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## I

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

## REGULATIONS

## COUNCIL REGULATION (EC) No 805/2008

of 7 August 2008

**repealing the anti-dumping duties imposed by Regulation (EC) No 437/2004 on imports of large rainbow trout originating in Norway**

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<sup>(1)</sup> ('the basic Regulation'), and in particular Articles 9 and 11(3) thereof,

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

Whereas:

**A. PROCEDURE**

**1. Measures in force**

- (1) The Council, following an anti-dumping investigation (the 'original investigation'), by Regulation (EC) No 437/2004<sup>(2)</sup> imposed a definitive anti-dumping duty on imports of large rainbow trout ('LRT' or 'the product concerned' as defined in recital 19 below) originating in Norway. The definitive duty was imposed in the form of a countrywide *ad valorem* duty at a level of 19,9 % ('the current measures').

**2. Request for review and initiation**

- (2) On 12 March 2007, the Commission received a request for a partial interim review lodged by several producers and exporters of LRT; i.e. Sjøtroll Havbruk AS, Lerøy Fossen AS, Firda Sjøfarmer AS, Coast Seafood AS, Hallvard Lerøy AS and Sirena Norway AS ('the applicants') pursuant to Article 11(3) of the basic Regulation.

- (3) The applicants have provided prima facie evidence that the basis on which the measures were established has changed and that these changes are of a lasting nature. The applicants alleged and provided prima facie evidence showing that their export prices to the Community market have increased significantly and substantially more than the domestic prices and cost of production in Norway. The applicants alleged furthermore that this would lead to a reduction of dumping significantly below the level of the current measures and therefore the continued imposition of measures at the existing levels is no longer necessary to offset dumping. This evidence was considered sufficient to justify the opening of a proceeding.

- (4) Accordingly, after having consulted the Advisory Committee, the Commission on 15 May 2007 initiated, by the publication of a notice in the *Official Journal of the European Union*<sup>(3)</sup>, a partial interim review of anti-dumping measures in force on imports of LRT originating in Norway in accordance with Article 11(3) of the basic Regulation ('the notice of initiation').

- (5) This review was limited in scope to the aspects of dumping, with the objective of assessing the need for the continuation, removal or amendment of the existing measures.

**3. Parties concerned by the proceeding**

- (6) The Commission officially advised all known exporters/producers in Norway, traders, importers and associations known to be concerned, and representatives of the Kingdom of Norway, 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.

<sup>(1)</sup> 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).

<sup>(2)</sup> OJ L 72, 11.3.2004, p. 23.

<sup>(3)</sup> OJ C 109, 15.5.2007, p. 23.

#### 4. Sampling

- (7) Section 5(a) of the notice of initiation indicated that the Commission may decide to apply sampling in accordance with Article 17 of the basic Regulation. In response to the request pursuant to Section 5(a)(i) of the notice of initiation, 298 companies, representing more than 70 % of the production licences in use during the IP, provided the information requested within the specified deadline. Of these, 123 were exporting LRT and/or producers of LRT. Exports were made either directly or indirectly via related and independent traders.
- (8) In view of the large number of companies involved, it was decided to make use of the provisions for sampling and, for this purpose, a sample of producing companies, with the largest export volumes to the Community (exporting producers) was chosen, in consultation with the representatives of the Norwegian industry.
- (9) In accordance with Article 17 of the basic Regulation, the selected sample covered the largest possible representative volume of exports that could reasonably be investigated within the time available.
- (10) Requests for the determination of an individual dumping margin were submitted by the companies not selected in the sample. However, in view of the large number of requests and the large number of companies selected in the sample, it was considered that such individual examinations would be unduly burdensome within the meaning of Article 17(3) of the basic Regulation and would have prevented completion of the investigation in good time. The claims for determination of individual margins are therefore rejected.
- (11) One of the exporting producers selected in the sample, declared that it was unable to complete the reply to the anti-dumping questionnaire. This exporting producer was therefore excluded from the sample and the findings with regard to it were based on the facts available in accordance with Article 18 of the basic Regulation.
- (12) The investigation has also revealed that two other exporting producers included in the sample did not export the product concerned produced by them or their related companies to the Community during the review investigation period ('RIP'). Since no export price was therefore available, no dumping margin could be established for these exporting producers.
- (13) The three exporting producers included in the final sample represented around 33 % of Norwegian exports of LRT to the Community and 31 % of the production volume in Norway during the RIP which was still considered representative.
- (14) As far as importers are concerned, and in order to enable the Commission to decide whether sampling is necessary, section 5(a)(ii) of the notice of initiation requested importers in the Community to submit the information specified in this section. Only three importers in the Community replied to the sampling form. Given this low number of cooperating importers no sampling was necessary in this case.
- (15) The Commission sought and verified all information deemed necessary for the determination of dumping. To this end the Commission invited all parties known to be concerned and all other parties which made themselves known within the deadlines set out in the notice of initiation to cooperate in the present proceeding and to fill in the relevant questionnaires.
- (16) The Commission carried out verification visits at the premises of the following companies:
- (a) *Producers in Norway*
- Marine Harvest AS, Bergen, Norway,
  - Hallvard Leroy AS, Bergen, Norway,
  - Sjøtroll Havbruk AS, Bekkjarvik, Norway,
  - Svanoy Havbruk AS, Svanoybukt, Norway,
  - Hyen Laks AS, Hyen, Norway;
- (b) *Related traders in Norway*
- Coast Seafood AS, Maloy, Norway,
  - Skaar Norway AS, Floro, Norway.
- (17) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- 5. Investigation period**
- (18) The investigation of dumping covered the period from 1 April 2006 to 31 March 2007 ('review investigation period' or 'RIP').

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product concerned

- (19) The product under review is the same as in the original investigation, i.e. large rainbow trout (*Oncorhynchus mykiss*) whether fresh, chilled or frozen, whether in the form of whole fish (with heads and gills on, gutted, weighing more than 1,2 kg each or with heads off, gilled and gutted, weighing more than 1 kg each), or in the form of fillets (weighing over 0,4 kg each), originating in Norway ('the product concerned').
- (20) The product concerned is currently classifiable within CN codes 0302 11 20, 0303 21 20, 0304 19 15 and 0304 29 15 corresponding to different presentations of the product (fresh or chilled fish, fresh or chilled fillets, frozen fish and frozen fillets).

### 2. Like product

- (21) As established in the original investigation and confirmed by this investigation, the product concerned and the product produced and sold on the domestic market in Norway were found to have the same basic physical characteristics and had the same use. They were therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation. Since the present review was limited to dumping, no conclusions were reached with regard to the product produced and sold by the Community industry in the Community market.

## C. DUMPING

### 1. General

- (22) The Norwegian producers of LRT were making sales of the product concerned to the Community either directly, or via related and unrelated traders. Only identifiable sales destined for the Community market made directly or via related companies of the exporting procurers included in the sample based in Norway, were used to calculate the export price.

### 2. Normal value

- (23) For the determination of normal value the Commission first established, for each of the exporting producers included in the sample, whether its total domestic sales of the product concerned were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.
- (24) In order to determine whether domestic sales were representative, sales to unrelated traders located in Norway

during the RIP were disregarded since the final destination of these sales could not be established with certainty. Indeed, the investigation indicated that these sales were overwhelmingly destined for export to third country markets and therefore not sold for domestic consumption.

- (25) The Commission subsequently identified those product types sold domestically by the companies having overall representative domestic sales, which were identical or directly comparable with the types sold for export to the Community.
- (26) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market during the review investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.
- (27) An examination was also made as to whether the domestic sales of each type of the product concerned sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers of the type in question. This was done by establishing the proportion of profitable domestic sales to independent customers of each exported product type, on the domestic market during the review investigation period, as follows:
- (28) Where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic prices. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the RIP, irrespective of whether these sales were profitable or not.
- (29) 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 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.
- (30) Where the volume of the profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that the domestic price of this particular type does not provide an appropriate basis for the establishment of the normal value.

- (31) 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.
- (32) In this regard, it was first examined whether normal value could be established on the basis of domestic prices of other producers in Norway in accordance with Article 2(1) of the basic Regulation. Since in this case, the corporate structures of the groups selected in the sample were highly complex and differed significantly from each other, which very likely had an impact on the exporting producer's sales price on the domestic market, it was considered that in this case the use of the sales prices of other producers was not appropriate because this would not give more reliable results than using each exporting producer's own data. Therefore, normal value was constructed in accordance with Article 2(3) of the basic Regulation as follows:
- (33) Normal value was constructed by adding to the exporting producer'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.
- (34) 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.
- (35) One of the three exporting producers concerned for which the normal value had to be constructed did not have representative domestic sales. Therefore, the method as described in Article 2(6) *chapeau* could not be used.
- (36) Since the other exporting producers had representative domestic sales in the ordinary course of trade, SG & A and profit for this exporting producer were determined in accordance with Article 2(6)(a) of the basic Regulation, i.e. on the basis of the weighted average of the actual amounts determined for other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin.

### 3. Export price

- (37) 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.
- (38) Where export sales were made via related importers, the export price was constructed, pursuant to Article 2(9) of

the basic Regulation, on the basis of the price at which the imported products were first resold to an independent buyer, duly adjusted for all costs incurred between importation and resale, as well as a reasonable margin for SG & A and profit. In this regard, the related importers' actual SG & A during the RIP were used. As far as profit is concerned, it was determined on the basis of information available, and in the absence of any other more reliable information, that 2 % profit was reasonable for an importer in this business sector.

- (39) As mentioned above in recital 24, in cases where sales were made via unrelated traders, it was not possible to determine with certainty the final destination of the product exported. Therefore, it could not be established whether a certain sale was made to a customer in the Community or to another third country, and it was therefore decided to disregard sales to unrelated traders.

### 4. Comparison

- (40) The comparison between normal value and export prices was made on an ex-works basis.
- (41) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence. On this basis allowances for differences in discounts, commissions, transport, insurance, handling, loading and ancillary costs, packing, bank charges credit and import duties were made.

### 5. Dumping margins

#### 5.1. Sampled companies

- (42) For the exporting producers which were included in the sample, an individual dumping margin was calculated. For these companies, the weighted average normal value of each type of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for under Article 2(11) of the basic Regulation.
- (43) On the basis of the above, the dumping margins of the sampled companies expressed as a percentage of the CIF net free-at-Community-frontier price, duty unpaid are:

|                     |          |
|---------------------|----------|
| Marine Harvest AS   | - 12,1 % |
| Hallvard Leroy AS   | - 3,3 %  |
| Sjotroll Havbruk AS | 0,6 %    |

## 5.2. Countrywide dumping margin

- (44) Given the dumping margins determined for all the companies in the sample were *de minimis* and the co-operation in this investigation was very high, the countrywide dumping margin was also considered to be *de minimis*.

## D. LASTING NATURE OF CHANGED CIRCUMSTANCES

### 1. General

- (45) It was further examined, in accordance with Article 11(3) of the basic Regulation, whether the circumstances during the RIP; i.e. the dumping margins as indicated above, were of a lasting nature. In this regard, the following aspects were examined in particular: (i) the likely development of the normal value; (ii) the evolution of the production volume in Norway; and (iii) the development of the consumption of LRT in the Community market; (iv) the evolution of export prices and volumes to third country markets; as well as (v) the development of export prices and volumes to the Community.

### 2. Evolution of the normal value

- (46) To determine the likely evolution of the normal value and since the normal values established during the RIP had to be constructed on the basis of the cost of manufacturing for the exporting producer with the largest export volume to the EC in accordance with Article 2(3) and 2(6) of the basic Regulation, it was considered appropriate to examine the likely evolution of the cost of production in Norway as a surrogate for domestic prices.
- (47) Within this framework, several factors having an influence on the level of the unit costs were examined, such as costs of feed, costs of smolt and the impact of the consolidation process of the Norwegian LRT industry. Firstly, the investigation revealed that the two main cost elements, the cost of feed and the cost of smolt, representing over 60 % of the total cost, have decreased since the original investigation and have stabilised since the RIP. No indications were found that they would fluctuate significantly in the foreseeable future. This was confirmed by feed price lists for the first quarter of 2008 verified during the investigation. Secondly, the consolidation process in the industry had also a cost reducing effect due to economies of scale. Thus, the overall production costs have decreased by around 12 % between the original investigation and the RIP. It is expected that overall costs will now stabilise at levels found during the RIP.
- (48) Since the normal values established during the RIP were not always constructed, it was examined whether the domestic sales prices are likely to remain at the same level as during the RIP. No information was available

with regard to domestic prices in Norway after the RIP. Although it was observed, on the basis of publicly available statistical data showing price evolutions over the past years, that domestic prices in Norway and export prices to the Community have been at similar levels and have generally followed the same trend, no meaningful conclusion could be drawn on this basis. It was therefore difficult to predict how domestic prices will indeed develop in the future but it could be inferred that they would follow a similar trend to export prices to the Community.

- (49) In conclusion, given the above, it is considered that the normal value, when based on cost of production is not likely to increase significantly in the foreseeable future. On the other hand, the analysis of the normal value, when based on domestic prices, did not show a clear picture of future developments. Therefore, although no overall definitive conclusion could be drawn, there is an indication that normal value is not likely to increase significantly in the foreseeable future.
- (50) Subsequent to disclosure, the Community industry ('CI') claimed that the conclusions reached as far as feed and smolt costs are concerned would be erroneous. The CI alleged that feed price in Finland would have increased by 36 % between 2001 and 2008 and that Norwegian feed price evolution would have followed the same trend. The CI also claimed that the price of feed components would have increased sharply during and after the RIP indicating an increase in the LRT production cost in Norway.
- (51) As the allegations concerning feed price in Finland were not supported by any public or verifiable information, they had to be rejected. As far as the price of feed components is concerned, it is not contested that it may have increased. However, given the substitutability between different feed components; usually some higher priced components can be substituted by lower priced components, it is expected that even if the cost of certain feed components increased, this would not have a direct linear impact on the overall feed cost (and subsequently total production cost), i.e. if any increase in overall feed costs, such increase will be at a significantly lower pace.
- (52) The CI also claimed that Norwegian statistics showed that smolt unit cost had increased by 15,7 % between 2003 and 2006. The same statistics however revealed that, when looking at a wider time-span, the smolt cost had fluctuated over the last 10 years and overall did not significantly increase. Also, it should be noted that the average smolt cost submitted by the CI did not refer to any average smolt weight, which is, however, necessary to make a meaningful evaluation of these costs. Given the above, the arguments raised by the Community industry regarding feed and smolt cost were disregarded and conclusions in recital 49 above are therefore confirmed.

### 3. Evolution of the production volumes in Norway

- (53) Contrary to the arguments raised by the Norwegian interested parties, the investigation revealed that the production volume in Norway of the product concerned is likely to further increase in the near future. Although it seems that two major Norwegian producers of the product concerned have indeed decided to terminate their production of the product concerned, the investigation also revealed that other producers of both LRT and salmon planned to stop the salmon production and concentrate on the production of LRT.
- (54) Production licences issued by the Norwegian government are covering both the product concerned by this review (LRT) and salmon and limit the production volume of these two products. Although no new licences are expected to be issued before 2009, individual producers may decide to shift within the same licence from the production of salmon to the production of LRT (and vice versa). However, given the relative production volume between salmon and LRT (on average around 90 % within one licence is used for the salmon production while only 10 % for the production of LRT) the impact of a shift from salmon to LRT would be far more significant than the other way round.
- (55) The Norwegian interested parties claimed that major producers of LRT were switching increasingly to the production of salmon because of the biological differences between LRT and salmon (e.g. harvesting frequency, shorter period for releasing trout smolt), which would make the production of salmon more efficient and therefore more lucrative. Besides the fact that this argument was not supported by any evidence, it was also not taking into account that LRT has been successfully produced in Norway over many years, while the same biological differences between salmon and LRT have always existed. It was not explained which exact circumstances had changed which made a change in production strategies now more likely than in the past. It also contradicted the expectations of the Norwegian producers of LRT that consumption would increase worldwide (see recital 63 below). This argument therefore had to be rejected.
- (56) Furthermore, publicly available statistics show that the number of smolts for the production of the product concerned released in 2008 increased significantly, i.e. by at least 20 % in comparison to 2007. An increasing trend in production is also illustrated by other statistics (SSB — Statistics Norway) which show a significant increase in production (+ 42 %) and sales (+ 53 %) of LRT juveniles over the period 2003-2006.
- (57) Finally, the evidence submitted by the Norwegian interested parties in support of their arguments, i.e. that there was a decrease in the biomass level and roe production indicating lower outputs in the future, was incomplete and based on many assumptions. It was therefore not considered as conclusive.
- (58) On the basis of the above, the argument of the Norwegian interested parties that production volumes in Norway will decrease overall therefore had to be rejected.
- (59) The CI claimed that the production in Norway is expected to increase even further following the likely issuance of new production licences in 2009. As mentioned above in recital 54, it is not expected that any new licences will be issued before 2009. In this respect, it was considered that even if new licences were to be issued in 2009, the additional number of licences and thus additional production volume is yet unknown. Furthermore, licences cover both the production of salmon and the production of trout and at this stage it is not possible to forecast with sufficient degree of certainty how much of each licence will be used either for salmon or for trout. Finally, it should be noted that even if new licences were to be issued, and given the relatively long production cycles, this does not translate immediately in an increase of production. This argument had therefore to be rejected.
- (60) The Norwegian Seafood Federation and Association contested that production volume of trout would have increased or would increase further in future claiming that the total biomass and the number of fish in April 2008 was significantly lower when compared to April 2007. These allegations could however not be verified and had to be rejected.
- (61) On the basis of the above, it is concluded that production volumes of LRT in Norway are likely to increase in the foreseeable future.

### 4. Evolution of the Community consumption

- (62) It is noted that this investigation was limited to dumping and therefore precise data on the Community industry's production and sales of LRT on the Community market during the RIP were not available.
- (63) However, several sources confirmed that worldwide demand for fish products including LRT is expected to increase by 5 % on a yearly basis in the future. This expanding trend is also likely to be observed in the Community even though demand in the Community is not expected to absorb the entirety of the additional LRT volumes produced in Norway.

- (64) Subsequent to disclosure, the Finnish Fish Farmers' Association ('FFFA') objected to the above conclusion stating that, even if worldwide fish demand is expected to increase, there would be no additional demand for Norwegian LRT in the Community. FFFA further claimed that any additional demand would be directed to new and exotic fish species rather than trout. It should be noted that as mentioned in recital 63 above, several sources indicated an increase in consumption of LRT, which was also confirmed by other interested parties representing farmers located in several Member States but also in Norway. As FFFA did not submit any information or evidence which could substantiate its allegations, they had to be rejected.

#### 5. Evolution of export prices and volumes to third country markets

- (65) The investigation showed that Norway's main export markets are Russia and to a lesser extent Japan, where, in total, about 57 % of the Norwegian exports of LRT were destined, while only 13 % of Norwegian exports were destined to the Community market in 2007. Around 14 % of total Norwegian exports of LRT were also destined to Ukraine and Taiwan in the same year.
- (66) Norwegian exports on the world market are in competition with Chilean exports; Chile being the biggest global player, its production and export volumes exceed those of Norway.
- (67) However, following increasing demand, Norwegian exports to Russia but also to Ukraine have increased significantly during the past years; i.e. from 8 600 tonnes in 2002 to 31 500 tonnes in total in 2007. This trend is confirmed by recent statistics, which show that significant additional volumes of Chilean and Norwegian LRT are exported to Russia.
- (68) As stated in recital 65, the investigation showed that Russia has become the main export market for Norwegian producers. On top of the significant export volume increase to Russia, a switch from sales of frozen trout to fresh trout could also be observed in 2007. This switch shows the will by Norwegian producers to satisfy the needs of their Russian customers who prefer fresh products, thus indicating the strong interest of the Norwegian exporting producers in the booming Russian market.
- (69) Norwegian exports to Japan show a downward trend between 2006 and 2007, i.e. they decreased by 39 % from 10 877 to 6 661 tonnes. As in the case of Russia, Norwegian imports are in competition with

Chilean imports on the Japanese market. Chile was able to increase significantly its export volumes to Japan. However, in order to draw more definitive conclusions a wider time-span should be looked at. On the basis of the data available to the Commission services, such conclusion could however not be drawn.

- (70) Norwegian export prices were found to be higher to third country markets than to the Community (on average by 8,6 %) during the RIP. However, statistics referring to the period after the RIP show a decreasing price trend also in Norway's traditional export markets. Average export prices from Norway to Russia have fluctuated between 2006 and 2007 from NOK 34,70 per kg to NOK 24,22 per kg, which is explained to a great extent by the switch from frozen trout to fresh trout, which was less expensive, but also by the international competition. Likewise, export prices to Japan moved from an average NOK 33,26 per kg in 2006 to NOK 29,79 per kg. Despite this decrease, export prices to the EC in 2007 were still on average 4 % below the export prices to Japan and Russia. This trend is also confirmed for the beginning of 2008.
- (71) In a situation of global increasing demand, given the attractiveness (higher prices) of the main expanding market (Russia) and given the steady increasing demand of other markets such as Ukraine and Far East countries where exports of LRT originating in Norway have been increasing over the past years, it is likely that supplementary volumes of LRT will be mostly channelled to and absorbed by these markets.
- (72) Subsequent to disclosure the CI claimed that there are high stock levels of frozen LRT in Norway which should be taken into consideration in the analysis of the likely development of export volumes into the Community. However, the CI did not submit any evidence pointing to the existence of high stock levels. This claim was therefore considered as speculative. It is also noted that verification visits took place at the premises of the largest exporting producers of LRT in Norway and that no such high stock levels could be found. This claim was therefore rejected.
- (73) The CI further claimed the existence of increasing Russian production of LRT and the likely introduction of additional customs duties by the Russian authorities on Norwegian LRT to protect the Russian LRT production. Other LRT producers claimed that Norwegian LRT producers were dependent on the Russian market and that, should market access to Russia be limited due to the unpredictability of this market, significant volumes of LRT would be directed to the Community.

- (74) Likewise, these allegations were not supported by any evidence and were considered purely speculative. Thus, there were no reasons to assume that the currently expanding Russian market would limit access to Norwegian exports. It is also noted that, as mentioned above in recital 65, other third country markets such as Ukraine and the Far East are also expanding and that exports from Norway have indeed increased to these countries. The argument that Norway depends solely on exports to Russia had therefore to be rejected.

#### 6. Evolution of export prices and volumes to the Community

- (75) Price data available on export sales to the Community have shown that between 2006 and 2007 the average export prices have moved from an average of EUR 4,02 per kg in 2006 to an average EUR 2,87 per kg in 2007. However, since the last quarter of 2007 up to the beginning of 2008, statistics show that this trend stopped and that prices have stabilised.
- (76) As the above analysis shows in recital 71, in a situation of growing markets, it is unlikely that the increased production volume of LRT in Norway will be fully directed to the Community should measures be allowed to lapse. Indeed, demand is increasing worldwide and Norwegian exports are already well established in several third country markets and are expected to increase further. Despite the competition with Chilean exports, and although in relative terms Norway has lost market shares to Chile in some markets, its exports to most of these countries in absolute terms have increased and are expected to increase further given the world market situation.
- (77) With regard to the Community market, as mentioned above in recital 63, consumption for LRT is likely to increase and thus the Community market will be able to absorb increased import quantities without necessarily experiencing significant price pressure. It is also noted that the competition between Norwegian and Chilean imports is not only strong in other third country markets, but also in the Community market. There are therefore no clear indications that import volumes from Norway into the Community will indeed increase significantly should measures be allowed to lapse.
- (78) Given the expected increase in consumption, and the situation in the world market as described above, it cannot be concluded that there is a risk of oversupply in the Community market with consequent significant price drops.
- (79) Therefore, it was concluded that the situation as it was during the RIP with regard to the export prices and production volume is of a lasting nature.
- (80) Subsequent to disclosure, the CI claimed that export prices to Finland had dropped significantly during and after the RIP and that export prices of LRT to Finland had been below the cost of production since July 2007.
- (81) It should first be noted that the costs of Norwegian-produced LRT as estimated by the CI were overstated and did not correspond to the actual verified farming and production cost of the investigated companies. As far as the level of export prices is concerned and although Finland imports a significant part of Norway's total exports to the Community, significant quantities are also exported to Sweden and Denmark where the average export prices were higher. Since an evaluation has to be done on Community-wide basis, average export prices to all countries in the Community have to be taken into consideration. On this basis, the above conclusion in recital 75, i.e. that export prices to the Community, as a whole, have stabilised at the beginning of 2008 is therefore confirmed.

#### 7. Conclusion

- (82) The investigation has shown that the dumping margins were found to be *de minimis*.
- (83) The investigation has also shown that the production capacity for the product concerned in Norway will likely increase. However, the investigation further revealed that although somewhat increased quantities may be directed to the Community, due to an expected increase in consumption, the increased production volume will likely be absorbed in a large part by other third country markets. Consumption will also very likely increase in the Community market which will be able to absorb the potential increase in imports and therefore no significant oversupply is expected.
- (84) Additionally, although prices in the Community showed a decreasing trend, this trend is not confirmed after the RIP, where prices have stabilised. On the basis of the above, i.e. increasing consumption and no likely risk of oversupply, the price pressure in the Community is not expected to increase.
- (85) It is therefore concluded that the circumstances on the basis of which the dumping margins were calculated during the RIP are of a lasting nature.
- (86) The current interim review should therefore be terminated and the definitive anti-dumping measures should be repealed.

**F. DISCLOSURE**

- (87) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the present interim review. All parties were given an opportunity to comment. Their comments were taken into account where warranted and substantiated by evidence,

HAS ADOPTED THIS REGULATION:

*Sole Article*

The partial interim review of the anti-dumping measures applicable to imports of large rainbow trout (*Oncorhynchus mykiss*) whether fresh, chilled or frozen, whether in the form of whole fish (with heads and gills on, gutted, weighing more than 1,2 kg each or with heads off, gilled and gutted, weighing more than 1 kg each), or in the form of fillets (weighing over 0,4 kg each), originating in Norway, currently classifiable within CN codes 0302 11 20, 0303 21 20, 0304 19 15 and 0304 29 15, initiated pursuant to Article 11(3) of Council Regulation (EC) No 384/96, is hereby terminated and the measures in force on imports originating in Norway repealed.

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, 7 August 2008.

*For the Council*

*The President*

B. KOUCHNER

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**COMMISSION REGULATION (EC) No 806/2008****of 12 August 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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) <sup>(1)</sup>,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector <sup>(2)</sup>, and in particular Article 138(1) thereof,

Whereas:

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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 13 August 2008.

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

Done at Brussels, 12 August 2008.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

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<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 510/2008 (OJ L 149, 7.6.2008, p. 61).

<sup>(2)</sup> OJ L 350, 31.12.2007, p. 1. Regulation as last amended by Regulation (EC) No 590/2008 (OJ L 163, 24.6.2008, p. 24).

## ANNEX

**Standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)

| CN code    | Third country code <sup>(1)</sup> | Standard import value |
|------------|-----------------------------------|-----------------------|
| 0702 00 00 | MK                                | 34,0                  |
|            | XS                                | 27,8                  |
|            | ZZ                                | 30,9                  |
| 0707 00 05 | TR                                | 89,6                  |
|            | ZZ                                | 89,6                  |
| 0709 90 70 | TR                                | 92,6                  |
|            | ZZ                                | 92,6                  |
| 0805 50 10 | AR                                | 69,2                  |
|            | CL                                | 63,1                  |
|            | UY                                | 60,3                  |
|            | ZA                                | 93,3                  |
|            | ZZ                                | 71,5                  |
| 0806 10 10 | CL                                | 82,1                  |
|            | EG                                | 146,8                 |
|            | IL                                | 157,1                 |
|            | MK                                | 68,7                  |
|            | TR                                | 119,6                 |
|            | ZZ                                | 114,9                 |
| 0808 10 80 | AR                                | 85,0                  |
|            | BR                                | 90,3                  |
|            | CL                                | 91,2                  |
|            | CN                                | 80,2                  |
|            | NZ                                | 114,8                 |
|            | US                                | 97,7                  |
|            | UY                                | 148,0                 |
|            | ZA                                | 85,2                  |
| 0808 20 50 | ZZ                                | 99,1                  |
|            | AR                                | 75,4                  |
|            | CL                                | 83,0                  |
|            | TR                                | 159,7                 |
|            | ZA                                | 95,7                  |
|            | ZZ                                | 103,5                 |
| 0809 30    | TR                                | 153,0                 |
|            | ZZ                                | 153,0                 |
| 0809 40 05 | BA                                | 66,2                  |
|            | IL                                | 138,3                 |
|            | MK                                | 59,0                  |
|            | TR                                | 120,2                 |
|            | XS                                | 62,1                  |
|            | ZZ                                | 89,2                  |

<sup>(1)</sup> Nomenclature of countries laid down 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 807/2008****of 12 August 2008****amending Regulation (EC) No 1913/2006 laying down detailed rules for the application of the agrimonetary system for the euro in agriculture, as regards the operative events in the wine sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro <sup>(1)</sup>, and in particular Article 9 thereof,

Whereas:

- (1) Article 4 of Commission Regulation (EC) No 1913/2006 of 20 December 2006 laying down detailed rules for the application of the agrimonetary system for the euro in agriculture and amending certain Regulations <sup>(2)</sup> determines rules concerning the operative events for the exchange rate to be used for certain prices, premiums and aids in the wine sector.
- (2) The common organisation of the market in wine has been amended. Council Regulation (EC) No 479/2008 <sup>(3)</sup> has modified the previous regime for the wine sector and provides for new measures, repeals or amends some others.
- (3) In the case of the supports, aids and premiums under the new regime for wine, the operative event for the exchange rate must be linked, depending on the case, to the starting date of the wine year, the application of specific contracts or the completion of certain operations such as the enrichment or processing of wine products. The operative event to be taken into account should therefore be specified for each situation.
- (4) Regulation (EC) No 1913/2006 should therefore be amended accordingly.
- (5) The operative events for the exchange rates must be laid down in close connection with the different measures within the wine regime and should be applicable from the same date as the relevant measure. Article 129 of Regulation (EC) No 479/2008 provides for different dates concerning the applicability of those measures. As a consequence, this Regulation should apply from

1 August 2008, except for the operative event related to the grubbing-up premium which shall apply from 30 June 2008.

- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

*Article 1*

Article 4 of Regulation (EC) No 1913/2006 is replaced by the following:

*'Article 4*

1. The operative event for the exchange rate shall be the first day of the wine year in which the support is granted for the following:

- (a) restructuring and conversion of vineyards referred to in Article 11 of Regulation (EC) No 479/2008;
- (b) setting-up of mutual funds referred to in Article 13 of Regulation (EC) No 479/2008;
- (c) harvest insurance referred to in Article 14 of Regulation (EC) No 479/2008.

2. For the aids paid for the voluntary or obligatory distillation of by-products of wine-making, referred to in Article 16 of Regulation (EC) No 479/2008, the operative event for the exchange rate shall be the first day of the wine year in which the by-product is delivered.

3. The operative event for the exchange rate shall be the first day of the month in which the first delivery of wine is carried out under a contract for the following:

- (a) support granted for potable alcohol distillation referred to in Article 17 of Regulation (EC) No 479/2008;
- (b) support granted for crisis distillation referred to in Article 18 of Regulation (EC) No 479/2008.

<sup>(1)</sup> OJ L 349, 24.12.1998, p. 1.

<sup>(2)</sup> OJ L 365, 21.12.2006, p. 52. Regulation as last amended by Regulation (EC) No 507/2008 (OJ L 149, 7.6.2008, p. 38).

<sup>(3)</sup> OJ L 148, 6.6.2008, p. 1.

4. For the support granted for the use of concentrated grape musts referred to in Article 19 of Regulation (EC) No 479/2008, the operative event for the exchange rate shall be the first day of the month in which the first enrichment is carried out by a given producer.

5. For the premium granted in return for grubbing up vines referred to in Article 98 of Regulation (EC) No 479/2008, the operative event for the exchange rate shall be 1 July preceding the wine year in which the application for payment is accepted.'

#### *Article 2*

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

It shall apply from 1 August 2008.

However, Article 4(5) of Regulation (EC) No 1913/2006 shall apply as from 30 June 2008.

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

Done at Brussels, 12 August 2008.

*For the Commission*

Mariann FISCHER BOEL

*Member of the Commission*

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**COMMISSION REGULATION (EC) No 808/2008****of 11 August 2008****establishing a prohibition of fishing for megrims in EC waters of IIa and IV by vessels flying the flag of Germany**

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 <sup>(1)</sup>, 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 <sup>(2)</sup>, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 40/2008 of 16 January 2008 fixing for 2008 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 <sup>(3)</sup>, lays down quotas for 2008.
- (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 2008.

- (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 2008 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, 11 August 2008.

*For the Commission*

Fokion FOTIADIS

*Director-General for Maritime Affairs and Fisheries*

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

<sup>(2)</sup> OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1098/2007 (OJ L 248, 22.9.2007, p. 1).

<sup>(3)</sup> OJ L 19, 23.1.2008, p. 1. Regulation as last amended by Regulation (EC) No 718/2008 (OJ L 198, 26.7.2008, p. 8).

## ANNEX

|              |                             |
|--------------|-----------------------------|
| No           | 25/T&Q                      |
| Member State | GERMANY                     |
| Stock        | LEZ/2AC4-C                  |
| Species      | Megrim (Lepidorhombus spp.) |
| Zone         | EC waters of IIa and IV     |
| Date         | 27.6.2008                   |

## II

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

## DECISIONS

## COMMISSION

## COMMISSION DECISION

of 8 August 2008

**amending Decision 2005/294/EC concerning a request for derogation under point 2(b) of Annex III to and Article 9 of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources**

(notified under document number C(2008) 4252)

(Only the Danish text is authentic)

(2008/664/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

the present case, long growing seasons and crops with high nitrogen uptake.

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) If the amount of manure that a Member State intends to apply per hectare each year is different from the one specified in the first sentence of the second subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC and in point (a) thereof, that amount has to be fixed so as not to prejudice the achievement of the objectives specified in Article 1 of that Directive and has to be justified on the basis of objective criteria, such as, in

- (2) On 18 November 2002, the Commission adopted Decision 2002/915/EC<sup>(2)</sup> allowing the application of livestock manure containing up to 230 kg of nitrogen per hectare per year on specific cattle holdings within the framework of the Danish action programme 1999-2003. The derogation was extended by Commission Decision 2005/294/EC<sup>(3)</sup> in connection with the Danish action programme 2004-2007.

- (3) On 17 April 2008, Denmark requested a new extension of the derogation. The request was accompanied by a detailed technical motivation.

- (4) Danish legislation transposing Directive 91/676/EEC can be considered to be in compliance with Directive and its provisions apply equally to the derogation.

- (5) In December 2003 Denmark completed the evaluation of its Second Action Plan on aquatic environment which indicated the achievement of the reduction target for nitrate leaching of 48 % in the period 1985-2003.

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

<sup>(2)</sup> OJ L 319, 23.11.2002, p. 24

<sup>(3)</sup> OJ L 94, 13.4.2005, p. 34.

- (6) The Danish Parliamentary agreement on the Third Action Plan for the Aquatic Environment 2005-2015 sets the objectives for a further reduction of nitrate leaching by 13 % and for a reduction of phosphate surplus by 50 % in the period 2005-2015. In 2007 the Government Platform agreed on the development of a Fourth Action Plan for the Aquatic Environment by 2009 that will serve as a health check of the Third Action Plan and will include adjustments to national legislation in order to ensure achievement of the objectives by 2015.
- (7) Denmark has established an action programme for the period 2008-2011 in conformity with Article 5 of Directive 91/676/EEC. The measures of the action programme form an integral part of the Third Action Plan for the Aquatic Environment.
- (8) Results of monitoring and controls show that, in period 2005-2006, 1 779 cattle holdings, 220 839 livestock units and 115 336 hectare, corresponding respectively to 3,4 %, 10,3 % and 4,2 % of the total in Denmark were encompassed by the derogation.
- (9) Calculations on nitrate leaching based on survey and nutrient analysis in agricultural catchments, show that, in the period 1990-2006, nitrate leaching has been reduced by 40 % in loamy soils and by 49 % in sandy soils. Since 2002-2003 leaching rates are almost constant.
- (10) Trend analysis of measured nitrate concentration in water leaving the root zones over the period 1990-2006, shows a reduction of 29 % and 45 % respectively for loamy and sandy soils. In 2006, nitrate average concentration in upper groundwater of the reference catchments was below 50 mg/l, both for sandy and loamy soils. Nitrate concentration in streams in the agricultural reference catchments decreased by 31 % in the period 1990-2006, with nitrate average concentrations lower than 20 mg/l for the sandy soils and around 30 mg/l for the loamy soils.
- (11) The Commission, after examination of Denmark's request and in the light of the experience gained from the derogation as provided in Decisions 2002/915/EC and

2005/294/EC considers that the amount of manure envisaged by Denmark, 230 kg of nitrogen per hectare per year, will not prejudice the achievement of the objectives of Directive 91/676/EEC, if the same strict conditions established by Decision 2005/294/EC are met.

- (12) Decision 2005/294/EC expired on 31 July 2008. For the purpose of ensuring that the cattle farmers concerned may continue to benefit from the derogation, it is appropriate to extend the validity of Decision 2005/294/EC. The reporting obligations set by Decision 2005/294/EC should also be adapted.
- (13) The articles provided for in this Decision are in accordance with the opinion of the Nitrates Committee set up pursuant to Article 9 of Directive 91/676/EEC,

HAS ADOPTED THIS DECISION:

#### *Article 1*

Decision 2005/294/EC is amended as follows:

1. In Article 8, paragraph 1 is replaced by the following:

‘1. The results of the monitoring shall be transmitted every year to the Commission, with a concise report on evaluation practice (controls at cattle farm level) and water quality evolution (based on root zone leaching monitoring, surface/ground water quality and model-based calculations).’

2. In Article 9, ‘31 July 2008’ is replaced by ‘31 July 2012’.

#### *Article 2*

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 8 August 2008.

*For the Commission*  
Androulla VASSILIOU  
Member of the Commission

## III

(Acts adopted under the EU Treaty)

## ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

## COUNCIL DECISION 2008/665/CFSP

of 9 June 2008

**concerning the conclusion of the Agreement between the European Union and the Republic of Albania on the participation of the Republic of Albania in the European Union military operation in the Republic of Chad and in the Central African Republic (Operation EUFOR Tchad/RCA)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 24 thereof,

Having regard to the recommendation from the Presidency,

Whereas:

- (1) On 15 October 2007, the Council adopted Joint Action 2007/677/CFSP on the European Union military operation in the Republic of Chad and in the Central African Republic <sup>(1)</sup> (Operation EUFOR Tchad/RCA).
- (2) Article 10(3) of that Joint Action provides that detailed arrangements regarding the participation of third States are to be the subject of an agreement, in accordance with Article 24 of the Treaty.
- (3) Following authorisation by the Council on 13 September 2004, the Presidency, assisted by the Secretary-General of the Council of the European Union/High Representative for the Common Foreign and Security Policy, negotiated an Agreement between the European Union and the Republic of Albania on the participation of the Republic of Albania in Operation EUFOR Tchad/RCA, hereinafter referred to as 'the Agreement'.
- (4) The Agreement should be approved on behalf of the European Union,

HAS DECIDED AS FOLLOWS:

*Article 1*

The Agreement between the European Union and the Republic of Albania on the participation of the Republic of Albania in the European Union military operation in the Republic of Chad and in the Central African Republic (EUFOR Tchad/RCA) is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

*Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the European Union.

*Article 3*

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

*Article 4*

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

Done at Luxembourg, 9 June 2008.

*For the Council*

*The President*

M. COTMAN

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<sup>(1)</sup> OJ L 279, 23.10.2007, p. 21.

**AGREEMENT****between the European Union and the Republic of Albania on the participation of the Republic of Albania in the European Union military operation in the Republic of Chad and in the Central African Republic (Operation EUFOR Tchad/RCA)**

THE EUROPEAN UNION (EU),

of the one part, and

THE REPUBLIC OF ALBANIA,

of the other part,

hereinafter referred to as the 'Parties',

TAKING INTO ACCOUNT:

- the adoption by the Council of the European Union of Joint Action 2007/677/CFSP of 15 October 2007 on the European Union military operation in the Republic of Chad and in the Central African Republic (Operation EUFOR Tchad/RCA),
- the invitation to the Republic of Albania to participate in the EU-led operation,
- the successful completion of the Force Generation Process and the recommendation by the EU Operation Commander and the EU Military Committee to agree on the participation of the Republic of Albania's forces in the EU-led operation,
- the Political and Security Committee Decision CHAD/1/2008 of 13 February 2008 on the acceptance of third States' contributions to the European Union military operation in the Republic of Chad and in the Central African Republic <sup>(1)</sup>,
- the Political and Security Committee Decision CHAD/2/2008 of 18 March 2008 on the setting up of the Committee of contributors for the European Union military operation in the Republic of Chad and in the Central African Republic <sup>(2)</sup>,

HAVE AGREED AS FOLLOWS:

*Article 1*

**Participation in the operation**

1. The Republic of Albania shall associate itself with Joint Action 2007/677/CFSP of 15 October 2007 on the European Union military operation in the Republic of Chad and in the Central African Republic (Operation EUFOR Tchad/RCA) and with any Joint Action or Decision by which the Council of the European Union decides to extend the EU military crisis management operation, in accordance with the provisions of this Agreement and any required implementing arrangements.

2. The contribution by the Republic of Albania to the EU military crisis management operation shall be without prejudice to the decision-making autonomy of the European Union.

3. The Republic of Albania shall ensure that its forces and personnel participating in the EU military crisis management operation undertake their mission in accordance with:

- Joint Action 2007/677/CFSP and possible subsequent amendments,
- the Operation Plan,
- any implementing measures.

<sup>(1)</sup> OJ L 56, 29.2.2008, p. 64. Decision as amended by Decision CHAD/3/2008 (OJ L 144, 4.6.2008, p. 82).

<sup>(2)</sup> OJ L 107, 17.4.2008, p. 60. Decision as amended by Decision CHAD/3/2008.

4. Forces and personnel seconded to the operation by the Republic of Albania shall carry out their duties and conduct themselves solely with the interest of the EU military crisis management operation in mind.

5. The Republic of Albania shall inform the EU Operation Commander in due time of any change in its participation in the operation.

#### *Article 2*

##### **Status of forces**

1. The status of the forces and personnel contributed to the EU military crisis management operation by the Republic of Albania shall be governed by the provisions on the status of forces, if available, agreed between the European Union and the States concerned.

2. The status of the forces and personnel contributed to headquarters or command elements located outside the Republic of Chad and the Central African Republic shall be governed by arrangements between the headquarters and command elements concerned and the Republic of Albania.

3. Without prejudice to the provisions on the status of forces referred to in paragraph 1, the Republic of Albania shall exercise jurisdiction over its forces and personnel participating in the EU military crisis management operation.

4. The Republic of Albania shall be responsible for answering any claims linked to participation in the EU military crisis management operation, from or concerning any of its forces and personnel. The Republic of Albania shall be responsible for bringing any action, in particular legal or disciplinary, against any of its forces and personnel, in accordance with its laws and regulations.

5. The Republic of Albania undertakes to make a declaration regarding the waiver of claims against any State participating in the EU military crisis management operation, and to do so when signing this Agreement.

6. The European Union undertakes to ensure that Member States make a declaration regarding the waiver of claims, for the participation of the Republic of Albania in the EU military crisis management operation, and to do so when signing this Agreement.

#### *Article 3*

##### **Classified information**

1. The Republic of Albania shall take appropriate measures to ensure that EU classified information is protected in

accordance with the security regulations of the Council of the European Union, as set out in the Annex to Council Decision 2001/264/EC of 19 March 2001 <sup>(1)</sup>, and in accordance with further guidance issued by competent authorities, including the EU Operation Commander.

2. Where the European Union and the Republic of Albania have concluded an agreement on security procedures for the exchange of classified information, the provisions of that agreement shall apply in the context of the EU military crisis management operation.

#### *Article 4*

##### **Chain of command**

1. All forces and personnel participating in the EU military crisis management operation shall remain under the full command of their national authorities.

2. National authorities shall transfer the Operational and Tactical command and/or control of their forces and personnel to the EU Operation Commander. The EU Operation Commander shall be entitled to delegate his authority.

3. The Republic of Albania shall have the same rights and obligations in terms of the day-to-day management of the operation as participating EU Member States.

4. The EU Operation Commander may at any time, following consultations with the Republic of Albania, request the withdrawal of the Republic of Albania's contribution.

5. A Senior Military Representative (hereinafter referred to as SMR) shall be appointed by the Republic of Albania to represent its national contingent in the EU military crisis management operation. The SMR shall consult with the EU Force Commander on all matters affecting the operation and shall be responsible for day-to-day contingent discipline.

#### *Article 5*

##### **Financial aspects**

1. The Republic of Albania shall assume all the costs associated with its participation in the operation unless the costs are subject to common funding as provided for in the legal instruments referred to in Article 1(1) of this Agreement and in Council Decision 2007/384/CFSP of 14 May 2007 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) <sup>(2)</sup>.

<sup>(1)</sup> OJ L 101, 11.4.2001, p. 1. Decision as last amended by Decision 2007/438/EC (OJ L 164, 26.6.2007, p. 24).

<sup>(2)</sup> OJ L 152, 13.6.2007, p. 14.

2. In the event of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, the Republic of Albania shall, when its liability has been established, pay compensation under the conditions laid down in the provisions on the status of forces, if available, as referred to in Article 2(1) of this Agreement.

#### *Article 6*

##### **Arrangements to implement the Agreement**

Any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the Secretary-General of the Council of the European Union/High Representative for the Common Foreign and Security Policy and the appropriate authorities of the Republic of Albania.

#### *Article 7*

##### **Non-compliance**

Should one of the Parties fail to comply with its obligations as laid down in Articles 1 to 6, the other Party shall have the right to terminate this Agreement by serving a notice of one month.

#### *Article 8*

##### **Dispute settlement**

Disputes concerning the interpretation or application of this Agreement shall be settled by diplomatic means between the Parties.

#### *Article 9*

##### **Entry into force**

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal procedures necessary for this purpose.

2. This Agreement shall be applied provisionally from the date of signature.

3. This Agreement shall remain in force for the duration of the Republic of Albania's contribution to the operation.

Done at Paris, on 13 July 2008 in the English language in four copies.

*For the European Union*

*For the Republic of Albania*

## DECLARATIONS REFERRED TO IN ARTICLE 2(5) AND (6) OF THE AGREEMENT

Declaration by the EU Member States:

The EU Member States applying Joint Action 2007/677/CFSP of 15 October 2007 on the European Union military operation in the Republic of Chad and in the Central African Republic (Operation EUFOR Tchad/RCA) will endeavour, insofar as their internal legal systems so permit, to waive as far as possible claims against the Republic of Albania for injury, death of their personnel, or damage to, or loss of, any assets owned by themselves and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel from the Republic of Albania in the execution of their duties in connection with the EU crisis management operation, except in the event of gross negligence or wilful misconduct, or,
- arose from the use of any assets owned by the Republic of Albania, provided that the assets were used in connection with the operation and except in the event of gross negligence or wilful misconduct of EU crisis management operation personnel from the Republic of Albania when using those assets.'

Declaration by the Republic of Albania:

The Republic of Albania, associating itself with Joint Action 2007/677/CFSP of 15 October 2007 on the European Union military operation in the Republic of Chad and in the Central African Republic (Operation EUFOR Tchad/RCA), will endeavour, insofar as its internal legal system so permits, to waive as far as possible claims against any other State participating in the EU crisis management operation for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel in the execution of their duties in connection with the EU crisis management operation, except in the event of gross negligence or wilful misconduct, or,
  - arose from the use of any assets owned by States participating in the EU crisis management operation, provided that the assets were used in connection with the operation and except in the event of gross negligence or wilful misconduct of the EU crisis management operation personnel when using those assets.'
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**COUNCIL DECISION 2008/666/CFSP****of 24 July 2008****concerning the conclusion of an Agreement between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO**

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty on European Union, and in particular Article 24 thereof,

Having regard to the recommendation from the Presidency,

Whereas:

- (1) On 4 February 2008, the Council adopted Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO) <sup>(1)</sup>.
- (2) Article 13(4) of that Joint Action provides that detailed arrangements regarding the participation of third States shall be laid down in an agreement to be concluded in accordance with Article 24 of the Treaty on European Union.
- (3) On 13 December 2004, the Council authorised the Presidency, assisted where necessary by the Secretary-General/High Representative, in case of future EU civilian crisis management operations, to open negotiations with third States with a view to concluding an agreement on the basis of a model agreement between the European Union and a third State on the participation of a third State in a European Union civilian crisis management operation. On that basis, the Presidency negotiated an Agreement with the Swiss Confederation on the participation of the Swiss Confederation in the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO.
- (4) The Agreement should be approved,

*Article 1*

The Agreement between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

*Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the European Union.

*Article 3*

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

*Article 4*

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

Done at Brussels, 24 July 2008.

*For the Council*  
*The President*  
B. HORTEFEUX

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<sup>(1)</sup> OJ L 42, 16.2.2008, p. 92.

**AGREEMENT****between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO**

THE EUROPEAN UNION (EU),

of the one part, and

THE SWISS CONFEDERATION,

of the other part,

hereinafter referred to as the 'Parties',

TAKING INTO ACCOUNT:

- the adoption by the Council of the European Union of Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO,
- the invitation to the Swiss Confederation to participate in the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO,
- the successful completion of the Force Generation process and the recommendation by the EU Civilian Operation Commander and the Committee for Civilian Aspects of Crisis Management to agree on the participation of the Swiss Confederation in the EU-led operation,
- the Political and Security Committee Decision EULEX/2/2008 of 22 April 2008 on the acceptance of the Swiss Confederation's contribution to the EU Rule of Law Mission in Kosovo, EULEX KOSOVO,

HAVE AGREED AS FOLLOWS:

*Article 1*

**Participation in the operation**

1. The Swiss Confederation shall associate itself with the Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (hereinafter 'EULEX KOSOVO'), and with any Joint Action or Decision by which the Council of the European Union decides to extend EULEX KOSOVO, in accordance with the provisions of this Agreement and any required implementing arrangements.

2. The contribution of the Swiss Confederation to EULEX KOSOVO is without prejudice to the decision-making autonomy of the European Union.

3. The Swiss Confederation shall ensure that its personnel participating in the EULEX KOSOVO undertake their mission in conformity with:

- the Joint Action 2008/124/CFSP on European Union Rule of Law Mission in Kosovo, EULEX KOSOVO and possible subsequent amendments,

- the Operation Plan,

- implementing measures.

4. Personnel seconded to EULEX KOSOVO by the Swiss Confederation shall carry out their duties and conduct themselves solely with the interest of EULEX KOSOVO in mind.

5. The Swiss Confederation shall inform in due time the Civilian Operation Commander and the Head of Mission of EULEX KOSOVO (hereinafter 'Head of Mission') of any change to its contribution to EULEX KOSOVO.

6. Personnel seconded to EULEX KOSOVO shall undergo a medical examination, vaccination and be certified medically fit for duty by a competent authority from the Swiss Confederation. Personnel seconded to EULEX KOSOVO shall produce a copy of this certification.

*Article 2***Status of personnel**

1. The status of the personnel contributed to EULEX KOSOVO by the Swiss Confederation shall be governed by the provisions on the status of mission, as provided by Article 10(1) of the Joint Action 2008/124/CFSP of 4 February on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO.

2. The status of personnel contributed to headquarters or command elements located outside Kosovo, shall be governed by arrangements between the headquarters and command elements concerned and the Swiss Confederation.

3. Without prejudice to the agreement on the status of mission referred to in paragraph 1 of this Article, if available, the Swiss Confederation shall exercise jurisdiction over its personnel participating in EULEX KOSOVO.

4. The Swiss Confederation shall be responsible for answering any claims, from or concerning any of its personnel, linked to the participation in EULEX KOSOVO. The Swiss Confederation shall be responsible for bringing any action, in particular legal or disciplinary, against any of its personnel, in accordance with its laws and regulations.

5. The Swiss Confederation undertakes to make a declaration as regards the waiver of claims against any State participating in EULEX KOSOVO, and to do so when signing this Agreement. A model for such a declaration is annexed to this Agreement.

6. The European Union Member States undertake to make a declaration as regards the waiver of claims, for the participation of the Swiss Confederation in EULEX KOSOVO, and to do so when signing this Agreement. A model for such a declaration is annexed to this Agreement.

*Article 3***Classified information**

1. The Swiss Confederation shall take appropriate measures to ensure that EU classified information is protected in accordance with the European Union Council's security regulations, contained in Council Decision 2001/264/EC of 19 March 2001, and in accordance with further guidance issued by competent authorities, including the Head of Mission.

2. Where the EU and the Swiss Confederation have concluded an agreement on security procedures for the

exchange of classified information, the provisions of such an agreement shall apply in the context of EULEX KOSOVO.

*Article 4***Chain of command**

1. All personnel participating in EULEX KOSOVO shall remain under the full command of their national authorities.

2. National authorities shall transfer operational control to the Civilian Operations Commander, who shall exercise command and control at the strategic level.

3. The Head of Mission shall assume responsibility and exercise command and control of EULEX KOSOVO at theatre level.

4. The Head of Mission shall exercise command and control over personnel, teams and units from contributing States as assigned by the Civilian Operation Commander together with administrative and logistic responsibility including over assets, resources and information placed at the disposal of EULEX KOSOVO.

5. The Swiss Confederation shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States taking part in the operation, in accordance with the legal instruments referred to in Article 1, paragraph 1, of this Agreement.

6. The Head of Mission shall be responsible for disciplinary control over the personnel of EULEX KOSOVO. Where required, disciplinary action shall be taken by the national authority concerned.

7. A National Contingent Leader (NCL) shall be appointed by the Swiss Confederation to represent its national contingent in EULEX KOSOVO. The NCL shall report to the Head of Mission on national matters and shall be responsible for day-to-day contingent discipline.

8. The decision to end the operation shall be taken by the European Union, following consultation with the Swiss Confederation, provided that the Swiss Confederation is still contributing to EULEX KOSOVO at the date of termination of the operation.

*Article 5***Financial aspects**

1. The Swiss Confederation shall assume all the costs associated with its participation in the operation apart from the costs which are subject to common funding, as set out in the operational budget of the operation.

2. In case of death, injury, loss or damage to natural or legal persons from the territory where the operation is conducted, the Swiss Confederation shall, when its liability has been established, pay compensation under the conditions foreseen in the agreement on the status of mission, if available, as referred to in Article 2(1) of this Agreement.

*Article 6***Arrangements to implement the Agreement**

Any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the Secretary-General of the Council of the European Union/High Representative for the Common Foreign and Security Policy, and the appropriate authorities of the Swiss Confederation.

*Article 7***Non-compliance**

Should one of the Parties fail to comply with its obligations laid down in the previous Articles, the other Party shall have the

right to terminate this Agreement by serving a notice of one month.

*Article 8***Dispute settlement**

Disputes concerning the interpretation or application of this Agreement shall be settled by diplomatic means between the Parties.

*Article 9***Entry into force**

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal procedures necessary for this purpose.

2. This Agreement shall be provisionally applied from the date of signature.

3. This Agreement shall remain in force for the duration of the Swiss Confederation's contribution to the operation.

Done at Brussels, 29 July 2008.

*For the European Union*

*For the Swiss Confederation*

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## ANNEX

**DECLARATIONS****Declaration by the EU Member States**

The EU Member States applying the EU Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, will endeavour, insofar as their internal legal systems so permit, to waive as far as possible claims against the Swiss Confederation for injury, death of their personnel, or damage to, or loss of, any assets owned by themselves and used by EULEX KOSOVO if such injury, death, damage or loss was caused by personnel from the Swiss Confederation in the execution of their duties in connection with EULEX KOSOVO, except in case of gross negligence or wilful misconduct, or arose from the use of any assets owned by the Swiss Confederation, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of the personnel of EULEX KOSOVO from the Swiss Confederation using those assets.

**Declaration by the Swiss Confederation**

As a participant to the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, established by the EU Joint Action 2008/124/CFSP, the Swiss Confederation will endeavour, insofar as its internal legal system so permits, to waive as far as possible claims against any other State participating in EULEX KOSOVO for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by EULEX KOSOVO if such injury, death, damage or loss was caused by personnel in the execution of their duties in connection with EULEX KOSOVO, except in case of gross negligence or wilful misconduct, or arose from the use of any assets owned by States participating in EULEX KOSOVO, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of the personnel of EULEX KOSOVO using those assets.

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