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I

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

REGULATIONS

COUNCIL REGULATION (EC) No 1419/2007

of 29 November 2007

terminating the partial interim review of the anti-dumping measures applicable to imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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 Articles 9 and 11(3) thereof,

Having regard to the proposal from the Commission, after consulting the Advisory Committee,

Whereas:

of Vietnam, the Islamic Republic of Pakistan or the Republic of the Philippines whether declared as originating in the Socialist Republic of Vietnam, the Islamic Republic of Pakistan or the Republic of the Philippines or not. The extension followed an anti-circumvention investigation carried out pursuant to Article 13 of the basic Regulation.

- (3) By Regulation (EC) No 1322/2006 ⁽⁵⁾, the Council amended the anti-dumping measures in force. The amendment was made following an interim review carried out with regard to the product scope. The result of the investigation and the effect of the amending Regulation was that direct current voltage lamps (DC-CFL-i) should be excluded from the scope of the measures. The anti-dumping measures would accordingly only cover alternating current voltage lamps (including electronic compact fluorescent discharge lamps functioning on both alternating and direct current) (AC-CFL-i).

A. PROCEDURE

Measures in force

- (1) By Regulation (EC) No 1470/2001 ⁽²⁾, the Council imposed definitive anti-dumping duties ranging from 0 to 66,1 % on imports of integrated electronic fluorescent lamps (CFL-i) originating in the People's Republic of China (PRC) following an investigation. Prior to that, the Commission had imposed provisional anti-dumping duties by Regulation (EC) No 255/2001 ⁽³⁾.
- (2) By Regulation (EC) No 866/2005 ⁽⁴⁾, the Council extended the anti-dumping measures to also cover imports of CFL-i consigned from the Socialist Republic

- (4) By Regulation (EC) No 1205/2007 ⁽⁶⁾ the Council prolonged the anti-dumping measures in force. The prolongation was made following an expiry review carried out pursuant to Article 11(2) of the Basic Regulation.

Current investigation

- (5) The initiation of the investigation followed a request for a review pursuant to Article 11(3) of the basic Regulation. The request was lodged by the Community Federation of Lighting Industry of Compact Fluorescent Lamps Integrated (2CFLI) (the applicant).

⁽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 L 195, 19.7.2001, p. 8.

⁽³⁾ OJ L 38, 8.2.2001, p. 8.

⁽⁴⁾ OJ L 145, 9.6.2005, p. 1.

⁽⁵⁾ OJ L 244, 7.9.2006, p. 1.

⁽⁶⁾ OJ L 272, 17.10.2007, p. 1.

- (6) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission, on 8 September 2006, initiated an investigation ⁽¹⁾ pursuant to Article 11(3) of the basic Regulation. The scope of the interim review is limited to the level of dumping as far as one exporting producer, Lisheng Electronic & Lighting (Xiamen), is concerned.

Investigation and parties concerned

- (7) The Commission officially advised the applicant and the exporting producer in the PRC, as well as the representatives of the government of the exporting country, of the initiation of the review.
- (8) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.
- (9) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to the exporting producer concerned. The exporting producer cooperated by replying to the questionnaires and verification visits were subsequently carried out at the premises of the exporting producer as well as to other parties related to this exporting producer, namely:

— Lisheng Electronic & Lighting (Xiamen) Co., Ltd.

Related company in the PRC

— Megaman Electrical & Lighting Ltd (Xiamen).

Related companies in Hong Kong

— Neonlite Electronic & Lighting Ltd (HK),

— Electric Light Systems Ltd (HK).

Related importer in the Community

— IDV, Import und Direkt-Vertriebs-Ges.mBH, Germany.

Investigation period

- (10) The investigation period as concerns the level of dumping for the interim review of the one exporting producer, Lisheng Electronic & Lighting (Xiamen) Co. Ltd., covered the period from 1 July 2005 to 30 June 2006.

B. PRODUCT CONCERNED AND LIKE PRODUCT

Product concerned

- (11) The product concerned is the same as determined in the amending Regulation, i.e. electronic compact fluorescent discharge lamps functioning on alternating current (including electronic compact fluorescent discharge lamps functioning on both alternating and direct current), with one or more glass tubes, with all lighting elements and electronic components fixed to the lamp foot, or integrated in the lamp foot originating in the People's Republic of China (the product concerned), currently classifiable within CN code ex 8539 31 90.

Like product

- (12) As in the original investigation, it was found that CFL-i manufactured and sold domestically in the PRC, and CFL-i exported from the PRC has the same basic physical and technical characteristics and uses. Therefore and as concluded in the prolongation Regulation, these products are alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

Market economy treatment (MET)

- (13) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value is to be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which can show that they meet the criteria laid down in Article 2(7)(c) of that Regulation, i.e. that market economy conditions prevail in respect of the manufacture and sale of the like product.
- (14) While the Chinese exporting producer was granted Market economy treatment in the original investigation, an assessment had to be made in the interim review as to whether the relevant criteria for fulfilment of MET were still in place. A MET claims form pursuant to Article 2(7)(b) of the basic Regulation was consequently sent and completed by the Chinese Exporting producer, and its related company Megaman Electrical & Lighting Ltd. (Xiamen).
- (15) Briefly, and for ease of reference only, the criteria for MET are set out in summarised form below:

1. business decisions and costs are made in response to market signals, and without significant State interference;

⁽¹⁾ OJ C 217, 8.9.2006, p. 2.

2. firms have one clear set of accounting records which are independently audited in line with international accounting standards (IAS) and are applied for all purposes;
 3. there are no significant distortions carried over from former non-market-economy system;
 4. legal certainty and stability is provided by bankruptcy and property laws;
 5. currency exchanges are carried out at market rate.
- (16) As stated before, the Commission sought and verified at the premises of the exporting producer and its related company Megaman Electrical & Lighting Ltd., all information submitted in the MET applications and deemed necessary. The investigation revealed that the Chinese exporting producer fulfilled all of the conditions for granting MET.

Normal value

- (17) In order to establish normal value, it was first verified whether the total domestic sales of the exporting producer were representative in accordance with Article 2(2) of the Basic Regulation, i.e. that they accounted for 5 % or more of the total sales volume of the product concerned exported to the Community.
- (18) In view of the above requirements, the investigation revealed that domestic sales of the exporting producer could not be considered representative and the normal value therefore had to be constructed in accordance with Article 2(3) of the basic Regulation, thus calculated based on the cost of production in the exporting country plus a reasonable amount for selling, general and administrative costs and profits.
- (19) The normal value was accordingly established based on the exporting producer's own data for the cost of manufacturing (COM) for production destined for domestic consumption.
- (20) Conversely, the amount for selling general and administrative expenses (SGA) and profits could not be established in accordance with the chapeau of Article 2(6) of the Basic Regulation on actual data pertaining to production and sales in the ordinary course of trade of the product concerned.
- (21) It was examined whether SGA and profit could be established in accordance with Article 2(6)(a) and (b).

However, since no other exporter were investigated in this review the methodology in Article 2(6)(a) namely the weighted average of the actual amounts of other exporters could not be used. Similarly, the methodology in Article 2(6)(b) was not appropriate since there were no sales in the domestic market of products belonging to the same category.

- (22) Consequently, the Commission calculated a weighted average using the SGA expenses and profit rates from two cooperating exporting producers in the analogue country used in the expiry review pursuant to Article 11(2) of the basic Regulation and that had domestic sales in the ordinary course of trade. The SGA expenses and profit average rates found in these cooperating South Korean exporting producers were added to the cost of manufacturing incurred by the exporting producer in question with regard to the exported types as stipulated by Article 2(3) of the basic Regulation.

Export price

- (23) The exporting producer made export sales to the Community both directly to independent customers and via related importers in a third country and the Community. In all cases where the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.
- (24) In cases where sales were made via a related importer or trader, the export price was constructed on the basis of the resale prices of that related importer to independent customers. Adjustments were made for all costs incurred between importation and resale including sales, general and administrative expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation. The appropriate profit margin was established on the basis of information provided by unrelated cooperating traders/importers operating on the Community market.

Comparison

- (25) 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. For the investigated exporting producer, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, warranty and guarantee costs and commissions have been granted where applicable and justified.

Interest rates used for credit purposes

- (26) With regard to the credit cost allowance, the exporting producer claims that the deposit rate instead of the credit rate should be used on the grounds that, the company having sufficient liquidity, its credit costs are limited to the interest earnings not perceived on its bank deposit account.
- (27) Following the practice consistently applied by the Community institutions, it was not found appropriate to base the calculation of the credit cost allowance on the deposit rate on the grounds that these constitute opportunity costs as compared to actual costs.
- (28) In this context it is noted that the interest customers would have to pay in case of payment delays suggest that the company determined such interests on the basis of credit rates rather than deposit rates.

Dumping margin

- (29) As provided by Article 2(11) and (12) of the basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned. This comparison showed the existence of a dumping margin below *de minimis* for the exporting producer that exported to the Community in the RIP.

D. CONCLUSION

- (30) On this basis, it was concluded that, the circumstances with regard to dumping on the basis on which measures were established for the company in the original investi-

gation has not changed. The partial interim review pursuant to Article 11(3) of the basic Regulation should therefore be terminated.

E. TERMINATION OF THE REVIEW

- (31) Based on the above considerations, the partial interim review concerning Lisheng Electronic & Lighting (Xiamen) Co., Ltd should be terminated without any amendment to Regulation (EC) No 1205/2007.
- (32) Interested parties were informed of the essential facts and considerations on which basis the Commission proposed to terminate this proceeding. Views made known were then examined but were not such as alter the above conclusions,

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-dumping measures applicable to imports of integrated electronic compact fluorescent discharge lamps manufactured by Lisheng Electronic & Lighting (Xiamen) Co., Ltd and originating in the People's Republic of China, initiated pursuant to Article 11(3) of Regulation (EC) No 384/96, is hereby terminated without any amendment to Regulation (EC) No 1205/2007.

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, 29 November 2007.

For the Council
The President
M. LINO

COUNCIL REGULATION (EC) No 1420/2007**of 4 December 2007****imposing a definitive anti-dumping duty on imports of silico-manganese originating in the People's Republic of China and Kazakhstan and terminating the proceeding on imports of silico-manganese originating in Ukraine**

THE COUNCIL OF THE EUROPEAN UNION,

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 9 thereof,

Having regard to the proposal submitted by the Commission, after consulting the Advisory Committee,

Whereas:

A. PROCEDURE**1. Initiation**

- (1) On 6 September 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 silico-manganese (including ferro-silico-manganese) (SiMn) originating in the People's Republic of China (PRC), Kazakhstan and Ukraine (the countries concerned).
- (2) The proceeding was initiated following a complaint lodged on 24 July 2006 by the Comité de Liaison des Industries de Ferro-Alliages (EUROALLIAGES) (the complainant) on behalf of producers representing a

major proportion, in this case more than 50 % of the total Community production of SiMn (the complainant producers). The complaint contained prima facie evidence of dumping of SiMn originating in the countries concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

- (3) One interested party claimed that the Commission should have initiated this proceeding also against imports originating in India. At the time of the initiation of the current proceeding, however, the Commission did not have sufficient evidence of injurious dumping at its disposal that would have justified the initiation of a proceeding against imports originating in India in line with the requirements of Article 5(2) of the basic Regulation.

2. Parties concerned by the proceeding

- (4) The Commission officially advised the complainant, the complainant producers and other known Community producers, exporting producers in the countries concerned, importers/traders and their associations, suppliers 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.
- (5) In order to allow exporting producers in the PRC and in Kazakhstan 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 and Kazakhstan. Four exporting producer groups in the PRC and one exporting producer in Kazakhstan claimed MET pursuant to Article 2(7) of the basic Regulation, or IT should the investigation establish that they did not meet the conditions for MET.

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

⁽²⁾ OJ C 214, 6.9.2006, p. 14.

- (6) In view of the apparent large number of exporting producers in the PRC and importers in the Community, sampling was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation.
- (7) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in the PRC and Community importers were requested to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period of 1 July 2005 to 30 June 2006.
- (8) As far as the exporting producers in the PRC are concerned, given that only four groups of companies having export sales of SiMn to the Community during the IP indicated their willingness to be included in the sample, it was decided that sampling was not necessary.
- (9) With regard to importers into the European Community, only two unrelated importers made themselves known and provided the requested information in due time. Therefore, it was decided that sampling was not necessary.
- (10) 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 four Community producers, four exporting producer groups in the PRC, the sole Kazakh exporting producer, three Ukrainian exporting producers, two unrelated importers and nine unrelated users in the Community. In addition, two users submitted comments without replying to the questionnaire.
- (11) One of the exporting producer groups in the PRC, however, subsequently did not agree to an envisaged on-the-spot verification of the information provided in their MET/IT claims and questionnaire replies. Consequently, after having advised the companies concerned of the consequences of non-cooperation as stipulated in Article 18(1) of the basic Regulation, the Commission has in accordance with the provisions of Article 18 considered the said companies as not cooperating in the proceeding and all submissions made by them have been disregarded.
- (12) The Commission sought and verified all the information it deemed necessary for the purpose of MET/IT, in the case of the PRC and Kazakhstan, and for the determination of dumping, resulting injury and Community interest for all countries concerned. Verification visits were carried out at the premises of the following companies:
- (a) *Community producers*
- Eramet Comilog Manganese, Paris, France
- Ferroatlantica S.L., Madrid, Spain
- Huta Łaziska SA, Łaziska Górne, Poland
- OFZ, a.s., Istebne, Slovakia.
- (b) *Users in the Community*
- Compañía Española de Laminación, S.L., Castellbisbal, Spain
- Mittal Steel Poland SA (Arcelor SA), Kraków, Poland.
- (c) *Unrelated importers*
- Metalleghe S.P.A., Brescia, Italy.
- (d) *Exporting producers in the PRC*
- Minmetals Group
- Minmetals (Guizhou) Ferro-Alloys Co., Ltd, Guiyang
- Guiyang Huaxi Minmetals Ferro-Alloys Co., Ltd, Qingzhen
- China Minmetals Shenzhen Co., Ltd, Shenzhen

- Minmetals Shanghai Pudong Trading Co., Ltd, Shanghai
 - China National Minerals Co., Ltd, Beijing
 - Minmetals Orient Import & Export Trading Co., Ltd, Beijing.
 - Jilin Group
 - Jilin Ferroalloys Co., Ltd, Jilin City
 - Jilin Ferroalloy Imp & Exp Co., Ltd, Jilin City.
 - Shanxi Jinneng Group
 - Shanghai Jinneng International Trade Co. Ltd, Shanghai
 - Datong Jinneng Jinli Ferroalloy Co. Ltd, Datong
 - Shanxi Jinneng Group Jinguan Ferroalloy, Datong
 - Datong Jinneng Industrial Silicon Co. Ltd, Datong.
- (e) *Exporting producer in Kazakhstan*
- OJSC Kazchrome (Kazchrome), Aktyubinsk and Aksu.
- (f) *Exporting producers in Ukraine*
- PJSC Nikopol Ferroalloys Plant (NFP), Nikopol and its related traders
 - SPIG 'Interpipe' Corporation, Dnipropetrovsk
 - Nikopolskie Ferrosplavy LLC, Dnipropetrovsk
- JSC Stakhanov Ferroalloys Plant (Stakhanov), Stakhanov
 - OJSC Zaporozhye Ferroalloys Plant (Zaporozhye), Zaporozhye.
- (g) *Related traders in Switzerland*
- Steelex SA, Lugano, related to PJSC Nikopol Ferroalloys Plant
 - ENRC, Kloten, related to OJSC Kazchrome.
- (13) In light of the need to establish a normal value for the exporting producers in the PRC and Kazakhstan to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country took place at the premises of the following producer and its related sales company in the United States of America (USA):
- Eramet Marietta, Inc., Marietta, Ohio (producer)
 - Eramet North America, Inc., Coraopolis, Pennsylvania (related sales company).
- ### 3. Investigation period
- (14) The investigation of dumping and injury covered the period from 1 July 2005 to 30 June 2006 (the investigation period or IP). The examination of 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
- (15) The product concerned is silico-manganese (including ferro-silico-manganese) (SiMn) originating in the PRC, Kazakhstan and Ukraine (the product concerned), normally declared under CN codes 7202 30 00 and ex 8111 00 11.
- (16) The product concerned is used in the steel industry for deoxidization and as an alloy. It is mainly produced from manganese ore and silicon which are mixed together and brought to fusion temperatures in a furnace.

- (17) SiMn exists in different qualities and it can have different contents of iron (Fe), manganese (Mn), silicon (Si) and carbon (C). As far as the carbon content is concerned, a distinction can be made between SiMn with a very low content of carbon, which is of a higher quality (and attracts a higher price), and SiMn with higher carbon content, which can be considered as the normal quality. SiMn is sold in different powder, grain or lump sizes. Despite these differences, all qualities and sizes have been considered as a single product since they share the same main chemical and physical characteristics and main uses.

2. Like product

- (18) The investigation showed that SiMn produced and sold in the Community by the Community industry, SiMn produced and sold on the domestic markets of PRC, Kazakhstan and Ukraine, and on the domestic market of the USA, which finally served as an analogue country, and SiMn imported into the Community from the PRC, Kazakhstan and Ukraine, 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.

- (19) One exporting producer claimed that unwrought manganese, normally declared under CN code 8111 00 11, should not be covered by the investigation. In this regard, it is confirmed that the product concerned is silico-manganese, as stated at recital 15 and not unwrought manganese, but it also includes unwrought silico-manganese. While SiMn is generally declared under CN code 7202 30 00, it may also, depending on the iron content, be declared as unwrought silico-manganese or silico-manganese powders under CN code 8111 00 11.

C. DUMPING

1. Market Economy Treatment (MET)

- (20) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC and in Kazakhstan, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article 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:

- (1) business decisions are made in response to market signals, without significant State interference, and costs reflect market values;

- (2) 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;

- (3) there are no significant distortions carried over from the former non-market-economy system;

- (4) bankruptcy and property laws guarantee stability and legal certainty;

- (5) exchange rate conversions are carried out at market rates.

- (21) Four groups of Chinese exporting producers initially 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. However, one of these groups decided subsequently not to cooperate with the investigation (as mentioned in recital 11 above). Thus, only the MET claims of the remaining three cooperating Chinese exporting producer groups listed in recital 12 were considered. All of these groups included both producers of the product concerned and companies related to the producers and involved in the 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.

- (22) The sole Kazakh exporting producer 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.

- (23) For the cooperating exporting producers 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.

1.1. MET determination regarding exporting producers in the PRC

- (24) The investigation revealed that MET could not be granted to any of the Chinese exporting producers listed in recital 12 as none of these groups met criterion 1 set out in Article 2(7)(c) of the basic Regulation and, in addition, one of them failed to meet criterion 2 and another one failed to meet criterion 3. Furthermore, for the group not meeting criteria 1 and 2 strong doubts remained with regard to criterion 3 and this group, in any case, failed to submit a complete set of MET claim forms and questionnaire replies of its related companies involved in the production and/or trading of the product concerned.
- (25) As far as criterion 1 is concerned, none of the Chinese groups of companies concerned has demonstrated to fulfil this criterion. All of the groups of companies were found to be ultimately State owned and failed to present evidence that could be considered sufficient to remove doubts of significant State interference in management decisions. Therefore, it could not be excluded that the companies were under significant State control and interference.
- (26) For one group of companies, in addition to the non-compliance with criterion 1, it was established that it could not demonstrate that there are no distortions carried over from the former non-market-economy system (criterion 3), given certain uncompensated loan benefits one company in the group had received from its State-owned mother company.
- (27) Furthermore, for another group of companies, in addition to the non-compliance with criterion 1, it was established that it could not demonstrate that there are no distortions carried over from the former non-market-economy system, in particular in view of the existence of barter trade during the investigation period. This group also failed to demonstrate that the accounts of several of its verified entities were independently audited in accordance with international accounting standards, as the application of sound and basic accounting principles, in particular with regard to depreciation of fixed assets, had been overruled by the parent company and this infringement had been accepted by the companies' auditors.
- (28) Moreover, within the same group at least one company which appeared to be involved in trading of the product concerned had submitted neither a MET claim form nor a questionnaire reply, putting in doubt the reliability of the information provided.
- (29) The interested parties were given an opportunity to comment on the above findings. The comments received from two Chinese exporting producer groups did not provide any new evidence that would change the findings regarding the MET determination.
- (30) On the basis of the above, none of the Chinese exporting producer groups of companies have 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.

1.2. MET determination regarding the sole exporting producer in Kazakhstan

- (31) The sole Kazakh exporting producer showed that it fulfilled all five criteria set out in Article 2(7)(c) of the basic Regulation and was therefore granted MET. The exporting producer and the Community industry (see recital 91) were given an opportunity to comment on the MET findings. The comments received from the Community industry did not provide any new evidence that would change the findings regarding the MET determination.

2. Individual treatment (IT)

- (32) 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.
- (33) As far as the PRC is concerned, all exporting producers who requested MET also claimed IT in the event that they would not be granted MET.
- (34) On the basis of the information available, it was found that all of the groups of companies concerned 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 companies 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, since as explained in recital 25, all the companies were found to be ultimately majority State owned. Consequently, their claims had to be rejected.

3. Normal Value

3.1. General methodology

(i) Global representativeness

- (35) As far as the determination of normal value is concerned, the Commission first established, in accordance with Article 2(2) of the basic Regulation, for each exporting producer concerned in Kazakhstan and in Ukraine, whether its domestic sales of the product concerned to independent customers 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.

(ii) Comparison of product types

- (36) The Commission subsequently identified those product types sold domestically by the exporting producers having overall representative domestic sales, which were identical or directly comparable with the types sold for export to the Community.

(iii) Product type specific representativeness

- (37) For each product type sold by the exporting producers on their domestic markets 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 for the purposes of Article 2(2) of the basic Regulation. 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.

(iv) Ordinary course of trade test

- (38) The Commission subsequently examined for each exporting producer concerned in Kazakhstan and in Ukraine 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.

- (39) For those product types where more than 80 % by volume of sales on the domestic market were not below unit costs 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.

- (40) 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.

- (41) 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.

- (42) Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value, another method had to be applied. In accordance with Article 2(3) of the basic Regulation, the Commission instead calculated a constructed normal value, as follows.

- (43) Normal value was constructed by adding to each exporter's manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit.

- (44) In all cases SG&A and 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 incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.

3.2. *Analogue country*

- (45) According to Article 2(7)(a) of the basic Regulation, in economies in transition normal value for exporting producers not granted MET has to be established on the basis of the price or constructed value in a market economy third country (analogue country) or the price from such a third country to other countries, or where those are not possible, on any other reasonable basis.
- (46) In the notice of initiation, it was envisaged to use Brazil as an appropriate analogue country for the purpose of establishing normal value for the PRC and Kazakhstan, where necessary, and interested parties were invited to comment on this. No interested parties objected to this proposal.
- (47) The Commission sought cooperation from known producers in Brazil and subsequently also from producers in other potential analogue countries, i.e. India, Japan, Norway, South Africa and the USA. Offers of cooperation were, however, obtained only from producers in Norway and in the USA. On the basis of information obtained from three Norwegian companies, it was concluded that the domestic market of SiMn in Norway was very small. Therefore, the Norwegian market was not deemed sufficiently representative for the determination of normal value for the PRC and Kazakhstan.
- (48) As for the sole known USA producer, a questionnaire was sent to that producer and the data submitted in its reply were verified on the spot. The domestic sales volume of the producer in question in the USA was found to be significant and sufficiently representative in comparison to the volume of Chinese and Kazakh exports of the product concerned to the Community. Moreover, the USA market can be considered an open market, given that the import duty level is low (MFN duty of 3,9 % of fob price). The investigation showed that there were substantial imports of SiMn into the USA market. Therefore, the USA market was deemed a competitive market and sufficiently representative for the determination of normal value for the PRC and Kazakhstan.
- (49) Interested parties were invited to comment on this and comments were received from three interested parties objecting to the choice of the USA as an analogue country. One Chinese exporting producer group argued firstly that there is insufficient competition on the USA market since (i) the cooperating producer is the only producer on the domestic market and (ii) the volume of imports into the USA market is allegedly limited due to the existence of anti-dumping measures in the USA on imports of silico-manganese from main producing countries in the world. Secondly, it claimed that the fact that the cooperating USA producer is a related company to one of the complainant producers casts doubts on the reliability and representativity of its cost and price information. Thirdly, it was claimed that account should be taken of the fact that access to raw materials is allegedly different in the USA, where there are no domestic supplies of the main raw material, manganese ore, and the PRC, where domestic supplies are available. Fourthly, it was claimed that a country with a level of economic development more similar to that of the PRC would constitute a more appropriate analogue country than the USA.
- (50) The Chinese exporting producer claimed that India or, secondarily, Ukraine, would be more appropriate choices for analogue country, mainly because competition and market conditions in these countries would be more comparable with the situation in the PRC. As a third option, it was proposed that normal value for the PRC be established on the basis of the data submitted by those Chinese producers that qualify for MET. Ultimately, should the USA be retained as an analogue country, it was claimed that adjustments to the normal value should be made to account for differences in the access to raw materials and differences in production costs due to higher labour and environmental costs in the USA.
- (51) The comments made by two other interested parties did not add in substance to the above mentioned comments made by the Chinese exporting producer.
- (52) With respect to India, the Commission had sought cooperation from several Indian producers, but despite initial positive indications, no cooperation was finally obtained. Consequently, India could not be retained as an analogue country. As for Ukraine, high levels of dumping were found in the investigation for that country (see recital 87). In line with consistent practice, a country engaged in such dumping is not considered an appropriate analogue country. As for the third proposal, i.e. to establish the normal value for the PRC on the basis of the data submitted by Chinese producers qualifying for MET, it suffices to note that Article 2(7)(a) of the basic Regulation specifically sets out that a 'market economy third country' shall be used and in addition none of the cooperating Chinese producers was found to qualify for MET.

(53) In addition, as regards the specific objections made to the appropriateness of the USA as an analogue country, the following should be noted: firstly, as regards the alleged lack of competition on the local market, as already mentioned in recital 48, the investigation showed that, albeit the cooperating USA producer is the sole local producer, there were substantial imports of silico-manganese to the USA. Indeed, the imports during the IP were manifold in comparison to the domestic sales volume of the cooperating USA producer. In this connection, it is also noted that the existence of trade defence measures in force for the product in question does not preclude the choice of a particular country as an analogue country, as the purpose of anti-dumping measures is precisely to restore fair competition on the market in question.

(54) Regarding the allegation that the relationship between the USA cooperating company and a European producer could affect the reliability of the data provided, these allegations did not coincide with the findings of the investigation. No indication was found that the relationship would have had any distorting impact on the prices, costs of production and profitability of the United States producer, and the Commission satisfied itself on the accuracy and reliability of the information provided for the purposes of this investigation.

(55) Finally, the arguments concerning access to raw materials and the difference in costs were also considered. The price of the main raw material (manganese ore) used in the production of silico-manganese by the cooperating USA company was compared to the prices paid by the Chinese companies for manganese ore and no significant differences were found. In addition, it is noted that the Chinese cooperating producers also imported part of their manganese ore requirements. The argument, as well as the claim for adjustment, was therefore rejected.

(56) As regards other factors invoked, such as the level of economic development or the labour and environmental costs, the interested party failed to substantiate its claim sufficiently, and these factors were not deemed relevant for determining whether the USA is an appropriate analogue country nor to warrant an adjustment to the normal value. It is also noted that as costs and prices are in general not considered as a viable basis for determining normal value in countries falling under Article

2(7) of the basic Regulation, such comparison in fact defeats the purpose of resorting to the methods set out in Article 2(7)(a) of the basic Regulation.

(57) In view of the above, it is concluded that the USA constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

3.3. *People's Republic of China*

(58) Following the choice of the USA as an analogue country and pursuant to Article 2(7)(a) of the basic Regulation, normal value for Chinese exporting producers, none of whom has been granted MET, was established on the basis of verified information received from the sole cooperating USA producer.

(59) The general methodology described in recitals 35 to 44 has been applied to the cooperating producer in the analogue country. Given that domestic sales of SiMn by the cooperating USA producer did not occur in the ordinary course of trade during the IP, normal value has been constructed pursuant to Article 2(3) of the basic Regulation. The profit margin used to construct normal value has been determined pursuant to Article 2(6)(b) of the basic Regulation on the basis of the profit margin applicable to the same general category of products for the USA producer. Sales, general and administrative costs incurred by the cooperating USA producer on all domestic sales during the IP have been used.

3.4. *Kazakhstan*

(60) The general methodology described in recitals 35 to 44 has been applied to the sole exporting producer in Kazakhstan, which was granted MET. In view of limited domestic sales, normal value had to be constructed pursuant to Article 2(3) of the basic Regulation. In this respect, it was found that the domestic sales of the like product by Kazchrome were not representative and that this producer's domestic sales of the same general category of products were not in the ordinary course of trade. Therefore, the amounts for SG&A and for profit used to construct normal value were initially based, pursuant to Article 2(6) of the basic Regulation,

on the weighted average of these amounts attained by the cooperating Ukrainian producers on their domestic sales of the like product. Subsequent to definitive disclosure, the exporting producer argued that the methodology used to determine the SG&A and profit was not appropriate in view of the fact that significant dumping was found for the cooperating Ukrainian exporting producers. Alternatively, the Kazakh exporting producer claimed that the amounts for SG&A and profit established in the analogue country should be used. Following these comments, it was indeed considered not appropriate to use profits from the Ukrainian producers in these circumstances. It was thus re-examined pursuant to Article 2(6) of the basic Regulation on which basis the amounts for SG&A and profit could be established. In this regard, it was assessed whether any of the company's SG&A and profit data relating to SiMn could be used to establish the relevant amount. As the company is deemed to operate under market conditions and in order to reflect as precise as possible the domestic market situation of the Kazakh company, it was decided that the weighted average SG&A and profit obtained on its domestic sales of SiMn to unrelated and related customers should be used under the chapeau of Article 2(6) of the basic Regulation. In this respect, it should be noted that the SG&A and profit realised on its domestic sales to unrelated and related customers were at almost identical levels, thus indicating that neither the SG&A nor the profit realised in the sales to domestic related customers are affected by the relationship. Moreover, the domestic sales were found to be made in the ordinary course of trade and at a reasonably significant level (2,8 % of the volume of exports to the Community of SiMn). Given that chapeau of Article 2(6) of the basic Regulation prioritises the use of a company's own SG&A and profit realised on the domestic sales in the ordinary course of trade, the claim to resort to data obtained from the producer in the analogue country was thus rejected.

3.5. Ukraine

- (61) The general methodology described in recitals 35 to 44 above has been applied to all three exporting producers in Ukraine. For most of the sales, normal value had to be constructed in view of the absence of sufficient domestic sales of comparable models. Pursuant to Article 2(6)(b) of the basic Regulation, the amounts for selling, general and administrative costs and for profits used to construct normal value have been based on the companies' actual data pertaining to the production and sales, in the ordinary course of trade, of the same general category of products.

4. Export price

- (62) The exporting producers made export sales to the Community either directly to independent customers or through related or unrelated trading companies located outside the Community.

- (63) Where export sales to the Community were made either directly to independent customers in the Community or through unrelated trading companies located outside the Community, export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

- (64) Where export sales to the Community were made through related trading companies located in a third country, export prices were established on the basis of the first resale prices of these related traders to independent customers in the Community.

4.1. People's Republic of China

- (65) Since none of the cooperating Chinese exporting producers were granted MET/IT, the data on their export sales was not used to establish individual dumping margins but only in the calculation of the countrywide duty, as elaborated in recital 79 below.

- (66) All three cooperating exporting producer groups in the PRC made all export sales to the Community directly to independent customers in the Community. Export prices were therefore established on the basis of the prices actually paid or payable.

4.2. Kazakhstan

- (67) The sole cooperating exporting producer made exports of the product concerned to the Community via a related trading company located in a third country. The export price of this company was therefore established on the basis of the resale prices of this trader to the first independent customer in the Community.

4.3. *Ukraine*

- (68) Two exporting producers in Ukraine made exports to the Community exclusively via unrelated trading companies located in a third country outside the Community and the third Ukrainian exporting producer made some of its sales of the product concerned to the Community to an independent trading company in Ukraine for export to the Community. In both cases, the export price was established on the basis of the prices actually paid or payable for the product when sold to the trading company for export to the Community.
- (69) Some of the sales of the third exporting producer were made via a chain of related companies and ultimately by a related trader in a third country. In these cases, the export price was established on the basis of this related trading company's resale prices to independent customers in the Community.

5. **Comparison**

- (70) The normal value and export prices were compared on an ex-works basis and at the same level of trade. 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 affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (71) On this basis, for all investigated Kazakh and Ukrainian exporting producers, allowances for differences in level of trade, transport and insurance costs, handling, loading and ancillary costs, packing costs, credit costs and after sales costs (warranty/guarantee) were made where applicable and justified.
- (72) The SG&A used to construct normal value for the Kazakh exporting producer pursuant to the methodology set out in recital 60 above, included costs for domestic freight and insurance. Therefore, albeit no claim had been made in this regard, an ex officio adjustments to the normal value pursuant to Article 2(10)(e) was made to reduce the SG&A by the amount of the costs incurred on domestic freight and insurance.
- (73) The sole cooperating exporting producer in Kazakhstan, Kazchrome, submitted that, together with its related

trader located in Switzerland, ENRC, it formed what it called a 'single economic entity'. It claimed that therefore, whilst the trader's sales price should be used for establishing the export price, no adjustments had to be made for transport costs, SG&A expenses and trader profit.

- (74) The claim was duly investigated. It was found that ENRC and Kazchrome, although related parties, were separate legal entities. Furthermore, these two entities were acting on the basis of a buyer-seller relationship. Consequently, it was concluded that, in Kazchrome's sales flow to the Community, ENRC had functions similar to those of an agent working on a commission basis. In addition, it was established that, whereas all Community sales of Kazchrome were done via ENRC, this trader was not a party in the domestic sales channel of Kazchrome. Furthermore, it was concluded that the adjustment of the export price should also cover transport costs from the plant onwards, taking into account different terms of sales, in order to ensure a fair comparison between export price and normal value at ex-works level.
- (75) Therefore, the claim had to be dismissed and adjustments to the export price for a commission in accordance with Article 2(10)(i) of the basic Regulation and for transport in accordance with Article 2(10)(e) of the basic Regulation were made. The level of the commission was calculated based on direct evidence pointing to the existence of such functions. In this context, in the calculation of the commission, the SG&A expenses incurred by ENRC to sell the product concerned produced by Kazchrome were taken into account, as well as a profit margin for ENRC, based, in this case, on that reported by an unrelated importer cooperating in the investigation.
- (76) For the Ukrainian producer ultimately selling via a related trader in a third country (see recital 69), an adjustment to the export price for a commission was made in accordance with Article 2(10)(i) of the basic Regulation, in the cases where sales were made through this related trader, as this trader had functions similar to those of an agent working on a commission basis. The company concerned, NFP, and the related trader in question, Steelex SA, were found to be separate legal entities and, directly or indirectly, to work on the basis of a buyer-seller relationship. Moreover, for export sales to the Community via Steelex SA a commission was paid. The level of the commission calculated by the Community institutions was based on direct evidence pointing to the existence of such functions. In this context, the SG&A expenses incurred by Steelex SA to sell the product concerned produced by NFP were taken into account, as well as a profit margin reported by an unrelated importer cooperating in the investigation.

Furthermore, NFP made part of its sales to the Community by Stelex SA through an unrelated trader located in another third country. For these sales, in addition to the commission for Stelex SA, it was found reasonable to make an adjustment for a commission for the unrelated trader in accordance with Article 2(10)(i) of the basic Regulation as this trader also had functions similar to those of an agent working on a commission basis. This commission was established on the basis of its calculated mark-up on the sales in question.

- (77) One Ukrainian exporting producer claimed an adjustment for currency conversions, pursuant to Article 2(10)(j) of the basic Regulation. This claim was based on the fluctuation between the exchange rate on the date of invoice and the exchange rate on the date of payment. In this respect, it is important to underline that the date of invoice is, in accordance with Article 2(10)(j) of the basic Regulation, considered to be the date of sale and the exchange rate to be applied should, thus, be the exchange rate prevailing at the date of sale. Therefore, this claim had to be rejected.

6. Dumping margins

6.1. People's Republic of China

- (78) 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 a weighting factor for the cif value of each group of exporters, i.e. cooperators and non-cooperators.

- (79) To this end, the dumping margin was firstly calculated for the cooperating Chinese exporting producers pursuant to Article 2(11) and (12) of the basic Regulation, on the basis of a comparison of a weighted average normal value of the analogue country by product type with a weighted average export price by product type as established above.

- (80) It should be noted that the imports from the PRC consisted both of SiMn with normal carbon content and low-carbon SiMn. However, the cooperating producer in the analogue country produced only the normal carbon content SiMn. Therefore, only data concerning this common product type was used in the comparison.

- (81) Secondly, the dumping margin was established for all non-cooperating exporting producers on the basis of

the facts available, in accordance with Article 18(1) of the basic Regulation.

- (82) In order to determine the dumping margin for non-cooperating exporting producers, the level of non-cooperation was first established. To this end, the volume of exports to the Community reported by the cooperating Chinese exporting producers was compared with the total volume of imports originating in the PRC, as based on Eurostat import statistics. This comparison indicated that the level of cooperation was low, since the exports by the cooperating producers represented less than 29 % of total Community imports from the PRC during the IP.

- (83) Therefore, the level of dumping for the export volumes of non-cooperating Chinese exporting producers was determined on the basis of the highest dumping margin established for the cooperating exporting producers for the normal carbon content SiMn. This approach was deemed appropriate since there were no indications that any non-cooperating producer was dumping at a lower level than the cooperating exporting producers. Therefore, a countrywide average dumping margin was calculated using as a weighting factor the cif value of each group of exporters, i.e. cooperating exporters and non-cooperating exporters. On this basis, the countrywide dumping margin, expressed as a percentage of the cif import price at the Community frontier, duty unpaid, is 60,1 %.

6.2. Kazakhstan

- (84) Based on the complaint, the information available from the exporting producer which came forward and other statistical data it appeared that OJSC Kazchrome is the sole Kazakh exporting producer of silico-manganese. As no indications were found that any exporting producer deliberately abstained from cooperating it was considered appropriate to set the residual dumping margin at the same level as the level established for OJSC Kazchrome.

- (85) The dumping margins established, expressed as a percentage of the cif import price at the Community frontier, duty unpaid, are therefore the following:

— OJSC Kazchrome: 6,5 %,

— All other companies: 6,5 %.

6.3. Ukraine

(86) Based on the complaint, the information available from the exporting producers which came forward and other statistical data, it was concluded that the level of cooperation was above 80 % in the case of Ukraine. Therefore, it was considered appropriate to set the residual dumping margin at the level of the highest dumping margin established for a cooperating exporting producer in the country concerned.

(87) On this basis, the dumping margins, expressed as a percentage of the cif import price at the Community frontier, duty unpaid, are the following:

- PJSC Nikopol Ferroalloys Plant: 39,1 %,
- JSC Stakhanov Ferroalloys Plant: 53,4 %,
- OJSC Zaporozhye Ferroalloys Plant: 56,7 %,
- All other companies: 56,7 %.

D. INJURY

1. General

(88) In 1998, anti-dumping measures were imposed on imports of SiMn originating in the PRC and in Ukraine (Regulation (EC) No 495/98 ⁽¹⁾). Those measures expired in early March 2003. Therefore, during the early part of the period considered there were measures in place on imports from two of the countries concerned. This fact was taken into consideration when conducting the injury analysis. As indicated in recital 118 below, the evolution in respect of profitability clearly indicates that the removal of the anti-dumping measures in March 2003 did not influence significantly the situation of the Community industry during the following period. It is therefore concluded that, contrary to the claim by some interested parties, the year 2002 can be considered as the basis for the calculation of the indices mentioned in recitals 93 to 141.

(89) SiMn is a key raw material used for the production of steel. There was a significant increase in demand for steel worldwide, but primarily in Asia, which began towards the end of 2003 and continued during the first half of

2004. This, combined with production shortages of SiMn in Asia resulted in increased worldwide demand for SiMn, and led to an unprecedented increase in price during 2004. In carrying out the injury analysis, account has been taken of these unusual circumstances, in order to ensure that they do not unduly affect the injury picture.

2. Community production and Community industry

(90) Within the Community, the like product is manufactured by five producers. The output of these five Community producers is therefore deemed to constitute the Community production within the meaning of Article 4(1) of the basic Regulation.

(91) Of these five producers, a total of four, being members of the complaining association, declared their interest in cooperating in the proceeding within the time limit set out in the notice of initiation and properly cooperated with the investigation. These four producers were found to account for a major proportion, in this case around 88 %, of the total Community production of the like product. The four cooperating producers therefore constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will be hereafter referred to as the 'Community industry'. The remaining Community producer will be hereafter referred to as the 'other Community producer'. This other Community producer did not oppose the complaint.

3. Community consumption

(92) Community consumption was established on the basis of the volumes of the Community industry's own production taking into account changes in stock levels, the import and export volumes data for the Community market obtained from Eurostat and, concerning the other Community producer, from estimations made by the Community industry producers.

(93) In the IP, the Community market for the product concerned and the like product was approximately 9 % higher than in 2002, i.e. around 914 000 tonnes. During the period considered consumption increased to a peak in 2004, when it was 14 % higher than in 2002, but fell in the following two years.

	2002	2003	2004	2005	IP
Total EC consumption (tonnes)	835 419	882 607	953 692	921 654	914 240
Index (2002=100)	100	106	114	110	109

⁽¹⁾ OJ L 62, 3.3.1998, p. 1. Regulation as amended by Regulation (EC) No 154/2003 (OJ L 25, 30.1.2003, p. 25).

4. Imports from the countries concerned

(a) Cumulative assessment of the effects of the imports concerned

- (94) The Commission considered whether imports from the countries concerned should be assessed cumulatively on the basis of the criteria set out in Article 3(4) of the basic Regulation.
- (95) The dumping margin found for each of the countries concerned was more than *de minimis*, the volume of imports from each of these countries was not negligible and the cumulative assessment could be considered appropriate in view of the conditions of competition between the imports from the countries concerned and the like Community product. These similar conditions of competition were evidenced by the fact that the product concerned imported from the countries concerned and the like product produced and sold by the Community industry within the Community market were alike and distributed via the same trade channels. Moreover, all import volumes were substantial and resulted in significant market shares. However, in view of the absence of undercutting by imports from Ukraine as stated at recital 104, it is considered that the effect of imports from Ukraine should be assessed separately.
- (96) The exporting producer in Kazakhstan maintained that Kazakhstan should not be cumulated with the PRC for the purpose of the injury assessment, because of its diametrically different market behaviour. This exporting producer argued *inter alia* that the evolution of Kazakh import volumes, values and market share for the Community was different from the other countries

concerned and that there was a difference in product mix. In respect of this, it is acknowledged that there was during the period considered an overall decrease in the volume of imports and in market share in respect of Kazakhstan (the latter was 5,8 % in 2002 and 4,6 % during the IP). However, both the volume and market share of Kazakh imports during the period considered were relatively stable and were at levels which cannot be considered as insignificant. In addition, the investigation has shown that the evolution of prices for Kazakh imports is not significantly different from that for imports from the other countries concerned. Therefore, also in light of the considerations in recitals 73 to 75 it cannot be concluded that there is a diametrically different market behaviour between imports from the PRC and Kazakhstan and consequently the claim should be rejected.

- (97) In the light of the above, it was considered that all the criteria set out in Article 3(4) of the basic Regulation were met in respect of the PRC and Kazakhstan. The imports from those two countries concerned were therefore examined cumulatively, while imports from Ukraine were assessed separately.

(b) Volume

- (98) The volume of imports of the product concerned from the PRC and Kazakhstan into the Community increased steadily from around 48 000 tonnes during 2002 to around 162 000 tonnes during 2004, before decreasing to around 96 000 tonnes during the IP. Between 2002 and the IP, the volume of imports from these countries increased by 99 %.

	2002	2003	2004	2005	IP
Volume of imports from the PRC and Kazakhstan (tonnes)	48 091	66 509	162 227	142 993	95 491
Index (2002=100)	100	138	337	297	199
Market share of imports from the PRC and Kazakhstan	5,8 %	7,5 %	17,0 %	15,5 %	10,4 %
Price of imports from the PRC and Kazakhstan (EUR/tonne)	462	464	829	689	564
Index (2002=100)	100	101	179	149	122

- (99) The volume of imports of the product concerned from Ukraine into the Community decreased slightly from around 154 000 tonnes during 2002 to around 138 000 tonnes during 2003 and 2004, before

increasing to around 180 000 tonnes during 2005 and to around 210 000 tonnes during the IP. Between 2002 and the IP, the volume of imports from these countries increased by 36 %.

	2002	2003	2004	2005	IP
Volume of imports from Ukraine (tonnes)	154 391	137 683	137 514	179 993	210 302
Index (2002=100)	100	89	89	117	136
Market share of imports from Ukraine	18,5 %	15,6 %	14,4 %	19,5 %	23,0 %
Price of imports from Ukraine (EUR/tonne)	508	490	912	602	550
Index (2002=100)	100	97	180	118	108

(c) *Market share*

(100) The market share held by imports from the PRC and Kazakhstan stood at 5,8 % during 2002. This increased in 2003 and again in 2004, reaching 17,0 % in that year. During 2005 the market share decreased slightly to 15,5 % and decreased again during the IP to 10,4 %. Overall, between 2002 and the IP, the market share increased by 4,6 percentage points to almost double the market share in 2002.

(101) The market share held by imports from Ukraine stood at 18,5 % during 2002. This decreased in 2003 and again in 2004, reaching 14,4 % in that year. During 2005 the market share increased to 19,5 % and increased again during the IP to 23,0 %. Overall, between 2002 and the IP, the market share increased by 4,5 percentage points.

(d) *Prices*(i) *Price evolution*

(102) During 2004, prices for the SiMn increased worldwide to exceptional levels due to a situation of unusually high demand and low supply, as explained in recital 89. This is reflected in the prices of imports from the countries concerned for that year and part of 2005. This, however, did not affect prices during the IP. Overall, the average price of imports of the product concerned originating in the PRC and Kazakhstan increased by 22 % between 2002 and the IP, while the average price of imports of the product concerned originating in Ukraine increased by 8 % over the same period.

(ii) *Price undercutting*

(103) A model-to-model price comparison was made between the exporting producer and the Community industry's average selling prices in the Community. To this end, Community industry's prices to unrelated customers have been compared with the prices of cooperating exporting producers of the countries concerned. Adjustments were applied where necessary to take

account of differences in the level of trade and in the quality of products.

(104) The comparison showed that during the IP, SiMn originating in the PRC and Kazakhstan sold in the Community each undercut the Community industry's prices by 4,5 %, and consequently by 4,5 % overall on a weighted average basis. Prices of imports from Ukraine were at comparable levels to those of the Community industry (i.e. no undercutting).

(105) With a view to ensure that in the undercutting calculation prices are compared at the same level of trade, ex-works prices of the Community industry were compared with prices of the imported goods as they enter the physical territory of the Community, duly adjusted for the unloading and customs clearance costs. One interested party contested the methodology used with regard to the Kazakh company, claiming that the basis for calculation of the price of imports should be the cif price at the point of customs clearance at the EU ports, and not the price of the imported goods as they enter the physical territory of the Community (in this case the land border in Lithuania). No convincing argument was presented that would support the need to apply a different method of calculation for this company. On the contrary, it should be noted that the cif prices at the point of customs clearance of the Kazakh imports include a significant amount of transportation costs after the goods have passed the Community border in Lithuania and comparing them with the ex-works prices of the Community industry would be discriminatory for the latter, as the ex-work prices do not include any transportation cost. Therefore, it is concluded that the methodology applied is the most appropriate and consequently the claim is rejected.

5. Situation of the Community industry

(106) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

(a) *Production*

- (107) From a level of around 241 000 tonnes in 2002, the Community industry's production increased to a peak during 2004 of around 255 000 tonnes, due to exceptional demand as explained in recital 89, before decreasing in 2005 and increasing slightly in the IP. Overall, production decreased over the period considered by 6 % to around 226 000 tonnes during the IP. It should be noted that one Community producer stopped production of SiMn during 2003 and for much of the IP.

	2002	2003	2004	2005	IP
Production (tonnes)	241 784	220 073	255 671	221 402	226 142
Index (2002=100)	100	91	106	92	94

(b) *Capacity and capacity utilisation rates*

- (108) The production capacity of the Community industry remained stable, at a level of around 325 000 tonnes, throughout the period considered.

	2002	2003	2004	2005	IP
Production capacity (tonnes)	325 226	325 537	325 254	326 068	326 696
Index (2002=100)	100	100	100	100	100
Capacity utilisation	74 %	68 %	79 %	68 %	69 %
Index (2002=100)	100	91	106	91	93

- (109) Capacity utilisation was 74 % in 2002. It declined to 68 % in 2003, increased again to 79 % in 2004, before declining to 69 % in the IP. This reflects the variations in production volumes as described in recital 107.

(c) *Stocks*

- (110) The level of closing stocks of the Community industry decreased by 45 % in 2003, but returned in 2004 to almost the same level as in 2002. The steep decrease in stocks at the end of 2003 was due to the reaction to the exceptional increase in demand referred to in recital 89. Closing stocks then increased in 2005 by 22 % before decreasing significantly in the IP to a level 30 % below 2002 levels. This overall decrease in closing stocks accounts for the fact that the Community industry's EC sales volume remained stable overall (see recital 111), despite the decrease in production as described in recital 107.

	2002	2003	2004	2005	IP
Closing stock (tonnes)	21 017	11 561	20 983	25 682	14 618
Index (2002=100)	100	55	100	122	70

(d) *Sales volume*

- (111) The sales volume by the Community industry of its own production to unrelated customers on the Community market during the IP was around 227 000 tonnes, the same as in 2002. However, the 2003 and 2005 sales volumes were 6 % and 8 % lower, respectively. In 2004, sales volume was higher at 104 % of the 2002 and IP level for the reasons already explained in recital 89.

	2002	2003	2004	2005	IP
EC Sales volume to customers (tonnes)	227 571	213 778	236 494	208 687	227 690
Index (2002=100)	100	94	104	92	100

(e) *Market share*

- (112) The market share held by the Community industry decreased from 27,2 % in 2002 to 24,2 % in 2003, before recovering to 24,8 % in 2004. In 2005, market share decreased again to 22,6 %. During the IP, it recovered somewhat to 24,9 %. Over the period considered, the Community industry lost 2,3 percentage points of market share.

	2002	2003	2004	2005	IP
Market share of the Community industry	27,2 %	24,2 %	24,8 %	22,6 %	24,9 %
Index (2002=100)	100	89	91	83	91

(f) *Growth*

- (113) Between 2002 and the IP, when the Community consumption increased by 9 percentage points, the volume of sales by the Community industry on the Community market did not increase and the Community industry's market share decreased by 2,3 percentage points. On the other hand, the sales volume and market share of the PRC and Ukraine increased over the same period. It is thus concluded that the Community industry could not benefit from any growth on the Community market.

(g) *Employment*

- (114) The employment level of the Community industry first decreased by 32 % between 2002 and 2003, increased by 27 percentage points in 2004, before decreasing by 13 percentage points in 2005 and a further 26 percentage points in the IP. During the period considered, production volume remained relatively stable, varying between 91 % and 106 % of the 2002 level. However, for one producer who stopped production of SiMn in the IP, as referred to in recital 107, the variation in production volumes during the period considered was more pronounced and the variation in employment reflects this. Overall, employment of the Community industry declined by 44 % between 2002 and the IP, i.e. from around 700 persons to around 400 persons. This shows that the Community industry improved efficiency since, at the same time, production volumes only decreased by 6 %.

	2002	2003	2004	2005	IP
Employment (persons)	702	475	668	577	391
Index (2002=100)	100	68	95	82	56

(h) *Productivity*

- (115) Productivity of the Community industry's workforce, measured as output (tonnes) per person employed per year, starting from a level of 344 tonnes per employee, increased over the period considered, apart from 2004, and finished during the IP at a level 68 % up on 2002. This reflects the fact that employment fell by 44 % over the period considered while production only decreased by 6 %. The increase in productivity is partly due to the fact that job reductions were higher for those Community producers where productivity was initially relatively low.

	2002	2003	2004	2005	IP
Productivity (tonne per employee)	344	463	383	384	578
Index (2002=100)	100	135	111	111	168

(i) *Wages*

- (116) The average wage per employee increased by 26 % between 2002 and 2003, remained at a similar level during 2004 before increasing again in 2005 and the IP to finish 77 % higher than in 2002. The increase in average wage costs is partly due to the fact that job reductions were higher for those Community producers where average wages were initially relatively low.

	2002	2003	2004	2005	IP
Annual labour cost per employee (EUR)	17 602	22 102	21 636	22 459	31 092
Index (2002=100)	100	126	123	128	177

(j) *Factors affecting sales prices*

- (117) Unit prices for Community industry's sales to unrelated customers increased overall by 14 % between 2002 and the IP. In 2004 prices were exceptionally high due to the worldwide situation of unusually high demand and low supply referred to in recital 89. The effect of this situation carried over partly into 2005 when prices returned to more normal levels, but finished during the IP 14 % higher than in 2002.

	2002	2003	2004	2005	IP
Unit price EC market (EUR/tonne)	521	526	928	640	593
Index (2002=100)	100	101	178	123	114

(k) *Profitability and return on investments*

- (118) During the period considered, the profitability of the Community industry's sales of the like product, expressed as a percentage of net sales, increased from 0,8 % in 2002 to 3,1 % in 2003, increased exceptionally to 37,2 % in 2004 due to the situation described at recital 89, returned to 7,0 % in 2005 and to 2,5 % in the IP. Profitability therefore increased by 1,7 percentage points between 2002 and the IP.

	2002	2003	2004	2005	IP
Profitability of EC sales to unrelated (% of net sales)	0,8 %	3,1 %	37,2 %	7,0 %	2,5 %
	100	385	4 668	884	313
ROI (profit in % of net book value of investments)	3,6 %	11,0 %	410,2 %	24,4 %	10,4 %
	100	303	11 252	668	284

- (119) The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the profitability trend. It increased from a level of 3,6 % in 2002 to 11 % in 2003, increased exceptionally to 410 % in 2004, returned to 24 % in 2005, before reaching finally a level of 10,4 % in the IP, thus increasing by 6,8 percentage points over the period considered.

(l) *Cash flow and ability to raise capital*

- (120) The net cash flow from operating activities was almost zero in 2002. It increased to around EUR 9 million in 2003, to 83 million EUR in 2004, before returning to around EUR 16 million in 2005 and EUR 17 million in the IP. There were no indications that the Community industry encountered difficulties in raising capital.

	2002	2003	2004	2005	IP
Cash flow (EUR)	132	9 551	83 701	16 445	17 092
Index (2002=100)	100	7 214	63 220	12 421	12 910

(m) *Investments*

- (121) The Community industry's annual investments in the production of the like product increased fivefold between 2002 and 2003 before returning in 2004 to around 2002 levels. Investments increased again by around eightfold between 2004 and 2005 before declining slightly in the IP. Overall, investments increased by around 900 % between 2002 and the IP. The Community industry's investments can be attributed mainly to one Community producer and it was established that they were for the maintenance and renewal of existing equipment, and not for capacity increase purposes.

	2002	2003	2004	2005	IP
Net investments (1 000 EUR)	1 528	8 376	2 351	17 365	15 333
Index (2002=100)	100	548	154	1 136	1 003

(n) *Magnitude of dumping margin*

- (122) Given the volume, the market share and the prices of the imports from the countries concerned, the impact on the Community industry of the magnitude of the actual margins of dumping cannot be considered to be negligible.

(o) *Recovery from past dumping*

- (123) As indicated in recital 88, the evolution in respect of profitability clearly indicates that the removal of the anti-dumping measures on SiMn in March 2003 did not influence significantly the situation of the Community industry during the following period.

6. Conclusion on injury

- (124) In a context of growing consumption, the Community industry's market share declined by 2,3 percentage points to 24,9 % during the period considered. At the same time, production decreased by 6 % and the capacity utilisation also decreased by 5 percentage points. Moreover, the Community industry had to release a number of employees. On the other hand, some injury indicators indicate a positive trend during the period considered, such as profitability, cash flow, return on investments and sales price which increased by 14 %. A more thorough analysis of that data nevertheless shows that, given the nature of the business, a profit margin of 2,5 % is not considered as sufficient as it cannot guarantee the continuation of the industry in the long term. As regards the price increase, it was enough to cover the increase in raw material prices, but not to raise the profit margin to a sustainable level. Therefore, while a number of indicators show positive trends, the Community industry could not benefit at all from the overall increase in consumption on the Community market, as evidenced by its loss of market share, drop in production and by its poor profitability.

- (125) As one Community producer did not manufacture the like product continuously throughout the period considered, stopping production altogether during 2003 and for most of the IP, as referred to in recital 107, the impact of this intermittence was further examined. The analysis has shown, however, that due to the relatively small overall output of this producer its intermittent production pattern had only limited impact on the overall injury picture and did not inflate the injury indicators to a significant extent. This is evidenced by the fact that excluding this producer from the analysis would result in only slightly better performance figures. In particular, the profitability of the Community industry would still be far from satisfactory at 3,2 % in the IP, while production and capacity utilisation would still be showing negative trends. Thus, it is concluded that the injury suffered by the Community industry cannot be attributed solely to this Community producer.

- (126) In the light of the foregoing, it is concluded that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

E. CAUSATION**1. Introduction**

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

2. Effect of the dumped imports

- (128) Between 2002 and the IP, the volume of the dumped imports of the product concerned originating in the PRC and Kazakhstan increased by 99 % and their share of the Community market increased by around 4,6 percentage points. The average price of these imports increased by 22 % between 2002 and the IP, but prices were generally lower than those of the Community industry during the period considered. Over the same period, the volume of the dumped imports of the product concerned originating in Ukraine increased by 36 % and their share of the Community market increased by around 4,5 percentage points. The average price of these imports increased by 8 % between 2002 and the IP, but prices were generally at levels close to those of the Community industry during the period considered.
- (129) As indicated in recital 104 above, price undercutting of imports from the PRC and Kazakhstan was 4,5 % overall on a weighted average basis, while there was no undercutting by imports from Ukraine.
- (130) In view of the undercutting of Community industry's prices by imports from the PRC and Kazakhstan, it is considered that these dumped imports exerted a downward pressure on the prices, preventing the Community industry from increasing its sales prices to a level that would have been necessary to realise a sustainable profit. Therefore, there is a clear causal link between those imports and the Community industry's injury. On the other hand, in view of the absence of undercutting by imports from the Ukraine and the fact that the injury margin for Ukraine is at a *de minimis* level (see recitals 168 and 169), it is considered that there is no clear causal link between imports from Ukraine and the injury to the Community industry.

3. Effect of other factors

(a) Export performance of the Community industry

- (131) As can be seen from the table below, the volume of export sales decreased by 40 % during the period considered. The unit price of these sales remained relatively stable, with the exception of those during 2004.

	2002	2003	2004	2005	IP
Export sales volume (tonnes)	12 056	16 445	10 524	9 713	7 191
Index (2002=100)	100	136	87	81	60
Export sales price (EUR/tonne)	598	522	787	592	578
Index (2002=100)	100	87	132	99	97

- (132) It should be noted, however, that the level of export sales is not significant in the context of the Community industry's overall sales, representing only around 3 % to 7 % of total sales during the period considered. It is therefore considered that the export activity cannot have contributed in any way to the material injury suffered by the Community industry.

(b) Imports from third countries

- (133) The analysis of imports from third countries is based on data from Eurostat. For a number of countries it was possible to cross-check this data with verified information provided by interested parties, which confirmed the reliability of Eurostat data.
- (134) Overall imports from all countries, other than the countries concerned, decreased over the period considered by around 6 %, i.e. from around 377 000 tonnes in 2002 to around 354 000 tonnes in the IP. The corresponding market share declined from around 45 % to around 39 %. The main sources of imports from third countries are Norway, India, South Africa and Brazil.

	2002	2003	2004	2005	IP
Volume from all other third countries (tonnes)	376 919	437 205	393 857	364 250	353 802
Index (2002=100)	100	116	104	97	94
Market share of all other third countries	45,1 %	49,5 %	41,3 %	39,5 %	38,7 %
Price from all other third countries (EUR/tonne)	523	528	823	691	597
Index (2002=100)	100	101	157	132	114

Source: Eurostat.

- (135) Imports from Norway decreased by around 11 %, and the market share of those imports decreased by 4,9 percentage points (IP = 21,9 %), during the period considered. Overall, the average price of imports from Norway was above that of the Community industry throughout the period considered. While the price of low-carbon imports from Norway may undercut Community industry prices to some extent, given that this quality of product only represents a small part (roughly 5 %) of the total production of the Community industry, and in view of the absence of overall undercutting and the

decrease in both import volumes and market share, it was considered that imports from Norway did not contribute to the material injury suffered by the Community industry.

Norway	2002	2003	2004	2005	IP
Volume of imports (tonnes)	224 253	213 838	178 639	200 310	200 272
Index (2002=100)	100	95	80	89	89
Market share of imports	26,8 %	24,2 %	18,7 %	21,7 %	21,9 %
Price of imports (EUR/tonne)	574	604	956	765	656
Index (2002=100)	100	105	167	133	114

Source: Eurostat.

- (136) Imports from India increased by over 300 %, and the market share of those imports increased by 7,3 percentage points (IP = 9,7 %), during the period considered. At the same time the average price of imports from India was slightly higher than those of the Community industry (i.e. no undercutting). In view of the absence of undercutting by imports from India, it is considered that there is no clear evidence that imports from India contributed to the injury suffered by the Community industry.

India	2002	2003	2004	2005	IP
Volume of imports (tonnes)	19 954	33 497	31 593	48 123	89 017
Index (2002=100)	100	168	158	241	446
Market share of imports	2,4 %	3,8 %	3,3 %	5,2 %	9,7 %
Price of imports (EUR/tonne)	479	449	804	591	521
Index (2002=100)	100	94	168	123	109

Source: Eurostat.

- (137) Imports from South Africa decreased by around 38 %, and the market share of those imports decreased by 2,5 percentage points (IP = 3,2 %) during the period considered. The average price of imports from South Africa was below that of the Community industry and similar to that practiced by the countries concerned. It is therefore considered that imports from South Africa may have contributed to the injury suffered by the Community industry. However, given the significant overall decrease in imports from South Africa and their small market share, it is considered not sufficient to break the causal link between the material injury suffered by the Community industry and dumped imports from the PRC and Kazakhstan.

South Africa	2002	2003	2004	2005	IP
Volume of imports from S Africa (tonnes)	47 808	81 330	58 753	52 640	29 531
Index (2002=100)	100	170	123	110	62
Market share of imports from S Africa	5,7 %	9,2 %	6,2 %	5,7 %	3,2 %
Price of imports from S Africa (EUR/tonne)	417	429	660	611	501
Index (2002=100)	100	103	158	147	120

Source: Eurostat.

- (138) Imports from other third countries, including Brazil, decreased by around 59 %, and the market share of those imports decreased by around 6,4 percentage points (IP = 3,8 %), during the period considered. At the same time, the average price of imports from other third countries was higher than that of the Community industry (i.e. no undercutting). In view of the absence of undercutting by those imports and their decreasing trend, it is considered that they did not contribute to the material injury suffered by the Community industry.

Other third countries (including Brazil)	2002	2003	2004	2005	IP
Volume of imports (tonnes)	84 904	108 539	124 872	63 178	34 982
Index (2002=100)	100	128	147	74	41
Market share of imports	10,2 %	12,3 %	13,1 %	6,9 %	3,8 %
Price of imports (EUR/tonne)	460	476	713	598	528
Index (2002=100)	100	104	155	130	115

Source: Eurostat.

(c) *Competition from the other Community producer*

- (139) As indicated in recital 91 above, one Community producer did not cooperate with the investigation. Based on information obtained in the course of the investigation from cooperating Community producers, it is estimated that its sales volume in the Community was around 30 000 tonnes throughout the period considered. Similarly, the corresponding market share was stable throughout the period considered at around 3 %. The other Community producer therefore did not gain any sales volume and market share at the expense of the Community industry. No information was available concerning the prices of this Community producer.

	2002	2003	2004	2005	IP
EC Sales volume of the other Community producers (tonnes)	30 000	30 000	30 000	30 000	30 000
Index (2002=100)	100	100	100	100	100
Market share of the other Community producers	3,6 %	3,4 %	3,1 %	3,3 %	3,3 %
Index (2002=100)	100	95	88	91	91

Source: Investigation, complaint.

- (140) Given the above, and given the absence of information to the contrary, it is concluded that the other Community producer has not contributed to the injury suffered by the Community industry.

(d) *Cost of production (raw materials)*

- (141) The main elements in the total cost of production are raw materials (around 45 % to 55 %) and electricity (around 20 % to 30 %). Direct labour accounts for around 5 % of costs. The cost of production of the Community industry increased by 12 % between 2002 and the IP.

	2002	2003	2004	2005	IP
Unit cost of production (EUR/tonne)	517	510	583	595	578
Index (2002=100)	100	99	113	115	112

- (142) Some interested parties claimed that the injury suffered by the Community industry was attributable to the increases in the cost of production. In respect of raw material costs, since these are generally commodity products which, in principle, are traded on the international market, it is considered that the price increase has affected all producers of SiMn, which would normally be forced to increase their sales prices across the board. The injury was thus not caused by the general increase in raw material prices as such but by the fact that, due to the dumped imports which were undercutting the Community industry's prices, the Community industry was unable to sell at a level that would have allowed it to realise a sufficient profit margin. As for labour costs, as indicated in recital 115 above, data concerning productivity show that, overall, the Community industry has managed to offset increases in costs with increases in efficiency and productivity. Some parties referred to electricity costs as the main reason why Community industry would have suffered injury. In this respect, it was established that the electricity prices for the industrial users in the countries where the Community industry is based were in line with the prices in other major markets in the world and consequently may not be considered as a source of a self-inflicted injury. The electricity costs may have had some impact on the overall performance, but only in the case of one Community producer that experienced shortages of the electricity supply due to important increases in the electricity prices and the related dispute with the energy supplier. It is concluded that, overall, increases in the cost of production have not contributed to the injury suffered by the Community industry.

(e) *Self-inflicted injury*

- (143) As the investment of one Community producer increased significantly between 2004 and the 2005 (see recital 121), it was examined if the injury was self-inflicted. This investment had a direct impact on the cost of production and therefore the profitability of the Community industry. However, the analysis has shown that due to limited weight of this investment in the total cost of production, the impact on the profitability was marginal. Therefore, it is concluded that the investment of one Community producer may have contributed to the injury suffered by the Community industry but not to an extent to break the causal link.

(f) *Downturn in the market for silico-manganese due to the cycle in steel production*

- (144) Some parties claimed that the drop in the demand for steel, and the consequent drop in demand for SiMn,

which occurred during the second half of 2004 and the first half of 2005, following the unprecedented increase in demand described in recital 89, contributed to the bad state of the Community industry. However, the investigation has shown that over the full period considered Community consumption increased overall by 9 %. In view of this, the argument is rejected.

4. Conclusion on causation

- (145) The coincidence in time between, on the one hand, the increase in dumped imports from the PRC and Kazakhstan, the increase in market shares and the undercutting found and, on the other hand, the deterioration in the situation of the Community industry, leads to the conclusion that the dumped imports caused the material injury suffered by the Community industry within the meaning of Article 3(6) of the basic Regulation.
- (146) Other factors were analysed but were found not to be a determining reason for the injury suffered. As concerns Ukraine, which represents 23 % of market share, since there is no undercutting overall, it is considered that its imports did not contribute to the injury of the Community industry. Imports from South Africa may have contributed to the injury suffered by the Community industry, but given their small market share and declining volumes not to an extent sufficient to break the causal link established with the imports from the PRC and Kazakhstan. Due to the lack of undercutting, the import volumes and trend figures, there is also no evidence that imports from India or other third countries (including Brazil) have contributed to the injury suffered by the Community industry. The investment of one Community producer may have contributed to the injury suffered by the Community industry; however, due to limited weight of this investment, not to an extent to break the causal link. Moreover, no other known factor, i.e. the export performance of the Community industry, competition from the other Community producer, the increase in cost of production or the market cycle for steel, has contributed to the injury of the Community industry.
- (147) Based on the above analysis, which has properly distinguished and separated the effects of all known factors having an effect on the situation of the Community industry from the injurious effect of the dumped imports, it is concluded that the imports from the PRC and Kazakhstan have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

F. COMMUNITY INTEREST

- (148) 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(1) of the basic Regulation, the Commission considered the likely impact of measures on all parties involved as well as the likely consequences of not taking measures.

1. Interest of the Community industry

- (149) In the light of the foregoing, measures would be imposed on imports from the PRC and Kazakhstan. It is expected that the imposition of these measures would lead to an increase in prices for SiMn from those countries and would provide the Community industry with an opportunity to improve its situation through increased prices and possibly through increased sales volumes and market share. In the absence of measures, it is expected that imports would continue at low prices from the PRC and Kazakhstan and that the Community industry would not have the opportunity to improve its situation.
- (150) As for the low-carbon product, this represents only 5 % of the production of the Community industry and is imported mainly from Norway, but also from the PRC. While it is considered that, should measures be imposed, the quantities presently coming from the PRC could be to some extent substituted by imports from Norway, the measures would provide the Community industry with the opportunity to increase its own production and sales of low-carbon product in order to meet demand.

2. Interest of the other Community producers

- (151) There is only one other producer in the Community in addition to the Community industry. In the absence of cooperation from this producer, and thus of precise data concerning its activity, it is estimated, based on information from cooperating Community producers, that this manufacturer's production is around 10 % to 15 % of that of the Community industry. Should anti-dumping measures be imposed, the same type of developments, as set out in recitals 149 and 150 for the Community industry, can be expected for this other Community producer as well.

3. Interest of unrelated importers in the Community

- (152) Two independent importers of the product concerned cooperated in the proceeding by completing and submitting questionnaires.

- (153) These importers expressed concern, should measures be imposed, regarding (i) the negative impact on the supply situation within the Community, given that the total production capacity within the Community amounted to only approximately one third of the consumption, and (ii) the adverse effect any measures would have on the cost of the product concerned, which, as a fundamental raw material for the production of steel, would affect overall Community steel production.

- (154) As concerns the supply situation within the Community, it is true that consumption is around three times the current Community production capacity and that the Community industry only supplied around 25 % of Community demand during the IP. However, the Community industry was operating at around 70 % capacity utilisation during the IP, and at between 70 % and 80 % capacity utilisation over the period considered. It is therefore in a position to significantly increase its current production. Also, given the relatively limited quantities of imports which will be subject to measures (as indicated at recitals 149 and 150 above) and that the possible reduction of imports from the countries concerned could be compensated by exports from other countries, it is considered that the imposition of duties would not have any sizeable impact on the availability of supplies for importers. Also, in addition to supplies from Community producers and from the countries concerned by the investigation, the Community market is also supplied, to the extent of almost 40 % of consumption, by imports from other countries, notably Norway, India, South Africa and Brazil. Those countries have cumulatively in the past supplied higher quantities to the Community.

- (155) It is recognised that if measures were introduced, there may be some short-term disruption due to possible delays with increasing Community production and if it proves necessary for some users to arrange new or alternative supplies.

- (156) As far as importers are concerned, even if the Community industry were to increase its production, sales and market share within the Community, given that the Community industry can only supply around 30 % of the market, and that Community consumption is growing, there would still remain a need for substantial import activity. While it is recognised that importers generally operate on a relatively low profit margin and that any short-term disruption resulting from users seeking to arrange new or alternative supplies could negatively affect their margins, it is considered that importers are in a position to safeguard their margins by passing on any increased costs to users.

4. Interest of the users

- (157) Ten users of the product concerned in the metal industry cooperated in the proceeding by completing and submitting questionnaires or making submissions. A submission was also received from the European Confederation of Iron and Steel Industries (EUROFER).
- (158) Users expressed similar concerns regarding sufficient supply and increased costs for end-users, as did importers, as stated in recital 153 above. For the reasons set out in recital 154, it is considered that the imposition of measures would not have a serious detrimental mid-term effect on the supply situation in the Community.
- (159) The direct effect of an increase in the price of SiMn on steel production costs would be limited, given that the SiMn represents at most 1 % of the production cost of carbon steel, and even less in the case of stainless steel. On the basis of information supplied by the user industry association (EUROFER) concerning the total annual cost for their usage of SiMn, it is estimated that the effect of even a significant increase of 20 % in the price affecting all SiMn would be to reduce the profitability of steel producers (currently achieving profit levels of between 10 % to 40 %) by only around 0,2 %. Given that measures would be at a significantly lower rate, and would only affect a maximum of 10 % of the Community consumption (in case that no imports subject to measures would be substituted by imports from other origins), the effect of any possible measures on the profitability of the steel industry would be extremely limited.
- (160) It has been claimed that the market for the SiMn is a global one and that global demand is increasing in line with increasing demand for steel. When demand increases over supply, this can lead to significant price increases, as happened in 2004. Should a temporary disruption of supply and demand in the Community develop, as described in recital 155, this could lead to price increases in the short-term in excess of the level of any duties imposed. However, in view of the fact that the market for the SiMn is a global one, it is considered that the price level within the Community is set by the interplay of global supply and demand and that Community prices should not go out of line with world prices to any great degree for any extended period due to the significant presence of imports from other origins on the market. In addition, steel producers, who are currently operating at satisfactory profit levels (10 % to 40 %), will, in any case, have the possibility to pass on the effect of any price increase for the product concerned, which will be limited by the relatively minor significance of SiMn in the overall cost of steel production.
- (161) Users also questioned the effectiveness of imposing measures, arguing that the imposition and removal of previous measures had little effect on the profitability of the Community industry. In this regard, although the purpose of imposing anti-dumping measures is to restore fair market conditions with a view to providing the opportunity for a Community industry, which was materially injured through dumping, to recover, the fact that such recovery may not have realised in the past should not be a reason against considering the appropriateness of imposing anti-dumping measures where this is now warranted.
- (162) Some users pointed out that over the past 10 years or so the Community steel industry has suffered from increased costs from anti-dumping measures which had been placed on a variety of raw materials used solely or mainly for steel production. They also pointed out that, in addition to the present proceeding, there were a number of other proceedings currently open concerning raw materials used in steel production. The overall effect, they argued, was to place the Community steel producers at a disadvantage internationally. As regards previous measures, it should be noted that the majority of the previous measures have now expired. As concerns the cumulative effect of measures on a number of raw materials, it should be borne in mind that the purpose of anti-dumping measures is to eliminate the impact of distorted market conditions arising from the presence of dumped imports. As such, the effect of anti-dumping measures, even when imposed on a number of raw materials affecting the same industry, should not have a distorting effect. In any event, the impact of the imposition of any measures in this case on the steel industry would be negligible, as explained in recital 159 above.
- (163) Following disclosure, EUROFER reiterated its argument that the imposition of measures would not be in the overall Community interest since they would lead to increased costs for users and have little effect in improving the situation of the Community industry. No new information was provided in this respect and therefore the reasoning provided above (recitals 157 to 162) is confirmed and on this basis it is considered that any impact from the imposition of an anti-dumping duty on the financial situation of users is likely to be negligible overall.

5. Conclusion on Community interest

- (164) To conclude, it is expected that the imposition of measures on imports from the PRC and Kazakhstan would, despite the availability of limited and decreasing quantities of SiMn on the market from other countries (i.e. South Africa and Norway in case of low-carbon SiMn) and from suppliers not subject to measures at prices similar to those practiced by the PRC and Kazakhstan prior to the imposition of any duties, provide an opportunity for the Community industry, as well as the other Community producer, to improve its situation through increased sales volumes, sales prices and market share. While some negative effects may occur in the form of cost increases for users arising out of the possible need to arrange new or alternative supplies, it is considered that the overall effect on users of the imposition of measures on the PRC and Kazakhstan would be negligible. In light of the above, it is concluded that no compelling reasons exist for not imposing measures in the present case and that the application of such measures would be in the interest of the Community.

G. DEFINITIVE MEASURES

Estimated injury elimination level

- (165) The level of any anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.
- (166) The Community industry claimed that a profit margin of 8 % of turnover should be regarded as an appropriate level that it could be expected to obtain in the absence of injurious dumping. This was examined and it was found that the claimed profit margin would result in the recovery of capital investment over a relatively short time period. In addition, the investigation showed that the Community industry itself generally depreciated its capital investments over a longer time frame. On this basis, it is considered that a profit margin of 5 %, which is in line with the margin that was used in the investigation which led to the previous anti-dumping measures, is an appropriate level that the Community industry could be expected to obtain in the absence of injurious dumping.

- (167) The necessary price increase was then determined on the basis of a comparison, per product type, of the weighted average import price, as established for the price under-cutting calculations, with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry in order to reflect the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value. In the absence of MET or IT being granted to any of the cooperating Chinese exporting producers, a countrywide injury margin was calculated for the whole of the PRC on the basis of prices from Comext.

- (168) The above mentioned price comparison showed the following injury margins:

Ukraine: all companies	1,6 %
OJSC Kazchrome	7,3 %
PRC	8,2 %

- (169) In the light of the foregoing and pursuant to Article 9(4) of the basic Regulation, it is considered that a definitive anti-dumping duty should be imposed in respect of imports of SiMn originating in Kazakhstan and in the PRC at the level of the lower of the dumping and injury margins, in accordance with the lesser duty rule. By analogy with Article 9(3) of the basic Regulation, given that the injury margin for Ukraine is below a *de minimis* level, the investigation in respect of this country should be terminated.

- (170) Consequently, and for the reasons already mentioned at recitals 165 to 169, the anti-dumping duties should be as follows:

Country	Company	Rate of duty
Kazakhstan	All companies	6,5 %
PRC	All companies	8,2 %

H. UNDERTAKINGS

- (171) Following the disclosure of essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties, the exporting producer in Kazakhstan offered a price undertaking in accordance with Article 8(1) of the basic Regulation. The product concerned has shown in the last years a considerable volatility in prices and therefore it is not suitable for a fixed price undertaking. In order to overcome this problem the exporting producer offered to index the minimum import price to the price of the main raw material, namely manganese ore. However, the fluctuation in the price of the product concerned cannot be explained by the fluctuation in the price of the main raw material, and thus it is not possible to index the minimum import prices to the price of the raw material. As an alternative approach the exporting producer also offered to index the minimum import price on the basis of its own cost of production as it is shown in its audited accounts. However this approach cannot be accepted as the evolution of its cost do not necessarily correspond to the evolution of its prices. Moreover, such an undertaking is considered as unworkable since it would be very difficult for the Commission to constantly monitor the evolution of costs. On the basis of the above it was concluded that the undertaking offered by the exporter cannot be accepted,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on

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

Done at Brussels, 4 December 2007.

imports of silico-manganese (including ferro-silico-manganese) falling within CN codes 7202 30 00 and ex 8111 00 11 (TARIC code 8111 00 11 10), originating in the People's Republic of China and Kazakhstan.

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

Country	Manufacturer	Rate of duty
Kazakhstan	All companies	6,5 %
PRC	All companies	8,2 %

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

Article 2

The proceeding concerning imports of silico-manganese originating in Ukraine is hereby terminated.

Article 3

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

For the Council

The President

F. TEIXEIRA DOS SANTOS

COMMISSION REGULATION (EC) No 1421/2007**of 4 December 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 5 December 2007.

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

Done at Brussels, 4 December 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 4 December 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	IL	114,0
	MA	63,5
	SY	68,2
	TR	97,5
	ZZ	85,8
0707 00 05	JO	196,3
	MA	52,5
	TR	80,2
	ZZ	109,7
0709 90 70	MA	57,9
	TR	82,6
	ZZ	70,3
0709 90 80	EG	301,9
	ZZ	301,9
0805 10 20	AR	28,9
	AU	15,0
	SZ	38,2
	TR	50,7
	ZA	40,1
	ZW	17,7
	ZZ	31,8
0805 20 10	MA	66,5
	ZZ	66,5
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	62,5
	HR	21,2
	IL	66,9
	TR	81,9
	UY	95,3
	ZZ	65,6
0805 50 10	EG	61,3
	TR	102,4
	ZA	104,9
	ZZ	89,5
0808 10 80	AR	87,7
	CA	87,3
	CL	86,0
	CN	78,9
	MK	31,5
	US	83,6
	ZA	95,7
0808 20 50	ZZ	78,7
	AR	71,1
	CN	45,5
	TR	141,1
	ZZ	85,9

⁽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 1422/2007**of 4 December 2007****amending Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures for the award of contracts****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services ⁽¹⁾, and in particular Article 69 thereof,

Having regard to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽²⁾, and in particular Article 78 thereof,

After consultation of the Advisory Committee for Public Contracts,

Whereas:

(1) By Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) ⁽³⁾ the Council concluded the Agreement on Government Procurement (hereinafter referred to as the Agreement). The Agreement should be applied to any procurement contract with a value that reaches or exceeds the amounts (hereinafter referred to as thresholds) set in the Agreement and expressed as special drawing rights.

(2) One of the objectives of Directives 2004/17/EC and 2004/18/EC is to allow the contracting entities and the contracting authorities which apply those Directives to

comply at the same time with the obligations laid down in the Agreement. To achieve this, the thresholds laid down by those Directives for public contracts which are also covered by the Agreement should be aligned in order to ensure that they correspond to the Euro equivalents, rounded down to the nearest thousand, of the thresholds set out in the Agreement.

(3) For reasons of coherence, it is appropriate to align also those thresholds in Directives 2004/17/EC and 2004/18/EC which are not covered by the Agreement.

(4) Directives 2004/17/EC and 2004/18/EC should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Directive 2004/17/EC is amended as follows:

1. Article 16 is amended as follows:

(a) in point (a), the amount 'EUR 422 000' is replaced by 'EUR 412 000',

(b) in point (b), the amount 'EUR 5 278 000' is replaced by 'EUR 5 150 000'.

2. Article 61 is amended as follows:

(a) in paragraph 1, the amount 'EUR 422 000' is replaced by 'EUR 412 000',

(b) in paragraph 2, the amount 'EUR 422 000' is replaced by 'EUR 412 000'.

⁽¹⁾ OJ L 134, 30.4.2004, p. 1. Directive as last amended by Council Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107).

⁽²⁾ OJ L 134, 30.4.2004, p. 114. Directive as last amended by Directive 2006/97/EC.

⁽³⁾ OJ L 336, 23.12.1994, p. 1.

Article 2

Directive 2004/18/EC is amended as follows:

1. Article 7 is amended as follows:

- (a) in point (a), the amount 'EUR 137 000' is replaced by 'EUR 133 000',
- (b) in point (b), the amount 'EUR 211 000' is replaced by 'EUR 206 000',
- (c) in point (c), the amount 'EUR 5 278 000' is replaced by 'EUR 5 150 000'.

2. the first paragraph of Article 8 is amended as follows:

- (a) in point (a), the amount 'EUR 5 278 000' is replaced by 'EUR 5 150 000',
- (b) in point (b), the amount 'EUR 211 000' is replaced by 'EUR 206 000'.

3. in Article 56, the amount 'EUR 5 278 000' is replaced by 'EUR 5 150 000'.

4. in the first subparagraph of Article 63(1), the amount 'EUR 5 278 000' is replaced by 'EUR 5 150 000'.

5. Article 67(1) is amended as follows:

- (a) in point (a), the amount 'EUR 137 000' is replaced by 'EUR 133 000',
- (b) in point (b), the amount 'EUR 211 000' is replaced by 'EUR 206 000',
- (c) in point (c), the amount 'EUR 211 000' is replaced by 'EUR 206 000'.

Article 3

This Regulation shall enter into force on 1 January 2008.

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

Done at Brussels, 4 December 2007.

For the Commission
Charlie MCCREEVY
Member of the Commission

COMMISSION REGULATION (EC) No 1423/2007**of 4 December 2007****amending Regulation (EC) No 1291/2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

(a) paragraph 1 is replaced by the following:

Having regard to the Treaty establishing the European Community,

‘1. Notwithstanding Article 24, a Member State may allow the licence or certificate to be:

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 9(2) thereof, and the corresponding Articles of the other Regulations on the common organisation of markets in agricultural products,

(a) lodged with the issuing body or the authority responsible for payment of the refund;

Whereas:

(b) in cases where Article 19 applies, stored in the database of the issuing body or the authority responsible for payment of the refund.’

(1) Article 19 of Commission Regulation (EC) No 1291/2000 ⁽²⁾ provides for the possibility of issuing electronic import and export licences and certificates.

(b) paragraph 3 is replaced by the following:

(2) Experience has shown that in order to increase the efficiency of import and export operations, the provisions of Article 25 could be improved with the intention of making it clear that licences and certificates can be kept and managed in electronic form by the competent authority of the Member State instead of issuing them to the importer or exporter and that where data concerning exports have been introduced and transmitted electronically to the issuing authority, the entries on the electronic export licence or certificate and its endorsement can also be done electronically.

‘3. The Member State shall decide which authority is to make the entry on and endorse the licence or certificate.

However, the attribution and its validation and endorsement on the licence or certificate shall also be deemed to have been carried out where:

(3) Regulation (EC) No 1291/2000 should therefore be amended accordingly.

(a) a document detailing the exported quantities has been generated by computer; this document must be attached to the licence or certificate and filed with it;

(4) The measures provided for in this Regulation are in accordance with the opinion of all the relevant Management Committees,

(b) the exported quantities have been introduced in an official electronic database of the Member State concerned and there is a link between this information and the electronic certificate; Member States may choose to archive this information by using paper versions of the electronic documents.

HAS ADOPTED THIS REGULATION:

The date of entry shall be considered as the date of acceptance of the declaration referred to in Article 24(1).’

Article 1

Article 25 of Regulation (EC) No 1291/2000 is amended as follows:

Article 2

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as last amended by Regulation (EC) No 735/2007 (OJ L 169, 29.6.2007, p. 6).

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

This Regulation shall enter into force on the seventh 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, 4 December 2007.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION REGULATION (EC) No 1424/2007**of 4 December 2007****amending Regulation (EC) No 2304/2002 implementing Council Decision 2001/822/EC on the association of the overseas countries and territories with the European Community and allocating the indicative amounts under the 10th European Development Fund**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 2001/822/EC on the association of the overseas countries and territories with the European Community (Overseas Association Decision) ⁽¹⁾, and in particular Article 23 thereof,

Having regard to Commission Regulation (EC) No 2304/2002 of 20 December 2002 implementing Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (Overseas Association Decision) ⁽²⁾,

Having regard to the Internal Agreement between the Representatives of the Governments of the Member States meeting within the Council on the financing of Community aid under the multiannual framework for the period 2008 to 2013 in accordance with the ACP-EC Partnership Agreement and the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies ⁽³⁾ (hereinafter referred to as Internal Agreement establishing the 10th EDF),

Having regard to the Financial Regulation applicable to the 10th EDF ⁽⁴⁾,

Whereas:

- (1) The provisions of Regulation (EC) No 2304/2002 adopted pursuant to Article 23 of the Overseas Association Decision should be brought into line with the amendments to that Decision, in the light of the newly established 10th European Development Fund (hereinafter referred to as 10th EDF). They should also be brought into line with the revision of the corresponding Articles in Annex IV of the Partnership Agreement between, on the one hand the members of the African, Caribbean and Pacific Group of States, and on the other

hand the European Community and its Member States, signed in Cotonou on 23 June 2000 ⁽⁵⁾ (the ACP-EC Partnership Agreement).

- (2) Taking into account the specific needs, capabilities and constraints of the overseas countries and territories (hereinafter referred to as OCTs), 10th EDF financial assistance to the OCTs should be granted as budgetary support, provided the OCTs management of public expenditure presents sufficient transparency, accountability and effectiveness. In addition, the public procurement procedures of the OCTs should satisfy the standards of the 10th EDF Financial Regulation as to transparency and openness. On the basis of the experience acquired under the 9th EDF, 10th EDF financial assistance should only in exceptional circumstances be provided as support for projects or programmes, namely when the conditions for budgetary support are not met.
- (3) As a condition for their adoption, it should be verified that the Single Programming Documents (SPDs) contain all the elements required for the Commission to take the financing decision referred to in Article 20(4) of the Overseas Association Decision.
- (4) In accordance with Article 3(1) of Annex II Aa to the Overseas Association Decision, the SPDs should, where appropriate, pay particular attention to actions aimed at strengthening the governance and the institutional capacities of the beneficiary OCTs and, where relevant, to the likely timetable of the envisaged actions, including in the financial, tax and judicial areas.
- (5) Provision should be made for the programming of the allocation under the 10th EDF to support regional cooperation and integration, with a view to enhancing the resilience of the OCTs in coping with the challenges that they are facing as small island micro-economies, for example by means of regional disaster preparedness and mitigation initiatives. In this connection, coordination should be ensured in particular between support for regional cooperation and integration and support at territorial level. Special attention should also be paid to cooperation between the OCTs, the ACP States and, in coordination with other Community financial instruments, the outermost regions referred to in Article 299(2) of the Treaty.

⁽¹⁾ OJ L 314, 30.11.2001, p. 1. Decision as amended by Decision 2007/249/EC (OJ L 109, 26.4.2007, p. 33).

⁽²⁾ OJ L 348, 21.12.2002, p. 82.

⁽³⁾ OJ L 247, 9.9.2006, p. 32.

⁽⁴⁾ Not yet published — COM(2007) 410 final, 16.7.2007.

⁽⁵⁾ OJ L 317, 15.12.2000, p. 3. Agreement as last amended by Decision No 1/2006 of the ACP-EC Council of Ministers (OJ L 247, 9.9.2006, p. 22).

- (6) The indicative amounts allocated to the beneficiary OCTs under the 10th EDF should be determined in accordance with Article 3(5) of Annex II Aa to the Overseas Association Decision.
- (7) The measures provided for in this Regulation have been subject to consultation with the OCTs.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the EDF-OCTs Committee established by Article 24 of the Overseas Association Decision,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2304/2002 is amended as follows:

1. Article 1 is replaced by the following:

'Article 1

Subject matter

This Regulation lays down the procedures for the programming, implementation and control of the Community financial assistance to the overseas countries and territories (OCTs) managed by the Commission under the Tenth European Development Fund (EDF), in accordance with the provisions of the Overseas Association Decision and the Financial Regulation applicable to the 10th EDF.'

2. Article 3 is replaced by the following:

'Article 3

Territorial programming

Operations financed by non-repayable aid under the 10th EDF within the framework of the Overseas Association Decision shall be programmed as soon as possible after the entry into force of the Internal Agreement establishing the 10th EDF by means of the adoption of an SPD following the model in the Annex to this Regulation.'

3. Article 4 is replaced by the following:

'Article 4

Preparation of the SPD

1. The competent OCTs authorities shall prepare a proposal for the SPD following consultations with the widest possible range of stakeholders in the development process, and shall draw on lessons learned and best practices.

Each proposal for an SPD shall be adapted to the needs and specific circumstances of each OCTs. It shall identify results-oriented indicators to be monitored and promote local ownership of cooperation programmes.

2. The proposal for the SPD shall be the subject of an exchange of views between the OCTs and Member State concerned and the Commission, via, if applicable, the relevant Delegation.

The OCTs shall provide all the necessary information, including the results of any feasibility studies, to make the appraisal of the draft SPD by the Commission as effective as possible.

3. The 10th EDF financial allocation shall in principle be provided as budgetary support, save in exceptional and duly justified circumstances.

Where the conditions for budgetary support are not met, the SPD shall provide for measures to create the conditions for budgetary support.

Any divergences between the OCTs's own analysis and the Community's shall be noted.'

4. Article 5 is replaced by the following:

'Article 5

Appraisal of the SPD by the Commission

The Commission shall appraise the proposal for the SPD to determine whether it contains all the elements required and is consistent with the aims of the Overseas Association Decision, of this Regulation and of the relevant Community policies.

The Commission shall also appraise the proposal for the SPD to determine whether it contains all the elements required for the Commission to take the financing decision referred to in Article 20(4) of the Overseas Association Decision.

It shall inform the European Investment Bank of the draft received.

Without prejudice to Article 4(3), the Commission shall decide whether 10th EDF financial assistance is to be granted as budgetary support, subject to a preliminary assessment of the transparency, accountability and effectiveness of public expenditure management and of the openness and transparency of public procurement in accordance with the standards set out in the Financial Regulation applicable to the 10th EDF, or is to be granted as support for programmes or projects.'

5. Article 6 is replaced by the following:

‘Article 6

Regional programmes

1. Articles 3 to 5 shall apply *mutatis mutandis* to the financial support for regional cooperation and integration under Article 3(2) of Annex II Aa to the Overseas Association Decision.

In its assessment of the proposals, the Commission shall take particular account of the anticipated impact on the integration of the beneficiary OCTs within the region to which they belong.

As far as possible, coordination shall be ensured with programmes at territorial level and with actions involving ACP countries and/or the outermost regions referred to in Article 299(2) of the Treaty. This may involve the identification of the priorities and specific resources for the purpose of strengthening cooperation with ACP countries and/or outermost regions, and the modalities for identifying and coordinating the selection of common interest actions.

Commitment of expenditure shall be preceded by a Commission financing decision covering support for projects and programmes.

2. In order to achieve an adequate scale and to increase efficiency, regional and territorial funds may be mixed for financing regional programmes with a distinct territorial component.

3. Articles 8 and 16 to 30 apply to regional programmes *mutatis mutandis*.

6. Article 7 is replaced by the following:

‘Article 7

Use of the reserve

1. The Commission shall allocate resources from reserve B for the purposes referred to in Article 3(4)(b) of Annex II Aa to the Overseas Association Decision on the basis of the mid-term review referred to in Article 22 of this Regulation. The Commission shall adjust the indicative amounts already allocated accordingly and inform the OCTs and the Member States of its decision regarding the new allocations.

2. For the purposes of committing the resources provided for in Article 28 and Annex II D of the

Overseas Association Decision, any OCTs which considers itself to be eligible for the support provided for therein shall submit a complete request on the forms made available by the Commission and include all the information needed for it to be assessed.

The request shall be submitted to the Commission at the latest by the end of the year following the year for which the additional support is required.

The Commission shall inform the OCTs within the shortest possible time of its decision.’

7. Article 8 is replaced by the following:

‘Article 8

Commitments

1. Expenditure on financial assistance for the OCTs shall be committed by the Commission in accordance with the Financial Regulation applicable to the 10th EDF.

2. Within the scope of the SPD, commitment of expenditure shall be preceded by a Commission financing decision covering in principle budgetary support, save in exceptional and duly justified circumstances.

3. Outside the scope of the SPD, expenditure under the non-allocated reserve B set aside in accordance with Article 3(4) of Annex II Aa to the Overseas Association Decision shall be committed by the Commission and implemented in accordance with the Financial Regulation applicable to the 10th EDF.’

8. Article 9 is replaced by the following:

‘Article 9

Paying agents

The financial institutions in the OCTs with which the Commission opens accounts in accordance with the Financial Regulation applicable to the 10th EDF for the purposes of implementing cooperation with the OCTs shall exercise the functions of “Paying Agents”.

Interest shall be payable on funds deposited with Paying Agents in the Community.

The Paying Agents shall receive no remuneration for their services and no interest shall be payable on deposited funds.’

9. Article 10 is replaced by the following:

'Article 10

General regulations for contracts

1. The procedures governing the award of contracts shall be indicated in the financing agreements.
2. Where financial assistance is granted by means of budgetary support, the procedures for public procurement of the OCTs in question shall apply.
3. In all other cases, award of contract shall follow the applicable provisions of the Financial Regulation applicable to the 10th EDF.'

10. Article 13 is replaced by the following:

'Article 13

Delegations

1. Where the Commission is represented by a Delegation under the authority of a Head of Delegation, it shall inform the OCTs concerned accordingly. In such cases, the provisions of the Financial Regulation applicable to the 10th EDF concerning authorising officers and accounting officers by subdelegation shall apply.
2. The Head of Delegation shall be the main contact for the different actors of cooperation in the OCTs concerned. He shall cooperate and work closely with the Territorial Authorising Officer.
3. The Head of Delegation shall have the necessary instructions and delegated powers to facilitate and expedite all operation under this Regulation.
4. On a regular basis, the Head of Delegation shall inform the OCTs authorities of Community activities which may directly concern cooperation between the Community and the OCTs concerned.'

11. Article 14 is replaced by the following:

'Article 14

Territorial Authorising Officer

1. The Government of each OCTs shall appoint a Territorial Authorising Officer to represent it in all operations financed from the resources of the EDF managed by the Commission and the Bank. The Territorial Authorising

Officer shall appoint one or more deputy Territorial Authorising Officers to replace him when he is unable to carry out his duties and shall inform the Commission of this appointment. Wherever the conditions regarding institutional capacity and sound financial management are met, the Territorial Authorising Officer may delegate his functions for implementation of the programmes and projects concerned to the body responsible within the OCTs administration. The Territorial Authorising Officer shall inform the Commission of any such delegation.

When the Commission becomes aware of problems in carrying out procedures relating to the management of EDF resources, it shall, in conjunction with the Territorial Authorising Officer, make all contacts necessary to remedy the situation and take any appropriate steps.

The Territorial Authorising Officer shall assume financial responsibility only for the executive tasks entrusted to him.

Where EDF resources are managed in a decentralised way and subject to any additional powers that might be granted by the Commission, the Territorial Authorising Officer shall:

- (a) be responsible for the coordination, programming, regular monitoring and annual, mid-term and end of-term reviews of implementation of cooperation, and, if applicable, for coordination with donors;
- (b) in close cooperation with the Commission, be responsible for the preparation, submission and appraisal of programmes and projects;
- (c) prepare tender dossiers and, where appropriate, the documents for calls for proposals;
- (d) submit tender dossiers and, where appropriate, documents for calls for proposals, to the Commission for approval before launching invitations to tender and, where appropriate, calls for proposals;
- (e) in close cooperation with the Commission, launch invitations to tender and, where appropriate, calls for proposals;
- (f) receive tenders and, if applicable, proposals, and transmit copies of tenders to the Commission; preside over the opening of tenders and decide on the results of their examination within the period of validity of the tenders, taking account of the time required for approval of contracts;

- (g) invite the Commission to the opening of tenders and, if applicable, proposals and notify the Commission of the results of the examination of tenders and proposals for approval of the proposals for the award of contracts and grants;
- (h) submit contracts and programme estimates and any addenda thereto to the Commission for approval;
- (i) sign the contracts and addenda thereto approved by the Commission;
- (j) clear and authorise expenditure within the limits of the funds assigned to him; and
- (k) during the execution operations, make any adaptation arrangements necessary to ensure the proper execution of approved programmes or projects from the economic and technical viewpoint.

2. The Territorial Authorising Officer shall, during the execution of operations and subject to the requirement to inform the Commission, decide on:

- (a) technical adjustments and alterations to programmes and projects in matters of detail so long as they do not affect the technical solution adopted and remain within the limits of the reserve for adjustments provided for in the financing agreement;
- (b) changes of site for multiple-unit programmes or projects where justified on technical, economic or social grounds;
- (c) imposition or remission of penalties for delay;
- (d) acts discharging guarantors;
- (e) purchase of goods, irrespective of their origin, on the local market;
- (f) use of construction equipment and machinery not originating in the OCTs, Member States or ACP States provided there is no production of comparable equipment and machinery in the OCTs, Member States or ACP States;
- (g) subcontracting;

- (h) final acceptance, provided that the Commission is present at provisional acceptance, endorses the corresponding minutes and, where appropriate, is present at the final acceptance, in particular where the extent of the reservations recorded at the provisional acceptance necessitates major additional work; and

- (i) hiring of consultants and other technical assistance experts.

3. In addition the Territorial Authorising Officer shall:

- (a) draw up and, after obtaining the approval of the Monitoring Committee, submit to the Commission the annual implementation report;
- (b) carry out the mid-term review referred to in Article 22;
- (c) ensure that those bodies taking part in the management and implementation of EDF programmes maintain either a separate accounting system or an adequate accounting code for all transactions relating to the assistance; and
- (d) take any necessary measures to ensure the implementation of Articles 16, 19, 24 and 30.

4. When the annual implementation report referred to in Article 21 is submitted, the Commission and the Territorial Authorising Officer shall review the main outcomes of the previous year.

After this review, the Commission may make comments to the Territorial Authorising Officer. The Territorial Authorising Officer shall inform the Commission of any action taken on these comments. Where in duly substantiated cases the Commission considers that the measures taken are inadequate, it may make recommendations to the OCTs and the Territorial Authorising Officer for adjustments aimed at improving the effectiveness of the monitoring or management arrangements, together with the reasons for any such recommendations.

On receiving any such recommendations, the Territorial Authorising Officer shall subsequently demonstrate the steps taken to improve the monitoring or management arrangements or shall explain why no such steps have been taken.'

12. Article 22 is replaced by the following:

'Article 22

Mid-term review

1. The mid-term review shall be organised to examine the initial results of the SPD, their relevance and the extent to which the targets have been attained.

It shall also assess the use made of financial resources and the operation of monitoring and implementation.

2. The mid-term review shall be carried out under the responsibility of the Commission, in cooperation with the Territorial Authorising Officer and the Member State concerned.

The mid-term review shall be carried out in general between 30 and 42 months after the entry into force of the Internal Agreement establishing the 10th EDF.

A different deadline may be set in the SPD, in particular in respect of the indicators adopted in the case of budgetary support.

The mid-term review shall be carried out by an independent assessor, submitted to the Monitoring Committee and then sent to the Commission.

3. The Commission shall examine the relevance and quality of the review on the basis of criteria defined in the SPD, including in respect of the EDF financial allocation.'

13. Article 27 is replaced by the following:

'Article 27

Adaptation of EDF allocations

Using the results of monitoring, audit and evaluations as a basis and taking account of the comments of the Monitoring Committee, the Commission may adjust the amounts and conditions of the initial SPD on its own initiative or on a proposal from the OCTs concerned in the light of the current needs and performance of that OCTs and taking due account of the latest available statistical data for that OCTs.

This adaptation shall normally take place on the occasion of the mid-term review referred to in Article 22 or, in the case of irregularities, in the shortest possible time, in accordance with the procedure laid down in Article 24 of the Overseas Association Decision.'

14. Article 29 is replaced by the following:

'Article 29

Recovery and repayments

1. Any repayment due to be made to the Commission shall be made by the due date indicated in the order for recovery drawn up in accordance with the Financial Regulation applicable to the 10th EDF. This due date shall be the last day of the second month following the issuing of the order.

2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date referred to in paragraph 1 and ending on the date of actual payment. The rate of such interest shall be one and a half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

3. The Territorial Authorising Officer shall keep an account of amounts recoverable from payments of Community assistance already made, and ensure that the amounts are recovered without unjustified delay.

The beneficiary shall repay any amount to be recovered, together with interest received on account of late payment, by deducting the amounts concerned from its next statement of expenditure and request for payment to the Commission, or, where this is insufficient, by making a refund to the Community.

The Territorial Authorising Officer shall send the Commission a statement once a year of the amounts awaiting recovery at that date, classified by the year of initiation of the recovery proceedings.'

15. The Annex is replaced by a new Annex, the text of which is set out in the Annex to this Regulation.

Article 2

In accordance with Article 3(5) of Annex II Aa to the Overseas Association Decision, the indicative amounts allocated under the 10th EDF shall be the following:

<i>(EUR in millions)</i>	
OCTs	10th EDF indicative allocation
New Caledonia	19,81
French Polynesia	19,79
Wallis and Futuna	16,49
Mayotte	22,92
St Pierre and Miquelon	20,74
Aruba	8,88
Netherlands Antilles	24
Falkland Islands	4,13
Turks and Caicos	11,85
Anguilla	11,7
Montserrat	15,66
Saint Helena and dependencies (Ascension, Tristan da Cunha)	16,63
Pitcairn	2,4
Regional cooperation and integration	40
Non-allocated B reserve	15

Article 3

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

This Regulation shall enter into force on the day of the entry into force of the Internal Agreement establishing the 10th EDF.

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

Done at Brussels, 4 December 2007.

For the Commission
Louis MICHEL
Member of the Commission

ANNEX

'ANNEX

STANDARD STRUCTURE FOR SINGLE PROGRAMMING DOCUMENTS FOR OVERSEAS COUNTRIES AND TERRITORIES UNDER THE 10TH EDF

The full text, including the executive summary and chapters 1 to 6, should be limited to at most 15 pages (Word Count) plus annexes.

PART A: COOPERATION STRATEGY**Executive summary**

SPDs should begin with a half-page executive summary. This should include the major political, institutional, economic, social or environmental challenges for the OCTs in the medium and long term, the main objective of the SPD, the principal reasons for the choice of focal area and the overall distribution of funds.

Chapter 1: EC cooperation objectives

In this section, the broad EC cooperation objectives are explicitly stated, as determined by the EC Treaty, the Overseas Association Decision, international agreements and the recent Statement on EC Development Policy.

Chapter 2: Assessment of the political, economic, social and environmental situation

Major domestic policy developments/issues and relevant aspects of the external context should be covered, including the political situation, trade aspects, the economic and social situation, environmental aspects and, finally, the sustainability of current policies and medium-term challenges.

This should be an analytical and not merely descriptive exercise. The analysis should be dialogue-driven, prepared in close cooperation with other donors (if applicable) and involving non-governmental actors.

Wherever relevant, special attention should be paid to the implementation of international good governance principles in the financial, tax and judicial areas, and to the extent and the calendar of reforms in this connection.

In the same way, special attention should be paid to the availability of up-to-date statistical data.

Chapter 3: Policy agenda of the OCTs

This section should provide a concise statement of the aims and objectives of the government, as set out in official policy documents, in medium- or long-term plans, reform strategies or development programmes. This should be completed by an indication as to how the government proposes to achieve these objectives.

Chapter 4: Assessment of past and ongoing EC cooperation

This section should contain a brief account of the results and "lessons learnt" from past and ongoing EC cooperation. Recommendations from relevant evaluations of the OCTs, specific sectors or projects should be considered.

A coherence paragraph (EC policy mix) should assess the linkages between the SPD and other Community policies, resources and instruments. Programmes of EU Member States and other donors (if applicable) should be outlined. Particular attention should be paid to coordination between territorial and regional programmes and to cooperation with ACP countries and the outermost regions referred to in Article 299(2) of the Treaty.

Chapter 5: Response strategy

This section should set out the strategic choices for EC cooperation, specifying on which area/sector assistance will concentrate. That choice should flow logically from:

- EC policy objectives,
- an analysis of the OCTs situation and its development strategy, determining the relevance and sustainability of the support strategy,

- conclusions reached in the context of any policy mix/coherence analysis exercise,
- the indicative volume of funds available,
- lessons learnt from past and ongoing EC activities,
- complementarity with assistance from other major donors and the OCTs Government's own programmes. Community assistance should be focused in areas where it has comparative advantages or particular expertise.

This section should also contain a concise institutional capacity assessment and, where appropriate address the possible needs for institutional and capacity development actions, or, if necessary, support for actions to strengthen governance, including in the financial, tax and judicial areas wherever relevant.

Where support for programmes or projects is proposed as the financing modality, the exceptional and duly justified circumstances that would not allow assistance to be provided as budgetary support should be described. If the conditions for budgetary support are not met, a description should be provided of which measures will be carried out to ensure that the conditions for budgetary support are created.

PART B: TERRITORIAL PROGRAMME

Chapter 6: Territorial programme

This Chapter is a presentation of the OCTs territorial programme, which is based on and fully consistent with the strategic analysis. The territorial programme is an integral part of the SPD and should be composed of the following sections:

OPTION A: SECTOR POLICY SUPPORT PROGRAMME

Identification

Title			
Total cost	<i>Specify: EC contribution and if applicable contribution of the beneficiary OCTs (and of other donors, if applicable)</i>		
Aid method/management mode	Sector Policy Support Programme: — sector budget support (centralised management), — pool fund (centralised (direct or indirect)/decentralised/or joint management), — project mode (centralised (direct or indirect)/decentralised/joint management).		
DAC-code		Sector	

1. Rationale and OCTs context

Economic and social situation

Key conclusions from the assessment of the macroeconomic situation, in particular the medium to long term outlook.

If budget support is used as financing modality, indicate the following:

- macroeconomic situation: structure of GDP; recent economic performance and expected trends, covering GDP growth and inflation; public finances, fiscal deficit, debt burden and amount of arrears; share of spending in key sectors; balance of payments current and capital account, reserves; monetary situation; role of external assistance in the economy; relationship with the International Monetary Fund,
- profile and trends in poverty: evolution of real GDP per head of population; consistency between rate of growth and challenge of poverty reduction; results of poverty surveys; situation of main social indicators compared to other countries; evolution of indicators of recent years (where available),
- that the relevant eligibility criterion for Budget Support is fulfilled, namely that a sufficiently stable macroeconomic situation exists.

Cooperation policy of the beneficiary OCTs

Main policy, strategic priorities and orientations:

- the main features of national development policy and strategy (analysis of current situation, statement of policy and strategy, action plan(s), medium-term financial perspectives and budget, performance measurement, monitoring and evaluation),
- the realism of the policy and strategy (for example links between growth and poverty reduction, strategic orientations),
- ownership of policy and strategy by Government in general and sector Ministry specifically.

Government Sector Programme

Origin and status of the Government sector programme:

- main findings of the assessment of the sector policy and the sector budget and its medium-term financial perspectives (if available) as well as the link with the territorial strategic framework,
- assessment of the institutional capacity,
- overall framework for monitoring implementation of sector policies and strategies.

If budget support is used as a financing modality, provide key conclusions on the assessment of public financial management:

- the quality of the existing public financial management system including any specific public financial management sector issues and reforms,
- an assessment of the process of improvements in public financial management.

If budget support is used, indicate that the relevant eligibility criteria are fulfilled:

- a well defined sector policy and,
- a well defined programme to improve public financial management.

Lessons learnt

Reference to reviews, assessments, monitoring results and evaluations of relevant previous actions.

Complementary actions

General overview of ongoing EC actions, actions of other donors and/or of the beneficiary OCTs complementary to the present one.

Donor coordination

Description of the coordination process with the beneficiary OCTs and/or other donors, notably Member States.

2. Description

Objectives and expected results

Objectives and key elements of the Government sector programme and the objectives of the present Sector Policy Support Programme in relation to that programme.

Results anticipated from the Government sector programme and from the Sector Policy Support Programme; specific activities to be undertaken under the Sector Policy Support Programme.

Stakeholders

Description of main stakeholders, including beneficiaries; consultation of civil society and other partners; ownership and assessment of institutional capacity.

Risks and assumptions

Identification of main risks and overview of mitigating measures; elements evidencing the sustainability of the proposed action. If Budget Support is used as the financing modality, risks with respect to eligibility criteria should be mentioned.

Crosscutting issues

Environmental sustainability, gender equality, good governance and human rights.

3. Implementation issues

Implementation method

Choose the relevant option in accordance with the selected financing modality:

- centralised management,
- joint management through the signature of an agreement with an international organisation,
- decentralised management through the signature of a financing agreement with an OCTs (in case of partly centralised implementation and partly decentralised implementation, use this option).

In case of decentralisation of procurement contracts and grant award procedures:

- the Commission controls *ex ante* the contracting procedures for procurement contracts > EUR 50 000 and *ex post* for procurement contracts < EUR 50 000,

or

- the Commission controls *ex post* the contracting procedures (full decentralisation can only be chosen if the criteria of decentralisation set out in the Financial Regulation are fully met).

In case of decentralisation of payments (only possible where the award procedures for the relevant contracts have been decentralised):

- through the programme estimates, payments are decentralised for operating costs and contracts up to the following ceilings,

Works	Supplies	Services	Grants
< EUR 300 000	< EUR 150 000	< EUR 200 000	≤ EUR 100 000

or

- the payments are fully decentralised (full decentralisation can only be chosen if the criteria of decentralisation set out in the Financial Regulation are fully met).

Procurement and grant award procedures

The following is to be inserted without modification for those activities for which EC procedures apply: "All contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question."

The following is to be inserted without modification if the agreement with an international organisation foresees the use of its own rules and procedures, which comply with the international standards set: "All contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the International Organisation concerned."

If rules and procedures other than EC procedures apply, these procedures should be specified and fulfil criteria set out in the Financial Regulation.

Budget and calendar

Indicative breakdown of overall amount by main components, including evaluation, audit and visibility. Where appropriate, specify also the contribution of the beneficiary OCTs per budget item and whether this contribution is in kind or in cash.

Where possible, indicate proportions of financing reserved for grants and for procurement contracts; for contracts, indicate type of procurement (services, supply, works), and for grants, indicate the main category of intended beneficiaries.

If applicable: Give indicative timeframe for launching the procurement procedures or the call for proposals.

If budget support is used as the financing modality, provide indicative calendar for disbursements in months, distinguishing between fixed and variable tranches, where appropriate.

Indicate operational duration indicated in months as from signature of Financing Agreement (contract or other implementing agreement if no Financing Agreement is signed).

Performance monitoring and criteria for disbursement

Description of performance monitoring arrangements.

Performance indicators for the Sector Policy Support Programme; coherence with the overall government sector programme performance assessment framework; process of performance monitoring; means of verification; steps to strengthen performance measurement (as appropriate).

Where budget support or pool funding is chosen as the financing modality: general conditions for disbursement of all tranches; areas in which specific conditions for disbursement of individual tranches will be defined.

Input, output, outcome, and, as far as possible, impact indicators should be identified for policy areas covered by the focal area. Indicators should take into account the SMART criteria (specific, measurable in the short/medium term, achievable, realistic and time-bound) and include a starting level, a target and a clear time-horizon, to allow for comparisons at the time of annual, mid- and end-of-term reviews.

Evaluation and audit

Description of evaluations (mid-term, final, ex post) and audit arrangements.

Communication and visibility

Description of communication and visibility activities.

OPTION B: GENERAL BUDGET SUPPORT

Identification

Title			
Total cost	EC contribution		
Aid method/management mode	General budget support — centralised management		
DAC-code		Sector	

1. Rationale and OCTs context

Economic and social situation

Macroeconomic situation: structure of GDP; recent economic performance covering GDP growth and inflation; public finances, fiscal deficit, debt burden and amount of arrears; share of spending in key sectors; balance of payments current and capital account, reserves; monetary situation; role of external assistance in the economy; summary of the main past and expected trends in macroeconomic variables; description of the relationship between the partner country and the International Monetary Fund; any special topics of macroeconomic interest specific to the OCTs.

Profile and trends in poverty: evolution of real GDP per head of population; consistency between rate of growth and challenge of poverty reduction; results of poverty surveys; situation of main social indicators compared to other countries; evolution of indicators of recent years (where available).

Indicate that the relevant eligibility criterion for budget support is fulfilled, namely that a stability-oriented macro-economic policy is in place or under implementation and that this policy should be supported by the EC.

Cooperation policy and strategy of beneficiary OCTs

Main policy and strategic priorities and orientations:

— OCTs policy and strategy:

— the main features of the OCTs policy and strategy (analysis of current situation, statement of policy and strategy, action plan(s), medium-term financial perspectives and budget, performance measurement, monitoring and evaluation),

— realism of the policy and strategy (for example links between growth and poverty reduction, strategic orientations),

— ownership of policy and strategy;

— performance measurement: the existence of a monitoring process with performance indicators to measure achievement of objectives; coherence with the Millennium Development Goals and political and economic approximation to the EU; existence of a programme to ensure the quality of performance indicators used,

— indicate that the relevant eligibility criterion for budget support is fulfilled, namely that a well defined development or reform policy and strategy is in place or under implementation and this policy should be supported by the EC.

Sector policies (where appropriate)

Overview of the characteristics of the main sectors and the sector policies in the priority areas addressed by this programme.

Public finance

Main public finance issues in two key areas:

— public financial management,

— assessment of the quality of the existing Public Financial Management system,

— assessment of the process of improvements in Public Financial Management, including the OCTs authorities' commitment to improve Public Financial Management performance; the relevance and degree of implementation of the reform strategy; the relevance and degree of coordination and implementation of the capacity development programmes in the area of public financial management,

— indicate that the relevant eligibility criterion for budget support is fulfilled, namely that a credible and relevant programme to improve the management of public finances exists;

— national budget and medium-term financial perspectives: the size of budget support in relation to the budget; the type and coverage of the budget (including structure of budget income and expenditure; coherence between OCTs policy and strategy and budget allocations and expenditure; budget strategy (including fiscal sustainability, debt sustainability, budget rules, financing strategies); any work on value for money; and status of any medium-term financial perspectives (including coverage, extent of integration or not into budget process, extent of reorientation in line with policies and strategies).

Lessons learnt

Summary of lessons learnt, including results of reviews, assessments, monitoring and evaluations of previous actions relevant to this specific programme.

Complementary actions

General overview of ongoing EC actions, actions of other donors and/or of the beneficiary OCTs complementary to the present one.

Donor coordination

Description of the coordination process with the beneficiary OCTs and/or other donors, notably Member States.

2. Description

Objectives

Overall Objectives: derived from the OCTs policy and strategy, this usually covers a contribution to broad development objectives and Millennium Development Goals, such as growth, poverty reduction, security and good neighbourliness, integration in the world economy, economic partnership.

Purpose (specific objective): derived from the OCTs policy and strategy, this refers to particular aspects of the overall strategy. It is often related to improving macroeconomic stability, public financial management, implementation of reforms and improvements in the performance of government and social services.

Expected results and main activities

Expected results: this is often related to the better functioning of the public or general government sector and the goods and services it supplies, as well as improvements in the framework for public policy and public expenditure. These goods and services would be those that contribute towards the overall objectives, such as those related to poverty reduction and Millennium Development Goals.

Activities cover the issues related to policy dialogue, capacity development activities, monitoring of conditions for disbursement of budget support. Means (or inputs) will refer mainly to the financial support provided by budget support, indicating the size of this support in relation to key macroeconomic variables.

Stakeholders

Description of main stakeholders, including beneficiaries; consultation of civil society and other partners; ownership and assessment of institutional capacity.

Risks and assumptions

Identification of main risks, notably with respect to eligibility criteria and overview of mitigating measures.

Crosscutting issues

Environmental sustainability, gender equality, good governance and human rights.

3. Implementation issues

Budget and calendar

Total budget and indicative calendar for disbursements in months, distinguishing fixed/variable tranches where appropriate.

Operational duration indicated in months as from signature of Financing Agreement.

Budget allocations for complementary support measures for the action.

Budget support modalities

Specify: direct/indirect; targeted/non-targeted; medium-term/short-term policy and strategy (as appropriate).

Procurement and grants award procedures

Only for complementary support like technical assistance, audit, evaluation. To be inserted without modification: "All contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question."

Performance monitoring and criteria for disbursement

Description of performance monitoring arrangements, general conditions for disbursement of all tranches, specific conditions for disbursement of individual tranches. Input, output, outcome, and, as far as possible, impact indicators should be identified for policy areas covered by the focal area. Indicators should take into account the SMART criteria (specific, measurable in the short/medium term, achievable, realistic and time-bound) and include a starting level, a target and a clear time-horizon, to allow for comparisons at the time of annual, mid- and end-of-term reviews.

Evaluation and audit

Description of evaluations (mid-term, final, *ex post*) and audit arrangements.

Communication and visibility

Description of communication and visibility activities.

OPTION C: PROJECT APPROACH

Identification

Title			
Total cost	<i>Specify: EC contribution and if applicable contribution of the beneficiary OCTs (and of other donors, if applicable)</i>		
Aid method/management mode	Project approach — centralised (direct or indirect)/decentralised/joint management		
DAC-code		Sector	

1. Rationale

Sector context

Characteristics and policies of concerned sector or thematic area (at regional level, where appropriate) and main problems the project is intended to address.

Lessons learnt

Reference to reviews, assessments, monitoring results and evaluations of previous actions, relevant to this specific project.

Complementary actions

General overview of ongoing EC actions, actions of other donors and/or of the beneficiary OCTs complementary to the present one.

Donor coordination

Description of the coordination process with the beneficiary OCTs and/or other donors, notably Member States.

2. Description

Objectives

Overall objectives and purpose (specific objective) of the EC support.

Expected results and main activities

Strategy selected to remedy identified problems the project is intended to address; description of expected results and indication of the way they will be achieved.

Stakeholders

Description of main stakeholders, including beneficiaries; consultation of civil society and other partners, where appropriate; ownership and assessment of institutional capacity.

Risks and assumptions

Identification of main risks and overview of mitigating measures, including conditions to be met prior to and during implementation; elements evidencing the sustainability of the proposed action.

Crosscutting issues

Environmental sustainability, gender equality, good governance and human rights.

3. Implementation issues

Implementation method

Choose the relevant option in accordance with the selected financing modality:

- centralised management,
- joint management through the signature of an agreement with an international organisation,
- decentralised management through the signature of a financing agreement with an OCTs (in case of partly centralised implementation and partly decentralised implementation, use this option).

Indicate the tasks (procurement and grant award procedures/payments) which are foreseen to be centralised or decentralised, and the contracting and paying authority(ies).

In case of decentralisation of procurement contracts and grant award procedures:

- the Commission controls *ex ante* the contracting procedures for procurement contracts > EUR 50 000 and *ex post* for procurement contracts < EUR 50 000,

or

- the Commission controls *ex post* the contracting procedures (full decentralisation can only be chosen if the criteria of decentralisation set out in the Financial Regulation are fully met).

In case of decentralisation of payments (only possible where the award procedures for the relevant contracts have been decentralised):

- through the programme estimates, payments are decentralised for operating costs and contracts up to the following ceilings:

Works	Supplies	Services	Grants
< EUR 300 000	< EUR 150 000	< EUR 200 000	≤ EUR 100 000

or

- the payments are fully decentralised (full decentralisation can only be chosen if the criteria of decentralisation set out in the Financial Regulation are fully met).

Procurement and grant award procedures

The following is to be inserted without modification for those activities for which EC procedures apply: "All contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question."

The following is to be inserted without modification if the agreement with an international organisation foresees the use of its own rules and procedures, which comply with the international standards set: 'All contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the International Organisation concerned.'

If rules and procedures other than EC procedures apply, these procedures should be specified and fulfil criteria set out in the Financial Regulation.

Budget and calendar

Indicative breakdown of overall amount by main components, including evaluation, audit and visibility. Where appropriate, specify also the contribution of the beneficiary OCTs per budget item and whether this contribution is in kind or in cash.

Where possible, indicate proportions of financing reserved for grants and for procurement contracts; for contracts, indicate type of procurement (services, supply, works), and for grants, indicate the main category of intended beneficiaries.

If applicable, give indicative timeframe for launching the procurement procedures or the call for proposals.

Foreseen operational duration indicated in months as from signature of Financing Agreement (contract or other implementing agreement if no Financing Agreement is signed).

Performance monitoring

Description of performance monitoring arrangements; overview of key indicators measuring progress. Input, output, outcome, and, as far as possible, impact indicators should be identified for policy areas covered by the focal area. Indicators should take into account the SMART criteria (specific, measurable in the short/medium term, achievable, realistic and time-bound) and include a starting level, a target and a clear time-horizon, to allow for comparisons at the time of annual, mid- and end-of-term reviews.

Evaluation and audit

Description of evaluations (mid-term, final, *ex post*) and audit arrangements.

Communication and visibility

Description of communication and visibility activities.'

COMMISSION REGULATION (EC) No 1425/2007**of 3 December 2007****establishing a prohibition of fishing for cod in ICES zone IV; EC waters of II a by vessels flying the flag of Belgium**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

- (1) Council Regulation (EC) No 41/2007 of 21 December 2006 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2007.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2007.

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

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2007 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

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

*Article 3***Entry into force**

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

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

Done at Brussels, 3 December 2007.

For the Commission

Fokion FOTIADIS

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59. Regulation as amended by Regulation (EC) No 865/2007 (OJ L 192, 24.7.2007, p. 1).

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1967/2006 (OJ L 409, 30.12.2006, p. 11), as corrected by OJ L 36, 8.2.2007, p. 6.

⁽³⁾ OJ L 15, 20.1.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 898/2007 (OJ L 196, 28.7.2007, p. 22).

ANNEX

No	78
Member State	Belgium
Stock	COD/2AC4.
Species	Cod (<i>Gadus morhua</i>)
Zone	IV; EC waters of IIa
Date	15.11.2007

COMMISSION REGULATION (EC) No 1426/2007**of 3 December 2007****establishing a prohibition of fishing for cod in ICES zones VII b-k, VIII, IX and X; EC waters of CECAF 34.1.1 by vessels flying the flag of Belgium**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

- (1) Council Regulation (EC) No 41/2007 of 21 December 2006 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2007.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2007.

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

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2007 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

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

*Article 3***Entry into force**

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

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

Done at Brussels, 3 December 2007.

For the Commission

Fokion FOTIADIS

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59. Regulation as amended by Regulation (EC) No 865/2007 (OJ L 192, 24.7.2007, p. 1).

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1967/2006 (OJ L 409, 30.12.2006, p. 11), as corrected by OJ L 36, 8.2.2007, p. 6.

⁽³⁾ OJ L 15, 20.1.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 898/2007 (OJ L 196, 28.7.2007, p. 22).

ANNEX

No	79
Member State	Belgium
Stock	COD/7X7A34
Species	Cod (<i>Gadus morhua</i>)
Zone	VII b-k, VIII, IX and X; EC waters of CECAF 34.1.1
Date	15.11.2007

COMMISSION REGULATION (EC) No 1427/2007**of 3 December 2007****establishing a prohibition of fishing for ling in EC waters of ICES zone IV by vessels flying the flag of Belgium**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

- (1) Council Regulation (EC) No 41/2007 of 21 December 2006 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2007.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2007.

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

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2007 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

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

*Article 3***Entry into force**

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

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

Done at Brussels, 3 December 2007.

For the Commission

Fokion FOTIADIS

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59. Regulation as amended by Regulation (EC) No 865/2007 (OJ L 192, 24.7.2007, p. 1).

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1967/2006 (OJ L 409, 30.12.2006, p. 11), as corrected by OJ L 36, 8.2.2007, p. 6.

⁽³⁾ OJ L 15, 20.1.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 898/2007 (OJ L 196, 28.7.2007, p. 22).

ANNEX

No	80
Member State	Belgium
Stock	LIN/04.
Species	Ling (<i>Molva molva</i>)
Zone	EC waters of ICES zone IV
Date	15.11.2007

COMMISSION REGULATION (EC) No 1428/2007**of 4 December 2007****amending Annex VII to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽¹⁾, and in particular the first paragraph of Article 23 thereof,

Whereas:

- (1) Annex VII to Regulation (EC) No 999/2001 lays down eradication measures to be carried out following the confirmation of a transmissible spongiform encephalopathy (TSE) in ovine and caprine animals.
- (2) In the framework of the Communication from the Commission TSE Roadmap ⁽²⁾ of 15 July 2005, and in line with the SANCO work programme 2006-07 on TSEs ⁽³⁾ of 21 November 2006, the Commission adopted Regulation (EC) No 727/2007 of 26 June 2007 amending Annexes I, III, VII and X to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies. Regulation (EC) No 999/2001, as thus amended, provides for certain measures to be applied in the case of confirmation of a TSE in a holding of ovine or caprine animals and where the presence of bovine spongiform encephalopathy (BSE) has been excluded.
- (3) Given that the structure of the sector for ovine and caprine animals is notoriously different across the Community, Regulation (EC) No 999/2001, as amended by Regulation (EC) No 727/2007, introduced the possibility to apply alternative policies, provided that harmonised rules are established at Community level.
- (4) Annex VII to Regulation (EC) No 999/2001, before the amendments made thereto by Regulation (EC) No 727/2007, provided for a derogation regarding the destruction of ovine and caprine animals following the confirmation on a holding of a case of TSE in such animals. Accordingly, Member States could decide to delay the destruction of the animals up to five breeding years under certain conditions. However, that derogation was not included in Annex VII to Regulation (EC) No 999/2001, as thus amended, as it was no longer necessary.
- (5) On 17 July 2007, in Case T-257/07, before the Court of First Instance of the European Communities, France brought an action against the European Commission seeking the annulment of certain provisions of Regulation (EC) No 727/2007, in particular regarding the measures to be applied to TSE-affected flocks, or alternatively the entire annulment of that Regulation. In its Order of 28 September 2007, as an interim measure, the Court suspended the application of those provisions until a final judgment is delivered.
- (6) Following that Order, the Member States have no longer the possibility to apply the suspended measures. Therefore, certain Member States may have difficulties to proceed with the immediate destruction of the animals concerned.
- (7) It is therefore necessary to reintroduce the derogation that applied before the amendments made to the relevant provisions of Annex VII to Regulation (EC) No 999/2001, by Regulation (EC) No 727/2007, in order to allow Member States where the frequency of the ARR allele within the breed or holding is low, or where it is deemed necessary in order to avoid inbreeding, to delay the destruction of the animals concerned up to five breeding years, as from the date of that Order.
- (8) Regulation (EC) No 999/2001 should therefore be amended accordingly.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

⁽¹⁾ OJ L 147, 31.5.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 727/2007 (OJ L 165, 27.6.2007, p. 8).

⁽²⁾ COM(2005) 322 final.

⁽³⁾ SEC(2006) 1527.

HAS ADOPTED THIS REGULATION:

delay the destruction of animals as referred to in point 2.3 (b)(i) and (ii) for up to five breeding years.'

Article 1

In Annex VII, Chapter A, point 2.3, the following point (f) is added:

'(f) Where the frequency of the ARR allele within the breed or holding is low, or where it is deemed necessary in order to avoid inbreeding, a Member State may decide to

Article 2

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

It shall apply from 28 September 2007.

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

Done at Brussels, 4 December 2007.

For the Commission

Markos KYPRIANOU

Member of the Commission

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 22 October 2007

on the signing and provisional application of a Protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, to take account of the accession of the Republic of Bulgaria and Romania to the European Union

(2007/786/EC)

THE COUNCIL OF THE EUROPEAN UNION,

(2) These negotiations have been concluded to the satisfaction of the Commission.

Having regard to the Treaty establishing the European Community, and in particular Article 310 in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

(3) The text of the Protocol negotiated with Israel provides, in Article 9(2), for the provisional application of the Protocol before its entry into force.

Having regard to the 2005 Act of Accession and in particular Article 6(2) thereof,

(4) The Protocol should be signed on behalf of the European Community and its Member States and applied on a provisional basis subject to its conclusion at a later date,

Having regard to the proposal from the Commission,

HAS DECIDED AS FOLLOWS:

Whereas:

Article 1

The signing of the Protocol to the Euro-Mediterranean Agreement is hereby approved on behalf of the European Community and its Member States, subject to the conclusion of the said Protocol.

(1) On 23 October 2006 the Council authorised the Commission, on behalf of the European Community and its Member States, to open negotiations with Israel with a view to adjusting the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part ⁽¹⁾, hereinafter referred to as 'the Euro-Mediterranean Agreement', to take account of the accession of the Republic of Bulgaria and Romania to the European Union.

The text of the Protocol is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Protocol on behalf of the European Community and its Member States subject to its conclusion.

⁽¹⁾ OJ L 147, 21.6.2000, p. 3.

Article 3

Subject to reciprocity, the Protocol shall be applied on a provisional basis as from 1 January 2007, pending the completion of the procedures for its formal conclusion.

Done at Luxembourg, 22 October 2007.

For the Council
The President
J. SILVA

PROTOCOL

to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, to take account of the accession of the Republic of Bulgaria and Romania to the European Union

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

hereinafter referred to as 'the Member States' represented by the Council of the European Union,

and

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community' represented by the Council of the European Union and the Commission of the European Communities,

of the one part, and

the STATE OF ISRAEL, hereinafter referred to as 'Israel',

of the other part,

WHEREAS the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, hereinafter referred to as 'the Euro-Mediterranean Agreement', was signed in Brussels on 20 November 1995 and entered into force on 1 June 2000;

WHEREAS the Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union and the Act thereto was signed in Luxembourg on 25 April 2005 and entered into force on 1 January 2007;

WHEREAS, pursuant to Article 6(2) of the 2005 Act of Accession, the accession of the new Parties to the Euro-Mediterranean Agreement is to be agreed by the conclusion of a Protocol to that Agreement;

WHEREAS consultations pursuant to Article 21 of the Euro-Mediterranean Agreement have taken place in order to ensure that account has been taken of the mutual interests of the Community and Israel,

HAVE AGREED AS FOLLOWS:

Article 1

The Republic of Bulgaria and Romania, hereinafter referred to as 'new Member States', hereby become Parties to the Euro-Mediterranean Agreement and shall respectively adopt and take note, in the same manner as the other Member States, of the texts of the Euro-Mediterranean Agreement, as well as of the Joint Declarations, Declarations and Exchanges of Letters.

CHAPTER ONE

AMENDMENTS TO THE TEXT OF THE EURO-MEDITERRANEAN AGREEMENT, INCLUDING ITS ANNEXES AND PROTOCOLS

Article 2

Agricultural, processed agricultural and fishery products

1. Table 1 of Annex VI to the Euro-Mediterranean Agreement, setting out tariff concessions on imports into the Community of goods originating in Israel, is complemented by one additional tariff concession, defined as follows:

'CN code (*)	Description of goods (**)	Annual quota (tonnes)	Concession within limits of quota
ex 2106 90 98	Citrus bases for preparation of soft drinks and beverages containing by weight at least 30 % of concentrated fruit juices and no more than 50 % of sucrose, not containing milk or milk products	5 550 (***)	33 % reduction of the agricultural component

(*) N codes corresponding to Regulation (EC) No 1549/2006 (OJ L 301, 31.10.2006, p. 1).

(**) Where 'ex' CN codes are indicated, the preferential scheme is to be determined by the application of the CN codes and corresponding description taken together.

(***) For 2007 this quota will be fixed at 3 240 tonnes.'

2. Further tariff concessions for the adaptation of bilateral concessions in agricultural, processed agricultural or fishery products shall be concluded between the Parties in accordance with the provisions set out in the Annex.

Article 3

Rules of origin

Protocol (4) shall be amended as follows:

1. in Articles 3(1) and 4(1), the reference to the new Member States is deleted;
2. Annex IVa is replaced by the following:

Bulgarian version

Износителят на продуктите, които се обхващат от този документ (митническо разрешение № ...⁽¹⁾) декларира, че освен когато ясно е отбелязано друго, тези продукти са с ... преференциален произход⁽²⁾.

Spanish version

El exportador de los productos incluidos en el presente documento [autorización aduanera n° ...⁽¹⁾] declara que, salvo indicación clara en sentido contrario, estos productos gozan de un origen preferencial ...⁽²⁾.

Czech version

Vývozce výrobků uvedených v tomto dokumentu (číslo povolení ...⁽¹⁾) prohlašuje, že kromě zřetelně označených mají tyto výrobky preferenční původ v ...⁽²⁾.

Danish version

Eksportøren af varer, der er omfattet af nærværende dokument, (toldmyndighedernes tilladelse nr. ...⁽¹⁾), erklærer, at varerne, medmindre andet tydeligt er angivet, har præferenceoprindelse i ...⁽²⁾.

German version

Der Ausführer (Ermächtigter Ausführer; Bewilligungs-Nr. ...⁽¹⁾) der Waren, auf die sich dieses Handelspapier bezieht, erklärt, dass diese Waren, soweit nicht anders angegeben, präferenzbegünstigte ...⁽²⁾ Ursprungswaren sind.

Estonian version

Käesoleva dokumendiga hõlmatud toodete eksportija (tolli kinnitus nr ...⁽¹⁾) deklareerib, et need tooted on ...⁽²⁾ sooduspäritoluga, välja arvatud juhul, kui on selgelt näidatud teisiti.

Greek version

Ο εξαγωγέας των προϊόντων που καλύπτονται από το παρόν έγγραφο [άδεια τελωνείου υπ' αριθ. ...⁽¹⁾] δηλώνει ότι, εκτός εάν δηλώνεται σαφώς άλλως, τα προϊόντα αυτά είναι προτιμωσιακής καταγωγής ...⁽²⁾.

English version

The exporter of the products covered by this document (customs authorisation No ...⁽¹⁾) declares that, except where otherwise clearly indicated, these products are of ...⁽²⁾ preferential origin.

French version

L'exportateur des produits couverts par le présent document [autorisation douanière n° ...⁽¹⁾] déclare que, sauf indication claire du contraire, ces produits ont l'origine préférentielle ...⁽²⁾.

Italian version

L'esportatore delle merci contemplate nel presente documento [autorizzazione doganale n. ...⁽¹⁾] dichiara che, salvo espressa indicazione contraria, le merci sono di origine preferenziale ...⁽²⁾.

Latvian version

Eksportētājs produktiem, kuri ietverti šajā dokumentā (muitas pilnvara Nr. ...⁽¹⁾), deklarē, ka, izņemot tur, kur ir citādi skaidri noteikts, šiem produktiem ir priekšrocību izcelsme no ...⁽²⁾.

Lithuanian version

Šiame dokumente išvardintų prekių eksportuotojas (muitinės liudijimo Nr. ...⁽¹⁾) deklaruoja, kad, jeigu kitaip nenurodyta, tai yra ...⁽²⁾ preferencinės kilmės prekės.

Hungarian version

A jelen okmányban szereplő áruk exportőre (vámfelhatalmazási szám: ...⁽¹⁾) kijelentem, hogy eltérő jelzés hiányában az áruk preferenciális ...⁽²⁾ származásúak.

Maltese version

L-esportatur tal-prodotti koperti b'dan id-dokument (awtorizzazzjoni tad-dwana nru ...⁽¹⁾) jiddikjara li, hlief fejn indikat b'mod ċar li mhux hekk, dawn il-prodotti huma ta' oriġini preferenzjali ...⁽²⁾.

Dutch version

De exporteur van de goederen waarop dit document van toepassing is (douanevergunning nr. ...⁽¹⁾), verklaart dat, behoudens uitdrukkelijke andersluidende vermelding, deze goederen van preferentiële ... oorsprong zijn⁽²⁾.

Polish version

Eksporter produktów objętych tym dokumentem (upoważnienie władz celnych nr ... ⁽¹⁾) deklaruje, że z wyjątkiem gdzie jest to wyraźnie określone, produkty te mają ... ⁽²⁾ preferencyjne pochodzenie.

Portuguese version

O exportador dos produtos cobertos pelo presente documento [autorização aduaneira n.º ... ⁽¹⁾], declara que, salvo expressamente indicado em contrário, estes produtos são de origem preferencial ... ⁽²⁾.

Romanian version

Exportatorul produselor la care se referă acest document [autorizația vamală nr. ... ⁽¹⁾] declară că, exceptând cazul în care în mod expres este indicat altfel, aceste produse sunt de origine preferențială ... ⁽²⁾.

Slovenian version

Izvoznik blaga, zajetega s tem dokumentom (pooblastilo carinskih organov št. ... ⁽¹⁾) izjavlja, da, razen če ni drugače jasno navedeno, ima to blago preferencialno ... ⁽²⁾ poreklo.

Slovak version

Vývozca výrobkov uvedených v tomto dokumente [číslo povolenia ... ⁽¹⁾] vyhlasuje, že okrem zreteľne označených, majú tieto výrobky preferenčný pôvod v ... ⁽²⁾.

Finnish version

Tässä asiakirjassa mainittujen tuotteiden viejä (tullin lupa n:o ... ⁽¹⁾) ilmoittaa, että nämä tuotteet ovat, ellei toisin ole selvästi merkitty, etuuskohteluun oikeutettuja ... alkuperä-tuotteita ⁽²⁾.

Swedish version

Exportören av de varor som omfattas av detta dokument (tullmyndighetens tillstånd nr. ... ⁽¹⁾) försäkrar att dessa varor, om inte annat tydligt markerats, har förmånsberättigande ... ursprung ⁽²⁾.

Hebrew Version

היצואן של הטובין המכוסים במסמך זה (אישור מכס מס' ... ⁽¹⁾) מצהיר כי מקורם של הטובין הללו מועדף, אלא אם כן צוין אחרת במפורש. ⁽²⁾

3. Annex IVb shall be replaced by the following:

'Bulgarian version

Износителят на продуктите, които се обхващат от този документ [митническо разрешение № ... ⁽¹⁾] декларира, че

освен когато ясно е отбелязано друго, тези продукти са с ... преференциален произход ⁽²⁾:

— cumulation applied with ... (name of the country/countries)

— no cumulation applied ⁽³⁾.

Spanish version

El exportador de los productos incluidos en el presente documento [autorización aduanera n.º ... ⁽¹⁾] declara que, salvo indicación clara en sentido contrario, estos productos gozan de un origen preferencial. ... ⁽²⁾:

— cumulation applied with ... (name of the country/countries)

— no cumulation applied ⁽³⁾.

Czech version

Vývozce výrobků uvedených v tomto dokumentu (číslo povolení ... ⁽¹⁾) prohlašuje, že kromě zřetelně označených mají tyto výrobky preferenční původ v ... ⁽²⁾:

— cumulation applied with ... (name of the country/countries)

— no cumulation applied ⁽³⁾.

Danish version

Eksportøren af varer, der er omfattet af nærværende dokument, (toldmyndighedernes tilladelse nr. ... ⁽¹⁾), erklærer, at varerne, medmindre andet tydeligt er angivet, har præferenceoprindelse i ... ⁽²⁾:

— cumulation applied with ... (name of the country/countries)

— no cumulation applied ⁽³⁾.

German version

Der Ausführer (Ermächtigter Ausführer; Bewilligungs-Nr. ... ⁽¹⁾) der Waren, auf die sich dieses Handelspapier bezieht, erklärt, dass diese Waren, soweit nicht anders angegeben, präferenzbegünstigte ... ⁽²⁾ Ursprungswaren sind:

— cumulation applied with ... (name of the country/countries)

— no cumulation applied ⁽³⁾.

Estonian version

Käesoleva dokumendiga hõlmatud toodete eksportija (tolli kinnitus nr ... ⁽¹⁾) deklareerib, et need tooted on ... ⁽²⁾ sooduspäritoluga, välja arvatud juhul, kui on selgelt näidatud teisiti:

- cumulation applied with ... (name of the country/countries)
- no cumulation applied ⁽³⁾.

Greek version

Ο εξαγωγέας των προϊόντων που καλύπτονται από το παρόν έγγραφο [άδεια τελωνείου υπ' αριθ. ... ⁽¹⁾] δηλώνει ότι, εκτός εάν δηλώνεται σαφώς άλλως, τα προϊόντα αυτά είναι προτιμηςιακής καταγωγής ... ⁽²⁾:

- cumulation applied with ... (name of the country/countries)
- no cumulation applied ⁽³⁾.

English version

The exporter of the products covered by this document (customs authorisation No ... ⁽¹⁾) declares that, except where otherwise clearly indicated, these products are of ... ⁽²⁾ preferential origin:

- cumulation applied with ... (name of the country/countries)
- no cumulation applied ⁽³⁾.

French version

L'exportateur des produits couverts par le présent document [autorisation douanière n° ... ⁽¹⁾] déclare que, sauf indication claire du contraire, ces produits ont l'origine préférentielle ... ⁽²⁾:

- cumulation applied with ... (name of the country/countries)
- no cumulation applied ⁽³⁾.

Italian version

L'esportatore delle merci contemplate nel presente documento [autorizzazione doganale n. ... ⁽¹⁾] dichiara che, salvo espressa indicazione contraria, le merci sono di origine preferenziale ... ⁽²⁾:

- cumulation applied with ... (name of the country/countries)
- no cumulation applied ⁽³⁾.

Latvian version

Eksportētājs produktiem, kuri ietverti šajā dokumentā (muitas pilnvara Nr. ... ⁽¹⁾), deklarē, ka, izņemot tur, kur ir citādi skaidri noteikts, šiem produktiem ir priekšrocību izcelsme no ... ⁽²⁾:

- cumulation applied with ... (name of the country/countries)
- no cumulation applied ⁽³⁾.

Lithuanian version

Šiame dokumente išvardintų prekių eksportuotojas (muitinės liudijimo Nr. ... ⁽¹⁾) deklaruoja, kad, jeigu kitaip nenurodyta, tai yra ... ⁽²⁾ preferencinės kilmės prekės:

- cumulation applied with ... (name of the country/countries)
- no cumulation applied ⁽³⁾.

Hungarian version

A jelen okmányban szereplő áruk exportőre (vámfelhatalmazási szám: ... ⁽¹⁾) kijelentem, hogy eltérő jelzés hiányában az áruk preferenciális ... ⁽²⁾ származásúak:

- cumulation applied with ... (name of the country/countries)
- no cumulation applied ⁽³⁾.

Maltese version

L-esportatur tal-prodotti koperti b'dan id-dokument (awtorizzazzjoni tad-dwana nru ... ⁽¹⁾) jiddikjara li, hlief fejn indikat b'mod ċar li mhux hekk, dawn il-prodotti huma ta' orijini preferenzjali ... ⁽²⁾:

- cumulation applied with ... (name of the country/countries)
- no cumulation applied ⁽³⁾.

Dutch version

De exporteur van de goederen waarop dit document van toepassing is (douanevergunning nr. ... ⁽¹⁾), verklaart dat, behoudens uitdrukkelijke andersluidende vermelding, deze goederen van preferentiële ... oorsprong zijn ⁽²⁾:

- cumulation applied with ... (name of the country/countries)
- no cumulation applied ⁽³⁾.

Polish version

Eksporter produktów objętych tym dokumentem (upoważnienie władz celnych nr ... ⁽¹⁾) deklaruje, że z wyjątkiem gdzie jest to wyraźnie określone, produkty te mają ... ⁽²⁾ preferencyjne pochodzenie:

— cumulation applied with ... (name of the country/countries)

— no cumulation applied ⁽³⁾.

Portuguese version

O exportador dos produtos cobertos pelo presente documento [autorização aduaneira n.º ... ⁽¹⁾], declara que, salvo expressamente indicado em contrário, estes produtos são de origem preferencial ... ⁽²⁾:

— cumulation applied with ... (name of the country/countries)

— no cumulation applied ⁽³⁾.

Romanian version

Exportatorul produselor la care se referă acest document [autorizația vamală nr. ... ⁽¹⁾] declară că, exceptând cazul în care în mod expres este indicat altfel, aceste produse sunt de origine preferențială ... ⁽²⁾:

— cumulation applied with ... (name of the country/countries)

— no cumulation applied ⁽³⁾.

Slovenian version

Izvoznik blaga, zajetega s tem dokumentom (pooblastilo carinskih organov št ... ⁽¹⁾) izjavlja, da, razen če ni drugače jasno navedeno, ima to blago preferencialno ... ⁽²⁾ poreklo:

— cumulation applied with ... (name of the country/countries)

— no cumulation applied ⁽³⁾.

Slovak version

Vývozca výrobkov uvedených v tomto dokumente [číslo povolenia ... ⁽¹⁾] vyhlasuje, že okrem zreteľne označených, majú tieto výrobky preferenčný pôvod v ... ⁽²⁾:

— cumulation applied with ... (name of the country/countries)

— no cumulation applied ⁽³⁾.

Finnish version

Tässä asiakirjassa mainittujen tuotteiden viejä (tullin lupa n:o ... ⁽¹⁾) ilmoittaa, että nämä tuotteet ovat, ellei toisin ole selvästi merkitty, etuuskohteluun oikeutettuja ... alkuperäistuotteita ⁽²⁾:

— cumulation applied with ... (name of the country/countries)

— no cumulation applied ⁽³⁾.

Swedish version

Exportören av de varor som omfattas av detta dokument (tullmyndighetens tillstånd nr. ... ⁽¹⁾) försäkrar att dessa varor, om inte annat tydligt markerats, har förmånsberättigande ... ursprung ⁽²⁾:

— cumulation applied with ... (name of the country/countries)

— no cumulation applied ⁽³⁾.

Hebrew Version

היצואן של הטובין המכוסים במסמך זה (אישור מכס מס' ... ⁽¹⁾) מצהיר כי מקורם של הטובין הללו מועדף, אלא אם כן צוין אחרת במפורש. ⁽²⁾

- הוחלה צבירה עם ... (שם המדינה/המדינות)

- לא הוחלה צבירה ⁽³⁾.

CHAPTER TWO

TRANSITIONAL PROVISIONS

Article 4

Proofs of origin and administrative cooperation

1. Proofs of origin properly issued by either Israel or a new Member State in the framework of the bilateral free trade agreements or autonomous arrangements applied between them shall be accepted in the respective countries under this Protocol, provided that:

- (a) the acquisition of such origin confers preferential tariff treatment on the basis of the preferential tariff measures contained in the Euro-Mediterranean Agreement or in the Community System of Generalised Preferences;
- (b) the proof of origin and the transport documents were issued no later than the day before the date of accession;
- (c) the proof of origin is submitted to the customs authorities within the period of four months from the date of accession.

Where goods were declared for importation in either Israel or a new Member State, prior to the date of accession, under the bilateral free trade agreements or autonomous arrangements applied between Israel and that new Member State at that time, proof of origin issued retrospectively under those agreements or arrangements may also be accepted provided that it is submitted to the customs authorities within the period of four months from the date of accession.

2. Israel and the new Member States are authorised to retain the authorisations with which the status of 'approved exporters' has been granted in the framework of the bilateral free trade agreements or autonomous arrangements applied between them, provided that:

- (a) such a provision is also provided for in the agreement concluded prior to the date of accession between Israel and the Community; and
- (b) the approved exporter applies the rules of origin in force under that agreement.

These authorisations shall be replaced no later than one year after the date of accession by new authorisations issued under the conditions of the Euro-Mediterranean Agreement.

3. Requests for subsequent verification of proof of origin issued under the bilateral free trade agreements or autonomous arrangements referred to in paragraphs 1 and 2 above can be presented by the competent customs authorities of either Israel or the new Member States and shall be accepted by those authorities for a period of three years after the issue of the proof of origin concerned. Such verifications shall be carried out in accordance with the bilateral free trade agreements which were in force at the date of the issuance of the proof of origin.

Article 5

Goods in transit

1. The provisions of the Euro-Mediterranean Agreement may be applied to goods exported from either Israel to one of the new Member States, or from one of the new Member States to Israel, which comply with the provisions of Protocol 4 and which on the date of accession are either en route or in temporary storage, in a customs warehouse or in a free zone in Israel or in that new Member State.

2. Preferential treatment may be granted in such cases, subject to the submission to the customs authorities of the importing country, within four months of the date of accession, of a proof of origin issued retrospectively by the customs authorities of the exporting country.

GENERAL AND FINAL PROVISIONS

Article 6

Israel undertakes that it shall neither make any claim, request or referral nor modify or withdraw any concession pursuant to GATT 1994 Articles XXIV.6 and XXVIII regarding agricultural, processed agricultural or fishery products in relation to this enlargement of the Community, for other products than those falling under the CN Code 2106 90 98, subject to the completion of negotiations on a new Additional Protocol for the adaptation of bilateral trade concessions in agricultural, processed agricultural or fishery products according to the Annex to this Protocol.

Article 7

This Protocol shall form an integral part of the Euro-Mediterranean Agreement.

The Annex to this Protocol shall form an integral part thereof.

Article 8

1. This Protocol shall be approved by the Community, by the Council of the European Union on behalf of the Member States, and by Israel in accordance with their own procedures.

2. The Parties shall notify each other of the accomplishment of the corresponding procedures referred to in paragraph 1. The instruments of approval shall be deposited with the General Secretariat of the Council of the European Union.

Article 9

1. This Protocol shall enter into force on the first day of the first month following the date of deposit of the last instrument of approval.

2. This Protocol shall apply provisionally as from 1 January 2007.

3. Notwithstanding paragraphs 1 and 2 of this Article, Article 2(1) of this Protocol shall apply from the first day of the month following the date of the signature of this Protocol.

Article 10

This Protocol is drawn up in duplicate in each of the official languages of the Parties, each of these texts being equally authentic.

Article 11

The text of the Euro-Mediterranean Agreement, including the Annexes and Protocols forming an integral part thereof, and the Final Act together with the declarations annexed thereto shall be drawn up in the Bulgarian and Romanian languages⁽¹⁾ and these texts shall be authentic in the same way as the original texts.

The Association Council shall approve these texts.

⁽¹⁾ The Bulgaria and Romanian language versions shall be published in a special edition of the Official Journal at a later date.

Съставено в Брюксел, 31 октомври 2007 г.

Hecho en Bruselas, el 31 de octubre de 2007.

V Bruselu dne 31. října 2007.

Udfærdiget i Bruxelles, den 31. oktober 2007.

Geschehen zu Brüssel am 31. Oktober 2007.

Brüsselis, 31. oktoober 2007.

Έγινε στις Βρυξέλλες, στις 31 Οκτωβρίου 2007.

Done at Brussels on the 31 October 2007, which corresponds to the 19th day of Heshvan in the year five thousand seven hundred and sixty eight in the Hebrew calendar.

Fait à Bruxelles, le 31 octobre 2007.

Fatto a Bruxelles, addì 31 ottobre 2007.

Briselē, 2007. gada 31. oktobrī.

Priimta Briuselyje, 2007 m. spalio 31 d.

Kelt Brüsszelben, 2007. október 31-én.

Magħmul fi Brussell, 31 ta' Ottubru 2007.

Gedaan te Brussel, 31 oktober 2007.

Sporządzono w Brukseli, dnia 31 października 2007 r.

Feito em Bruxelas, em 31 de Outubro de 2007.

Întocmit la Bruxelles, 31 octombrie 2007.

V Bruseli 31. októbra 2007.

V Bruslju, dne 31. oktobra 2007.

Tehty Brysselissä 31. lokakuuta 2007.

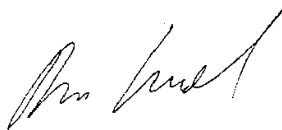
Som skedde i Bryssel den 31 oktober 2007.

נעשה בבריסל ביום י"ט לחודש חשוון התשס"ח, שהוא יום השלושים ואחד לחודש אוקטובר אלפיים ושבע

За държавите-членки
 Por los Estados miembros
 Za členské státy
 For medlemsstaterne
 Für die Mitgliedstaaten
 Liikmesriikide nimel
 Για τα κράτη μέλη
 For the Member States
 Pour les États membres
 Per gli Stati membri
 Dalībvalstu vārdā —
 Valstybių narių vardu
 A tagállamok részéről
 Ghall-Istati Membri
 Voor de lidstaten
 W imieniu państw członkowskich
 Pelos Estados-Membros
 Pentru statele membre
 Za členské štáty
 Za države članice
 Jäsenvaltioiden puolesta
 På medlemsstaternas vägnar
 בשם המדינות החברות

За Европейската общност
 Por las Comunidades Europeas
 Za Evropská společnost
 For Det Europæiske Fællesskab
 Für die Europäische Gemeinschaft
 Euroopa Ühenduste nimel
 Για τις Ευρωπαϊκές Κοινότητες
 For the European Community
 Pour les Communautés européennes
 Per le Comunità europee
 Eiropas Kopienas vārdā —
 Europos bendrijų vardu
 Az Európai Közösség részéről
 Ghall-Komunitajiet Ewropej
 Voor de Europese Gemeenschappen
 W imieniu Wspólnot Europejskiej
 Pelas Comunidades Europeias
 Pentru Comunitatea Europeană
 Za Európske spoločenstvá
 Za Evropsko skupnost
 Euroopan yhteisöjen puolesta
 För Europeiska gemenskapernas vägnar
 בשם הקהילות האירופיות

За Държавата Израел
Por el Estado de Israel
Za Stát Izrael
For Staten Israel
Für den Staat Israel
Iisraeli Riigi nimel
Για τα Κράτος του Ισραήλ
For the State of Israel
Pour l'État d'Israël
Per lo Stato di Israele
Izraēlas Valsts vārdā —
Izraelio Valstybės vardu
Izrael Állam részéről
Ghall-Istat ta' Izrael
Voor de Staat Israël
W imieniu Państwa Izrael
Pelo Estado de Israel
Pentru statul Israel
Za Izraelský štát
Za Državo Izrael
Israelin valtion puolesta
På Staten Israels vägnar
בשם מדינת ישראל



ANNEX

concerning the arrangements applicable to trade concessions for agricultural, processed agricultural and fishery products

The Parties agree that the actual volume of trade and its market access conditions between Israel and Bulgaria, and Israel and Romania, under the existing bilateral free trade agreements, shall serve as the minimum quantity for the adaptation of the bilateral trade concessions in agricultural, processed agricultural or fishery products under the Euro-Mediterranean Agreement to be implemented in the framework of a new Additional Protocol.

COUNCIL DECISION

of 29 November 2007

on the conclusion of the Protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, to take account of the accession of the Republic of Bulgaria and Romania to the European Union

(2007/787/EC)

THE COUNCIL OF THE EUROPEAN UNION,

(2) The Protocol should be approved,

Having regard to the Treaty establishing the European Community, and in particular Article 310 in conjunction with the second sentence of the first subparagraph of Article 300(2) and the second subparagraph of Article 300(3) thereof,

HAS DECIDED AS FOLLOWS:

Sole Article

Having regard to the 2005 Act of Accession, and in particular Article 6(2) thereof,

The Protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, to take account of the accession of the Republic of Bulgaria and Romania to the European Union is hereby approved on behalf of the Community and its Member States.

Having regard to the proposal from the Commission,

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

The text of the Protocol is attached to this Decision ⁽³⁾.

Whereas:

Done at Brussels, 29 November 2007.

- (1) The Protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part ⁽²⁾, was signed on behalf of the Community and its Member States at Brussels on 31 October 2007.

For the Council

The President

M. LINO

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ OJ L 147, 21.6.2000, p. 3.

⁽³⁾ See page 65 of this Official Journal.

COMMISSION

COMMISSION DECISION

of 13 September 2007

relating to a proceeding pursuant to Article 81 of the EC Treaty

(Case COMP/E-2/39.140 — DaimlerChrysler)

(notified under document number C(2007) 4275)

(Only the English text is authentic)

(2007/788/EC)

- (1) This decision adopted pursuant to Article 9(1) of Council Regulation (EC) No 1/2003 ⁽¹⁾ is addressed to DaimlerChrysler AG (hereinafter DaimlerChrysler) and concerns the supply of technical information for the repair of vehicles of the Mercedes-Benz and Smart brands.
- (2) Technical information consists of data, processes and instructions which are necessary to check, repair and replace defective/broken/used parts of a motor vehicle or to fix failures in any of a vehicle's systems. It includes seven main categories:
- basic parameters (documentation of all reference values and set points of the measurable values concerning the vehicle, such as torque settings, brake clearance measurements, hydraulic and pneumatic pressures),
 - diagrams and descriptions of stages in repair and maintenance operations (service handbooks, technical documents such as work plans, descriptions of tools used to carry out a given repair, and diagrams such as wiring schematics or hydraulics),
 - testing and diagnosis (including diagnostic fault/troubleshooting codes, software and other information needed to diagnose faults on vehicles) — much, but not all, of this information is contained in specialised electronic tools,
 - codes, software and other information needed to re-program, re-set or re-initialise the electronic control units (ECUs) embarked on a vehicle. This category is linked to the preceding one, in that often the same electronic tools are used to diagnose the fault, and then make the necessary adjustments via the ECUs to deal with it,
 - spare parts information, including parts catalogues with codes and descriptions, and vehicle identification methods (that is to say, data relating to a specific vehicle which enable a repairer to identify the individual codes for the parts fitted during vehicle assembly, and to identify the corresponding codes for compatible original replacement parts for that specific vehicle),
 - special information (recall notices and notification of frequent faults),
 - training materials.
- (3) In December 2006, the Commission opened proceedings, and addressed a preliminary assessment to DaimlerChrysler, containing the preliminary view that DaimlerChrysler's agreements with its after-sales service partners raised concerns as to their compatibility with Article 81(1) of the EC Treaty.
- (4) In the Commission's preliminary assessment, DaimlerChrysler seemed to have failed to release certain categories of technical repair information well after the end of the transitional period provided for in Regulation (EC) No 1400/2002 ⁽²⁾. Moreover, at the time that the Commission's investigation was launched, DaimlerChrysler had still not put in place an effective system to allow independent repairers to have access to technical repair information in an unbundled manner. Although DaimlerChrysler improved the accessibility of its technical information over the course of the Commission investigation, notably by setting up a website (the TI website) in June 2005 designed for that purpose, the information made available to independent repairers seemed to be still incomplete.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1). Regulation as last amended by Regulation (EC) No 1419/2006 (OJ L 269, 28.9.2006, p. 1).

⁽²⁾ Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ L 203, 1.8.2002, p. 30). Regulation as amended by the 2003 Act of Accession.

- (5) That preliminary assessment found that the relevant markets affected by the practice at issue were the market for the provision of repair and maintenance services for passenger cars, and the market for the provision of technical information to repairers. The Mercedes-Benz and Smart authorised networks had very high market shares on the first of these markets, while on the second, DaimlerChrysler was the only supplier able to offer all of the technical information needed by repairers of its vehicles.
- (6) In essence, DaimlerChrysler's service and parts distribution agreements require the members of its authorised networks to carry out a full range of brand-specific repair services, and act as spare parts wholesalers. The Commission is concerned that possible negative effects stemming from such agreements could be strengthened by DaimlerChrysler's failure to provide independent repairers with appropriate access to technical information thereby foreclosing firms which would be willing and able to offer repair services through a different business model.
- (7) The Commission's preliminary conclusion was that DaimlerChrysler's arrangements for providing its technical information to independent repairers did not correspond to the latter's needs either as regards the scope of the information available or as regards its accessibility, and that such a practice, in combination with similar practices by other car manufacturers, could have contributed to a decline in the market position of independent repairers. In turn, this could have caused considerable consumer harm in terms of a significant reduction in choice of spare parts, higher prices for repair services, a reduction in choice of repair outlets, potential safety issues, and a lack of access to innovative repair shops.
- (8) Moreover, DaimlerChrysler's apparent failure to provide independent repairers with appropriate access to technical information might prevent the agreements with its after-sales service partners from benefiting from the exemption granted by Regulation (EC) No 1400/2002, since according to Article 4(2) of the Regulation, the exemption granted therein does not apply where the supplier of motor vehicles refuses to give independent operators access to any technical information, diagnostic and other equipment, tools, including any relevant software, or training required for the repair and maintenance of these motor vehicles. As clarified in recital 26 of the regulation, the conditions of access must not discriminate between authorised and independent operators.
- (9) Finally, the Commission came to the preliminary view that in the context of lack of access to technical repair information, the agreements between DaimlerChrysler and its authorised repairers were unlikely to benefit from the provision of Article 81(3).
- (10) On 14 February 2007, DaimlerChrysler offered commitments to the Commission in order to meet the competition concerns addressed in the preliminary assessment.
- (11) According to those commitments, the principle determining the scope of the information to be provided is that of non-discrimination between independent and authorised repairers. In this light, DaimlerChrysler will ensure that all technical information, tools, equipment, software and training required for the repair and maintenance of its vehicles which is provided to authorised repairers and/or independent importers of its Mercedes-Benz and Smart brands in any EU Member State by or on behalf of DaimlerChrysler is also made available to independent repairers.
- (12) The commitments specify that 'technical information' within the meaning of Article 4(2) of Regulation (EC) No 1400/2002 includes all information provided to authorised repairers for the repair or maintenance of Mercedes-Benz and Smart motor vehicles. Particular examples include software, fault codes and other parameters, together with updates, which are required to work on electronic control units (ECUs) with a view to introducing or restoring settings recommended by DaimlerChrysler, vehicle identification methods, parts catalogues, working solutions resulting from practical experience and relating to problems typically affecting a given model or batch, and recall notices as well as other notices identifying repairs that may be carried out without charge within the authorised repair network.
- (13) Access to tools includes access to electronic diagnostic and other repair tools, together with related software, including periodic updates thereof, and after-sales services for such tools.
- (14) The commitments shall bind DaimlerChrysler and its connected undertakings but shall not be directly binding on independent importers of the Mercedes-Benz and Smart brands. DaimlerChrysler has therefore agreed that in those Member States in which DaimlerChrysler distributes Mercedes-Benz and/or Smart vehicles via independent importers, it will make its best efforts to contractually oblige these undertakings to make available to independent repairers free of charge and in a non-discriminatory way through their national commercial websites any given piece of technical information or language version of such information that the importer in question has provided to authorised repairers in the Member State for which it has been appointed and that is not available to independent repairers on the TI website.

- (15) According to recital 26 of Regulation (EC) No 1400/2002, DaimlerChrysler is not obliged to provide independent repairers with technical information that would enable a third party to bypass or disarm on-board anti-theft devices and/or recalibrate⁽¹⁾ electronic devices, or to tamper with devices which limit a vehicle's performance. As with any exception under EU law, recital 26 is to be interpreted narrowly. The commitments note that if DaimlerChrysler were to invoke this exception as a reason for withholding any technical information from independent repairers, it has committed itself to ensure that the information withheld is limited to that necessary to provide the protection described in recital 26, and that the lack of the information in question does not prevent independent repairers from carrying out operations other than those listed in recital 26, including work on devices such as engine management ECUs, airbags, seatbelt pretensioners, or central locking elements.
- (16) Article 4(2) of Regulation (EC) No 1400/2002 provides that technical information must be made available in a way that is proportionate to independent repairers' needs. This implies both unbundling of information and pricing that takes account of the extent to which independent repairers use the information
- (17) In line with this principle, the commitments specify that DaimlerChrysler will include on the TI website all technical information relating to models launched after 1996, and will ensure that all updated technical information is on the TI website or on any successor site at all times. However, if certain items of technical information relating to models launched after 1996 or language versions thereof that DaimlerChrysler or its connected undertakings provides to authorised repairers in a given Member State are not available on the TI website, DaimlerChrysler shall be deemed to have complied with the commitments in this respect if it has made the items in question available without undue delay and free of charge to independent repairers on its commercial website in the Member State in question.
- (18) DaimlerChrysler will at all times ensure that the TI website may be easily located and provides an equivalent level of performance to the methods used for providing technical information to members of its authorised networks. When DaimlerChrysler or another undertaking acting on DaimlerChrysler's behalf makes a piece of technical information available to authorised repairers in a particular EU language, DaimlerChrysler will ensure that this language version of the information is placed on the TI website without undue delay.
- (19) DaimlerChrysler has set the yearly access fees for the TI website at EUR 1 254 (EUR 1 239 for access to the main section known as WIS net; the electronic parts catalogue net is free of charge except for a yearly contribution towards administrative expenses of EUR 15). However, in order to respect the proportionality requirement laid down in the regulation, DaimlerChrysler agrees to provide for a pro rata breakdown for WIS net access into monthly, weekly, daily, and hourly time windows at a price of EUR 180, EUR 70, EUR 20, and EUR 4, respectively. DaimlerChrysler agrees to maintain this access fee structure, and not to increase fee levels above the average inflation rate within the EU during the whole currency of the commitments.
- (20) DaimlerChrysler's commitments are without prejudice to any current or future requirement established by Community or national law which might extend the scope of the technical information that DaimlerChrysler is to provide to independent operators and/or might set out more favourable ways for such information to be provided.
- (21) If an independent repairer or association of such repairers so requests, DaimlerChrysler has committed itself to accept arbitration for settling disputes relating to the provision of technical information. This arbitration shall be governed by the national rules of arbitration and the substantive law that DaimlerChrysler has contractually agreed upon with its authorised repairers in the Member State where the requesting party is located. DaimlerChrysler commits itself to provide information on these rules upon request. The arbitral tribunal shall consist of three arbitrators appointed in accordance with these Rules. Arbitration will not prejudice any right to file an application with the competent national court.
- (22) The Decision finds that, in view of the commitments, there are no longer grounds for action by the Commission. The commitments will be binding until 31 May 2010.
- (23) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 9 July 2007.

⁽¹⁾ I.e. to modify the original settings of an ECU in a way not recommended by DaimlerChrysler.

COMMISSION DECISION**of 4 December 2007****suspending the definitive anti-dumping duty imposed by Regulation (EC) No 1420/2007 on imports of silico-manganese originating in the People's Republic of China and Kazakhstan**

(2007/789/EC)

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 14(4) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) The Council, by Regulation (EC) No 1420/2007⁽²⁾, imposed a definitive anti-dumping duty on imports of silico-manganese (including ferro-silico-manganese) (SiMn) originating in the People's Republic of China (PRC) and Kazakhstan, falling within CN codes 7202 30 00 and ex 8111 00 11 (TARIC code 8111 00 11 10) (the product concerned). The rate of the anti-dumping duty is 8,2 % and 6,5 % for the product originating in the PRC and Kazakhstan respectively.
- (2) Information on a change of market conditions, which occurred after the original investigation period, indicated in Regulation (EC) No 1420/2007, and which might justify the suspension of the measures imposed, in accordance with Article 14(4) of the basic Regulation, was obtained by the Commission. Consequently, the Commission examined whether such suspension was warranted.

B. GROUNDS

- (3) Article 14(4) of the basic Regulation provides that, in the Community interest, anti-dumping measures may be suspended on the grounds that market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such suspension, provided that the Community industry has been given an opportunity to comment and these comments have been taken into account. Article 14(4) further specifies that the anti-dumping measures concerned may be re-instated at any time if the reason for suspension is no longer applicable.
- (4) Since the original investigation period, an increase in world prices for SiMn was observed, indicating a

change of the market situation and conditions. In view of this, the Commission has carried out a further investigation to assess the recent evolution of volumes and prices of the product concerned for the period between 1 July 2006 and 30 September 2007 and their impact on the injury suffered by the Community industry as well as the overall Community interest.

- (5) On the basis of the information gathered, it was established that market prices of SiMn on the Community market have increased after the original investigation period until the third quarter of year 2007 by around 69 %, i.e. from an average EUR 622/MT in the third quarter of year 2006 to an average EUR 1 051/MT in the third quarter of year 2007. In particular, a significant increase of around 42 % was to be observed between the second and the third quarter of year 2007. These trends can also be found in other major markets across the world as well as for imports of SiMn into the Community.
- (6) SiMn is a key raw material used for the production of steel. The price increase described above can be attributed to the temporary supply shortages combined with a higher demand for SiMn due to increased demand for steel worldwide. Evidence from previous sudden price increases such as the one that occurred in year 2004 shows that such demand-supply imbalances in this market are of temporary nature. Prices tend to return to their long-term levels once the spare capacities for SiMn are fully utilised.
- (7) Between the original investigation period and the period from 1 October 2006 to 30 September 2007 the market share of imports of SiMn originating in the PRC and Kazakhstan decreased by 0,6 percentage points to 9,8 % of the overall Community consumption. EC consumption has increased by 20 %.
- (8) With regard to the Community industry, it is to be noted that since the original investigation period, the situation of the Community industry has improved. Between the original investigation period and the period from 1 October 2006 to 30 September 2007, the sales and production volumes have increased by 15 % and 19 % respectively. However, the market share of the Community industry decreased by 1,1 percentage points to 23,8 %. The profit situation improved significantly and the profitability of the Community industry reached 42 % in the third quarter of year 2007, thus substantially surpassing even the 5 % profit level established as appropriate by the original investigation.

⁽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⁾ See page 5 of this Official Journal.

- (9) As indicated in recitals 157 to 163 of Regulation (EC) No 1420/2007, the imposition of measures in question was expected to have some negative, although limited, effects for users in the form of cost increases arising out of the possible need to arrange new or alternative supplies. Considering the temporary change in market conditions and that consequently the Community industry is currently not suffering injury, any negative effect on users could be removed by suspending the measures. Consequently, it can be concluded that the suspension is in the overall Community interest.
- (10) Given the temporary change in market conditions, and in particular the high level of prices of SiMn existing on the Community market, which is far higher than the injurious price level found in the original investigation, together with the alleged demand-supply imbalance of the product concerned, it is considered that the injury linked to the imports of the product concerned originating in the PRC and Kazakhstan is unlikely to resume as a result of the suspension. It is therefore proposed to suspend for nine months the measures in force in accordance with Article 14(4) of the basic Regulation.

C. CONSULTATION OF COMMUNITY INDUSTRY

- (11) Pursuant to Article 14(4) of the basic Regulation, the Commission has informed the Community industry of its intention to suspend the anti-dumping measures in question. The Community industry has been given an opportunity to comment and did not oppose the suspension of the anti-dumping measures.

D. CONCLUSION

- (12) The Commission therefore considers that all requirements for suspending the anti-dumping duty imposed on the product concerned are met, in accordance with Article 14(4) of the basic Regulation. Consequently, the anti-dumping duty imposed by Regu-

lation (EC) No 1420/2007 should be suspended for a period of nine months.

- (13) The Commission will monitor the development of imports and the prices of the product concerned. Should a situation arise at any time in which increased volumes at dumped prices of the product concerned from the PRC and Kazakhstan resume and consequently cause injury to the Community industry, the Commission will take the necessary steps to reinstate the anti-dumping duty, taking into account the substantive rules that govern an injury assessment. An interim review pursuant to Article 11(3) of the basic Regulation might be initiated, if appropriate,

HAS DECIDED AS FOLLOWS:

Article 1

The definitive anti-dumping duty imposed by Regulation (EC) No 1420/2007 on imports of silico-manganese (including ferro-silico-manganese), originating in the People's Republic of China and Kazakhstan, falling within CN codes 7202 30 00 and ex 8111 00 11 (TARIC code 8111 00 11 10) is hereby suspended for a period of nine months.

Article 2

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

Done at Brussels, 4 December 2007.

For the Commission

Peter MANDELSON

Member of the Commission

EUROPEAN CENTRAL BANK

DECISION OF THE EUROPEAN CENTRAL BANK of 23 November 2007 on the approval of the volume of coin issuance in 2008 (ECB/2007/16) (2007/790/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty establishing the European Community, and in particular to Article 106(2) thereof,

Having regard to Article 1 of Council Decision 2007/503/EC of 10 July 2007 in accordance with Article 122(2) of the Treaty on the adoption by Cyprus of the single currency on 1 January 2008 ⁽¹⁾,

Having regard to Article 1 of Council Decision 2007/504/EC of 10 July 2007 in accordance with Article 122(2) of the Treaty on the adoption by Malta of the single currency on 1 January 2008 ⁽²⁾,

Whereas:

- (1) The European Central Bank (ECB) has the exclusive right from 1 January 1999 to approve the volume of coins issued by the Member States that have adopted the euro (hereinafter the participating Member States).
- (2) The derogation in favour of Cyprus and Malta referred to in Article 4 of the 2003 Act of Accession has been abrogated with effect from 1 January 2008.
- (3) The 13 current participating Member States, Cyprus and Malta have submitted to the ECB for approval their estimates of the volume of euro coins to be issued in 2008, supplemented by explanatory notes on the forecasting methodology,

HAS DECIDED AS FOLLOWS:

Article 1

Approval of the volume of euro coins to be issued in 2008

The ECB hereby approves the volume of euro coins to be issued by the participating Member States in 2008 as described in the following table:

	(EUR million)
	Issuance of coins intended for circulation and issuance of collector coins (not intended for circulation) in 2008
Belgium	130,0
Germany	655,0
Ireland	114,0

⁽¹⁾ OJ L 186, 18.7.2007, p. 29.

⁽²⁾ OJ L 186, 18.7.2007, p. 32.

	(EUR million)
	Issuance of coins intended for circulation and issuance of collector coins (not intended for circulation) in 2008
Greece	97,3
Spain	550,0
France	500,0
Italy	375,2
Cyprus	147,4
Luxembourg	49,0
Malta	56,7
Netherlands	57,5
Austria	185,0
Portugal	50,0
Slovenia	39,0
Finland	60,0

*Article 2***Final provision**

This Decision is addressed to the participating Member States.

Done at Frankfurt am Main, 23 November 2007.

The President of the ECB
Jean-Claude TRICHET

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL DECISION 2007/791/CFSP

of 4 December 2007

implementing Joint Action 2007/749/CFSP on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Article 1

Having regard to Council Joint Action 2007/749/CFSP of 19 November 2007 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH) ⁽¹⁾ and, in particular, Article 12(1) thereof, in conjunction with the second indent of Article 23(2) of the Treaty on European Union,

1. The financial reference amount intended to cover the expenditure related to the implementation of Joint Action 2007/749/CFSP shall be EUR 14 800 000 for 2008.

2. The expenditure financed by the amount referred to in paragraph 1 shall be managed in accordance with the procedures and rules applicable to the general budget of the European Union, with the exception that any pre-financing shall not remain the property of the Community.

Whereas:

Article 2

This Decision shall take effect on the date of its adoption.

Article 3

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

- (1) On 19 November 2007 the Council adopted Joint Action 2007/749/CFSP establishing that the EUPM is to be continued until 31 December 2009. The financial reference amount for 2008 and 2009 is to be decided on an annual basis.

Done at Brussels, 4 December 2007.

- (2) The mandate of the EUPM will be implemented in the context of a situation which may deteriorate and could harm the objectives of the Common Foreign and Security Policy as set out in Article 11 of the Treaty,

For the Council

The President

F. TEIXEIRA DOS SANTOS

⁽¹⁾ OJ L 303, 21.11.2007, p. 40.