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Legislation

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⁽¹⁾ Text with EEA relevance

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 55/2009

of 22 January 2009

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) ⁽¹⁾,

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 ⁽²⁾, 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 23 January 2009.

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

Done at Brussels, 22 January 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	IL	138,6
	JO	78,3
	MA	45,4
	TN	139,0
	TR	110,6
	ZZ	102,4
0707 00 05	JO	155,5
	MA	116,0
	TR	152,1
	ZZ	141,2
0709 90 70	MA	163,7
	TR	136,6
	ZZ	150,2
0805 10 20	EG	49,7
	IL	56,3
	MA	64,4
	TN	49,3
	TR	55,7
	ZZ	55,1
0805 20 10	MA	83,3
	TR	54,0
	ZZ	68,7
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	63,3
	EG	88,5
	IL	72,4
	JM	105,5
	PK	46,6
	TR	74,1
	ZZ	75,1
0805 50 10	EG	52,5
	MA	67,1
	TR	61,3
	ZZ	60,3
0808 10 80	CN	84,7
	MK	32,6
	TR	67,5
	US	103,4
	ZZ	72,1
0808 20 50	CN	60,8
	TR	97,0
	US	111,8
	ZZ	89,9

⁽¹⁾ 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 56/2009
of 21 January 2009
concerning the classification of certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

This Regulation shall enter into force on the twentieth 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, 21 January 2009.

For the Commission
László KOVÁCS
Member of the Commission

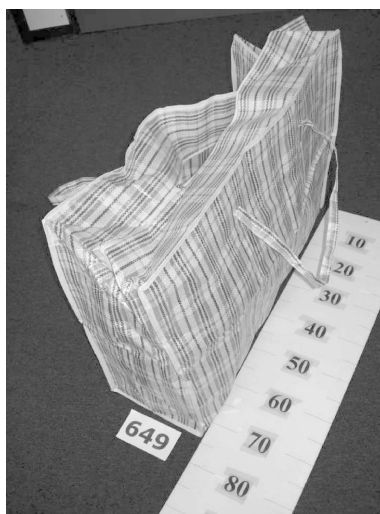
⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

⁽²⁾ OJ L 302, 19.10.1992, p. 1.

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
A bag made of fabric woven from polypropylene strip of less than 5 mm wide, cuboid in shape and measuring approx. 54,5 cm × 74 cm × 25 cm, with two strong handles made of the same material sewn on the two long sides of the bag, each going down to underneath the bottom of the bag. The bag is visibly coated with plastic sheeting on both surfaces, there are no compartments inside, and it can be closed on the top with a zip fastener. The edges are reinforced with a sewn-on band. (container similar to a shopping bag) (See photograph No 649) (*)	4202 92 19	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 2(m) to Chapter 39, Additional Note 1 to Chapter 42 and the wording of CN codes 4202, 4202 92 and 4202 92 19. Due to its cuboid shape typical for shopping bags and the reinforced handles situated in such a way as to be carried by the shopper's hands and due to the fact that the plastic sheeting, the zip fastener, the reinforced border and the strong handles (continuing along the sides of the bag for reinforcing purposes) enable prolonged use, the bag has the objective characteristics of a 'container similar to a shopping bag'. Containers similar to a shopping bag are covered by heading 4202 (see also the Harmonised System (HS) Explanatory Note to heading 4202, first paragraph, which explicitly mentions that this heading covers only the articles specifically named therein and similar containers). Due to the above-mentioned characteristics the article in question is not the kind of container generally used for the packing or conveyance of all kinds of products, therefore classification in heading 3923 is excluded within the meaning of Note 2(m) to Chapter 39 (see also the HS Explanatory Notes to heading 3923, first paragraph, point (a) and second paragraph). Since the outer surface of the article is covered with plastic sheeting visible to the naked eye, it is to be classified as an article with outer surface of plastic sheeting (see Additional Note 1 to Chapter 42). Consequently the article is to be classified under CN Code 4202 92 19.

(*) The photograph is purely for information.



COMMISSION REGULATION (EC) No 57/2009
of 22 January 2009
fixing the export refunds on milk and milk products

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) ⁽¹⁾, and in particular Article 164(2), in conjunction with Article 4, thereof,

Whereas:

- (1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products listed in Part XVI of Annex I to that Regulation and prices for those products on the Community market may be covered by an export refund.
- (2) Given the present situation on the market in milk and milk products, export refunds should be fixed in accordance with the rules and certain criteria provided for in Articles 162, 163, 164, 167, 169 and 170 of Regulation (EC) No 1234/2007.
- (3) Article 164(1) of Regulation (EC) No 1234/2007 provides that export refunds may vary according to destination, especially where the world market situation, the

specific requirements of certain markets or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.

- (4) In accordance with the Memorandum of Understanding between the European Community and the Dominican Republic on import protection for milk powder in the Dominican Republic ⁽²⁾ approved by Council Decision 98/486/EC ⁽³⁾, a certain amount of Community milk products exported to the Dominican Republic can benefit from reduced customs duties. For this reason, export refunds granted to products exported under this scheme should be reduced by a certain percentage.
- (5) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

Export refunds as provided for in Article 164 of Regulation (EC) No 1234/2007 shall be granted on the products and for the amounts set out in the Annex to this Regulation, subject to the conditions provided for in Article 3(2) of Commission Regulation (EC) No 1282/2006 ⁽⁴⁾.

Article 2

This Regulation shall enter into force on 23 January 2009.

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

Done at Brussels, 22 January 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 218, 6.8.1998, p. 46.

⁽³⁾ OJ L 218, 6.8.1998, p. 45.

⁽⁴⁾ OJ L 234, 29.8.2006, p. 4.

ANNEX

Export refunds on milk and milk products applicable from 23 January 2009

Product code	Destination	Unit of measurement	Refunds	Product code	Destination	Unit of measurement	Refunds
0401 30 31 9100	L20	EUR/100 kg	8,60	0402 29 19 9900	L20	EUR/100 kg	26,00
0401 30 31 9400	L20	EUR/100 kg	13,42	0402 29 99 9100	L20	EUR/100 kg	26,15
0401 30 31 9700	L20	EUR/100 kg	14,80	0402 29 99 9500	L20	EUR/100 kg	27,79
0401 30 39 9100	L20	EUR/100 kg	8,60	0402 91 10 9370	L20	EUR/100 kg	2,58
0401 30 39 9400	L20	EUR/100 kg	13,42	0402 91 30 9300	L20	EUR/100 kg	3,05
0401 30 39 9700	L20	EUR/100 kg	14,80	0402 91 99 9000	L20	EUR/100 kg	16,87
0401 30 91 9100	L20	EUR/100 kg	16,87	0402 99 10 9350	L20	EUR/100 kg	6,64
0401 30 99 9100	L20	EUR/100 kg	16,87	0402 99 31 9300	L20	EUR/100 kg	8,60
0401 30 99 9500	L20	EUR/100 kg	24,79	0403 90 11 9000	L20	EUR/100 kg	17,00
0402 10 11 9000	L20 ⁽¹⁾	EUR/100 kg	17,00	0403 90 13 9200	L20	EUR/100 kg	17,00
0402 10 19 9000	L20 ⁽¹⁾	EUR/100 kg	17,00	0403 90 13 9300	L20	EUR/100 kg	23,63
0402 10 99 9000	L20	EUR/100 kg	17,00	0403 90 13 9500	L20	EUR/100 kg	24,53
0402 21 11 9200	L20	EUR/100 kg	17,00	0403 90 13 9900	L20	EUR/100 kg	26,00
0402 21 11 9300	L20	EUR/100 kg	23,63	0403 90 33 9400	L20	EUR/100 kg	23,63
0402 21 11 9500	L20	EUR/100 kg	24,53	0403 90 59 9310	L20	EUR/100 kg	8,60
0402 21 11 9900	L20 ⁽¹⁾	EUR/100 kg	26,00	0403 90 59 9340	L20	EUR/100 kg	13,42
0402 21 17 9000	L20	EUR/100 kg	17,00	0403 90 59 9370	L20	EUR/100 kg	14,80
0402 21 19 9300	L20	EUR/100 kg	23,63	0404 90 21 9120	L20	EUR/100 kg	14,50
0402 21 19 9500	L20	EUR/100 kg	24,53	0404 90 21 9160	L20	EUR/100 kg	17,00
0402 21 19 9900	L20 ⁽¹⁾	EUR/100 kg	26,00	0404 90 23 9120	L20	EUR/100 kg	17,00
0402 21 91 9100	L20	EUR/100 kg	26,15	0404 90 23 9130	L20	EUR/100 kg	23,63
0402 21 91 9200	L20 ⁽¹⁾	EUR/100 kg	26,28	0404 90 23 9140	L20	EUR/100 kg	24,53
0402 21 91 9350	L20	EUR/100 kg	26,53	0404 90 23 9150	L20	EUR/100 kg	26,00
0402 21 99 9100	L20	EUR/100 kg	26,15	0404 90 81 9100	L20	EUR/100 kg	17,00
0402 21 99 9200	L20 ⁽¹⁾	EUR/100 kg	26,28	0404 90 83 9110	L20	EUR/100 kg	17,00
0402 21 99 9300	L20	EUR/100 kg	26,53	0404 90 83 9130	L20	EUR/100 kg	23,63
0402 21 99 9400	L20	EUR/100 kg	27,79	0404 90 83 9150	L20	EUR/100 kg	24,53
0402 21 99 9500	L20	EUR/100 kg	28,23	0404 90 83 9170	L20	EUR/100 kg	26,00
0402 21 99 9600	L20	EUR/100 kg	30,00	0405 10 11 9500	L20	EUR/100 kg	43,90
0402 21 99 9700	L20	EUR/100 kg	30,97	0405 10 11 9700	L20	EUR/100 kg	45,00
0402 29 15 9200	L20	EUR/100 kg	17,00				
0402 29 15 9300	L20	EUR/100 kg	23,63				
0402 29 15 9500	L20	EUR/100 kg	24,53				
0402 29 19 9300	L20	EUR/100 kg	23,63				
0402 29 19 9500	L20	EUR/100 kg	24,53				

Product code	Destination	Unit of measurement	Refunds	Product code	Destination	Unit of measurement	Refunds
0405 10 19 9500	L20	EUR/100 kg	43,90	0406 30 39 9500	L04	EUR/100 kg	4,62
0405 10 19 9700	L20	EUR/100 kg	45,00		L40	EUR/100 kg	5,77
0405 10 30 9100	L20	EUR/100 kg	43,90	0406 30 39 9700	L04	EUR/100 kg	4,96
0405 10 30 9300	L20	EUR/100 kg	45,00		L40	EUR/100 kg	6,20
0405 10 30 9700	L20	EUR/100 kg	45,00	0406 30 39 9930	L04	EUR/100 kg	5,31
0405 10 50 9500	L20	EUR/100 kg	43,90		L40	EUR/100 kg	6,64
0405 10 50 9700	L20	EUR/100 kg	45,00	0406 30 39 9950	L04	EUR/100 kg	5,11
0405 10 90 9000	L20	EUR/100 kg	46,65		L40	EUR/100 kg	6,39
0405 20 90 9500	L20	EUR/100 kg	41,16	0406 40 50 9000	L04	EUR/100 kg	12,47
0405 20 90 9700	L20	EUR/100 kg	42,80		L40	EUR/100 kg	15,59
0405 90 10 9000	L20	EUR/100 kg	54,49	0406 40 90 9000	L04	EUR/100 kg	13,82
0405 90 90 9000	L20	EUR/100 kg	45,00		L40	EUR/100 kg	17,28
0406 10 20 9640	L04	EUR/100 kg	11,78	0406 90 13 9000	L04	EUR/100 kg	17,58
	L40	EUR/100 kg	14,72		L40	EUR/100 kg	21,98
0406 10 20 9650	L04	EUR/100 kg	9,82	0406 90 15 9100	L04	EUR/100 kg	18,17
	L40	EUR/100 kg	12,27		L40	EUR/100 kg	22,71
0406 10 20 9830	L04	EUR/100 kg	7,03	0406 90 17 9100	L04	EUR/100 kg	18,17
	L40	EUR/100 kg	8,79		L40	EUR/100 kg	22,71
0406 10 20 9850	L04	EUR/100 kg	6,85	0406 90 21 9900	L04	EUR/100 kg	17,60
	L40	EUR/100 kg	8,56		L40	EUR/100 kg	22,00
0406 20 90 9913	L04	EUR/100 kg	8,54	0406 90 23 9900	L04	EUR/100 kg	15,93
	L40	EUR/100 kg	10,68		L40	EUR/100 kg	19,91
0406 20 90 9915	L04	EUR/100 kg	11,61	0406 90 25 9900	L04	EUR/100 kg	15,53
	L40	EUR/100 kg	14,51		L40	EUR/100 kg	19,41
0406 20 90 9917	L04	EUR/100 kg	12,34	0406 90 27 9900	L04	EUR/100 kg	14,06
	L40	EUR/100 kg	15,42		L40	EUR/100 kg	17,58
0406 20 90 9919	L04	EUR/100 kg	13,79	0406 90 32 9119	L04	EUR/100 kg	13,02
	L40	EUR/100 kg	17,24		L40	EUR/100 kg	16,28
0406 30 31 9730	L04	EUR/100 kg	5,29	0406 90 35 9190	L04	EUR/100 kg	18,63
	L40	EUR/100 kg	6,61		L40	EUR/100 kg	23,29
0406 30 31 9930	L04	EUR/100 kg	5,69	0406 90 35 9990	L04	EUR/100 kg	18,63
	L40	EUR/100 kg	7,11		L40	EUR/100 kg	23,29
0406 30 31 9950	L04	EUR/100 kg	5,17	0406 90 37 9000	L04	EUR/100 kg	17,58
	L40	EUR/100 kg	6,46		L40	EUR/100 kg	21,98
				0406 90 61 9000	L04	EUR/100 kg	20,31
					L40	EUR/100 kg	25,39

Product code	Destination	Unit of measurement	Refunds	Product code	Destination	Unit of measurement	Refunds
0406 90 63 9100	L04	EUR/100 kg	19,93	0406 90 86 9200	L04	EUR/100 kg	17,30
	L40	EUR/100 kg	24,91		L40	EUR/100 kg	21,63
0406 90 63 9900	L04	EUR/100 kg	19,93	0406 90 86 9400	L04	EUR/100 kg	17,60
	L40	EUR/100 kg	24,91		L40	EUR/100 kg	22,00
0406 90 69 9910	L04	EUR/100 kg	19,56	0406 90 86 9900	L04	EUR/100 kg	18,12
	L40	EUR/100 kg	24,45		L40	EUR/100 kg	22,65
0406 90 73 9900	L04	EUR/100 kg	16,20	0406 90 87 9300	L04	EUR/100 kg	15,89
	L40	EUR/100 kg	20,25		L40	EUR/100 kg	19,86
0406 90 75 9900	L04	EUR/100 kg	16,61	0406 90 87 9400	L04	EUR/100 kg	15,61
	L40	EUR/100 kg	20,76		L40	EUR/100 kg	19,51
0406 90 76 9300	L04	EUR/100 kg	14,65	0406 90 87 9951	L04	EUR/100 kg	16,12
	L40	EUR/100 kg	18,31		L40	EUR/100 kg	20,15
0406 90 76 9400	L04	EUR/100 kg	16,41	0406 90 87 9971	L04	EUR/100 kg	16,12
	L40	EUR/100 kg	20,51		L40	EUR/100 kg	20,15
0406 90 76 9500	L04	EUR/100 kg	15,02	0406 90 87 9973	L04	EUR/100 kg	15,82
	L40	EUR/100 kg	18,77		L40	EUR/100 kg	19,78
0406 90 78 9100	L04	EUR/100 kg	16,53	0406 90 87 9974	L04	EUR/100 kg	16,85
	L40	EUR/100 kg	20,66		L40	EUR/100 kg	21,06
0406 90 78 9300	L04	EUR/100 kg	15,87	0406 90 87 9975	L04	EUR/100 kg	16,50
	L40	EUR/100 kg	19,84		L40	EUR/100 kg	20,63
0406 90 79 9900	L04	EUR/100 kg	13,22	0406 90 87 9979	L04	EUR/100 kg	15,93
	L40	EUR/100 kg	16,53		L40	EUR/100 kg	19,91
0406 90 81 9900	L04	EUR/100 kg	16,41	0406 90 88 9300	L04	EUR/100 kg	13,82
	L40	EUR/100 kg	20,51		L40	EUR/100 kg	17,28
0406 90 85 9930	L04	EUR/100 kg	18,12	0406 90 88 9500	L04	EUR/100 kg	13,52
	L40	EUR/100 kg	22,65		L40	EUR/100 kg	16,90
0406 90 85 9970	L04	EUR/100 kg	16,61				
	L40	EUR/100 kg	20,76				

(¹) As for the relevant products intended for exports to Dominican Republic under the quota 2008/2009 referred to in the Decision 98/486/EC, and complying with the conditions laid down in Chapter III, Section 3 of Regulation (EC) No 1282/2006, the following rates should apply:

- (a) products falling within CN codes 0402 10 11 9000 and 0402 10 19 9000 0,00 EUR/100 kg
- (b) products falling within CN codes 0402 21 11 9900, 0402 21 19 9900, 0402 21 91 9200 and 0402 21 99 9200 0,00 EUR/100 kg

The destinations are defined as follows:

L20: All destinations with the exception of:

- (a) third countries: Andorra, Holy See (Vatican City State), Liechtenstein and the United States of America;
- (b) territories of the EU Member States not forming part of the customs territory of the Community: the Faeroe Islands, Greenland, Heligoland, Ceuta, Melilla, the Communes of Livigno and Campione d'Italia, and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control;
- (c) European territories for whose external relations a Member State is responsible and not forming part of the customs territory of the Community: Gibraltar
- (d) the exports referred to in Article 36(1), Article 44(1) and Article 45(1) of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999, p. 11).

L04: Albania, Bosnia and Herzegovina, Serbia, Kosovo (*), Montenegro and the former Yugoslav Republic of Macedonia.

L40: All destinations with the exception of:

- (a) third countries: L04, Andorra, Iceland, Liechtenstein, Norway, Switzerland, Holy See (Vatican City State), the United States of America, Croatia, Turkey, Australia, Canada, New Zealand and South Africa;
- (b) territories of the EU Member States not forming part of the customs territory of the Community: the Faeroe Islands, Greenland, Heligoland, Ceuta, Melilla, the Communes of Livigno and Campione d'Italia, and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control;
- (c) European territories for whose external relations a Member State is responsible and not forming part of the customs territory of the Community: Gibraltar.
- (d) the exports referred to in Article 36(1), Article 44(1) and Article 45(1) of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999, p. 11).

(*) As defined by United Nations Security Council Resolution 1244 of 10 June 1999.

COMMISSION REGULATION (EC) No 58/2009**of 22 January 2009****fixing the maximum export refund for butter in the framework of the standing invitation to tender provided for in Regulation (EC) No 619/2008**

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) ⁽¹⁾, and in particular Article 164(2), in conjunction with Article 4, thereof,

Whereas:

- (1) Commission Regulation (EC) No 619/2008 of 27 June 2008 opening a standing invitation to tender for export refunds concerning certain milk products ⁽²⁾ provides for a standing invitation to tender procedure.
- (2) Pursuant to Article 6 of Commission Regulation (EC) No 1454/2007 of 10 December 2007 laying down common rules for establishing a tender procedure for fixing export refunds for certain agricultural products ⁽³⁾, and following

an examination of the tenders submitted in response to the invitation to tender, it is appropriate to fix a maximum export refund for the tendering period ending on 20 January 2009.

- (3) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

For the standing invitation to tender opened by Regulation (EC) No 619/2008, for the tendering period ending on 20 January 2009, the maximum amount of refund for the products referred to in Article 1(a) and (b) and in Article 2 of that Regulation shall be as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 23 January 2009.

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

Done at Brussels, 22 January 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 168, 28.6.2008, p. 20.

⁽³⁾ OJ L 325, 11.12.2007, p. 69.

ANNEX

(EUR/100 kg)

Product	Export refund Code	Maximum amount of export refund for exports to the destinations referred to in Article 2 of Regulation (EC) No 619/2008
Butter	ex 0405 10 19 9700	50,00
Butteroil	ex 0405 90 10 9000	58,00

COMMISSION REGULATION (EC) No 59/2009**of 22 January 2009****fixing the maximum export refund for skimmed milk powder in the framework of the standing invitation to tender provided for in Regulation (EC) No 619/2008**

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) ⁽¹⁾, and in particular Article 164(2), in conjunction with Article 4, thereof,

Whereas:

(1) Commission Regulation (EC) No 619/2008 of 27 June 2008 opening a standing invitation to tender for export refunds concerning certain milk products ⁽²⁾ provides for a standing invitation to tender procedure.

(2) Pursuant to Article 6 of Commission Regulation (EC) No 1454/2007 of 10 December 2007 laying down common rules for establishing a tender procedure for fixing export

refunds for certain agricultural products ⁽³⁾ and following an examination of the tenders submitted in response to the invitation to tender, it is appropriate to fix a maximum export refund for the tendering period ending on 20 January 2009.

(3) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

For the standing invitation to tender opened by Regulation (EC) No 619/2008, for the tendering period ending on 20 January 2009, the maximum amount of refund for the products and destinations referred to in Article 1(c) and in Article 2 of that Regulation shall be EUR 20/100 kg.

Article 2

This Regulation shall enter into force on 23 January 2009.

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

Done at Brussels, 22 January 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 168, 28.6.2008, p. 20.

⁽³⁾ OJ L 325, 11.12.2007, p. 69.

COMMISSION REGULATION (EC) No 60/2009
of 22 January 2009
fixing the export refunds on beef and veal

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 ⁽¹⁾, and in particular Article 164(2), final subparagraph, and Article 170 thereof,

Whereas:

(1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products listed in Part XV of Annex I to that Regulation and prices for those products on the Community market may be covered by an export refund.

(2) Given the present situation on the market in beef and veal, export refunds should therefore be set in accordance with the rules and criteria provided for in Articles 162 to 164 and 167 to 170 of Regulation (EC) No 1234/2007.

(3) Article 164(1) of Regulation (EC) No 1234/2007 provides that the refund may vary according to destination, especially where the world market situation, the specific requirements of certain markets, or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.

(4) Refunds should be granted only on products that are allowed to move freely in the Community and that bear the health mark as provided for in Article 5(1)(a) 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 ⁽²⁾. Those products must also satisfy the requirements laid down in Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs ⁽³⁾ and Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ⁽⁴⁾.

(5) The conditions laid down in the third subparagraph of Article 7(2) of Commission Regulation (EC) No 1359/2007 of 21 November 2007 laying down the conditions for granting special export refunds on certain cuts of boned meat of bovine animals ⁽⁵⁾ provide for a reduction of the special refund if the quantity of cuts of boned meat to be exported amounts to less than 95 %, but not less than 85 %, of the total weight of cuts produced by boning.

(6) Commission Regulation (EC) No 1044/2008 ⁽⁶⁾ should therefore be repealed and replaced by a new regulation.

(7) 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

1. Export refunds as provided for in Article 164 of Regulation (EC) No 1234/2007 shall be granted on the products and for the amounts set out in the Annex to this Regulation subject to the conditions provided for in paragraph 2 of this Article.

2. The products eligible for a refund under paragraph 1 must meet the relevant requirements of Regulations (EC) Nos 852/2004 and 853/2004, notably preparation in an approved establishment and compliance with the health marking requirements laid down in Annex I, Section I, Chapter III to Regulation (EC) No 854/2004.

Article 2

In the case referred to in the third subparagraph of Article 7(2) of Regulation (EC) No 1359/2007, the rate of the refund on products falling within product code 0201 30 00 9100 shall be reduced by EUR 7/100 kg.

Article 3

Regulation (EC) No 1044/2008 is hereby repealed.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 139, 30.4.2004, p. 55, as corrected by OJ L 226, 25.6.2004, p. 22.

⁽³⁾ OJ L 139, 30.4.2004, p. 1, as corrected by OJ L 226, 25.6.2004, p. 3.

⁽⁴⁾ OJ L 139, 30.4.2004, p. 206, as corrected by OJ L 226, 25.6.2004, p. 83.

⁽⁵⁾ OJ L 304, 22.11.2007, p. 21.

⁽⁶⁾ OJ L 281, 24.10.2008, p. 10.

Article 4

This Regulation shall enter into force on 23 January 2009.

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

Done at Brussels, 22 January 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

ANNEX

Export refunds on beef and veal applicable from 23 January 2009

Product code	Destination	Unit of measurement	Refunds
0102 10 10 9140	B00	EUR/100 kg live weight	25,9
0102 10 30 9140	B00	EUR/100 kg live weight	25,9
0201 10 00 9110 ⁽¹⁾	B02	EUR/100 kg net weight	36,6
	B03	EUR/100 kg net weight	21,5
0201 10 00 9130 ⁽¹⁾	B02	EUR/100 kg net weight	48,8
	B03	EUR/100 kg net weight	28,7
0201 20 20 9110 ⁽¹⁾	B02	EUR/100 kg net weight	48,8
	B03	EUR/100 kg net weight	28,7
0201 20 30 9110 ⁽¹⁾	B02	EUR/100 kg net weight	36,6
	B03	EUR/100 kg net weight	21,5
0201 20 50 9110 ⁽¹⁾	B02	EUR/100 kg net weight	61,0
	B03	EUR/100 kg net weight	35,9
0201 20 50 9130 ⁽¹⁾	B02	EUR/100 kg net weight	36,6
	B03	EUR/100 kg net weight	21,5
0201 30 00 9050	US ⁽³⁾	EUR/100 kg net weight	6,5
	CA ⁽⁴⁾	EUR/100 kg net weight	6,5
0201 30 00 9060 ⁽⁶⁾	B02	EUR/100 kg net weight	22,6
	B03	EUR/100 kg net weight	7,5
0201 30 00 9100 ⁽²⁾ ⁽⁶⁾	B04	EUR/100 kg net weight	84,7
	B03	EUR/100 kg net weight	49,8
	EG	EUR/100 kg net weight	103,4
0201 30 00 9120 ⁽²⁾ ⁽⁶⁾	B04	EUR/100 kg net weight	50,8
	B03	EUR/100 kg net weight	29,9
	EG	EUR/100 kg net weight	62,0
0202 10 00 9100	B02	EUR/100 kg net weight	16,3
	B03	EUR/100 kg net weight	5,4
0202 20 30 9000	B02	EUR/100 kg net weight	16,3
	B03	EUR/100 kg net weight	5,4
0202 20 50 9900	B02	EUR/100 kg net weight	16,3
	B03	EUR/100 kg net weight	5,4
0202 20 90 9100	B02	EUR/100 kg net weight	16,3
	B03	EUR/100 kg net weight	5,4
0202 30 90 9100	US ⁽³⁾	EUR/100 kg net weight	6,5
	CA ⁽⁴⁾	EUR/100 kg net weight	6,5

Product code	Destination	Unit of measurement	Refunds
0202 30 90 9200 ⁽⁶⁾	B02	EUR/100 kg net weight	22,6
	B03	EUR/100 kg net weight	7,5
1602 50 31 9125 ⁽⁵⁾	B00	EUR/100 kg net weight	23,3
1602 50 31 9325 ⁽⁵⁾	B00	EUR/100 kg net weight	20,7
1602 50 95 9125 ⁽⁵⁾	B00	EUR/100 kg net weight	23,3
1602 50 95 9325 ⁽⁵⁾	B00	EUR/100 kg net weight	20,7

N.B.: The product codes and the 'A' series destination codes are set out in the Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1).

The destination codes are set out in Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19).

The other destinations are defined as follows:

B00: all destinations (third countries, other territories, victualling and destinations treated as exports from the Community).

B02: B04 and destination EG.

B03: Albania, Croatia, Bosnia-Herzegovina, Serbia, Kosovo (*), Montenegro, former Yugoslav Republic of Macedonia, stores and provisions (destinations referred to in Articles 36 and 45, and if appropriate in Article 44, of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999, p. 11).

B04: Turkey, Ukraine, Belarus, Moldova, Russia, Georgia, Armenia, Azerbaijan, Kazakhstan, Turkmenistan, Uzbekistan, Tajikistan, Kyrgyzstan, Morocco, Algeria, Tunisia, Libya, Lebanon, Syria, Iraq, Iran, Israel, West Bank/Gaza Strip, Jordan, Saudi Arabia, Kuwait, Bahrain, Qatar, United Arab Emirates, Oman, Yemen, Pakistan, Sri Lanka, Myanmar (Burma), Thailand, Vietnam, Indonesia, Philippines, China, North Korea, Hong Kong, Sudan, Mauritania, Mali, Burkina Faso, Niger, Chad, Cape Verde, Senegal, Gambia, Guinea-Bissau, Guinea, Sierra Leone, Liberia, Côte-d'Ivoire, Ghana, Togo, Benin, Nigeria, Cameroun, Central African Republic, Equatorial Guinea, Sao Tome Principe, Gabon, Congo, Congo (Democratic Republic), Rwanda, Burundi, Saint Helena and dependencies, Angola, Ethiopia, Eritrea, Djibouti, Somalia, Uganda, Tanzania, Seychelles and dependencies, British Indian Ocean Territory, Mozambique, Mauritius, Comoros, Mayotte, Zambia, Malawi, South Africa, Lesotho.

(*) As defined by United Nations Security Council Resolution 1244 of 10 June 1999.

(1) Entry under this subheading is subject to the submission of the certificate appearing in the Annex to Commission Regulation (EC) No 433/2007 (OJ L 104, 21.4.2007, p. 3).

(2) The refund is granted subject to compliance with the conditions laid down in amended Commission Regulation (EC) No 1359/2007 (OJ L 304, 22.11.2007, p. 21), and, if applicable, in Commission Regulation (EC) No 1741/2006 (OJ L 329, 25.11.2006, p. 7).

(3) Carried out in accordance with Commission Regulation (EC) No 1643/2006 (OJ L 308, 8.11.2006, p. 7).

(4) Carried out in accordance with Commission Regulation (EC) No 2051/96 (OJ L 274, 26.10.1996, p. 18).

(5) The refund is granted subject to compliance with the conditions laid down in Commission Regulation (EC) No 1731/2006 (OJ L 325, 24.11.2006, p. 12).

(6) The lean bovine meat content excluding fat is determined in accordance with the procedure described in the Annex to Commission Regulation (EEC) No 2429/86 (OJ L 210, 1.8.1986, p. 39).

The term 'average content' refers to the sample quantity as defined in Article 2(1) of Commission Regulation (EC) No 765/2002 (OJ L 117, 4.5.2002, p. 6). The sample is to be taken from that part of the consignment presenting the highest risk.

COMMISSION REGULATION (EC) No 61/2009
of 22 January 2009
fixing the export refunds on pigmeat

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) ⁽¹⁾, and in particular Article 164(2), final subparagraph, and Article 170 thereof,

Whereas:

- (1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products listed in Part XVII of Annex I to that Regulation and prices for those products on the Community market may be covered by an export refund.
- (2) Given the present situation on the market in pigmeat, export refunds should therefore be fixed in accordance with the rules and criteria provided for in Articles 162 to 164, 167, 169 and 170 of Regulation (EC) No 1234/2007.
- (3) Article 164(1) of Regulation (EC) No 1234/2007 provides that the refund may vary according to destination, especially where the world market situation, the specific requirements of certain markets, or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.
- (4) Refunds should be granted only on products that are allowed to move freely in the Community and that bear the health mark as provided for in Article 5(1)(a)

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 ⁽²⁾. Those products must also satisfy the requirements laid down in Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs ⁽³⁾ and Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ⁽⁴⁾.

- (5) 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

1. Export refunds as provided for in Article 164 of Regulation (EC) No 1234/2007 shall be granted on the products and for the amounts set out in the Annex to this Regulation subject to the condition provided for in paragraph 2 of this Article.

2. The products eligible for a refund under paragraph 1 must meet the relevant requirements of Regulations (EC) Nos 852/2004 and 853/2004, notably preparation in an approved establishment and compliance with the health marking requirements laid down in Annex I, Section I, Chapter III to Regulation (EC) No 854/2004.

Article 2

This Regulation shall enter into force on 23 January 2009.

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

Done at Brussels, 22 January 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 139, 30.4.2004, p. 55. Corrigendum in OJ L 226, 25.6.2004, p. 22.

⁽³⁾ OJ L 139, 30.4.2004, p. 1. Corrigendum in OJ L 226, 25.6.2004, p. 3.

⁽⁴⁾ OJ L 139, 30.4.2004, p. 206. Corrigendum in OJ L 226, 25.6.2004, p. 83.

ANNEX

Export refunds on pigmeat applicable from 23 January 2009

Product code	Destination	Unit of measurement	Amount of refund
0210 11 31 9110	A00	EUR/100 kg	54,20
0210 11 31 9910	A00	EUR/100 kg	54,20
0210 19 81 9100	A00	EUR/100 kg	54,20
0210 19 81 9300	A00	EUR/100 kg	54,20
1601 00 91 9120	A00	EUR/100 kg	19,50
1601 00 99 9110	A00	EUR/100 kg	15,20
1602 41 10 9110	A00	EUR/100 kg	29,00
1602 41 10 9130	A00	EUR/100 kg	17,10
1602 42 10 9110	A00	EUR/100 kg	22,80
1602 42 10 9130	A00	EUR/100 kg	17,10
1602 49 19 9130	A00	EUR/100 kg	17,10

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

COMMISSION REGULATION (EC) No 62/2009
of 22 January 2009
fixing the export refunds on eggs

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 ⁽¹⁾, and in particular Article 164(2), last subparagraph, and Article 170 thereof,

Whereas:

- (1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products referred to in Part XIX of Annex I to that Regulation and prices in the Community for those products may be covered by an export refund.
- (2) In view of the current situation on the market in eggs, export refunds should be fixed in accordance with the rules and certain criteria provided for in Articles 162 to 164, 167, 169 and 170 of Regulation (EC) No 1234/2007.
- (3) Article 164(1) of Regulation (EC) No 1234/2007 provides that refunds may vary according to destination, especially where the world market situation, the specific requirements of certain markets, or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.
- (4) Refunds should be granted only on products which are authorised to move freely within the Community and

comply with requirements under Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs ⁽²⁾ and 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 ⁽³⁾, as well as marking requirements under point A of Annex XIV to Regulation (EC) No 1234/2007.

- (5) 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

1. The products on which the export refunds provided for in Article 164 of Regulation (EC) No 1234/2007 may be paid, subject to the conditions laid down in paragraph 2 of this Article, and the amounts of those refunds are specified in the Annex to this Regulation.

2. The products on which a refund may be paid under paragraph 1 shall meet the requirements under Regulations (EC) Nos 852/2004 and 853/2004 and, in particular, shall be prepared in an approved establishment and comply with the marking conditions laid down in Section I of Annex II to Regulation (EC) No 853/2004 and those defined in point A of Annex XIV to Regulation (EC) No 1234/2007.

Article 2

This Regulation shall enter into force on 23 January 2009.

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

Done at Brussels, 22 January 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 139, 30.4.2004, p. 1. Corrected version in OJ L 226, 25.6.2004, p. 3.

⁽³⁾ OJ L 139, 30.4.2004, p. 55. Corrected version in OJ L 226, 25.6.2004, p. 22.

ANNEX

Export refunds on eggs applicable from 23 January 2009

Product code	Destination	Unit of measurement	Amount of refund
0407 00 11 9000	A02	EUR/100 pcs	0,78
0407 00 19 9000	A02	EUR/100 pcs	0,39
0407 00 30 9000	E09	EUR/100 kg	0,00
	E10	EUR/100 kg	16,00
	E19	EUR/100 kg	0,00
0408 11 80 9100	A03	EUR/100 kg	25,10
0408 19 81 9100	A03	EUR/100 kg	12,60
0408 19 89 9100	A03	EUR/100 kg	12,60
0408 91 80 9100	A03	EUR/100 kg	15,90
0408 99 80 9100	A03	EUR/100 kg	4,00

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

The other destinations are defined as follows:

E09 Kuwait, Bahrain, Oman, Qatar, the United Arab Emirates, Yemen, Hong Kong SAR, Russia and Turkey.

E10 South Korea, Japan, Malaysia, Thailand, Taiwan and the Philippines.

E19 all destinations except Switzerland and those of E09 and E10.

COMMISSION REGULATION (EC) No 63/2009
of 22 January 2009
fixing the export refunds on poultrymeat

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 ⁽¹⁾, and in particular Article 164(2), last subparagraph, and Article 170 thereof,

Whereas:

- (1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products referred to in Part XX of Annex I to that Regulation and prices in the Community for those products may be covered by an export refund.
- (2) In view of the current situation on the market in poultrymeat, export refunds should be fixed in accordance with the rules and criteria provided for in Articles 162 to 164, 167, 169 and 170 of Regulation (EC) No 1234/2007.
- (3) Article 164(1) of Regulation (EC) No 1234/2007 provides that refunds may vary according to destination, especially where the world market situation, the specific requirements of certain markets, or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.

- (4) Refunds should be granted only on products which are authorised to move freely in the Community and bear the identification mark provided for in Article 5(1)(b) 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 ⁽²⁾. Those products should also comply with the requirements of Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs ⁽³⁾.
- (5) 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

1. The products on which the export refunds provided for in Article 164 of Regulation (EC) No 1234/2007 may be paid, subject to the conditions laid down in paragraph 2 of this Article, and the amounts of those refunds are specified in the Annex to this Regulation.

2. The products on which a refund may be paid under paragraph 1 shall meet the requirements under Regulations (EC) Nos 852/2004 and 853/2004 and, in particular, shall be prepared in an approved establishment and comply with the identification marking conditions laid down in Section I of Annex II to Regulation (EC) No 853/2004.

Article 2

This Regulation shall enter into force on 23 January 2009.

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

Done at Brussels, 22 January 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 139, 30.4.2004, p. 55.

⁽³⁾ OJ L 139, 30.4.2004, p. 1. Corrected version in OJ L 226, 25.6.2004, p. 3.

ANNEX

Export refunds on poultrymeat applicable from 23 January 2009

Product code	Destination	Unit of measurement	Amount of refund
0105 11 11 9000	A02	EUR/100 pcs	0,47
0105 11 19 9000	A02	EUR/100 pcs	0,47
0105 11 91 9000	A02	EUR/100 pcs	0,47
0105 11 99 9000	A02	EUR/100 pcs	0,47
0105 12 00 9000	A02	EUR/100 pcs	0,94
0105 19 20 9000	A02	EUR/100 pcs	0,94
0207 12 10 9900	V03	EUR/100 kg	40,00
0207 12 90 9190	V03	EUR/100 kg	40,00
0207 12 90 9990	V03	EUR/100 kg	40,00

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

The other destinations are defined as follows:

V03 A24, Angola, Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, United Arab Emirates, Jordan, Yemen, Lebanon, Iraq and Iran.

COMMISSION REGULATION (EC) No 64/2009**of 22 January 2009****fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95**

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) ⁽¹⁾, and in particular Article 143 thereof,

Having regard to Regulation (EEC) No 2783/75 of the Council of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin, and in particular Article 3(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽²⁾ lays down detailed rules for implementing the system of additional import duties and fixes representative prices for poultrymeat and egg products and for egg albumin.
- (2) Regular monitoring of the data used to determine representative prices for poultrymeat and egg products and

for egg albumin shows that the representative import prices for certain products should be amended to take account of variations in price according to origin. The representative prices should therefore be published.

- (3) In view of the situation on the market, this amendment should be applied as soon as possible.
- (4) 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

Annex I to Regulation (EC) No 1484/95 is replaced by the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 22 January 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 145, 29.6.1995, p. 47.

ANNEX

to the Commission Regulation of 22 January 2009 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

‘ANNEX I

CN code	Description of goods	Representative price (EUR/100 kg)	Security under Article 3(3) (EUR/100 kg)	Origin ⁽¹⁾
0207 12 10	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “70 % chickens”, frozen	124,2	0	AR
0207 12 90	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “65 % chickens”, frozen	125,0	0	BR
		138,6	0	AR
0207 14 10	Fowls of the species <i>Gallus domesticus</i> , boneless cuts, frozen	239,0	18	BR
		268,4	10	AR
		279,6	6	CL
0207 14 50	Fowls of the species <i>Gallus domesticus</i> , breasts, frozen	180,9	9	BR
0207 14 60	Fowl of the species <i>Gallus domesticus</i> , legs, frozen	126,7	5	BR
0207 25 10	Turkeys, not cut in pieces, presented as “80 % turkeys”, frozen	213,5	0	BR
0207 27 10	Turkeys, boneless cuts, frozen	311,9	0	BR
		316,5	0	CL
0408 11 80	Egg yolks	452,7	0	AR
0408 91 80	Eggs, not in shell, dried	427,9	0	AR
1602 32 11	Preparations of fowls of the species <i>Gallus domesticus</i> , uncooked	269,6	5	BR
3502 11 90	Egg albumin, dried	604,0	0	AR

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). The code “ZZ” represents “other origins”.

COMMISSION REGULATION (EC) No 65/2009**of 22 January 2009****fixing the rates of the refunds applicable to eggs and egg yolks exported in the form of goods not covered by Annex I to the Treaty**

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 market and on specific provisions for certain agricultural products (single CMO Regulation) ⁽¹⁾, and in particular Article 164(2) thereof,

Whereas:

(1) Article 162(1) b of Regulation (EC) No 1234/2007 provides that the difference between prices in international trade for the products referred to in Article 1(1) (s) and listed in Part XIX of Annex 1 to of that Regulation and prices within the Community may be covered by an export refund where these goods are exported in the form of goods listed Part V of the Annex XX to that Regulation.

(2) Commission Regulation (EC) No 1043/2005 of 30 June 2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ⁽²⁾, specifies the products for which a rate of refund is to be fixed, to be applied where these products are exported in the form of goods listed in Part V of Annex XX to Regulation (EC) No 1234/2007.

(3) In accordance with paragraph 2 (b) of Article 14 of Regulation (EC) No 1043/2005, the rate of the refund per 100 kilograms for each of the basic products in question is to be fixed for a period of the same duration as that for which refunds are fixed for the same products exported unprocessed.

(4) Article 11 of the Agreement on Agriculture concluded under the Uruguay Round lays down that the export refund for a product contained in a good may not exceed the refund applicable to that product when exported without further processing.

(5) 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

The rates of the refunds applicable to the basic products listed in Annex I to Regulation (EC) No 1043/2005 and in Article 1(1)(s) of Regulation (EC) No 1234/2007, and exported in the form of goods listed in Part V of Annex XX to Regulation (EC) No 1234/2007, shall be fixed as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 23 January 2009.

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

Done at Brussels, 22 January 2009.

For the Commission

Heinz ZOUREK

Director-General Enterprise and Industry

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 172, 5.7.2005, p. 24.

ANNEX

Rates of the refunds applicable from 23 January 2009 to eggs and egg yolks exported in the form of goods not covered by Annex I to the Treaty

(EUR/100 kg)			
CN code	Description	Destination ⁽¹⁾	Rate of refund
0407 00	Birds' eggs, in shell, fresh, preserved or cooked:		
	– Of poultry:		
0407 00 30	– – Other:		
	(a) On exportation of ovalbumin of CN codes 3502 11 90 and 3502 19 90	02	0,00
		03	16,00
		04	0,00
	(b) On exportation of other goods	01	0,00
0408	Birds' eggs, not in shell and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter:		
	– Egg yolks:		
0408 11	– – Dried:		
ex 0408 11 80	– – – Suitable for human consumption:		
	not sweetened	01	25,10
0408 19	– – Other:		
	– – – Suitable for human consumption:		
ex 0408 19 81	– – – – Liquid:		
	not sweetened	01	12,60
ex 0408 19 89	– – – – Frozen:		
	not sweetened	01	12,60
	– Other:		
0408 91	– – Dried:		
ex 0408 91 80	– – – Suitable for human consumption:		
	not sweetened	01	15,90
0408 99	– – Other:		
ex 0408 99 80	– – – Suitable for human consumption:		
	not sweetened	01	4,00

⁽¹⁾ The destinations are as follows:

01 Third countries. For Switzerland and Liechtenstein these rates are not applicable to the goods listed in Tables I and II to Protocol No 2 to the Agreement between the European Community and the Swiss Confederation of 22 July 1972,

02 Kuwait, Bahrain, Oman, Qatar, United Arab Emirates, Yemen, Turkey, Hong Kong SAR and Russia,

03 South Korea, Japan, Malaysia, Thailand, Taiwan and the Philippines,

04 all destinations except Switzerland and those of 02 and 03.

COMMISSION REGULATION (EC) No 66/2009**of 22 January 2009****fixing the rates of the refunds applicable to milk and milk products exported in the form of goods not covered by Annex I to the Treaty**

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) ⁽¹⁾, and in particular Article 164(2) thereof,

Whereas:

(4) Article 11 of the Agreement on Agriculture concluded under the Uruguay Round lays down that the export refund for a product contained in a good may not exceed the refund applicable to that product when exported without further processing.

(5) However, in the case of certain milk products exported in the form of goods not covered by Annex I to the Treaty, there is a danger that, if high refund rates are fixed in advance, the commitments entered into in relation to those refunds may be jeopardised. In order to avert that danger, it is therefore necessary to take appropriate precautionary measures, but without precluding the conclusion of long-term contracts. The fixing of specific refund rates for the advance fixing of refunds in respect of those products should enable those two objectives to be met.

(1) Article 162(1)b of Regulation (EC) No 1234/2007 provides that the difference between prices in international trade for the products referred to in Article 1(1)(p) and listed in Part XVI of Annex I to that Regulation and prices within the Community may be covered by an export refund where these goods are exported in the form of goods listed in Part IV of Annex XX to that Regulation.

(6) Article 15(2) of Regulation (EC) No 1043/2005 provides that, when the rate of the refund is being fixed, account is to be taken, where appropriate, of production refunds, aids or other measures having equivalent effect applicable in all Member States in accordance with the Regulation on the common organisation of the agricultural markets to the basic products listed in Annex I to Regulation (EC) No 1043/2005 or to assimilated products.

(2) Commission Regulation (EC) No 1043/2005 of 30 June 2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ⁽²⁾, specifies the products for which a rate of refund is to be fixed, to be applied where these products are exported in the form of goods listed in Part IV of Annex XX to Regulation (EC) No 1234/2007.

(7) Article 100(1) of Regulation (EC) No 1234/2007 provides for the payment of aid for Community-produced skimmed milk processed into casein if such milk and the casein manufactured from it fulfil certain conditions.

(3) In accordance with the second paragraph, subparagraph (a) of Article 14 of Regulation (EC) No 1043/2005, the rate of the refund per 100 kilograms for each of the basic products in question is to be fixed for a period of the same duration as that for which refunds are fixed for the same products exported unprocessed.

(8) Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/1999 as regards measures for the disposal of cream, butter and concentrated butter ⁽³⁾, lays down that butter and cream at reduced prices should be made available to industries which manufacture certain goods.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 172, 5.7.2005, p. 24.

⁽³⁾ OJ L 308, 25.11.2005, p. 1.

- (9) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products listed in Annex I to Regulation (EC) No 1043/2005 and in Part XVI of Annex I to Regulation (EC) No 1234/2007, and exported in the form of goods listed in Part IV of Annex XX to Regulation (EC) No 1234/2007, shall be fixed as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 23 January 2009.

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

Done at Brussels, 22 January 2009.

For the Commission

Heinz ZOUREK

Director-General Enterprise and Industry

ANNEX

Rates of the refunds applicable from 23 January 2009 to certain milk products exported in the form of goods not covered by Annex I to the Treaty ⁽¹⁾

(EUR/100 kg)

CN code	Description	Rate of refund	
		In case of advance fixing of refunds	Other
ex 0402 10 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content not exceeding 1,5 % by weight (PG 2):		
	(a) on exportation of goods of CN code 3501	—	—
	(b) on exportation of other goods	17,00	17,00
ex 0402 21 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content of 26 % by weight (PG 3):		
	(a) where goods incorporating, in the form of products assimilated to PG 3, reduced-price butter or cream obtained pursuant to Regulation (EC) No 1898/2005 are exported	26,85	26,85
	(b) on exportation of other goods	26,00	26,00
ex 0405 10	Butter, with a fat content by weight of 82 % (PG 6):		
	(a) where goods containing reduced-price butter or cream which have been manufactured in accordance with the conditions provided for in Regulation (EC) No 1898/2005 are exported	45,00	45,00
	(b) on exportation of goods of CN code 2106 90 98 containing 40 % or more by weight of milk fat	46,05	46,05
	(c) on exportation of other goods	45,00	45,00

⁽¹⁾ The rates set out in this Annex are not applicable to exports to

- (a) third countries: Andorra, the Holy See (Vatican City State), Liechtenstein, the United States of America and the goods listed in Tables I and II of Protocol 2 to the Agreement between the European Community and the Swiss Confederation of 22 July 1972 exported to the Swiss Confederation.
- (b) territories of EU Member States not forming part of the customs territory of the Community: Ceuta, Melilla, the Communes of Livigno and Campione d'Italia, Heligoland, Greenland, the Faeroe Islands and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.
- (c) European territories for whose external relations a Member State is responsible and not forming part of the customs territory of the Community: Gibraltar.
- (d) the exports referred to in Article 36(1), Article 44(1) and Article 45(1) of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999, p. 11).

DIRECTIVES

DIRECTIVE 2008/121/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 January 2009

on textile names (recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

accompany textile products at the various stages of their production, processing and distribution.

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

- (4) Provision should also be made in respect of certain products which are not made exclusively of textile materials but have a textile content which constitutes an essential part of the product or to which attention is specifically drawn by the producer, processor or trader.

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

- (5) The tolerance in respect of 'other fibres', which has already been laid down for pure products, should also be applied to mixtures.

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

- (6) In order to attain the objective underlying national provisions in this field, labelling should be compulsory.

Whereas:

- (1) Directive 96/74/EC of the European Parliament and of the Council of 16 December 1996 on textile names ⁽³⁾ has been substantially amended several times ⁽⁴⁾. Since further amendments are to be made, it should be recast in the interests of clarity.

- (7) In cases where it is technically difficult to specify the composition of a product at the time of manufacture, any fibres known at that time may be stated on the label provided that they account for a certain percentage of the finished product.

- (2) If the provisions of the Member States with regard to the names, composition and labelling of textile products were to vary from one Member State to another, this would create hindrances to the proper functioning of the internal market.

- (8) It is expedient, in order to avoid differences of application in the Community, to specify the exact methods of labelling certain textile products consisting of two or more components, and also the components of textile products that need not be taken into account for purposes of labelling and analysis.

- (3) Those hindrances can be eliminated if the placing of textile products on the market at Community level is subject to uniform rules. It is therefore necessary to harmonise the names of textile fibres and the particulars appearing on labels, markings and documents which

- (9) Textile products subject only to the requirements of inclusive labelling, and those sold by the metre or in cut lengths, should be offered for sale in such a way that the consumer can fully acquaint himself with the particulars affixed to the overall packaging or the roll. It is for the Member States to decide on the measures to be adopted for this purpose.

⁽¹⁾ OJ C 162, 25.6.2008, p. 40.

⁽²⁾ Opinion of the European Parliament of 17 June 2008 (not yet published in the Official Journal) and Council Decision of 16 December 2008.

⁽³⁾ OJ L 32, 3.2.1997, p. 38.

⁽⁴⁾ See Annex VI, Part A.

- (10) The use of descriptions or names which enjoy particular prestige among users and consumers should be made subject to certain conditions.

- (11) It is necessary to lay down methods for the sampling and analysis of textiles in order to exclude any possibility of objections to the methods used. However, the provisional retention of the national methods currently in force does not prevent the application of uniform rules.
- (12) Annex V, which sets out the agreed allowances to be applied to the anhydrous mass of each fibre during the determination by analysis of the fibre content of textile products, gives, in items 1, 2 and 3, two different agreed allowances for calculating the composition of carded or combed fibres containing wool and/or animal hair. Laboratories cannot always tell whether a product is carded or combed, and consequently inconsistent results can arise from the application of this provision during checks on the conformity of textile products carried out in the Community. Laboratories should therefore be authorised to apply a single agreed allowance in doubtful cases.
- (13) It is not advisable, in a separate Directive on textile products, to harmonise all the provisions applicable to such products.
- (14) Annexes III and IV, because of the exceptional nature of the items referred to therein, should also cover other products exempt from labelling, in particular 'disposable' products or products for which only inclusive labelling is required.
- (15) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (16) In particular, the Commission should be empowered to adapt Annexes I and V to technical progress and to adopt new methods of quantitative analysis for binary and ternary mixtures. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, *inter alia*, by supplementing it, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (17) The new elements introduced into this Directive only concern the committee procedure. They therefore do not need to be transposed by the Member States.
- (18) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex VI, Part B,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

1. Textile products may be marketed within the Community, either before or during their industrial processing or at any of the distribution stages, only where such products comply with this Directive.
2. This Directive shall not apply to textile products which:
 - (a) are intended for export to third countries;
 - (b) enter Member States, under customs control, for transit purposes;
 - (c) are imported from third countries for inward processing;
 - (d) are contracted out to persons working in their own homes, or to independent firms that make up work from materials supplied without the property therein being transferred for consideration.

Article 2

1. For the purposes of this Directive, the following definitions shall apply:
 - (a) 'textile products' means any raw, semi-worked, worked, semi-manufactured, manufactured, semi-made-up or made-up products which are exclusively composed of textile fibres, regardless of the mixing or assembly process employed;
 - (b) 'textile fibre' means:
 - (i) a unit of matter characterised by its flexibility, fineness and high ratio of length to maximum transverse dimension, which render it suitable for textile applications;
 - (ii) flexible strips or tubes, of which the apparent width does not exceed 5 mm, including strips cut from wider strips or films, produced from the substances used for the manufacture of the fibres listed under items 19 to 47 in Annex I and suitable for textile applications; the apparent width is the width of the strip or tube when folded, flattened, compressed or twisted, or the average width where the width is not uniform.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

2. The following shall be treated in the same way as textile products and shall be subject to this Directive:

- (a) products containing at least 80 % by weight of textile fibres;
- (b) furniture, umbrella and sunshade coverings containing at least 80 % by weight of textile components; similarly, the textile components of multi-layer floor coverings, of mattresses and of camping goods, and warm linings of footwear, gloves, mittens and mitts, provided such parts or linings constitute at least 80 % by weight of the complete article;
- (c) textiles incorporated in other products and forming an integral part thereof, where their composition is specified.

Article 3

1. The names and descriptions of fibres referred to in Article 2 are listed in Annex I.

2. Use of the names appearing in the table in Annex I shall be reserved for fibres the nature of which is specified under the same item of that table.

3. None of those names may be used for any other fibre, whether on their own or as an adjective or as a root, in any language whatsoever.

4. The word 'silk' may not be used to indicate the shape or particular presentation in continuous yarn of textile fibres.

Article 4

1. No textile product may be described as '100 %', 'pure' or 'all' unless it is exclusively composed of the same fibre; no similar term may be used.

2. A textile product may contain up to 2 % by weight of other fibres, provided this quantity is justified on technical grounds and is not added as a matter of routine. This tolerance shall be increased to 5 % in the case of textile products which have undergone a carding process.

Article 5

1. A wool product may be described with one of the names referred to in Annex II, provided that it is composed exclusively of a fibre which has not previously been incorporated in a finished product, which has not been subjected to any spinning and/or felting processes other than those required in the manufacture of that product, and which has not been damaged by treatment or use.

2. By way of derogation from paragraph 1, the names referred to in Annex II may be used to describe wool contained in a fibre mixture when:

- (a) all the wool contained in that mixture satisfies the requirements laid down in paragraph 1;
- (b) this wool accounts for not less than 25 % of the total weight of the mixture;
- (c) in the case of a scribbled mixture, the wool is mixed with only one other fibre.

In the case referred to in this paragraph, the full percentage composition must be given.

3. The tolerance justified on technical grounds connected with manufacture shall be limited to 0,3 % of fibrous impurities in the case of the products referred to in paragraphs 1 and 2, including wool products which have undergone a carding process.

Article 6

1. A textile product composed of two or more fibres, one of which accounts for at least 85 % of the total weight, shall be designated by one of the following:

- (a) by the name of the latter fibre followed by its percentage by weight;
- (b) by the name of the latter fibre followed by the words '85 % minimum'; or
- (c) by the full percentage composition of the product.

2. A textile product composed of two or more fibres, none of which accounts for as much as 85 % of the total weight, shall be designated by the name and percentage by weight of at least the two main fibres, followed by the names of the other constituent fibres in descending order of weight, with or without an indication of their percentage by weight. However:

- (a) fibres which separately account for less than 10 % of the total weight of a product may be collectively designated by the term 'other fibres', followed by the total percentage by weight;
- (b) where the name of a fibre which accounts for less than 10 % of the total weight of a product is specified, the full percentage composition of that product shall be given.

3. Products having a pure cotton warp and a pure flax weft, in which the percentage of flax accounts for not less than 40 % of the total weight of the unsized fabric may be given the name 'cotton linen union' which must be accompanied by the composition specification 'pure cotton warp — pure flax weft'.

4. The term 'mixed fibres' or the term 'unspecified textile composition' may be used for any product the composition of which cannot easily be stated at the time of manufacture.

5. In the case of textile products intended for the end consumer, in the percentage compositions specified in paragraphs 1 to 4:

- (a) a quantity of extraneous fibres of up to 2 % of the total weight of the textile product shall be tolerated, provided that this quantity is justified on technical grounds and is not added as a matter of routine; this tolerance shall be increased to 5 % in the case of products which have undergone a carding process and shall be without prejudice to the tolerance referred to in Article 5(3);
- (b) a manufacturing tolerance of 3 % shall be permitted between the stated fibre percentages and the percentages obtained from analysis, in relation to the total weight of fibres shown on the label; such tolerance shall also be applied to fibres which, in accordance with paragraph 2, are listed in descending order of weight with no indication of their percentage. This tolerance shall also apply for the purpose of Article 5(2)(b).

On analysis, the tolerances shall be calculated separately. The total weight to be taken into account in calculating the tolerance referred to in point (b) shall be that of the fibres of the finished product less the weight of any extraneous fibres found when applying the tolerance referred to in point (a).

The addition of the tolerances referred to in points (a) and (b) shall be permitted only if any extraneous fibres found by analysis, when applying the tolerance referred to in point (a), prove to be of the same chemical type as one or more of the fibres shown on the label.

In the case of particular products for which the manufacturing process requires tolerances higher than those given in points (a) and (b), higher tolerances may be authorised when the conformity of the product is checked pursuant to Article 13(1) only in exceptional cases and where adequate justification is provided by the manufacturer. Member States shall immediately inform the Commission thereof.

Article 7

Without prejudice to the tolerances laid down in Article 4(2), Article 5(3) and Article 6(5), visible, isolable fibres which are purely decorative and do not exceed 7 % of the weight of the finished product need not be mentioned in the fibre compositions provided for in Articles 4 and 6. The same shall apply to fibres, such as metallic fibres, which are incorporated in order to obtain an antistatic effect and which do not exceed 2 % of the weight of the finished product. In the case of the products referred to in Article 6(3), such percentages shall be calculated not on the weight of the fabric but on the weight of the warp and that of the weft separately.

Article 8

1. Textile products within the meaning of this Directive shall be labelled or marked whenever they are put on the market for production or commercial purposes. This labelling or marking may be replaced or supplemented by accompanying commercial documents when the products are not being offered for sale to the end consumer, or when they are delivered in performance of an order placed by the State or by some other legal person governed by public law or, in those Member States where this concept is unknown, by an equivalent entity.

2. The names, descriptions and particulars as to textile fibre content referred to in Articles 3 to 6 and in Annexes I and II shall be clearly indicated in the commercial documents. This requirement shall, in particular, preclude the use of abbreviations in sales contracts, bills and invoices. However, a mechanised processing code may be used, provided that code is explained in the same document.

3. The names, descriptions and particulars as to textile fibre content referred to in Articles 3 to 6 and in Annexes I and II shall be indicated in clear, legible and uniform print when textile products are offered for sale or sold to the consumer, and in particular in catalogues and trade literature, on packagings, on labels and on markings.

Particulars and information other than those provided for by this Directive shall be separate. This provision shall not apply to trade marks or to the name of the undertaking which may be given immediately before or after particulars provided for by this Directive.

If, however, when a textile product is offered for sale or is sold to the consumer as referred to in the first subparagraph, a trade mark or a name of an undertaking is indicated which contains, on its own or as an adjective or as a root, one of the names listed in Annex I or a name liable to be confused therewith, the trade mark or the name of an undertaking must be immediately preceded or followed by the names, descriptions and particulars as to textile fibre content referred to in Articles 3 to 6 and in Annexes I and II in clear, legible and uniform print.

4. Member States may require that, when textile products are offered for sale or are sold to the end consumer in their territory, their national languages should also be used for the labelling and marking required by this Article.

In the case of bobbins, reels, skeins, balls or any other small quantity of sewing, mending and embroidery yarns, the option provided for in the first subparagraph may be exercised by the Member States only in the case of inclusive labelling on packaging or displays. Without prejudice to the cases referred to in item 18 of Annex IV, individual items may be labelled in any of the Community languages.

5. Member States may not prohibit the use of descriptions or particulars other than those referred to in Articles 3, 4 and 5 which relate to characteristics of products where such descriptions or particulars are consistent with their fair trade practices.

Article 9

1. Any textile product composed of two or more components which have different fibre contents shall bear a label stating the fibre content of each component. Such labelling shall not be compulsory for components representing less than 30 % of the total weight of the product, excluding main linings.

2. Where two or more textile products have the same fibre content and normally form a single unit, they need bear only one label.

3. Without prejudice to Article 12:

(a) the fibre composition of the following corsetry articles shall be indicated by stating the composition of the whole product or that of the components listed below either inclusively or separately:

(i) for brassières: the outside and inside fabric of the cups and back;

(ii) for corsets: the front, rear and side stiffening panels;

(iii) for corselets: the outside and inside fabric of the cups, the front and rear stiffening panels and the side panels.

The fibre composition of corsetry articles other than those listed in the first subparagraph shall be indicated by stating the composition of the whole product or, either inclusively or separately, the composition of the various components of the articles; such labelling shall not be compulsory for components representing less than 10 % of the total weight of the product.

The separate labelling of the various parts of the said corsetry articles shall be carried out in such a way that the end consumer can easily understand to which part of the product the particulars on the label refer;

(b) the fibre composition of etch-printed textiles shall be given for the product as a whole and may be indicated by stating, separately, the composition of the base fabric and that of the etched parts. These components must be mentioned by name;

(c) the fibre composition of embroidered textiles shall be given for the product as a whole and may be indicated by stating, separately, the composition of the base fabric and that of the embroidery yarn; these components must be mentioned by name; if the embroidered parts amount to less than 10 % of the surface area of the product, only the composition of the base fabric need be stated;

(d) the fibre composition of yarns consisting of a core and a cover made up of different fibres, and offered for sale as such to the consumer, shall be given for the product as a whole and may be indicated by stating the composition of the core and the cover separately; these components must be mentioned by name;

(e) the fibre composition of velvet and plush textiles, or of textiles resembling velvet or plush, shall be given for the whole product and, where the product comprises a distinct backing and a use-surface composed of different fibres, may be stated separately for these two parts, which must be mentioned by name;

(f) the composition of floor coverings and carpets of which the backing and the use-surface are composed of different fibres may be stated for the use-surface alone, which must be mentioned by name.

Article 10

1. By way of derogation from Articles 8 and 9:

(a) in the case of textile products listed in Annex III which are at one of the stages referred to in Article 2(1), point (a), Member States may not require any labelling or marking bearing the name or composition. However, the provisions of Articles 8 and 9 shall apply where such products bear a label or marking giving the name or composition, or a trade mark or name of an undertaking which incorporates, on its own or as an adjective or as a root, either one of the names listed in Annex I or a name liable to be confused therewith;

(b) where textile products listed in Annex IV are of the same type and composition, they may be offered for sale together under an inclusive label giving the composition particulars laid down by this Directive;

- (c) the composition of textile products sold by the metre needs to be shown only on the length or roll offered for sale.

2. Member States shall take all necessary steps to ensure that the products referred to in points (b) and (c) of paragraph 1 are offered for sale in such a way that the end consumer can fully acquaint himself with the composition of those products.

Article 11

Member States shall take all necessary measures to ensure that any information supplied when textile products are placed on the market cannot be confused with the names and particulars laid down by this Directive.

Article 12

For the purposes of applying Article 8(1) and the other provisions of this Directive relating to the labelling of textile products, the fibre percentages referred to in Articles 4, 5 and 6 shall be determined without taking account of the following items:

- (a) for all textile products: non-textile parts, selvages, labels and badges, edgings and trimmings not forming an integral part of the product, buttons and buckles covered with textile materials, accessories, decorations, non-elastic ribbons, elastic threads and bands added at specific and limited points of the product and, subject to the conditions specified in Article 7, visible, isolable fibres which are purely decorative and antistatic fibres;
- (b) for floor coverings and carpets: all components other than the use-surface;
- (c) for upholstery fabrics: binding and filling warps and wefts which do not form part of the use-surface;
- (d) for hangings and curtains: binding and filling warps and wefts which do not form part of the right side of the fabric;
- (e) for other textile products: base or underlying fabrics, stiffenings and reinforcements, inter-linings and canvas backings, stitching and assembly threads unless they replace the warp and/or weft of the fabric, fillings not having an insulating function and, subject to Article 9(1), linings.

For the purposes of this point:

- (i) the base or underlying material of textile products which serve as a backing for the use-surface, in particular in blankets and double fabrics, and the backings of velvet or plush fabrics and kindred products shall not be regarded as backings to be removed;

- (ii) 'stiffenings and reinforcements' mean the yarns or materials added at specific and limited points of the textile products to strengthen them or to give them stiffness or thickness;

- (f) fatty substances, binders, weightings, sizings and dressings, impregnating products, additional dyeing and printing products and other textile processing products. In the absence of Community provisions, Member States shall take all necessary measures to ensure that these items are not present in quantities liable to mislead the consumer.

Article 13

1. Checks on whether the composition of textile products is in conformity with the information supplied in accordance with this Directive shall be carried out by the methods of analysis specified in the Directives referred to in paragraph 2.

For this purpose, the fibre percentages in Articles 4, 5 and 6 shall be determined by applying to the anhydrous mass of each fibre the appropriate agreed allowance laid down in Annex V, after having removed the items referred to in Article 12.

2. Separate directives shall specify the methods of sampling and analysis to be used in Member States to determine the fibre composition of products covered by this Directive.

Article 14

1. No Member State may, for reasons connected with names or composition specifications, prohibit or impede the placing on the market of textile products which comply with the provisions of this Directive.

2. The provisions of this Directive shall not preclude the application of the provisions in force in each Member State on the protection of industrial and commercial property, on indications of provenance, marks of origin and the prevention of unfair competition.

Article 15

1. The Commission shall adopt the additions to Annex I and the additions and amendments to Annex V which are necessary for adapting those Annexes to technical progress.

2. The Commission shall determine the new methods of quantitative analysis for binary and ternary mixtures other than those referred to in Directive 96/73/EC of the European Parliament and of the Council of 16 December 1996 on certain methods for the quantitative analysis of binary textile fibre mixtures ⁽¹⁾ and Council Directive 73/44/EEC of 26 February 1973 on the approximation of the laws of the Member States relating to the quantitative analysis of ternary fibre mixtures ⁽²⁾.

⁽¹⁾ OJ L 32, 3.2.1997, p. 1.

⁽²⁾ OJ L 83, 30.3.1973, p. 1.

3. The measures referred to in paragraphs 1 and 2, designed to amend non-essential elements of this Directive, *inter alia*, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 16(2).

Article 16

1. The Commission shall be assisted by the Committee for Directives relating to textile names and labelling set up pursuant Directive 96/73/EC.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 17

Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 18

Directive 96/74/EC, as amended by the Acts listed in Annex VI, Part A, is repealed, without prejudice to the obligations of the

Member States relating to the time limits for transposition into national law of the Directives set out in Annex VI, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VII.

Article 19

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

Article 20

This Directive is addressed to the Member States.

Done at Strasbourg, 14 January 2009.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

A. VONDRA

ANNEX I

TABLE OF TEXTILE FIBRES

(referred to in Article 3)

No	Name	Fibre description
1	wool ⁽¹⁾	Fibre from sheep's or lambs' fleeces (<i>Ovis aries</i>)
2	alpaca, llama, camel, kashmir, mohair, angora, vicuña, yak, guanaco, cashgora, beaver, otter, followed or not by the name 'wool' or 'hair' ⁽¹⁾	hair of the following animals: alpaca, llama, camel, kashmir goat, angora goat, angora rabbit, vicuna, yak, guanaco, cashgora goat (a cross between the kashmir goat and the angora goat), beaver, otter
3	animal or horsehair, with or without an indication of the kind of animal (e.g. cattle hair, common goat hair, horsehair)	hair of the various animals not mentioned under 1 or 2
4	silk	fibre obtained exclusively from silk-secreting insects
5	cotton	fibre obtained from the bolls of the cotton plant (<i>Gossypium</i>)
6	kapok	fibre obtained from the inside of the kapok fruit (<i>Ceiba pentandra</i>)
7	flax	fibre obtained from the bast of the flax plant (<i>Linum usitatissimum</i>)
8	true hemp	fibre obtained from the bast of hemp (<i>Cannabis sativa</i>)
9	jute	fibre obtained from the bast of <i>Corchorus olitorius</i> and <i>Corchorus capsularis</i> . For the purposes of this Directive, bast fibres obtained from the following species shall be treated in the same way as jute: <i>Hibiscus cannabinus</i> , <i>Hibiscus sabdariffa</i> , <i>Abutilon avicennae</i> , <i>Urena lobata</i> , <i>Urena sinuata</i>
10	abaca (Manila hemp)	fibre obtained from the sheathing leaf of <i>Musa textilis</i>
11	alfa	fibre obtained from the leaves of <i>Stipa tenacissima</i>
12	coir (coconut)	fibre obtained from the fruit of <i>Cocos nucifera</i>
13	broom	fibre obtained from the bast of <i>Cytisus scoparius</i> and/or <i>Spartium junceum</i>
14	ramie	fibre obtained from the bast of <i>Boehmeria nivea</i> and <i>Boehmeria tenacissima</i>
15	sisal	fibre obtained from the leaves of <i>Agave sisalana</i>
16	Sunn	fibre from the bast of <i>Crotalaria juncea</i>
17	Henequen	fibre from the bast of <i>Agave fourcroydes</i>
18	Maguey	fibre from the bast of <i>Agave cantala</i>
19	acetate	cellulose acetate fibre wherein less than 92 % but at least 74 % of the hydroxyl groups are acetylated

No	Name	Fibre description
20	alginate	fibre obtained from metallic salts of alginic acid
21	cupro (cuprammonium rayon)	regenerated cellulose fibre obtained by the cuprammonium process
22	modal	a regenerated cellulose fibre obtained by a modified viscose process having a high breaking force and high wet modulus. The breaking force (B_C) in the conditioned state and the force (B_M) required to produce an elongation of 5 % in the wet state are: $B_C \text{ (CN)} \geq 1,3 \sqrt{T} + 2 T$ $B_M \text{ (CN)} \geq 0,5 \sqrt{T}$ where T is the mean linear density in decitex
23	protein	fibre obtained from natural protein substances regenerated and stabilised through the action of chemical agents
24	triacetate	cellulose acetate fibre wherein at least 92 % of the hydroxyl groups are acetylated
25	viscose	regenerated cellulose fibre obtained by the viscose process for filament and discontinuous fibre
26	acrylic	fibre formed of linear macromolecules comprising at least 85 % (by mass) in the chain of the acrylonitrilic pattern
27	chlorofibre	fibre formed of linear macromolecules having in their chain more than 50 % by mass of chlorinated vinyl or chlorinated vinylidene monomeric units
28	fluorofibre	fibre formed of linear macromolecules made from fluorocarbon aliphatic monomers
29	modacrylic	fibre formed of linear macromolecules having in the chain more than 50 % and less than 85 % (by mass) of the acrylonitrilic pattern
30	polyamide or nylon	fibre formed from synthetic linear macromolecules having in the chain recurring amide linkages of which at least 85 % are joined to aliphatic or cycloaliphatic units
31	aramid	fibre formed from synthetic linear macromolecules made up of aromatic groups joined by amide or imide linkages, of which at least 85 % are joined directly to two aromatic rings and with the number of imide linkages, if the latter are present, not exceeding the number of amide linkages
32	polyimide	fibre formed from synthetic linear macromolecules having in the chain recurring imide units
33	Lyocell ⁽²⁾	a regenerated cellulose fibre obtained by dissolution, and an organic solvent spinning process, without formation of derivatives
34	polylactide	fibre formed of linear macromolecules having in the chain at least 85 % (by mass) of lactic acid ester units derived from naturally occurring sugars, and which has a melting temperature of at least 135 °C
35	polyester	fibre formed of linear macromolecules comprising at least 85 % (by mass) in the chain of an ester of a diol and terephthalic acid

No	Name	Fibre description
36	polyethylene	fibre formed of un-substituted aliphatic saturated hydrocarbon linear macromolecules
37	polypropylene	fibre formed of an aliphatic saturated hydrocarbon linear macromolecule where one carbon atom in two carries a methyl side chain in an isotactic disposition and without further substitution
38	polycarbamide	fibre formed of linear macromolecules having in the chain the recurring ureylene (NH-CO-NH) functional group
39	polyurethane	fibre formed of linear macromolecules composed of chains with the recurring urethane functional group
40	vinylal	fibre formed of linear macromolecules whose chain is constituted by poly(vinyl alcohol) with differing levels of acetalisation
41	triviny	fibre formed of acrylonitrile terpolymer, a chlorinated vinyl monomer and a third vinyl monomer, none of which represents as much as 50 % of the total mass
42	elastodiene	elastofibre composed of natural or synthetic polyisoprene, or composed of one or more dienes polymerised with or without one or more vinyl monomers, and which, when stretched to three times its original length and released, recovers rapidly and substantially to its initial length
43	elastane	elastofibre composed of at least 85 % (by mass) of a segmented polyurethane, and which, when stretched to three times its original length and released, recovers rapidly and substantially to its initial length
44	glass fibre	fibre made of glass
45	name corresponding to the material of which the fibres are composed, e.g. metal (metallic, metallised), asbestos, paper, followed or not by the word 'yarn' or 'fibre'	fibres obtained from miscellaneous or new materials not listed elsewhere in this Annex
46	elastomultiester	fibre formed by interaction of two or more chemically distinct linear macromolecules in two or more distinct phases (of which none exceeds 85 % by mass) which contains ester groups as dominant functional unit (at least 85 %) and which, after suitable treatment when stretched to one and half times its original length and released, recovers rapidly and substantially to its initial length
47	elastolefin	fibre composed of at least 95 % (by mass) of macromolecules partially cross-linked, made up from ethylene and at least one other olefin and which, when stretched to one and a half times its original length and released, recovers rapidly and substantially to its initial length

(¹) The name 'wool' in item 1 of this Annex may also be used to indicate a mixture of fibres from sheep's or lambs' fleeces and the hairs listed in the third column of item 2.

This provision is applicable to the textile products listed in Articles 4 and 5 and to those referred to in Article 6 provided that the latter are partly composed of the fibres listed in items 1 and 2.

(²) It is understood that an 'organic solvent' means essentially a mixture of organic chemicals and water.

ANNEX II

Names referred to in Article 5(1)

— in Bulgarian:	‘необработена вълна’,
— in Spanish:	‘lana virgen’ or ‘lana de esquilado’,
— in Czech:	‘strižní vlna’,
— in Danish:	‘ren, ny uld’,
— in German:	‘Schurwolle’,
— in Estonian:	‘uus vill’,
— in Greek:	‘παρθένο μαλλί’,
— in English:	‘virgin wool’ or ‘fleece wool’,
— in French:	‘laine vierge’ or ‘laine de tonte’,
— in Italian:	‘lana vergine’ or ‘lana di tosa’,
— in Latvian:	‘pirmlietojuma vilna’ or ‘jaunvilna’,
— in Lithuanian:	‘natūralioji vilna’,
— in Hungarian:	‘élőgyapjú’,
— in Maltese:	‘suf vergni’,
— in Dutch:	‘scheerwol’,
— in Polish:	‘żywa wełna’,
— in Portuguese:	‘lã virgem’,
— in Romanian:	‘lână virgină’,
— in Slovak:	‘strižná vlna’,
— in Slovene:	‘runska volna’,
— in Finnish:	‘uusi villa’,
— in Swedish:	‘ren ull’.

ANNEX III

Products which cannot be made subject to mandatory labelling or marking

(referred to in Article 10(1)(a))

1. Sleeve-supporting armbands
2. Watch straps of textile materials
3. Labels and badges
4. Stuffed pan-holders of textile materials
5. Coffee cosy covers
6. Tea cosy covers
7. Sleeve protectors
8. Muffs other than in pile fabric
9. Artificial flowers
10. Pin cushions
11. Painted canvas
12. Textile products for base and underlying fabrics and stiffenings
13. Felts
14. Old made-up textile products, where explicitly stated to be such
15. Gaiters
16. Packagings, not new and sold as such
17. Felt hats
18. Containers which are soft and without foundation, saddlery, of textile materials
19. Travel goods of textile materials
20. Hand-embroidered tapestries, finished or unfinished, and materials for their production, including embroidery yarns, sold separately from the canvas and specially presented for use in such tapestries
21. Slide fasteners
22. Buttons and buckles covered with textile materials
23. Book covers of textile materials
24. Toys
25. Textile parts of footwear, with the exception of warm linings
26. Table mats having several components and a surface area of not more than 500 cm²
27. Oven gloves and cloths
28. Egg cosies
29. Make-up cases

30. Tobacco pouches of textile fabric
31. Spectacle, cigarette and cigar, lighter and comb cases of textile fabric
32. Protective requisites for sports with the exception of gloves
33. Toilet cases
34. Shoe-cleaning cases
35. Funeral items
36. Disposable articles, with the exception of wadding

For the purposes of this Directive, textile articles designed to be used once only or for a limited time, and the normal use of which precludes any restoring for subsequent use for the same or a similar purpose, are to be regarded as disposable

37. Textile articles subject to the rules of the European Pharmacopoeia and covered by a reference to those rules, non-disposable bandages for medical and orthopaedic use and orthopaedic textile articles in general
38. Textile articles including cordage, ropes and string, subject to item 12 of Annex IV, normally intended:
 - (a) for use as equipment components in the manufacture and processing of goods;
 - (b) for incorporation in machines, installations (e.g. for heating, air conditioning or lighting), domestic and other appliances, vehicles and other means of transport, or for their operation, maintenance or equipment, other than tarpaulin covers and textile motor vehicle accessories sold separately from the vehicle
39. Textile articles for protection and safety purposes such as safety belts, parachutes, life-jackets, emergency chutes, firefighting devices, bullet-proof waistcoats and special protective garments (e.g. those providing protection against fire, chemical substances or other safety hazards)
40. Air-supported structures (e.g. sports halls, exhibition stands or storage facilities), provided that particulars of the performances and technical specifications of these articles are supplied
41. Sails
42. Animal clothing
43. Flags and banners

ANNEX IV

Products for which only inclusive labelling or marking is obligatory

(referred to in Article 10(1)(b))

1. Floor cloths
2. Cleaning cloths
3. Edgings and trimmings
4. Passementerie
5. Belts
6. Braces
7. Suspenders and garters
8. Shoe and boot laces
9. Ribbons
10. Elastic
11. New packaging sold as such
12. Packing string and agricultural twine; string, cordage and ropes other than those falling within item 38 of Annex III ⁽¹⁾
13. Table mats
14. Handkerchiefs
15. Bun nets and hair nets
16. Ties and bow ties for children
17. Bibs; wash gloves and face flannels
18. Sewing, mending and embroidery yarns presented for retail sale in small quantities with a net weight of 1 gram or less
19. Tape for curtains and blinds and shutters

⁽¹⁾ For the products falling within this item and sold in cut lengths, the inclusive labelling shall be that of the reel. The cordage and ropes falling within this item include those used in mountaineering and water sports.

ANNEX V

Agreed allowances used to calculate the mass of fibres contained in a textile product

(referred to in Article 13)

Fibre No	Fibres	Percentages
1-2	Wool and animal hair:	
	combed fibres	18,25
	carded fibres	17,00 ⁽¹⁾
3	Animal hair:	
	combed fibres	18,25
	carded fibres	17,00 ⁽¹⁾
	Horsehair:	
	combed fibres	16,00
	carded fibres	15,00
4	Silk	11,00
5	Cotton:	
	normal fibres	8,50
	mercerised fibres	10,50
6	Kapok	10,90
7	Flax	12,00
8	True hemp	12,00
9	Jute	17,00
10	Abaca	14,00
11	ALFA	14,00
12	Coir	13,00
13	Broom	14,00
14	Ramie (bleached fibre)	8,50
15	Sisal	14,00
16	Sunn	12,00
17	Henequen	14,00
18	Maguey	14,00
19	Acetate	9,00
20	Alginate	20,00
21	Cupro	13,00
22	Modal	13,00
23	Protein	17,00
24	Triacetate	7,00
25	Viscose	13,00
26	Acrylic	2,00
27	Chlorofibre	2,00
28	Fluorofibre	0,00
29	Modacrylic	2,00

Fibre No	Fibres	Percentages
30	Polyamide or nylon:	
	discontinuous fibre	6,25
	filament	5,75
31	Aramid	8,00
32	Polyimide	3,50
33	Lyocell	13,00
34	Polylactide	1,50
35	Polyester:	
	discontinuous fibre	1,50
	filament	1,50
36	Polyethylene	1,50
37	Polypropylene	2,00
38	Polycarbamide	2,00
39	Polyurethane	
	discontinuous fibre	3,50
	filament	3,00
40	Vinylal	5,00
41	Triviny	3,00
42	Elastodiene	1,00
43	Elastane	1,50
44	Glass fibre:	
	with an average diameter of over 5 µm	2,00
	with an average diameter of 5 µm or less	3,00
45	Metal fibre	2,00
	Metallised fibre	2,00
	Asbestos	2,00
	Paper yarn	13,75
46	Elastomultiester	1,50
47	Elastolefin	1,50

(¹) The agreed allowances of 17 % shall also be applied where it is impossible to ascertain whether the textile product containing wool and/or animal hair is combed or carded.

ANNEX VI

PART A

Repealed Directive with list of its successive amendments

(referred to in Article 18)

Directive 96/74/EC of the European Parliament and of the Council
(OJ L 32, 3.2.1997, p. 38).

Commission Directive 97/37/EC
(OJ L 169, 27.6.1997, p. 74).

Point 1.F.2 of Annex II to the 2003 Act of Accession
(OJ L 236, 23.9.2003, p. 66).

Commission Directive 2004/34/EC
(OJ L 89, 26.3.2004, p. 35).

Commission Directive 2006/3/EC
(OJ L 5, 10.1.2006, p. 14).

Council Directive 2006/96/EC
(OJ L 363, 20.12.2006, p. 81).

Annex, point D 2 only

Commission Directive 2007/3/EC
(OJ L 28, 3.2.2007, p. 12).

PART B

List of time limits for transposition into national law

(referred to in Article 18)

Directive	Time limit for transposition
96/74/EC	—
97/37/EC	1 June 1998
2004/34/EC	1 March 2005
2006/3/EC	9 January 2007
2006/96/EC	1 January 2007
2007/3/EC	2 February 2008

ANNEX VII

CORRELATION TABLE

Directive 96/74/EC	This Directive
Article 1	Article 1(1)
Article 2(1)	Article 2(1)(a)
Article 2(2), introductory wording	Article 2(1)(b), introductory wording
Article 2(2), first indent	Article 2(1)(b)(i)
Article 2(2), second indent	Article 2(1)(b)(ii)
Article 2(3), introductory wording	Article 2(2), introductory wording
Article 2(3), first indent	Article 2(2)(a)
Article 2(3), second indent	Article 2(2)(b)
Article 2(3), third indent	Article 2(2)(c)
Article 3	Article 3
Article 4	Article 4
Article 5(1), wording other than the indents	Article 5(1)
Article 5(1), indents	Annex II
Article 5(2)	Article 5(2)
Article 5(3)	Article 5(3)
Article 6(1), introductory wording	Article 6(1), introductory wording
Article 6(1), first indent	Article 6(1)(a)
Article 6(1), second indent	Article 6(1)(b)
Article 6(1), third indent	Article 6(1)(c)
Article 6(2)	Article 6(2)
Article 6(3)	Article 6(3)
Article 6(4)	Article 6(5)
Article 6(5)	Article 6(4)
Article 7	Article 7
Article 8(1)	Article 8(1)
Article 8(2)(a)	Article 8(2)
Article 8(2)(b)	Article 8(3)
Article 8(2)(c)	Article 8(4)
Article 8(2)(d)	Article 8(5)
Article 9(1)	Article 9(1)
Article 9(2)	Article 9(2)
Article 9(3), introductory wording	Article 9(3), introductory wording

Directive 96/74/EC	This Directive
Article 9(3)(a), first subparagraph, introductory wording	Article 9(3)(a), first subparagraph, introductory wording
Article 9(3)(a), first subparagraph, first indent	Article 9(3)(a), first subparagraph, point (i)
Article 9(3)(a), first subparagraph, second indent	Article 9(3)(a), first subparagraph, point (ii)
Article 9(3)(a), first subparagraph, third indent	Article 9(3)(a), first subparagraph, point (iii)
Article 9(3)(a), second subparagraph	Article 9(3)(a), second subparagraph
Article 9(3)(a), third subparagraph	Article 9(3)(a), third subparagraph
Article 9(3)(b) to (f)	Article 9(3)(b) to (f)
Article 10	Article 10
Article 11	Article 11
Article 12, introductory wording	Article 12, introductory wording
Article 12, point 1	Article 12(a)
Article 12, point 2(a)	Article 12(b)
Article 12, point 2(b), first subparagraph	Article 12(c)
Article 12, point 2(b), second subparagraph	Article 12(d)
Article 12, point 2(c), first subparagraph	Article 12(e), first subparagraph
Article 12, point 2(c), second subparagraph, introductory wording	Article 12(e), second subparagraph, introductory wording
Article 12, point 2(c), second subparagraph, first indent	Article 12(e), second subparagraph, point (i)
Article 12, point 2(c), second subparagraph, second indent	Article 12(e), second subparagraph, point (ii)
Article 12, point 3	Article 12(f)
Article 13	Article 13
Article 14	Article 14
Article 15, introductory wording	Article 1(2), introductory wording
Article 15, point 1	Article 1(2)(a)
Article 15, point 2	Article 1(2)(b)
Article 15, point 3	Article 1(2)(c)
Article 15, point 4	Article 1(2)(d)
Article 16	Articles 15 and 16
Article 17	Article 17
Article 18	—
—	Article 18
Article 19, first paragraph	Article 20
Article 19, second paragraph	Article 19

Directive 96/74/EC	This Directive
Annex I, Nos 1 to 33	Annex I, Nos 1 to 33
Annex I, No 33a	Annex I, No 34
Annex I, No 34	Annex I, No 35
Annex I, No 35	Annex I, No 36
Annex I, No 36	Annex I, No 37
Annex I, No 37	Annex I, No 38
Annex I, No 38	Annex I, No 39
Annex I, No 39	Annex I, No 40
Annex I, No 40	Annex I, No 41
Annex I, No 41	Annex I, No 42
Annex I, No 42	Annex I, No 43
Annex I, No 43	Annex I, No 44
Annex I, No 44	Annex I, No 45
Annex I, No 45	Annex I, No 46
Annex I, No 46	Annex I, No 47
Annex II, Nos 1 to 33	Annex V, Nos 1 to 33
Annex II, No 33a	Annex V, No 34
Annex II, No 34	Annex V, No 35
Annex II, No 35	Annex V, No 36
Annex II, No 36	Annex V, No 37
Annex II, No 37	Annex V, No 38
Annex II, No 38	Annex V, No 39
Annex II, No 39	Annex V, No 40
Annex II, No 40	Annex V, No 41
Annex II, No 41	Annex V, No 42
Annex II, No 42	Annex V, No 43
Annex II, No 43	Annex V, No 44
Annex II, No 44	Annex V, No 45
Annex II, No 45	Annex V, No 46
Annex II, No 46	Annex V, No 47
Annex III	Annex III
Annex IV	Annex IV
Annex V	—
Annex VI	—
—	Annex VI
—	Annex VII

II

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

DECISIONS

EUROPEAN PARLIAMENT AND COUNCIL

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 18 December 2008

on mobilisation of the Flexibility Instrument in accordance with point 27 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management

(2009/45/EC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

HAVE DECIDED AS FOLLOWS:

Article 1

Having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ⁽¹⁾, and in particular the fifth paragraph of point 27 thereof,

For the general budget of the European Union for the financial year 2009, the Flexibility Instrument shall be used to provide the sum of EUR 420 million in commitment appropriations.

That amount shall be used to complement the financing of the facility for a rapid response to soaring food prices in developing countries in heading 4.

Article 2

Having regard to the proposal from the Commission,

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

Whereas, at the conciliation meeting on 21 November 2008, the two arms of the budgetary authority agreed to mobilise the Flexibility Instrument to complement the financing in the 2009 budget, beyond the ceilings of heading 4, of EUR 420 million towards the financing of the facility for a rapid response to soaring food prices in developing countries,

Done at Strasbourg, 18 December 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

E. WOERTH

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

COMMISSION

COMMISSION DECISION

of 19 December 2008

exempting certain services in the postal sector in Sweden from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

(notified under document number C(2008) 8409)

(Only the Swedish text is authentic)

(Text with EEA relevance)

(2009/46/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ⁽¹⁾, and in particular Article 30(4) and (6) thereof,

Having regard to the request submitted by Posten AB Sweden (hereinafter referred to as Sweden Post) by e-mail of 19 June 2008,

After consulting the Advisory Committee for Public Contracts,

Whereas:

I. FACTS

- (1) On 19 June 2008, Sweden Post transmitted a request pursuant to Article 30(5) of Directive 2004/17/EC to the Commission by e-mail. In accordance with Article 30(5) first subparagraph, the Commission informed the Swedish authorities thereof by letter of 25 June 2008, to which the Swedish authorities, following a request for prolongation of the deadline, answered by e-mail of 2 September 2008. The Commission also requested additional information of Sweden Post by e-mail of 30 July 2008, which was transmitted by Sweden Post by e-mail of 15 August 2008.
- (2) The request submitted by Sweden Post concerns certain postal services as well as certain services other than postal services in Sweden. The services described in the request are as follows:

(a) addressed first class letters services (Consumer to Consumer (CtC), Consumer to Business (CtB), Business to Business (BtB) and Business to Consumer (BtC)), both domestic and international; this category also includes priority distribution of newspapers and express services;

(b) non-priority letter services, including the so-called 'e-brev' services, distribution of non-priority newspapers and addressed direct mail. E-brev is a service whereby the customer submits material on electronic media and this is then transferred through a printing and enveloping service into physical letters which are combined with a postage service; within this category of services, further distinctions are made according to the fact that certain types of mail are handled differently and priced differently. Thus, there is a fundamental difference between single items and large sorted shipments (also called pre-sorted bulk mail). For this last category, yet another difference is made according to the geographic area in which this service is offered, i. e. between large sorted shipments in metropolitan areas ⁽²⁾ and large sorted shipments elsewhere in Sweden. A particularly relevant consequence of this distinction is that prices differ according to where the services are rendered and the differences are substantial ⁽³⁾. For the purposes of this Decision, three different services will therefore be considered, namely:

— non-priority letter services in general, i.e. all non-priority letter services as just described, to the exclusion of:

⁽¹⁾ OJ L 134, 30.4.2004, p. 1.

⁽²⁾ Defined as certain postal code areas pertaining to larger cities and environs, such as Stockholm, Gothenburg, Malmö and Västerås.

⁽³⁾ On average 0,40 SEK — in comparison, the price for a non-priority letter of up to 20 g (single item) is 4,0 SEK and the price for non-priority letters in large sorted shipments outside of the metropolitan areas is 2,84 SEK. On average, the price in metropolitan areas is 16,39 % cheaper for non-priority letters in large sorted shipments.

- large sorted non-priority shipments in metropolitan areas, and
 - large sorted non-priority shipments elsewhere in Sweden than in metropolitan areas;
- (c) unaddressed direct mail services;
- (d) domestic BtB standard parcel services;
- (e) domestic BtC standard parcel services;
- (f) domestic consumer standard parcel services (CtC and CtB);
- (g) domestic express and courier parcel services;
- (h) international parcel services (BtB, BtC, CtB, CtC), that is services relating to parcels originating outside of Sweden and services relating to parcels to be delivered outside of Sweden;
- (i) domestic pallet services (also called light goods services, i. e. services relating to goods of up to approximately 1 000 kg);
- (j) philatelic services;
- (k) third and fourth party logistics, defined as including import, warehousing and distribution as well as direction, control and development of the customer's flows of goods;
- (l) outsourcing of internal office services. This is described as follows in the application: 'Postservice entails that a company's internal post management

routines are managed by an external player in order to free up internal resources and enhance business efficiency. *Postservice* constitutes a part of the Outsourcing of Internal Office Services Market, which includes a number of other services. Many companies operate on this market and the services they provide vary. The services are bundled differently and sometimes include most of the services which can be deemed to constitute postal service, while in other cases only a few are included and the emphasis is then placed on, for example, cleaning services.'

- (3) The request furthermore mentions a service consisting in the provision of post-boxes, but concludes — correctly — that this is an ancillary service that should be considered as a part of the provision of an access to the postal infrastructure. It can therefore not be the subject of an autonomous decision pursuant to Article 30.
- (4) The request is accompanied by the conclusions of the independent national authority, Konkurrensverket ⁽¹⁾ (the Swedish Competition Authority), whose main comments and conclusions are as follows: 'Konkurrensverket does not have any decisive objections against the way in which [Sweden Post] has delimited the relevant markets. (...) The picture of an existing and increasing competition against [Sweden Post] from new companies within the postal sector is correct, this applies in particular to the more densely populated areas. (...) Sweden is however thinly populated with large geographical areas within which it will currently and probably for the foreseeable future not be commercially interesting for new companies to establish themselves [i. e. to provide postal services]. This means that [Swedish Post] also in the future will continue to be the sole market operator or at the least will have very strong market position within certain parts of the Swedish postal market. (...) To conclude, Konkurrensverket considers that [Sweden Post's] request pursuant to Article 30 of the Utilities Directive, 2004/17/EC, meets the requirements to be granted an exemption for the markets mentioned [therein]. (...)'

II. LEGAL FRAMEWORK

- (5) Article 30 of Directive 2004/17/EC provides that contracts intended to enable the performance of one of the activities to which Directive 2004/17/EC applies shall not be subject to that Directive if, in the Member State in which it is carried out, the activity is directly exposed to competition on markets to which access is not restricted. Direct exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. Access is deemed to be unrestricted if the Member State has implemented and applied the relevant Community legislation opening a given sector or a part of it.

⁽¹⁾ Note of 28.2.2008, Dnr 656/2007.

- (6) Since Sweden has implemented and applied Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service ⁽¹⁾, without using the possibility to reserve any services pursuant to its Article 7, access to the market should be deemed not to be restricted in accordance with the first subparagraph of Article 30(3) of Directive 2004/17/EC. Direct exposure to competition in a particular market should be evaluated on the basis of various criteria, none of which are, *per se*, decisive.
- (7) In respect of the markets concerned by this decision, the market share of the main players on a given market constitutes one criterion which should be taken into account. Another criterion is the degree of concentration on those markets. As the conditions vary for the different activities that are concerned by this Decision, the examination of the competitive situation should take into account the different situations on different markets.
- (8) Although narrower market definitions might be envisaged in certain cases, the precise definition of the relevant market can be left open for the purposes of this Decision as far as a number of the services listed in the request submitted by Sweden Post are concerned to the extent that the result of the analysis remains the same whether it is based on a narrow or a broader definition.
- (9) This Decision is without prejudice to the application of the rules on competition.

III. ASSESSMENT

Services to which Article 30(1) of Directive 2004/17/EC is not applicable

Addressed first class letter services

- (10) In respect of addressed first class letters, Sweden Post has a market share which has been stable at slightly more than [...] % ^(*) each year between 2005 and 2007, whether measured in terms of value or of volume ⁽²⁾. According to Sweden Post, this level of market share would not differ to any significant degree even if referred separately to each of the possible segments that could be contemplated (CtC, CtB, BtC, BtB,

domestic and international, letters and first class newspapers, single items and shipments, sorted and unsorted shipments, large and small shipments, metropolitan area and the rest of Sweden (...)) ⁽³⁾. Consequently, in the present case, the question whether or not all these segments are part of the same product market can be left open. However, according to Sweden Post, the relevant market to evaluate its markets position against, would be a larger 'Messages Market', which, in addition to addressed letters of all categories and types, priority and non-priority newspapers and periodicals as well as addressed direct mail, would include 'all electronic alternatives to physical distribution of postal items. (...) Examples include e-mail, EDI, communication via websites (with information submission, transaction execution, etc.), business systems (which generate communication and service applications, such as e-invoicing systems) and telephony services (in the form of SMS and MMS).' On a market thus defined Sweden Post would have 'a limited market share'. According to Sweden Post there would, in fact, be competitive pressure from the possibility to substitute 'traditional' paper-based letter services with electronic means of communication (such as e-mail or SMS). In respect of substitution, it should be noted that according to EC competition rules, substitutability should be analysed *inter alia* on the basis of product characteristics, price of the products and barriers associated with the switching of demand to potential substitutes. It appears that the characteristics of paper-based mail and of electronic communications differ significantly in terms of the form of communication, the consumption of time of the communication and the customer preferences. There are also significant barriers to switching between paper-based mail and electronic mail ⁽⁴⁾. This indicates that electronic communications belong to a different product market and therefore they cannot exercise a direct competitive restraint on Sweden Post's addressed first class letter services. Furthermore, it would seem that the main effect of the increased use of electronic mail would substantially reduce the overall size of the paper-based mail market, rather than introduce competition within it ⁽⁵⁾. Whether there is direct exposure to competition can therefore not be evaluated using the 'messages market' as reference. Failing that, Sweden Post argues that the relevant market would be a 'market for addressed physical messages', that is one single market covering all forms and categories of letters (priority and non-priority, express and 'normal'), addressed direct mail,

⁽¹⁾ OJ L 15, 21.1.1998, p. 14.

^(*) Confidential information.

⁽²⁾ Measured by value, the markets shares were [...] % for, respectively, 2005, 2006 and 2007, whereas the corresponding markets shares measured in terms of volume for the same years were respectively [...] %.

⁽³⁾ See the request, point 3.1, C, p. 25-26.

⁽⁴⁾ For instance, roughly one quarter of Swedish households are not connected to the Internet. Furthermore, the part of the Swedish population that pays its bills via internet is stated to be 'slightly over half', which, conversely, means that almost half do not do so.

⁽⁵⁾ See also the conclusion in the same sense set out in recital 10 of Commission Decision 2007/564/EC of 6 August 2007 exempting certain services in the postal sector in Finland, excluding the Åland Islands, from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 215, 18.8.2007, p. 21).

newspapers and periodicals. On the thus defined market, the market share of Sweden Post for 2007 is stated to be [...] % in terms of value and [...] % in terms of volume. Apart from the fact that pricing conditions are widely different for the different types of services concerned, this high market share spans over market shares for Sweden Post varying between [...] % and [...] % in terms of value and between [...] % and [...] % in terms of volume, which is not consistent with one single market. The market for addressed first class letters should therefore be evaluated separately and the market shares of Sweden Post on that market are such that, in the absence of any indications to the contrary, it should be concluded that the services relating to addressed first class letters examined in this recital are not directly exposed to competition in Sweden. Therefore Article 30(1) of Directive 2004/17/EC does not apply to contracts intended to enable the pursuit of those activities in Sweden.

Non-priority letter services in general

- (11) In respect of non-priority letter services in general as defined under recital 2(b), first indent, Sweden Post has an estimated market share of [...] % in 2007 ⁽¹⁾ in terms of value with the largest competitor having a share amounting to the remaining [...]. A constant jurisprudence should be recalled in this context ⁽²⁾, according to which 'very large market shares are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position. That is the situation when there is a market share of 50 %'. In view of the high level of concentration [...] % on this market and in the absence of any other indicators to the contrary, it should therefore be concluded that non-priority letter services in general are not directly exposed to competition in Sweden. Therefore Article 30(1) of Directive 2004/17/EC does not apply to contracts intended to enable the pursuit of that activity in Sweden.

Large sorted non-priority shipments elsewhere in Sweden than in metropolitan areas

- (12) In respect of large sorted non-priority shipments elsewhere in Sweden than in metropolitan areas, as defined under recital 2(b), third indent, the information given by Sweden Post states that the 'market shares of the players who offer large shipments outside metro-

politan areas are not measured separately, but only as part of all other mail destined to these areas. This means that the market shares of these players are approximately the same as the market shares for the players providing first class items which means that [Sweden Post's] market share [is] approximately [...] %'. In view of this high level of concentration on this market and in the absence of any other indicators to the contrary, it should be concluded that large sorted non-priority shipments elsewhere in Sweden than in metropolitan areas are not directly exposed to competition in Sweden ⁽³⁾. Therefore Article 30(1) of Directive 2004/17/EC does not apply to contracts intended to enable the pursuit of that activity in Sweden.

Unaddressed direct mail services

- (13) In respect of unaddressed direct mail which for the purposes of this Decision means unaddressed deliveries intended as marketing communications, Sweden Post has an estimated market share of [...] % in terms of value, with the biggest significant competitor holding [...] %, also in terms of value. However, according to Sweden Post, the relevant market to evaluate its market positions against, would be a larger 'Advertising Distribution Market', which, in addition to unaddressed direct mail would include 'other advertising distribution channels, such as newspaper advertisements, TV and radio advertisements, outdoor advertisements, advertising via the Internet, sponsoring, etc.'. On a thus defined market, Sweden Post's share would be approximately [...] % ⁽⁴⁾. The existence of one single, broad market comprising publicity in various media has, however, already been examined and rejected in a previous Commission Decision ⁽⁵⁾. Whether there is direct exposure to competition can therefore not be evaluated using the 'advertising distribution market' as reference. The market for unaddressed direct mail services must therefore be examined separately. In view of the high level of concentration on this market, taking into account also the constant jurisprudence mentioned in recital 11 and in the absence of any other indicators to the contrary, it should be concluded that unaddressed direct mail services are not directly exposed to competition in Sweden. Therefore Article 30(1) of Directive 2004/17/EC does not apply to contracts intended to enable the pursuit of that activity in Sweden.

⁽³⁾ Population density was not considered to be a relevant factor in reaching the just-mentioned Decision 2007/564/EC concerning Finland, whose population density — 17,4 inhabitants per km² as of 1 January 2007 — is lower than the Swedish population density, 22,2 inhabitants per km² as of 1 January 2007.

⁽⁴⁾ Including its addressed direct mail, which, however, is deemed by Sweden Post in its request to be part of the addressed physical message market, 'taking into consideration, *inter alia*, the division of postal services made in the Utilities Directive.'

⁽⁵⁾ See point 11 of Commission Decision of 8 April 2005 (Case No IV/M.3648 — GRUNER + JAHR/MPS). The media concerned were publicity in periodicals, television, Radio and internet. See in the same sense, point 15 of Commission Decision of 24 January 2005 (Case No IV/M.3579 — WPP/GREY), which, *inter alia*, states '... it rather appears that different media types are complementary rather than interchangeable, since different media can address different audiences in different ways.'

⁽¹⁾ 2005: [confidential] 2006: [confidential].

⁽²⁾ See point 328 of the judgment of the Court of First Instance (Third Chamber) of 28 February 2002. *Atlantic Container Line AB and Others v Commission of the European Communities*. Case T-395/94. European Court reports 2002 Page II-00875.

Consumer standard parcel services (CtC and CtB), domestic

- (14) Sweden Post considers that there would be one single market, called 'The Sorting Office Processed General Cargo Market', for 'standardised distribution of parcels, parcel shipments and pallets in national, regional or global transportation networks', as these would all have a common denominator in that 'sorting offices for processing large volumes of goods are a central feature of the networks.' On a market thus defined, Swedish Post would have a market share of the order of [... %]. However, this spans over widely differing market shares, varying from [... %] by value for domestic express parcel services to [... %] by value for domestic consumer standard parcel services. This is inconsistent with one single market. Domestic consumer standard parcel services must therefore be considered apart, as they satisfy different needs of demand (universal postal service) in relation to commercial parcels, where the technological process of providing this service usually differs significantly. In respect of these services, Sweden Post's position is quite strong with an estimated market share that has remained stable over the period 2005-2007 at the order of [... %] by value⁽¹⁾. While this may change in the coming years following the entry of two new competitors during (late) 2007, it should be concluded that the category of services examined is not directly exposed to competition in Sweden. Therefore Article 30(1) of Directive 2004/17/EC does not apply to contracts intended to enable the pursuit of those activities in Sweden.

Outsourcing of internal office services

- (15) According to the information submitted by the Sweden Post, there would be one single market for outsourcing of internal office services. As set out under recital 2(l), this would cover different types of services ranging from one or more services relating to postal items, e. g. mailroom management services, to cleaning services. The precise combination of services depends on the demands of the individual customers. Apart from all other considerations concerning the absence of substitutability between as widely differing services as cleaning services and mailroom management services, both on the supply side and on the demand side, it cannot be ascertained beforehand which services may be grouped together if one or more customers decide to request them. A decision as to the legal regime applicable to outsourcing of internal office services would therefore entail substantial legal uncertainty. Under these circumstances, outsourcing of internal office services as defined

⁽¹⁾ According to a study provided by Sweden Post and accompanying its request, Sweden Post 'in fact makes no distinction between the two types of service. Whether the parcel is C2C or C2B, the service is provided under the same product name ("Postpaket"). Because of this close substitutability on the supply-side, it is appropriate to treat these services as one C2X service.' This is also consistent with analysis adopted for Finland in Decision 2007/564/EC.

in the notification from Sweden Post cannot be the subject of a decision pursuant to Article 30 of Directive 2004/17/EC as a single category of services.

Services to which Article 30(1) of Directive 2004/17/EC is applicable*Large Sorted Non-Priority Shipments in Metropolitan Areas*

- (16) As set out under recital 2(b), above, there is a separate market in Sweden for large sorted non-priority shipments in metropolitan areas. On this market, Sweden Post's market share amounts to [... %] by value in 2007. Considering the degree of concentration on this market, where the biggest competitor has obtained a share estimated at approximately [... %] by value in 2007, these factors should be taken as an indication of direct exposure to competition.

BtB standard parcel services, domestic

- (17) In respect of domestic BtB standard parcel services, Sweden Post's market share amounted to [... %] by value in 2007. Considering that the estimated aggregate market shares of the two biggest competitors with regard to domestic services amount to [... %], and that the aggregate share of the three biggest competitors lies between [... %] by value, there is therefore a not indifferent market share for the three biggest competitors and it is concluded that the activity is directly exposed to competition.

BtC standard parcel services, domestic

- (18) Sweden Post's market share for domestic services amounts to an estimated [... %] by value in 2007. However, at [... %] by value in 2007, the estimated market share of the biggest competitor amounts to about half of that of Sweden Post and at that level it can be considered that that competitor would be able to exert a significant competitive pressure on Sweden Post. These factors should therefore be taken as an indication of direct exposure to competition.

Express and courier parcel services, domestic

- (19) On this market, Sweden Post had a share by value of [... %] in 2007, while the aggregate market share of the two biggest competitors amounted to [... %]. These factors should therefore be taken as an indication of direct exposure to competition of domestic express and courier parcel services.

International parcel services

- (20) On the market for international parcel services as defined under recital 2(h), above, Sweden Post has a market share by value in 2007 of [... %], whereas the share for its biggest competitor was at a comparable level at [... %] and the aggregate share of the two biggest competitors was almost double that of Sweden Post at [... %]. These factors should therefore be taken as an indication of direct exposure to competition of international parcel services.

Domestic pallet services (also called light goods services)

- (21) On the market for domestic pallet services as defined under recital 2(i), above, Sweden Post has an estimated market share of [... %]. According to the information supplied by Sweden Post '... the market is dominated by DHL, Schenker, DSV and [Sweden Post], with [Sweden Post] and DSV competing for third place. In addition, there are both local and nationwide haulage firms which offer transportation of pallets. There are some 14 000 companies in the transport sector in Sweden and it is not possible to say how many of them also include a pallet service in their product range.' These factors should therefore be taken as an indication of direct exposure to competition.

Third and fourth party logistics

- (22) On the market for third and fourth party logistics as defined under recital 2(k), Sweden Post's market share is fairly negligible at less than [... %], with 'a large number of Swedish and international players operating on the Swedish market, such as DHL, Schenker, DSV and Green Cargo. In addition, there are companies which were originally in the shipping and forwarding industry with their own global networks, such as Maersk and Tradimus', according to the information supplied by Sweden Post. This can therefore be taken as an indication of direct exposure to competition.

Philatelic services

- (23) For the purposes of this Decision, philatelic services are defined as 'sales of stamps and stamp related products mainly to collectors of stamps and, to a limited extent, to gift- and souvenir buyers.' According to the information given, Sweden Post is the largest company that continuously issues new stamps in Sweden. Other players that offer newly issued stamps on the philately market in Sweden are locally established Swedish post

operators and foreign, mainly Nordic, post operators. However, the philately market is not limited to stamps offered by post operators but also comprises sales of stamps through auctioneers, stamp traders and sales on the Internet through different sales- and auction sites. Sweden Post's estimated market share on the overall market for philatelic services in Sweden, whether provided by dealers or auction houses, is estimated at [... %], auctioneers hold a joint market share of [... %], stamp traders jointly [... %], sales on the Internet jointly [... %] and other post operators in Sweden [... %] all together. The estimated aggregate shares of the three largest auctioneers ([... %]) is somewhat greater than that of Sweden Post. These factors should therefore be taken as an indication of direct exposure to competition for philatelic services, whether the market considered is the overall market or the separate stamp-dealing market and the stamp auction market.

IV. CONCLUSIONS

- (24) In view of the factors examined in recitals 2 to 23, the condition of direct exposure to competition laid down in Article 30(1) of Directive 2004/17/EC should be considered to be met in Sweden in respect of the following services:
- (a) large sorted non-priority shipments in metropolitan areas;
 - (b) domestic standard business to business parcel services;
 - (c) domestic standard business to consumer parcel services;
 - (d) domestic express and courier parcel services;
 - (e) domestic pallet services (also called light goods services);
 - (f) third and fourth party logistics;
 - (g) philatelic services; and
 - (h) international parcel services.

- (25) Since the condition of unrestricted access to the market is deemed to be met, Directive 2004/17/EC should not apply when contracting entities award contracts intended to enable the services listed in points (a) to (h) of recital 24 to be carried out in Sweden, nor when design contests are organised for the pursuit of such an activity in Sweden.

(26) This Decision is based on the legal and factual situation as of June to September 2008 as it appears from the information submitted by Sweden Post and the Kingdom of Sweden. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 30(1) of Directive 2004/17/EC are no longer met,

HAS ADOPTED THIS DECISION:

Article 1

Directive 2004/17/EC shall not apply to contracts awarded by contracting entities and intended to enable the following services to be carried out in Sweden:

- (a) large sorted non-priority shipments in metropolitan areas;
- (b) domestic standard business to business parcel services;
- (c) domestic standard business to consumer parcel services;
- (d) domestic express and courier parcel services;

- (e) domestic pallet services (also called light goods services);
- (f) third and fourth party logistics;
- (g) philatelic services; and
- (h) international parcel services.

Article 2

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 19 December 2008.

For the Commission
Charlie McCREEVY
Member of the Commission

COMMISSION DECISION

of 22 December 2008

establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors is not applicable to the production of electricity in the Czech Republic

*(notified under document number C(2008) 8569)***(Only the Czech text is authentic)****(Text with EEA relevance)**

(2009/47/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ⁽¹⁾, and in particular Article 30(4) and (6) thereof,

Having regard to the request submitted by the Czech Republic by e-mail received on 3 July 2008,

After consulting the Advisory Committee for Public Contracts,

Whereas:

I. FACTS

- (1) On 3 July 2008, the Commission received a Czech request pursuant to Article 30(4) of Directive 2004/17/EC, transmitted to the Commission by e-mail. The Commission requested additional information by e-mail of 26 September 2008, which was transmitted by the Czech authorities by e-mail of 9 October 2008.
- (2) The request submitted by the Czech Republic concerns production of electricity.
- (3) The request is accompanied by a letter from an independent national authority, (Energetický regulační úřad, the Czech energy regulatory authority), and by a letter from another independent authority (Úřad pro ochranu hospodářské soutěže, the Czech Office for the Protection of Competition). Both of these authorities analyse the conditions of access to the relevant market, finding it to

be unrestricted, while none of them establish that the further condition relating to the direct exposure to competition is met in respect of electricity production in the Czech Republic.

II. LEGAL FRAMEWORK

- (4) Article 30 of Directive 2004/17/EC provides that contracts intended to enable the performance of one of the activities to which the Directive applies shall not be subject to the Directive if, in the Member State in which it is carried out, the activity is directly exposed to competition on markets to which access is not restricted. Direct exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. Access is deemed to be unrestricted if the Member State has implemented and applied the relevant Community legislation opening a given sector or a part of it. This legislation is listed in Annex XI to Directive 2004/17/EC, which, for the electricity sector, refers to Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity ⁽²⁾. Directive 96/92/EC has been superseded by Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC ⁽³⁾, which requires an even higher degree of market opening.
- (5) The Czech Republic has implemented and applied not only Directive 96/92/EC but also Directive 2003/54/EC, opting for legal and organisational unbundling for transmission and distribution networks except for the smallest distribution companies, which, while continuing to be subject to accounting unbundling, are exempted from the requirements of legal and organisational unbundling having less than 100 000 customers or serving electricity systems with consumption lower than 3 TWh in 1996. Furthermore, the transmission system operator, CEPS, has been ownership unbundled. Consequently, and in accordance with the first subparagraph of Article 30(3), access to the market should be deemed not to be restricted.

⁽¹⁾ OJ L 134, 30.4.2004, p. 1.

⁽²⁾ OJ L 27, 30.1.1997, p. 20.

⁽³⁾ OJ L 176, 15.7.2003, p. 37.

- (6) Direct exposure to competition should be evaluated on the basis of various indicators, none of which are, per se, decisive. In respect of the markets concerned by this decision, the market share of the main players on a given market constitutes one criterion which should be taken into account. Another criterion is the degree of concentration on those markets. Given the characteristics of the markets concerned, further criteria should also be taken into account such as the functioning of the balancing mechanism, price competition and the degree of customer switching.
- (7) This Decision is without prejudice to the application of the rules on competition.

III. ASSESSMENT

- (8) The request submitted by the Czech Republic concerns production of electricity in the Czech Republic.
- (9) The Czech request considers that the relevant geographical market would be a market larger than the national territory, incorporating the territories of the Czech Republic, Poland, Slovakia, Austria and Germany. It is argued that a main reason for this market definition is the high share of interconnection capacity (with several Member States) as compared to domestic generation and demand. According to the information given by the Czech authorities in their answer of 9 October 2008, 25,6 TWh were exported in 2007 and 9,5 TWh imported during the same year. The Czech Republic is thus a net exporter of electricity with net exports amounting to 16,1 TWh, equivalent to almost 20 % ⁽¹⁾ of the total, net electricity generation (81,4 TWh). A further argument submitted with respect to the existence of a wider geographic market is a development towards price convergence between the national market within the Czech Republic and the one in Germany as well as the growing role of the PXE Prague energy Exchange.
- (10) However, relatively high interconnection capacity and price convergence are not sufficient to delineate a relevant market. The local market rules, and in particular the indispensability and dominant position of any market player (being in the case of the Czech Republic the operator CEZ) can also lead to defining a narrower market. In this context, it must be noted that according to the reply of the Czech authorities of

9 October 2008, the overwhelming share of the growing volume of the PXE, stems from transactions involving CEZ. Furthermore, the Commission has also analysed in its Energy Sector Inquiry ⁽²⁾, with regards to possible geographical market definitions going beyond the national scope, whether certain countries in Central Europe could be part of possible pairs of relevant markets. For the Austria-Germany country pair, the size of the main operator in Austria coupled with internal Austrian network congestion prevented the Commission from concluding that there would be a larger than national relevant market. Similarly, in the case of the Czech Republic and Slovakia, the respective size of the dominant operators and their indispensability to meet demand lead to the conclusion that even those two country pairs are not part of one and the same relevant geographic market. In addition, the Commission has recently examined the Austrian and the Polish electricity production markets and found them to be national in geographical scope ⁽³⁾. Finally, in its recent antitrust Decision C(2008) 7367 of 26 November 2008 against E.ON concerning the German wholesale market ⁽⁴⁾, the Commission has considered the latter to be national in scope, without neighbouring countries (neither to the west, nor the east) being part of a broader geographic market.

- (11) Consequently, the existence of a regional market should be rejected. This is also consistent with the statement by the Czech Office for the Protection of Competition that 'in assessing the (application pursuant to Article 30), the Bureau, taking into account its existing investigation, started from the presumption that the relevant market of production of electricity should be, from the geographical standpoint, defined by the territory of the Czech Republic.' In view of the facts set out in recitals 9 and 10 above, the territory of the Czech Republic should therefore be considered to constitute the relevant market for the purposes of evaluating the conditions laid down in Article 30(1) of Directive 2004/17/EC.
- (12) As it results from a constant practice ⁽⁵⁾ in respect of Commission Decisions pursuant to Article 30, the Commission considered that, in respect of electricity

⁽¹⁾ 19,78 %. The total (gross) exports amounted to 31,45 % of the total, net generation, whereas the total imports amounted to 11,67 % of the total, net generation. If seen in relation to the domestic net electricity consumption for 2007 (approximately 59,7 TWh according to the Czech authorities), the total exports amounted to 42,88 % and net exports to 26,97 %, whereas total imports amounted to 15,91 % of the domestic net electricity consumption.

⁽²⁾ See COM(2006) 851 final of 10.1.2007: Commission Communication: Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors, hereinafter referred to as 'Final Report', Annex B, point A.2.7, p. 339.

⁽³⁾ See Commission Decision 2008/585/EC of 7 July 2008 exempting the production of electricity in Austria from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJ L 188, 16.7.2008, p. 28, and Commission Decision 2008/741/EC of 11 September 2008 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors is not applicable to the production and wholesale of electricity in Poland, OJ L 251, 19.9.2008, p. 35.

⁽⁴⁾ Not published in the Official Journal. See press release IP/08/1774 of 26.11.2008.

⁽⁵⁾ Most recently in the abovementioned Decisions 2008/585/EC and 2008/741/EC.

generation, 'one indicator for the degree of competition on national markets is the total market share of the biggest three producers'. According to 'Table 6: Wholesale Market Position', p. 12 et seq. of 'Commission Staff Working Document: Accompanying document to the Report on Progress in Creating the Internal Gas and Electricity Market' ⁽¹⁾, the shares of the three largest generators amounted to 69,4 % of electricity production in 2006 and rising to 73,9 % in 2007. According to the information given by the Czech authorities in their answer of 9 October 2008, the dominant company held almost 70 % of the total installed capacity, and the second and third largest held respectively 3,5 and 3 %. These levels of concentration, encompassing the total market share of the largest three generators, are higher than the corresponding percentage, 39, to which Commission Decisions 2006/211/EC ⁽²⁾ and 2007/141/EC ⁽³⁾ refer to for the UK. They are also significantly higher than the level (52,2 %) referred to in Commission Decision 2008/585/EC ⁽⁴⁾ in respect of Austria, as well as being higher than the level (58 % of gross production) referred to in Commission Decision 2008/741/EC ⁽⁵⁾ in the case of Poland.

- (13) The Czech levels of concentration of the largest three operators are finally similar to or lower than the corresponding levels referred to in Commission Decisions 2006/422/EC ⁽⁶⁾ and 2007/706/EC ⁽⁷⁾ concerning, respectively Finland (73,6 %) and Sweden (86,7 %). There

is, however, an important difference between the Czech case on the one hand and the Swedish and Finnish on the other hand. Notably, in the Czech Republic there is a single dominant operator with the other two largest producers having market shares that are smaller by a factor of 20 (3 % being the lowest share and almost 70 % the highest). In Finland the corresponding figures show that the operator with an 18,3 % market share was lowest among the top three and one with a 33,7 % market share the highest. Similarly, for Sweden there exists a range between 17,4 % as the lowest and 47,1 % as the highest.

- (14) A constant jurisprudence should also be recalled in this context ⁽⁸⁾, according to which 'very large market shares are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position. That is the situation when there is a market share of 50 %'.
- (15) The level of electricity imports into the Czech Republic amounts to slightly more than 11 % of its total demand ⁽⁹⁾, which, while higher than the share of electricity imports into Poland, reaches less than half of the share in the case of Austria ⁽¹⁰⁾ ⁽¹¹⁾. Also in the Swedish and Finnish cases, the high levels of concentration of the three largest producers are 'offset' by the 'competitive pressure on the [...] market deriving from the potential to import electricity from outside [...]' ⁽¹²⁾. It is therefore difficult to find that there would be a substantial competitive pressure from imported electricity in the Czech Republic and the fact that there would be transport capacity to raise the level of imports substantially is only theoretical, given that the Czech Republic has been a net exporter each year since at least 2003 and will continue to be so in the mid-term. This level of concentration therefore cannot be taken as an indicator of direct exposure to competition of the generation market.
- (16) The Czech authorities' answer of 9 October 2008 also points towards CEZ planning the majority of future large-scale generation projects on the transmission network level, through in particular envisaged nuclear new-build, the planned life-time extension of the existing Dukovany nuclear plant as well as coal- and gas-fired power plant projects. Besides CEZ's plans,

⁽¹⁾ COM(2008)192 final of 15.4.2008, in the following referred to as the 'Annex to the 2007 Progress Report'. The Report itself, SEC(2008)460, will be referred to as the '2007 Progress Report'.

⁽²⁾ Commission Decision of 8 March 2006 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to electricity generation in England, Scotland and Wales, OJ L 76, 15.3.2006, p. 6.

⁽³⁾ Commission Decision of 26 February 2007 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to the supply of electricity and gas in England, Scotland and Wales, OJ L 62, 1.3.2007, p. 23.

⁽⁴⁾ Commission Decision of 7 July 2008 exempting the production of electricity in Austria from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJ L 188, 16.7.2008, p. 28.

⁽⁵⁾ Commission Decision 2008/741/EC of 11 September 2008 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors is not applicable to the production and wholesale of electricity in Poland, OJ L 251, 19.9.2008, p. 35.

⁽⁶⁾ Commission Decision of 19 June 2006 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to the production and sale of electricity in Finland, excluding the Åland Islands, OJ L 168, 21.6.2006, p. 33.

⁽⁷⁾ Commission Decision of 29 October 2007 exempting the production and sale of electricity in Sweden from the application of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJ L 287, 1.11.2007, p. 18.

⁽⁸⁾ See point 328 of the judgment of the Court of First Instance (Third Chamber) of 28 February 2002. *Atlantic Container Line AB and Others v Commission of the European Communities*. Case T-395/94. European Court reports 2002 Page II-00875.

⁽⁹⁾ i.e. the quantity of electricity needed for internal consumption and exports.

⁽¹⁰⁾ 23,5 % according to information given by the Austrian authorities.

⁽¹¹⁾ See recital 10 of Decision 2008/585/EC. '[...] imported electricity accounted for approximately a quarter of its total needs, in particular for base load power.'

⁽¹²⁾ See, e.g. recital 12 of Decision 2007/706/EC. Indeed, in the Swedish and Finnish cases, the existence of a regional market has been left open, which, if taken as reference, brought the levels of concentration to 40 %.

there are also projects, especially in the field of renewable energy sources, which are planned by others in part at the transmission level and in particular at the distribution level.

(17) Furthermore, even though they represent a small part of the total amount of electricity produced and/or consumed in a Member State, the functioning of the balancing mechanisms should also be considered as an additional indicator. According to the available information, the workings of the balancing mechanism – in particular the markets based pricing and the well-developed intra-day market with one-and-a-half hourly gate closures, that is the possibility for network users to adjust their position every one-and-a-half hours – are such that it does not constitute an obstacle to electricity production being subject to direct exposure to competition.

(18) Given the characteristics of the product concerned (electricity) and the scarcity or unavailability of suitable substitutable products or services, price competition and price formation assume greater importance when assessing the competitive state of the electricity markets. In respect of large industrial (end)users, the number of customers switching supplier may serve as an indicator of price competition and, thus, indirectly, 'a natural indicator' of the effectiveness of competition. If few customers are switching, there is likely to be a problem with the functioning of the market, even if the benefits from the possibility of renegotiating with the historical supplier should not be ignored⁽¹⁾. Furthermore, 'the existence of regulated end-user prices is clearly a key determinant of customer behaviour [...]. Although the retaining of controls may be justified in a period of transition, these will increasingly cause distortions as the need for investment approaches'⁽²⁾.

(19) According to the latest available information, switching rates in the Czech Republic have been qualified as being at a 'high level'⁽³⁾ and, according to the latest information given by the Czech authorities in their answer of 9 October, 'since the electricity market opening almost every second customer in the large customer segment has changed its electricity supplier'. This must be seen against the background of the situation as set out in the previous Decisions concerning the electricity sector in which switching rates for large and very large industrial users ranged from more than 75 % (Decision 2006/422/EC concerning Finland) to 41,5 % (Decision 2008/585/EC

concerning Austria). Furthermore, supply markets (for household, industrial customers, etc.) have in the Commission's prior decision practice been defined as separate product markets, and may, due to the influence of strong and well-established supply companies, have a different competitive landscape the wholesale or generation market. The high level of switching can therefore not be taken as an unequivocal indicator of direct exposure to competition.

(20) In respect of production of electricity in the Czech Republic, the situation can thus be summarised as follows: the aggregate market shares of the three biggest generators are high, but more importantly, the biggest generator on its own represents a market share of almost 70 %, without this having been counterbalanced by imported electricity, as the Czech Republic has on the contrary been a constant net exporter of substantial quantities of electricity over at least the past 5 years. As set out in recital 17, the functioning of the balancing mechanism does not constitute an obstacle to direct exposure to competition of the electricity generation market and there is a high degree of switching. The well-functioning balancing mechanism and the high level of switching can not, however, outweigh the quite high degree of concentration, and in particular the high share of the greatest producer, taking into account also the jurisprudence mentioned under recital 14 above.

IV. CONCLUSIONS

(21) In view of the factors examined in recitals 9 to 20, it should be concluded that production of electricity is currently not directly exposed to competition in the Czech Republic. Therefore Article 30(1) of Directive 2004/17/EC is not applicable to contracts intended to enable the pursuit of those activities in the Czech Republic. Consequently, Directive 2004/17/EC continues to apply when contracting entities award contracts intended to enable generation of electricity to be carried out in the Czech Republic or when they organise design contests for the pursuit of such activities in the Czech Republic.

(22) This Decision is based on the legal and factual situation as of July to October 2008 as it appears from the information submitted by the Czech Republic, the 2007 Communication and the 2007 Staff Document, the Final Report as well as the 2007 Progress Report and the Annex thereto. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 30(1) of Directive 2004/17/EC are met,

⁽¹⁾ 2005 Report, p. 9.

⁽²⁾ Technical Annex, p. 17.

⁽³⁾ See the 2007 Progress Report, p. 8, point 7.

HAS ADOPTED THIS DECISION:

Article 1

Article 30(1) of Directive 2004/17/EC is not applicable to production of electricity in the Czech Republic. Consequently, Directive 2004/17/EC shall continue to apply to contracts awarded by contracting entities and intended to enable them to carry out such activities in the Czech Republic.

Article 2

This Decision is addressed to the Czech Republic.

Done at Brussels, 22 December 2008.

For the Commission

Charlie McCREEVY

Member of the Commission

COMMISSION DECISION

of 22 January 2009

granting certain parties an exemption from the extension to certain bicycle parts of the anti-dumping duty on bicycles originating in the People's Republic of China imposed by Council Regulation (EEC) No 2474/93, last maintained and amended by Regulation (EC) No 1095/2005, and lifting the suspension of the payment of the anti-dumping duty extended to certain bicycle parts originating in the People's Republic of China granted to certain parties pursuant to Commission Regulation (EC) No 88/97

(notified under document number C(2009) 157)

(2009/48/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Council Regulation (EC) No 71/97 of 10 January 1997 extending the definitive anti-dumping duty imposed by Regulation (EEC) No 2474/93 on bicycles originating in the People's Republic of China to imports of certain bicycle parts from the People's Republic of China, and levying the extended duty on such imports registered under Regulation (EC) No 703/96 ⁽²⁾ (the 'extending Regulation'),

Having regard to Commission Regulation (EC) No 88/97 of 20 January 1997, on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93 ⁽³⁾ (the 'exemption Regulation'), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

- (1) After the entry into force of the exemption Regulation, a number of bicycle assemblers submitted requests pursuant to Article 3 of that Regulation for exemption from the anti-dumping duty as extended to imports of certain bicycle parts from the People's Republic of China by Regulation (EC) No 71/97 (the 'extended anti-dumping duty'). The Commission has published in the Official Journal successive lists of bicycle assemblers ⁽⁴⁾ for which the payment of the extended anti-dumping duty in respect of their imports of essential bicycle parts declared for free circulation was suspended pursuant to Article 5(1) of the exemption Regulation.
- (2) Following the publication of a list of parties under examination ⁽⁵⁾, a period of examination has been selected. This period was defined as from 1 January 2007 to 30 June 2008. A questionnaire was sent to all parties under examination, requesting information on the assembly operations conducted during the relevant period of examination.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 16, 18.1.1997, p. 55.

⁽³⁾ OJ L 17, 21.1.1997, p. 17.

⁽⁴⁾ OJ C 45, 13.2.1997, p. 3; OJ C 112, 10.4.1997, p. 9; OJ C 220, 19.7.1997, p. 6; OJ C 378, 13.12.1997, p. 2; OJ C 217, 11.7.1998, p. 9; OJ C 37, 11.2.1999, p. 3; OJ C 186, 2.7.1999, p. 6; OJ C 216, 28.7.2000, p. 8; OJ C 170, 14.6.2001, p. 5; OJ C 103, 30.4.2002, p. 2; OJ C 35, 14.2.2003, p. 3; OJ C 43, 22.2.2003, p. 5; OJ C 54, 2.3.2004, p. 2; OJ C 299, 4.12.2004, p. 4; OJ L 17, 21.1.2006, p. 16; and OJ L 313, 14.11.2006, p. 5; OJ L 81, 20.3.2008, p. 73; OJ C 310, 5.12.2008, p. 19.

⁽⁵⁾ OJ L 81, 20.3.2008, p. 73.

A. REQUESTS FOR EXEMPTION FOR WHICH SUSPENSION WAS PREVIOUSLY GRANTED

1. Acceptable requests for exemption

- (3) The Commission received from the parties listed in table 1 below all the information required for the determination of the admissibility of their requests. These parties received their suspension after this date. The information provided was examined and verified, where necessary, at the premises of the parties concerned. Based on this information, the Commission found that the requests submitted by the parties listed in table 1 below are admissible pursuant to Article 4(1) of the exemption Regulation.

Table 1

Name	Address	Country	TARIC additional code
Blue Ocean Hungary Ltd	Sukorói u. 8, 8097 Nadap	HU	A858
Canyon Bicycles GmbH	Koblenzer Straße 236, 56073 Koblenz	DE	A856
Euro Bike Products	Ul. Starolecka 18, 61-361 Poznan	PL	A849
KOVL spol. s.r.o.	Choceradská 3042/20, 14100 Prague	CZ	A838
MICPOL	Ul. Myśliwska 93A/62, 03-185 Warsaw	PL	A839
N&W Cycle GmbH	Mühlenhof 5, 51598 Friesenhagen	DE	A852
Radsportvertrieb Dietmar Bayer GmbH	Zum Acker 1, 56244 Freirachdorf	DE	A850
Special Bike Società Cooperativa	Via dei Mille n. 50, 71042 Cerignola (FG)	IT	A533

- (4) The facts as finally ascertained by the Commission show that for all of these applicants' bicycle assembly operations, the value of the parts originating in the People's Republic of China which were used in their assembly operations was lower than 60 % of the total value of the parts used in these assembly operations, and they, therefore, fall outside the scope of Article 13(2) of the basic Regulation.
- (5) For this reason, and in accordance with Article 7(1) of the exemption Regulation, the parties listed in the above table should be exempted from the extended anti-dumping duty.
- (6) In accordance with Article 7(2) of the exemption Regulation, the exemption of the parties listed in table 1 from the extended anti-dumping duty should take effect as from the date of receipt of their requests. In addition, their customs debt in respect of the extended anti-dumping duty is to be considered void as from the date of receipt of their requests for exemption.

2. Unacceptable requests for exemption and withdrawals

- (7) The party listed in table 2 below also submitted requests for exemption from the extended anti-dumping duty.

Table 2

Name	Address	Country	TARIC additional code
Eusa Mart European Sales & Marketing GmbH & Co. KG	An der Welle 4, 60322 Frankfurt am Main	DE	A857

- (8) The party did not submit a questionnaire reply.

- (9) Since the party listed in table 2 failed to meet the criteria for exemption set by Article 6(2) of the exemption Regulation, the Commission has to reject its requests for exemption, in accordance with Article 7(3) of the Regulation. In the light of this, the suspension of the payment of the extended anti-dumping duty referred to in Article 5 of the exemption Regulation must be lifted and the extended anti-dumping duty must be collected as from the date of receipt of the request submitted by this party.

B. REQUESTS FOR EXEMPTION FOR WHICH SUSPENSION WAS NOT PREVIOUSLY GRANTED

1. Admissible requests for exemption for which suspension should be granted

- (10) Interested parties are hereby informed of the receipt of a further request for exemption, pursuant to Article 3 of the exemption Regulation, from a party listed in table 3. The suspension from the extended duty, following this request, should take effect as shown in the column headed 'Date of effect':

Table 3

Name	Address	Country	Exemption pursuant to Regulation (EC) No 88/97	Date of effect	TARIC additional code
Winora-Staiger GmbH	Max-Planck-Straße 6, 97526 Sennfeld	DE	Article 5	27.11.2008	A894

2. Inadmissible requests for exemption

- (11) The parties listed in table 4 also submitted requests for exemption from the payment of the extended anti-dumping duty:

Table 4

Name	Address	Country
Cicli B Radsport Bornmann Import + Versand	Königstor 48, 34117 Kassel	DE
MSC Bikes SL	C/Hostalets, Nave 3. Pol. Ind. Puig-Xorigué, 08540 Centelles, Barcelona	ES

- (12) With regard to these parties, it should be noted that their requests did not meet the admissibility criteria set out in Article 4(1) of the exemption Regulation as all these applicants use essential bicycle parts for the production or assembly of bicycles in quantities below 300 units per type on a monthly basis.
- (13) These parties were informed accordingly and were given an opportunity to comment. No suspension was granted to these parties,

HAS ADOPTED THIS DECISION:

Article 1

The parties listed below in table 1 are hereby exempted from the extension to imports of certain bicycle parts from the People's Republic of China by Regulation (EC) No 71/97 of the definitive anti-dumping duty on bicycles originating in the People's Republic of China imposed by Regulation (EEC) No 2474/93 ⁽¹⁾.

⁽¹⁾ OJ L 228, 9.9.1993, p. 1. Regulation as maintained by Regulation (EC) No 1524/2000 (OJ L 175, 14.7.2000, p. 39) and amended by Regulation (EC) No 1095/2005 (OJ L 183, 14.7.2005, p. 1).

The exemption shall take effect in relation to each party as from the relevant date shown in the column headed 'Date of effect'.

Table 1

List of parties to be exempted

Name	Address	Country	Exemption pursuant to Regulation (EC) No 88/97	Date of effect	TARIC additional code
Blue Ocean Hungary Ltd	Sukorói u. 8, 8097 Nadap	HU	Article 7	30.1.2008	A858
Canyon Bicycles GmbH	Koblenzer Straße 236, 56073 Koblenz	DE	Article 7	4.12.2007	A856
Euro Bike Products	Ul. Starolecka 18, 61-361 Poznan	PL	Article 7	6.8.2007	A849
KOVL spol. s.r.o	Choceradská 3042/20, 14100 Prague	CZ	Article 7	29.3.2007	A838
MICPOL	Ul. Mysłiborska 93A/62, 03-185 Warsaw	PL	Article 7	17.4.2007	A839
N&W Cycle GmbH	Mühlenhof 5, 51598 Friesenhagen	DE	Article 7	11.10.2007	A852
Radsportvertrieb Dietmar Bayer GmbH	Zum Acker 1, 56244 Freirachdorf	DE	Article 7	25.6.2007	A850
Special Bike Società Cooperativa	Via dei Mille n. 50, 71042 Cerignola (FG)	IT	Article 7	22.1.2008	A533

Article 2

The request for exemption from the extended anti-dumping duty submitted pursuant to Article 3 of Regulation (EC) No 88/97 by the party listed below in table 2 is hereby rejected.

The suspension of payment of the extended anti-dumping duty pursuant to Article 5 of Regulation (EC) No 88/97 is hereby lifted for the party concerned as from the relevant date shown in the column headed 'Date of effect'.

Table 2

List of parties for which the suspension is to be lifted

Name	Address	Country	Suspension pursuant to Regulation (EC) No 88/97	Date of effect	TARIC additional code
Eusa Mart European Sales & Marketing GmbH & Co. KG	An der Welle 4, 60322 Frankfurt am Main	DE	Article 5	7.1.2008	A857

Article 3

The party listed in table 3 below constitutes the updated list of parties under examination pursuant to Article 3 of Regulation (EC) No 88/97. The suspension from the extended duty, following these requests, took effect from the relevant date in the column headed 'Date of effect' in table 3.

Table 3

Name	Address	Country	Suspension pursuant to Regulation (EC) No 88/97	Date of effect	TARIC additional code
Winora-Staiger GmbH	Max-Planck-Straße 6, 97526 Sennfeld	DE	Article 5	27.11.2008	A894

Article 4

The requests for exemption from the extended anti-dumping duty made by the parties listed below in table 4 are hereby rejected.

Table 4

List of parties for which the request for exemption is rejected

Name	Address	Country
Cicli B Radsport Bornmann Import + Versand	Königstor 48, 34117 Kassel	DE
MSC Bikes SL	C/Hostalets, Nave 3. Pol. Ind. Puig-Xorigué, 08540 Centelles, Barcelona	ES

Article 5

This Decision is addressed to the Member States and to the parties listed in Articles 1, 2, 3 and 4.

Done at Brussels, 22 January 2009.

For the Commission
Catherine ASHTON
Member of the Commission
