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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1616/2006**of 23 October 2006**

on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, and for applying the Interim Agreement between the European Community and the Republic of Albania

THE COUNCIL OF THE EUROPEAN UNION,

this Regulation should also apply to the implementation of the SAA after its entry into force.

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

- (4) The SAA and the Interim Agreement stipulate that fishery products originating in Albania may be imported into the Community at a reduced customs duty, within the limits of tariff quotas. It is therefore necessary to lay down provisions regulating the management of these tariff quotas.

Having regard to the proposal from the Commission,

Whereas:

- (1) A Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, (hereinafter referred to as SAA) was signed in Luxembourg on 12 June 2006. The SAA is in the process of ratification.

- (5) Where trade defence measures become necessary, they should be adopted in accordance with the general provisions laid down in Council Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports ⁽²⁾, Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports ⁽³⁾, Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽⁴⁾ or, as the case may be, Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ⁽⁵⁾.

- (2) On 12 June 2006 the Council concluded an Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Albania, of the other part ⁽¹⁾, (hereinafter referred to as the Interim Agreement) which provides for the early entry into force of the trade and trade-related provisions of the SAA. The Interim Agreement will enter into force the first day of the second month following the date of deposit of the last instrument of ratification or approval.

- (6) Where a Member State provides information to the Commission on a possible fraud or failure to provide administrative cooperation, the relevant Community legislation shall apply, in particular Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters ⁽⁶⁾.

- (3) It is necessary to lay down the procedures for applying certain provisions of both the SAA and the Interim Agreement. Since the trade and trade-related provisions of these instruments are to a very large extent identical,

⁽¹⁾ OJ L 239, 1.9.2006, p. 2.

⁽²⁾ OJ L 349, 31.12.1994, p. 53. Regulation as last amended by Regulation (EC) No 2200/2004 (OJ L 374, 22.12.2004, p. 1).

⁽³⁾ OJ L 324, 27.12.1969, p. 25. Regulation as last amended by Regulation (EEC) No 3918/91 (OJ L 372, 31.12.1991, p. 31).

⁽⁴⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽⁵⁾ OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽⁶⁾ OJ L 82, 22.3.1997, p. 1. Regulation as amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

- (7) For the purposes of implementing the relevant provisions of this Regulation the Commission should be assisted by the Customs Code Committee established by Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing Community Customs Code ⁽¹⁾.
- (8) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down certain procedures for the adoption of detailed rules for the implementation of certain provisions of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, (hereinafter referred to as SAA), and of the Interim Agreement on trade and trade-related matters between the European Community and the Republic of Albania (hereinafter referred to as the Interim Agreement).

Article 2

Concessions for fish and fishery products

Detailed rules for the implementation of Article 15(1) of the Interim Agreement, and thereafter Article 28(1) of the SAA, concerning the tariff quotas for fish and fishery products, shall be adopted by the Commission in accordance with the procedure set out in Article 12(2) of this Regulation.

Article 3

Tariff reductions

1. Subject to paragraph 2, rates of preferential duty shall be rounded down to the first decimal place.
2. Where the result of calculating the rate of the preferential duty in application of paragraph 1 is one of the following, the preferential rate shall be considered a full exemption:
 - (a) 1 % or less in the case of *ad valorem* duties, or
 - (b) EUR 1 or less per individual amount in the specific duties.

⁽¹⁾ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 648/2005 (OJ L 117, 4.5.2005, p. 13).

⁽²⁾ OJ L 184, 17.7.1999, p. 23. Decision as last amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

Article 4

Technical adaptations

Amendments and technical adaptations to the provisions adopted pursuant to this Regulation rendered necessary by changes to the Combined Nomenclature codes and to the TARIC subdivisions or arising from the conclusion of new or modified Agreements, Protocols, Exchanges of Letters or other acts between the Community and the Republic of Albania, shall be adopted in accordance with the procedure set out in Article 12(2) of this Regulation.

Article 5

General safeguard clause

Without prejudice to Article 7 of this Regulation, where the Community needs to take a measure as provided for in Article 25 of the Interim Agreement, and thereafter Article 38 of the SAA, it shall be adopted in accordance with the conditions and procedures laid down in Regulation (EC) No 3285/94, unless otherwise specified in Article 25 of the Interim Agreement, and thereafter Article 38 of the SAA.

Article 6

Shortage clause

Without prejudice to Article 7 of this Regulation, where the Community needs to take a measure as provided for in Article 26 of the Interim Agreement, and thereafter Article 39 of the SAA, it shall be adopted in accordance with the procedures laid down in Regulation (EEC) No 2603/69.

Article 7

Exceptional and critical circumstances

Where exceptional and critical circumstances arise within the meaning of Article 26(4) of the Interim Agreement, and thereafter Article 39(4) of the SAA, the Commission may take immediate measures as provided for in Article 26 of the Interim Agreement, and thereafter Article 39 of the SAA.

If the Commission receives a request from a Member State, it shall take a decision thereon within five working days of receipt of the request.

The Commission shall notify the Council of its decision.

Any Member State may refer the Commission's decision to the Council within ten working days of receiving notification of the decision.

The Council, acting by a qualified majority, may take a different decision within two months.

Article 8

Safeguard clause for agricultural and fisheries products

1. Notwithstanding the procedures referred to in Articles 5 and 6 of this Regulation, where the Community needs to take a safeguard measure as provided in Article 25 of the Interim Agreement and thereafter Article 38 of the SAA concerning agricultural and fisheries products, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures after, where applicable, having had recourse to the referral procedure provided for in Article 25 of the Interim Agreement and thereafter Article 38 of the SAA.

If the Commission receives a request from a Member State, it shall take a decision thereon:

- (a) within three working days following the receipt of a request, where the referral procedure provided for in Article 25 of the Interim Agreement and thereafter Article 38 of the SAA does not apply; or
- (b) within three days of the end of the 30-day period referred to in Articles 25(5)(a) of the Interim Agreement and thereafter Article 38(5)(a) of the SAA, where the referral procedure provided for in Article 25 of the Interim Agreement and thereafter Article 38 of the SAA applies.

The Commission shall notify Member States of the measures it decided.

2. Measures decided on by the Commission pursuant to paragraph 1 may be referred to the Council by any Member State within three working days of the date on which they were notified. The Council shall meet without delay. It may, acting by qualified majority, amend or repeal the measures in question within one month following the date on which they were referred to the Council.

Article 9

Dumping and subsidy

In the event of a practice which is liable to warrant application by the Community of the measures provided for in Article 24(2) of the Interim Agreement, and thereafter Article 37(2) of the SAA, the introduction of anti-dumping and/or countervailing measures shall be decided upon in accordance with the provisions laid down in Regulation (EC) No 384/96 or Regulation (EC) No 2026/97, respectively.

Article 10

Competition

1. In the event of a practice that may justify application by the Community of the measures provided for in Article 37 of the Interim Agreement, and thereafter Article 71 of the SAA, the Commission shall, after examining the case, on its own initiative or on the request of a Member State, decide whether such practice is compatible with the Agreements.

The measures provided for in Article 37(9) of the Interim Agreement, and thereafter Article 71(9) of the SAA, shall be adopted in the cases of aid in accordance with the procedures laid down in Regulation (EC) No 2026/97 and in the other cases in accordance with the procedure laid down in Article 133 of the Treaty.

2. In the event of a practice that may cause measures to be applied to the Community by the Republic of Albania on the basis of Article 37 of the Interim Agreement, and thereafter Article 71 of the SAA, the Commission shall, after examining the case, decide whether the practice is compatible with the principles set out in the Interim Agreement, and thereafter the SAA. Where necessary, it shall take appropriate decisions on the basis of criteria which result from the application of Articles 81, 82 and 87 of the Treaty.

Article 11

Fraud or failure to provide administrative cooperation

Where the Commission, on the basis of information provided by a Member State or on its own initiative, finds that the conditions laid down in Article 30 of the Interim Agreement and thereafter in Article 43 of the SAA are fulfilled, the Commission shall, without undue delay:

- (a) inform the Council; and
- (b) notify the Joint Committee, and thereafter the Stabilisation and Association Committee, of its finding together with the objective information, and enter into consultations within the Stabilisation and Association Committee.

Any publication under Article 30(5) of the Interim Agreement, and thereafter Article 43(5) of the SAA, shall be done by the Commission in the *Official Journal of the European Union*.

The Commission may decide, in accordance with the procedure set out in Article 12(3) of this Regulation, to suspend temporarily the relevant preferential treatment of the products as provided for in Article 30(4) of the Interim Agreement, and thereafter Article 43(4) of the SAA.

*Article 12***Committee**

1. The Commission shall be assisted by the Customs Code Committee set up by Article 248a of Regulation (EEC) No 2913/92.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

4. The Committee shall adopt its Rules of Procedure.

*Article 13***Notification**

Notification to the Joint Committee, and thereafter the Stabilisation and Association Council and the Stabilisation and Association Committee, respectively, as required by the Interim Agreement or the SAA shall be the responsibility of the Commission, acting on behalf of the Community.

*Article 14***Entry into force**

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 Luxembourg, 23 October 2006.

For the Council

The President

J.-E. ENESTAM

COUNCIL REGULATION (EC) No 1617/2006**of 24 October 2006****amending Regulation (EC) No 1207/2001 as regards the consequences of the introduction of the system of pan-Euro-Mediterranean cumulation of origin**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Council Regulation (EC) No 1207/2001 of 11 June 2001 on procedures to facilitate the issue of movement certificates EUR.1, the making out of invoice declarations and forms EUR.2 and the issue of certain approved exporter authorisations under the provisions governing preferential trade between the European Community and certain countries ⁽¹⁾, lays down rules intended to facilitate the correct issue or making out of proofs of origin in relation to exports of products from the Community in the context of its preferential trade relations with certain third countries.

(2) A system of pan-European diagonal cumulation of origin was put in place in 1997 between the Community, Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Romania, Slovenia, Slovakia, Iceland, Norway and Switzerland (including Liechtenstein) and extended in 1999 to Turkey. On 1 May 2004, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia acceded to the European Union.

(3) At the Euro-Med Trade Ministerial Meeting in Toledo of March 2002, Ministers agreed upon the extension of this system to the Mediterranean countries, other than Turkey, which participate in the Euro-Mediterranean partnership, based on the Barcelona Declaration adopted at the Euro-Mediterranean Conference held on 27 and 28 November 1995. At the Euro-Med Trade Ministerial Meeting in Palermo, on 7 July 2003, the Ministers, with a view to allowing such an extension, endorsed a new pan-Euro-Mediterranean model of Protocol to the Euro-Mediterranean Agreements, concerning the definition of the concept of 'originating products' and methods of administrative cooperation. Further to the

outcome of the EC-Faroe Islands/Denmark Joint Committee of 28 November 2003, it has been agreed to include also the Faroe Islands in the system of pan-Euro-Mediterranean diagonal cumulation of origin.

(4) Decisions of the respective Association Council or Joint Committee introducing the new pan-Euro-Mediterranean Protocol in the Euro-Mediterranean Agreements and in the Agreement between the EC and the Faroe Islands/Denmark have already been, or will be, adopted.

(5) The application of that new system of diagonal cumulation implies using new types of proof of preferential origin, consisting in movement certificates EUR-MED and invoice declarations EUR-MED. Regulation (EC) No 1207/2001 should therefore cover also those types of proofs of preferential origin.

(6) To allow a correct determination of the originating status of products and properly support the establishment of the proofs of origin in that new context, the supplier's declaration for products having preferential originating status should incorporate an additional statement showing whether diagonal cumulation has been applied and with what countries.

(7) Regulation (EC) No 1207/2001 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Regulation (EC) No 1207/2001 is hereby amended as follows:

1. The title shall be replaced by the following:

'Council Regulation (EC) No 1207/2001 of 11 June 2001 on procedures to facilitate the issue or the making out in the Community of proofs of origin and the issue of certain approved exporter authorisations under the provisions governing preferential trade between the European Community and certain countries'.

⁽¹⁾ OJ L 165, 21.6.2001, p. 1.

2. In Article 1, point (a) shall be replaced by the following:

‘(a) the issue or the making-out in the Community of proofs of origin under the provisions governing preferential trade between the Community and certain countries;’.

3. Article 2(2) shall be replaced by the following:

‘2. Supplier’s declarations shall be used by exporters as evidence, in particular in support of applications for the issue or the making out in the Community of proofs of origin under the provisions governing preferential trade between the Community and certain countries.’.

4. Article 10(5) shall be replaced by the following:

‘5. Where there is no reply within five months of the date of the verification request or where the reply does not contain sufficient information to demonstrate the real origin of the products, the customs authorities of the country of export shall declare invalid the proof of origin established on the basis of the documents in question.’.

5. Annex I shall be replaced by the text set out in Annex I to this Regulation.

6. Annex II shall be replaced by the text set out in Annex II to this Regulation.

Article 2

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

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

Done at Luxembourg, 24 October 2006.

For the Council
The President
J. KORKEAOJA

ANNEX I

'ANNEX I

Supplier's declaration for products having preferential origin status

The supplier's declaration, the text of which is given below, must be made out in accordance with the footnotes. However, the footnotes do not have to be reproduced.

DECLARATION

I, the undersigned, declare that the goods listed on this document⁽¹⁾ originate in⁽²⁾ and satisfy the rules of origin governing preferential trade with⁽³⁾.

I declare that ⁽⁴⁾:

☐ Cumulation applied with (name of the country/countries)

☐ No cumulation applied

I undertake to make available to the customs authorities any further supporting documents they require:

.....⁽⁵⁾

.....⁽⁶⁾

.....⁽⁷⁾

⁽¹⁾ If only some of the goods listed on the document are concerned, they shall be clearly indicated or marked and this marking entered in the declaration as follows:

"... listed on this invoice and marked originate in ...".

⁽²⁾ The Community, country, group of countries or territory, in which the goods originate.

⁽³⁾ Country, group of countries or territory concerned.

⁽⁴⁾ To be completed, where necessary, only for goods having preferential origin status in the context of preferential trade relations with one of the countries referred to in Articles 3 and 4 of the relevant origin Protocol, with which pan-Euro-Mediterranean cumulation of origin is applicable.

⁽⁵⁾ Place and date.

⁽⁶⁾ Name and position in the company.

⁽⁷⁾ Signature.'

ANNEX II

‘ANNEX II

Long-term supplier's declaration for products having preferential origin status

The supplier's declaration, the text of which is given below, must be made out in accordance with the footnotes. However, the footnotes do not have to be reproduced.

DECLARATION

I, the undersigned, declare that the goods described below:

..... ⁽¹⁾

..... ⁽²⁾

which are regularly supplied to ⁽³⁾ originate in ⁽⁴⁾ and satisfy the rules of origin governing preferential trade with ⁽⁵⁾.

I declare that ⁽⁶⁾:

☐ Cumulation applied with (name of the country/countries)

☐ No cumulation applied

This declaration is valid for all further shipments of these products dispatched from:

..... to ⁽⁷⁾.

I undertake to inform immediately if this declaration is no longer valid.

I undertake to make available to the customs authorities any further supporting documents they require:

..... ⁽⁸⁾

..... ⁽⁹⁾

..... ⁽¹⁰⁾

⁽¹⁾ Description.

⁽²⁾ Commercial designation as used on the invoices, e.g. model No.

⁽³⁾ Name of company to which goods are supplied.

⁽⁴⁾ The Community, country, group of countries or territory, in which the goods originate.

⁽⁵⁾ Country, group of countries or territory concerned.

⁽⁶⁾ To be completed, where necessary, only for goods having preferential origin status in the context of preferential trade relations with one of the countries referred to in Articles 3 and 4 of the relevant origin Protocol, with which pan-Euro-Mediterranean cumulation of origin is applicable.

⁽⁷⁾ Give the dates. The period shall not exceed 12 months.

⁽⁸⁾ Place and date.

⁽⁹⁾ Name and position, name and address of company.

⁽¹⁰⁾ Signature.

COMMISSION REGULATION (EC) No 1618/2006**of 30 October 2006****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the

standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 31 October 2006.

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

Done at Brussels, 30 October 2006.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 30 October 2006 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	65,8
	096	19,5
	204	42,3
	999	42,5
0707 00 05	052	153,0
	204	42,1
	999	97,6
0709 90 70	052	100,2
	204	37,7
	999	69,0
0805 50 10	052	67,7
	388	53,7
	524	53,6
	528	54,3
	999	57,3
0806 10 10	052	98,5
	400	206,2
	508	262,9
	999	224,6
0808 10 80	096	29,0
	388	92,3
	400	107,1
	404	100,4
	800	148,5
	804	153,2
0808 20 50	999	105,1
	052	109,5
	720	59,2
	999	84,4

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1619/2006**of 30 October 2006****amending Regulation (EC) No 1555/96 as regards the trigger levels for additional duties on cucumbers, artichokes, clementines, mandarins and oranges**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾, and in particular Article 33(4) thereof,

Whereas:

(1) Commission Regulation (EC) No 1555/96 of 30 July 1996 on rules of application for additional import duties on fruit and vegetables ⁽²⁾ provides for surveillance of imports of the products listed in the Annex thereto. That surveillance is to be carried out in accordance with the rules laid down in Article 308d of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽³⁾.

(2) For the purposes of Article 5(4) of the Agreement on Agriculture ⁽⁴⁾ concluded during the Uruguay Round of multilateral trade negotiations and in the light of the

latest data available for 2003, 2004 and 2005, the trigger levels for additional duties on cucumbers, artichokes, clementines, mandarins and oranges should be adjusted.

(3) As a result, Regulation (EC) No 1555/96 should be amended.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1555/96 is hereby replaced by the Annex hereto.

Article 2

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

It shall apply from 1 November 2006.

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

Done at Brussels, 30 October 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 297, 21.11.1996, p. 1. Regulation last amended by Commission Regulation (EC) No 47/2003 (OJ L 7, 11.1.2003, p. 64).

⁽²⁾ OJ L 193, 3.8.1996, p. 1. Regulation last amended by Regulation (EC) No 1450/2006 (OJ L 271, 30.9.2006, p. 35).

⁽³⁾ OJ L 253, 11.10.1993, p. 1. Regulation last amended by Regulation (EC) No 402/2006 (OJ L 70, 9.3.2006, p. 35).

⁽⁴⁾ OJ L 336, 23.12.1994, p. 22.

ANNEX

‘ANNEX

Without prejudice to the rules governing the interpretation of the combined nomenclature, the description of the products is deemed to be indicative only. The scope of the additional duties for the purposes of this Annex is determined by the scope of the CN codes as they exist at the time of the adoption of this Regulation.

Serial No	CN code	Description	Trigger period	Trigger level (tonnes)
78.0015 78.0020	0702 00 00	Tomatoes	— 1 October to 31 May — 1 June to 30 September	260 852 18 281
78.0065 78.0075	0707 00 05	Cucumbers	— 1 May to 31 October — 1 November to 30 April	9 278 16 490
78.0085	0709 10 00	Artichokes	— 1 November to 30 June	5 770
78.0100	0709 90 70	Courgettes	— 1 January to 31 December	68 401
78.0110	0805 10 20	Oranges	— 1 December to 31 May	271 744
78.0120	0805 20 10	Clementines	— 1 November to end of February	116 637
78.0130	0805 20 30 0805 20 50 0805 20 70 0805 20 90	Mandarins (including tangerines and satsumas); wilkings and similar citrus hybrids	— 1 November to end of February	91 359
78.0155 78.0160	0805 50 10	Lemons	— 1 June to 31 December — 1 January to 31 May	301 899 34 287
78.0170	0806 10 10	Table grapes	— 21 July to 20 November	189 604
78.0175 78.0180	0808 10 80	Apples	— 1 January to 31 August — 1 September to 31 December	922 228 51 920
78.0220 78.0235	0808 20 50	Pears	— 1 January to 30 April — 1 July to 31 December	263 711 33 052
78.0250	0809 10 00	Apricots	— 1 June to 31 July	4 569
78.0265	0809 20 95	Cherries, other than sour cherries	— 21 May to 10 August	46 088
78.0270	0809 30	Peaches, including nectarines	— 11 June to 30 September	17 411
78.0280	0809 40 05	Plums	— 11 June to 30 September	11 155'

COMMISSION REGULATION (EC) No 1620/2006**of 30 October 2006****imposing a provisional anti-dumping duty on imports of ironing boards originating in the People's Republic of China and Ukraine**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation) and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE**1.1. Initiation of the proceeding**

- (1) On 4 February 2006, the Commission announced by a notice published in the *Official Journal of the European Union* ⁽²⁾ (notice of initiation), the initiation of an anti-dumping proceeding concerning imports into the Community of ironing boards originating in the People's Republic of China (PRC) and Ukraine.
- (2) The anti-dumping proceeding was initiated following a complaint lodged on 23 December 2005 by three Community producers (the complainants) representing a major proportion, in this case more than 40 %, of the total Community production of ironing boards. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

1.2. Parties concerned and verification visits

- (3) The Commission officially advised the complainants, other known producers in the Community, exporting producers in the PRC and Ukraine, importers and retailers known to be concerned, the representatives of the exporting countries concerned, producers in the United States of America, which was initially envisaged as analogue country and producers in other potential analogue countries. In addition, the Commission contacted all other Community operators potentially involved in the production and/or distribution of the like product/product concerned whose contact details were provided to the Commission following the initiation of the proceeding. The 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. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

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

⁽²⁾ OJ C 29, 4.2.2006, p. 2.

- (4) In view of the high number of Chinese exporting producers, sampling was envisaged in the notice of initiation for the determination of dumping, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all Chinese exporting producers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period 1 January 2005 to 31 December 2005. However, only eight Chinese exporting producers came forward and provided the requested information for sampling within the deadlines set out in the notice of initiation. Therefore, it was decided that sampling was not necessary.
- (5) In order to allow exporting producers in the countries concerned to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned and to the authorities of the PRC and Ukraine. Eight companies in the PRC and one company in Ukraine requested MET pursuant to Article 2(7) of the basic Regulation or IT should the investigation establish that they did not meet the conditions for MET.
- (6) The Commission sent questionnaires to all parties known to be concerned and to all other parties that requested so within the deadlines set out in the notice of initiation.
- (7) Questionnaire replies were received from six Chinese exporting producers, from the sole Ukrainian exporting producer, from four Community producers, from two importers not related to the exporting producers and from one trader. In addition, one importer submitted comments without replying to the questionnaire.
- (8) Certain information was also received from 17 Community producers of the like product (15 of which supported the complaint, one expressed a neutral position and one opposed) and three companies only importing the product concerned.
- (9) The Commission sought and verified all the information it deemed necessary for the purpose of MET and for a provisional determination of dumping, resulting injury and Community interest. Verification visits were carried out as follows:

(a) *Community producers*

Verification visits were carried out at the premises of the four Community producers. These producers requested that their identities be kept confidential on the basis of the provisions of Article 19 of the basic Regulation. They claimed that the disclosure of their identity could lead to a risk of significant adverse effects.

Indeed, certain complainant Community producers supply customers in the Community that also source their products from the PRC and Ukraine, thus benefiting directly from these imports. Those complainants argued that they were therefore in a particularly sensitive position since they had good reasons to believe that some of their suppliers and customers would not be satisfied with their lodging or supporting a complaint against alleged injurious dumping and would react to such action. Indeed, they alleged that they risk retaliation from these suppliers and customers, including the possible termination of their business relationship. The request was granted as it was sufficiently substantiated.

(b) *Exporting producers in the PRC*

- Foshan City Gaoming Lihe Daily Necessities Co. Ltd, Foshan,
- Foshan Shunde Heng Yip Housewares Co. Ltd, Foshan,
- Guangzhou Power Team Houseware Co. Ltd, Guangzhou,
- Since Hardware (Guangzhou) Co. Ltd, Guangzhou,
- Foshan Shunde Yongjian Housewares and Hardware Co. Ltd, Foshan and its related company Wire King International Ltd, Hong Kong,
- Zhejiang Harmonic Hardware Products Co. Ltd, Guzhou.

(c) *Exporting producer in Ukraine*

- Eurogold Industries Ltd, Zhitomir and its related company Eurogold Service Zumbühl & Co., Zug in Switzerland.

- (10) In the light of the need to establish a normal value for the exporting producers in the PRC and Ukraine to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country took place at the premises of the following company:

- Gİpaş elektronik sanayi ithalat ihracaat dahili ticaret ve pazarlama anonim şirketi sanayi A.Ş., Istanbul, Turkey.

1.3. Investigation period

- (11) The investigation of dumping and injury covered the period from 1 January 2005 to 31 December 2005 (the investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 2002 to the end of the IP (the period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (12) The product concerned is ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest originating in the People's Republic of China and Ukraine (the product concerned), normally declared within CN codes ex 3924 90 90, ex 4421 90 98, ex 7323 93 90, ex 7323 99 91, ex 7323 99 99, ex 8516 79 70 and ex 8516 90 00.
- (13) There are different types of ironing boards and their essential parts depending mainly on their construction and size, their construction material and accessories. However, all different types have the same basic physical characteristics and uses. Consequently, all existing types are considered as one product for the purposes of this investigation.

2.2. Like product

- (14) The product concerned and the ironing boards and the essential parts thereof produced and sold on the domestic market of the PRC and Ukraine, and on the domestic market of Turkey, which finally served as an analogue country, as well as the ironing boards and their essential parts produced and sold in the Community by the Community industry were found to have the same basic physical and technical characteristics and uses. Therefore, these products are provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Market economy treatment (MET)

- (15) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC and in Ukraine (in the latter case for all proceedings lodged or initiated before 30 December 2005), normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which have shown that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is demonstrated by such exporting producers that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in a summarised form below:
- business decisions and costs are made in response to market conditions, and without significant State interference,
 - accounting records are independently audited, in line with International Accounting Standards (IAS) and applied for all purposes,
 - there are no significant distortions carried over from the former non-market economy system,
 - legal certainty and stability is provided by bankruptcy and property laws,
 - currency exchanges are carried out at the market rate.
- (16) Eight Chinese exporting producers initially requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines. However, two of them decided subsequently not to co-operate with the investigation. Thus, only the MET claims of the remaining six co-operating Chinese exporting producers listed in recital 9 were considered.
- (17) The sole Ukrainian exporting producer requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines.
- (18) However, the Ukrainian producer remarked that Ukraine was by Council Regulation (EC) No 2117/2005 removed from the list of non-market-economy countries mentioned under Article 2(7)(b) of the basic Regulation. The company claimed that the decision to grant market economy status to Ukraine was taken on the basis of an assessment of the situation in the preceding months. Therefore, it was submitted that it should be granted MET because (i) the IP is the calendar year 2005; (ii) the complainants should have provided evidence showing that market economy conditions were not applicable to the Ukrainian producers concerned and (iii) a failure to grant MET status to Ukraine would discriminate Ukraine with regard to Russia.

- (19) In this respect, it is noted that Council Regulation (EC) No 2117/2005 clearly states that normal value for Ukrainian exporters and producers will be established in accordance with the provisions of Article 2(1) to (6) of the basic Regulation only in investigations initiated after 30 December 2005, either on the basis of an application for initiation lodged after the above said date or at the initiative of the Commission. As the complaint for this proceeding was lodged on 23 December 2005, it is evident that the provisions of Article 2(1) to (6) of the basic Regulation cannot apply and that the co-operating Ukrainian company has, therefore, to prove that it meets the criteria laid down in Article 2(7)(c) of the basic Regulation. It is evident from the wording of the aforesaid Article that it is the exporting producers that carry the burden of proof on the fulfilment of the MET criteria and not the complainants. Furthermore, it should be noted that the granting of MET status to a certain country is based on an overall assessment of its economic situation as a whole with a view to establish whether costs and prices can, in general, be relied on for the purpose of anti-dumping investigations. In other words, it is not an evaluation of the particular situation of each individual enterprise. Finally, the argument that Ukraine would be discriminated with regard to Russia is without foundation as Russia has been considered to be a market economy since 2002. For these reasons the Commission rejected the claims made by the Ukrainian exporting producer and proceeded with the MET determination process.
- (20) For the co-operating exporting producers the Commission sought all information deemed necessary and verified the information submitted in the MET claim at the premises of the companies in question.

3.1.1. MET determination regarding exporting producers in the PRC

- (21) One Chinese exporting producer, Since Hardware (Guangzhou) Co., Ltd, Guangzhou, showed that it fulfilled all five criteria set out in Article 2(7)(c) of the basic Regulation and it was granted MET.
- (22) As far as the remaining Chinese exporting producers listed in recital 9 are concerned, one did not fulfil criteria 1, 2 and 3, one did not fulfil criteria 2 and 3 and three did not meet criterion 2.
- (23) All co-operating Chinese exporting producers and the Community industry were given an opportunity to comment on the above findings. Four companies disagreed with the determinations made and claimed that they should be granted MET.
- (24) As far as criterion 1 is concerned, one Chinese exporting producer has not demonstrated that it fulfils this criterion. In particular, it has not shown at any stage of the investigation that one of its two shareholders actually paid for its shares obtained from the state. Furthermore, the company obtained electricity from the state on a non-contractual basis. The company contested the disclosed findings but did not provide any verifiable evidence on these issues. Therefore, its comments could not be taken into account. Consequently, it was concluded that the company has not shown that it fulfils criterion 1.
- (25) As far as criterion 2 is concerned, five companies failed to demonstrate that they had a clear set of accounting records, independently audited in line with International Accounting Standards. As a matter of fact, an examination of the accounts in question showed significant flaws in all five cases. For instance, the companies did not itemise all different revenues and expenses in their accounts but applied an extensive offsetting system between such revenues and expenses on a monthly basis. They also did not respect the accrual principle of accounting. In fact, they grouped transactions per month and recorded them in their books on a summary basis without details of the individual transactions concerned. Since the auditors have not commented on these infringements of the IAS 1, the accounting records were not audited in line with IAS. Upon disclosure, four exporting producers continued to argue that they followed IAS but provided no evidence to show that the findings were wrong. Consequently, it was concluded that in all cases the companies have not shown that they fulfil criterion 2.

- (26) Two companies also failed to demonstrate that they fulfil criterion 3. For these two companies it was found on the spot that they had not met their contractual obligations in respect to payments of land-use rights to the state, yet this had no financial or other consequence for the companies. Furthermore, one company was found to lease during the IP state owned land for which it had not formally obtained land-use rights from the state. This situation was only corrected after the IP, but only at a fee below the normal rate. Upon disclosure the two Chinese exporting producers contested these findings, but the new information they submitted in order to support their claims could not be accepted since it was not verifiable. Consequently, it was concluded that both companies failed to show that they fulfil criterion 3.
- (27) On the basis of the above, only one Chinese exporting producer, namely Since Hardware (Guangzhou) Co. Ltd, has shown that it fulfils all the criteria set out in Article 2(7)(c) of the basic Regulation and was granted MET, whilst the remaining five exporting producers have not shown that they fulfil all such criteria and, thus, could not be granted MET.

3.1.2. MET determination regarding the sole exporting producer in Ukraine

- (28) The sole Ukrainian exporting producer, Eurogold Industries Ltd, Zhitomir, showed that it fulfils all the criteria set out in Article 2(7)(c) of the basic Regulation and was therefore granted MET. The exporting producer and the Community industry were given an opportunity to comment on the MET findings but no comments were received.

3.2. Individual treatment (IT)

- (29) Pursuant to Article 2(7)(a) of the basic Regulation, a country wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation.
- (30) As far as the PRC is concerned, all exporting producers who requested MET also claimed IT in the event that they would not be granted MET.
- (31) On the basis of the information available, it was found that four companies met all the requirements for IT as set forth in Article 9(5) of the basic Regulation.
- (32) It was therefore concluded that IT should be granted to the following exporting producers in the PRC:
- Foshan City Gaoming Lihe Daily Necessities Co. Ltd, Foshan,
 - Guangzhou Power Team Houseware Co. Ltd, Guangzhou,
 - Foshan Shunde Yongjian Housewares and Hardware Co. Ltd, Foshan,
 - Zhejiang Harmonic Hardware Products Co. Ltd, Guzhou.
- (33) On the basis of the information available, it was found that one company failed to demonstrate that it cumulatively met all the requirements for IT as set forth in Article 9(5) of the basic Regulation.

- (34) In particular, it was established that information referring to export sales made either directly or via a related company established in Hong Kong was not verifiable. The company failed to provide substantial data referring to its total export volumes and the relevant corresponding export invoices despite requests for such information. Furthermore, the information submitted on total turnover, as well as domestic and export sales could not be reconciled with the available audit reports and the company's accounting records. In addition, the company was not able to demonstrate the destination of its sales as reported in the questionnaire. The Commission could thus not verify if the company was able to freely determine its export prices and quantities, and conditions and terms of sale as set out in Article 9(5)(b) of the basic Regulation.

3.3. Normal value

3.3.1. *Analogue country*

- (35) According to Article 2(7) of the basic Regulation, in case of imports from non-market-economy countries and to the extent that MET could not be granted, for countries specified in Article 2(7)(b) of the basic Regulation, normal value has to be established on the basis of the price or constructed value in an analogue country.
- (36) In the notice of initiation the Commission indicated its intention to use the United States of America (USA) as an appropriate analogue country for the purpose of establishing normal value for the PRC and Ukraine and invited the interested parties to comment thereon.
- (37) Comments were received from the co-operating exporting producers in the PRC and Ukraine suggesting Thailand, India or Turkey as being more suitable analogue countries than the USA. The main arguments made against the USA were the differences in overall economic development, access to and prices of raw materials, labour cost and production methods, but also differences in terms of competition on domestic market for ironing boards. It was also claimed that the USA market for ironing boards is a highly protected market with artificially high prices.
- (38) The Commission sought co-operation from producers in the USA and in other potential analogue countries such as Thailand, India and Turkey. Letters and relevant questionnaires were sent to five companies in the USA, three companies in Thailand, five companies in India and nine companies in Turkey. Out of all these companies, only one Turkish producer submitted in due time all the necessary information for the determination of normal value and agreed to co-operate in the investigation.
- (39) The investigation showed that Turkey has a competitive market for ironing boards with around 90 % of the market supplied by a number of local producers and the rest by imports from third countries. The production volume in Turkey constitutes more than 5 % of the volume of Chinese exports of the product concerned to the Community. As for the quality and standards of the Turkish ironing boards, no major overall differences were found when compared to Chinese and Ukrainian products. The Turkish market was therefore deemed sufficiently representative for the determination of normal value for the PRC and Ukraine.
- (40) In view of the above, it is provisionally concluded that Turkey constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

3.3.2. *Determination of normal value for the exporting producers granted MET*

- (41) The normal value determination for one Chinese and the sole Ukrainian exporting producer granted MET should be based on the data they submitted on domestic sales and cost of production. These data were verified at the premises of the companies concerned.

- (42) As far as the determination of normal value is concerned, the Commission first established in each exporting country whether the domestic sales of the product concerned by each exporting producer were representative in comparison with total sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was equal to or greater than 5 % of the total export sales volume of the producer to the Community.

3.3.2.1. People's Republic of China

- (43) It was established that the Chinese exporting producer granted MET did not have sufficient representative domestic sales during the IP. Therefore, normal value could not be established on the basis of prices of the relevant exporting producer in the export country, as provided by Article 2(1) subparagraph 1 of the basic Regulation. Subsequently, another method had to be applied.
- (44) Given that no domestic prices could be used to establish normal value, a constructed normal value had to be calculated based on the costs of the producer in question. Consequently, in accordance with Article 2(3) of the basic Regulation, therefore, normal value was constructed by adding to the manufacturing costs of the exported ironing board types, adjusted where necessary, a reasonable amount for selling, general and administrative (SG&A) expenses and a reasonable margin of profit. In this respect it should be noted that the purchase prices of certain raw materials/parts, in particular raw materials/parts made of steel, reported by this company appears to be artificially low and thus the cost of production needs to be further examined and the provisional findings may have to be reconsidered for the purpose of any definitive findings.
- (45) Since the exporting producer that was granted MET had insufficient representative domestic sales, SG&A expenses and profit had to be determined on the basis of any other reasonable method pursuant to Article 2(6)(c) of the basic Regulation.
- (46) Consequently, the Commission used the SG&A expenses and profit rates from the co-operating exporting producer in the analogue country which had domestic sales in the ordinary course of trade. The SG&A expenses and profit average rates found in the co-operating Turkish exporting producer were added to the cost of manufacturing incurred by the exporting producer in question with regard to the exported types as stipulated by Article 2(3) of the basic Regulation.

3.3.2.2. Ukraine

- (47) It was established that for the sole Ukrainian exporting producer the overall domestic sales of the product concerned during the IP were not made in representative quantities. Therefore, normal value could not be established on the basis of prices of the relevant exporting producer in the export country, as provided by Article 2(1) subparagraph 1 of the basic Regulation. Subsequently, another method had to be applied.
- (48) Since the exporting producer with MET did not have sufficient domestic sales and since there was no other co-operating Ukrainian exporting producer, the SG&A expenses and profit had to be determined on the basis of any other reasonable method pursuant to Article 2(6)(c) of the basic Regulation.
- (49) Consequently, the Commission used SG&A expenses and profit rates from the co-operating exporting producer in the analogue country which had domestic sales in the ordinary course of trade. The SG&A expenses and profit average rates found in the co-operating Turkish exporting producer were compounded on the cost of manufacturing incurred by the exporting producer in question with regard to the exported types as stipulated by Article 2(3) of the basic Regulation.

3.3.3. *Determination of normal value in the analogue country*

- (50) Following the choice of Turkey as an analogue country, normal value was calculated on the basis of the data verified at the premises of the co-operating Turkish producer.
- (51) The domestic sales of the Turkish producer of the like product were found to be representative compared to the product concerned exported to the Community by the exporting producers in the PRC.
- (52) An examination was also made as to whether the domestic sales could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers. The verification carried out at the Turkish producer showed that its sales volume, sold at a net sales price equal to or above the unit cost, represented more than 80 % of the total sales volume. Therefore, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that product type made during the IP, irrespective of whether these sales were profitable or not. In addition, these domestic prices were found to be overall in line with the prices of another major Turkish producer for which certain information was obtained during on the spot verification in the analogue country.

3.4. **Export price**

3.4.1. *People's Republic of China*

- (53) The exporting producers made export sales to the Community either (i) directly to independent customers in the Community; (ii) through unrelated trading companies located outside the Community and (iii) through related trading companies located outside the Community.
- (54) Where export sales to the Community were made directly to independent customers in the Community, the export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

Where export sales to the Community were made through unrelated trading companies, export prices were established on the basis of the prices of the product when sold to the trading companies for export to the Community in accordance with Article 2(8) of the basic Regulation.

- (55) Where export sales to the Community were made through related trading companies, the export price was established on the basis of the prices of the product when sold by the related trading companies to the first independent buyer in accordance with Article 2(8) of the basic Regulation.
- (56) One exporting producer was selling part of the product concerned via a trading company in Hong Kong. The Hong Kong based trading company was not in a position to properly demonstrate through its accounts that the reported export prices to independent customers in the Community were actually paid. Furthermore, it was not possible to reconcile on the spot the Hong Kong trader's purchases with its audited accounts for sales to the Community. The company was informed that there were serious doubts about the accuracy of its sales to the Community via the related trading company in Hong Kong and that such sales would be disregarded for the provisional dumping calculations. The company was given the opportunity to comment, but it did not provide any evidence which could change the preliminary conclusion. Thus, those export transactions were disregarded and the export price was based only on prices for sales made either directly to independent customers in the Community or through unrelated trading companies located outside the PRC and the Community.

- (57) One exporting producer had no direct sales of the product concerned. It sold the product concerned either via unrelated trading companies located in the PRC or via a related trading company located in the PRC. Since the final destination of the sales made via unrelated parties could not be demonstrated, these sales were provisionally disregarded and the export price was based only on the sales made via the related trading company, which was able to demonstrate the destination of its sales. The company was informed accordingly and given the opportunity to comment. The comments have not altered this preliminary conclusion.
- (58) As it has been explained under the analysis of IT in recital (33) above, one exporting producer was not able to demonstrate and substantiate its actual export sales. Therefore, pursuant to Article 18(1) of the basic Regulation all its export sales were disregarded and prices reported could not be used for the establishment of export prices from the PRC to the Community. The company was informed accordingly and given the opportunity to comment. Nevertheless, the comments have not changed the findings of the investigation and, since no other source was available to establish this company's exports to the Community, it was considered appropriate to disregard all its export data and establish the dumping margin on the facts available (see recital (65)).

3.4.2. *Ukraine*

- (59) All export sales to the Community of the sole Ukrainian exporter were made through its related company located outside the Community. This related company performed all import functions of the goods entering into free circulation in the Community, and should consequently be considered as a related importer. The export price was therefore established in accordance with Article 2(9) of the basic Regulation, on the basis of prices at which the imported products were first resold to an independent buyer. For this purpose, adjustments were made to take account of all costs, including any duties and taxes, incurred between importation and resale, and of profits normally accruing by independent co-operating importers, so that a reliable export price could be established.

3.5. **Comparison**

- (60) The comparison between normal value and export price was made on an ex-factory basis.
- (61) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. For all investigated exporting producers, allowances for differences in transport and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, warranty and guarantee costs and commissions have been granted where applicable and justified.
- (62) As regards the normal value based on the analogue country for exporting producers not granted MET, the investigation established that the Turkish ironing boards are in most cases equipped with electric socket and cord-minder, whereas this was not the case for the majority of Chinese products. Therefore, an appropriate adjustment was made under Article 2(10)(a) of the basic Regulation for the Turkish prices to eliminate the effect of this difference. In addition, some differences in the level of trade were found. It was established that on the Turkish domestic market ironing boards are normally supplied directly to retailers and thus the quantities per order/delivery are substantially lower compared to those made via importers/traders or via distribution/supply centres of the large retail chains, as it is the case of Chinese export sales. Therefore, an appropriate adjustment was made under Article 2(10)(d) of the basic Regulation on the Turkish prices to eliminate the effect of these differences.

3.6. **Dumping margins**

3.6.1. *General methodology*

- (63) Pursuant to Article 2(11) and (12) of the basic Regulation, dumping margins for co-operating exporting producers were established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type as established above. It is noted that there were no co-operating exporting producers in both countries beyond those granted MET or IT.

- (64) In order to determine the dumping margin for all non-cooperating exporting producers, the level of non-cooperation was first established. To this end, the volume of exports to the Community reported by the co-operating exporting producers was compared with the equivalent volume of imports established on the basis of the complaint and of certain information collected from other known exporting producers in the countries concerned who did not finally co-operate in the investigation. It should be noted that there are no precise Eurostat import statistics for the product concerned.
- (65) Where the level of co-operation is low, i.e. less than 80 % of total exports of the product concerned being accounted for by the co-operating exporting producers, it is considered appropriate to set the dumping margin for other exporting producers at a level higher than the highest dumping margin established for the co-operating exporting producers. In such case, the dumping margin was therefore established at a level which corresponds to the weighted average dumping margin of the most sold product types of the co-operating exporting producers with the highest dumping margins. This was considered appropriate since there was reason to believe that the low level of co-operation results from the non-cooperating exporting producers in the investigated country generally having dumped at a higher level than any co-operating exporting producer. Moreover, since there were no indications that any non-cooperating company was dumping at a lower level.
- (66) Where the level of co-operation is high, i.e. 80 % or more of total exports of the product concerned being accounted for by the co-operating exporting producers, it was considered appropriate to set the dumping margin for the other exporting producers at the level of the highest dumping margin established for a co-operating exporting producer in the country concerned.

3.6.2. Dumping margins

3.6.2.1. People's Republic of China

- (67) Based on the complaint and the information available from the exporting producers which came forward and provided certain data at the initial stage of the investigation it was provisionally concluded that the level of co-operation was below 80 %. Therefore the methodology described in recital (65) above was used to establish the country wide dumping margin.
- (68) The provisional dumping margins, expressed as a percentage of the cif Community frontier price duty unpaid, are the following:
- Foshan City Gaoming Lihe Daily Necessities Co. Ltd, Foshan: 34,9 %
 - Guangzhou Power Team Houseware Co. Ltd, Guangzhou: 36,5 %
 - Since Hardware (Guangzhou) Co. Ltd, Guangzhou: 0 %
 - Foshan Shunde Yongjian Housewares and Hardware Co. Ltd, Foshan: 18,1 %
 - Zhejiang Harmonic Hardware Products Co. Ltd, Guzhou: 26,5 %
 - all other companies: 38,1 %.
- (69) For the only Chinese exporting producer granted MET, namely Since Hardware (Guangzhou) Co. Ltd, it was provisionally established that the export sales were not made at dumping prices. In this respect, it should be recalled that the provisional findings may have to be reconsidered for the purpose of any definitive findings for the reasons explained under recital (44).

3.6.2.2. Ukraine

(70) Based on the complaint and the information available from the exporting producers which came forward and provided certain data in the initial stage of the investigation it was provisionally concluded that the level of co-operation was above 80 % in the case of Ukraine. In fact, it appears that Eurogold Industries Ltd is the sole Ukrainian exporting producer of ironing boards and no indications were found that any exporting producer deliberately abstained from cooperating. Therefore, the methodology described in recital (66) above was used to establish the dumping margin for any other Ukrainian exporting producers of the product concerned.

(71) The provisional dumping margin, expressed as a percentage of the cif Community frontier price duty unpaid, are the following:

— Eurogold Industries Ltd, Zhitomir: 17,3 %

— all other companies: 17,3 %.

4. INJURY

4.1. Community production

(72) The provisional findings of the investigation established that the like product is manufactured by at least 30 small and medium sized companies (SMEs) in the Community. Most of the Community production is located in Italy, Poland and the United Kingdom.

(73) Although there are several producers on the Community market, the level of concentration is relatively high as can be seen by the fact that the output of the five major producers represents more than 50 % of the overall estimated output in the Community. The output of all the above companies constitutes the total Community production.

4.2. Definition of the Community industry

(74) The complaint was lodged by three Community producers representing a major proportion of the total known Community production of the like product, i.e. in this case more than 40 %.

(75) The complainants and one other Community producer fully co-operated in the investigation (see also recital (9)). These four companies represent more than 45 % of the total known Community production of the like product. One of these Community producers had made some imports from the PRC in the IP. However, importation was not its core business and these imports were considered to have been made in reaction to the influx of low-priced dumped imports, in particular in order to remain competitive in its low-end product range. It is thus not considered appropriate to exclude this producer from the definition of the Community industry.

(76) On this basis it is considered that the four Community producers referred to in recital (75) above are deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. They will hereinafter be referred to as the 'Community industry'.

4.3. Community consumption

(77) It is recalled that there are no precise Eurostat import statistics for the product concerned. Furthermore, there is no indication of any significant quantity of imports of ironing boards from countries other than the PRC and Ukraine (countries concerned). The Community consumption was thus established on the basis of the following information:

— the volume of sales in the Community of the like product produced by the Community industry,

- the volume of sales in the Community of the like product produced by other known Community producers,
- the volume of imports of the product concerned in the Community from the co-operating Chinese and Ukrainian exporting producers,
- the volume of imports of the product concerned in the Community from other known Chinese exporting producers.

On this basis, the Community consumption developed as follows:

	2002	2003	2004	IP
Consumption (units)	6 684 000	6 795 000	7 187 000	8 557 000
Index: 2002 = 100	100	102	108	128

Source: questionnaire replies from the Community industry and co-operating Chinese and Ukrainian exporting producers, information collected from other Community producers and other Chinese exporting producers.

- (78) The consumption of ironing boards in the Community increased by 28 % between 2002 and the IP, with the most sudden increase between 2004 and the IP. The overall steady increase is mainly attributed to the increasing consumption in the new Member States, though the increase in the IP can to some extent be attributed to increased low priced imports from the PRC and Ukraine by some formerly traditional Community producers who switched to importing and, thus, increased their stocks.

4.4. Imports from the countries concerned

4.4.1. Cumulative assessment of the effects of the dumped imports concerned

- (79) The Commission considered whether the effects of dumped imports from the countries concerned should be assessed cumulatively, on the basis of the criteria set out in Article 3(4) of the basic Regulation. This Article provides that the effects of imports from two or more countries simultaneously subject to anti-dumping investigations shall be assessed cumulatively only if it is determined that (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) of the basic Regulation and that the volume of imports of each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.
- (80) It is recalled that imports from one Chinese exporting producer were not found to be dumped. Therefore, these imports have not been considered with the dumped imports.
- (81) The dumping margins established in relation to dumped imports from each of the countries concerned were more than *de minimis*. In addition, the volume of the dumped imports from each of those countries was not negligible in the sense of Article 5(7) of the basic Regulation.
- (82) The investigation further showed that the conditions of competition both between the dumped imports and between the dumped imports and the like Community product were similar. It was found that, irrespective of their origin, ironing boards produced/sold by the countries concerned and those produced/sold by the Community industry compete against each other since they are alike in terms of their basic characteristics, interchangeable from the consumer's point of view and distributed via the same distribution channels.

- (83) Certain interested parties claimed that the conditions for cumulative assessment were not fulfilled in this case because there are fundamental differences between imports from the PRC and Ukraine in terms of prices and market behaviour.
- (84) As regards prices, it is noted that the absolute difference in the level of the prices between the two countries is not decisive in the context of the cumulative assessment. It may indeed be explained by various factors, e.g. a different product mix. It is the price trend over the period considered that is relevant and the trend is comparable for the two countries. In fact, the average import price from the PRC and Ukraine increased by 27 % and 12 % respectively between 2002 (2003 in the case of Ukraine) and the IP.
- (85) As far as the market behaviour is concerned, as already stated in recital (82) above, no substantial differences in terms of product characteristics, distribution channels etc. were established.
- (86) On this basis, it is provisionally concluded that all conditions of cumulation are met and that accordingly the effects of the dumped imports originating in the countries concerned should be assessed jointly for the purpose of the injury analysis.

4.4.2. *Volume, price and market share of dumped imports from the countries concerned:*

	2002	2003	2004	IP
Imports (units)	431 000	858 300	2 388 600	4 120 800
Index: 2002 = 100	100	199	554	956

Source: questionnaire replies from co-operating Chinese and Ukrainian exporting producers, information collected from other Chinese exporting producers.

- (87) The volume of imports of the product concerned increased significantly throughout the period considered. Imports in the IP increased more than 850 % since 2002.
- (88) It should be noted that there were no imports from Ukraine in 2002. The only Ukrainian producer of ironing boards started its operation in 2003. The imports from Ukraine increased sharply in 2004, by more than 400 %.

	2002	2003	2004	IP
Average import price (EUR/unit)	4,91	6,15	6,34	6,53
Index: 2002 = 100	100	125	129	133

Source: questionnaire replies from co-operating Chinese and Ukrainian exporting producers.

- (89) The average import price increased throughout the period considered. However, it remained significantly below the average prices of the Community industry (see relevant table and recital (99)). In the IP, the average import price was by more than 40 % lower than the average price of the Community industry.

- (90) The increase of average import prices can be attributed to the following factors.

There was a significant move by the PRC exporters towards the mid to high end of the market. In fact, as already mentioned in recital (78) above, some traditional Community producers significantly lowered or discontinued their production in the Community and started to import from the countries concerned. Most of these companies are established in mid and high range products.

Most of the Chinese exporting producers are recent entrants to the ironing board market and it is not surprising to observe some increase in prices as they become more established.

The share of imports from Ukraine suddenly increased in 2004. Since the average price level of these imports is above the average price level of imports from the PRC, the cumulated price level is higher.

	2002	2003	2004	IP
Market share	6 %	13 %	33 %	48 %
Index: 2002 = 100	100	196	515	747

Source: questionnaire replies from co-operating Chinese and Ukrainian exporting producers, information collected from other Chinese exporting producers.

- (91) The market share of dumped imports from the countries concerned increased dramatically throughout the period considered. It almost tripled between 2003 and 2004, when the imports from Ukraine massively penetrated the Community market, and continued increasing at a high rate in the IP to an extent that they took almost half of the market.

4.4.3. Undercutting

- (92) For the purpose of analysing price undercutting, the import prices of the co-operating exporting producers were compared to the Community industry prices, on the basis of weighted averages for comparable product types during the IP. The Community industry prices were adjusted to an ex-works level, and compared to cif Community frontier import prices, plus customs duties where applicable. This price comparison was made for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts.
- (93) On the basis of the co-operating exporting producers' prices, the undercutting margins found, by country, and expressed as a percentage of the Community industry's prices, are as follows:

Country	Price Undercutting
PRC	30,8 %-45,5 %
Ukraine	6,6 %

4.5. Situation of the Community industry

4.5.1. Preliminary remarks

- (94) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Community industry. Full analysis of these factors was carried out for the complainants and one other fully co-operating producer, i.e. the Community industry.

4.5.2. *Injury indicators*

Production, capacity and capacity utilisation:

	2002	2003	2004	IP
Production (units)	2 851 796	2 814 254	2 578 175	2 229 641
Index: 2002 = 100	100	99	90	78
Capacity (units)	5 304 158	5 304 158	5 304 158	5 484 620
Index: 2002 = 100	100	100	100	103
Capacity utilisation	54 %	53 %	49 %	41 %
Index: 2002 = 100	100	99	90	76

Source: verified questionnaire replies.

- (95) During the period considered, the Community industry's production decreased by 22 %. The slight increase in capacity in the IP was because one Community producer installed extra capacity to benefit from the increased consumption following the enlargement of the EU. Unfortunately, only imports benefited from this increase in consumption. As a result, the capacity utilisation decreased more than the output in the IP.

Stocks:

	2002	2003	2004	IP
Stocks (units)	96 729	131 811	180 518	144 543
Index: 2002 = 100	100	136	187	149

Source: verified questionnaire replies.

- (96) There has been an overall increase in stocks between 2002 and the IP. Although the peak in 2004 was in all likelihood in part influenced by completed orders not yet delivered to the customers, the overall increasing trend is evident.

Sales volume, sales price and market share:

	2002	2003	2004	IP
Sales in the EC (units)	2 605 381	2 567 285	2 348 934	2 050 373
Index: 2002 = 100	100	99	90	79
Market share	39 %	38 %	33 %	24 %
Index: 2002 = 100	100	97	84	61
Sales price (EUR/unit)	12,99	12,31	11,17	11,18
Index: 2002 = 100	100	95	86	86

Source: verified questionnaire replies.

- (97) Sales of the Community industry decreased throughout the period considered and in the IP dropped at 79 % of their original volume. Such a decreasing trend is even more worrying when seen within the context of increasing Community consumption. In fact, the Community industry lost 39 % of its market share between 2002 and the IP.
- (98) No growth of the Community industry could be observed. In fact, the Community industry has not benefited from the growth of the market, i.e. the increased Community consumption, but to the contrary has lost 21 % of its sales volume in the period considered.
- (99) Average unit price of the Community industry's own production decreased significantly in the first three years, i.e. by 14 %. It reached its lowest level in 2004 and remained stable in the IP.

Profitability:

	2002	2003	2004	IP
Pre-tax profit margin	6,8 %	6,4 %	0,7 %	4,1 %
Index: 2002 = 100	100	94	10	60

Source: verified questionnaire replies.

- (100) Over the period considered profitability of the Community industry deteriorated. The profit margin in the IP was 40 % lower than in 2002. The apparent improvement in the IP, as compared to 2004, was in reality achieved by cuts in remunerations of the management of some companies. Such remuneration cuts had significant impact on their profit margins. In fact, the overall gross profit continued decreasing in the IP and reached 65 % of its 2002 level. It is therefore evident that the increase of overall net pre-tax profit is artificial and not sustainable.

Investment, return on investment, cash flow and the ability to raise capital:

	2002	2003	2004	IP
Investment (EUR)	1 437 087	779 490	1 303 287	635 836
Index: 2002 = 100	100	54	91	44
Return on investment	61,98 %	68,19 %	4,77 %	27,02 %
Index: 2002 = 100	100	110	8	44
Cash flow (EUR)	3 463 326	4 184 515	1 246 671	3 023 277
Index: 2002 = 100	100	121	36	87

Source: verified questionnaire replies.

- (101) Investments significantly decreased over the period considered, reaching in the IP less than half of the level in 2002. Furthermore, major part of the investments constituted necessary replacement and renovation investments. Part of the 2004 investment was also connected with preparation for new opportunities after the enlargement of the EU. However, as shown above, the increased consumption was entirely taken over by imports from the countries concerned.

- (102) The return on investment, expressed in terms of net profits of the Community industry and the net book value of its investments developed in line with the investment and the profit margins. In respect of the seemingly high level of return on net assets, it should be noted that most of the companies constituting the Community industry were established 30 or more years ago and thus most of their assets have already been considerably depreciated. In fact, in 2004 when certain investments were made and when profit margins reflected the actual performance of the Community industry (rather than the artificially increased profit in the IP), the return on investment dropped by 63 percentage points. This confirms the inability of the Community producers to raise capital, in particular because of decreasing sales volume and low sales price.
- (103) The Community industry's cash flow fluctuated. The 2003 improvement was followed by a sudden drop in 2004. The recovery in the IP is in line with the measures aimed at profitability improvement, as described in recital 100 above. Overall, cash flow deteriorated over the period considered.

Employment, productivity and wages:

	2002	2003	2004	IP
Employment	347	326	283	234
Index: 2002 = 100	100	94	82	67
Labour cost (EUR)	7 521 183	7 209 158	5 701 507	5 361 572
Index: 2002 = 100	100	96	76	71
Average labour cost per worker (EUR)	21 675	22 114	20 147	22 913
Index: 2002 = 100	100	102	93	106
Productivity per worker (units per year)	9 474	10 015	10 787	11 261
Index: 2002 = 100	100	106	114	119

Source: verified questionnaire replies.

- (104) The number of employees of the Community industry involved with the like product diminished by 33 % between 2002 and the IP. The average labour cost per employee, reflecting wages, remained rather stable; temporary decrease in 2004 was compensated by a slight increase in the IP.
- (105) Efforts to decrease production cost, rationalisation and reduction in number of employees resulted in an increased output per worker (19 % increase over the period considered). However, as result from the above described financial indicators of the Community industry, the increased productivity could not compensate decrease in volume of sales and price level.

4.5.3. Magnitude of dumping, recovery from past dumping or subsidisation

- (106) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of dumped imports from the countries concerned, this impact cannot be considered to be negligible.
- (107) Furthermore, there were no indications that the Community industry was recovering, during the IP, from the effects of any past dumping or subsidisation.

4.6. Conclusion on injury

- (108) During the period considered the presence of low-priced dumped imports from the PRC and Ukraine increased dramatically. In terms of volume, dumped imports from the countries concerned increased by more than 850 % during the period considered. In terms of market share, they gained more than 40 percentage points of the Community ironing boards market during the same period.
- (109) The analysis of the economic indicators of the Community industry revealed that the injury materialised in terms of decrease of sales volume, sales price and market share. This had a direct negative impact on the financial situation of the Community industry, the production level and employment. During the period considered the Community industry's sales volume on the Community market decreased by more than 20 %, market share declined by 15 percentage points and employment dropped by more than 30 %. The average sales price of the Community industry decreased by 14 % and the individual prices reached their lowest possible level. In fact, the financial indicators confirm that the Community industry is no longer in the position to further decrease their price levels without incurring losses which, in the case of SMEs, cannot be sustained for more than a few months without being forced to close down.
- (110) Taking into account all these factors, it is provisionally considered that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. Introduction

- (111) In accordance with Articles 3(6) and (7) of the basic Regulation, the Commission examined whether the material injury suffered by the Community industry was caused by dumped imports of the product concerned originating in the countries concerned. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined in order to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

5.2. Effects of the dumped imports

- (112) First, it is recalled that the investigation revealed that the ironing boards imported from the countries concerned directly compete with the ironing boards produced and sold by the Community industry, since they are alike in terms of their basic characteristics, interchangeable from the consumer's point of view and distributed via the same distribution channels.
- (113) The significant increase in volume of the dumped imports from the countries concerned (more than 850 %) coincided with the deterioration of the economic situation of the Community industry. This deterioration included, *inter alia*, a drop of sales and price levels of the Community production during the same period.
- (114) The market share of the dumped imports increased by 42 percentage points during the period considered, whilst the Community industry lost 15 % of the market. It is recalled that the Community consumption increased by more than 20 % between 2002 and the IP.
- (115) The dumped imports undercut the prices of the Community industry by very substantial margins so it can be reasonably concluded that they were responsible for the price suppression which led to the deterioration of the financial situation of the Community industry. In addition, the Community industry could not increase its capacity utilisation, as could have reasonably happened given the increase in consumption observed over the period considered.

- (116) In view of the clearly established coincidence in time between, on the one hand, the surge of dumped imports at prices significantly undercutting the Community industry's prices and, on the other hand, the Community industry's loss of sales and production volume, decrease in market shares and employment, and price depression, it is provisionally concluded that the dumped imports played a determining role in the injurious situation of the Community industry.

5.3. Effects of other factors

5.3.1. Performance of other Community producers supporting the complaint

- (117) Fifteen Community producers of ironing boards other than those composing the Community industry supported the complaint. These companies did not wish to fully co-operate in the investigation, however they provided certain information concerning their production, capacity and capacity utilisation, sales volume, market share and employment. These companies all together represent around 30 % of the total known Community production. It should be noted that none of these companies imported any substantial quantity of the product concerned.
- (118) The situation of these 15 companies was analyzed and compared with the situation of the Community industry.

Production, capacity, capacity utilisation and employment:

	2002	2003	2004	IP
Production (units)	1 401 965	1 674 888	1 448 686	1 262 714
Index: 2002 = 100	100	119	103	90
Capacity (units)	2 758 900	2 865 300	3 284 500	3 299 800
Index: 2002 = 100	100	104	119	120
Capacity utilisation	51 %	58 %	44 %	38 %
Index: 2002 = 100	100	115	87	75
Employment	281	314	277	231
Index: 2002 = 100	100	112	98	82

- (119) Production of these producers increased by 19 % in 2003, then decreased to its initial level in 2004 and dropped by 13 % in the IP. The increase in capacity in 2004 can be attributed to the expectations of increased sales following the enlargement of the EU. As a result of increased capacity, the capacity utilisation decreased more than the output during the period considered. Employment developed in line with the output, i.e. increased in 2003, then returned to its initial level in 2004 and dropped suddenly in the IP.

Sales volume and market share:

	2002	2003	2004	IP
Sales in the EC (units)	1 206 714	1 446 522	1 204 336	1 079 264
Index: 2002 = 100	100	120	100	89
Market share	18 %	21 %	17 %	13 %
Index: 2002 = 100	100	118	93	70

- (120) After a temporary improvement in 2003, the sales and market share of the 15 companies dropped sharply. This development clearly coincides with the sudden increase of the dumped imports from the countries concerned on the Community market. It is recalled that these imports almost tripled in 2004 and their market share increased by 20 percentage points in the same year. It is also recalled that the Community consumption of ironing boards increased throughout the period considered.
- (121) In view of the above, it can be concluded that the situation of these 15 Community producers of ironing boards, which supported the complaint, deteriorated similarly to the situation of the Community industry. Thus, no injury could be caused to the Community industry by these companies.

5.3.2. Performance of other known Community producers

- (122) As set out in recital (8) above, two other Community producers provided certain information but did not support the complaint. In addition, there are two other known producers in the Community which supported the complaint, but did not co-operate in the investigation, and one ex-producer which provided certain information on its past production activities. All these companies made substantial imports of the product concerned. The data available for these companies show the following trends (because of confidentiality reasons actual figures cannot be disclosed):

	2002	2003	2004	IP
Sales of Community production in the EC Index: 2002 = 100	100	75	49	29
Market share Index: 2002 = 100	100	76	46	23

- (123) Sales of ironing boards produced by these Community producers decreased by 71 % during the period considered. The corresponding market share has decreased even more significantly by 77 %, because the market expanded in the same period.
- (124) As already mentioned in recital (78) above, in 2004 and during the IP some traditional Community producers of ironing boards significantly lowered or completely discontinued their production activities in the Community and started to import massively from the countries concerned. In fact, some of these companies can no longer be considered Community producers, since their production sites have been closed down in the IP.
- (125) In view of the above, it is concluded that these other Community producers were in a situation similar to that of the Community industry and their production activities did not cause any injury to the Community industry.

5.3.3. Export performance of the Community industry:

	2002	2003	2004	IP
Exports sales of EC production (units)	213 711	211 887	219 410	215 243
Index: 2002 = 100	100	99	103	101
Export sales price (EUR/unit)	14,92	12,70	13,26	13,27
Index: 2002 = 100	100	85	89	89

Source: verified questionnaire replies.

- (126) The export performance of the Community industry remained relatively stable during the period considered. In terms of volumes, no deterioration can be observed. In terms of sales price, a fall by 15 % in 2003 was partially recovered in 2004 and the export price remained stable in the IP. It should be noted that the export sales price is considerably higher than the sales price in the Community and that the volume of export sales represents only about 10 % of the output of the Community industry.
- (127) In this view it can be concluded that the export performance of the Community industry did not contributed to the material injury suffered.

5.3.4. Imports from the PRC not sold at dumping prices

- (128) It is recalled that imports from one Chinese exporting producer were found not to be sold at dumping prices and were thus excluded from the analysis of dumped imports from the countries concerned and their impact on the situation of the Community industry. Therefore, it was considered whether the imports from this company could have broken the causal link between dumped imports and the material injury suffered by the Community industry.
- (129) The investigation established that during the period considered the volume of imports from the PRC not sold at dumping prices increased by 467 %, compared to an 856 % increase of dumped imports from the countries concerned. In absolute terms, the volume of the dumped imports from the countries concerned exceeded more than five times the volume of the non-dumped imports. The market share of non-dumped imports from the PRC increased by 343 %, whilst the market share of dumped imports increased by 647 % during the same period. The average price of non-dumped imports increased during the period considered and, in absolute terms, it remained considerably above the average price of dumped imports, although below the Community industry's average price.
- (130) In view of the above, it is provisionally concluded that any impact of imports from the PRC not sold at dumping prices cannot be considered to be such as to break the causal link between dumped imports and the material injury suffered by the Community industry.

5.3.5. Imports from other third countries

- (131) Certain parties argued that imports from Turkey have allegedly been entering the Community market at prices similar to the PRC and in ever-increasing volumes thereby causing injury to the Community industry.
- (132) In this regard it is noted that these allegations were not confirmed in the investigation. No evidence of imports from Turkey was submitted in the course of the investigation. Moreover, the co-operating Turkish producer of ironing boards referred to in recital (10) above did not sell the like product to the Community. Furthermore, no other sources of imports were established by the investigation.
- (133) Considering the above mentioned findings the claim concerning imports from Turkey is rejected and it is concluded that imports from other third countries did not cause material injury to the Community industry.

5.3.6. *The injury is self-inflicted*

- (134) Certain interested parties argued that the injury was self-inflicted because the Community industry failed to respond to the changes in the patterns of distribution and consumption and developments in technology as regards the production of ironing boards. Furthermore, it was claimed that self-inflicted injury has also been caused by imports of Chinese ironing boards by the Community producers themselves.
- (135) Ironing boards produced in the Community are normally distributed via traders or, in most instances, directly supplied to retailers or their distribution centres. Imported ironing boards are normally distributed via importers/traders or via distribution/supply centres of large retail chains. The proportion of the two distribution channels in the case of imports varies from one exporting producer to another. In all cases agents may be involved. This distribution pattern has been in place for several years and no significant and sudden changes could be observed over time. The Community industry has traditionally been supplying both small retailers and large retail chains. Thus, the increasing share of sales of ironing boards via retail chains cannot be seen as a factor causing injury per se. No significant changes in the pattern of consumption were confirmed.
- (136) As regards the production process/technology, it was argued that the Community industry is not able to respond to specific requirements from the customers/retailers because of the high level of automation of their production. Firstly, it is noted that without automation the Community industry could not conceivably compete with imports of the products originating in countries benefiting from very low cost of energy, raw materials and labour. Secondly, the automated production allows the Community industry to guarantee high quality and short lead times which is perceived as a comparative advantage by the customers. Lastly, no evidence was produced to support the claim that the Community industry was unable to satisfy the specific requirements of customers/retailers with regard to design and innovation.
- (137) As to imports of Chinese ironing boards by the Community industry, the investigation has shown that only some not significant quantities have been imported in the IP. That was a self defence action of the Community industry against the influx of low-priced dumped imports. In any event, these imports were resold in the Community at non-injurious prices. Consequently such imports could not have caused injury to the Community industry.
- (138) In view of the above, these claims are rejected, and it is concluded that the injury could not be self-inflicted.

5.4. **Conclusion on causation**

- (139) In conclusion, it is confirmed that the material injury suffered by the Community industry, which is characterised especially by a decline in sales volume, market shares and unit sales price resulting in a deterioration of the financial situation, was caused by the dumped imports from the countries concerned. Although the imports from the PRC not sold at dumping prices in all likelihood contributed to the worsened performance of the Community producers, their development, their volume and market share and price level was not such as to break the causal link between the dumped imports and the injurious situation of the Community industry.
- (140) Given the above analysis which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that the injury assessed must be attributed to the dumped imports.

- (141) It is therefore provisionally concluded that the dumped imports originating in the countries concerned have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

6. COMMUNITY INTEREST

6.1. General remarks

- (142) The Commission examined whether, despite the provisional conclusion on the existence of injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and in accordance with Article 21(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

6.2. Interest of the Community industry

- (143) The injury analysis has clearly demonstrated that the Community industry has suffered from the dumped imports. The sharply increased presence of dumped imports in recent years caused a strong suppression of the prices both at wholesale/distribution and retail level, i.e. where competition between imported and Community manufactured ironing boards takes place. The Community industry is not in a position to further decrease its sales prices, since this would require that they sell below their cost of production. Therefore, and given that the market of ironing boards is mainly driven by the retail chains on the basis of price, it becomes more and more difficult for the Community industry to secure new orders. It is recalled that several traditional manufacturers have already stopped production and are now acting as importers/traders of the product concerned.
- (144) In this context, without the imposition of measures the position of the Community industry would clearly deteriorate further and the production of ironing boards in the Community would, in all likelihood, soon cease. Much of the negative impact on employment would be in one geographical area of the Community as several producers and their parts suppliers are located in that one region. On the other hand, measures would prevent a further substantial increase of dumped imports from the countries concerned, which would allow the Community industry to, at least, maintain its current position on the market. The investigation has shown that any increase in the market share of the dumped imports from the countries concerned is gained at the direct expense of the Community industry.
- (145) Following the imposition of anti-dumping duties on imports of ironing boards from the countries concerned, it can be expected that the distributors and retail chains would be much more likely to switch their sources of supply, at least partially, to Community producers. Indeed, should measures be imposed and the level of the import price restored to non-dumped levels, the Community industry would be able to compete under fair trade circumstances, on the basis of proper comparative advantage.
- (146) Imposing measures is therefore clearly in the interest of the Community industry and Community producers actively supporting the complaint, but also in the interest of the other Community producers that did not actively support the complaint.

6.3. Interest of consumers

- (147) No representations were received from consumers' organisations following the publication of the notice of initiation of this proceeding. Nevertheless, the impact of any measures on the consumers has been analysed.

(148) In order to assess this impact, the following elements were considered:

- importers/wholesalers and/or distributors/retailers are normally involved in the distribution to consumers. In each stage a markup, or a margin, in order to cover their costs and to allow for a certain profit is applied. The level of this margin may vary significantly from one operator to the other, but is on average substantial, although it would appear that the markup of retailers is higher than the one of importers. In fact, the average retail price of an ironing board is around EUR 35, whilst the average unit dumped import price at the Community frontier, i.e. including the transportation costs, was found to be EUR 6,53 in the IP. Thus, even taking into account any additional costs at the importers' and retailers' stage, there is a considerable gap between import prices and retail prices,
- in the most pessimistic scenario, where the burden of anti-dumping measures would be allocated evenly between the importers, retailers and consumers, i.e. 1/3 for each of them, the consumer would have to pay in addition less than half a euro for its ironing board, a durable good with a useful life of at least five years. This has to be compared to a total markup of around 500 % as set out in the preceding indent,
- it is pertinent to note that the consumer appears not to have benefited from the recent influx of the low-priced imports since retail prices have not fallen in reaction to these low import prices. Thus, there is no reason to believe that retail prices would change should anti-dumping measures be imposed.

(149) In view of the above, any financial impact of anti-dumping measures on the consumers of ironing boards would most likely be negligible. On the other hand, should the anti-dumping measures not be imposed, the Community production would in all likelihood disappear and the choice of product types available to the consumers may decrease.

(150) It is therefore provisionally concluded that the imposition of the measures is not likely to be against the interest of the Community consumers of ironing boards.

6.4. Interest of the distributors/retailers

(151) No representations were received from distributors/retailers or their organisations at this stage of the investigation. However, it is known that nowadays ironing boards are mainly sold by big retail chains, i.e. hypermarkets, supermarkets. Therefore, it is more than likely that for the majority of distributors/retailers the product concerned represents only a negligible part of their turnover. Considering this, and taking into account the high mark up they usually apply (see recital (148) above), it is provisionally concluded that any measures would probably not have a significant negative impact on their situation.

6.5. Interest of the unrelated importers in the Community

(152) Questionnaire replies were received from two importers and one trader related to one of these importers. In addition, four importers provided certain information and/or comments within the deadlines. These companies all together represent more than 20 % of the total imports into the Community. They all objected to the imposition of measures against the PRC, but not all of them against measures for Ukraine.

- (153) The situation of the importers that made representations varies depending on their size and the importance of the product concerned in their operations. As already mentioned above, some of these companies are/were traditional producers but, in a defensive move, they have changed their core business and are now acting mainly or exclusively as importers. These companies are normally producing/importing a whole range of other household products and ironing boards represent a fraction of their business. In the case of one major ex-producer, which became recently an important importer of Chinese ironing boards, it was provisionally established that ironing boards represented in the IP less than 4 % of its turnover. Furthermore, this company expressed an opinion only against measures for the PRC, but not against Ukraine since they did not import from the latter. It was also found that it purchased some ironing boards from Community producers as well. Taking into account the different sources of supply of the company in question, and if the company is not able to pass on 1/3 of the anti-dumping duty to retailers (see recital (148)), the impact on its gross margin for ironing boards is estimated at not being more than 10 %. However, it should be noted that the information received at this stage did not allow for an exact calculation. It should also be recalled that the markup also of such importers appears to be substantial. Although, the investigation on the situation of such importers will continue, it has been concluded that the provisional measures would not affect significantly their business.
- (154) One co-operating importer produces ironing board covers and sells them together with the imported ironing boards. It was argued that any anti-dumping duty on imports of ironing boards would also affect the production of covers and would thus have a significant impact on the turnover of this company. However, it is noted that ironing board covers are also sold separately and the imposition of anti-dumping measures would not affect such sales. It is also noted that the sales of ironing boards did not represent more than 10 % of its turnover. Thus, the impact of the provisional measures on the business of the company in question would also not be significant.
- (155) In addition, most importers, which are/were also trading Community products, admitted that it would not be in their interest to become completely dependent on the imported ironing boards — the PRC was particularly pointed out in this context — and confirmed that they prefer to have alternative sources of supply. This can best be ensured by eliminating dumping practices so that the Community industry will continue to exist.
- (156) In view of the above, and taking into account the elements summarised in recital (148) above, in particular the high markups and the fact that the additional duty cost will be less than half a euro per unit, it is provisionally concluded that any anti-dumping measures would not have a decisive adverse impact on the situation of unrelated importers of ironing boards in the Community, although some of them would likely bear a somewhat higher burden than the retailers. In any event, all comments will be considered before reaching any final findings.

6.6. Conclusion on Community interest

- (157) The above analysis showed that it is in the interest of the Community industry to impose measures, since those measures are expected to, at least, restrain the high level of imports at dumped prices which proved to have a significant negative impact on the situation of the Community industry. The other Community producers are expected to also benefit from those measures.
- (158) The analysis also demonstrated that consumers are not likely to be financially affected by any anti-dumping measures. In the worse case scenario, they will have to pay in addition less than half a euro for a durable good. On the other hand, without measures the consumers' choice could be negatively affected since Community ironing boards may disappear from the market.

- (159) The distributors and retailers may see their purchase prices of the product concerned increased, but they will probably not be significantly affected by measures given their high margins.
- (160) The importers of the product concerned would likely bear a somewhat higher burden than the retailers. However, they would maintain the benefits of several sources of supply and avoid becoming dependent on imports, which would in all likelihood be the case should measures not be imposed.
- (161) On balance, it is considered that imposing measures, i.e. removing injurious dumping, would allow the Community industry to maintain its activity and that the adverse effects that the measures may have on certain other economic operators in the Community are not disproportionate as compared to the beneficial effects for the Community industry.
- (162) On the basis of the above, it is provisionally concluded that no compelling reasons of Community interest exist for not imposing anti-dumping measures in this case.

7. PROVISIONAL ANTI-DUMPING MEASURES

- (163) In view of the provisional conclusions reached with regard to dumping, resulting injury and Community interest, provisional measures on imports of the product concerned from the PRC and Ukraine should be imposed in order to prevent further injury being caused to the Community industry by dumped imports.

7.1. Injury elimination level

- (164) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found.
- (165) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports. The pre-tax profit margin used for this calculation was 7 % of turnover. It was demonstrated that this was the profit level that could reasonably be expected in the absence of injurious dumping, since it was the profit of the Community industry before the Chinese and Ukrainian imports into the Community started to significantly increase during the period considered. On this basis, a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding the above mentioned profit margin of 7 % to the cost of production.
- (166) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price of products sold by the Community industry on the Community market. Any difference resulting from this comparison was then expressed as a percentage of the average import cif value. These differences were for all Chinese co-operating exporting producers above the dumping margins found. In the case of Ukraine, the injury eliminating level was below the dumping margin found for the sole exporting producer.

7.2. Provisional measures

- (167) In the light of the foregoing, and in accordance with Article 7(2) of the basic Regulation, it is considered that the provisional anti-dumping measures should be imposed on imports originating (i) in the PRC at the level of the dumping margins found and (ii) in Ukraine at the level eliminating the injury.
- (168) On the basis of the above, the rate of the provisional anti-dumping duty for the PRC and Ukraine should be as follows:

Country	Company	Anti-dumping duty
PRC	Foshan City Gaoming Lihe Daily Necessities Co. Ltd, Foshan	34,9 %
	Guangzhou Power Team Houseware Co. Ltd, Guangzhou	36,5 %
	Since Hardware (Guangzhou) Co. Ltd, Guangzhou	0 %
	Foshan Shunde Yongjian Housewares and Hardware Co. Ltd, Foshan	18,1 %
	Zhejiang Harmonic Hardware Products Co. Ltd, Guzhou	26,5 %
	All other companies	38,1 %
Ukraine	All companies	10,3 %

- (169) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to all other companies) are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (170) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.
- (171) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporting producers, but also to those producers which did not have any exports to the Community during the IP. However, the latter companies are invited, when they fulfil the requirements of Article 11(4) of the basic Regulation, second paragraph, to present a request for a review pursuant to that Article in order to have their situation examined individually.

⁽¹⁾ European Commission
Directorate General for Trade
Directorate B
J-79 5/17
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

8. FINAL PROVISION

- (172) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest originating in the People's Republic of China and Ukraine, falling within CN codes ex 3924 90 90, ex 4421 90 98, ex 7323 93 90, ex 7323 99 91, ex 7323 99 99, ex 8516 79 70 and ex 8516 90 00 (TARIC codes 3924 90 90 10, 4421 90 98 10, 7323 93 90 10, 7323 99 91 10, 7323 99 99 10, 8516 79 70 10 and 8516 90 00 51).

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for products manufactured by the companies listed below shall be as follows:

Country	Company	Anti-dumping duty	TARIC additional code
PRC	Foshan City Gaoming Lihe Daily Necessities Co. Ltd, Foshan	34,9 %	A782
	Guangzhou Power Team Houseware Co. Ltd, Guangzhou	36,5 %	A783
	Since Hardware (Guangzhou) Co. Ltd, Guangzhou	0 %	A784
	Foshan Shunde Yongjian Housewares and Hardware Co. Ltd, Foshan	18,1 %	A785
	Zhejiang Harmonic Hardware Products Co. Ltd, Guzhu	26,5 %	A786
	All other companies	38,1 %	A999
Ukraine	All companies	10,3 %	—

3. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

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

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 30 October 2006.

For the Commission
Peter MANDELSON
Member of the Commission

COMMISSION REGULATION (EC) No 1621/2006**of 30 October 2006****establishing a prohibition of fishing for saithe in ICES zone IIa (EC waters), IIIa, IIIb,c,d (EC waters),
IV by vessels flying the flag of Sweden**

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 51/2006 of 22 December 2005 fixing for 2006 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 2006.
- (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 2006.

- (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 2006 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, 30 October 2006.

For the Commission

Jörgen HOLMQUIST

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).

⁽³⁾ OJ L 16, 20.1.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 1262/2006 (OJ L 230, 24.8.2006, p. 4).

ANNEX

No	43
Member State	Sweden
Stock	POK/2A34.
Species	Saithe (<i>Pollachius virens</i>)
Zone	Ila (EC waters), IIIa, IIIb,c,d (EC waters), IV
Date	6 October 2006

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 27 June 2005

on the signing and provisional application of the Agreement between the European Community and the Republic of Chile on certain aspects of air services

(2006/734/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Council decided on 5 June 2003 to authorise the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.
- (2) The Commission has negotiated on behalf of the Community an Agreement with the Republic of Chile on certain aspects of air services in accordance with the mechanisms and directives in the Annex to that Decision.
- (3) Subject to its possible conclusion at a later date, the Agreement negotiated by the Commission should be signed and provisionally applied,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Agreement between the European Community and the Republic of Chile on certain aspects of

air services is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Community subject to its conclusion.

Article 3

Pending its entry into force, the Agreement shall be applied provisionally from the first day of the first month following the date on which the Parties have notified each other of the completion of the necessary procedures for this purpose.

Article 4

The President of the Council is hereby authorised to make the notification provided in Article 8(2) of the Agreement.

Done at Luxembourg, 27 June 2005.

For the Council

The President

L. LUX

AGREEMENT**between the European Community and the Republic of Chile on certain aspects of air services**

THE EUROPEAN COMMUNITY (hereinafter referred to as the Community),

of the one part, and

THE REPUBLIC OF CHILE,

of the other part,

(hereinafter referred to as the Parties),

NOTING that bilateral air service agreements have been concluded between 10 Member States and the Republic of Chile containing provisions contrary to Community law,

NOTING that the Community has exclusive competence with respect to several aspects that may be included in bilateral air service agreements between Member States and third countries,

NOTING that under Community law Community air carriers established in a Member State have the right to non-discriminatory access to air routes between the Member States and third countries,

HAVING REGARD to the agreements between the Community and certain third countries providing for the possibility for nationals of such third countries to acquire ownership in air carriers licensed by the Member States,

RECOGNISING that provisions of the bilateral air service agreements between Member States and the Republic of Chile, which are contrary to Community law, must be brought into full conformity with it in order to establish a sound legal basis for air services between the Community and the Republic of Chile and to preserve the continuity of such air services,

NOTING that it is not a purpose of the Community, as part of these negotiations, to increase the total volume of air traffic between the Community and the Republic of Chile, to affect the balance between Community air carriers and air carriers of the Republic of Chile, or to negotiate amendments to the provisions of existing bilateral air service agreements concerning traffic rights,

HAVE AGREED AS FOLLOWS:

*Article 1***General Provisions**

1. For the purposes of this Agreement, 'Member States' shall mean Member States of the Community. 'CLAC Member States' shall mean Member States of the Latin American Civil Aviation Commission.
2. References in each of the agreements listed in Annex I to nationals of the Member State that is a party to that agreement shall be understood as referring to nationals of the Member States.
3. References in each of the agreements listed in Annex I to air carriers or airlines of the Member State that is a party to that agreement shall be understood as referring to air carriers or airlines designated by that Member State.

*Article 2***Designation, authorisation and revocation**

1. The provisions in paragraphs 2 and 3 shall supersede the corresponding provisions in the Articles listed in Annex II(1) and (2) respectively, in relation to the designation of an air carrier by the Member State concerned, its authorisations and permissions granted by the Republic of Chile, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively. The provisions in paragraphs 4 and 5 shall supersede the corresponding provisions in the articles listed in Annex II(1) and (2) respectively, in relation to the designation of an air carrier by the Republic of Chile, its authorisations and permissions granted by the Member State, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.

2. On receipt of a designation by a Member State, the Republic of Chile shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

- (a) the air carrier is established in the territory of the designating Member State under the Treaty establishing the European Community and has a valid operating licence in accordance with Community law;
- (b) effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its air operators certificate and the relevant aeronautical authority is clearly identified in the designation; and
- (c) the air carrier is owned and shall continue to be owned directly or through majority ownership by Member States and/or nationals of Member States, or by other States listed in Annex III and/or nationals of such other States, and shall at all times be effectively controlled by such States and/or such nationals.

3. The Republic of Chile may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:

- (a) the air carrier is not established in the territory of the designating Member State under the Treaty establishing the European Community or does not have a valid operating licence in accordance with Community law; or
- (b) effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its air operators certificate, or the relevant aeronautical authority is not clearly identified in the designation; or
- (c) the air carrier is not owned and effectively controlled directly or through majority ownership by Member States and/or nationals of Member States, or by other States listed in Annex III and/or nationals of such other States; or
- (d) the Republic of Chile demonstrates that, by exercising traffic rights under this Agreement on a route that includes a point in another Member State, the air carrier would be circumventing restrictions on traffic rights imposed by a bilateral agreement between the Republic of Chile and that other Member State; or
- (e) the air carrier holds an air operators certificate issued by a Member State and there is no bilateral air services

agreement between the Republic of Chile and that Member State, and traffic rights to that Member State have been denied to the air carrier designated by the Republic of Chile.

In exercising its right under this paragraph, the Republic of Chile shall not discriminate between Community air carriers on the grounds of nationality.

4. On receipt of a designation by the Republic of Chile, a Member State shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

- (a) the air carrier is established in the Republic of Chile; and
- (b) the Republic of Chile has and maintains effective regulatory control of the air carrier and is responsible for issuing its air operators certificate; and
- (c) the air carrier is owned and effectively controlled directly or through majority ownership by CLAC Member States and/or nationals of CLAC Member States, unless more favourable provisions have been agreed in the bilateral air services agreement between that Member State and the Republic of Chile.

5. A Member State may refuse, revoke, suspend or limit the authorisation or permissions of an air carrier designated by the Republic of Chile where:

- (a) the air carrier is not established in the Republic of Chile; or
- (b) effective regulatory control of the air carrier is not exercised or not maintained by the Republic of Chile or the Republic of Chile is not responsible for issuing its air operators certificate; or
- (c) the air carrier is not owned and effectively controlled directly or through majority ownership by CLAC Member States and/or nationals of CLAC Member States, unless more favourable provisions have been agreed in the bilateral air services agreement between that Member State and the Republic of Chile; or
- (d) the Member State demonstrates that, by exercising traffic rights under this Agreement on a route that includes a point in another CLAC Member State, the air carrier would be circumventing restrictions on the traffic rights imposed by a bilateral agreement between the Member State and that other CLAC Member State.

*Article 3***Rights with regard to regulatory control**

1. Paragraph 2 shall complement the articles listed in Annex II(3).

2. Where a Member State has designated an air carrier whose regulatory control is exercised and maintained by another Member State, the rights of the Republic of Chile under the safety provisions of the agreement between the Member State that has designated the air carrier and the Republic of Chile shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other Member State and in respect of the operating authorisation of that air carrier.

*Article 4***Taxation of aviation fuel**

1. The provisions in paragraph 2 shall complement the corresponding provisions in the articles listed in Annex II(4).

2. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex II(4) shall prevent Member States from imposing on a non-discriminatory basis taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of the Republic of Chile that operates between a point in the territory of that Member State and another point in the territory of that Member State or in the territory of another Member State.

3. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex II(4) shall prevent the Republic of Chile from imposing on a non-discriminatory basis taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of a Member State that operates between a point in the territory of the Republic of Chile and another point in the territory of the Republic of Chile or in the territory of another CLAC Member State.

*Article 5***Tariffs for carriage**

1. Paragraph 2 shall complement the articles listed in Annex II(5).

2. The tariffs to be charged by the air carrier(s) designated by the Republic of Chile under an agreement listed in Annex I containing a provision listed in Annex II(5) for carriage wholly within the Community shall be subject to Community law. Community law is applied on a non discriminatory basis.

3. The tariffs to be charged by the air carrier(s) designated by a Member State under an agreement listed in Annex I containing a provision listed in Annex II(5) for carriage between the Republic of Chile and another CLAC Member

State shall be subject to Chilean law concerning price leadership and applied on a non-discriminatory basis.

*Article 6***Annexes to this Agreement**

The Annexes to this Agreement shall form an integral part thereof.

*Article 7***Revision or amendment**

The Parties may, at any time, revise or amend this Agreement by mutual consent.

*Article 8***Entry into force and provisional application**

1. This Agreement shall enter in force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.

2. Notwithstanding paragraph 1, the Parties agree to provisionally apply this Agreement from the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose.

3. Agreements and other arrangements between Member States and the Republic of Chile which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex I(2). This Agreement shall apply to all such Agreements and arrangements upon their entry into force or provisional application.

*Article 9***Termination**

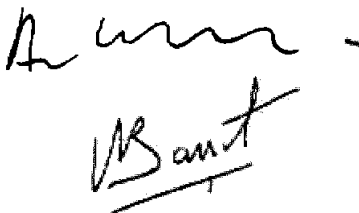
1. In the event that an agreement listed in Annex I is terminated, all provisions of this Agreement that relate to the agreement listed in Annex I concerned shall terminate at the same time.

2. In the event that all agreements listed in Annex I are terminated, this Agreement shall terminate at the same time.

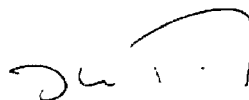
IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Agreement.

Done at Luxembourg in duplicate, on the sixth day of October in the year two thousand and five, in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovene, Spanish, and Swedish languages.

Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
Az Európai Közösség részéről
Għall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Za Európske spoločenstvo
Za Evropsko skupnost
Euroopan yhteisön puolesta
För Europeiska gemenskapen

A handwritten signature in black ink, appearing to be 'Bant' with a horizontal line underneath.

Por la República de Chile
Za Chilskou republiku
For Republikken Chile
Für die Republik Chile
Tšiili Vabariigi nimel
Για τη Δημοκρατία της Χιλής
For the Republic of Chile
Pour la République du Chili
Per la Repubblica del Cile
Číles Republikas vārdā
Čilės Respublikos vardu
A Chilei Köztársaság részéről
Għar-Repubblika tač-Čili
Voor de Republiek Chili
W imieniu Republiki Chile
Pela República do Chile
Za Čilskú republiku
Za Republiko Čile
Chilen tasavallan puolesta
För Republiken Chile

A handwritten signature in black ink, appearing to be 'J. I. I.' with a large loop at the end.

ANNEX I

List of agreements referred to in Article 1

1. Air service agreements between the Republic of Chile and Member States which, at the date of signature of this Agreement, have been concluded, signed and/or are being applied provisionally
 - Air Services Agreement between the Government of the Republic of Chile and the Government of the Kingdom of Belgium, signed at Brussels on 13 September 2001, hereinafter referred to as 'Chile-Belgium Agreement',
 - Air Services Agreement between the Government of the Kingdom of Denmark and the Government of the Republic of Chile, signed at Copenhagen on 27 June 2001, hereinafter referred to as 'Chile-Denmark Agreement',
 - Agreement between the Governments of the Republic of Chile and the Republic of France concerning air services between and beyond their respective territories, signed at Paris on 6 December 1979, hereinafter referred to as 'Chile-France Agreement',
 - Air Transport Agreement between the Federal Republic of Germany and the Republic of Chile, signed at Santiago de Chile on 30 March 1964, as amended, hereinafter referred to as 'Chile-Germany Agreement',
 - Air Services Agreement between the Government of the Republic of Chile and the Government of the Italian Republic, signed at Rome on 27 February 2002, hereinafter referred to as 'Chile-Italy Agreement',
 - Agreement between the Government of the Grand-Duchy of Luxembourg and the Government of the Republic of Chile concerning air services between their respective territories, signed at Luxembourg on 25 February 2002, hereinafter referred to as 'Chile-Luxembourg Agreement',
 - Air Services Agreement between the Kingdom of the Netherlands and the Republic of Chile, signed at Santiago de Chile on 13 July 1962, hereinafter referred to as 'Chile-Netherlands Agreement',
 - Draft Air Services Agreement between the Republic of Chile and the Kingdom of the Netherlands for air services between their respective territories, initialled and attached as Annex B to the Agreed Minutes of the Aeronautical Consulting Meeting between the Netherlands and Chile signed at Santiago de Chile on 12 April 2001, hereinafter referred to as 'Draft Revised Chile-Netherlands Agreement',
 - Agreement between the Government of Chile and the Government of Spain concerning commercial air transport services, signed at Santiago de Chile on 17 December 1974, hereinafter referred to as 'Chile-Spain Agreement',
 - Air Services Agreement between the Government of the Republic of Chile and the Government of the Kingdom of Sweden, signed in Copenhagen on 27 June 2001, hereinafter referred to as 'Chile-Sweden Agreement',
 - Agreement between the Republic of Chile and the United Kingdom of Great Britain and Northern Ireland concerning air services, signed at Santiago de Chile on 16 September 1947, hereinafter referred to as 'Chile-UK Agreement',
 - Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Chile concerning air services, initialled and attached as Annex B to the Memorandum of Understanding between the aeronautical authorities of the United Kingdom and Chile signed at Santiago de Chile on 31 May 2000, hereinafter referred to as 'Draft Revised Chile-UK Agreement'.
 2. Air service agreements and other arrangements initialled or signed between the Republic of Chile and Member States which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally
-

ANNEX II

List of articles in the agreements listed in Annex I and referred to in Articles 2 to 5 of this Agreement

1. Designation by a Member State:

- Article 3 of the Chile-Belgium Agreement,
- Article 3 of the Chile-Denmark Agreement,
- Article 4 of the Chile-France Agreement,
- Article 3 of the Chile-Germany Agreement,
- Article 3 of the Chile-Italy Agreement,
- Article 3 of the Chile-Luxembourg Agreement,
- Article 3 of the Draft Revised Chile-Netherlands Agreement,
- Article 3 of the Chile-Spain Agreement,
- Article 3 of the Chile-Sweden Agreement,
- Article 4 of the Draft Revised Chile-UK Agreement.

2. Refusal, revocation, suspension or limitation of authorisations or permissions:

- Article 4 of the Chile-Belgium Agreement,
- Article 4 of the Chile-Denmark Agreement,
- Article 5 of the Chile-France Agreement,
- Article 4 of the Chile-Germany Agreement,
- Article 4 of the Chile-Italy Agreement,
- Article 4 of the Chile-Luxembourg Agreement,
- Article V of the Chile-Netherlands Agreement,
- Article 4 of the Draft Revised Chile-Netherlands Agreement,
- Article 4 of the Chile-Spain Agreement,
- Article 4 of the Chile-Sweden Agreement,
- Article 4 of the Chile-UK Agreement,
- Article 5 of the Draft Revised Chile-UK Agreement.

3. Regulatory control:

- Article 6 of the Chile-Belgium Agreement,
- Article 14 of the Chile-Denmark Agreement,
- Annex 3 to the Protocol between the aeronautical authorities of the Federal Republic of Germany and the Republic of Chile, signed at Berlin on 2 April 1998 — as applied provisionally in the framework of the Germany-Chile Agreement,
- Article 6 of the Chile-Italy Agreement,
- Article 6 of the Chile-Luxembourg Agreement,
- Article 6 of the Draft Revised Chile-Netherlands Agreement,
- Article 14 of the Chile-Sweden Agreement,
- Article 14 of the Draft Revised Chile-UK Agreement.

4. Taxation of aviation fuel:

- Article 9 of the Chile-Belgium Agreement,
- Article 6 of the Chile-Denmark Agreement,
- Article 10 of the Chile-France Agreement,
- Article 6 of the Chile-Germany Agreement,
- Article 9 of the Chile-Italy Agreement,
- Article 15 of the Chile-Luxembourg Agreement,
- Article III of the Chile-Netherlands Agreement,
- Article 15 of the Draft Revised Chile-Netherlands Agreement,
- Article 5 of the Chile-Spain Agreement,
- Article 6 of the Chile-Sweden Agreement,
- Article 8 of the Draft Revised Chile-UK Agreement.

5. Tariffs for carriage within the Community:

- Article 12 of the Chile-Belgium Agreement,
- Article 10 of the Chile-Denmark Agreement,
- Article 9 of the Chile-France Agreement,
- Article 8 of the Chile-Germany Agreement,
- Article 12 of the Chile-Italy Agreement,
- Article 14 of the Chile-Luxembourg Agreement,
- Article 14 of the Draft Revised Chile-Netherlands Agreement,
- Article 8 of the Chile-Spain Agreement,
- Article 10 of the Chile-Sweden Agreement,
- Article 9 of the Chile-UK Agreement,
- Article 7 of the Draft Revised Chile-UK Agreement.

*ANNEX III***List of other States referred to in Article 2**

1. The Republic of Iceland (under the Agreement on the European Economic Area);
 2. The Principality of Liechtenstein (under the Agreement on the European Economic Area);
 3. The Kingdom of Norway (under the Agreement on the European Economic Area);
 4. The Swiss Confederation (under the Agreement between the European Community and the Swiss Confederation on Air Transport).
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COUNCIL DECISION**of 27 June 2005****concerning the conclusion of the Agreement between the European Community and the Republic of Chile on certain aspects of air services**

(2006/735/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80, paragraph 2, in conjunction with Article 300(2), first sentence of the first subparagraph thereof and Article 300(3), first subparagraph,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Council has authorised the Commission on 5 June 2003 to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.
- (2) The Commission has negotiated on behalf of the Community an Agreement with the Republic of Chile on certain aspects of air services in accordance with the mechanisms and directives in the Annex to the abovementioned decision.
- (3) This Agreement has been signed on behalf of the Community subject to its possible conclusion at a later date.

(4) This Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Republic of Chile on certain aspects of air services is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision ⁽¹⁾.

Article 2

The President of the Council is hereby authorised to designate the person empowered to make the notification provided in Article 8(1) of the Agreement.

Done at Luxembourg, 27 June 2005.

For the Council
The President
L. LUX

⁽¹⁾ See page 46 of this Official Journal.

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 742/2006 of 17 May 2006 adapting certain fish quotas for 2006 pursuant to Council Regulation (EC) No 847/96 introducing additional conditions for year-to-year management of TACs and quotas

(Official Journal of the European Union L 130 of 18 May 2006)

Annex I, on page 10, the first four lines of the table should read as follows:

'Country identity	Stock Id	Species	Zone	Adapted quantity 2005	Catches 2005	% Adapted quantity	Transfers 2006	Initial quantity 2006	Revised quantity 2006	New code
DEU	WHB/571214	Blue whiting	V, VI, VII, XII, XIV	41 847	20 173,8	48,0	4 184,7			
DEU	WHB/8ABDE.	Blue whiting	VIIIa, b, d, e	2 000		0,0	200			
DEU	WHB/1X14	Blue whiting	I, II, III, IV, V, VI, VII, VIIIa,b,d,e, XII, XIV (EC and international waters)				4 385	20 424	24 809	1X14'