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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 733/1999

of 30 March 1999

imposing a definitive anti-dumping duty on imports of calcium metal originating in Russia and the People's Republic of China and amending Regulation (EC) No 2557/94

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Previous investigations

- (1) Imports of calcium metal originating in the People's Republic of China and Russia have been the subject of a number of anti-dumping investigations.
- (2) Following a complaint lodged by the 'Chambre syndicale de l'électrometallurgie et de l'électrochimie', in January 1988, an anti-dumping investigation concerning imports of calcium metal originating in the People's Republic of China and the Soviet Union⁽²⁾ was opened (hereinafter 'the first investigation'). Definitive duties of 21,8 % and 22 % for the People's Republic of China and the Soviet Union respectively were imposed by Council Regulation (EEC) No 2808/89⁽³⁾.
- (3) Extramet, an importer which cooperated in the investigation, appealed to the Court of Justice and Regulation No 2808/89 was annulled by the Court in June 1992⁽⁴⁾. The Court ruled that injury had been insufficiently examined. Following judgment, the Commission issued a notice⁽⁵⁾ informing the

parties of the reimbursement of the anti-dumping duties which had been collected.

- (4) Subsequently, the Commission, after consulting the Advisory Committee, advised the parties of the resumption of the investigation in a notice published in the *Official Journal of the European Communities*⁽⁶⁾ (hereinafter 'the second investigation').
 - (5) Regulation (EEC) No 2808/89 which had concluded the first investigation having been annulled ex tunc by the Court, the Commission's investigation remained open. However, in order for the Commission to conclude the investigation on the basis of the most up-to-date information, new data were collected concerning dumping and injury resulting therefrom. The Commission sent out supplementary questionnaires to the parties known to be concerned.
- 2. Measures in force**
- (6) Following the resumption of the investigation, the Council, by Regulation (EC) No 2557/94⁽⁷⁾, imposed definitive duties at the level provisionally determined by Commission Regulation (EC) No 892/94⁽⁸⁾, i.e. ECU 2 074 per tonne on imports of calcium metal originating in China and ECU 2 120 per tonne on imports of calcium metal originating in Russia. The duties were imposed for both countries at the injury elimination levels since these were lower than the respective dumping margins.
 - (7) In January 1995, l'Industrie des Poudres Sphériques (hereinafter 'IPS'), previously Extramet, the importer of calcium metal, brought an action for annulment of Council Regulation (EC) No 2557/94 in the Court of First Instance. On 15

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).

⁽²⁾ OJ C 20, 26.1.1988, p. 3.

⁽³⁾ OJ L 271, 20.9.1989, p. 1.

⁽⁴⁾ Case C-358/89, Extramet Industrie SA v. Council, [1992] ECR I, p. 3813.

⁽⁵⁾ OJ C 213, 19.8.1992, p. 14.

⁽⁶⁾ OJ C 298, 14.11.1992, p. 3.

⁽⁷⁾ OJ L 270, 21.10.1994, p. 27.

⁽⁸⁾ OJ L 104, 23.4.1994, p. 5.

October 1998, the Court of First Instance dismissed IPS's application. The Court found that the Commission had correctly concluded that the product imported from Russia and China is a like product to the one produced in the Community. Furthermore, the Court found that the Community producer did not refuse to sell its product to IPS and that additional sources of supply in the United States and Canada were available ⁽¹⁾.

3. Reasons for the interim review

- (8) The Council, when adopting Regulation (EC) No 2557/94, considered it appropriate that the Commission undertake a review of the Regulation six months after its entry into force if the conditions of competition in the sector concerned so required or otherwise, after one year. The reason for this review clause was linked to the specific circumstances of the market for calcium metal, notably the fact that in the Community there was only one producer of this product and worldwide the number of producers of calcium metal was very limited. Under these conditions, the Council considered it advisable to examine the effect of the measures in conjunction with the general development of the market situation for this particular product.
- (9) Accordingly, after consultation, the Commission published a notice of initiation of a review ⁽²⁾ in accordance with Article 11(3) of Regulation (EC) No 384/96 (hereinafter referred to as 'the basic Regulation'). During the investigation, IPS alleged that the domestic market prices in the reference country, the United States, had decreased considerably. Since such prices had been used to establish normal value ⁽³⁾ in the investigation leading to Regulation (EC) No 2557/94, the Commission asked all parties to comment. However, since it had been decided in Regulation (EC) No 2557/94 that the review would concern only injury and Community interest, but not dumping, IPS had to provide sufficient evidence to meet the criteria of Article 11(3) of the basic Regulation for the review to be enlarged to include dumping. IPS submitted market research data indicating that the price of calcium metal in free circulation on the United States market had declined. However, IPS did not, despite a written request by the Commission,

submit any calculation showing that a comparison of the market research data, on which it relied, with the actual Chinese or Russian export prices, led to a reduction or an elimination of the dumping margins established in 1994, which amounted to ECU 2 202 per tonne for the Chinese product and ECU 2 502 per tonne for the Russian product, in both cases at the level of free-at-Community-frontier. It was therefore concluded that IPS did not submit sufficient evidence which would have justified a review investigation of dumping.

- (10) Consequently, since there was no justification for a review investigation of dumping, the present review was limited to injury aspects.

4. Review investigation

- (11) The Commission officially advised all parties known to be concerned of the initiation of the review and gave interested parties the opportunity to make their views known in writing and to request a hearing within the time limits set in the notice of initiation.
- (12) One importer and one organisation representing exporters made their views known in writing and were granted a hearing.
- (13) The Commission sent questionnaires to all parties known to be concerned and received replies from one Community producer and one importer.
- (14) The Commission sought and verified all information it deemed necessary for the purposes of a determination of injury and carried out investigations at the premises of the following companies:
- (a) *Community producer*
- PEM Electrometallurgie SA, Paris (France)
- (b) *Importer*
- Industrie des Poudres Sphériques SA, Annemasse (France)
- (15) The investigation of injury covered the period from 1 January 1992 to 30 September 1995 (hereinafter 'the period under consideration').
- (16) The investigation could not be completed within the normal time limit as provided for in the basic Regulation for several reasons. Firstly, following a complaint lodged by IPS in July 1994 alleging a violation of Article 86 of the Treaty by the

⁽¹⁾ Case T-2/95, *Industrie des Poudres Sphériques v. Council*, [1998] ECR II-000. The CFI's judgment is under appeal by IPS, but the appeal does not concern the substantive findings made by the judgment.

⁽²⁾ OJ C 2, 5.1.1996, p. 2.

⁽³⁾ See Recitals 12-18 of Regulation (EC) No 892/94 (OJ L 104, 23.4.1994, p. 5) and Recital 15 of Regulation (EC) No 2557/94.

Community producer, an investigation pursuant to Regulation No 17 was initiated. It was considered desirable to wait until the results of the competition investigation were known since it was expected that the competition investigation would resolve IPS's contentions about the cause of injury. In November 1996 the Commission notified IPS of its decision to reject the complaint as unfounded. Secondly, the Commission had still to examine submissions made during the first half of 1997 by IPS and by the Community producer on the question of a review of dumping. Since, as explained in Recital 9 above, IPS eventually failed to submit sufficient evidence on a change in the dumping margin during a proposed investigation period of 1 October 1994 — 30 September 1995, the Commission disclosed its findings in October 1997 and heard the parties on their request in December 1997. This led to a number of critical comments from the parties concerning figures used by the Commission, which then re-examined all the data it had used. Thirdly, as explained at Recital 54, the Commission undertook lengthy negotiations with Russian exporters concerning undertakings.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(17) The product under consideration is calcium metal. Calcium metal is produced in two ways:

- the first procedure, the reduction of lime with aluminium is used by the Community producer and producers in the United States and Canada,
- the second procedure, the igneous electrolysis of calcium followed by distillation is used by the Russian and the Chinese producers;

The product is available in various forms and sizes: crowns, chunks, turnings, chips and grains (or granules) and at different levels of purity (at above 96 % whatever the manufacturing process). The prices of the products vary according to the differences in the size of the pieces and especially according to the level of purity. According to the level of purity and the level of content of Aluminium and Magnesium, calcium metal is divided into three categories: calcium 'R' (standard type with a 97 % calcium content), calcium 'N' and calcium 'NN' (nuclear type with a higher degree of purity).

(18) Calcium metal is mainly used within the Community by two industries:

- the lead and ferro-alloy industries which require chunks and chips;
- the steel industry which requires grains obtained through mechanical pulverising of chunks, turnings and chips or granules obtained through re-smelting and atomisation.

2. Like product

(19) IPS alleged that the calcium metal originating in Russia and the People's Republic of China is not identical to the calcium metal produced in the Community. The investigation revealed that the two production methods described above result in a slight difference in the composition of the product. The standard calcium metal produced by the Community producer is 97 % pure while calcium metal produced by the Russian and Chinese producers is between 98,5 % and 99,7 % pure. The only consequence of this difference is that in the process used by IPS for making granules, a higher residue level occurs when the Community industry's calcium metal is used. However, this does not affect the interchangeability of the product. In addition, the Community producer also produces another type of calcium metal with a low degree of oxygen and a 98,5 % purity level which is identical to the calcium metal supplied by Russian and Chinese producers. These findings were confirmed by a study undertaken by an independent laboratory in the framework of the abovementioned competition investigation. IPS acknowledged that the higher quality (98,5 % purity), specially produced by the Community industry at IPS's request, is acceptable for its requirements but stated that it did not want to pay a premium over the price for normal grade calcium metal of the Community industry (97 % purity).

(20) It is therefore concluded that the product under consideration, i.e. that exported by China and Russia to the Community is virtually identical to and interchangeable with the product produced in the Community and constitutes consequently a like product, within the meaning of Article 1(4) of the basic Regulation, it being recalled that Regulation (EC) No 2557/94 concluded that it is also a like

product to that produced in the United States, the reference country used for the dumping determination.

C. INJURY

1. Preliminary remark

- (21) For the purpose of establishing injury in the present investigation, the Commission analysed data relating to the period 1 January 1992 to 30 September 1995 (the period under consideration). For the purpose of calculating the price differences between export prices and Community industry's prices and costs (undercutting or underselling calculation respectively) the period 1 October 1994 until 30 September 1995 (hereinafter 'the reference period') was used.

The geographic scope of the investigation over the period under consideration was the Community as composed at the time of the initiation of the interim review, i.e. the Community of 15 Member States. The injury assessment was based on the relevant factors as provided for under Article 3 of the basic Regulation.

2. Cumulative assessment of the effects of the dumped imports

- (22) It was considered that the effects of the Chinese and Russian imports of calcium metal should be analysed cumulatively in the sense of Article 3(4) of the basic Regulation. Indeed, the margins of dumping established in Regulation (EC) No 2557/94 in relation to the imports of both countries concerned exceed in each case 2 % and the volumes of imported products from either source are not negligible within the meaning of Article 3(4) of the basic Regulation since they represent in each case a market share of more than 1 % of the Community market.
- (23) In addition, a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between the imported products and also, between the imported products and the like Community product. Indeed, all these products are interchangeable, sold or offered for sale in the same geographical markets and they have common or similar channels of distribution.

3. Cumulated volume and market share of dumped imports

- (24) The cumulated quantities of the product concerned imported from Russia and the People's Republic of China to the Community increased from 612 tonnes in 1992 to 1 007 tonnes in the reference period. Due, however, to the increase in overall consumption, the market shares of the total imports decreased from 51,8 % in 1992 to 40,2 % in the reference period. These figures were the result of a specific verification since, following disclosure, the parties had stated that the volume of imports in free circulation originally used by the Commission was too high. The Commission again verified all available import data and the questionnaire responses and found that this claim was partially justified. The figures were corrected accordingly. Furthermore, as explained in recital 28, the Commission included the import transactions under the regime of inward processing relief in order to establish the market shares of Russian and Chinese imports on the Community market.

It should be noted that the market share of Russian and Chinese imports found in the second investigation was 52,8 % for 1992. The slight difference with the above figure of 51,8 % used in Regulation (EC) No 892/94 is due to the fact that full data for 1992 were not yet available in the second investigation.

4. Prices of the dumped product

- (25) In comparing the prices of the Community industry and the prices of imports, the Commission used average prices on the basis of sales to the first independent importer in the case of imports, and to first independent customers in the case of the Community producer. Comparisons were made at levels of trade known to be comparable to those of Chinese and Russian imports.
- (26) The Commission established that, during the reference period, Chinese and Russian import prices were still undercutting the prices of the Community producer, by 52,2 % on average for imports originating in the People's Republic of China and 52,5 % for imports originating in Russia.

5. Community consumption

- (27) In calculating the apparent Community consumption of calcium metal, the sales in the Community by the Community industry, as established on the basis of verified data provided by the Community producer, were added to the total imports into the Community as published by Eurostat. Following the investigation, the Commission disclosed figures relating to the Community consumption to the parties. These figures were contested, especially regarding import volumes, and the Commission carefully re-examined them. On the basis of the detailed information found during the verification regarding sales in the Community and total imports, it has been found that the Community market for calcium metal increased from about 1 182 tonnes in 1992 to about 2 502 tonnes in the reference period, an overall increase of about 112 %.
- (28) One party raised the issue of inclusion of imports under the regime of inward processing relief, arguing that only the imports released into free circulation in the Community can cause injury to the Community industry. However, it is considered that the transactions which may cause injury to a Community industry, i.e. dumped imports, include imports under the inward processing regime since Article 1(2) of the basic Regulation states that a product is considered as being dumped 'if its export price to the Community' — as opposed to its release in free circulation — 'is less than its normal value'. In addition, sales of the product to companies using inward processing relief may well contribute to the injury caused to the Community producer as they reduce outlets which would otherwise be available to them.

Consequently, and in accordance with constant practice, the Council concluded that the inclusion of export transactions relating to inward processing relief was justified in its assessment of injury.

6. Situation of the Community industry

Production, capacity and capacity utilisation rate

- (29) During the period under consideration, the production of the Community producer increased by 67 %.

- (30) From 1994 on, the Community producer invested in new furnaces. This led to an increase of its production capacity, which grew by 24 % during the period under consideration.
- (31) During the same period the Community industry increased its capacity utilisation by 30 %.

Sales in the Community

- (32) During the period under consideration, the Community industry almost tripled its sales.
- (33) The increase in production and sales between 1993 and the end of the reference period was due to the temporary existence of a new market to a user in the cord wire industry. This new user bought around 32 % of the total production of the Community producer in 1994. The Community producer provided evidence that from the fourth quarter of 1995 onwards this new consumer stopped using calcium metal for the production of cord wire in its three plants. Despite IPS's allegation that such a major operator was unknown to it, the evidence submitted during verification by the Community industry made it clear that this user existed and that all shipments of calcium metal to this user stopped definitively in the fourth quarter of 1995 due to a change in commercial policy by this user.

Market share of the Community industry

- (34) Between 1992 and the reference period, the market share of the Community industry increased from 36,5 % in 1992 to 46 % in the reference period. It should be noted that the market share for 1992 in the second investigation was established at 31,7 %⁽¹⁾. However, this figure was established through an extrapolation of the findings during the 16 months chosen for the second investigation (1 July 1991 — 31 October 1992) to calendar year 1992. The market shares in the present investigation have been established on the basis of verified data for 1992 which were not available at the time of the initial investigation. Furthermore, as explained in Recital 28, the Commission considered it to be appropriate to establish the market shares on the basis of total imports. The market shares were recalculated in order to establish the trend of market shares over the period under consideration, on the basis of the same methodology.

⁽¹⁾ See Recital 32 of Regulation (EC) No 892/94.

Stocks

- (35) During the reference period the stocks were reduced by 40 %. However, between 1994 and the end of the reference period, the verification revealed a sudden increase in stocks by 40 %.

Profitability

- (36) The situation of the Community producer improved following the imposition of the anti-dumping duties in 1994, although not to the extent of allowing the Community producer to make a profit. Losses increased from 1992 to 1993 but the situation improved during the reference period. However, despite this improvement in terms of profitability, the Community producer was still not able to reach the break-even level.

7. Conditions of competition

- (37) It should be recalled that in Case C-385/89, *Extramet v. Council*, the Court of Justice held that the institutions had not followed the proper procedure in determining injury, in particular whether injury could have been self-inflicted by the Community industry not supplying a major Community user of the product, namely IPS.
- (38) The Community producer was condemned in March 1992 by the Conseil de la Concurrence in France for behaviour aimed at hindering the setting up of a competitor on a downstream market by effectively refusing to supply IPS (previously *Extramet*) in 1984. The judgment was confirmed by the Cour d'Appel of Paris. However, the Cour d'Appel also declared that no unlawful competitive practices could be attributed to the Community producer after 1984.
- (39) On 20 July 1994, the importer, IPS, lodged a complaint with the Commission under Regulation No 17, alleging an abuse of a dominant position by the Community producer, contrary to Article 86 of the Treaty. Three main arguments were raised. Firstly, that the Community producer was abusing anti-dumping proceedings in order to obtain information on the costs and general position of its competitors on the market. IPS also alleged that the Community producer misled the Commission

as regards injury in the Community. Secondly, that the Community producer refused to sell calcium metal to its competitors. Thirdly, that the Community producer allegedly maintained a policy of predatory and abusive pricing.

In November 1996, the Commission, after an investigation definitively rejected the complaint lodged by IPS, concluding that, on the basis of its findings, no anti-competitive practices could be attributed to the Community producer⁽¹⁾.

- (40) In the same competition investigation, the Commission also examined IPS's claim that the Community producer misused the anti-dumping procedure to improve its position on the Community calcium metal market to deprive its competitor of supplies of raw material. It was concluded that this was not the case since, even if a company has a dominant position this does not deprive it of the right to legitimate protection against unfair competition from producers in third countries and, in any event, no anti-competitive practice could be attributed to that company.

8. The evolution of the market

- (41) The review investigation was initiated principally with a view to examining the impact of the measures in conjunction with the general development of the market situation for the product under investigation. The investigation has revealed that the Community market for calcium metal became more competitive after the imposition of anti-dumping duties. This conclusion was based on the following findings.
- (42) Firstly, Chinese and Russian producers and/or exporters have maintained a significant market share.
- (43) Secondly, the Commission has found that, after the imposition of duties, the Community producer, while reinforcing its position on the market (from 36,5 % in 1992 to 46 % in the reference period), has not attained the market share it held prior to the beginning of dumped imports from Russia and China.
- (44) Thirdly, since the imposition of anti-dumping duties in 1994, the market for calcium metal has been characterised by the increased presence of other suppliers, notably from the United States, with Canadian imports remaining relatively stable.
- (45) Consequently IPS's allegation that the imposition of anti-dumping duties seriously limited the supply of calcium metal other than that produced in the Community is not well founded.

⁽¹⁾ Decision of 7 November 1996. On 13 January 1997 IPS lodged an Application for the annulment of this decision (Case T-5/97, still pending).

- (46) One party alleged that the imports from the United States consist of imports of cord wire containing calcium metal, which falls under the same tariff heading as calcium metal. However, no evidence was provided to substantiate this allegation and a verification of this allegation did not show that imports of calcium metal from the United States are in effect imports of cord wire.
- (47) During the course of the proceeding, it was alleged that imports of calcium metal from the United States had actually originated in Russia and China, thereby circumventing the anti-dumping duty. However, no evidence was forwarded to support these allegations.

9. Conclusion

- (48) As a result of the imposition of definitive anti-dumping duties in 1994 and of exceptional sales during the period from 1993 to 1995 (see Recital 33), certain trends regarding the Community industry operations have improved, e.g. sales and market share. However, despite these trends it is considered that the Community industry is still suffering material injury, consisting in particular of continuous price pressure and losses.
- (49) Furthermore, it has been established that the imposition of anti-dumping duties in 1994 had no negative impact on the evolution of the Community market for calcium metal, notably in terms of operators actively competing on that market and alternative sources of supply, while the anti-dumping measures did not confer an advantaged position on the market to the Community producer. The Council is of the view that this finding is particularly important since it shows that alternative sources of supply exist.

D. CAUSATION

1. Other factors

- (50) The Commission services examined whether the injury suffered by the Community industry had been caused by factors other than the dumped imports. In particular, the Commission services looked at the trend in consumption in the Community market and the evolution and impact of imports from other countries.
- (51) Community consumption of calcium metal increased continuously and grew by 112 % between 1992 and the end of the reference period. The injury suffered by the Community industry

cannot, therefore, be attributed to any fall in demand. It should be stressed that imports from third countries increased considerably. Imports from the United States increased from 49 tonnes to 270,8 tonnes in the reference period while imports originating in Canada increased from 62 tonnes in 1992 to 74,1 tonnes in the reference period. However, according to Eurostat, these imports were at higher prices than those under consideration. The Commission therefore concluded that these imports were not a material cause of the injury suffered by the Community industry.

- (52) IPS alleged that a subsidiary of the Community industry was importing significant quantities of calcium metal from Russia and China under the regime of inward processing relief and consequently that any injury would therefore be partly self-inflicted. This allegation was not supported by any evidence. The Commission found during the investigation that the Community producer's core production and commercialisation activity in the Community remained unchanged. Furthermore, even if a subsidiary of this producer had been importing for use in transformation activities some quantities of calcium metal from Russia and China in addition to the quantities delivered by the Community producer, this would have to be considered as a normal commercial behaviour in order to cope with the unfair commercial practices of the Russian and Chinese exporters on the Community market and to limit somewhat the injury suffered by the parent company.

2. Conclusion on causation

- (53) According to the above, factors other than the dumped imports have not been shown to have a material impact on the Community industry. Moreover, since the injury suffered by the Community industry consists mainly of continuous price pressure and losses resulting therefrom, a causal link with the low priced dumped imports undercutting the Community industry's prices is evident. Were measures not to exist, the level of undercutting would be significant, enabling Chinese and Russian producers to increase their exports to the Community thus creating downward pressure on the Community producers' prices. As mentioned in recital 26, the undercutting by Chinese and Russian exporters remains very significant.

E. UNDERTAKING

(54) One Russian exporter offered an undertaking providing for a minimum price. The Commission entered into negotiation with this exporter in December 1997. However, despite lengthy negotiation, the proposed minimum price was around 30 % below the target price necessary for the Community producer to achieve a reasonable profit. Therefore, the proposed undertaking was not considered acceptable.

F. ANTI-DUMPING MEASURES

(55) Having established that the dumped imports under consideration are still causing material injury to the Community industry and that it remains in the Community's interest to continue to impose measures, the proposed measures should be amended to eliminate the injury caused by these imports as established in the present review investigation.

(56) In order to calculate the injury elimination level, the Commission, as in the previous investigation, compared the prices of the dumped imports with the selling prices of the Community industry reflecting its cost of production plus a reasonable level of profit.

(57) On this basis, the weighted average export prices for those product types used in the determination of price undercutting, as established for the period of investigation, on a CIF Community frontier level, adjusted to take account of customs duty paid and post-importation costs and profit, were compared with the Community industry's cost of production plus a reasonable profit margin which was considered to be the minimum profit level necessary to make the sector concerned viable.

(58) The comparison showed an injury margin of 59,6 % for China and 59,5 % for Russia. These figures show a slight decrease in the duty rate which is due to the downward adjustment to the appropriate level of the injury threshold as a result of a fall in certain production costs of the Community industry. The amended injury elimination level leads to a conclusion that a duty of EUR 1 863 per tonne of Russian calcium metal and EUR 1 876 per tonne of Chinese calcium metal is appropriate.

(59) This level of duty is less than the dumping margins which were established in the second investigation and should therefore constitute the amount of the definitive duty to be imposed.

(60) In accordance with Article 11(2) of the basic Regulation, the present review does not affect the due date of expiry of the measures imposed in 1994 since it has been limited to an investigation of injury.

(61) Regulation (EC) No 2557/94 should therefore be amended to take account of the injury elimination level as amended,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EC) No 2557/94 is hereby replaced by the following:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of calcium metal falling within CN code 2805 21 00 originating in Russia and the People's Republic of China.

2. The rate of duty applicable is EUR 1 863 per tonne for imports originating in Russia and EUR 1 876 per tonne for imports originating in the People's Republic of China.

3. In instances where the customs value is reduced pursuant to the second paragraph of Article 145 of Commission Regulation (EEC) No 2454/93 ⁽¹⁾, the rate of the specific duty applicable, shall be reduced *pro rata*.

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

⁽¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 502/99 (OJ L 65, 12.3.1999, p. 1).'

Article 2

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

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

Done at Brussels, 30 March 1999.

For the Council

The President

K.-H. FUNKE

COMMISSION REGULATION (EC) No 734/1999
of 8 April 1999
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⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4 (1) thereof,

Whereas 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;

Whereas, 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 9 April 1999.

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

Done at Brussels, 8 April 1999.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 8 April 1999 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	61,9
	204	63,4
	999	62,7
0707 00 05	052	114,3
	068	107,2
	999	110,8
0709 10 00	220	220,2
	999	220,2
0709 90 70	052	79,3
	999	79,3
0805 10 10, 0805 10 30, 0805 10 50	052	34,0
	204	44,0
	212	53,2
	600	50,9
	624	45,7
	999	45,6
0805 30 10	052	62,0
	999	62,0
0808 10 20, 0808 10 50, 0808 10 90	039	104,6
	388	74,0
	400	92,5
	404	97,3
	508	77,4
	512	87,1
	524	68,8
	528	76,8
	720	99,1
	804	103,4
	999	88,1
	0808 20 50	388
400		65,2
512		66,3
528		75,7
720		79,6
999		71,0

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22.11.1997, p. 19). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 735/1999
of 8 April 1999

on the opening of a standing invitation to tender for the resale on the internal market of 15 000 tonnes of rice held by the Italian intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 2072/98 ⁽²⁾, and in particular the last indent of Article 8(b) thereof,

Whereas Commission Regulation (EEC) No 75/91 ⁽³⁾ lays down the procedures and conditions for the disposal of paddy rice held by intervention agencies;

Whereas there is a current lack on the Italian market of certain varieties of rice consumed on the internal market; whereas certain quantities of rice of those varieties are available in the Italian intervention agency's stores; whereas a standing invitation to tender should be opened for the resale on the internal market of 15 000 tonnes of paddy rice held by the Italian intervention agency;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Rice,

HAS ADOPTED THIS REGULATION:

Article 1

The Italian intervention agency shall open, under the conditions laid down in Regulation (EEC) No 75/91, a standing invitation to tender for the resale on the internal

market of 15 000 tonnes of paddy rice held by that agency, in accordance with Regulation (EEC) No 75/91.

Article 2

1. The closing date for the submission of tenders in response to the first partial invitation to tender shall be 21 April 1999.
2. The closing date for the submission of tenders in response to the last partial invitation to tender shall be 16 June 1999.
3. Tenders must be lodged with the Italian intervention agency at the following address:

Ente Nazionale Risi (ENR),
Piazza Pio XI 1,
I-20123 Milan
(Telex: 33 40 32; tel. 87 41 53).

Article 3

By Tuesday of the week following the closing date for the submission of tenders, the Italian intervention agency shall notify the Commission of the quantities and the average prices of the various lots sold.

Article 4

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

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

Done at Brussels, 8 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 265, 30.9.1998, p. 4.

⁽³⁾ OJ L 9, 12.1.1991, p. 15.

COMMISSION REGULATION (EC) No 736/1999
of 8 April 1999
adjusting the compensatory agrimonetary aid granted in Ireland

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas Commission Regulation (EC) No 806/97 of 2 May 1997 fixing the maximum amounts of compensatory aid relating to appreciable revaluations of the Irish pound, the pound sterling and the Italian lira occurring prior to 31 March 1997 ⁽²⁾, as last amended by Regulation (EC) No 1219/97 ⁽³⁾, establishes the maximum amount of aid arising from the appreciable revaluations of the Irish pound on 11 January and 29 March 1997;

Whereas the third subparagraph of Article 10(3) of Regulation (EC) No 2799/98 states that the references to the compensatory aid provided for in Council Regulations (EEC) No 3813/92 ⁽⁴⁾, as last amended by Regulation (EC) No 150/95 ⁽⁵⁾, and (EC) No 724/97 ⁽⁶⁾, as last amended by Regulation (EC) No 942/98 ⁽⁷⁾, are to be construed as referring to Articles 4, 5 and 6 of Regulation (EC) No 2799/98;

Whereas the second subparagraph of Article 4(5) of Regulation (EC) No 2799/98 states that the amounts paid out under the second and third tranches are to be reduced or cancelled as a function of the effect on incomes of the development of exchange rates recorded until the beginning of the month preceding the first month of the relevant tranche;

Whereas the conversion rate for the Irish pound at the beginning of the month preceding the first month of the third tranche was higher than the rate on the date of its

appreciable revaluation of 11 January 1997; whereas, because of the conversion rate reached, the amount of the third tranche of aid for Ireland should be adjusted;

Whereas the conversion rate for the Irish pound at the beginning of the month preceding the first month of the third tranche was higher than the rate on the date of its appreciable revaluation of 29 March 1997; whereas, because of the conversion rate reached, the amount of the third tranche of aid for Ireland should be cancelled;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the relevant management committees,

HAS ADOPTED THIS REGULATION:

Article 1

1. The amount of the third tranche of compensatory aid for Ireland resulting from the principal amount of the first tranche provided for by Regulation (EC) No 806/97 in respect of the appreciable revaluation of 11 January 1997 is reduced from ECU 35,07 million to ECU 6,62 million.

2. The amount of the third tranche of compensatory aid for Ireland resulting from the principal amount of the first tranche provided for by Regulation (EC) No 806/97 in respect of the appreciable revaluation of 29 March 1997 is cancelled.

Article 2

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

⁽¹⁾ OJ L 349, 24.12.1998, p. 1.

⁽²⁾ OJ L 115, 3.5.1997, p. 16.

⁽³⁾ OJ L 170, 28.6.1997, p. 56.

⁽⁴⁾ OJ L 387, 31.12.1992, p. 1.

⁽⁵⁾ OJ L 22, 31.1.1995, p. 1.

⁽⁶⁾ OJ L 108, 25.4.1997, p. 9.

⁽⁷⁾ OJ L 132, 6.5.1998, p. 1.

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

Done at Brussels, 8 April 1999.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 737/1999
of 8 April 1999

fixing the export refunds on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 13 (2) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund;

Whereas the refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals⁽³⁾, as last amended by Regulation (EC) No 2513/98⁽⁴⁾;

Whereas, as far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture; whereas these quantities were fixed in Regulation (EC) No 1501/95;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

Whereas it follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 1766/92, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 April 1999.

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

Done at Brussels, 8 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 126, 24.5.1996, p. 37.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

ANNEX

to the Commission Regulation of 8 April 1999 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

<i>(EUR/tonne)</i>			<i>(EUR/tonne)</i>		
Product code	Destination (1)	Amount of refund	Product code	Destination (1)	Amount of refund
1001 10 00 9200	—	—	1101 00 11 9000	—	—
1001 10 00 9400	01	0	1101 00 15 9100	01	43,75
1001 90 91 9000	—	—	1101 00 15 9130	01	41,00
1001 90 99 9000	03	22,00	1101 00 15 9150	01	37,75
	02	0	1101 00 15 9170	01	35,00
1002 00 00 9000	03	61,50	1101 00 15 9180	01	32,50
	02	0	1101 00 15 9190	—	—
1003 00 10 9000	—	—	1101 00 90 9000	—	—
1003 00 90 9000	03	42,00	1102 10 00 9500	01	82,00
	02	0	1102 10 00 9700	—	—
1004 00 00 9200	—	—	1102 10 00 9900	—	—
1004 00 00 9400	—	—	1103 11 10 9200	01	30,00 (2)
1005 10 90 9000	—	—	1103 11 10 9400	01	27,00 (2)
1005 90 00 9000	04	36,00	1103 11 10 9900	—	—
	02	0	1103 11 90 9200	01	30,00 (2)
1007 00 90 9000	—	—	1103 11 90 9800	—	—
1008 20 00 9000	—	—			

(1) The destinations are identified as follows:

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Liechtenstein,
- 04 Switzerland, Liechtenstein and Slovenia.

(2) No refund is granted when this product contains compressed meal.

NB: The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ L 214, 30.7.1992, p. 20).

COMMISSION REGULATION (EC) No 738/1999
of 8 April 1999
concerning tenders notified in response to the invitation to tender for the export
of barley issued in Regulation (EC) No 1078/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 923/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾, and in particular Article 4 thereof,

Whereas an invitation to tender for the refund and or the tax for the export of barley to all third countries was opened pursuant to Commission Regulation (EC) No 1078/98 ⁽⁵⁾;

Whereas Article 7 of Regulation (EC) No 1501/95, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No

1766/92 and on the basis of the tenders notified, to make no award;

Whereas on the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund or a minimum tax should not be fixed;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 2 to 8 April 1999 in response to the invitation to tender for the refund or the tax for the export of barley issued in Regulation (EC) No 1078/98.

Article 2

This Regulation shall enter into force on 9 April 1999.

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

Done at Brussels, 8 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 126, 24.5.1996, p. 37.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 154, 28.5.1998, p. 20.

COMMISSION REGULATION (EC) No 739/1999
of 8 April 1999

**fixing the maximum export refund on rye in connection with the invitation to
tender issued in Regulation (EC) No 1746/98**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European
Community,

Having regard to Council Regulation (EEC) No 1766/92
of 30 June 1992 on the common organisation of the
market in cereals ⁽¹⁾, as last amended by Regulation (EC)
No 923/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/
95 of 29 June 1995 laying down certain detailed rules for
the application of Council Regulation (EEC) No 1766/92
on the granting of export refunds on cereals and the
measures to be taken in the event of disturbance on the
market for cereals ⁽³⁾, as last amended by Regulation (EC)
No 2513/98 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the
tax for the export of rye to all third countries was opened
pursuant to Commission Regulation (EC) No 1746/98 ⁽⁵⁾;
Whereas Article 7 of Regulation (EC) No 1501/95
provides that the Commission may, on the basis of the
tenders notified, in accordance with the procedure laid
down in Article 23 of Regulation (EEC) No 1766/92,
decide to fix a maximum export refund taking account of
the criteria referred to in Article 1 of Regulation (EC) No

1501/95; whereas in that case a contract is awarded to any
tenderer whose bid is equal to or lower than the
maximum refund, as well as to any tenderer whose bid
relates to an export tax;

Whereas the application of the abovementioned criteria
to the current market situation for the cereal in question
results in the maximum export refund being fixed at the
amount specified in Article 1;

Whereas the measures provided for in this Regulation are
in accordance with the opinion of the Management
Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 2 to 8 April 1999, pursuant to
the invitation to tender issued in Regulation (EC) No
1746/98, the maximum refund on exportation of rye shall
be EUR 71,45/t.

Article 2

This Regulation shall enter into force on 9 April 1999.

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

Done at Brussels, 8 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 126, 24.5.1996, p. 37.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 219, 7.8.1998, p. 3.

COMMISSION REGULATION (EC) No 740/1999
of 8 April 1999

**fixing the maximum export refund on common wheat in connection with the
invitation to tender issued in Regulation (EC) No 1079/98**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 923/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾, and in particular Article 4 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to all third countries with the exception of certain ACP States was opened pursuant to Commission Regulation (EC) No 1079/98 ⁽⁵⁾, as amended by Regulation (EC) No 2005/98 ⁽⁶⁾;

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of

the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 2 to 8 April 1999, pursuant to the invitation to tender issued in Regulation (EC) No 1079/98, the maximum refund on exportation of common wheat shall be EUR 31,95/t.

Article 2

This Regulation shall enter into force on 9 April 1999.

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

Done at Brussels, 8 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 126, 24.5.1996, p. 37.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 154, 28.5.1998, p. 24.

⁽⁶⁾ OJ L 258, 22.9.1998, p. 8.

COMMISSION REGULATION (EC) No 741/1999
of 8 April 1999

**fixing the maximum export refund on common wheat in connection with the
invitation to tender issued in Regulation (EC) No 2004/98**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 923/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to certain ACP States was opened pursuant to Commission Regulation (EC) No 2004/98 ⁽⁵⁾, as amended by Regulation (EC) No 456/1999 ⁽⁶⁾;

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of

the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 2 to 8 April 1999, pursuant to the invitation to tender issued in Regulation (EC) No 2004/98, the maximum refund on exportation of common wheat shall be EUR 38,96/t.

Article 2

This Regulation shall enter into force on 9 April 1999.

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

Done at Brussels, 8 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 126, 24.5.1996, p. 37.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 258, 22.9.1998, p. 4.

⁽⁶⁾ OJ L 55, 3.3.1999, p. 5.

COMMISSION REGULATION (EC) No 742/1999
of 8 April 1999
concerning tenders notified in response to the invitation to tender for the import
of maize issued in Regulation (EC) No 566/1999

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 12(1) thereof,

Whereas an invitation to tender for the maximum reduction in the duty on maize imported into Spain was opened pursuant to Commission Regulation (EC) No 566/1999⁽³⁾;

Whereas Article 5 of Commission Regulation (EC) No 1839/95⁽⁴⁾, as amended by Regulation (EC) No 1963/95⁽⁵⁾, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 and on the basis of the tenders notified, to make no award;

Whereas on the basis of the criteria laid down in Articles 6 and 7 of Regulation (EC) No 1839/95 a maximum reduction in the duty should not be fixed;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 2 to 8 April 1999 in response to the invitation to tender for the reduction in the duty on maize issued in Regulation (EC) No 566/1999.

Article 2

This Regulation shall enter into force on 9 April 1999.

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

Done at Brussels, 8 April 1999.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.
⁽²⁾ OJ L 126, 24.5.1996, p. 37.
⁽³⁾ OJ L 61, 6.3.1999, p. 18.
⁽⁴⁾ OJ L 177, 28.7.1995, p. 4.
⁽⁵⁾ OJ L 189, 10.8.1995, p. 22.

COMMISSION REGULATION (EC) No 743/1999
of 8 April 1999
on the issue of system B export licences in the fruit and vegetables sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 2190/96 of 14 November 1996 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1287/98 ⁽²⁾, and in particular Article 5(5) thereof,

Whereas Commission Regulation (EC) No 458/1999 ⁽³⁾, as amended by Regulation (EC) No 499/1999 ⁽⁴⁾, fixes the indicative quantities for system B export licences other than those sought in the context of food aid;

Whereas, in the light of the information available to the Commission today, there is a risk that the indicative quantities laid down for the current export period for apples for destination group Y will shortly be exceeded; whereas this overrun will prejudice the proper working of

the export refund scheme in the fruit and vegetables sector;

Whereas, to avoid this situation, applications for system B licences for apples for destination group Y exported after 8 April 1999 should be rejected until the end of the current export period,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for system B export licences for apples for destination group Y submitted pursuant to Article 1 of Regulation (EC) No 458/1999, export declarations for which are accepted after 8 April 1999 and before 17 May 1999, are hereby rejected.

Article 2

This Regulation shall enter into force on 9 April 1999.

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

Done at Brussels, 8 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 292, 15.11.1996, p. 12.

⁽²⁾ OJ L 178, 23.6.1998, p. 11.

⁽³⁾ OJ L 55, 3.3.1999, p. 8.

⁽⁴⁾ OJ L 59, 6.3.1999, p. 22.

COMMISSION REGULATION (EC) No 744/1999
of 8 April 1999
on the issue of import licences for garlic originating in China

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⁾, as amended by Commission Regulation (EC) No 2520/97⁽²⁾,

Having regard to Council Regulation (EC) No 1137/98 of 29 May 1998 concerning a protective measure applicable to imports of garlic from China⁽³⁾, and in particular Article 1(3) thereof,

Whereas pursuant to Commission Regulation (EEC) No 1859/93⁽⁴⁾, as amended by Regulation (EC) No 1662/94⁽⁵⁾, the release for free circulation in the Community of garlic imported from third countries is subject to presentation of an import licence;

Whereas Article 1(1) of Regulation (EC) No 1137/98, restricts the issue of import licences for garlic originating in China to a maximum monthly quantity in the case of applications lodged from 1 June 1998 to 31 May 1999;

Whereas, given the criteria laid down in Article 1(2) of that Regulation and the import licences already issued, the quantity applied for since 1 April 1999 is in excess of

the maximum monthly quantity given in the Annex to that Regulation for the month of April 1999; whereas it is therefore necessary to determine to what extent import licences may be issued in response to these applications; whereas the issue of licences in response to applications lodged after 6 April 1999 and before 6 May 1999 should be refused,

HAS ADOPTED THIS REGULATION:

Article 1

Import licences applied for from 1 April to 6 April 1999 pursuant to Article 1 of Regulation (EEC) No 1859/93 for garlic falling within CN code 0703 20 00 originating in China shall be issued for 2,5 % of the quantity applied for, having regard to the information available to the Commission on 7 April 1999.

For the abovementioned products applications for import licences lodged after 6 April 1999 and before 6 May 1999 shall be refused.

Article 2

This Regulation shall enter into force on 9 April 1999.

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

Done at Brussels, 8 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 297, 21.11.1996, p. 1.

⁽²⁾ OJ L 346, 17.12.1997, p. 41.

⁽³⁾ OJ L 157, 30.5.1998, p. 107.

⁽⁴⁾ OJ L 170, 13.7.1993, p. 10.

⁽⁵⁾ OJ L 176, 9.7.1994, p. 1.

COUNCIL DIRECTIVE 1999/22/EC
of 29 March 1999
relating to the keeping of wild animals in zoos

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s(1) thereof,

Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure laid down in Article 189c of the Treaty ⁽²⁾,

Whereas Council Regulation (EEC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein ⁽³⁾ requires evidence of the availability of adequate facilities for the accommodation and care of live specimens of a great many species before their importation into the Community is authorised; whereas that Regulation prohibits the display to the public for commercial purposes of specimens of species listed in Annex A thereof unless a specific exemption was granted for education, research or breeding purposes;

Whereas Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds ⁽⁴⁾, and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽⁵⁾, prohibit the capture and keeping of and trade in a great number of species, whilst providing for exemptions for specific reasons, such as research and education, repopulation, reintroduction and breeding;

Whereas the proper implementation of existing and future Community legislation on the conservation of wild fauna and the need to ensure that zoos adequately fulfil their important role in the conservation of species, public education, and/or scientific research make it necessary to provide a common basis for Member States' legislation with regard to the licensing and inspection of zoos, the keeping of animals in zoos, the training of staff and the education of the visiting public;

Whereas action at the Community level is required in order to have zoos throughout the Community contributing to the conservation of biodiversity in accordance with the Community's obligation to adopt measures for *ex situ* conservation under Article 9 of the Convention on Biological Diversity;

Whereas a number of organisations such as the European Association of Zoos and Aquaria have produced guidelines for the care and accommodation of animals in zoos which could, where appropriate, assist in the development and adoption of national standards,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Aim

The objectives of this Directive are to protect wild fauna and to conserve biodiversity by providing for the adoption of measures by Member States for the licensing and inspection of zoos in the Community, thereby strengthening the role of zoos in the conservation of biodiversity.

Article 2

Definition

For the purpose of this Directive, 'zoos' means all permanent establishments where animals of wild species are kept for exhibition to the public for 7 or more days a year, with the exception of circuses, pet shops and establishments which Member States exempt from the requirements of this Directive on the grounds that they do not exhibit a significant number of animals or species to the public and that the exemption will not jeopardise the objectives of this Directive.

Article 3

Requirements applicable to zoos

Member States shall take measures under Articles 4, 5, 6 and 7 to ensure all zoos implement the following conservation measures:

⁽¹⁾ OJ C 204, 15.7.1996, p. 63.

⁽²⁾ Opinion of the European Parliament of 29 January 1998. (OJ C 56, 23.2.1998, p. 34), Council Common Position of 20 July 1998 (OJ C 364, 25.11.1998, p. 9), and Decision of the European Parliament of 10 February 1999 (not yet published in the Official Journal).

⁽³⁾ OJ L 61, 3.3.1997, p. 1. Regulation as last amended by Commission Regulation (EC) No 2307/97 (OJ L 325, 27.11.1997, p. 1).

⁽⁴⁾ OJ L 103, 25.4.1979, p. 1. Directive as last amended by Directive 97/49/EC (OJ L 223, 13.8.1997, p. 9).

⁽⁵⁾ OJ L 206, 22.7.1992, p. 7. Directive as last amended by Commission Directive 97/62/EC (OJ L 305, 8.11.1997, p. 42).

- participating in research from which conservation benefits accrue to the species, and/or training in relevant conservation skills, and/or the exchange of information relating to species conservation and/or, where appropriate, captive breeding, repopulation or reintroduction of species into the wild,
- promoting public education and awareness in relation to the conservation of biodiversity, particularly by providing information about the species exhibited and their natural habitats,
- accommodating their animals under conditions which aim to satisfy the biological and conservation requirements of the individual species, *inter alia*, by providing species specific enrichment of the enclosures; and maintaining a high standard of animal husbandry with a developed programme of preventive and curative veterinary care and nutrition,
- preventing the escape of animals in order to avoid possible ecological threats to indigenous species and preventing intrusion of outside pests and vermin,
- keeping of up-to-date records of the zoo's collection appropriate to the species recorded.

Article 4

Licensing and inspection

1. Member States shall adopt measures for licensing and inspection of existing and new zoos in order to ensure that the requirements of Article 3 are met.
2. Every zoo shall have a licence within four years after the entry into force of this Directive or, in the case of new zoos, before they are open to the public.
3. Each licence shall contain conditions to enforce the requirements of Article 3. Compliance with the conditions shall be monitored *inter alia* by means of regular inspection and appropriate steps shall be taken to ensure such compliance.
4. Before granting, refusing, extending the period of, or significantly amending a licence, an inspection by Member States' competent authorities shall be carried out in order to determine whether or not the licensing conditions or proposed licensing conditions are met.
5. If the zoo is not licensed in accordance with this Directive or the licensing conditions are not met, the zoo or part thereof:

- (a) shall be closed to the public by the competent authority; and/or
- (b) shall comply with appropriate requirements imposed by the competent authority to ensure that the licensing conditions are met.

Should these requirements not be complied with within an appropriate period to be determined by the competent authorities but not exceeding two years, the competent authority shall withdraw or modify the licence and close the zoo or part thereof.

Article 5

Licensing requirements set out in Article 4 shall not apply where a Member State can demonstrate to the satisfaction of the Commission that the objective of this Directive as set out in Article 1 and the requirements applicable to zoos set out in Article 3 are being met and continuously maintained by means of a system or regulation and registration. Such a system should, *inter alia*, contain provisions regarding inspection and closure of zoos equivalent to those in Article 4(4) and (5).

Article 6

Closure of zoos

In the event of a zoo or part thereof being closed, the competent authority shall ensure that the animals concerned are treated or disposed of under conditions which the Member State deems appropriate and consistent with the purposes and provisions of this Directive.

Article 7

Competent authorities

Member States shall designate competent authorities for the purposes of this Directive.

Article 8

Penalties

Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties shall be effective, proportionate and dissuasive.

*Article 9***Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive not later than 9 April 2002. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

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

*Article 10***Entry in force**

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

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 29 March 1999.

For the Council

The President

F. MÜNTEFERING
