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I

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

REGULATIONS

COUNCIL REGULATION (EC) No 847/2009

of 15 September 2009

amending Regulation (EC) No 682/2007 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation) and in particular Articles 8 and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) Following an investigation (the original investigation), the Council, by Regulation (EC) No 682/2007 ⁽²⁾ (the original Regulation), imposed definitive anti-dumping duties on imports of certain prepared or preserved sweetcorn in kernels falling within CN codes ex 2001 90 30 and ex 2005 80 00 and originating in Thailand. The measures took the form of an *ad valorem* duty. Regulation (EC) No 954/2008 ⁽³⁾ amended Regulation (EC) No 682/2007 with regard to the rate of duty imposed on one company and on 'all other companies'. The duty rates range between 3,1 % and 14,3 %. Imports from two Thai exporting producers, namely Malee Sampran Public Co. Ltd (Malee) and Sun Sweet Co. Ltd (Sun Sweet), from whom undertakings had been accepted by Commission Decision 2007/424/EC ⁽⁴⁾ and which fulfilled the conditions set out in Article 2 of Regulation (EC) No 682/2007, were exempted from the duty.

2. Grounds for a review

- (2) At the time of imposition of definitive measures, the Council exceptionally allowed cooperating exporting producers who were not able to submit a sufficiently substantiated undertaking offer within the deadline set in Article 8(2) of the basic Regulation to complete their offer within 10 calendar days from the entry into force of the original Regulation. Ten further undertaking offers were completed within this deadline. The two undertaking offers accepted, as well as those 10 further offers, include fixed minimum import prices.
- (3) Upon disclosure of the 10 further offers, the Community industry opposed the acceptance of price undertakings by stating that fixed minimum import prices were no longer an effective form of the measure because of the increasing price of the product concerned, as defined in recital 16, as well as of its main raw material and inputs.
- (4) In order to reassess the appropriateness of undertakings as an effective form of anti-dumping measures, the Commission deemed it necessary to reassess the acceptability and workability of the undertakings offered and of those accepted.

3. Investigation

- (5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission announced on 16 September 2008, by a notice of initiation published in the *Official Journal of the European Union* ⁽⁵⁾, the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation.
- (6) The review was limited in scope to the examination of the form of the measure applicable to the two Thai exporting producers from whom undertakings had been accepted and the 10 Thai exporting producers with pending undertaking offers.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 159, 20.6.2007, p. 14.

⁽³⁾ OJ L 260, 30.9.2008, p. 1.

⁽⁴⁾ OJ L 159, 20.6.2007, p. 42.

⁽⁵⁾ OJ C 237, 16.9.2008, p. 18.

- (7) The Commission officially advised the exporting producers, the representatives of the exporting country, the Community producers and their association as well as importers of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.
- (8) In order to obtain the information deemed necessary for the investigation, the Commission sent questionnaires to the 12 exporting producers concerned as well as to the Community producers. The Community producers and seven out of the 12 Thai companies replied to the questionnaire.
- (9) Five Thai companies with pending undertaking offers did not reply at all to this review questionnaire and were considered as not cooperating within the meaning of Article 18 of the basic Regulation. The information submitted by one Thai company had to be disregarded due to incompleteness of the confidential questionnaire reply. In addition, this company did not provide a meaningful non-confidential version of the questionnaire reply. The company argued that due to significant structural changes within the company, including a name change, it was difficult to react efficiently to the questionnaire. Another Thai company also refused to provide a meaningful non-confidential version of the questionnaire reply. The companies concerned were informed about the proposed application of Article 18 of the basic Regulation and were given the opportunity to comment. The latter company claimed that it was impossible for it to furnish a meaningful non-confidential reply of its data submitted due to the sensitivity of the information contained. It is noted that whereas this argument is acceptable for parts of the questionnaire dealing with the companies costs and prices, this argument cannot be accepted for other parts of the questionnaire such as operating statistics, general information, etc. The first company submitted further confidential information. However, even considering that this first company may be in a phase of restructuring, basic information has to be given in order to allow for an assessment of the situation of the company. Despite the additional information submitted at a later stage, this minimum requirement was not met, given that no details about certain cost items were given. Moreover, no meaningful non-confidential version of the reply was provided.
- (10) It was thus considered that no decisive arguments were submitted to reverse the decision to apply Article 18 of the basic Regulation.
- (11) All other producing companies cooperated by replying to the questionnaire.
- (12) Several other interested parties submitted comments. One importer stated that the imposition of measures was not justified due to the absence of dumping during the original investigation period (original IP), as defined in recital 17, and should therefore be withdrawn. In this regard, it should be recalled that the original investigation established that injurious dumping was taking place. Moreover, this review focuses on the appropriateness of undertakings as an effective form of anti-dumping measures, and any claims regarding the findings of the original investigation other than the form of the measures cannot be taken into account. The comment therefore had to be rejected. Another importer submitted a formal request for suspension of the measures. This request is being assessed outside the current review investigation.
- (13) Verification visits were carried out at the premises of the following companies:
- (14) (a) Exporting producers in Thailand
- Lampang Food Products Co., Ltd, Bangkok,
 - Malee Sampran Public Co., Ltd, Bangkok,
 - River Kwai International Food Industry Co., Ltd, Bangkok, and,
 - Sun Sweet Co., Ltd, Chingmai;
- (b) Community Producers
- Bonduelle Conserve International, Lille-Villeneuve d'Ascq, France, and,
 - Conserve Italia SCA, San Lazzaro di Savena, Italy.
- (15) The investigation covered the period from 1 July 2007 to 30 June 2008 ('review investigation period' or 'RIP').
- #### 4. Product concerned
- (16) The product concerned is sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, currently falling within CN code ex 2001 90 30, and sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling within CN code ex 2005 80 00, originating in Thailand.
- ### B. FINDINGS
- #### 1. Evolution of sale prices of the product concerned
- (17) As a first step, the price developments of the product concerned were examined for the period beginning with the original IP, i.e. from 1 January 2005 to 31 December 2005 and ending with the RIP. Data for the remainder of 2008 was looked at to cross-check conclusions.
- (18) The analysis showed a clear upward trend of import prices of the product concerned from Thailand since the original IP, in particular since the end of 2006. Despite a price decrease during the RIP, prices remained significantly above the price level of the original IP. Data available for 2008 point to yet another increase.

Table 1

Import prices for imports from Thailand into the EU by quarter

Index, Q1/2005 = 100	Q1	Q2	Q3	Q4
Original IP	656	669	723	699
Index	100	102	110	107
2006	719	705	715	747
Index	110	107	109	114
2007	830	798	814	773
Index	127	122	124	118
RIP	814	773	763	740
Index	124	118	116	113
2008	763	740	768	811
Index	116	113	117	124

Source: Eurostat.

- (19) The overall evolution of the average import price of the product concerned reported by Eurostat, as set out in Table 1, was corroborated by the analysis of the verified sale prices to the EU of a representative can size (12 oz) by the Thai companies. Indeed, as shown in Table 2, the same trend as that reported by Eurostat could be observed for this can size.
- (20) Furthermore, an analysis of the Thai prices for the representative can size demonstrated an even higher price fluctuation since the original IP. Sale prices varied by more than 30 % in the period between the first quarter of 2005 and the last quarter of the RIP. Data available for the second half of 2008 confirm this evolution.

Table 2

Thai sale prices to the EU (euro/t — can size 12 oz — indexed)

Index, Q1/2005 = 100	Q1	Q2	Q3	Q4
Original IP	100	105	106	115
2006	118	119	118	123
2007	129	133	123	116
RIP	123	116	109	112
2008	109	112	121	122

Source: Investigation.

- (21) In view of the significant price variation of the product concerned since the original IP, it has to be concluded that price undertakings with fixed minimum import prices are no longer suitable.

2. Possible indexation of the minimum import prices

- (22) Although the pending undertaking offers and the accepted undertaking offers exclusively contain fixed minimum prices, it was also examined whether the two undertakings in force and the 10 pending undertaking offers could exceptionally be maintained, or respectively accepted, through an indexation of the minimum import prices.
- (23) It therefore had to be established whether there is a correlation between the price evolution of the sale prices of the product concerned and the purchase prices of the main raw material/inputs used in the production process and, should that be the case, whether they represent a significant part of the total cost of production and whether there is publicly available price information for those components.
- (24) The two main components are sweetcorn and cans, representing each between 30 and 40 % of the cost of production of the product concerned.

(a) Indexation on the evolution of purchase prices of sweetcorn

- (25) As can be seen from Table 3, average purchase prices of sweetcorn in Thailand and in the EU increased significantly compared to the original IP. Prices at the end of the RIP were significantly higher than during the original IP. Data available for the second half of 2008 confirm the price increase.
- (26) It is also evident that, other than in the EU, purchase prices in Thailand show an increasing volatility within a given year, in particular since the end of 2006. The difference between the lowest and the highest price in Thailand varied by almost 40 % in the period between the original IP and the RIP. Data available for the end of 2008 point to an even higher volatility.

Table 3

Purchase prices of sweetcorn by quarter in euro (indexed)

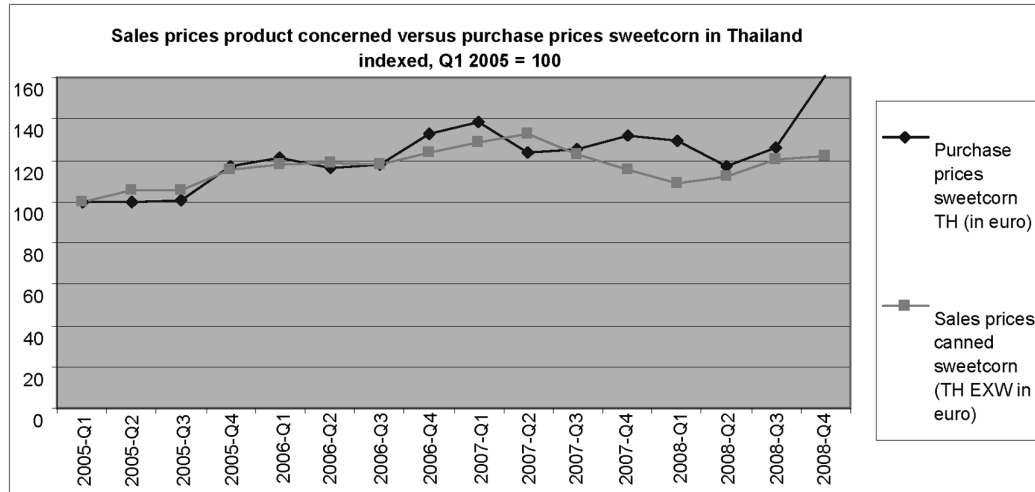
Index, Q1/2005 = 100		Q1	Q2	Q3	Q4
Original IP (2005)	Thailand	100	100	101	117
	EU	100	100	100	100
2006	Thailand	121	116	118	132
	EU	99	99	99	99
2007	Thailand	138	124	125	132
	EU	114	114	114	114
RIP	Thailand	125	132	130	117
	EU	114	114	160	160
2008	Thailand	130	117	127	161
	EU	160	160	160	160

Source: Investigation.

- (27) Even though it was found that both the sale price of the product concerned and the purchase price of sweetcorn showed an increasing volatility since the original IP, no consistent and stable correlation between both prices could be established. Although between the beginning of 2005 and the end of 2006, it could be argued that the price evolution of sweetcorn is somewhat reflected in the price evolution of the product concerned, this is no longer the case since 2007. Indeed, as illustrated in Table 4, the purchase price of sweetcorn decreased while the sale price of the product concerned increased and vice versa.

Table 4

Correlation between the sale price of the product concerned and the purchase price of sweetcorn



- (28) Moreover, the analysis showed that there is no homogeneity in the evolution of sweetcorn prices worldwide. As can be seen in Table 3 above, prices in Thailand and in the Community evolve differently.

- (29) Due to the absence of a correlation between the sale prices of the product concerned and the purchase price of sweetcorn, and in light of the divergent evolution of sweetcorn prices in Thailand and in the Community, it is evident that an indexation of the minimum import price on the price of sweetcorn is not feasible.

- (30) Moreover — and of equal importance — there is no publicly available information on the price of sweetcorn. The above data could only be obtained in the framework of a review. An indexation of the minimum price would therefore be impossible, even if a correlation had been established.

(b) Indexation on the evolution of the purchase price of cans

- (31) The cost of cans, the other main input, represents a part of the total cost of production that is not significant

enough to permit an indexation on can prices alone. In any case, the investigation has shown that can prices remained stable between the original IP and the RIP, i.e. no correlation whatsoever with the price of the product concerned could be established. It is therefore noted that main pre-conditions for indexation, as outlined in recital 23, are not met. The possibility to index the minimum import prices to the evolution of the price of cans was therefore not considered further.

- (32) In view of all the elements listed above, the investigation confirmed that there is no possibility to index the minimum import prices in order to address the fluctuating price of the product concerned.

3. Individual reasons not to accept pending undertaking offers

- (33) Five out of the 10 companies with pending undertaking offers did not reply to the questionnaire and have therefore been considered as non-cooperating in accordance with Article 18 of the basic Regulation. For reasons of general policy, non-cooperation should not be rewarded and thus the pending undertaking offers of those companies cannot be accepted.

- (34) It was also found that another company absorbed the anti-dumping duties, at least with regard to certain transactions. Such practice negatively affects the relationship of trust which forms the basis for acceptance of price undertakings. The undertaking offer of this company is therefore not acceptable.
- (35) Another company established a related company outside Thailand which produces the product concerned. The company offered to include this subsidiary in the undertaking offer. However, the existence of such a subsidiary constitutes a high risk of cross-compensation. The undertaking offer of this company therefore also has to be rejected.
- (36) Another company ceased production of the product concerned and leased the production facilities to a newly established related company. The undertaking offer of this company therefore also has to be rejected.

4. Individual reasons for withdrawal of an undertaking

- (37) The verification at the premises of one of the companies with an existing undertaking revealed a number of breaches, as detailed in Commission Decision 2009/708/EC ⁽¹⁾.

C. CONCLUSIONS

- (38) On the basis of the above facts and considerations, it is considered that price undertakings with fixed minimum import prices are no longer appropriate to counteract the injurious effect of dumping and that there is no possibility of indexing the minimum import prices in order to address the problem. In these circumstances, the undertaking offers should be rejected and the accepted undertakings should be withdrawn.
- (39) Moreover, eight out of the 10 pending undertaking offers should be rejected due to the individual reasons outlined above.
- (40) In addition, one of the two existing price undertakings should also be withdrawn due to non-compliance with the undertaking.
- (41) It was therefore concluded that the review investigation limited to the form of the measure should be terminated, that the undertaking offers in question should not be accepted and that the existing undertakings should be withdrawn.

- (42) All parties were informed of the essential facts and considerations on the basis of which the decision to reject the pending undertaking offers and withdraw the existing undertakings was made and were given the opportunity to comment.
- (43) Some parties argued that an undertaking cannot be withdrawn if all clauses of the undertaking have been respected. Instead, they claim, the company should be given the opportunity to revise its minimum import prices in accordance with the market evolution.
- (44) In response to this argument, it has to be underlined that the existing undertakings have first and foremost to be withdrawn, just like the pending undertaking offers have to be rejected, for general reasons of practicability. As outlined above, the review has shown that sweetcorn is no longer suitable for a price undertaking, regardless of whether or not individual companies complied with the provisions of the undertaking or whether they are willing to revise the minimum import prices. In any case, in view of the price volatility established during the review, a revision of the minimum import prices would only be feasible by introducing an indexation formula. However, the review has shown that there is no basis for it.
- (45) One company contested that their purchase prices of sweetcorn and their sale prices of the product concerned showed an increasing volatility and upward trend between the original IP and the RIP and claimed that the increase in their sale prices of the product concerned was only caused by the minimum import price. It was therefore argued that there are no reasons to withdraw the acceptance of their price undertaking.
- (46) However, data provided by the company do not corroborate the claim. The purchase prices of sweetcorn did show an increasing trend although slightly less than the average. On the other hand, their sale prices of the product concerned during the RIP were significantly above the relevant minimum import price and showed a further increasing trend in the second half of 2008.
- (47) Some parties argued further that the rejection of the pending price undertaking offers and the withdrawal of the existing price undertakings is not in line with Article 15 of the WTO Anti-Dumping Agreement which obliges WTO members to give regard to the special situation of developing countries. In response to this submission, it has to be stressed that the Commission actively considered, with an open mind, all possible options, including indexation of the fixed minimum import prices, in order to overcome the practicability problems of the undertakings. Thus, possibilities of constructive remedies have been explored in this case. However, the findings of the investigation as set out in recitals 22 to 32 did not give any leeway in this regard.

⁽¹⁾ See page 29 of this Official Journal.

(48) Other parties requested formal suspension of the measures as a result of the review findings. As already outlined in recital 12, such a request is being assessed outside the current review investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. Article 1(3) of Regulation (EC) No 682/2007 shall be deleted.
2. Article 1(4) of Regulation (EC) No 682/2007 shall be renumbered as Article 1(3).
3. Article 2 of Regulation (EC) No 682/2007 shall be deleted.

4. Articles 3 and 4 of Regulation (EC) No 682/2007 shall be renumbered as Articles 2 and 3 respectively.

5. Annex II to Regulation (EC) No 682/2007 shall be deleted.

Article 2

The partial interim review of Regulation (EC) No 682/2007 is hereby terminated with the non-acceptance of the undertaking offers.

Article 3

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

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

Done at Brussels, 15 September 2009.

For the Council
The President
C. BILDT

COMMISSION REGULATION (EC) No 848/2009**of 17 September 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 18 September 2009.

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

Done at Brussels, 17 September 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	MK	31,8
	ZZ	31,8
0707 00 05	MK	33,6
	TR	117,9
	ZZ	75,8
0709 90 70	TR	111,0
	ZZ	111,0
0805 50 10	AR	73,8
	CL	134,9
	TR	108,0
	UY	76,3
	ZA	89,1
	ZZ	96,4
0806 10 10	EG	137,1
	IL	115,4
	TR	98,2
	ZZ	116,9
0808 10 80	AR	124,5
	BR	68,1
	CL	58,5
	NZ	87,6
	ZA	75,2
	ZZ	82,8
0808 20 50	CN	70,8
	TR	112,8
	ZA	72,1
	ZZ	85,2
0809 30	TR	120,3
	US	243,3
	ZZ	181,8
0809 40 05	IL	112,9
	TR	113,9
	ZZ	113,4

⁽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 849/2009**of 17 September 2009****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 945/2008 for the 2008/2009 marketing year**

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

Whereas:

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

for the 2008/2009 marketing year are fixed by Commission Regulation (EC) No 945/2008 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EC) No 843/2009 ⁽⁴⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 945/2008 for the 2008/2009, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 September 2009.

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

Done at Brussels, 17 September 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 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 258, 26.9.2008, p. 56.

⁽⁴⁾ OJ L 245, 17.9.2009, p. 9.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 18 September 2009

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 ⁽¹⁾	36,59	0,31
1701 11 90 ⁽¹⁾	36,59	3,93
1701 12 10 ⁽¹⁾	36,59	0,17
1701 12 90 ⁽¹⁾	36,59	3,63
1701 91 00 ⁽²⁾	39,14	5,73
1701 99 10 ⁽²⁾	39,14	2,60
1701 99 90 ⁽²⁾	39,14	2,60
1702 90 95 ⁽³⁾	0,39	0,29

⁽¹⁾ For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.⁽²⁾ For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.⁽³⁾ Per 1 % sucrose content.

COMMISSION REGULATION (EC) No 850/2009
of 17 September 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) Export refunds for the Dominican Republic have been differentiated to take into account the reduced custom duties applied on imports under the import tariff quota under 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⁾. Due to a changed market situation in the Dominican Republic, characterised by increased competition for milk powder, the quota is no longer fully used. In order to maximise the use of the quota, the differentiation of export refunds for the Dominican Republic should be abolished.
- (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

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 18 September 2009.

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

Done at Brussels, 17 September 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 18 September 2009

Product code	Destination	Unit of measurement	Refunds	Product code	Destination	Unit of measurement	Refunds
0401 30 31 9100	L20	EUR/100 kg	10,43	0402 29 19 9900	L20	EUR/100 kg	35,00
0401 30 31 9400	L20	EUR/100 kg	16,34	0402 29 99 9100	L20	EUR/100 kg	35,20
0401 30 31 9700	L20	EUR/100 kg	18,02	0402 29 99 9500	L20	EUR/100 kg	37,40
0401 30 39 9100	L20	EUR/100 kg	10,43	0402 91 10 9370	L20	EUR/100 kg	3,48
0401 30 39 9400	L20	EUR/100 kg	16,34	0402 91 30 9300	L20	EUR/100 kg	4,11
0401 30 39 9700	L20	EUR/100 kg	18,02	0402 91 99 9000	L20	EUR/100 kg	20,56
0401 30 91 9100	L20	EUR/100 kg	20,56	0402 99 10 9350	L20	EUR/100 kg	8,94
0401 30 99 9100	L20	EUR/100 kg	20,56	0402 99 31 9300	L20	EUR/100 kg	10,43
0401 30 99 9500	L20	EUR/100 kg	30,26	0403 90 11 9000	L20	EUR/100 kg	22,80
0402 10 11 9000	L20	EUR/100 kg	22,80	0403 90 13 9200	L20	EUR/100 kg	22,80
0402 10 19 9000	L20	EUR/100 kg	22,80	0403 90 13 9300	L20	EUR/100 kg	31,81
0402 10 99 9000	L20	EUR/100 kg	22,80	0403 90 13 9500	L20	EUR/100 kg	33,02
0402 21 11 9200	L20	EUR/100 kg	22,80	0403 90 13 9900	L20	EUR/100 kg	35,00
0402 21 11 9300	L20	EUR/100 kg	31,81	0403 90 33 9400	L20	EUR/100 kg	31,81
0402 21 11 9500	L20	EUR/100 kg	33,02	0403 90 59 9310	L20	EUR/100 kg	10,43
0402 21 11 9900	L20	EUR/100 kg	35,00	0403 90 59 9340	L20	EUR/100 kg	16,34
0402 21 17 9000	L20	EUR/100 kg	22,80	0403 90 59 9370	L20	EUR/100 kg	18,02
0402 21 19 9300	L20	EUR/100 kg	31,81	0404 90 21 9120	L20	EUR/100 kg	19,45
0402 21 19 9500	L20	EUR/100 kg	33,02	0404 90 21 9160	L20	EUR/100 kg	22,80
0402 21 19 9900	L20	EUR/100 kg	35,00	0404 90 23 9120	L20	EUR/100 kg	22,80
0402 21 91 9100	L20	EUR/100 kg	35,20	0404 90 23 9130	L20	EUR/100 kg	31,81
0402 21 91 9200	L20	EUR/100 kg	35,38	0404 90 23 9140	L20	EUR/100 kg	33,02
0402 21 91 9350	L20	EUR/100 kg	35,71	0404 90 23 9150	L20	EUR/100 kg	35,00
0402 21 99 9100	L20	EUR/100 kg	35,20	0404 90 81 9100	L20	EUR/100 kg	22,80
0402 21 99 9200	L20	EUR/100 kg	35,38	0404 90 83 9110	L20	EUR/100 kg	22,80
0402 21 99 9300	L20	EUR/100 kg	35,71	0404 90 83 9130	L20	EUR/100 kg	31,81
0402 21 99 9400	L20	EUR/100 kg	37,40	0404 90 83 9150	L20	EUR/100 kg	33,02
0402 21 99 9500	L20	EUR/100 kg	38,01	0404 90 83 9170	L20	EUR/100 kg	35,00
0402 21 99 9600	L20	EUR/100 kg	40,38	0405 10 11 9500	L20	EUR/100 kg	63,41
0402 21 99 9700	L20	EUR/100 kg	41,69	0405 10 11 9700	L20	EUR/100 kg	65,00
0402 29 15 9200	L20	EUR/100 kg	22,80				
0402 29 15 9300	L20	EUR/100 kg	31,81				
0402 29 15 9500	L20	EUR/100 kg	33,02				
0402 29 19 9300	L20	EUR/100 kg	31,81				
0402 29 19 9500	L20	EUR/100 kg	33,02				

Product code	Destination	Unit of measurement	Refunds	Product code	Destination	Unit of measurement	Refunds
0405 10 19 9500	L20	EUR/100 kg	63,41	0406 30 39 9500	L04	EUR/100 kg	4,62
0405 10 19 9700	L20	EUR/100 kg	65,00		L40	EUR/100 kg	5,77
0405 10 30 9100	L20	EUR/100 kg	63,41	0406 30 39 9700	L04	EUR/100 kg	4,96
0405 10 30 9300	L20	EUR/100 kg	65,00		L40	EUR/100 kg	6,20
0405 10 30 9700	L20	EUR/100 kg	65,00	0406 30 39 9930	L04	EUR/100 kg	5,31
0405 10 50 9500	L20	EUR/100 kg	63,41		L40	EUR/100 kg	6,64
0405 10 50 9700	L20	EUR/100 kg	65,00	0406 30 39 9950	L04	EUR/100 kg	5,11
0405 10 90 9000	L20	EUR/100 kg	67,38		L40	EUR/100 kg	6,39
0405 20 90 9500	L20	EUR/100 kg	59,45	0406 40 50 9000	L04	EUR/100 kg	12,47
0405 20 90 9700	L20	EUR/100 kg	61,83		L40	EUR/100 kg	15,59
0405 90 10 9000	L20	EUR/100 kg	78,71	0406 40 90 9000	L04	EUR/100 kg	13,82
0405 90 90 9000	L20	EUR/100 kg	65,00		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				

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 destinations referred to in Article 33(1), Article 41(1) and Article 42(1) of Commission Regulation (EC) No 612/2009 (OJ L 186, 17.7.2009, p. 1).

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 destinations referred to in Article 33(1), Article 41(1) and Article 42(1) of Commission Regulation (EC) No 612/2009 (OJ L 186, 17.7.2009, p. 1).

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

COMMISSION REGULATION (EC) No 851/2009**of 17 September 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 15 September 2009.

- (3) 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

For the standing invitation to tender opened by Regulation (EC) No 619/2008, for the tendering period ending on 15 September 2009, the maximum amount of refund for the products and destinations referred to in Article 1(a) and (b) and in Article 2 respectively of that Regulation shall be as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 18 September 2009.

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

Done at Brussels, 17 September 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.

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(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	70,00
Butteroil	ex 0405 90 10 9000	84,50

COMMISSION REGULATION (EC) No 852/2009**of 17 September 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 15 September 2009.

(3) 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

For the standing invitation to tender opened by Regulation (EC) No 619/2008, for the tendering period ending on 15 September 2009, the maximum amount of refund for the product and destinations referred to in Article 1(c) and in Article 2 of that Regulation shall be EUR 25,80/100 kg.

Article 2

This Regulation shall enter into force on 18 September 2009.

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

Done at Brussels, 17 September 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 853/2009**of 17 September 2009****fixing the maximum buying-in price for skimmed milk powder for the 10th individual invitation to tender within the tendering procedure opened by Regulation (EC) No 310/2009**

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 43, in conjunction with Article 4 thereof,

Whereas:

- (1) Commission Regulation (EC) No 310/2009 ⁽²⁾ has opened buying-in of skimmed milk powder by a tendering procedure for the period expiring on 31 August 2009, in accordance with the conditions provided for in Commission Regulation (EC) No 214/2001 of 12 January 2001 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in skimmed milk powder ⁽³⁾.
- (2) In the light of the tenders received in response to individual invitations to tender, a maximum buying-in price is to be fixed or a decision to make no award is to be

taken, in accordance with Article 17 of Regulation (EC) No 214/2001.

- (3) In the light of the tenders received for the 10th individual invitation to tender, a maximum buying-in price should be fixed.
- (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

For the 10th individual invitation to tender for the buying-in of skimmed milk powder within the tendering procedure opened by Regulation (EC) No 310/2009, in respect of which the time limit for the submission of tenders expired on 15 September 2009, the maximum buying-in price shall be EUR 167,90/100 kg.

Article 2

This Regulation shall enter into force on 18 September 2009.

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

Done at Brussels, 17 September 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 97, 16.4.2009, p. 13.

⁽³⁾ OJ L 37, 7.2.2001, p. 100.

COMMISSION REGULATION (EC) No 854/2009**of 17 September 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 Council Regulation (EC) No 614/2009 of 7 July 2009 on the common system of trade for ovalbumin and lactalbumin ⁽²⁾, and in particular Article 3(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽³⁾ 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, 17 September 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 181, 14.7.2009, p. 8.

⁽³⁾ OJ L 236, 8.9.2009, p. 5.

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to the Commission Regulation of 17 September 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	117,9	0	AR
0207 12 90	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “65 % chickens”, frozen	117,8	0	BR
		104,3	4	AR
0207 14 10	Fowls of the species <i>Gallus domesticus</i> , boneless cuts, frozen	200,7	30	BR
		202,2	29	AR
		292,2	2	CL
0207 14 50	Fowls of the species <i>Gallus domesticus</i> , breasts, frozen	195,0	5	BR
		146,3	20	AR
0207 14 60	Fowl of the species <i>Gallus domesticus</i> , legs, frozen	113,2	9	BR
		116,1	8	AR
0207 27 10	Turkeys, boneless cuts, frozen	224,8	22	BR
		269,7	8	CL
0408 11 80	Egg yolks	306,2	1	AR
0408 91 80	Eggs, not in shell, dried	328,5	0	AR
1602 32 11	Preparations of fowls of the species <i>Gallus domesticus</i> , uncooked	254,4	10	BR
3502 11 90	Egg albumin, dried	595,6	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 855/2009**of 17 September 2009****establishing a prohibition of fishing for common sole in VIIIa and b by vessels flying the flag of Spain**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

- (1) Council Regulation (EC) No 43/2009 of 16 January 2009 fixing for 2009 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2009.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2009.

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

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2009 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

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

*Article 3***Entry into force**

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

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

Done at Brussels, 17 September 2009.

For the Commission

Fokion FOTIADIS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1.

⁽³⁾ OJ L 22, 26.1.2009, p. 1.

ANNEX

No	15/T&Q
Member State	Spain
Stock	SOL/8AB.
Species	Common sole (<i>Solea solea</i>)
Zone	VIIIa and b
Date	30 July 2009

COMMISSION REGULATION (EC) No 856/2009**of 17 September 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:

- (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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 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 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 18 September 2009.

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

Done at Brussels, 17 September 2009.

For the Commission

Heinz ZOUREK

Director-General Enterprise and Industry

ANNEX

Rates of the refunds applicable from 18 September 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	22,80	22,80
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	37,48	37,48
	(b) on exportation of other goods	35,00	35,00
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	65,00	65,00
	(b) on exportation of goods of CN code 2106 90 98 containing 40 % or more by weight of milk fat	66,52	66,52
	(c) on exportation of other goods	65,00	65,00

⁽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 destinations referred to in Article 33(1), Article 41(1) and Article 42(1) of Commission Regulation (EC) No 612/2009 (OJ L 186, 17.7.2009, p. 1).

COMMISSION REGULATION (EC) No 857/2009**of 17 September 2009****amending Regulation (EC) No 838/2009 fixing the import duties in the cereals sector applicable from 16 September 2009**

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 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 in respect of import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector applicable from 16 September 2009 were fixed by Commission Regulation (EC) No 838/2009 ⁽³⁾.

- (2) As the average of the import duties calculated differs by more than EUR 5/tonne from that fixed, a corresponding adjustment must be made to the import duties fixed by Regulation (EC) No 838/2009.

- (3) Regulation (EC) No 838/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 838/2009 are hereby replaced by the text in 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*.

It shall apply from 18 September 2009.

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

Done at Brussels, 17 September 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 161, 29.6.1996, p. 125.

⁽³⁾ OJ L 244, 16.9.2009, p. 3.

ANNEX I

Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 18 September 2009

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,33
	low quality	20,33
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	77,87
1005 10 90	Maize seed other than hybrid	35,69
1005 90 00	Maize, other than seed ⁽²⁾	35,69
1007 00 90	Grain sorghum other than hybrids for sowing	82,86

⁽¹⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal the importer may benefit, under Article 2(4) of Regulation (EC) No 1249/96, from a reduction in the duty of:

- 3 EUR/t, where the port of unloading is on the Mediterranean Sea, or
- 2 EUR/t, where the port of unloading is in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom or the Atlantic coast of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating the duties laid down in Annex I

15.9.2009-16.9.2009

1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

(EUR/t)

	Common wheat ⁽¹⁾	Maize	Durum wheat, high quality	Durum wheat, medium quality ⁽²⁾	Durum wheat, low quality ⁽³⁾	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	141,57	91,80	—	—	—	—
Fob price USA	—	—	146,19	136,19	116,19	58,65
Gulf of Mexico premium	—	16,44	—	—	—	—
Great Lakes premium	6,92	—	—	—	—	—

⁽¹⁾ Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).⁽²⁾ Discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).⁽³⁾ Discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Freight costs: Gulf of Mexico–Rotterdam: 18,10 EUR/t

Freight costs: Great Lakes–Rotterdam: 23,31 EUR/t

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 19 August 2009

repealing Decision 2007/424/EC accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of certain prepared or preserved sweet corn in kernels originating in Thailand

(2009/708/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

B. BREACHES OF THE UNDERTAKING

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the 'basic Regulation'), and in particular Articles 8 and 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. EXISTING MEASURES

- (1) In June 2007, the Council, by Regulation (EC) No 682/2007 ⁽²⁾, imposed a definitive anti-dumping duty on imports of certain prepared or preserved sweet corn in kernels originating in Thailand ('the product concerned'). Council Regulation (EC) No 954/2008 ⁽³⁾ amended Regulation (EC) No 682/2007 with regard to the duty imposed on one company and on 'all other companies'.
- (2) The Commission, by Decision 2007/424/EC ⁽⁴⁾, accepted price undertakings offered by two exporting producers, namely Sun Sweet Co., Ltd ('Sun Sweet') and Malee Sampran Public Co., Ltd ('Malee').

1. **Obligations stipulated in the undertaking**
 - (3) With regard to Sun Sweet, it is noted that in the framework of the undertaking, the company agreed to respect a number of obligations, such as, inter alia, not to issue undertaking invoices within 1 calendar year to customers in the Community to which they sell other products, in order to reduce the risk of cross-compensation.
 - (4) Moreover, and without prejudice to the abovementioned clause, the company agreed that it will not have the option of making some sales under the terms of the undertaking and others with payment of the anti-dumping duties as long as the quantitative ceiling is not reached.
 - (5) The company also agreed not to circumvent the undertaking by, inter alia, taking part in a trading system leading to a risk of circumvention.
 - (6) The terms of the undertaking also oblige the company to provide the Commission with regular and detailed information in the form of a quarterly report of its sales of the product concerned to the European Community.
 - (7) For the purpose of ensuring compliance with the undertaking, the company also undertook to allow on-spot verification visits at its premises in order to verify the accuracy and veracity of data submitted in the said quarterly reports and to provide all information considered necessary by the Commission.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 159, 20.6.2007, p. 14.

⁽³⁾ OJ L 260, 30.9.2008, p. 1.

⁽⁴⁾ OJ L 159, 20.6.2007, p. 42.

(8) In addition, the acceptance of the undertaking by the European Commission is based on trust and any action which would harm the relationship of trust established with the European Commission shall justify the immediate withdrawal of the undertaking.

(9) Furthermore, any changes in circumstances occurring during the period of implementation of the undertaking from those circumstances prevailing at the time of acceptance of the undertaking which were relevant to the decision to accept the undertaking may give rise to the withdrawal of the undertaking by the European Commission.

2. Verification visit

(10) In this regard and in parallel to the visit carried out in the framework of the partial interim review limited to the form of the measure initiated on 16 September 2008 ⁽¹⁾, a verification visit was carried out at the premises of Sun Sweet.

(11) The verification visit established a number of breaches of the undertaking.

(a) *Change in the pattern of trade*

(12) The verification visit revealed that the company changed the pattern of trade to the European Community after imposition of anti-dumping measures, at least with regard to one customer, representing a substantial part of the company's turnover of the product concerned. During the original investigation period (original IP), the company delivered the product concerned to that customer to Germany only. In 2008, the company delivered more than one third of its sales of the product concerned to this customer to Russia.

(13) Such a change in the pattern of trade does affect the undertaking in so far as it constitutes a serious risk of cross-compensation, i.e. shipments to Russia may be sold at artificially low prices in order to compensate for the minimum prices to be respected for sales to the Community.

(14) Furthermore, and of equal importance is that it had to be concluded that due to the change in the pattern of trade during the application of the undertaking, the current circumstances are different from those prevailing at the time of acceptance of the undertaking which were relevant to the decision to accept the undertaking. It is standing practice of the Commission not to accept undertakings if the risk of cross-compensation is too high.

(b) *Sales of the product concerned together with other products*

(15) The verification established that the company also violated the cross-compensation clause of the undertaking by issuing undertaking invoices for sales of the product covered to one customer in the Community to which other products were sold in the same calendar year.

(c) *Sales outside the undertaking before reaching the quantitative ceiling*

(16) Moreover, it has been found that the company chose to sell the product covered by the undertaking to at least three customers outside the terms of the undertaking before the quantitative ceiling was reached. On some of those normal commercial invoices the phrase 'goods subject to undertaking as detailed in the *Official Journal of the European Union*' appeared. This phrase is misleading and may have caused customs authorities not to collect anti-dumping duties for those imports.

(17) In addition, some of those sales were not reported in the quarterly reports.

(d) *Numerous errors in the undertaking reports*

(18) Despite the fact that the company has been advised in February 2008 that the undertaking reports were not correct, in particular with regard to quantities, exchange rates and invoice values reported, it was found that the reports still contain numerous errors, which impeded a proper monitoring of the undertaking.

3. Reasons to withdraw acceptance of the undertaking

(19) In view of the above, the following is concluded:

(20) A change in the pattern of trade since the imposition of measures has led to a significant risk of cross-compensation which no longer allows the Commission to effectively monitor the undertaking. This change in the pattern of trade is considered as a relevant change in circumstances compared to those prevailing at the time of acceptance of the undertaking.

(21) A breach of the cross-compensation clauses of the undertaking occurred since the company sold both, the product covered by the undertaking and other products to the same client in the same calendar year but continued to issue undertaking invoices for the product covered.

(22) The sales made to certain customers outside the undertaking before the quantitative ceiling was reached constitute another breach of the undertaking.

⁽¹⁾ OJ C 237, 16.9.2008, p. 18.

- (23) In addition, the company failed to submit quarterly reports which are complete, exhaustive and correct in all particulars.
- (24) Although the verification did not reveal that sales were made below the minimum import price, the numerous other breaches of the undertaking mentioned above do not allow the Commission to effectively monitor the undertaking and have undermined the relationship of trust which formed the basis for the acceptance of the undertaking.

4. Written submissions

- (25) With regard to the change in the pattern of trade and the increasing risk of circumvention resulting from such a change, the company submitted that it had no intention to violate the undertaking and that it did not change the pattern of trade in order to circumvent the terms of the undertaking. It was further added that no cross-compensation had taken place.
- (26) In response to this argument, it should be mentioned that there was indeed no evidence for an intentional violation of the price undertaking. However, the change in the pattern of trade as such constitutes a serious risk of cross-compensation, regardless of the underlying reason. It is long-standing practice of the Commission not to accept price undertakings if the risk of cross-compensation is too high. Consequently, if such a change in the pattern of trade occurs during the period of application of an undertaking, the change in itself is sufficient for the Commission to withdraw the undertaking, because it renders proper monitoring of the undertaking impractical, regardless of whether or not cross-compensation actually took place.
- (27) Accordingly, the arguments presented by the company in this respect do not alter the Commission's view that the change in the pattern of trade had led to a significant risk of cross-compensation.
- (28) The company further submitted that it misunderstood the terms of the undertaking when selling the product concerned together with other products and when selling outside the undertaking before reaching the quantitative ceiling. It also underlined that it concerned only a small quantity and that those practices were immediately ceased.
- (29) Additionally, the company argued that the errors in the undertaking reports were of limited importance and mainly due to typing errors which the company tried to correct as much as possible during the verification visit. A withdrawal of the undertaking would not give the company a chance to improve the reporting practice

and to correct the shortcomings identified during the verification. The company also brought forward the argument that the Commission has sent each quarter an e-mail confirming that no error was found in the electronically submitted version of the report and underlined that the main clause of the undertaking, the respect of the minimum price, has never been violated.

- (30) In response to those submissions, it has to be stressed that already in 2007, the Commission exceptionally provided all companies that offered an undertaking with detailed information and training regarding the functioning of undertakings and the obligations of the companies.

- (31) Furthermore, it should be emphasised that the respect of the minimum price is indeed a core element of a price undertaking, but not the only one. It is equally important to respect the other obligations as well, including the obligation to provide regular sales reports that are complete, exhaustive and correct in all particulars in order to allow proper monitoring by the Commission. The confirmation e-mail the company referred to is an automatically generated message which confirms that the structure of the report is in accordance with the technical specifications outlined in the Annex to the undertaking text. As also explicitly mentioned in the same Annex, it does not confirm correctness in substance.

- (32) Therefore, the arguments presented by the company in this respect do not alter the Commission's view that the numerous breaches of the undertaking render the undertaking unworkable and are sufficient to withdraw acceptance of the undertaking.

C. PRACTICABILITY

- (33) With regard to both undertaking offers accepted, it has also to be noted that the partial interim review limited to the form of the measures revealed that the undertakings in their current form, i.e. with a fixed minimum price are no longer appropriate to counteract the injurious effect of dumping, and that there is no possibility of indexing the minimum import prices in order to address the problem ⁽¹⁾.

D. WITHDRAWAL OF ACCEPTANCE OF THE UNDERTAKINGS

- (34) In view of the above, and in accordance with the relevant clauses of the undertakings in question, which authorise the Commission to unilaterally withdraw acceptance of the undertakings, the Commission has decided to withdraw the acceptance of both undertakings.

⁽¹⁾ Council Regulation (EC) No 847/2009 (see page 1 of this Official Journal).

E. REPEAL OF DECISION 2007/424/EC*Article 2*

- (35) In view of the above, Decision 2007/424/EC accepting undertakings from Sun Sweet Co., Ltd. and Malee Sampran Public Co., Ltd should be repealed. Accordingly, the definitive anti-dumping duty imposed by Article 1(2) of Regulation (EC) No 682/2007 on imports of the product concerned from those companies should apply,

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

Done at Brussels, 19 August 2009.

HAS DECIDED AS FOLLOWS:

Article 1

Decision 2007/424/EC is hereby repealed.

For the Commission

Catherine ASHTON

Member of the Commission

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2009/709/CFSP

of 15 September 2009

on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (EUSEC RD Congo)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14, Article 25, third paragraph, and Article 28(3), first subparagraph thereof,

Whereas:

- (1) Since 2 May 2005, the European Union (EU) has been conducting a mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (DRC) (EUSEC RD Congo). The current mission statement is set out in Joint Action 2007/406/CFSP ⁽¹⁾ and ends on 30 September 2009.
- (2) The Secretary-General/High Representative for Common Foreign and Security Policy (SG/HR) sent a letter to the President of the DRC dated 27 July 2009 stating the EU's renewed commitment. Following that letter, the mission statement should be adapted as from 1 October 2009.
- (3) Following the ratification in 2005 of the Constitution of the Third Republic of the Congo, the elections held in the DRC in 2006 marked the end of the transition process and enabled a government to be formed in 2007, which has adopted a programme providing in particular for comprehensive reform of the security sector, the drawing up of a national plan, and priority reforms in the police, armed forces and judicial sectors. The development of a revised plan for reform of the Armed forces of the Democratic Republic of the Congo (FARDC), approved by the President of the Republic at the end of May 2009, demonstrates the interest of the Congolese authorities in reinvigorating the process of security sector reform (SSR) in the DRC.
- (4) The United Nations has reaffirmed its support for the transition process and SSR by means of several Security Council resolutions, and is conducting the United Nations Mission in the Democratic Republic of the Congo (MONUC), which is contributing to the security and stability of the country. On 22 December 2008, the United Nations Security Council adopted Resolution 1856 (2008) extending MONUC's mandate and allowing it, in close coordination with other international partners, and especially the EU, to contribute to efforts to support the government in the process of SSR.
- (5) The EU has consistently supported SSR in the DRC, as one of the elements of a more general EU commitment to supporting development and democracy in the African Great Lakes Region, while taking care to promote policies compatible with human rights and international humanitarian law, democratic standards and the principles of good governance, transparency and respect for the rule of law.
- (6) On 27 July 2009, the Council approved a revised General Concept on continuation of the mission to provide advice and assistance for SSR in the DRC.
- (7) On 15 June 2009, the Council adopted Joint Action 2009/466/CFSP amending and extending for an additional period of 12 months Joint Action 2007/405/CFSP on the EU police mission undertaken in the framework of SSR and its interface with the system of justice in the Democratic Republic of the Congo (EUPOL RD Congo) ⁽²⁾.
- (8) The synergies between the two missions, EUPOL RD Congo and EUSEC RD Congo, should continue to be promoted.

⁽¹⁾ OJ L 151, 13.6.2007, p. 52.

⁽²⁾ OJ L 151, 16.6.2009, p. 40.

- (9) In order to increase the consistency of the EU's activities in the DRC, the closest possible coordination between the various EU players should be ensured in Kinshasa as well as in Brussels, through appropriate arrangements. The European Union Special Representative (EUSR) for the African Great Lakes Region will have an important role to play in this respect, taking account of his mandate.
- (10) On 16 February 2009, the Council adopted Joint Action 2009/128/CFSP ⁽¹⁾ extending the mandate of Mr Roeland VAN DE GEER as the EUSR for the African Great Lakes Region.
- (11) Joint Action 2005/355/CFSP has been amended several times in order to boost the mission, in particular by Joint Action 2007/406/CFSP, as last amended by Joint Action 2009/509/CFSP ⁽²⁾ extending the mission until 30 September 2009.
- (12) For the sake of clarity, Joint Action 2007/406/CFSP should be replaced by a new Joint Action.
- (13) Third States should participate in the project in accordance with the general guidelines defined by the European Council.
- (14) The current security situation in the DRC may deteriorate, with potentially serious repercussions for the process of strengthening democracy, the rule of law and international and regional security. A continued commitment of EU political effort and resources will help to embed stability in the region,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Mission

1. The European Union (EU) is conducting a mission to provide advice and assistance for security sector reform (SSR) in the Democratic Republic of the Congo (DRC), named 'EUSEC RD Congo', with the aim of assisting the Congolese authorities in setting up a defence apparatus capable of guaranteeing the security of the Congolese people, while respecting democratic standards, human rights and the rule of law, as well as the principles of good governance and transparency. The purpose of the mission is to contribute, in close coordination with international partners, to creating conditions to facilitate the implementation in the short and medium term of the guidelines adopted by the Congolese authorities in the revised plan for reform of the Armed forces of the Democratic Republic of the Congo (FARDC).

⁽¹⁾ OJ L 46, 17.2.2009, p. 36.

⁽²⁾ OJ L 172, 2.7.2009, p. 36.

2. The mission shall operate in accordance with the mission statement set out in Article 2.

Article 2

Mission statement

1. The mission shall aim, in close cooperation and coordination with the other actors in the international community, in particular the United Nations and the United Nations Mission in the Democratic Republic of the Congo (MONUC), and in pursuit of the objectives laid down in Article 1, to provide practical support in the field of SSR in the DRC – with emphasis on the strategic dimension – as set out in the revised General Concept, including:
- supporting the overall implementation of the revised plan through assistance and support for the structures put in place by the Congolese authorities to manage the implementation of the revised plan,
 - making the implementation of the revised plan for reform of the FARDC operational through the development of detailed plans to rebuild the FARDC, in particular in the following areas: administration, operational capabilities, budget and finance, training, logistics, human rights and combating sexual violence, and human resources,
 - identifying and managing specific projects in support of the revised plan for reform of the FARDC,
 - supporting the Congolese authorities in the process of integrating ex-combatants into the FARDC, including the accelerated integration of the National Council for the Defence of the People (CNDP) and armed groups,
 - supporting the EUSR in particular in the context of the peace negotiations in the east of the country,
 - supporting cross-cutting activities, particularly in the area of human rights and for gender issues,

2. The mission shall advise the Member States and shall coordinate and facilitate, under their responsibility, the implementation of their projects in fields which are of interest to the mission and in furtherance of its objectives.

Article 3

Structure of the mission and deployment zone

1. The mission shall have headquarters in Kinshasa consisting of:
- (a) the mission leadership;
 - (b) an administrative support and logistics department for the mission;

(c) a department of advisers, at strategic level, assigned to the various structures of the Ministry of Defence, responsible for contributing to work on SSR carried out by the Congolese administration, and

(d) a department of defence experts responsible for assisting and supporting the Congolese in carrying out specific actions in the areas of administration, human resources, finance, logistics and training.

2. The main deployment zone shall be Kinshasa. Seconded advisers shall also be deployed in the four military regions in the east of the DRC. Movements of experts and their temporary presence in the military regions shall, if necessary, be organised on the instructions of the Head of Mission.

Article 4

Planning

The Head of Mission shall draw up a revised implementation plan (OPLAN) for the mission, to be submitted for approval by the Council. He shall be assisted in this task by the General Secretariat of the Council.

Article 5

Head of Mission

1. The Head of Mission shall assume day-to-day management of the mission and shall be responsible for staff and disciplinary matters.

2. All seconded staff shall remain under the full command of the national authorities of the sending State or the EU institution concerned. National authorities shall transfer operational control (OPCON) of their personnel to the Head of Mission.

3. The Head of Mission shall be responsible for disciplinary matters relating to staff. In the case of seconded staff, disciplinary action shall be exercised by the national authorities or EU institution concerned.

4. In the context of the mission statement as set out in Article 2, the Head of Mission shall be authorised to have recourse to financial contributions from the Member States to implement projects identified as supplementing in a consistent manner the mission's other actions, in two specific cases: either the project is provided for in the financial statement relating to this Joint Action or it is incorporated in the course of the mission by amending the financial statement at the request of the Head of Mission.

The Head of Mission will then conclude an arrangement with the Member States concerned. This arrangement shall in particular cover the specific procedures for dealing with any complaint from third parties concerning damage caused as a result of acts or omissions by the Head of Mission in the use of the funds provided by the contributing Member States.

Under no circumstances may the EU or the Secretary-General/High Representative (SG/HR) be held liable by contributing Member States as a result of acts or omissions by the Head of Mission in the use of funds from those States.

5. The Head of Mission shall sign a contract with the Commission to execute the budget for the mission.

6. The Head of Mission shall collaborate closely with the EUSR.

Article 6

Staff

1. Mission experts shall be seconded by Member States and by the EU institutions. Except for the Head of Mission, each Member State or institution shall bear the costs relating to the experts seconded, including travel expenses to and from the DRC, salaries, medical coverage and allowances other than daily allowances.

2. International civilian staff and local staff shall be recruited on a contractual basis by the mission as required.

3. All mission experts shall remain under the authority of the appropriate Member State or EU institution, and shall fulfil their duties and act in the interest of the mission. Both during and after the mission, mission experts shall exercise the greatest discretion with regard to all facts and information relating to the mission.

Article 7

Chain of command

1. The mission shall have a unified chain of command.

2. The Political and Security Committee (PSC) shall exercise political control and strategic direction.

3. The SG/HR shall give political guidance to the Head of Mission through the EUSR.

4. The Head of Mission shall lead the mission and assume its day-to-day management.

5. The Head of Mission shall report to the SG/HR.

*Article 8***Political control and strategic direction**

1. Under the responsibility of the Council, the PSC shall exercise the political control and strategic direction of the mission. The Council hereby authorises the PSC to take the relevant decisions in accordance with Article 25 of the Treaty. This authorisation shall include the power to amend the OPLAN and the chain of command. It shall also include powers necessary to take decisions regarding the appointment of the Head of Mission. The power of decision with respect to the objectives and termination of the mission shall remain vested in the Council, assisted by the SG/HR.
2. The PSC shall report to the Council at regular intervals.
3. The PSC shall receive, at regular intervals, reports by the Head of Mission. The PSC may invite the Head of Mission to its meetings as appropriate.
4. The EUSR shall provide the Head of Mission with the political guidance required to fulfil his duties at local level.

*Article 9***Financial provisions**

1. The financial reference amount to cover expenditure relating to the mission shall be EUR 10 900 000.
2. As regards expenditure financed out of the amount stipulated in paragraph 1, the following shall apply:
 - (a) expenditure shall be managed in accordance with the Community rules and procedures applicable to the budget. Nationals of third States shall be allowed to tender for contracts;
 - (b) the Head of Mission shall report fully to, and be supervised by, the Commission regarding the activities undertaken in the framework of his contract.
3. The financial arrangements shall respect the operational requirements of the mission, including compatibility of equipment.
4. The expenditure connected with the mission shall be eligible as from the entry into force of this Joint Action.

*Article 10***Participation by third States**

1. Without prejudice to the decision-making autonomy of the EU and its single institutional framework, third States may be invited to contribute to the mission, provided that they bear the cost of the staff seconded by them, including salaries, all risks insurance cover, daily allowances and travel expenses to

and from the DRC, and that they contribute to the running costs of the mission, as appropriate.

2. Third States contributing to the mission shall have the same rights and obligations in terms of day-to-day management of the mission as Member States.

3. The Council hereby authorises the PSC to take the relevant decisions on acceptance of the contributions proposed and to establish a Committee of Contributors.

4. Detailed arrangements regarding the participation of third States shall be covered by agreements concluded in accordance with the procedure laid down in Article 24 of the Treaty. The SG/HR, who shall assist the Presidency, may negotiate such arrangements on the latter's behalf. Where the EU and a third State have concluded an agreement establishing a framework for the third State's participation in EU crisis-management operations, the provisions of that agreement shall apply in the context of the mission.

*Article 11***Consistency and coordination**

1. The Council and the Commission shall each, in accordance with their respective powers, ensure that this Joint Action is consistent with the Community's external activities, in accordance with the second paragraph of Article 3 of the Treaty. The Council and the Commission shall cooperate to this end. Arrangements for the coordination of the EU's activities in the DRC shall be established in Kinshasa as well as in Brussels.
2. Without prejudice to the chain of command, the Head of Mission shall also act in close coordination with the Commission delegation.
3. Without prejudice to the chain of command, the Head of the EUSEC RD Congo mission and the Head of the EUPOL RD Congo mission shall coordinate their activities closely and shall seek synergies between the two missions, particularly as regards the horizontal aspects of SSR in the DRC, and as regards the sharing of functions between the two missions, particularly in relation to gender issues and human rights.
4. The Head of Mission shall ensure that EUSEC RD Congo closely coordinates its activities with the Government of the DRC, the United Nations, via the MONUC mission, and the third States involved in the defence area of SSR in the DRC.

5. In accordance with his mandate, the EUSR shall ensure consistency between the activities of the EUSEC RD Congo mission and the EUPOL RD Congo mission. He shall contribute to coordination with the other international players involved in SSR in the DRC.

*Article 12***Release of classified information**

1. The SG/HR shall be authorised to release to third States associated with this Joint Action EU classified information and documents up to the level 'CONFIDENTIEL UE' generated for the purposes of the operation, in accordance with the Council's security regulations ⁽¹⁾.

2. The SG/HR shall be authorised further to release to the United Nations, in accordance with the operational needs of the mission, EU classified information and documents up to the level 'RESTREINT UE' generated for the purposes of the operation, in accordance with the Council's security regulations. Local arrangements shall be established for this purpose.

3. In the event of a specific and immediate operational need, the Secretary-General/High Representative shall also be authorised to release to the host State EU classified information and documents up to the level 'RESTREINT UE' generated for the purposes of the operation, in accordance with the Council's security regulations. In all other cases, such information and documents shall be released to the host State in accordance with procedures appropriate to the host State's level of cooperation with the EU.

4. The SG/HR shall be authorised to release to third States associated with this Joint Action EU non-classified documents relating to the deliberations of the Council with regard to the operation and covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure ⁽²⁾.

*Article 13***Status of the mission and of its staff**

1. The status of mission staff, including where appropriate the privileges, immunities and any further guarantees necessary for the completion and smooth functioning of the mission, shall be agreed in accordance with the procedure laid down in Article 24 of the Treaty. The SG/HR, who shall assist the Presidency, may negotiate such arrangements on its behalf.

2. The State or EU institution having seconded a staff member shall be responsible for dealing with any complaints linked to the secondment, from or concerning the staff member. The State or EU institution in question shall be responsible for bringing any action against the person seconded.

*Article 14***Security**

1. The Head of Mission shall be responsible for the security of the EUSEC RD Congo mission.

2. The Head of Mission shall exercise this responsibility in accordance with EU directives on the security of staff deployed outside EU territory in an operational mission under Title V of the Treaty and related documents.

3. Appropriate training in security measures shall be provided for all staff, in accordance with the OPLAN. A reminder of security instructions shall be given regularly by the EUSEC RD Congo officer in charge of security.

*Article 15***Review of the mission**

The PSC shall, on the basis of a report by the General Secretariat of the Council presented at the latest in March 2010, approve recommendations to the Council with a view to reviewing the progress of the reform of the FARDC and evaluating the impact of the mission on the implementation of specific measures to support the revised plan for reform of the FARDC, basing itself on strategic indicators and on operational indicators set out in the mission implementation plan.

*Article 16***Entry into force and duration**

This Joint Action shall enter into force on 1 October 2009.

It shall apply until 30 September 2010.

*Article 17***Publication**

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

Done at Brussels, 15 September 2009.

For the Council

The President

C. BILDT

⁽¹⁾ Decision 2001/264/EC (OJ L 101, 11.4.2001, p. 1).

⁽²⁾ Decision 2006/683/EC, Euratom (OJ L 285, 16.10.2006, p. 47).

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