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Contents

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

REGULATIONS

Commission Regulation (EC) No 210/2008 of 7 March 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables 1

Commission Regulation (EC) No 211/2008 of 7 March 2008 amending the representative prices and additional duties for the import of certain products in the sugar sector fixed by Regulation (EC) No 1109/2007 for the 2007/08 marketing year 3

★ **Commission Regulation (EC) No 212/2008 of 7 March 2008 amending Annex I to Regulation (EC) No 138/2004 of the European Parliament and of the Council on the economic accounts for agriculture in the Community ⁽¹⁾** 5

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

DECISIONS

Council

2008/207/EC:

★ **Council Decision of 28 February 2008 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** 10

⁽¹⁾ Text with EEA relevance

(Continued overleaf)

Commission

2008/208/EC:

- ★ **Commission Decision of 23 October 2007 on the State aid C 30/2006 (ex N 367/05 and N 623/05) which Italy is planning to implement as an amendment to an existing scheme for excise duty reduction for biofuels** (notified under document number C(2007) 5091) ⁽¹⁾ 11

2008/209/EC:

- ★ **Commission Decision of 7 March 2008 amending the Appendix to Annex VI to the Act of Accession of Bulgaria and Romania as regards certain milk processing establishments in Bulgaria** (notified under document number C(2008) 827) ⁽¹⁾ 18



⁽¹⁾ Text with EEA relevance

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 210/2008**of 7 March 2008****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 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽¹⁾, and in particular Article 138(1) thereof,

Whereas:

- (1) Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes

the standard values for imports from third countries, in respect of the products and periods stipulated in 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 138 of Regulation (EC) No 1580/2007 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 8 March 2008.

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

Done at Brussels, 7 March 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

to Commission Regulation of 7 March 2008 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	JO	79,4
	MA	63,6
	TN	129,8
	TR	95,9
	ZZ	92,2
0707 00 05	EG	178,8
	TR	209,9
	ZZ	194,4
0709 90 70	MA	99,9
	TR	160,8
	ZZ	130,4
0709 90 80	EG	238,6
	ZZ	238,6
0805 10 20	EG	46,1
	IL	56,9
	MA	53,2
	TN	50,0
	TR	87,7
	ZZ	58,8
0805 50 10	EG	95,9
	IL	106,9
	TR	126,2
	ZZ	109,7
0808 10 80	AR	96,2
	BR	104,8
	CA	73,8
	CN	91,5
	MK	44,4
	US	106,3
	UY	89,9
	ZZ	86,7
0808 20 50	AR	85,7
	CL	80,2
	CN	80,9
	ZA	114,6
	ZZ	90,4

⁽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 211/2008**of 7 March 2008****amending the representative prices and additional duties for the import of certain products in the sugar sector fixed by Regulation (EC) No 1109/2007 for the 2007/08 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector ⁽¹⁾,

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

Whereas:

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

for the 2007/08 marketing year are fixed by Commission Regulation (EC) No 1109/2007 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EC) No 201/2008 ⁽⁴⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 1109/2007 for the 2007/08 marketing year are hereby amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 8 March 2008.

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

Done at Brussels, 7 March 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Regulation (EC) No 1260/2007 (OJ L 283, 27.10.2007, p. 1). Regulation (EC) No 318/2006 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 October 2008.

⁽²⁾ OJ L 178, 1.7.2006, p. 24. Regulation as last amended by Regulation (EC) No 1568/2007 (OJ L 340, 22.12.2007, p. 62).

⁽³⁾ OJ L 253, 28.9.2007, p. 5.

⁽⁴⁾ OJ L 60, 5.3.2008, p. 15.

ANNEX

Amended representative prices and additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 95 applicable from 8 March 2008

(EUR)

CN code	Representative price per 100 kg of the product concerned	Additional duty per 100 kg of the product concerned
1701 11 10 ⁽¹⁾	24,14	4,23
1701 11 90 ⁽¹⁾	24,14	9,46
1701 12 10 ⁽¹⁾	24,14	4,04
1701 12 90 ⁽¹⁾	24,14	9,03
1701 91 00 ⁽²⁾	23,66	13,84
1701 99 10 ⁽²⁾	23,66	8,88
1701 99 90 ⁽²⁾	23,66	8,88
1702 90 95 ⁽³⁾	0,24	0,40

⁽¹⁾ Fixed for the standard quality defined in Annex I.III to Council Regulation (EC) No 318/2006 (OJ L 58, 28.2.2006, p. 1).

⁽²⁾ Fixed for the standard quality defined in Annex I.II to Regulation (EC) No 318/2006.

⁽³⁾ Fixed per 1 % sucrose content.

COMMISSION REGULATION (EC) No 212/2008**of 7 March 2008****amending Annex I to Regulation (EC) No 138/2004 of the European Parliament and of the Council
on the economic accounts for agriculture in the Community****(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 138/2004 of the European Parliament and of the Council of 5 December 2003 on the economic accounts for agriculture in the Community ⁽¹⁾, and in particular Article 2(2) thereof,

Whereas:

(1) A revised statistical classification of economic activities, called NACE Revision 2 (hereinafter referred to as 'NACE Rev. 2'), was adopted by Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains ⁽²⁾.

(2) Measures necessary for the implementation of that Regulation should be adopted to provide for the use of NACE Rev. 2 in various statistical domains.

(3) Annex I to Regulation (EC) No 138/2004 sets out the methodology of the economic accounts for agriculture in the Community (EAA). As a consequence of the revised statistical classification of economic activities, the EAA methodology should be updated and the references to NACE Rev. 1,1 should be replaced.

(4) Regulation (EC) No 138/2004 should therefore be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee for Agricultural Statistics set up by Decision 72/279/EEC ⁽³⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 138/2004 is amended as set out in the Annex to this Regulation.

Article 2

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

It shall apply from 1 April 2011.

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

Done at Brussels, 7 March 2008.

For the Commission

Joaquín ALMUNIA

Member of the Commission

⁽¹⁾ OJ L 33, 5.2.2004, p. 1. Regulation as amended by Commission Regulation (EC) No 909/2006 (OJ L 168, 21.6.2006, p. 14).

⁽²⁾ OJ L 393, 30.12.2006, p. 1.

⁽³⁾ OJ L 179, 7.8.1972, p. 1.

ANNEX

Annex I to Regulation (EC) No 138/2004 is amended as follows:

(1) 'NACE Rev. 1' is replaced by 'NACE Rev. 2' throughout the text.

(2) 'ISIC Rev. 3' is replaced by 'ISIC Rev. 4' throughout the text.

(3) Paragraph 1.23 is replaced by the following:

'1.23. If, however, the contract work is not performed entirely by specialised units (e.g. if holders hire machines but employ their own workers), this activity must be recorded in Division 77 of NACE Rev. 2 (Rental and leasing activities); in this case, amounts paid by the holders to enterprises working under contract must be recorded as 'other goods and services' under 'intermediate consumption' (cf. 2.108).'

(4) Paragraph 1.55 is replaced by the following:

'1.55. The EAA are an integral part of the European system of accounts and therefore for their compilation use is made of Eurostat's general classification of economic activities, NACE Rev. 2. NACE Rev. 2 is a four-level nomenclature of activities which was compiled in 2006. It is in fact a revision of the general industrial classification of economic activities within the European Communities, or NACE, which was first published by Eurostat in 1970.'

(5) Paragraph 1.57 is replaced by the following:

'1.57. NACE Rev. 2 is a classification of activities which is used for defining industries in the national accounts. It is based on the four-level coding system described below:

- a first level consisting of headings identified by an alphabetical code (sections);
- a second level consisting of headings identified by a two-digit numerical code (divisions);
- a third level consisting of headings identified by a three-digit numerical code (groups); and
- a fourth level consisting of headings identified by a four-digit numerical code (classes).'

(6) Paragraph 1.62 is replaced by the following:

'1.62. For national accounts purposes the agricultural industry is defined as all units performing, either solely or together with other secondary economic activities, activities which come under Division 01 of NACE Rev. 2 "Crop and animal production, hunting and related service activities". Division 01 comprises (*):

- Group 01,1: Growing of non-perennial crops;
- Group 01,2: Growing of perennial crops;
- Group 01,3: Plant propagation;
- Group 01,4: Animal production;
- Group 01,5: Mixed farming;
- Group 01,6: Support activities to agriculture and post-harvest crop activities;
- Group 01,7: Hunting, trapping and related service activities.

(*) See also the "Explanatory notes": Eurostat: NACE Rev. 2, Statistical classification of economic activities in the European Community, Theme 2, Series E, Luxembourg, 2007.'

(7) Paragraph 1.63 is replaced by the following:

'1.63. The list of characteristic agricultural activities of the EAA corresponds to these seven groups of activities (01,1 to 01,7), but with the following differences:

- inclusion of the production of wine and olive oil (exclusively using grapes and olives grown by the same holding) (*),
- exclusion of the activities relating to the production of seeds upstream and downstream of multiplication and certain activities which, in NACE Rev. 2, are considered as agricultural services (e.g. the operation of irrigation systems — only agricultural contract work is taken into account here).

(*) The inclusion of these activities in fact does not represent a deviation from NACE Rev. 2: see the "Introductory guidelines" to NACE Rev. 2.'

(8) Paragraph 1.64 is replaced by the following:

'1.64. All units which perform characteristic activities of the agricultural industry of the EAA must be included. The units in question perform the activities included in the following groups in NACE Rev. 2:

- groups 01,1 and 01,2: Growing of non-perennial and perennial crops,
- production of seeds: only the units engaged in seed multiplication,
- group 01,3: Plant propagation
- group 01,4: Animal production,
- group 01,5: Mixed farming,
- group 01,6: Support activities to agriculture and post-harvest crop activities
- excluding units which perform agricultural service activities other than contract work (i.e. units which operate irrigation systems or seed processing for propagation),
- group 01,7: Hunting, trapping and related service activities.'

(9) Paragraph 1.65 is deleted.

(10) The title in point (a) above paragraph 1.67 is replaced by the following:

'(a) Groups from 01,1 to 01,3: Growing of non-perennial and perennial crops, plant propagation'

(11) Paragraph 1.67 is replaced by the following:

'1.67. Groups from 01,1 to 01,3 include a systematic breakdown making it possible to classify all crop production activities in the EU Member States.'

(12) Paragraph 1.69 is deleted.

(13) Paragraph 1.71 is replaced by the following:

'1.71. Following the convention adopted by NACE Rev. 2 (*), when own produced agricultural products are processed by the same unit of production, the processed products are also attributed to agriculture. As an example, grape must, wine and olive oil are treated as food products in the CPA. NACE Rev. 2 classifies the production of wine and olive oil under section C "manufacturing" (Classes 11,02 "Manufacture of wine from grape" and 10,41 "Manufacture of oils and fats"). Only the production of wine grapes and olives comes under agriculture (Classes 01,21 "Growing of grapes" and 01,26 "Growing of oleaginous fruits"). However, following the above convention, wine and olive oil produced from grapes and olives grown by the same unit of production are attributed to agriculture.

(*) See the "Introductory guidelines" to NACE Rev. 2: Statistical classification of economic activities in the European Community, Theme 2, Series E, Luxembourg, 2007.'

(14) The title in point (b) above paragraph 1.76 is replaced by the following:

‘(b) Group 01,4: Animal production’

(15) Paragraph 1.77 is deleted.

(16) In paragraph 1.78, the second sentence is replaced by the following:

‘It should be noted, however, that the management of racehorse stables and riding schools is not a characteristic agricultural activity (it is a part of “Sports activities and amusement and recreation activities”: Division 93) (cf. 2.210).’

(17) The title in point (c) above paragraph 1.80 is replaced by the following:

‘(c) Group 01,6: Support activities to agriculture and post-harvest crop activities’

(18) Paragraph 1.80 is replaced by the following:

‘1.80. The activities in group 01,6 can be divided into two categories:

— agricultural services in the form of contract work at the production stage (i.e. agricultural contract work),

— “other” agricultural services (the operation of irrigation systems, seed processing for propagation, etc.).’

(19) Paragraph 1.81 is replaced by the following:

‘1.81. Agricultural service activities in the second category are not treated as characteristic EAA activities (even though they are recorded in the agricultural accounts of the national accounts), since they are not traditional or typical agricultural activities.’

(20) In paragraph 1.86, the second sentence is replaced by the following:

‘If, on the other hand, the farmer hires machines without operators or with only some of the operators required, with the result that he/she continues to carry out the activity as such, with the help of the machines, this activity comes under Division 77 of NACE Rev. 2.’

(21) Paragraph 1.89 is replaced by the following:

‘1.89. Animal husbandry performed on farms for remuneration (the provision of land for livestock) is agricultural contract work since it is part of the agricultural production process. This heading does not, however, include the private rearing and care of saddle horses, since these activities do not constitute the production of goods but a genuine service within the meaning of the ESA 95 (section R of NACE Rev. 2).’

(22) The title in point (d) above paragraph 1.92 is replaced by the following:

‘(d) Group 01,7: Hunting, trapping and related service activities’

(23) Paragraph 1.92 is replaced by the following:

‘1.92. This group of activities comprises the following activities: (i) hunting and trapping on a commercial basis; (ii) taking of animals (dead or alive) for food, fur or skin, or for use in research, in zoos or as pets; (iii) production of fur skins or reptile or bird skins from hunting or trapping activities. It should be noted that the production of hide and leather from slaughterhouses and hunting performed as a sports or recreation activity are not included as characteristic activities of the agricultural industry. Additionally, the “hunting” group does not comprise the breeding of game on holdings, which should be recorded under class 01,49 “Raising of other animals”.’

(24) In paragraph 1.93, the equation for 'EAA agricultural industry' is replaced by the following:

'EAA agricultural industry = NA agricultural branch

- Units engaged in seed production (for research or certification)
- Production of units providing associated agricultural services other than agricultural contract work (e.g. the operation of irrigation systems)
- Units for which the agricultural activity represents solely a leisure activity
- + Agricultural activities of units whose principal activity is not agricultural (cf. 1,18)

(25) The first subparagraph of paragraph 2.055 is replaced by the following:

'1. The two activities exercised should come under different four-digit levels of NACE Rev. 2 (Division 01: Crop and animal production, hunting and related service activities). The application of this criterion thus precludes, for example, the valuation of seed produced and used on the same holding for crop production (during the same accounting period);'

(26) In paragraph 2.062, the first sentence is replaced by the following:

'Agricultural products processed by the agricultural unit in a separable way (i.e. giving rise to the formation of a local non-agricultural KAU) and consumed by farmers' households are recorded in the output of the "Manufacturing" industry (section C of NACE Rev. 2), as own final consumption.'

(27) Paragraph 2.063 is replaced by the following:

'2.063. The imputed rental value of the owner-occupied housing unit is not recorded here but in the branch "Renting and operating of own or leased real estate" (Class 68,20 of NACE Rev. 2). Renting of accommodation is a non-agricultural activity which is always considered to be separable from agricultural activity.'

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 28 February 2008

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

(2008/207/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,

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

Having regard to the proposal from the Commission,

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

Whereas:

- (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.

HAS DECIDED AS FOLLOWS:

Sole Article

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.

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

Done at Brussels, 28 February 2008.

For the Council

The President

D. MATE

⁽¹⁾ Assent of 19 February 2008 (not yet published in the Official Journal).

⁽²⁾ OJ L 147, 21.6.2000, p. 3.

⁽³⁾ OJ L 317, 5.12.2007, p. 65.

COMMISSION

COMMISSION DECISION

of 23 October 2007

on the State aid C 30/2006 (ex N 367/05 and N 623/05) which Italy is planning to implement as an amendment to an existing scheme for excise duty reduction for biofuels

(notified under document number C(2007) 5091)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2008/208/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to those provision(s) ⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter of 26 July 2005, registered on 29 July 2005, the authorities of Italy notified, according to Article 88(3) of the EC Treaty, the aid measure N 367/2005 in the simplified procedure. By letter of 28 September 2005, registered on the same day, the authorities of Italy notified, according to Article 88(3) of the EC Treaty, the aid measure N 623/2005 also in the simplified procedure. The notification registered under the number N 367/05 concerned modifications to an existing aid scheme, authorised by the Commission until the end of the year 2005 under aid number N 717/2002 ⁽²⁾ and the notification registered under the number N 623/05 is a prolongation of the modified scheme until the end of the year 2007.

(2) By letters dated 29 August 2005 and 21 October 2005, the Commission asked for additional information, which was received by letters dated 27 September 2005 and

21 November 2005, registered on the same days. Following a meeting between the representatives of Italy and of the Services of the European Commission on 9 December 2005 that took place on the request of Italy, the Commission Services sent a letter on 19 December 2005 summarizing all open issues. The Italian authorities submitted missing information in two letters: on 28 February 2006 registered on 1 March 2006 and on 28 April 2006 registered on 5 May 2006. The second letter followed a meeting of Italy and of the European Commission that took place on 15 March 2006 and a letter sent to Italy on 24 March 2006.

(3) By letter dated 7 June 2006, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure. The two notifications (N 623/05 and N 367/05) had the same subject-matter and therefore, and for reasons of procedural efficiency, the Commission took one decision on both notifications. Furthermore, the Commission considered all correspondence with Italy concerning the notification N 367/05 as correspondence concerning also notification N 623/05. The Commission took the decision in the normal procedure due to the fact that Italy did not deliver the annual report as required by Article 4 of Commission Regulation (EC) No 794/2004 ⁽³⁾ concerning simplified procedure. Moreover the changes introduced to the scheme turned out being an alteration to an existing aid in the meaning of Article 4(1) of the above mentioned Regulation and therefore requiring evaluation of their compatibility with the common market.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽⁴⁾. The Commission called on interested parties to submit their comments.

⁽¹⁾ OJ C 157, 6.7.2006, p. 8.

⁽²⁾ OJ C 16, 22.1.2004, p. 23.

⁽³⁾ OJ L 140, 30.4.2004, p. 1.

⁽⁴⁾ OJ C 218, 9.9.2006, p. 2.

- (5) The Commission received comments from interested parties. It forwarded them to Italy, which was given the opportunity to react; its comments were received by letters dated 28 November 2006 and 10 April 2007.
- (6) By letter dated 16 July 2007 the Commission asked for additional information, which was received by letter dated 6 August 2007.

II. DESCRIPTION OF THE MEASURE

- (7) Both notifications concern amendments to an existing aid scheme.

2.1. Existing Scheme

- (8) The scheme authorised by the Commission under aid number N 717/2002 reduces excise duty for bioethanol and its derivatives (ETBE) as well as for additives and reformulates derived from other types of biomass for petrol and diesel, but not for biodiesel. The bioethanol is an agricultural product. It is 100 % from renewable origin. ETBE (ethyl-tertio-butyl-ether), which is etherised bioethanol, is derivable from agricultural alcohol. It is obtained through the reaction of bioethanol with isobutylene and is only 47 % from renewable origin. The only biomass-derived additive known so far is diethyl carbonate which can be used as additive for diesel.
- (9) The biofuels may be used in a blended or a pure form. The two blended end products which will benefit from the reduction will be the mix bioethanol-fuel (5 %-95 %) and the mix ETBE-fuel (15 %-85 %).
- (10) The project aims at encouraging the use of biofuels produced from wine, cereals and sugar beet and sugar beet and molasses. The beneficiaries of the aid are participants of an experimental project. Under the aid measure N 717/2002 three companies were selected in an open tender: Ecofuel SpA, Milan as producer of ETBE and IMA srl, Partinico, Palermo and Silcoma SpA, Corregio, Reggio Emilia as producers of bioethanol. The tender was open to all EU undertakings producing the respective biofuels and complying with the conditions set out in the decree on tender procedure.
- (11) The measure was set to apply for three years: from 2003 to 2005. The foreseen total budget was EUR 15 493 706 per year including VAT. However, the aid has been granted from the beginning of the year 2005, due to delay in the tender procedure.
- (12) The approved advantage in terms of the reduced rate for the period from the year 2003 to 2005 was as follows (all reductions are granted per one litre of the biofuel concerned):

Biofuels	Normal rate	Rebate	Reduced rate
	In Euro per litre		
Bioethanol	0,541 (petrol)	0,26	0,281
ETBE	0,541 (petrol)	0,25427	0,28673
Other additives and blends (for petrol)	0,541 (petrol)	0,26	0,281
Other additives and blends (for diesel)	0,403 (diesel)	0,16	0,243

- (13) The approved tax rebate per one litre of ETBE is equivalent to a complete tax exemption per 0,47 litre of ETBE, which is the part of ETBE derived from biomass ⁽¹⁾.
- (14) The excise duty rebate applies to pure and blended biofuels. As far as biofuels blended with fossil fuels are concerned Italy confirmed that the excise duty rebate would be proportioned to the volume of biofuel contained in the end product.
- (15) In its decision N 717/2002 the Commission concluded that the rebates did not exceed the difference between the costs of producing energy from biofuels and the market price of that energy. Therefore the Commission excluded overcompensation for the biofuels production.
- ### 2.2. Notified changes
- (16) Italy notified under the number N 367/2005 an increase of the annual total budget of the scheme to EUR 73 million including VAT. Furthermore, Italy notified under the number N 623/05 a prolongation of the existing measure until the end of the year 2007. The legal basis for both amendments is the Law No 311 (Legge finanziaria 2005) of 30.12.2004. These amendments have been introduced in order to make the program more meaningful due to the major changes regarding the policy on biofuels at the Community level (e.g. introducing of the Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport ⁽²⁾ and of the Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ⁽³⁾).

⁽¹⁾ In accordance with Article 2(2)(f) of the Directive 2003/30/EC on biofuels (OJ L 123, 17.5.2003).

⁽²⁾ OJ L 123, 17.5.2003, p. 42.

⁽³⁾ OJ L 283, 31.10.2003, p. 51.

- (17) For the new measure a new open tender procedure will be established. The Italian authorities underlined that the three beneficiaries selected in an open tender under the existing scheme N 717/2002 will not necessarily be the beneficiaries under the new scheme.
- (18) In addition Italy informed about higher excise tax reductions for biofuels and higher excise tax rates for fossil fuels and delivered updated production cost calculations for bioethanol and for bio-ETBE. The notified excise tax rates are as follows:

Biofuels	Normal rate	Reduction	Reduced rate
	In Euro per litre		
Bioethanol	0,564 (petrol)	0,275	0,289
Bio-ETBE	0,564 (petrol)	0,265	0,299

- (19) The notified tax rebate for bio-ETBE (EUR 0,265 per one litre) is equivalent to a complete tax exemption per 0,47 litre of ETBE, which is the part of bio-ETBE derived from biomass.
- (20) The production costs of bioethanol increased by EUR 32/1 000L due to an increase in costs of raw materials (sugar beet and molasses) and intermediate processing and logistics. The increase of bio-ETBE production costs (consequence of bioethanol becoming more expensive) was balanced with an increase in by-products selling prices. The reference price of fossil fuels that has been used for comparisons with the prices of biofuels was EUR 0,453/L⁽¹⁾. The production costs and the price of fossil fuels have been used in point 39 to calculate the extra production costs of biofuels eligible for aid.
- (21) Italy undertakes to monitor every six months the production costs of biofuels and the price of fossil fuels and, if necessary, to adjust the rebate in the excise duty rate so as to avoid any overcompensation of production costs throughout the duration of the aid in question.
- (22) In its letters of 21 October 2005, 19 December 2005 and 24 March 2006, the Commission has requested that

the Italian authorities suspend the payment of new aid under the current scheme to those firms that have not reimbursed the incompatible aid in compliance with earlier recovery decisions, (in particular with the Commission Decision 2000/128/EC of 11 May 1999 concerning aid granted by Italy to promote employment⁽²⁾, Commission Decision 2003/193/EC of 5 June 2002 concerning tax exemption and privileged loans in favour of public utilities in Italy⁽³⁾, Commission Decision 2004/800/EC of 30 March 2004 on the State aid scheme put into effect by Italy providing for urgent measures to assist employment⁽⁴⁾, and for Commission Decision 2005/315/EC of 20 October 2004 on the aid scheme implemented by Italy for firms investing in municipalities seriously affected by natural disasters in 2002⁽⁵⁾) in order to enable the Commission to take into account in its assessment the cumulated distortion of new aid and old incompatible aid which has not been recovered.

- (23) The Italian authorities declined to make such a commitment. Moreover, they have stated that, in their view, Court of Justice judgment of 15 May 1997⁽⁶⁾ (hereafter 'the Deggendorf jurisprudence') — on the basis of which the Commission has to control cumulation between old and new aid — should not apply to aid schemes.
- (24) The Italian authorities underlined that the three beneficiaries selected in an open tender under the existing scheme N 717/2002 (see point 6) will not be necessarily the beneficiaries under the new scheme.
- (25) The notification registered under the number N 623/05, extends the scheme modified under the notification N 367/05 from the end of the year 2005 until the end of the year 2007.

III. GROUNDS FOR INITIATING THE ARTICLE 88(2) PROCEDURE

- (26) The Italian authorities refused to give a commitment to suspend the granting of new aid under the current scheme to firms which have not reimbursed the incompatible aid in compliance with the previous recovery decision. Therefore the Commission found it impossible to take into account the cumulated distortion arising from the old aid and the new aid.

⁽¹⁾ The price of fossil fuels is the annual average value for 2005 of the market price of fossil fuels. All changes in the production costs data are based on the observations for the year 2005 and are justified by movements of market prices.

⁽²⁾ OJ L 42, 15.2.2000, p. 1.

⁽³⁾ OJ L 77, 24.3.2003, p. 21.

⁽⁴⁾ OJ L 352, 27.11.2004, p. 10.

⁽⁵⁾ OJ L 100, 20.4.2005, p. 46.

⁽⁶⁾ Case C-355/95P *Textilwerke Deggendorf GmbH (TWD) v Commission* [1997] ECR I-2549, paragraphs 25-27.

IV. COMMENTS FROM INTERESTED PARTIES

- (27) The only third party which submitted its comments on the initiation of the procedure was Associazione Nazionale Industriali Distilatori di Alcoli e di Acquaviti (AssoDistil).
- (28) The AssoDistil stressed that the beneficiaries of the measure notified are not known and it is not a foregone conclusion that they will be the same as those which benefited under the previous measure.
- (29) AssoDistil informed also the Commission that it suggested to the Italian authorities to undertake to insert a clause in the tender procedure for biofuels that would make the right to take part in the procedure for new aid conditional on non-cumulation of aid with previous incompatible aid and that payment of the new aid will be suspended if the beneficiary still has to reimburse old incompatible aid.

V. COMMENTS FROM ITALY

- (30) By letter received on 10 April 2007 the Italian authorities, committed themselves to insert in the tender for biofuels a clause that subordinates the right to participate in the selection process to the absence of cumulus with precedent illegal aids. Furthermore, the Italian authorities commit themselves to suspend the payment of new aids whereas the beneficiary still has to repay incompatible aids.
- (31) The Italian authorities excluded that the commitment can constitute a precedent for other schemes that will be notified in the future. They stressed that the commitment is given only with regard to the present aid in consideration of its particular characteristics.

VI. ASSESSMENT OF THE MEASURE

- (32) Italy has notified the measure to the Commission and its entry into force is subject to the Commission's approval, so Italy has complied with its obligations under Article 88(3) of the EC Treaty. The notified amendments in the scheme concern the increase in the budget of the scheme and the duration. The Commission has been also informed about the change in the excise reduction and modifications in calculating biofuels production costs.

Existence of aid within the meaning of Article 87(1) of the EC Treaty

- (33) According to Article 87 of the EC Treaty, State aid is (a) any aid granted by a Member State or through State resources (b) which distorts competition (c) by favouring certain undertakings, (d) insofar as it affects trade between Member States.

- (34) Excise tax reduction is granted from State resources. The aim of this measure is to compensate the biofuels producers for part of their production costs. By reducing the tax obligation imposed on the products, the measure favours certain undertakings and the production of certain goods. Consequently the prices for biofuels can be lowered to a level that is competitive with fossil fuels. Since biofuels serve as substitute for fossil fuels, this advantage may distort competition in the internal EU-market. As fuels are tradable internationally, the measure is also likely to affect trade between Member States and therefore constitutes State aid pursuant to Article 87(1) of the EC Treaty.

Exemption under Article 87(3)(c) of the EC Treaty

- (35) Article 87(3)(c) of the EC Treaty provides an exemption from the general rule of incompatibility with the common market as stated in paragraph (1) of that Article for aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (36) The proposed aid measures are designed to enhance the use of environmentally friendly fuels in order to reduce the emission of greenhouse gases. The development of renewable energies, especially biofuels⁽¹⁾, has been encouraged since 1995 by numerous Community measures⁽²⁾ and as of 2003 by the Directive 2003/30/EC of the European Parliament and of the Council on the promotion of the use of biofuels or other renewable fuels for transport ('Biofuels Directive')⁽³⁾. According to Article 3 of this Directive Member States should ensure that a minimum proportion of biofuels is put on their markets. It sets for the national targets a reference value of 5,75 % that should be achieved by 31 December 2010.

- (37) The objectives of the present scheme are in line with EU policy in this sector. The Commission has to assess the notified measure in the light of the Community Guidelines on State aid for environmental protection⁽⁴⁾ unless the aid is granted to support products which fall under the list in Annex I of the Treaty, which is the list of products covered by Title II on Agriculture.

⁽¹⁾ Biofuels are included in the definition of renewable energy sources of Directive 2001/77/EC of the European Parliament and of the Council of 27.9.2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market (OJ L 283, 27.10.2001, p. 33).

⁽²⁾ Among others, the White Paper of 1997 on renewable energies (COM(1997) 599 final of 26.11.1997), the Commission Green paper on energy supply safety in the European Union (COM(2000) 769 of 29.11.2000), the Commission's communication on alternative fuels for road transport and on a set of measures to promote the use of biofuels (COM(2001) 547 of 7.11.2001).

⁽³⁾ OJ L 123, 17.5.2003.

⁽⁴⁾ OJ C 37, 3.2.2001, p. 3.

- (38) According to section E.3.3 of the Environmental Guidelines, operating aid in favour of the production of renewable energy can be allowable. The Commission takes the view that such aid qualifies for special treatment because of the difficulties these sources of energy have sometimes encountered in competing effectively with conventional energy sources.
- (39) Point 56 of the Environmental Guidelines allows for the aid to cover the difference between the costs of

producing energy from renewable source and the market price of that energy. This is further developed in points 59 and 60 of the Community Guidelines. From the tables below, which are based on the information supplied by Italy, it is clear that the aid enables producers to sell the blended fuel at a price that is just sufficient to compete with the fossil fuel. It is ensured that this will remain to be the case during the entire period of the scheme because Italy confirmed that the changes in fossil fuel price and biofuels production costs will be monitored every six months and if necessary the aid level will be adjusted.

Production costs for 1 000 litres	Bioethanol			Bio-ETBE
	Sugar b./ molasses	Cereal	Wine	
A) Raw materials	270,00	380,00	650,00	Bioethanol: 334,10 Refined (1): 400,00
B) Labour	30,00	30,00	30,00	21,50
C) Capital repayments	30,00	30,00	30,00	9,70
D) Intermediate processing	205,00	215,00	195,00	37,10
E) Transport costs	22,00	22,00	22,00	
F) By-product selling price		- 130,00		- 149,00
G) Production costs (A + B + C + D + E + F)	557,00	530,00	910,00	653,40
H) Profit margin 5 %	27,85	27,35	46,35	32,67
I) Energy content adjustment factor (*)	270,36	265,50	449,94	110,46
J) Total, excluding taxes (G + H + I)	855,21	839,85	1 428,29	796,53
K) Biofuels detaxation	274,78	274,78	274,78	265,08
L) Price for biofuels (J - K)	580,42	565,07	1 148,51	531,45
M) Reference price of fossil fuels excl. taxes	453,00	453,00	453,00	453,00
Difference (L - M) (**)	127,43	112,07	695,51	78,45

(*) The energy adjustment factor has been calculated in the following way: for bioethanol $(31/21,2 - 1) \times 100\%$, for bio-ETBE $(31/26,7 - 1) \times 100\%$. The sum of lines G and H has to be multiplied with these factors.

(**) If the difference is positive than the level of aid is allowable. If the difference is negative then the level of aid is too high and results with overcompensation.

- (40) Apart from bioethanol and bio-ETBE the notified measure also foresees that additives and reformulates derived from biomass can benefit from the tax reduction. The only potential biomass-derived additive and reformulate known so far is diethyl carbonate. As this product is however not in the market yet, no information on production costs is available. The same holds for further potential biomass-derived additives and reformulates, which are not known yet but which might be introduced under the scheme in the future. European Commission notes that Italy committed itself under the scheme approved under the decision N 717/2002 ⁽¹⁾ to carry out an analysis, as soon as a new product will benefit from the tax reduction, to ensure that the reduction will not lead to overcompensation. This information will also be submitted to the Commission in the annual monitoring reports.
- (41) Cereals, sugar beet and molasses and wine used to produce biofuels in the scheme at hand fall within Chapter 10, Chapter 17.03 and Chapter 22.05 of the list in Annex I of the Treaty respectively, which is the list of products covered by Title II on Agriculture. The aid for these products falls within the scope of the Community Guidelines for State aid in the agriculture sector and is excluded from the scope of the Environmental Guidelines in conformity with point 7 of the latter. According to point 194 of the Community Guidelines for State aid in the agriculture and forestry sector 2007 to 2013 ⁽²⁾, for notifications pending on 1 January 2007 the Guidelines of year 2000 ⁽³⁾ will remain applicable. Section 5.5.3 of the Agricultural Aid Guidelines stipulates that in duly justified cases, such as aid for the development of biofuels, the Commission may also approve operating aid in cases where these can clearly be shown to be necessary to offset the additional cost arising from the use of environmentally friendly inputs in comparison to conventional production processes. The aid component should be limited to neutralising the effects of the additional costs and should be subject to a periodic review at least every five years. Since the aid under scrutiny in the present case only concerns biofuels which without aid would not be competitive in the market, and since the aid level will be revised and adjusted annually to avoid overcompensation of the biofuel production, the notified aid scheme complies with these conditions.
- (42) As the measure concerns an excise tax rebate for an energy product, the Commission will also assess it with respect to the Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ('Energy Tax Directive') ⁽⁴⁾.
- (43) Article 16(1) of this Directive allows Member States to apply an exemption or a reduced rate of taxation on biofuels. However, Article 16(2) of the same Directive limits the exemption or reduction in taxation to the part of the product that actually derives from biomass. While bioethanol is completely derived from biomass, only 47 % of one litre of ETBE is derived from biomass. The excise reduction for bio-ETBE introduced by Italy (EUR 0,26508) equals 47 % of the normal excise rate (EUR 0,564). It is a complete tax exemption of the biomass part of ETBE and it respects provisions of Article 16(2).
- (44) The excise duty reduction applies to pure and blended biofuels. Concerning biofuels blended with fossil fuel, the reduction of excise duty will be proportionate to the volume of biofuel in the end product. Thus the higher the percentage of biofuel in the end product, the greater the value of the potential reduction of excise duty on the end product.
- (45) The notified scheme respects also Article 16(3) of the Energy Tax Directive which requires that the reduction in taxation shall be adjusted to take account of changes in raw material prices to avoid overcompensating for the extra costs involved in the manufacture of biofuels.
- (46) The measure is open to all EU undertakings producing the respective biofuels and complying with the conditions set out in the decree on tender procedure. It is therefore not discriminating.
- (47) The Commission notes that Italy ensured that the measure is not currently in force and will be applied only after the Commission has authorised it.
- (48) The Commission also notes that the original measure has been prolonged and the new measure is limited in time until the 31 December 2007.

⁽¹⁾ OJ C 16, 22.1.2004, p. 23.

⁽²⁾ OJ C 319, 27.12.2006, p. 1.

⁽³⁾ OJ C 28, 1.2.2000, p. 2.

⁽⁴⁾ OJ L 283, 31.10.2003, p. 51.

(49) Further, the Commission pointed out the problem of potential cumulation of the distortion arising from the aid under the excise reduction scheme and other distortions deriving from other illegal and incompatible aid, in particular under the schemes mentioned in paragraph 22, which has not yet been reimbursed. According to the Deggendorf jurisprudence, the compatibility of new aid could depend on the existence of any previous unlawful aid that has not been repaid, since the cumulative effect of the aid could distort competition in the common market to a significant extent.

(50) The Commission notes that, as regards the application of the Deggendorf jurisprudence, the Italian authorities undertook, in the context of this measure, committed themselves to insert in the tender for bio-fuels a clause that subordinates the right to participate in the selection process to the absence of cumulus with precedent illegal aids. Furthermore, the Italian authorities commit themselves to suspend the payment of new aids whereas the beneficiary still has to repay incompatible aids mentioned by the Commission in its decision initiating the procedure.

(51) The Commission further notes that during the procedure under Article 88(2) of the EC Treaty it did not receive any comments from third parties that the proposed aid may affect trading conditions and distort competition to an extent contrary to the common interest.

VII. CONCLUSIONS

(52) On the basis of the foregoing, the Commission concludes that the measure complies with the relevant provisions of the Environmental Aid Guidelines, the Agricultural Aid

Guidelines and the relevant provisions of the Energy Tax Directive. Furthermore, Italy has undertaken to suspend the granting of new aid under the current scheme to firms which have not reimbursed the incompatible aid in compliance with the relevant previous recovery decision. The measure can therefore be deemed compatible with the common market pursuant to Article 87(3)(c) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The measure which Italy is planning to implement on the basis of Article 1, paragraph 520 of Law No 311 of 30 December 2004, with an annual budget of EUR 73 million, and consisting in the amendment and prolongation of an existing scheme for excise duty reduction for biofuels until 31 December 2007 is compatible with the common market.

Implementation of the measure is accordingly authorised.

Article 2

This Decision is addressed to the Republic of Italy.

Done in Brussels, 23 October 2007.

For the Commission

Neelie KROES

Member of the Commission

COMMISSION DECISION**of 7 March 2008****amending the Appendix to Annex VI to the Act of Accession of Bulgaria and Romania as regards certain milk processing establishments in Bulgaria***(notified under document number C(2008) 827)***(Text with EEA relevance)****(2008/209/EC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Bulgaria and Romania, and in particular the first subparagraph of paragraph (f) of Chapter 4 of Section B of Annex VI thereto,

Whereas:

- (1) Bulgaria has been granted transitional periods by the Act of Accession of Bulgaria and Romania for compliance by certain milk processing establishments with the requirements of Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽¹⁾.
- (2) The Appendix to Annex VI to the Act of Accession has been amended by Commission Decisions 2007/26/EC ⁽²⁾ and 2007/689/EC ⁽³⁾.
- (3) Bulgaria has provided guarantees that two milk processing establishments have completed their upgrading process and are now in compliance with Community legislation. Those establishments are allowed to receive and process separately compliant and non-compliant milk. Those establishments should therefore be added to the list of Chapter II of the Appendix to Annex VI.

- (4) The Appendix to Annex VI to the Act of Accession of Bulgaria and Romania should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

The establishments listed in the Annex to this Decision are added to Chapter II of the Appendix to Annex VI to the Act of Accession of Bulgaria and Romania.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 7 March 2008.

For the Commission
Androulla VASSILIOU
Member of the Commission

⁽¹⁾ OJ L 139, 30.4.2004, p. 55; corrected version in OJ L 226, 25.6.2004, p. 22. Regulation as last amended by Commission Regulation (EC) No 1243/2007 (OJ L 281, 25.10.2007, p. 8).

⁽²⁾ OJ L 8, 13.1.2007, p. 35.

⁽³⁾ OJ L 282, 26.10.2007, p. 60.

ANNEX

Milk establishments to be added to Chapter II of the Appendix to Annex VI to the Act of Accession of Bulgaria and Romania

Dobrich Region — No 8

12	BG 0812009	“Serdika — 90” AD gr. Dobrich ul.	gr. Dobrich ul. “25 septemvri” 100
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Smolyan Region — No 21

13	BG 2112001	“Rodopeya — Belev” EOOD gr. Smolyan	gr. Sliven kv. “Rechitsa” ’
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