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Annual Report (2009)

on the application of Council Regulation (EC) No 953/2003 of 26 May 2003 to avoid trade diversion into the European Union of certain key medicines

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This is the sixth annual report foreseen under Article 11 of Regulation (EC) No 953/2003[1], which is designed to prevent parallel trade in discounted medicines intended for the least developed countries. This report covers the period from 1 January to 31 December 2009.

1. BACKGROUND

In 2000 the UN Millennium Summit adopted the Millennium Development Goals (MDGs), one of which is to fight HIV/AIDS, malaria and other diseases. In response to this commitment the European Commission adopted a comprehensive framework[2] to accelerate action targeted at the three major diseases – HIV/AIDS, malaria and tuberculosis (TB). In 2001 a Programme for Action (PfA)[3] was developed outlining specific measures to be taken. Follow-up of this Programme was adopted by the Commission in 2005 covering the period 2007-2011[4].

Supplying poor and developing countries with medicines at sustainable low prices is one of the key objectives in the fight against these major diseases. In order to achieve this, the European Commission has consistently advocated a policy of "tiered pricing" for medicines, combined with market segmentation between rich and poor countries. The advantage of such a policy is that it encourages manufacturers to distribute the drugs in question in the target countries at the lowest possible ("tiered") price, while at the same time recouping their research and development expenditure with the higher prices charged in developed (OECD) countries. This approach is designed to promote sustainable supplies and continuous distribution of life-saving medicines. It is also less prone to the constraints often encountered in "partnership schemes".

To support tiered pricing, specific safeguards were devised to prevent diversion of medicines. In May 2003, the EU adopted Council Regulation (EC) No 953/2003 to avoid trade diversion into the European Union of certain key medicines[5] ("the Regulation").

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1 Article 11 of Regulation (EC) No 953/2003 foresees: *"(1) The Commission shall monitor on an annual basis the volumes of exports of tiered priced products listed in Annex I and exported to the countries defined in Article 1 on the basis of information provided to it by pharmaceutical manufacturers and exporters. For this purpose a standard form will be issued by the Commission. Manufacturers and exporters must submit such sales reports annually for each tiered priced product to the Commission on a confidential basis.*
(2) The Commission shall periodically report to the Council on the volumes exported under tiered prices, including on the volumes exported within the framework of a partnership agreement agreed between the manufacturer and the government of a country of destination. The report shall examine the scope of countries and diseases and general criteria for the implementation of Article 3."

2 Accelerated action targeted at major communicable diseases within the context of poverty reduction, COM(2000)585.

3 Programme for Action: Accelerated action on HIV/AIDS, malaria and tuberculosis in the context of poverty reduction COM(2001)96. Update on the EC Programme for Action: Accelerated action on HIV/AIDS, malaria and tuberculosis in the context of poverty reduction. Outstanding policy issues and future challenges COM(2003)93.

4 European Programme for Action to confront HIV/AIDS, Malaria and TB through External Action (COM(2005)179). For the 2009 progress report (SEC(2009) 748 final) , please consult: http://ec.europa.eu/development/icenter/repository/COMM_PDF_SEC_2009_0748_F_EN_AUTRE_DOCUMENT_TRAVAIL_SERVICE.pdf

5 OJ L 135, 3.6.2003, pages 5 – 11. The Regulation has last been updated by Commission Regulation 1662/2005 of 11 October 2005 (OJ L 267, 12.10.2005, pages 19 – 21): http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:267:0019:0021:EN:PDF

2. COMMISSION REPORTING UNDER REGULATION (EC) NO 953/2003

This report covers the period from 1st January to 31st December 2009. During the reporting period, no new products were registered.

The report contains the following information:

– The volumes exported under tiered prices for each product registered in annex I of the Regulation;

– The sub-regions benefiting from these exports at tiered prices;

– The diseases treated with the products in question;

– An assessment of the application of the price formulae in Article 3 of the Regulation in relation to each of the products concerned.

This report is mainly based on the information received from the applicant under Article 11(1) of the Regulation. The Commission respects the confidentiality of the data provided by applicants and neither guarantees nor questions their accuracy.

In order to keep the public informed of all products registered under the Regulation, their producers, distinctive features, countries of destination, and other relevant details, the Commission has established a website where this information is continuously updated:

– http://trade-info.cec.eu.int/cgi-bin/antitradediversion/index.pl

The same website also provides assistance to manufacturers who wish to register a new product.

3. PRODUCTS REGISTERED

The products listed below were registered in 2004 by GlaxoSmithKline (GSK), Brentford (UK).

PRODUCT NAME	*OECD PRICE RANGE*	*PRICE OFFERED*
EPIVIR 150 mg x 60	US$ 121.81 – US$ 395.78	US$ 5.70
COMBIVIR 300/150 mg x 60	US$ 177.49 – US$ 767.59	US$ 19.50
EPIVIR Oral Solution 10mg/ml - 240 ml	US$ 33.32– US$ 71.73	US$ 6.73
RETROVIR 100 mg x 100	US$ 104.07 – US$ 219.42	US$ 15.77
RETROVIR 300 mg x 60	US$ 125.15 – 295.42	US$ 17.40
RETROVIR 250 mg x 40	US$ 83.84 – US$ 205.16	US$ 13.27
TRIZIVIR 750 mg x 60	US$ 539.09 – 887.97	US$ 102.00
ZIAGEN 300 mg x 60	US$ 152.64 – US$ 411.42	US$ 72.90
RETROVIR Oral Solution 10 mg/ml – 200 ml	US$ 17.85 – US$ 73.83	US$ 7.10

It should be noted that both the prices offered ("tiered" prices) and the OECD price ranges shown in the table above are those reported by the producer at the time when the applications were submitted. An **update** of these price ranges and the prices offered can be found in Annex I, together with the volumes sold in 2009 for each product registered under the Regulation.

Under the Regulation, no distinction can be made between purchasers – public or private - for products at these prices in the countries listed. However, it must be noted that these prices are indicative. The actual sales prices have not been reported, as Article 11(1) of the Regulation places no obligation on applicants to do so. It therefore cannot be excluded that in some instances lower prices for the products can be and, indeed have been, negotiated[6].

Over the reporting period, no attempts to illegally re-import tiered-priced products registered under the Regulation back into the EU were reported to the Commission.

As HIV/AIDS, Malaria and TB are chronic diseases, purchases of medication have to be sustainable. The Commission has been informed that most sales are part of long- standing agreements with purchasers. No exports under specific "partnership agreements" have been notified to the Commission.

4. COUNTRIES OF DESTINATION

In the reporting period, tiered priced products have been supplied to **14** of the countries listed in Annex II of the Regulation. These were: Cambodia, Cameroon, Democratic Republic of Congo, Haiti, Ivory Coast, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Togo, Uganda, and Zimbabwe.

With the exceptions of Cambodia and Haiti, all the countries concerned are in Sub-Saharan Africa, the region where the prevalence of HIV/AIDS is highest.

Detailed information on the volumes of exports to each of the 7 sub-regions (Europe and Central Asia, East Asia and Pacific, Latin America and the Caribbean, West Africa, Central Africa, East Africa and Southern Africa) can be found in Annex 2 to this report.

5. DISEASES COVERED

HIV/AIDS, malaria and tuberculosis are generally considered the gravest public health concerns for developing countries and a major obstacle to development. This is why EU development policy, including the Regulation, is specifically focusing on these three diseases. Considering that the list of registered products remained unchanged in 2009, the diseases covered in this report remain identical, i.e. exclusively treatment of HIV/AIDS.

However, there are certainly some pharmaceuticals for treating malaria and tuberculosis that would benefit from registration under the Regulation. Medicines to treat opportunistic

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[6] Readers interested in obtaining information on actual sales prices may find it on the website of the Global Fund to Fight AIDS, TB and Malaria.
http://www.theglobalfund.org/fr/procurement/pqr/?lang=fr

infections associated with HIV/AIDS are also eligible and suitable for coverage under the Regulation, but there have been no applications so far.

6. APPLICATION OF PRICE FORMULAE

To date the application of the price formulae provided for in Article 3 of the Regulation has not caused any practical problems. The applicant has not found it necessary to avail itself of the services of an independent auditor in order to protect sensitive business data (a possibility allowed by Article 4(2)(ii) of the Regulation). For all nine products, it proved sufficient to show that the price offered (i.e. the "tiered" price) was less than 25% of the lowest OECD list price. Both the tiered price and the OECD list prices are available to the public.

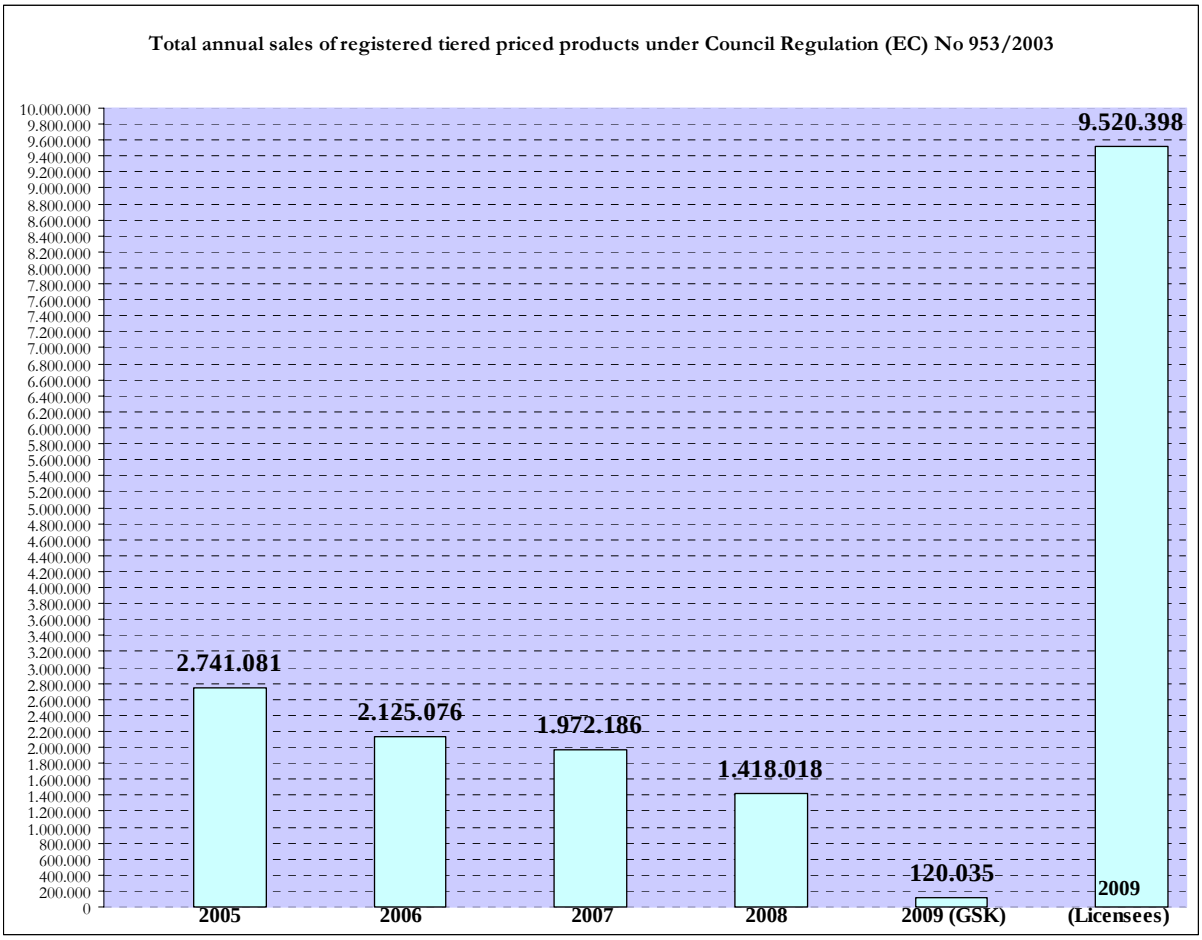
7. EVALUATING THE IMPACT OF THE REGULATION OVER TIME

The table below gives some indication of the sales trends per product registered under the Regulation over the last five years:

Figure 1:

Product/unit	2006	2007	2008	2009 (GSK)	2009 (licensees)
Combivir 300/150 mg x 60	397.450	153.793	178.216	66.344	905.655
Retrovir 250 mg x 40	585	643	2.700	17.240	0
Retrovir 100 mg x 100	132.176	92.467	136.571	10.185	43.728
Trizivir 750 mg x 60	4.903	17.102	7.475	9.895	0
Retrovir Oral Solution 10 mg	119.807	272.063	13.502	7.305	137.779
Ziagen 300 mg x 60	40.208	35.884	26.872	5.058	0
Epivir Oral Solution 10mg/ml 240 ml	406.287	155.523	33.311	4.008	720.863
Epivir 150 mg x 60	975.250	1.125.986	971.689	0	6.406.552
Retrovir 300 mg x 60	48.410	118.725	47.682	0	1.305.821
Total	**2.125.076**	**1.972.186**	**1.418.018**	***120.035***	***9.520.398***

Figure 2:



Of all the products registered, only *Retrovir 250 mg x 40*, and *Trizivir 750 mg x 60* showed an increase in volume sold at tiered prices compared to the previous year. Overall sales decreased by 92 %.

This further drop in 2009 is again primarily due to more customers *purchasing* ARVs from other producers and in particular from generic manufacturers, including those licensed by GSK. Figure 1 and 2 on page 8 show the total sales from generic manufacturers for the 9 registered products under the Regulation in 2009. GSK has granted voluntary licences to eight generic companies for the manufacture and supply of ARVs (Retrovir, Epivir and Combivir, all used mainly as first line treatment) to both the public and private sectors in sub-Saharan Africa. This trend is welcome as it improves the availability of affordable ARVs for customers in developing countries and helps to maintain a sustainable supply. In 2009 GSK licencees supplied 439 million tablets of their versions of Epivir and Combivir to African countries and GSK supplied 32.7 million tablets making a total of 471.7 million tablets in 2009 compared with a total of 349 million in 2008. It should, therefore once again be underlined that, overall, access to preferentially priced medicines has increased significantly.

ANNEX 1: DETAILS OF VOLUMES OF MEDICINES SOLD IN 2009

EPIVIR Oral Solution 10mg/ml – 240 ml **Date of Approval: 19 April 2004**	**Sub-region**	**Volumes sold (units)[7] - 1 January 2009 to 31 December 2009**
Disease targeted: HIV infection	Southern Africa	4,008
Active ingredient: lamivudine		
	Total no. of packs sold	**4,008**
	per month	334

Price offered (per unit): US$ 5.42

Lowest OECD list price: US$ 39.58

Preferential/lowest OECD list price: 13.69%

[7] In this and the following tables, "units" are the packages in which the products concerned are packed. For example, one "unit" of EPIVIR Oral Solution 10mg/ml – 240 ml is one bottle of 240 ml. One unit of EPIVIR 150 mg x 60 (see following table) is one package containing 60 tablets.

EPIVIR 150 mg x 60 **Date of Approval: 19 April 2004**	**Sub-region**	**Volumes sold (units) - 1 January 2009 to 31 December 2009-**
Disease targeted: HIV infection	**Total no. of packs sold**	**0**
Active ingredient: lamivudine	*Per month*	0

Price offered (per unit): US$ 5.23

Lowest OECD list price: US$ 147.49

Preferential/lowest OECD list price: 3.55%

COMBIVIR 300/150 mg x 60

Date of Approval: 19 April 2004

Disease targeted: HIV infection

Active ingredient: lamivudine + zidovudine

Price offered (per unit): US$ 16.19

Lowest OECD list price: US$ 302.85

Preferential/lowest OECD list price: 5.35%

Sub-region	**Volumes sold (units) - 1 January 2009 to 31 December 2009-**
Latin America and the Caribbean	50
Central Africa	2,520
East Africa	13,766
Southern Africa	50,008
Total no. of packs sold	**66,344**
Per month	5,529

RETROVIR 100 mg x 100 **Date of Approval: 19 April 2004**	**Sub-region**	**Volumes sold (units) - 1 January 2009 to 31 December 2009-**
Disease targeted: HIV infection	West Africa	5,278
Active ingredient: zidovudine	East Africa	1,996
	Southern Africa	2,911
Price offered (per unit): US$ 12.17	**Total no. of packs sold**	**10,185**
	Per month	849
Lowest OECD list price: US$ 101.69		
Preferential/lowest OECD list price: 11.97 %		

RETROVIR 300 mg x 60 **Date of Approval: 19 April 2004**	**Sub-region**	**Volumes sold (units) - 1 January 2009 to 31 December 2009-**
Disease targeted: HIV infection Active ingredient: zidovudine	**Total no. of packs sold** *Per month*	**0** 0

Price offered (per unit): US$ 13.24

Lowest OECD list price: US$ 211.09

Preferential/lowest OECD list price: 6.27%

RETROVIR 250 mg x 40 **Date of Approval: 19 April 2004**	**Sub-region**	**Volumes sold (units) - 1 January 2009 to 31 December 2009-**
Disease targeted: HIV infection	East Asia and Pacific	10,892
Active ingredient: zidovudine		
	Southern Africa	6,348
Price offered (per unit): US$ 11.03	**Total no. of packs sold**	**17,240**
	per month	1,437
Lowest OECD list price: US$ 109.16		
Preferential/lowest OECD list price: 10.10%		

TRIZIVIR 750 mg x 60 **Date of Approval: 19 April 2004**	**Sub-region**	**Volumes sold (units) - 1 January 2009 to 31 December 2009-**
Disease targeted: HIV infection	West Africa	6,688
Active ingredient: abacavir sulphate (300 mg) + lamivudine (150 mg) + zidovudine (300 mg)	East Africa	507
	Southern Africa	2,700
Price offered (per unit): US$ 53.71	**Total no. of packs sold**	**9,895**
	Per month	825
Lowest OECD list price: US$ 545.81		
Preferential/lowest OECD list price: 9.84 %		

ZIAGEN 300 mg x 60 **Date of Approval: 20 September 2004**	**Sub-region**	**Volumes sold (units) - 1 January 2009 to 31 December 2009-**
Disease targeted: HIV infection		
Active ingredient: abacavir sulphate	East Africa	900
	Southern Africa	4,158
	Total no. of packs sold	**5,058**
	per month	421

Price offered (per unit): US$ 35.91

Lowest OECD list price: US$ 255.92

Preferential/lowest OECD list price: 14.03%

RETROVIR Oral Solution 10 mg/ml – 200 ml **Date of Approval : 20 September 2004**	**Sub-region**	**Volumes sold (units) – 1 January 2009 to 31 December 2009-**
Disease targeted: HIV infection	West Africa	4,043
Active ingredient: zidovudine	East Africa	3,262
Price offered (per unit): US$ 6.35	**Total no. of packs sold**	**7,305**
	Per month	609
Lowest OECD list price: US$ 25.72		
Preferential/lowest OECD list price: 24.69%		

ANNEX 2: VOLUMES OF TIERED PRICED PRODUCTS SOLD BY SUB-REGION BETWEEN 1 JANUARY 2009 AND 31 DECEMBER 2009

Sub-regions	Products	Units
East Asia and Pacific	RETROVIR 250 mg x40	10,892
Latin America and the Caribbean	COMBIVIR 300/150 mg x 60	50
West Africa	RETROVIR 100mgx100	5,278
	RETROVIR Oral Solution	4,043
	TRIZIVIR 750 mg x 60	6,688
Central Africa	COMBIVIR 300/150 mg x 60	2,520
East Africa	COMBIVIR 300/150 mg x 60	13,766
	RETROVIR 100mgx100	1,996
	RETROVIR Oral Solution	3,262
	TRIZIVIR 750 mg x 60	507
	ZIAGEN 300 mg x 60	900
Southern Africa	EPIVIR Oral Solution	4,008
	COMBIVIR 300/150 mg x 60	50,008
	RETROVIR 100 mg x 100	2,911
	RETROVIR 250mgx40	6,348
	TRIZIVIR 750 mg x 60	2,700
	ZIAGEN 300 mg x 60	4,158