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## I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 1446/2004**  
**of 13 August 2004**  
**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<sup>(1)</sup>, 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 14 August 2004.

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

Done at Brussels, 13 August 2004.

*For the Commission*  
J. M. SILVA RODRÍGUEZ  
*Agriculture Director-General*

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<sup>(1)</sup> OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1947/2002 (OJ L 299, 1.11.2002, p. 17).

## ANNEX

**to Commission Regulation of 13 August 2004 establishing the standard import values for determining the entry price of certain fruit and vegetables**

<i>(EUR/100 kg)</i>		
CN code	Third country code <sup>(1)</sup>	Standard import value
0707 00 05	052	92,6
	999	92,6
0709 90 70	052	78,8
	999	78,8
0805 50 10	382	55,0
	388	51,3
	508	46,6
	524	62,3
	528	60,2
	999	55,1
0806 10 10	052	95,4
	204	87,5
	220	100,7
	400	179,8
	624	139,6
	628	137,6
	999	123,4
0808 10 20, 0808 10 50, 0808 10 90	388	76,7
	400	104,4
	404	117,3
	508	69,7
	512	88,3
	528	108,5
	720	46,7
	800	167,5
	804	77,2
	999	95,1
0808 20 50	052	141,8
	388	95,3
	528	87,0
	999	108,0
0809 30 10, 0809 30 90	052	150,2
	999	150,2
0809 40 05	052	101,8
	066	32,0
	093	41,6
	094	33,4
	400	240,6
	624	135,6
	999	97,5

<sup>(1)</sup> Country nomenclature as fixed by Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 1447/2004**  
**of 13 August 2004**  
**imposing provisional safeguard measures against imports of farmed salmon**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3285/94 of 22 December 1994 on common rules for imports and repealing Regulation (EC) No 518/94<sup>(1)</sup>, as last amended by Council Regulation (EC) No 2474/2000<sup>(2)</sup>, and in particular Articles 6 and 8 thereof,

Having regard to Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) No 1765/82, (EEC) No 1766/82 and (EEC) 3420/83<sup>(3)</sup>, as last amended by Regulation (EC) No 427/2003<sup>(4)</sup>, and in particular Articles 5 and 6 thereof,

After consultations within the Advisory Committee established under Article 4 of Regulation (EC) No 3285/94 and of Regulation (EC) No 519/94 respectively,

Whereas:

**1. PROCEDURE**

- (1) On 6 February 2004, Ireland and the United Kingdom informed the Commission that trends in imports of farmed Atlantic salmon appeared to call for safeguard measures under Regulations (EC) No 3285/94 and 519/94; submitted information containing the evidence available as determined on the basis of Article 10 of Regulation (EC) No 3285/94 and Article 8 of Regulation (EC) No 519/94; and requested the Commission to take safeguard measures under those instruments.
- (2) Ireland and the United Kingdom provided evidence that imports into the European Community of farmed Atlantic salmon are increasing rapidly both in absolute terms, and relative to Community production and consumption.
- (3) They alleged that the increase in the volume of imports of farmed Atlantic salmon has, among other consequences, had a negative impact on the prices of like or directly competitive products in the Community, and on the market share held by the Community producers, resulting in damage to the Community producers.
- (4) Ireland and the United Kingdom further advised that, based on the information submitted by the Community producers, any delay in the adoption of safeguard measures by the European Community would cause damage which it would be difficult to repair, and that measures should therefore be adopted as a matter of urgency.
- (5) The Commission informed all Member States of the situation and consulted with them on the terms and conditions of imports, import trends and the evidence as to serious injury, and the various aspects of the economic and commercial situation with regard to the Community product in question.

<sup>(1)</sup> OJ L 349, 31.12.1994, p. 53.

<sup>(2)</sup> OJ L 286, 11.11.2000, p. 1.

<sup>(3)</sup> OJ L 67, 10.3.1994, p. 89.

<sup>(4)</sup> OJ L 65, 8.3.2003, p. 1.

- (6) On 6 March 2004, the Commission initiated an investigation relating to serious injury or threat thereof to the Community producers of the product like or directly competitive with the imported product, which has been defined as farmed salmon, whether or not filleted, fresh, chilled or frozen ('the product concerned')<sup>(1)</sup>, as explained below.
- (7) The Commission officially advised the exporting producers and importers as well as their representative associations known to be concerned, the representatives of exporting countries and the Community producers of the investigation. The Commission sent questionnaires to all these parties, to representative associations of salmon farmers in the Community, and to those parties who made themselves known within the time limits set in the Notice of Initiation. Pursuant to Articles 5 of Council Regulation (EC) No 519/94 and 6 of Council Regulation (EC) No 3285/94 the Commission also gave parties directly concerned the opportunity to make their views known in writing and to request a hearing.
- (8) Certain governments, certain exporting producers and their representative associations, the Community producers, suppliers, processors and importers and their representative associations submitted comments in writing. The oral and written comments submitted by the parties were considered and taken into account in reaching the provisional findings. All the information which was deemed necessary for the purpose of a provisional determination was sought and verified. Verification visits were carried out at the premises of eight Community producers.
- (9) All parties were informed of the essential facts and considerations on the basis of which it was intended to impose provisional safeguard measures and the form of the proposed provisional measures. They were granted the opportunity to submit comments and these were considered, and, where deemed appropriate, taken into account in the preliminary findings.

## 2. LIST OF COOPERATING PARTIES

### Producers

Ardvar Salmon Ltd, Inverness, Scotland, United Kingdom.

Atlantic West, Western Isles HS7 5LZ, Scotland, United Kingdom.

Hennover Salmon, West George Street, Scotland, United Kingdom.

Pan Fish Scotland Ltd, Argyll, Scotland, United Kingdom.

Loch Duart Ltd, Scourie By Lairg Sutherland, Scotland, United Kingdom.

Marine Harvest (Scotland), Craigmack Road, Scotland, United Kingdom.

Orkney Salmon Ltd, Bellshill, Scotland, United Kingdom.

Stolt Sea Farm Ltd, Western Isles, Scotland, United Kingdom.

West Minch Salmon Ltd, Western Isles, Scotland, United Kingdom.

Western Isles Seafood Co Ltd, Western Isles, Scotland, United Kingdom.

Sidinish Salmon Ltd, Western Isles, Scotland, United Kingdom.

Creevin Salmon, Mountcharles, Ireland.

Marine Harvest Ireland, County Donegal, Ireland.

<sup>(1)</sup> OJ C 58, 6.3.2004, p. 7.

**Importers/processors**

Laschinger GmbH, Bischofsmais, Germany.

Syndicat National de l'Industrie du Saumon Fumé, Paris Cedex 14, France.

Vensy España SA, Malaga, Spain.

SIF France, Boulogne sur Mer, France.

Moulin de la Marche, Chateaulin, France.

**Exporters**

Aalesundfisk AS, Aalesund, Norway.

Marine Harvest Norway AS, Bergen, Norway.

Cultivos Yadrán SA, Renca, Chile.

Invertec Pesquera Mar de Chiloe SA, Providencia, Chile.

Marine Harvest Chile SA, Puerto Montt, Chile.

Pesca Chile SA, Piso 6, Chile.

Compañía Pesquera Camanchaca SA, Puerto Montt, Chile.

Chilefood Sociedad Anonima, Montalva No 4.800, Chile.

Fjord Seafood Chile SA, Puerto Montt, Chile.

Pesquera Los Fjords Ltda, Puerto Montt, Chile.

Salmones Pacific Star SA, Santiago, Chile.

Patagonia Salmon Farming SA, Puerto Montt, Chile.

Salmones Mainstream SA, Puerto Montt, Chile.

Yadrán Quellón SA, Santiago, Chile.

Salmones Friosur, Puerto Chabuco, Chile.

Aguas Claras, Puerto Montt, Chile.

Pesquera EICOSAL, Puerto Montt, Chile.

Cultivos Marinos Chiloe, Chiloe Island, Chile.

Patagonia Salmon Farming, Puerto Montt, Chile.

Salmones Multiexport Ltda, Puerto Montt, Chile.

East Salmon P/F, Klaksvik, Faeroe Islands.

Faeroe Seafood Prime, Torshavn, Faeroe Islands.

P/F Bakkafrost, Glyvvar, Faeroe Islands.

Landshandilin P/F, Torshavn, Faeroe Islands.

Viking Seafood P/F, Strendur, Faeroe Islands.

S. A. Salmon Sp/f, Faeroe Islands.  
PRG Export Limited, Gota, Faeroe Islands.  
P/F Vestsalmon, Kollafjördur, Faeroe Islands.  
Samherji hf, Akureyri, Iceland.  
Norwegian Seafood Federation, Bergen, Norway.  
The Faeroe Fish Farming Association, Tórshavn, The Faeroe Islands.

### Suppliers

Ewos, West Lothian, United Kingdom.  
Havsbrun Ltd, Fuglafjordur, Faeroe Islands.  
Landcatch Ltd, Argyll, United Kingdom.

### 3. PRODUCT CONCERNED

- (10) The product in respect of which the Commission was informed that trends in imports appear to call for safeguard measures is farmed Atlantic salmon, whether or not filleted, fresh, chilled or frozen.
- (11) It is considered that to restrict the product concerned to farmed Atlantic salmon would be to define the product concerned too narrowly. Based on the physical characteristics of different species of salmon (size, shape, taste etc.), the production process, and the substitutability of all types of farmed salmon from the perspective of the consumer, it is considered that all farmed salmon is a single product. Similarly, whilst farmed salmon is sold in different preparations (whole fish gutted, whole fish head-off and gutted, fillets), these different preparations all serve the same end-use and are readily capable of being substituted.
- (12) Some parties argued that frozen salmon is a different product to fresh salmon and should not be considered as part of the product concerned. One party claimed that it is preferred by processors whilst consumers prefer fresh salmon. Another claimed that it is unsuitable as a raw material for salmon smoking. These claims were found to be unsubstantiated. Processors use both fresh and frozen farmed salmon and it was found that any differences are minimal. Further, both preparations serve the same end-use. Therefore, this argument had to be rejected.
- (13) Therefore, it is considered that farmed (other than wild) salmon (whether fresh, chilled or frozen) in the different preparations described is a single product. It is currently classified within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, ex 0304 10 13 and ex 0304 20 13.

### 4. LIKE OR DIRECTLY COMPETITIVE PRODUCTS

- (14) A preliminary examination has been undertaken to establish whether the product produced by the Community producers (hereinafter referred to as 'the like product') is like or directly competitive with the imported product concerned.
- (15) In reaching a preliminary determination, the following preliminary findings in particular were taken into account.
- (16) (a) the imported product and the Community product share the same international classification for tariff purposes at HS code level (six digits). Furthermore, they share the same or similar physical properties such as taste, size, shape and texture. The domestic product is often marketed as a premium quality product and often enjoys a price premium at the retail level. However, 'likeness' does not require products to be completely identical, and the minor variations in quality are not sufficient to change the overall finding of likeness between the imported and domestic products;



- (b) the imported product and the Community product were sold via similar or identical sales channels, price information was readily available to buyers and the product concerned and the product of the Community producers competed mainly on price;
- (c) the imported product and the Community product both serve the same or similar end-uses, they were, therefore, alternative or substitute products and were easily interchangeable;
- (d) the imported product and the Community product were both perceived by consumers as alternatives to satisfy a particular want or demand, in this respect the differences identified by certain exporters and importers were simply minor variations.
- (17) Therefore, the preliminary conclusion reached is that the imported product and the Community product are 'like or directly competitive'.

## 5. IMPORTS

### 5.1. Increase in imports

#### 5.1.1. Introduction

- (18) A preliminary examination has been undertaken based on data for the period 2000 to 2003, focusing on imports in the most recent period for which data are available, to establish whether the product concerned is imported into the Community in such greatly increased quantities, absolute or relative to total Community production, and/or on such terms or conditions as to cause, or threaten to cause, serious injury to the Community producers. One party claimed that the import increase was due to the fact that imports of wild salmon were included in the import data. Eurostat data does not distinguish between wild and farmed salmon. However, the available information (US and Canadian export statistics) indicates that imports of wild salmon to the Community are small and have, in any event, decreased over the period 2000 to 2003. One party also claimed that 2000 was an inappropriate base year, claiming that salmon prices were unusually high in that year. However, the analysis focuses on the key developments in the most recent period, and changing the base year to 1999 or 2001 would not change the outcome of that analysis.
- (19) The provisional findings set out below are thus based on the data from 2000 to 2003.

#### 5.1.2. Volume of imports

	2000	2001	2002	2003
Imports (t)	372 789	379 764	396 772	455 948
Year-on-year increase		2 %	4 %	15 %
Total Community production (tonnes)	146 664	161 854	168 374	180 593
Imports/production (t)	254 %	235 %	236 %	252 %

Source: Import figures provided by Eurostat. Community production calculated from government data for Ireland and the United Kingdom and industry data for France and Latvia.

- (20) Imports increased from 372 789 tonnes in 2000 to 455 948 tonnes in 2003, an increase of 22 %. Between 2002 and 2003, imports increased by 15 %.
- (21) Relative to Community production, imports fell from 254 % in 2000 to 235 % in 2001, but have since increased again to 252 % in 2003.

- (22) Quarterly figures for the years 2002 and 2003 show that in 2003 quarterly imports were higher than in the same quarter in 2002, and that the highest increases (up to 20,8 %) occurred in the second half of 2003.

	Q1 2002	Q2 2002	Q3 2002	Q4 2002
Volume (t)	86 753	96 988	93 375	119 657

  

	Q1 2003	Q2 2003	Q3 2003	Q4 2003
Volume (t)	92 667	108 655	112 862	141 763
Year-on-year increase	6,8 %	12,0 %	20,8 %	18,5 %

Source: Eurostat.

### 5.1.3. Conclusion

- (23) Based on the import data for the period from 2000 to 2003, it is concluded on a preliminary basis that there is a recent, sudden, sharp and significant increase in imports, both absolute and relative to production.

### 5.2. Prices of imports

- (24) The conditions under which imports have been made have also been considered by reference to Eurostat data. While the data includes a small quantity of wild salmon, this is considered to have had no appreciable effect on prices.
- (25) In this regard, it should be noted that between September 1997 and May 2003, a significant proportion of imports of farmed salmon from Norway (which has around 55 % of the Community market) were subject to an MIP. In the course of 2002, violations of the MIP undertakings by certain Norwegian exporting producers began to undermine the effectiveness of that instrument and caused price falls. The proposed termination of the AD and CVD measures against imports from Norway was then announced in December 2002 and those measures were terminated in May 2003. Import prices during 2002 and the first half of 2003 fell partly due to violation of, or voluntary withdrawal from, the MIP by some Norwegian exporters.
- (26) Import prices fell by 28,5 % between 2000 and 2003. This is considered to be outwith the normal price fluctuation on the market because of the extent of the decrease in absolute terms, and because exporting producers were not earning supernormal profits in the year 2000 and the cost of production has not materially decreased between 2000 and 2003.

	2000	2001	2002	2003
Import price	3,55	2,99	2,87	2,54

Source: Eurostat.

- (27) Recent price developments are more clearly illustrated by quarterly data. Having remained relatively stable at between EUR 2,83 and EUR 2,93 in 2002, import prices dropped from EUR 2,87 in Q1 2003 to EUR 2,24 in Q3 2003 before making a partial recovery to EUR 2,48 in Q4 2003.

	Q1 2002	Q2 2002	Q3 2002	Q4 2002
Import price	2,83	2,93	2,86	2,85

	Q1 2003	Q2 2003	Q3 2003	Q4 2003
Import price	2,87	2,62	2,24	2,48

Source: Eurostat.

- (28) Whilst wholly reliable Eurostat data is not yet available for Q1 2004, currently available information indicates that prices increased to average around EUR 2,53/kg in Q1 2004. This is slightly below their average in 2003, and, the latest information available indicates that prices are again following a downward trend and are very low. While some claim that there will be price increases in the coming months, this was not substantiated and the current very low prices are indeed confirmed by industry sources in exporting countries.

### 5.3. Market share of imports

- (29) The market share of imports fell from 73,5% in 2000 to 71,9% in 2001, and remained stable at about this level in 2002 (72%). In 2003, imports increased their market share from 72,0% in 2002 to 75,0%, an increase of 3,0 percentage points and their highest level in the period considered.

	2000	2001	2002	2003
Imports	73,5%	71,9%	72,0%	75,0%

## 6. DEFINITION OF THE COMMUNITY PRODUCERS

- (30) Almost all production of the product concerned in the Community was made in Scotland and Ireland, although there are also two producers in France and at least one in Latvia.
- (31) In the year 2003, total Community production of the product concerned was 180 593 tonnes, of which the producers which cooperated fully in the provisional stage of the investigation accounted for 85 231 tonnes, equivalent to 47% of the total Community production. They therefore represent a major proportion of total Community production within the meaning of Article 5(3)(c) of Regulation (EC) No 3285/94 and Article 15(1) of Regulation (EC) No 519/94. They are accordingly considered as the Community producers for the purposes of the provisional determinations.

## 7. UNFORESEEN DEVELOPMENTS

- (32) Towards the end of 2002, Norwegian forecasts of their overall salmon production in 2003 were around 446 000 tonnes. By February 2003, Kontali Analyse (an industry information provider) was forecasting harvesting of 475 000 tonnes. This was 30 000 tonnes higher than Norwegian production in 2002, but it was expected that most of this increase would be directed to emerging markets such as Russia and Poland and to markets in the Far East such as Japan, Hong Kong, Taiwan and China. Growth in the Far East had been negative since 2000, but, Norway expected to reverse this decline in 2003 by opening up the Chinese market.
- (33) In fact, actual Norwegian production in 2003 was 509 000 (around 63 000 tonnes higher than had been forecast by the Norwegian Government), and harvesting was 6% higher than Kontali's harvesting forecast. Production was also 64 000 tonnes (or 14%) higher than Norwegian production in 2002. At the same time, far from reversing the decline in sales in the Far East, the rate of decline actually accelerated to -6,0%. In addition, growth in emerging markets also declined — from 47% to 32% in the case of Russia, and from 50% to 30% in the case of European countries outwith the Community. Indeed, overall global consumption grew by only 6% compared to 9% in 2002 and 14% in 2001. This, as it turned out, erroneous forecast of production, combined with the development of world consumption, was unforeseen.

- (34) In consequence, Norway experienced a serious problem of overproduction, a problem which it appeared to recognise. Indeed, in August 2003, in an effort to remove excess product from the market, certain Norwegian producers considered freezing 30 000 tonnes of farmed salmon. However, this idea was later abandoned and the market continued to be oversupplied.
- (35) In addition, in December 2002 the Commission had announced its proposal to terminate anti-dumping and anti-subsidy measures against Norway. These were subsequently terminated in May 2003. The measures had in large part taken the form of MIPs, which in effect guaranteed a minimum price for exporting producers. When the proposed withdrawal of the measures was announced, many Norwegian exporting producers either voluntarily gave up their undertakings or simply ceased to observe them. Norwegian salmon producers as a whole are heavily indebted to the Norwegian banks. As prices slid, and in the absence of MIPs, the banks lending to Norwegian producers began to take steps to reduce their exposure by demanding repayment. This created a vicious circle which led to an increase in harvesting, further pressure on prices and increased pressure to export. Although some temporary and small adjustment of import prices was to be expected as a result of the termination of the measures against Norway, the extent of the fall in prices (exacerbated by the problem of overproduction) and the vicious circle which that created because of the operation of the banking system described above, were unforeseen.
- (36) During 2003, the value of the Norwegian kroner fell by 13 % relative to the euro, by 12 % relative to the Danish krone and by 14 % relative to the Swedish krone. Although currency movements are to be expected, these were relatively large and sustained fluctuations and outwith the normal range of currency fluctuations. Although the euro also strengthened by comparison with the British pound, the British pound fell by only 6 % making farmed salmon produced in the United Kingdom more expensive in the euro-zone relative to Norwegian imports than it had been at the beginning of that year. The principal importers of Norwegian farmed salmon in the Community are Denmark, Sweden, Germany and Poland. However, much of these imports are directly transported within the Community to euro-zone countries such as France and Spain. In addition, over half of the farmed salmon imported to Denmark, and almost all of that imported to Poland and other new Member States, is re-sold in the euro-zone after processing. In consequence, the fall in the value of the Norwegian kroner relative to the euro had an effect not only on Norwegian imports directly to the euro-zone, but also on imports to those countries such as Denmark and Poland which process farmed salmon to re-sell in the euro-zone. The effect of these currency movements was to make the European Community market as a whole more attractive to Norwegian exporting producers, to some extent insulating them from the effect of a decrease in their prices in euro and krone, and helping them to maintain their export revenues in their domestic currency. Nevertheless, unit prices fell even in Norwegian kroner. At the same time, these currency movements made imported salmon cheaper in the European Community and made importing more attractive to importers and users such as the processing industry. In consequence, much of the overproduction in Norway was exported to the European Community.
- (37) The preliminary analysis is that the unforeseen development which caused the increase in imports was significant overproduction in Norway (despite lower forecasts), exacerbated by the failure of the Norwegian industry to achieve forecast growth in exports to markets outwith the Community, the unexpected extent of the effects of the termination of trade defence measures against Norway and the operation of the Norwegian banking system as described above, together with the rise in the value of the euro which made the Community market as a whole a more attractive destination for Norwegian exports. These developments and their effect will be investigated further at the definitive stage of this proceeding.

## 8. SERIOUS INJURY

### 8.1. Introduction

- (38) In order to make a provisional determination of serious injury to the Community producers of the like product, a preliminary evaluation of all relevant factors of an objective and quantifiable nature having a bearing on their situation has been undertaken. In particular, for the product concerned, an evaluation has been carried out of the development of global Community data for consumption, production capacity, production, capacity utilisation, employment, productivity, overall sales and market share. These global data are based on statistical information gathered by the United Kingdom and Ireland through comprehensive industry surveys. As concerns company specific data, these are based upon data provided by the cooperating Community producers on cash flow, return on capital employed, stocks, price, undercutting and profitability for the years 2000 to 2003.
- (39) It should be noted at the outset that in the Community salmon farming industry, as elsewhere, there is a long and relatively inflexible production cycle leading to harvesting and that, once harvested, the farmed salmon must be sold immediately since they can only be stored for more than a few days if frozen. Freezing is expensive, and in any event, there is limited freezing capacity in the Community. In consequence, the level of production must be planned at least two years in advance and, once planned, cannot be altered except at the margins. Therefore, oversupply has a delayed effect on production, but an immediate and severe effect on prices.

### 8.2. Analysis of the situation of the Community Producers

#### 8.2.1. Consumption

	2000	2001	2002	2003
Consumption (t)	507 705	527 970	550 943	607 728
Year-on-year increase		4,0 %	4,4 %	10,3 %

- (40) Consumption of the product concerned in the Community was provisionally established on the basis of the total production by all producers in the Community and total imports of the product concerned into the Community as reported by Eurostat, less European Community exports.
- (41) Between 2000 and 2003, consumption in the Community increased by 19,7 % from 507 705 tonnes to 607 728 tonnes.
- (42) It should be noted that salmon has a relatively high level of price elasticity and the markedly higher increase in consumption in 2003 can therefore be at least partially explained by the fall in prices at wholesale level.

#### 8.2.2. Production capacity and capacity utilisation

	2000	2001	2002	2003
Capacity (t)	340 029	340 294	339 359	347 671
Capacity utilisation	43 %	48 %	50 %	52 %

- (43) Farmed salmon production in the European Community is effectively limited by government licences specifying the maximum amount of live fish which may be held in the water at any place at any point in time. Capacity figures given are based on the total quantity licensed rather than the physical fish-holding capacity of the cages operated by the Community producers. The cost of applying for and maintaining licences is relatively low and therefore the cost of maintaining excess capacity is also low.

- (44) Having remained stable between 2000 and 2002, the preliminary investigation showed that theoretical production capacity increased by 2,2 % between 2000 and 2003.
- (45) Capacity utilisation (i.e. the quantity of fish in the water compared to the quantity licensed) increased from 43 % in 2000 to 48 % in 2001 and then increased steadily until 2003 when it reached 52 %. This reflects the fact that production increased by 23 % between 2000 and 2003 whilst the licensed capacity increased by only 2,2 %.

#### 8.2.3. Production

	2000	2001	2002	2003
Production (t)	146 664	161 854	168 374	180 593

- (46) Production (taken as fish harvested) grew by 23 % from 146 664 tonnes in 2000 to 180 593 tonnes in 2003, following a single year increase of 7 %.
- (47) It should be noted that due to the long production cycle, production is planned at least two years in advance and that, once the production cycle is commenced, production levels cannot be adjusted except at the margins.

#### 8.2.4. Employment

	2000	2001	2002	2003
Employment (end of period)	1 269	1 162	1 195	1 193

- (48) Employment in relation to the product concerned fell by 6 % from 1 269 in 2000 to 1 193 in 2003. There was a reduction in employment in 2001, employment partially recovered in 2002 and remained stable in 2003.

#### 8.2.5. Productivity

	2000	2001	2002	2003
Productivity (tonnes/employee)	115	139	141	151

- (49) Productivity has consistently increased throughout the period under consideration from 115 tonnes in 2000 to 151 tonnes in 2003. This reflects the increasing use of automated feed systems and other labour saving devices, and the strong pressure to reduce costs in the face of mounting financial losses.

#### 8.2.6. Sales volume

	2000	2001	2002	2003
Sales in the Community (tonnes)	134 916	148 206	154 171	151 780

- (50) Between 2000 and 2002, the Community producers' sales of the like product increased by 14,3 % from 134 916 to 154 171 tonnes. This increase occurred against a background of an increase in consumption over the same period of 8,5 %. Between 2002 and 2003, the Community producers' sales decreased by 1,6 % from 154 171 to 151 780 tonnes, notwithstanding an increase in consumption between 2002 and 2003 of 10,3 %.

#### 8.2.7. Market share

	2000	2001	2002	2003
Market share	26,5 %	28,1 %	28,0 %	25,0 %

- (51) The Community producers' market share increased from 26,5 % in 2000 to 28,1 % in 2001 and remained at about this level in 2002, but then fell by 3,0 percentage points to 25,0 % in 2003, its lowest level in the period considered. This reflects the fact that imports increased not only in absolute terms, but also relative to consumption, in 2003.

#### 8.2.8. Cash flow

Financial year	2000	2001	2002	2003
Cash flow (index)	100	-221	-384	-221

- (52) Cash flow could only be examined at the level of the cooperating companies which produced the product concerned rather than in relation to only the product concerned itself. This indicator was therefore seen as less meaningful than the other indicators shown. Nevertheless, it can be seen that there was strongly negative cash flow in 2001, 2002 and 2003.

#### 8.2.9. Return on capital employed (ROCE)

Financial year	2000	2001	2002	2003
ROCE	34	-1	2	-20

- (53) ROCE could also only be examined on the level of the cooperating companies which produced the product concerned rather than in relation to only the product concerned itself. This indicator was therefore also seen as less meaningful than the other indicators. Nevertheless, it can be seen that ROCE fell from 34 % in 2000 to close to zero in 2001 and 2002 before falling to -20 % in 2003.

#### 8.2.10. Price of the like product

	2000	2001	2002	2003
Unit prices of Community sales (EUR 1 000/tonne) (*)	3,50	3,23	3,02	2,79

(\*) Prices adjusted to ex Glasgow.

- (54) The average price of the like product fell by 20,3 % between 2000 and 2003, with a steady decline in prices over that period. Prices reached their lowest point (EUR 2,79/kg) in 2003.
- (55) In Q1 2004, the information available indicates that the average unit price of the Community producers' sales increased slightly, in line with the slight increase in average import prices. However, the latest information indicates that prices are again following a downward trend. One party argued that (by reference to average annual exchange rates) price falls were less significant in pounds sterling. Nevertheless, it is considered that the Commission should not diverge from its consistent practice in trade defence cases in using the euro as the unit of currency.

#### 8.2.11. Costs

	2000	2001	2002	2003
Average cost of production per tonne (EUR/kilo)	3,1	3,2	3,0	3,1

- (56) In addition to price development, the development of costs has also been considered. Costs have fluctuated between EUR 3,0 and EUR 3,2/kg over the period 2000 to 2003.

## 8.2.12. Profitability

	2000	2001	2002	2003
Net profit/loss on Community sales	7,3 %	- 3,3 %	- 2,5 %	- 17,1 %

- (57) The profitability of the Community producers' sales in the Community fell from 7,3 % in 2000 to -3,3 % in 2001. Losses became less pronounced in 2002 (-2,5 %) but then increased to -17,1 % in 2003. In 2003, as imports increased to their highest level and the average price of imports fell to its lowest level (EUR 2,54/kg), the average price of the Community product also fell to its lowest level (EUR 2,79/kg). The Community producers' fall in profitability between 2000 and 2003 occurred at the same time as the price per kilo of the Community producers' product fell from EUR 3,50 to EUR 2,79.

## 8.2.13. Stocks

	2000	2001	2002	2003
Closing stock (t)	36 332	39 048	53 178	43 024

- (58) Stocks in this context refer to live fish in the water. The Community producers, as all others, have negligible stocks of harvested fish as they have to be sold immediately. Therefore, a fall in closing stock levels indicates a decrease in the quantity of live fish being on-grown for harvesting in the following two years. Therefore, in this case, falling stock levels are an indicator of growing injury.
- (59) Stock levels increased from 36 332 tonnes in 2000 up to 53 178 tonnes in 2002 and then declined to 43 024 tonnes in 2003. This represents a fall in stocks between 2002 and 2003 of 19,1%.

## 8.2.14. Conclusion

- (60) It is recalled that the investigation has shown that between 2000 and 2003, and in particular as between 2002 and 2003, imports of the product concerned have taken place in increased quantities and high volumes onto the Community market.
- (61) As to the situation of the Community producers, between 2000 and 2002, theoretical production capacity remained more or less stable, whilst production increased by 14,8%. In consequence, capacity utilisation increased from 43 % to 50 % in this period. Stocks of live fish in the water also increased. There was some loss of employment, whereas productivity increased mostly due to greater use of automation.
- (62) Sales volumes increased by 14,3 % between 2000 and 2002 (compared to 8,5 % growth in consumption), and the Community producers' market share increased from 26,5 % to 28,0 %.
- (63) However, even in this period prices fell by 13,7 % between 2000 and 2002, and despite a small decrease in costs in 2002 (partly due to higher capacity utilisation and better productivity), this appears to have led to a fall in profitability from 7,3 % in 2000 to losses of -3,3 % and -2,5 % in 2001 and 2002. ROCE and cash flow also developed negatively in this period.



- (64) Between 2002 and 2003, the position of the Community producers worsened considerably. Although production capacity and production increased (by 7,3%) in line with previously developed production plans and this led to higher capacity utilisation and improved productivity, all other indicators developed negatively. Stocks of fish in the water fell by 19,1%. In the face of 10,3% growth in consumption, the Community producers' sales fell by 1,6% and they lost market share. In addition, prices fell by a further 7,6%, whilst costs increased to their average level for the four-year period. This led to a sharp drop in profitability and the Community producers incurred losses of 17,1%. These losses were reflected in an overall ROCE of -20%. Whilst cash flow appeared to improve, this actually reflected reduction in stocks of fish in the water and an inability to reinvest.
- (65) Taking account of all of these factors the preliminary conclusion reached is that the Community producers have suffered serious injury in terms of a significant overall impairment of the situation in the position of the Community producers.

## 9. CAUSATION

- (66) In order to examine the existence of a causal link between the increased imports and the serious injury, and ensure that injury caused by other factors is not attributed to increased imports, the injurious effects of factors considered to be causing injury have been distinguished from each other, the injurious effects have been attributed to the factors which are causing them, and, after having attributed injury to all causal factors present, it has been determined whether increased imports are a 'genuine and substantial' cause of serious injury.

### 9.1. Analysis of causation factors

#### 9.1.1. *Effect of increased imports*

- (67) As shown above, between 2000 and 2003, and in particular as between 2002 and 2003, imports of the product concerned have taken place in increased quantities and high volumes onto the Community market.
- (68) Farmed salmon is essentially a commodity product, and the product concerned and the like product compete mainly on price. It is generally accepted that imports, particularly from Norway, are the market leader and price-setter. In consequence, even low levels of undercutting result in price depression for the Community producers.
- (69) In the current case, the most important injurious effect of increased imports was the large financial losses to the Community producers. Due to the market and price leadership of imports, increased imports drove down prices throughout the Community. Had imports increased to a lesser degree, this price pressure would also have been lower. Had demand in the Community market been such as to sustain such an increase in imports at substantially higher prices, albeit such an increase would have resulted in lower sales and market share for the Community producers, it is possible that the Community producers would not have suffered serious injury.
- (70) Between 2000 and 2002, the price of imports fell by 19% and was closely followed by the Community producers' prices. Whilst the market share of the Community producers' sales in the Community increased in this period, this reflected production decisions taken in earlier years and in both 2001 and 2002 the Community producers' sales were made at a loss.
- (71) Between 2002 and 2003, imports grew by 15%. The market share of imports grew from 72% to 75%, whilst the market share of the Community producers fell from 28% to 25%. Over the same period imports grew from 236% to 252% of Community production. Thus, imports appear to have increased relative to both Community production and consumption at the expense of the Community producers.

- (72) However, the most important aspect of the increase in imports was its effect on the prices and profitability of the Community producers. As noted above, it is generally accepted that imports (particularly from Norway) are the price leader in the Community market for farmed salmon. The existence of undercutting has therefore been examined to establish whether indeed the low priced imports have tended to depress the prices practised by the Community producers.
- (73) In order to reach a preliminary determination as to the level of undercutting, price information was examined for comparable time periods, at the same level of trade and for sales to similar customers. Based on a comparison of average ex-Glasgow prices charged by the Community producers and by exporting producers to the Community importers (cif European Community border including customs duty), domestic prices were undercut in the three most recent years by between 3,1 % and 7,1 %. This appears to have resulted in price depression for the Community producers because, due to their large market share, prices are set by imports. In particular, it can be seen that the increase in imports at ever lower prices until Q3 2003 forced the Community producers to continually reduce their prices until Q3 2003 leading to the losses sustained by them in that year.
- (74) A direct comparison of import prices and the Community producers' prices confirms this analysis. Import prices fell by 28,5 % between 2000 and 2003, from EUR 3,62 to EUR 2,59/kg including duty. Over the same period, the average price of the like product fell by 20 % from EUR 3,50 to EUR 2,79/kg, with a steady decline in prices over that period.
- (75) Between 2002 and 2003, the average unit price of imports fell from EUR 2,93 to EUR 2,59/kg including duty. As imports increased to their highest level and the average price of imports fell to its lowest level (EUR 2,59/kg including duty), import prices led Community producers' prices in a downward trend and the average price of the Community product fell to its lowest level (EUR 2,79/kg). The average unit price of the Community product (adjusted ex-Glasgow) fell from EUR 3,02 to EUR 2,79/kg, representing a fall of 8 %.

	2000	2001	2002	2003
Unit prices of Community sales (EUR 1 000/tonne) (*)	3,50	3,23	3,02	2,79
Unit prices of imports incl. customs duty (EUR 1 000/tonne) (**)	3,62	3,05	2,93	2,59

(\*) Prices adjusted to ex Glasgow.

(\*\*) Import prices are cif including import duty of 2 %.

- (76) The fall in the Community producers' prices appears to have been the main cause of a significant fall in their profitability. In 2000, when their costs per kilo were EUR 3,1 and their sales price (adjusted ex-Glasgow) was EUR 3,50, the Community producers made a profit of 7,3 %. In 2001 and 2002, although their capacity utilisation, production, productivity, stocks of live fish, sales and market share all increased, they incurred financial losses, reduced overall ROCE and negative overall cash flow as their sales prices (adjusted ex-Glasgow) fell to EUR 3,23 and EUR 3,02 respectively and costs first slightly increased and then fell to EUR 3,2 in 2001 and EUR 3,0 in 2002, respectively. Employment also fell.

- (77) In 2003, as prices (adjusted ex-Glasgow) fell to EUR 2,79 under pressure from low priced imports, and with costs at their 2000 level of EUR 3,1, the Community producers incurred a loss of 17,1%. This was reflected in the negative overall ROCE and cash flow. At the same time their sales volume dropped by 1,6% and their market share fell by 3,0 percentage points, as the volume and market share of imports increased. Albeit capacity, capacity utilisation and production, productivity increased and employment remained stable, the effect of the increase in low priced imports on capacity utilisation and production and employment is delayed. That production can be expected to decrease as a result of the increase in imports is shown by the decrease in stocks of live fish in 2003.
- (78) For the foregoing reasons, the preliminary conclusion is that there is a correlation between the increase in imports and the serious injury suffered by the Community producers, and that the increase in low priced imports has had injurious effects on the Community producers, particularly in terms of downward pressure on prices on the Community market resulting in large financial losses to the Community producers.

#### 9.1.2. *Effect of changes in consumption in the United Kingdom*

- (79) One party argued that there had been an alleged fall in consumption in the United Kingdom in 2003 and that this had caused injury to the Community producers. However, the United Kingdom market cannot be isolated from the overall Community market and European Community consumption increased by 19,7% between 2000 and 2003, and by 10,3% between 2002 and 2003. Therefore, the reason for the Community producers' substantial losses in 2003 appears to have been the low prices rather than an alleged fall in consumption.

#### 9.1.3. *Effect of changes in export performance*

	2000	2001	2002	2003
Exports (t)	11 748	13 648	14 203	28 813

- (80) The effect of variations in the level of exports has also been examined. Exports increased throughout the period considered, and indeed doubled between 2002 and 2003 and it is therefore concluded, despite a claim by one party to the contrary, that the changes in the level of exports were not a cause of the serious injury suffered by the Community producers. In any event, data relating to profitability is based on data relating to Community sales only.

#### 9.1.4. *Effect of any excess capacity*

- (81) Whether injurious effects may have resulted from excess capacity amongst the Community producers has also been examined. Theoretical capacity increased during the period of the investigation by 2,2% between 2000 and 2003 – by considerably less than production and consumption. In addition, as previously noted, the theoretical capacity is the total quantity of live fish for which government licences are held. The cost of applying for and maintaining licences is low. Indeed, the main cost drivers are the cost of smolts (baby fish), feed and labour. Therefore, the preliminary conclusion is that the increase in theoretical capacity did not cause injurious effects to the Community producers.

9.1.5. *Effect of competition amongst the Community producers*

- (82) Some exporters argued that the reason behind the fall in the price of salmon on the Community market was an oversupply by the Community producers. However, imports increased by 15 % in 2003 whereas the Community producers' sales in the Community decreased. Further, imports are the price leader in this market, not the Community producers. Indeed, an examination of the pricing behaviour of all parties in 2002 and 2003 clearly shows that imports were consistently sold at lower prices than those of the Community producers, and that the Community producers' prices followed those of imports in a downward trend. The effect of competition amongst the Community producers balances itself amongst them — losses incurred by one are offset by gains made by another *ceteris paribus*. Therefore, the preliminary conclusion is that competition amongst the Community producers was not a cause of the serious injury observed.

9.1.6. *Effect of increased mortality on production costs*

- (83) One party argued that higher than normal fish mortality rates in Ireland and disease outbreaks in the United Kingdom and Ireland in 2002 and 2003 could have increased production costs and interrupted the normal production cycle for some producers. The information currently available suggests that these phenomena were limited to a small number of farms. Further, as the table below shows, the Community producers' production costs fell in 2002 and were close to their four year average in 2003. Therefore, the preliminary conclusion is that higher than normal fish mortality rates were not the cause of material injurious effects. Nevertheless, this argument will be further investigated in the course of the definitive stage of the investigation.

	2000	2001	2002	2003
Average cost of production (EUR 1 000/tonne)	3,1	3,2	3,0	3,1

9.1.7. *Effect of higher production costs generally*

- (84) One party argued that the Norwegian industry has lower production costs than the Community producers and that this is a reason for increased imports and serious injury. The information currently available suggests that whilst Norway enjoys advantages in relation to certain costs, the Community producers enjoy advantages in relation to others. Overall, it is noted that whilst the Community producers are incurring significant losses in the current market, so too are Norwegian producers. As noted in point 8.2.12, the Community producers made a loss of -2,5 % in 2002. Norwegian Government data indicate that in 2002 for a sample of 151 salmon and rainbow trout farms losses were -13 %. (No comparable data have yet been published for 2003.) In addition, they were operating under a heavy burden of debt, representing a significant proportion of their total costs. Their total debt (excluding equity and provisions) was NOK 6,8 billion compared to a total turnover of NOK 5,7 billion<sup>(1)</sup>. This situation has in some cases led to the Norwegian banks effectively taking ownership of Norwegian producers. Therefore, the preliminary conclusion is that Norwegian producers are not more efficient than the Community producers, but this argument will be further investigated in the course of the definitive stage of the investigation.

9.1.8. *Higher transport costs in Scotland*

- (85) One party argued that there is a less developed infrastructure in remote areas of Scotland and that this increases costs and may cause injury to Community producers. In this regard, it is noted that fish farming in Norway, which is the Community market leader, is often undertaken in remote locations with relatively poor transport infrastructure.

<sup>(1)</sup> Norwegian Directorate of Fisheries Statistical Survey 2002.

- (86) Transport costs are not a large part of the overall cost of production of farmed salmon and vary according to the origin of goods and the destination to which they are to be delivered. Overall, there is not considered to be a significant difference in the costs of transport to the Community market as between Norway, the United Kingdom and Ireland. In addition, exporting producers (which by definition are located outside the European Community) are generally likely to have higher transport costs when selling to the Community market. Therefore, it is not considered that higher transport costs in Scotland have contributed to the injury to the Community producers.
- (87) Further and in any event, no evidence was produced to the effect that transport costs in Scotland have increased in recent years, and therefore, higher transport costs could not explain the recent increase in financial losses suffered by the Community producers.

#### 9.1.9. *Other factors*

- (88) No other causation factors of possible relevance were identified during the provisional stage of the investigation.

### 9.2. **Attribution of injurious effects**

- (89) The increase in imports had only a limited negative effect on the quantities sold by the Community producers, although their sales and market share dropped somewhat in 2003. However, most importantly it appears that the considerable increase in imports had a devastating effect on the profitability of the Community producers, given the accompanying price drop. Given that imports (with around 70-75 % of the market) enjoy the position of price-leader, the downward spiral in import prices had a considerable depressing effect on Community producers' prices. This resulted in considerable losses to the Community producers. No other factors which could have contributed to the injury apart from the increase in low-priced imports were identified at this stage.

### 9.3. **Conclusion**

- (90) Therefore, having determined that no material injurious effects resulted from the other known factors, the preliminary conclusion is reached that there is a genuine and substantial link between increased low-priced imports and serious injury to the Community producers.

## 10. **CRITICAL SITUATION**

- (91) A preliminary determination has been made that critical circumstances exist in which delay would cause damage to the Community producers which it would be difficult to repair. They have suffered a serious decline, notably in live fish stocks, unit prices, profitability and ROCE as a result of increased low-priced imports of the product concerned.
- (92) The financial situation of the Community producers is extremely precarious. They have suffered substantial losses in 2003 (-17,1%). In consequence, a number of Community producers have already gone into bankruptcy or receivership, and many others are planning either to reduce their production or withdraw from the market altogether. A number of the Community producers are trying to sell their businesses as going concerns. However, given that they are making losses and the recent bankruptcies and receiverships there is little interest from potential purchasers. Others are simply closing down their operations in order to stem their losses.
- (93) In 2003 and the first months of 2004, five Community producers have gone into bankruptcy or receivership. A further two have been taken over by feed companies (to whom they owed substantial debts) and are in the course of being run down. In addition, seven more Community producers have closed down or are in the course of closing down their operations.

- (94) The substantial losses in 2003 have resulted in certain Community producers, particularly independent companies which are unable to rely on financial support from a larger group, relying on extended credit from feed companies and using overdraft facilities as a source of medium to long term financing. Some companies are being forced to sacrifice profitability in order to secure sufficient cash flow to meet their financial commitments (for example, by harvesting fish before they reach an optimum size). Whilst this strategy may ensure their survival for a short period, it is further reducing their profitability and thus their medium and long term viability.
- (95) Without an immediate and significant upturn in the outlook for salmon farming in the Community more Community producers will be forced into bankruptcy or receivership as feed companies and banks seek to limit their exposure to bad debts. Some Community producers have already had their overdraft facilities terminated or reduced. In the United Kingdom, the national authorities have held discussions with the banks to determine the reasons for withdrawal of support. However, the banks have stressed that they must operate according to commercial criteria.
- (96) It can be anticipated that without the application of provisional safeguard measures to the European Community market, imports of the product concerned into the Community will continue at a high level, and, particularly as a result of the price depression which this will continue to cause, the Community producers will continue to sustain losses and more will be forced into bankruptcy. Such damage would be difficult to repair given that businesses will have closed down, former employees will have been forced to relocate to find work and lenders will be cautious about providing finance to re-open failed ventures. If this is to be avoided, provisional safeguard measures must be taken.

#### 10.1. Conclusion

- (97) Therefore, bearing in mind the precarious economic situation of the Community producers as a result of the large losses which they have sustained, and the continuing threat posed by exporting producers, it is considered that there exists a critical situation in which any delay in the adoption of provisional safeguard measures would cause damage which it would be difficult to repair. It is therefore concluded that provisional safeguard measures should be adopted without delay.

### 11. FINAL CONSIDERATIONS

- (98) The preliminary analysis of the findings of the investigation confirms the existence of a critical situation and the need for provisional safeguard measures in order to prevent further injury to the Community producers which it would be difficult to remedy.

#### 11.1. Form and level of provisional safeguard measures

- (99) Community production of farmed salmon is insufficient to meet demand and it is therefore necessary to ensure that the measures taken are not such as to deny exporting producers access to the Community market. As the main cause of damage to the Community producers appears to be the large volume imports leading to low price and causing price depression and suppression, the measures taken should be designed to increase prices but not to unnecessarily limit supply.
- (100) Regulations (EC) No 3285/94 and (EC) No 519/94 provide that provisional safeguard measures should take the form of tariff increases. Therefore, preference should be given to tariff based measures where these are appropriate. In the current case, in order to keep the Community market open and ensure the availability of supply to meet demand, it is appropriate to establish quotas free of safeguard duties reflecting traditional levels of imports. Beyond those quotas, an additional duty should be payable on imports. Traditional levels of imports of farmed salmon can then continue without payment of any additional duty, and unlimited quantities can be imported albeit upon payment of the additional duty.

- (101) In order to preserve traditional trade flows and ensure that the Community market also remains open to minor players, the tariff quotas should be divided amongst those countries/regions having a substantial interest in supplying the product concerned, and a part should be reserved to other countries. After consultation with Norway and the Faeroes which have such a substantial interest and represent substantial import shares, it is considered appropriate to assign a specific tariff quota to each of these countries based on the proportions of the total quantity of the product supplied by that country during the three year period 2001 to 2003. The vast majority of the imports in this period originated in Norway and the Faeroes and therefore country specific tariff quotas should apply to these countries and one other to all other countries. In order to avoid an unnecessary administrative burden, the tariff quotas should operate on a first come first served basis.
- (102) It appears that in normal circumstances Community consumption of farmed salmon is growing at between around 4 % to 5 % annually taking into account the high growth levels observed in the new Member States. In order to take account of this growth, the tariff quotas (based on average imports in 2001 to 2003) should be increased by 5 %. As the salmon market is seasonal, with higher imports and sales in the second semester than the first, the tariff quotas should be seasonally adjusted. The quotas have been calculated on a whole fish equivalent basis (WFE) and conversion ratios to fillets and non fillets actually imported are 1:0,65 and 1:0,9 respectively.
- (103) The additional duty should be set at a level such as to provide adequate relief to the Community producers but at the same time should not constitute an unnecessarily onerous burden on importers and users. An *ad valorem* duty is considered unsuitable as it would act as an incentive to lower import prices free of duty, and would increase in real terms if a price increase occurs. Therefore a fixed amount of duty should be set.
- (104) The level of underselling, which reflects the extent to which the price of the imported product is lower than the price which the Community producers could be expected to achieve in a non-injurious situation, is considered to be a reasonable basis for fixing the level of duty. In order to take account of the principle of proportionality in this particular case (where 70-75 % of the product concerned is imported), the level of underselling was provisionally calculated on the basis of the weighted average non-injurious price per tonne of the Community product, based on the cost of production of the Community product plus a minimal level of profit for this industry (5 %). This non-injurious price was compared with the preliminary weighted average price per tonne of the imported product concerned during Q1 2004<sup>(1)</sup>. The difference between these two prices was expressed as a percentage of the CIF/Community border price of the imported product, and resulted in underselling of 17,8 % which represents a duty payable of EUR 469 per tonne (WFE), which, based on the conversion ratios shown above, is equivalent to EUR 522/tonne for gutted and EUR 722/tonne for fillets.
- (105) Provision should be made for review of the measures by the Commission if circumstances should change.
- (106) In conformity with Community legislation and the international obligations of the Community, the provisional safeguard measures should not apply to any product originating in a developing country as long as its share of imports of that product into the Community does not exceed 3 %. In this regard it is noted that imports from Chile in the most recent period for which reliable data is available (second semester 2003) are below 3 %, and therefore it is appropriate to exclude Chile from the application of the additional safeguard duty under the provisional safeguard measures and review the position at the definitive stage of the investigation. The developing countries to which the provisional measures do not apply should therefore be specified and this is done in Annex II.

<sup>(1)</sup> Based on available information in the absence of reliable Eurostat data for this period.

### 11.2. System of monitoring

- (107) As noted above, it is considered that the trend in imports of the product concerned has caused serious injury to the Community producers. It is therefore considered that it is in the interests of the Community to establish a system of retrospective surveillance in accordance with Article 11 of Regulation (EC) No 3285/94 and Article 9 of Regulation (EC) No 519/94 in relation to imports of the product concerned which have been put into free circulation in the Community. This will, in particular, allow imports from countries which are outside the application of provisional measures to be closely monitored. In order to ensure coherence, the surveillance should be in place for the same duration as the provisional measures. The surveillance should be administered in accordance with the scheme 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 Common Customs Code<sup>(1)</sup>, as last amended by Regulation (EC) No 2286/2003<sup>(2)</sup>, and the Member States should notify the information to the Commission on a weekly basis.

### 11.3. Duration

- (108) The provisional measures should not last more than 200 days. The measures should enter into force on 15 August 2004 and should remain in force for 176 days unless definitive measures are imposed or the investigation is terminated without measures before that time.

## 12. COMMUNITY INTEREST

### 12.1. Preliminary remarks

- (109) In addition to unforeseen developments, increased imports, serious injury, causation and critical circumstances, it has been examined whether any compelling reasons exist which could lead to the conclusion that it is not in the Community interest to impose provisional measures. For this purpose, the impact of possible provisional measures on all parties involved in the proceedings and the likely consequences of taking or not taking provisional measures were considered on the basis of the evidence available.

### 12.2. Interest of the Community producers

- (110) The Community producers have a combined annual turnover of over EUR 500 million, and, in addition to the direct employment of around 1 450 which they create, are estimated to indirectly support a further 8 000 jobs in the processing and other sectors. They are part of a major growth industry which has seen production double between 1995 and 2001. They are achieving increasing efficiency in the production of a product for which there is a growing market both in the Community and globally. They are viable and competitive in normal market conditions, and show increasing productivity.
- (111) The Community producers' position is clearly in jeopardy unless the current level of low-priced imports is corrected. The proposed measures will apply to all imports of the product concerned other than those from developing countries whose exports to the European Community are no more than 3% of imports to the Community. They would therefore apply to around 95% of such imports. Therefore, it can be anticipated that the measures would be effective and allow the Community producers prices to rise to a fair level.

### 12.3. Interest of the dependent industries

- (112) The areas in which salmon farming is undertaken tend to be remote – mainly on the West coast of Scotland and Ireland. There are limited employment opportunities and the economic activity generated by salmon farming makes an important contribution to these local economies. Without that contribution, many of the small local business which supply goods and services to the Community producers and their employees would cease to be viable. It is therefore in the interests of dependent industries that effective provisional measures are taken.

<sup>(1)</sup> OJ L 253, 11.10.1993, p. 1.

<sup>(2)</sup> OJ L 343, 31.12.2003, p. 1.



#### 12.4. Interests of producers of smolt and feed

- (113) It is in the interests of the major suppliers to the Community producers (such as smolt and feed producers) to have strong and predictable demand for their product at a price which allows them to make a reasonable profit. Given that a number of such suppliers have also extended substantial credit to the Community producers, it is also in their interests that the Community producers remain in business and able to service their debts. If the Community producers' situation does not improve, many of the smolt producers will suffer substantial bad debts which will reduce their profitability and in some cases may threaten their ability to continue trading. The same applies to feed producers. Therefore, it is in the interests of the smolt producers and feed producers for provisional measures to be taken.

#### 12.5. Interest of users, processors and importers in the Community

- (114) In order to evaluate the impact on importers, processors and users of taking or not taking measures, questionnaires were sent to the known importers, processors and users of the product concerned on the Community market. Importers/processors/users are normally one and the same and many are in fact related to exporting producers outside the Community, particularly in Norway. Responses were received from six importers/processors/users and from an association of processors. In addition, a number of processors' associations made representations to the Commission.
- (115) Some argued that no measures should be taken because there had been only a short temporary fall in farmed salmon prices in the two to three months following the termination of anti-dumping measures against Norway in May 2003, and prices had since returned to normal. Processors stressed that any increase in prices would increase their cost base, reduce their sales and profitability and may lead to job losses and even de-localisation, stressing that employment in the fish processing sector is far higher than in the fish farming industry and in some cases provides employment in areas of low employment.
- (116) Wholly reliable price data for Q1 2004 is not yet available from Eurostat. However, available information indicates that both import prices have increased since Q4 2003 to average around EUR 2,53/kilo in Q1 2004 and that the Community producers' prices also increased slightly. Nevertheless, the Community producers' prices remain substantially below a non-injurious price. Further, the latest information indicates that prices are again following a downward trend.
- (117) The main costs incurred by processors are the cost of the raw material and employment costs, and it is true that an increase in raw material prices would increase the processors' costs. However, according to the information provided by processors, the cost of their raw material fell by 10 % between 2002 and 2003, having already fallen by 18 % between 2000 and 2002. In 2003, it was 26 % cheaper than in 2000. At the same time, the information provided by them indicates that their selling prices have remained about the same in 2002 and 2003. Three processors provided information as to the profitability of their salmon processing operation. This indicated that profitability had increased from 15 % in 2000 to 31 % in 2002, and 33 % in 2003. Although not necessarily representative of the processing industry as a whole, this level of profitability is not believed to be atypical. Some processors have contested this level of profitability, although they have not cooperated in providing details of their own profitability. In these circumstances, it appears that the processing industry is well able to absorb a modest increase in the cost of their raw material without any job losses or de-localisation. In any event, it is clear that current price levels are unsustainable in the medium to long term.

- (118) Processors also stressed the need for traders in the principal European markets and consumers to continue to have access to good quality product at low prices. They expressed particular concern about the possibility of speculative buying immediately after the introduction of a tariff quota, and claimed that if the tariff quota is reached they might have to stop production. Finally, they stated that if measures were to be taken, they should be such as to maintain adequacy of supply and help bring price stability to the market in order that their costs could better be predicted. In this regard, whilst some maintained outright opposition to any form of measures, others indicated that if measures were to be imposed they would prefer a tariff quota system, certain expressing preference for a licensing system.
- (119) It should be noted that the provisional measures proposed consist of tariff quotas based on average imports to the Community (including the new Member States) in the period 2001 to 2003 plus 5 %, beyond which an additional duty apply. Therefore, the processing industry throughout the Community should continue to have access to an adequate supply of raw material without any additional duty.
- (120) Therefore, the disadvantages likely to be suffered by processors/users and importers, if any, are not considered such as to outweigh the benefits expected to accrue to the Community producers as a consequence of the proposed provisional measures, which are considered the minimum necessary to prevent further serious deterioration in the situation of the Community producers.

#### **12.6. Interest of consumers in the Community**

- (121) As the product concerned is a consumer product, the Commission informed various consumer organisations of the opening of an investigation. No responses were received from consumer organisations. Given the magnitude of the margins between the whole fish ex-farm and the retail price of processed salmon products, it is considered that the measures are unlikely to have a material effect on retail prices and the impact on consumers is therefore considered to be minimal.

### **13. EXTENSION OF TIME LIMIT FOR THE CURRENT PROCEEDINGS**

- (122) Article 7 of Regulation (EC) No 3285/94 and Article 6 of Regulation (EC) No 519/94 provide that if the Commission considers that surveillance or safeguard measures are necessary, it shall take the necessary decisions no later than nine months from the initiation of the investigation, but that, in exceptional circumstances, that time limit may be extended by a further maximum period of two months.

#### **13.1. Reasons for extension**

- (123) For the following reasons, it is considered that exceptional circumstances exist justifying the extension of the time limit for completing the safeguard investigations in relation to the products concerned by a further period of two months.
- (124) On 1 May 2004, enlargement occurred and 10 new Member States joined the European Community. Up until that date the investigation in relation to the current proceedings was restricted to the EU-15. A large number of interested parties have cooperated in the investigation undertaken to date in relation to the product concerned, and it is anticipated that economic operators in the new Member States will also wish to fully cooperate in the further enquiries to be undertaken. In order to verify the further information received, the Commission will send further questionnaires to Community producers, feed and smolt producers, and importers, processors and users in the new Member States in order to ascertain their specific situation. In order to allow the economic operators concerned the opportunity to exercise their rights under Article 6 of Regulation (EC) No 3285/94 and Article 5 of Regulation (EC) No 519/94, they should be given a reasonable period within which to reply to the questionnaires. Moreover the Commission's services will thereafter require to verify the information provided in reply to the questionnaires through on-the-spot investigations at the premises of the parties concerned before proceeding to any conclusions.

- (125) Following the completion of the Commission's further investigation, and prior to the adoption of definitive safeguard measures in relation to the products concerned, if any, the European Community would in addition be obliged to notify certain trade partners with which it has bilateral agreements and also to notify WTO trade partners of any proposed measures in a timely manner.
- (126) Further, were provisional measures (which should run in parallel with the investigation) to come to an end in Q4 2004, this would create uncertainty in the market during its busiest period in the run up to Christmas.

### 13.2. Extension of time limit

- (127) It is therefore considered that, in the circumstances outlined above, exceptional circumstances exist and the time limit for completion of the safeguard investigation in relation to farmed salmon should be extended by two months from 6 December 2004 to 6 February 2005,

HAS ADOPTED THIS REGULATION:

## Article 1

### System of tariff quotas and their additional duties

1. A system of tariff quotas is hereby opened for the period 15 August 2004 to 6 February 2005 in relation to imports into the Community of farmed (other than wild) salmon, whether or not filleted, fresh, chilled or frozen, classified within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, ex 0304 10 13 and ex 0304 20 13 (hereinafter farmed salmon). The volume of the tariff quotas and the countries to which they apply are specified in Annex I. The quotas have been calculated on a whole fish equivalent basis (WFE) and conversion ratios to fillets (Group 2) and non-fillets (Group 1) actually imported are 1:0,65 and 1:0,9 respectively.
2. Wild salmon shall not be subject, or allocated, to the tariff quotas. For the purpose of this Regulation, wild salmon shall be that in respect of which the competent authorities of the Member State where the customs declaration for free circulation is accepted are satisfied, by means of all appropriate documents to be provided by interested parties, that it was caught at sea for Atlantic or Pacific salmon or in rivers for Danube salmon.
3. For the purposes of determining the level of additional duty payable, farmed salmon falling within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00 shall fall within Group 1 in Annex I, whilst those falling within ex 0304 10 13 and ex 0304 20 13 shall fall within Group 2.
4. Subject to Article 2, imports of farmed salmon beyond the level of the tariff quota shall be subject to the additional duty specified in Annex I for the group to which they belong.
5. The conventional rate of duty provided in Council Regulation (EC) No 2658/87 <sup>(1)</sup>, as last amended by Commission Regulation (EC) No 2344/2003 <sup>(2)</sup> or any preferential rate of duty, shall continue to apply to imports of farmed salmon.
6. If circumstances should change, these measures may be reviewed by the Commission.

## Article 2

### Developing countries

Imports of farmed salmon originating in one of the developing countries specified in Annex II shall not be subject, or allocated, to the tariff quotas.

<sup>(1)</sup> OJ L 256, 7.9.1987, p. 1.

<sup>(2)</sup> OJ L 346, 31.12.2003, p. 38.

*Article 3***General provisions**

1. The origin of the farmed salmon to which this Regulation applies shall be determined in accordance with the provisions in force in the Community.
2. Subject to paragraph 3, any release into free circulation in the Community of farmed salmon originating in a developing country shall be subject to:
  - (a) presentation of a certificate of origin issued by the competent national authorities of that country meeting the conditions laid down in Article 47 of Regulation (EEC) No 2454/93; and
  - (b) the condition that the product has been transported directly, within the meaning of Article 4, from that country to the Community.
3. The certificate of origin referred to in paragraph 2(a) shall not be required for imports of farmed salmon covered by a proof of origin issued or made out in accordance with the relevant rules established in order to qualify for preferential tariff measures.
4. Proof of origin shall be accepted only if the farmed salmon meet the criteria for determining origin set out in the provisions in force in the Community.

*Article 4***Direct transport**

1. The following shall be considered as transported direct to the Community from a third country:
  - (a) products transported without passing through the territory of any third country;
  - (b) products transported through one or more third countries other than the country of origin, with or without transshipment or temporary warehousing in those countries, provided that such passage is justified for geographical reasons or exclusively on account of transport requirements and provided that the products:
    - have remained under the supervision of the customs authorities of the country or countries of transit or warehousing,
    - have not entered into commerce or been released for consumption there, and
    - have not undergone operations there other than unloading and reloading.
2. Proof that the conditions referred to in paragraph 1(b) have been satisfied shall be submitted to the Community authorities. That proof may be provided, in particular, in the form of one of the following documents:
  - (a) a single transport document issued in the country of origin covering passage through the country or countries of transit;
  - (b) a certificate issued by the customs authorities of the country or countries of transit containing:
    - a precise description of the goods;
    - the dates of their unloading and reloading or their lading or unlading, identifying the vessels used.

*Article 5***Imports in the process of shipment to the Community**

1. This Regulation shall not apply to products in the process of shipment to the Community within the meaning of paragraph 2.
2. Products shall be deemed to be in the process of shipment to the Community if they:
  - left the country of origin before the date this Regulation begins to apply, and
  - are shipped from the place of loading in the country of origin to the place of unloading in the Community under cover of a valid transport document issued before the date this Regulation begins to apply.
3. The parties concerned shall provide, to the satisfaction of the customs authorities, proof that the conditions laid down in paragraph 2 have been met.

However, the authorities may regard the products as having left the country of origin before the date this Regulation begins to apply if one of the following documents is provided:

- in the case of transport by sea, the bill of lading showing that loading took place before that date,
- in the case of transport by rail, the consignment note that was accepted by the railway authorities in the country of origin before that date,
- in the case of transport by road, the CMR contract for the carriage of goods or any other transport document issued in the country of origin before that date,
- in the case of transport by air, the air consignment note showing that the airline took the products over before that date.

*Article 6*

The Member States and the Commission shall cooperate closely to ensure compliance with this Regulation.

*Article 7*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union* and apply until 6 February 2005.

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

Done at Brussels, 13 August 2004.

*For the Commission*  
Pascal LAMY  
*Member of the Commission*

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## ANNEX I

CN code	TARIC code	Group	Origin (for groups 1 and 2)	Tariff quota (for groups 1 and 2) in tonnes (WFE)	Order Number for group 1	Order Number for group 2	Additional duty EUR/tonne	
							Group 1	Group 2
ex 0302 12 00	0302 12 00 21	1	Norway	163 997	90.780	90.788	522	722
	0302 12 00 22	1	Faeroes	22 230	90.694	90.695		
	0302 12 00 23	1	Other	20 108	90.077	90.078		
	0302 12 00 29	1						
	0302 12 00 39	1						
	0302 12 00 99	1						
ex 0303 11 00	0303 11 00 19	1						
	0303 11 00 99	1						
ex 0303 19 00	0303 19 00 19	1						
	0303 19 00 99	1						
ex 0303 22 00	0303 22 00 21	1						
	0303 22 00 22	1						
	0303 22 00 23	1						
	0303 22 00 29	1						
	0303 22 00 89	1						
ex 0304 10 13	0304 10 13 21	2						
	0304 10 13 29	2						
	0304 10 13 99	2						
ex 0304 20 13	0304 20 13 21	2						
	0304 20 13 29	2						
	0304 20 13 99	2						

## ANNEX II

**List of developing countries** — excluded from the measures as they export less than 3 % of imports to the Community.

United Arab Emirates, Afghanistan, Antigua and Barbuda, Angola, Argentina, American Samoa, Anguilla, Antarctica, Aruba, Barbados, Bangladesh, Burkina Faso, Bahrain, Burundi, Benin, Brunei Darussalam, Bolivia, Brazil, Bahamas, Bhutan, Botswana, Belize, Bermuda, Bouvet Island, British Virgin Islands, British Indian Ocean Territory, Democratic Republic of Congo, Central African Republic, Congo, Côte d'Ivoire, Chile, Cameroon, Chad, Colombia, Costa Rica, Cuba, Cape Verde, Cayman Islands, Christmas Island, Cocos Islands (or Keeling Islands), Cook Islands, Djibouti, Dominica, Dominican Republic, Algeria, Ecuador, Egypt, Eritrea, Ethiopia, Fiji, Federated States of Micronesia, Falkland Islands, French Polynesia, French Southern Territories, Gabon, Grenada, Ghana, Gambia, Guinea, Equatorial Guinea, Guatemala, Guinea-Bissau, Guyana, Gibraltar, Guam, Honduras, Hong Kong, Haiti, Heard Island and McDonald Islands, Indonesia, India, Iraq, Iran (Islamic Republic of), Jamaica, Jordan, Kenya, Cambodia, Kiribati, Comoros, St Kitts and Nevis, Kuwait, Lao People's Democratic Republic, Lebanon, St Lucia, Sri Lanka, Liberia, Lesotho, Libyan Arab Jamahiriya, Morocco, Madagascar, Marshall Islands, Mali, Myanmar, Mongolia, Mauritania, Mauritius, Maldives, Malawi, Mexico, Malaysia, Mozambique, Macau, Mayotte, Montserrat, Namibia, Niger, Nigeria, Nicaragua, Nepal, Nauru, Netherlands Antilles, New Caledonia and Dependencies, Niue Island, Norfolk Island, Northern Mariana Islands, Oman, Panama, Peru, Papua New Guinea, People's Republic of China, Philippines, Pakistan, Palau, Paraguay, Pitcairn, Qatar, Rwanda, Samoa, Saudi Arabia, Solomon Islands, Seychelles, Sudan, Sierra Leone, Senegal, Somalia, Suriname, São Tomé and Príncipe, El Salvador, Syrian Arab Republic, Swaziland, South Georgia and South Sandwich Islands, St Helena and Dependencies, St Pierre and Miquelon, Togo, Tunisia, Tonga, East Timor, Trinidad and Tobago, Tuvalu, Tanzania (United Republic of), Chinese Taipei, Tokelau, Turks and Caicos Islands, United States minor outlying islands, Uganda, Uruguay, St Vincent and the Northern Grenadines, Venezuela, Vietnam, Vanuatu, Virgin Islands of the United States of America, Wallis and Futuna Islands, Yemen, South Africa, Zambia and Zimbabwe.

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**COMMISSION REGULATION (EC) No 1448/2004****of 13 August 2004****amending Regulation (EC) No 2771/1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products<sup>(1)</sup>, and in particular Article 10 thereof,

Whereas:

- (1) Article 21 of Commission Regulation (EC) No 2771/1999<sup>(2)</sup>, lays down that intervention butter placed on sale must have entered into storage before 1 April 2002.
- (2) Given the situation on the butter market and the quantities of butter in intervention storage it is appropriate that butter in storage before 1 June 2002 should be available for sale.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

*Article 1*

In Article 21 of Regulation (EC) No 2771/1999, the date '1 April 2002' is replaced by the date '1 June 2002'.

*Article 2*

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, 13 August 2004.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

<sup>(2)</sup> OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 1236/2004 (OJ L 235, 6.7.2004, p. 4).



**COMMISSION REGULATION (EC) No 1449/2004****of 13 August 2004****amending Regulation (EEC) No 1609/88 as regards the latest date by which butter must have been taken into storage in order to be sold pursuant to Regulations (EEC) No 3143/85 and (EC) No 2571/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products<sup>(1)</sup>, and in particular Article 10,

Whereas:

- (1) Pursuant to Article 1 of Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the grant of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs<sup>(2)</sup>, the butter put up for sale must have been taken into storage before a date to be determined.

(2) In view of the trends on the butter market and the quantities of stocks available, the date in Article 1 of Commission Regulation (EEC) No 1609/88<sup>(3)</sup>, relating to the butter referred to in Regulation (EC) No 2571/97, should be amended.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

*Article 1*

In Article 1 of Regulation (EEC) No 1609/88, the second subparagraph is hereby replaced by the following:

'The butter referred to in Article 1(1)(a) of Regulation (EC) No 2571/97 must have been taken into storage before 1 June 2002.'

*Article 2*This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 13 August 2004.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

<sup>(2)</sup> OJ L 350, 20.12.1997, p. 3. Regulation as last amended by Regulation (EC) No 921/2004 (OJ L 163, 30.4.2004, p. 94).

<sup>(3)</sup> OJ L 143, 10.6.1988, p. 23. Regulation as last amended by Regulation (EC) No 1714/2003 (OJ L 243, 27.9.2003, p. 103).

**COMMISSION REGULATION (EC) No 1450/2004****of 13 August 2004****implementing Decision No 1608/2003/EC of the European Parliament and of the Council concerning the production and development of Community statistics on innovation****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

*Article 1*

Having regard to Decision No 1608/2003/EC of the European Parliament and of the Council of 22 July 2003 concerning the production and development of Community statistics on science and technology<sup>(1)</sup>, and in particular Article 3 thereof,

This Regulation sets up the necessary measures for implementing Decision No 1608/2003/EC with regard to Community innovation statistics.

Whereas:

*Article 2*

(1) Decision No 1608/2003/EC determined the individual statistical actions necessary in order to establish the Community statistics on science, technology and innovation.

1. This Regulation shall cover Community innovation statistics. For these statistics, the list of statistical variables, the activities and sectors covered, the breakdowns of the results, the frequency, the deadlines for data transmission and the transitional period shall be as specified in the Annex.

(2) It is necessary to adopt measures for the implementation of individual statistical actions as determined in Article 2 of Decision No 1608/2003/EC.

2. On the basis of the conclusions in the reports presented to the European Parliament and Council pursuant to Article 5 of Decision No 1608/2003/EC, the list of statistical variables, the activities and sectors covered, the breakdowns of the results, the frequency, the deadline for data transmission and other characteristics laid down in the Annex to this Regulation may be revised at regular intervals.

(3) The individual statistical actions should take into account Decision No 2367/2002/EC of the European Parliament and of the Council of 16 December 2002 on the Community statistical programme 2003 to 2007<sup>(2)</sup> which specifically determined the work programme for the production and improvement of statistics on innovation for the period 2003 to 2007.

*Article 3*

(4) It is necessary to ensure the consistency of the Community statistics on innovation with other international standards, which entails taking into account the work carried out by the Organisation for Economic Cooperation and Development (OECD) and other international organisations.

Member States shall acquire the necessary data using a combination of different sources such as sample surveys, administrative data sources or other data sources. The other data sources shall be at least equivalent in terms of quality or statistical estimation procedures to sample surveys or administrative data sources.

(5) In implementing Decision No 1608/2003/EC, regard should be had to the framework provided by Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics<sup>(3)</sup> when laying down provisions to cover access to administrative sources and statistical confidentiality.

*Article 4*

(6) The measures provided for in this Regulation are in accordance with the opinion of the Statistical Programme Committee,

The Community innovation statistics listed in the Annex shall be based on harmonised concepts and definitions, contained in the most recent version of the Oslo Manual. Member States shall apply these harmonised concepts and definitions to the statistics to be compiled.

<sup>(1)</sup> OJ L 230, 16.9.2003, p. 1.

<sup>(2)</sup> OJ L 358, 31.12.2002, p. 1.

<sup>(3)</sup> OJ L 52, 22.2.1997, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

The reports presented to the European Parliament and Council pursuant to Article 5 of Decision No 1608/2003/EC shall make reference to concepts and definitions and their applications.

*Article 5*

Member States shall transmit the aggregated statistics as listed in the Annex on a compulsory basis and the individual data records on a voluntary basis, to the Commission (Eurostat), using a standard transmission format to be determined by the Commission (Eurostat) in cooperation with them.

*Article 6*

Quality evaluation shall be carried out by Member States and the Commission (Eurostat).

Member States shall transmit to the Commission (Eurostat), at its request, the information necessary for the evaluation of the quality of the statistics laid down in the Annex to this Regulation which are needed for the fulfilment of the reporting requirements laid down in Article 5 of Decision No 1608/2003/EC.

*Article 7*

This Regulation shall enter into force on the 20th 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, 13 August 2004.

*For the Commission*  
Joaquín ALMUNIA  
*Member of the Commission*

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## ANNEX

## INNOVATION STATISTICS

## Section 1

Member States shall compile the following Community innovation statistics:

Code	Title	Comments
1	Number of innovation active enterprises	As absolute value and as a percentage of all enterprises
2	Number of innovating enterprises that introduced new or significantly improved products, new to the market	As absolute value, as a percentage of all enterprises and as a percentage of all innovation active enterprises
3	Turnover from innovation, related to new or significantly improved products, new to the market	As absolute value, as a percentage of total turnover and as a percentage of total turnover from innovation active enterprises
4	Turnover from innovation, related to new or significantly improved products, new to the firm, but not new to the market	As absolute value, as a percentage of total turnover and as a percentage of total turnover from innovation active enterprises
5	Number of innovation active enterprises involved in innovation cooperation	As absolute value and as a percentage of innovation active enterprises
6	Innovation expenditure	As absolute value, as a percentage of total turnover and as a percentage of total turnover from innovation active enterprises — optional
7	Number of innovation active enterprises that indicated highly important effects of innovation	As absolute value and as a percentage of all innovation active enterprises
8	Number of innovation active enterprises that indicated highly important sources of information for innovation	As absolute value and as a percentage of all innovation active enterprises — optional
9	Number of enterprises facing important hampering factors	As absolute value, as a percentage of all enterprises, as a percentage of all innovation active enterprises and as a percentage of non-innovation active enterprises

Beyond the statistics listed above, Member States shall compile additional statistics (including their breakdowns) in accordance with the main themes listed in the Oslo Manual. These additional statistics will be decided in close cooperation with Member States.

## Section 2

As a minimum, enterprises in the NACE Rev. 1.1 sections C, D, E, I, J, in the NACE Rev. 1.1 divisions 51, 72 and in the NACE Rev. 1.1 groups 74.2 and 74.3 are to be covered.

## Section 3

All variables shall be reported every four years, except the variables 1, 2, 3, 4 and 5 which shall be reported every two years.

## Section 4

The first reference year for which the statistics are to be compiled is the calendar year 2004.

## Section 5

1. All results are to be broken down by economic activity (NACE Rev. 1.1) at section level and by the following employment size classes: 10-49 employees, 50-249 employees, above 249 employees.

2. All results are also to be broken down by economic activity (NACE Rev. 1.1) at division level.

3. The results of variable 5 are to be broken down by type of innovation cooperation. The results of variable 7 are to be broken down by type of effects of innovation. The results of variable 8 are to be broken down by type of sources of information. The results of variable 9 are to be broken down by type of hampering factors. These breakdowns will be decided in close cooperation with Member States.

*Section 6*

1. All results are to be transmitted within 18 months of the end of the calendar year of the reference period.
2. Member States may transmit on a voluntary basis individual data records covering all statistical units surveyed within the national innovation surveys to the Commission (Eurostat).

*Section 7*

1. The survey questionnaire, used for the Community Innovation Surveys carried out every four years and starting with the reference year 2004, shall cover the main themes listed in the Oslo Manual with regard to the measurement of innovation in enterprises.
2. In close cooperation with Member States, methodological recommendations for the Community Innovation Surveys shall be drawn up by the Commission (Eurostat) leading to a high level of harmonisation of the survey results. These recommendations shall at least cover the target population, the survey methodology (including regional aspects), the harmonised survey questionnaire, the collection, processing and transmission of the data and data quality requirements.
3. In close cooperation with Member States, methodological recommendations shall also be drawn up for the other innovation surveys carried out every four years, starting with the reference year 2006.
4. Member States shall provide the Commission (Eurostat) with the necessary information concerning the national methodology used in national innovation statistics.

*Section 8*

In so far as national statistical systems require major adaptations, the Commission may grant derogations to Member States with respect to the statistics to be compiled for the first reference year 2004. Additional derogations may be granted with respect to the coverage of economic activities in accordance to NACE Rev. 1.1 or the size class breakdowns of the statistics to be compiled for the reference year 2006.

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**COMMISSION REGULATION (EC) No 1451/2004****of 13 August 2004****fixing the import duties in the cereals sector applicable from 16 August 2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals<sup>(1)</sup>,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector<sup>(2)</sup>, and in particular Article 2(1) thereof,

Whereas:

- (1) Article 10 of Regulation (EC) No 1784/2003 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.
- (2) Pursuant to Article 10(3) of Regulation (EC) No 1784/2003, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market.

- (3) Regulation (EC) No 1249/96 lays down detailed rules for the application of Regulation (EC) No 1784/2003 as regards import duties in the cereals sector.
- (4) The import duties are applicable until new duties are fixed and enter into force.
- (5) In order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in Annex I to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The import duties in the cereals sector referred to in Article 10(2) of Regulation (EC) No 1784/2003 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

*Article 2*

This Regulation shall enter into force on 16 August 2004.

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

Done at Brussels, 13 August 2004.

*For the Commission*

J. M. SILVA RODRÍGUEZ  
*Agriculture Director-General*

<sup>(1)</sup> OJ L 270, 21.10.2003, p. 78.

<sup>(2)</sup> OJ L 161, 29.6.1996, p. 125. Regulation as last amended by Regulation (EC) No 1110/2003 (OJ L 158, 27.6.2003, p. 12).

## ANNEX I

**Import duties for the products covered by Article 10(2) of Regulation (EC) No 1784/2003 applicable from 16 August 2004**

CN code	Description	Import duty <sup>(1)</sup> (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	3,85
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	Common high quality wheat other than for sowing	0,00
1002 00 00	Rye	27,41
1005 10 90	Maize seed other than hybrid	54,93
1005 90 00	Maize other than seed <sup>(2)</sup>	54,93
1007 00 90	Grain sorghum other than hybrids for sowing	37,50

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

— EUR 3/t, where the port of unloading is on the Mediterranean Sea, or

— EUR 2/t, where the port of unloading is in Ireland, the United Kingdom, Denmark, Estonia, Latvia, Lithuania, Poland, Finland, Sweden or the Atlantic coasts of the Iberian peninsula.

<sup>(2)</sup> The importer may benefit from a flat-rate reduction of EUR 24/t, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

## ANNEX II

**Factors for calculating duties**

period from 30.7-12.8.2004

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

Exchange quotations	Minneapolis	Chicago	Minneapolis	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2 (14 %)	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	119,66 (***)	71,88	150,69 (****)	140,69 (****)	120,69 (****)	97,14 (****)
Gulf premium (EUR/t)	—	13,23	—			—
Great Lakes premium (EUR/t)	12,93	—	—			—

(\*) A discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(\*\*) A discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(\*\*\*) Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

(\*\*\*\*) Fob Duluth.

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

Freight/cost: Gulf of Mexico–Rotterdam: 27,08 EUR/t; Great Lakes–Rotterdam: 32,48 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)  
0,00 EUR/t (SRW2).



## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DECISION

of 19 July 2004

**approving the accession of the European Community to the International Plant Protection Convention, as revised and approved by Resolution 12/97 of the 29th Session of the FAO Conference in November 1997**

(2004/597/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37, in conjunction with Article 300(2), first sentence of the first subparagraph and Article 300(3), first subparagraph thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Whereas:

- (1) The International Plant Protection Convention (hereinafter referred to as the IPPC Convention) was adopted by the FAO Conference in 1951 and entered into force the following year. It was subsequently amended by the FAO Conference in 1979 and the amendments entered into force in 1991.
- (2) In 1997 another revision of the IPPC Convention took place in order to bring it into line with the Agreement on the Application of Sanitary and Phytosanitary Measures in the Uruguay Round Final Act, to ensure consistency with the new system for drafting International Standards in the IPPC framework and to allow Member Organisations of the FAO to become a Contracting Party to it. The revised text was approved by Resolution 12/97 of the FAO Conference in November 1997.
- (3) The amendments of the revised text will come into force as from the 30th day after acceptance by two-thirds of the Contracting Parties. As from that date the European Community will be entitled to become a Party to the IPPC Convention. At present 43 countries, of which four Member States, have accepted the revised text.

- (4) One of the primary objectives of the IPPC Convention is to secure 'common and effective action to prevent the spread and introduction of pests of plants and plant products, and to provide appropriate measures for their control'.
- (5) The competence of the Community to conclude or accede to international agreements or treaties does not derive only from explicit conferral by the Treaty but may also derive from other provisions of the Treaty and from acts adopted pursuant to those provisions by Community institutions.
- (6) The subject matter of the IPPC Convention falls also within the scope of existing Community regulations in this field.
- (7) It follows that the subject matter of the IPPC Convention is a matter of both the Community and its Member States.
- (8) The IPPC Convention should be acceded by the Community with regard to matters within its competence.
- (9) The President of the Council should be authorised to deposit the instrument of accession of the Community,

HAS DECIDED AS FOLLOWS:

*Article 1*

1. The European Community shall submit a request for accession to the International Plant Protection Convention with regard to matters within its competence.

<sup>(1)</sup> Opinion delivered on 8 November 2003 (not yet published in the Official Journal).

2. The revised text of the IPPC Convention as approved by Resolution 12/97 of the 29th Session of the FAO Conference in November 1997 is set out in Annex I.

*Article 2*

1. The President of the Council is hereby authorised to deposit the instrument of accession with the Director-General of the Food and Agriculture Organisation of the United Nations (hereinafter referred to as FAO).

2. The declaration set out in Annex II shall be made in the instrument of accession.

Done at Brussels, 19 July 2004.

*For the Council*

*The President*

C. VEERMAN

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## ANNEX I

## INTERNATIONAL PLANT PROTECTION CONVENTION

New revised text approved by Resolution 12/97 of the 29th Session of the FAO Conference in November 1997

## PREAMBLE

The Contracting Parties,

- recognising the necessity for international cooperation in controlling pests of plants and plant products and in preventing their international spread, and especially their introduction into endangered areas,
- recognising that phytosanitary measures should be technically justified, transparent and should not be applied in such a way as to constitute either a means of arbitrary or unjustified discrimination or a disguised restriction, particularly on international trade,
- desiring to ensure close coordination of measures directed to these ends,
- desiring to provide a framework for the development and application of harmonised phytosanitary measures and the elaboration of international standards to that effect,
- taking into account internationally approved principles governing the protection of plant, human and animal health, and the environment, and
- noting the agreements concluded as a result of the Uruguay Round of Multilateral Trade Negotiations, including the Agreement on the Application of Sanitary and Phytosanitary Measures,

HAVE AGREED AS FOLLOWS:

*Article I***Purpose and responsibility**

1. With the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate measures for their control, the Contracting Parties undertake to adopt the legislative, technical and administrative measures specified in this Convention and in supplementary agreements pursuant to Article XVI.
2. Each Contracting Party shall assume responsibility, without prejudice to obligations assumed under other international agreements, for the fulfilment within its territories of all requirements under this Convention.
3. The division of responsibilities for the fulfilment of the requirements of this Convention between Member Organisations of FAO and their Member States that are Contracting Parties shall be in accordance with their respective competencies.
4. Where appropriate, the provisions of this Convention may be deemed by Contracting Parties to extend, in addition to plants and plant products, to storage places, packaging, conveyances, containers, soil and any other organism, object or material capable of harbouring or spreading plant pests, particularly where international transportation is involved.

*Article II***Use of terms**

1. For the purpose of this Convention, the following terms shall have the meanings hereunder assigned to them:

'Area of low pest prevalence' — an area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures;

'Commission' — the Commission on Phytosanitary Measures established under Article XI;

'Endangered area' — an area where ecological factors favour the establishment of a pest whose presence in the area will result in economically important loss;

'Establishment' — perpetuation, for the foreseeable future, of a pest within an area after entry;

'Harmonised phytosanitary measures' — phytosanitary measures established by Contracting Parties based on international standards;

'International standards' — international standards established in accordance with Article X, paragraphs 1 and 2;

'Introduction' — the entry of a pest resulting in its establishment;

'Pest' — any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products;

'Pest risk analysis' — the process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it;

'Phytosanitary measure' — any legislation, regulation or official procedure having the purpose to prevent the introduction and/or spread of pests;

'Plant products' — unmanufactured material of plant origin (including grain) and those manufactured products that, by their nature or that of their processing, may create a risk for the introduction and spread of pests;

'Plants' — living plants and parts thereof, including seeds and germplasm;

'Quarantine pest' — a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled;

'Regional standards' — standards established by a regional plant protection organisation for the guidance of the members of that organisation;

'Regulated article' — any plant, plant product, storage place, packaging, conveyance, container, soil and any other organism, object or material capable of harbouring or spreading pests, deemed to require phytosanitary measures, particularly where international transportation is involved;

'Regulated non-quarantine pest' — a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing Contracting Party;

'Regulated pest' — a quarantine pest or a regulated non-quarantine pest;

'Secretary' — Secretary of the Commission appointed pursuant to Article XII;

'Technically justified' — justified on the basis of conclusions reached by using an appropriate pest risk analysis or, where applicable, another comparable examination and evaluation of available scientific information.

2. The definitions set forth in this Article, being limited to the application of this Convention, shall not be deemed to affect definitions established under domestic laws or regulations of Contracting Parties.

### Article III

#### Relationship with other international agreements

Nothing in this Convention shall affect the rights and obligations of the Contracting Parties under relevant international agreements.

*Article IV***General provisions relating to the organisational arrangements for national plant protection**

1. Each Contracting Party shall make provision, to the best of its ability, for an official national plant protection organisation with the main responsibilities set out in this Article.
2. The responsibilities of an official national plant protection organisation shall include the following:
  - (a) the issuance of certificates relating to the phytosanitary regulations of the importing Contracting Party for consignments of plants, plant products and other regulated articles;
  - (b) the surveillance of growing plants, including both areas under cultivation (*inter alia* fields, plantations, nurseries, gardens, greenhouses and laboratories) and wild flora, and of plants and plant products in storage or in transportation, particularly with the object of reporting the occurrence, outbreak and spread of pests, and of controlling those pests, including the reporting referred to under Article VIII paragraph 1(a);
  - (c) the inspection of consignments of plants and plant products moving in international traffic and, where appropriate, the inspection of other regulated articles, particularly with the object of preventing the introduction and/or spread of pests;
  - (d) the disinfestation or disinfection of consignments of plants, plant products and other regulated articles moving in international traffic, to meet phytosanitary requirements;
  - (e) the protection of endangered areas and the designation, maintenance and surveillance of pest-free areas and areas of low pest prevalence;
  - (f) the conduct of pest risk analyses;
  - (g) to ensure through appropriate procedures that the phytosanitary security of consignments after certification regarding composition, substitution and reinfestation is maintained prior to export; and
  - (h) training and development of staff.
3. Each Contracting Party shall make provision, to the best of its ability, for the following:
  - (a) the distribution of information within the territory of the Contracting Party regarding regulated pests and the means of their prevention and control;
  - (b) research and investigation in the field of plant protection;
  - (c) the issuance of phytosanitary regulations; and
  - (d) the performance of such other functions as may be required for the implementation of this Convention.
4. Each Contracting Party shall submit a description of its official national plant protection organisation and of changes in such organisation to the Secretary. A Contracting Party shall provide a description of its organisational arrangements for plant protection to another Contracting Party, upon request.

*Article V***Phytosanitary certification**

1. Each Contracting Party shall make arrangements for phytosanitary certification, with the objective of ensuring that exported plants, plant products and other regulated articles and consignments thereof are in conformity with the certifying statement to be made pursuant to paragraph 2(b) of this Article.

2. Each Contracting Party shall make arrangements for the issuance of phytosanitary certificates in conformity with the following provisions:

- (a) Inspection and other related activities leading to issuance of phytosanitary certificates shall be carried out only by or under the authority of the official national plant protection organisation. The issuance of phytosanitary certificates shall be carried out by public officers who are technically qualified and duly authorised by the official national plant protection organisation to act on its behalf and under its control with such knowledge and information available to those officers that the authorities of importing Contracting Parties may accept the phytosanitary certificates with confidence as dependable documents.
- (b) Phytosanitary certificates, or their electronic equivalent where accepted by the importing Contracting Party concerned, shall be as worded in the models set out in the Annex to this Convention. These certificates should be completed and issued taking into account relevant international standards.
- (c) Uncertified alterations or erasures shall invalidate the certificates.

3. Each Contracting Party undertakes not to require consignments of plants or plant products or other regulated articles imported into its territories to be accompanied by phytosanitary certificates inconsistent with the models set out in the Annex to this Convention. Any requirements for additional declarations shall be limited to those technically justified.

#### *Article VI*

##### **Regulated pests**

1. Contracting Parties may require phytosanitary measures for quarantine pests and regulated non-quarantine pests, provided that such measures are:

- (a) no more stringent than measures applied to the same pests, if present within the territory of the importing Contracting Party; and
- (b) limited to what is necessary to protect plant health and/or safeguard the intended use and can be technically justified by the Contracting Party concerned.

2. Contracting Parties shall not require phytosanitary measures for non-regulated pests.

#### *Article VII*

##### **Requirements in relation to imports**

1. With the aim of preventing the introduction and/or spread of regulated pests into their territories, Contracting Parties shall have sovereign authority to regulate, in accordance with applicable international agreements, the entry of plants and plant products and other regulated articles and, to this end, may:

- (a) prescribe and adopt phytosanitary measures concerning the importation of plants, plant products and other regulated articles, including, for example, inspection, prohibition on importation, and treatment;
- (b) refuse entry or detain, or require treatment, destruction or removal from the territory of the Contracting Party, of plants, plant products and other regulated articles or consignments thereof that do not comply with the phytosanitary measures prescribed or adopted under subparagraph (a);
- (c) prohibit or restrict the movement of regulated pests into their territories;
- (d) prohibit or restrict the movement of biological control agents and other organisms of phytosanitary concern claimed to be beneficial into their territories.

2. In order to minimise interference with international trade, each Contracting Party, in exercising its authority under paragraph 1 of this Article, undertakes to act in conformity with the following:

- (a) Contracting Parties shall not, under their phytosanitary legislation, take any of the measures specified in paragraph 1 of this Article unless such measures are made necessary by phytosanitary considerations and are technically justified.

- (b) Contracting Parties shall, immediately upon their adoption, publish and transmit phytosanitary requirements, restrictions and prohibitions to any Contracting Party or parties that they believe may be directly affected by such measures.
  - (c) Contracting Parties shall, on request, make available to any Contracting Party the rationale for phytosanitary requirements, restrictions and prohibitions.
  - (d) If a Contracting Party requires consignments of particular plants or plant products to be imported only through specified points of entry, such points shall be so selected as not to unnecessarily impede international trade. The Contracting Party shall publish a list of such points of entry and communicate it to the Secretary, any regional plant protection organisation of which the Contracting Party is a member, all Contracting Parties which the Contracting Party believes to be directly affected, and other Contracting Parties upon request. Such restrictions on points of entry shall not be made unless the plants, plant products or other regulated articles concerned are required to be accompanied by phytosanitary certificates or to be submitted to inspection or treatment.
  - (e) Any inspection or other phytosanitary procedure required by the plant protection organisation of a Contracting Party for a consignment of plants, plant products or other regulated articles offered for importation, shall take place as promptly as possible with due regard to their perishability.
  - (f) Importing Contracting Parties shall, as soon as possible, inform the exporting Contracting Party concerned or, where appropriate, the re-exporting Contracting Party concerned, of significant instances of non-compliance with phytosanitary certification. The exporting Contracting Party or, where appropriate, the re-exporting Contracting Party concerned, should investigate and, on request, report the result of its investigation to the importing Contracting Party concerned.
  - (g) Contracting Parties shall institute only phytosanitary measures that are technically justified, consistent with the pest risk involved and represent the least restrictive measures available, and result in the minimum impediment to the international movement of people, commodities and conveyances.
  - (h) Contracting Parties shall, as conditions change, and as new facts become available, ensure that phytosanitary measures are promptly modified or removed if found to be unnecessary.
  - (i) Contracting Parties shall, to the best of their ability, establish and update lists of regulated pests, using scientific names, and make such lists available to the Secretary, to regional plant protection organisations of which they are members and, on request, to other Contracting Parties.
  - (j) Contracting Parties shall, to the best of their ability, conduct surveillance for pests and develop and maintain adequate information on pest status in order to support categorisation of pests, and for the development of appropriate phytosanitary measures. This information shall be made available to Contracting Parties, on request.
3. A Contracting Party may apply measures specified in this Article to pests which may not be capable of establishment in its territories but, if they gained entry, cause economic damage. Measures taken against these pests must be technically justified.
4. Contracting Parties may apply measures specified in this Article to consignments in transit through their territories only where such measures are technically justified and necessary to prevent the introduction and/or spread of pests.
5. Nothing in this Article shall prevent importing Contracting Parties from making special provision, subject to adequate safeguards, for the importation, for the purpose of scientific research, education, or other specific use, of plants and plant products and other regulated articles, and of plant pests.
6. Nothing in this Article shall prevent any Contracting Party from taking appropriate emergency action on the detection of a pest posing a potential threat to its territories or the report of such a detection. Any such action shall be evaluated as soon as possible to ensure that its continuance is justified. The action taken shall be immediately reported to Contracting Parties concerned, the Secretary, and any regional plant protection organisation of which the Contracting Party is a member.

*Article VIII***International cooperation**

1. The Contracting Parties shall cooperate with one another to the fullest practicable extent in achieving the aims of this Convention, and shall in particular:
  - (a) cooperate in the exchange of information on plant pests, particularly the reporting of the occurrence, outbreak or spread of pests that may be of immediate or potential danger, in accordance with such procedures as may be established by the Commission;
  - (b) participate, in so far as is practicable, in any special campaigns for combating pests that may seriously threaten crop production and need international action to meet the emergencies; and
  - (c) cooperate, to the extent practicable, in providing technical and biological information necessary for pest risk analysis.
2. Each Contracting Party shall designate a contact point for the exchange of information connected with the implementation of this Convention.

*Article IX***Regional plant protection organisations**

1. The Contracting Parties undertake to cooperate with one another in establishing regional plant protection organisations in appropriate areas.
2. The regional plant protection organisations shall function as the coordinating bodies in the areas covered, shall participate in various activities to achieve the objectives of this Convention and, where appropriate, shall gather and disseminate information.
3. The regional plant protection organisations shall cooperate with the Secretary in achieving the objectives of the Convention and, where appropriate, cooperate with the Secretary and the Commission in developing international standards.
4. The Secretary will convene regular Technical Consultations of representatives of regional plant protection organisations to:
  - (a) promote the development and use of relevant international standards for phytosanitary measures; and
  - (b) encourage inter-regional cooperation in promoting harmonised phytosanitary measures for controlling pests and in preventing their spread and/or introduction.

*Article X***Standards**

1. The Contracting Parties agree to cooperate in the development of international standards in accordance with the procedures adopted by the Commission.
2. International standards shall be adopted by the Commission.
3. Regional standards should be consistent with the principles of this Convention; such standards may be deposited with the Commission for consideration as candidates for international standards for phytosanitary measures if more broadly applicable.
4. Contracting Parties should take into account, as appropriate, international standards when undertaking activities related to this Convention.

*Article XI***Commission on Phytosanitary Measures**

1. Contracting Parties agree to establish the Commission on Phytosanitary Measures within the framework of the Food and Agriculture Organisation of the United Nations (FAO).



2. The functions of the Commission shall be to promote the full implementation of the objectives of the Convention and, in particular, to:
- (a) review the state of plant protection in the world and the need for action to control the international spread of pests and their introduction into endangered areas;
  - (b) establish and keep under review the necessary institutional arrangements and procedures for the development and adoption of international standards, and to adopt international standards;
  - (c) establish rules and procedures for the resolution of disputes in accordance with Article XIII;
  - (d) establish such subsidiary bodies of the Commission as may be necessary for the proper implementation of its functions;
  - (e) adopt guidelines regarding the recognition of regional plant protection organisations;
  - (f) establish cooperation with other relevant international organisations on matters covered by this Convention;
  - (g) adopt such recommendations for the implementation of the Convention as necessary; and
  - (h) perform such other functions as may be necessary to the fulfilment of the objectives of this Convention.
3. Membership in the Commission shall be open to all Contracting Parties.
4. Each Contracting Party may be represented at sessions of the Commission by a single delegate who may be accompanied by an alternate, and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Commission but may not vote, except in the case of an alternate who is duly authorised to substitute for the delegate.
5. The Contracting Parties shall make every effort to reach agreement on all matters by consensus. If all efforts to reach consensus have been exhausted and no agreement is reached, the decision shall, as a last resort, be taken by a two-thirds majority of the Contracting Parties present and voting.
6. A Member Organisation of FAO that is a Contracting Party and the Member States of that Member Organisation that are Contracting Parties shall exercise their membership rights and fulfil their membership obligations in accordance, *mutatis mutandis*, with the Constitution and General Rules of FAO.
7. The Commission may adopt and amend, as required, its own Rules of Procedure, which shall not be inconsistent with this Convention or with the Constitution of FAO.
8. The Chairperson of the Commission shall convene an annual regular session of the Commission.
9. Special sessions of the Commission shall be convened by the Chairperson of the Commission at the request of at least one-third of its members.
10. The Commission shall elect its Chairperson and no more than two Vice-Chairpersons, each of whom shall serve for a term of two years.

#### Article XII

##### Secretariat

1. The Secretary of the Commission shall be appointed by the Director-General of FAO.
2. The Secretary shall be assisted by such secretariat staff as may be required.
3. The Secretary shall be responsible for implementing the policies and activities of the Commission and carrying out such other functions as may be assigned to the Secretary by this Convention and shall report thereon to the Commission.
4. The Secretary shall disseminate:
  - (a) international standards to all Contracting Parties within 60 days of adoption;

- (b) to all Contracting Parties, lists of points of entry under Article VII paragraph 2(d) communicated by Contracting Parties;
  - (c) lists of regulated pests whose entry is prohibited or referred to in Article VII paragraph 2(i) to all Contracting Parties and regional plant protection organisations;
  - (d) information received from Contracting Parties on phytosanitary requirements, restrictions and prohibitions referred to in Article VII paragraph 2(b), and descriptions of official national plant protection organisations referred to in Article IV paragraph 4.
5. The Secretary shall provide translations in the official languages of FAO of documentation for meetings of the Commission and international standards.
6. The Secretary shall cooperate with regional plant protection organisations in achieving the aims of the Convention.

#### *Article XIII*

##### **Settlement of disputes**

1. If there is any dispute regarding the interpretation or application of this Convention, or if a Contracting Party considers that any action by another Contracting Party is in conflict with the obligations of the latter under Articles V and VII of this Convention, especially regarding the basis of prohibiting or restricting the imports of plants, plant products or other regulated articles coming from its territories, the Contracting Parties concerned shall consult among themselves as soon as possible with a view to resolving the dispute.
2. If the dispute cannot be resolved by the means referred to in paragraph 1, the Contracting Party or parties concerned may request the Director-General of FAO to appoint a committee of experts to consider the question in dispute, in accordance with rules and procedures that may be established by the Commission.
3. This Committee shall include representatives designated by each Contracting Party concerned. The Committee shall consider the question in dispute, taking into account all documents and other forms of evidence submitted by the Contracting Parties concerned. The Committee shall prepare a report on the technical aspects of the dispute for the purpose of seeking its resolution. The preparation of the report and its approval shall be according to rules and procedures established by the Commission, and it shall be transmitted by the Director-General to the Contracting Parties concerned. The report may also be submitted, upon its request, to the competent body of the international organisation responsible for resolving trade disputes.
4. The Contracting Parties agree that the recommendations of such a committee, while not binding in character, will become the basis for renewed consideration by the Contracting Parties concerned of the matter out of which the disagreement arose.
5. The Contracting Parties concerned shall share the expenses of the experts.
6. The provisions of this Article shall be complementary to and not in derogation of the dispute settlement procedures provided for in other international agreements dealing with trade matters.

#### *Article XIV*

##### **Substitution of prior agreements**

This Convention shall terminate and replace, between Contracting Parties, the International Convention respecting measures to be taken against the *Phylloxera vastatrix* of 3 November 1881, the additional Convention signed at Berne on 15 April 1889 and the International Convention for the Protection of Plants signed at Rome on 16 April 1929.

#### *Article XV*

##### **Territorial application**

1. Any Contracting Party may at the time of ratification or adherence or at any time thereafter communicate to the Director-General of FAO a declaration that this Convention shall extend to all or any of the territories for the international relations of which it is responsible, and this Convention shall be applicable to all territories specified in the declaration as from the 30th day after the receipt of the declaration by the Director-General.
2. Any Contracting Party which has communicated to the Director-General of FAO a declaration in accordance with paragraph 1 of this Article may at any time communicate a further declaration modifying the scope of any former declaration or terminating the application of the provisions of the present Convention in respect of any territory. Such modification or termination shall take effect as from the 30th day after the receipt of the declaration by the Director-General.

3. The Director-General of FAO shall inform all Contracting Parties of any declaration received under this Article.

*Article XVI*

**Supplementary agreements**

1. The Contracting Parties may, for the purpose of meeting special problems of plant protection which need particular attention or action, enter into supplementary agreements. Such agreements may be applicable to specific regions, to specific pests, to specific plants and plant products, to specific methods of international transportation of plants and plant products, or otherwise supplement the provisions of this Convention.
2. Any such supplementary agreements shall come into force for each Contracting Party concerned after acceptance in accordance with the provisions of the supplementary agreements concerned.
3. Supplementary agreements shall promote the intent of this Convention and shall conform to the principles and provisions of this Convention, as well as to the principles of transparency, non-discrimination and the avoidance of disguised restrictions, particularly on international trade.

*Article XVII*

**Ratification and adherence**

1. This Convention shall be open for signature by all States until 1 May 1952 and shall be ratified at the earliest possible date. The instruments of ratification shall be deposited with the Director-General of FAO, who shall give notice of the date of deposit to each of the signatory states.
2. As soon as this Convention has come into force in accordance with Article XXII it shall be open for adherence by non-signatory States and Member Organisations of FAO. Adherence shall be effected by the deposit of an instrument of adherence with the Director-General of FAO, who shall notify all Contracting Parties.
3. When a Member Organisation of FAO becomes a Contracting Party to this Convention, the Member Organisation shall, in accordance with the provisions of Article II(7) of the FAO Constitution, as appropriate, notify at the time of its adherence such modifications or clarifications to its declaration of competence submitted under Article II(5) of the FAO Constitution as may be necessary in light of its acceptance of this Convention. Any Contracting Party to this Convention may, at any time, request a Member Organisation of FAO that is a Contracting Party to this Convention to provide information as to which, as between the Member Organisation and its Member States, is responsible for the implementation of any particular matter covered by this Convention. The Member Organisation shall provide this information within a reasonable time.

*Article XVIII*

**Non-Contracting Parties**

The Contracting Parties shall encourage any State or Member Organisation of FAO, not a party to this Convention, to accept this Convention, and shall encourage any non-Contracting Party to apply phytosanitary measures consistent with the provisions of this Convention and any international standards adopted hereunder.

*Article XIX*

**Languages**

1. The authentic languages of this Convention shall be all official languages of FAO.
2. Nothing in this Convention shall be construed as requiring Contracting Parties to provide and to publish documents or to provide copies of them other than in the language(s) of the Contracting Party, except as stated in paragraph 3 below.
3. The following documents shall be in at least one of the official languages of FAO:
  - (a) information provided according to Article IV paragraph 4;
  - (b) cover notes giving bibliographical data on documents transmitted according to Article VII paragraph 2(b);
  - (c) information provided according to Article VII(2)(b), (d), (i) and (j);
  - (d) notes giving bibliographical data and a short summary of relevant documents on information provided according to Article VIII(1)(a);

- (e) requests for information from contact points as well as replies to such requests, but not including any attached documents;
- (f) any document made available by Contracting Parties for meetings of the Commission.

*Article XX*

**Technical assistance**

The Contracting Parties agree to promote the provision of technical assistance to Contracting Parties, especially those that are developing Contracting Parties, either bilaterally or through the appropriate international organisations, with the objective of facilitating the implementation of this Convention.

*Article XXI*

**Amendment**

1. Any proposal by a Contracting Party for the amendment of this Convention shall be communicated to the Director-General of FAO.
2. Any proposed amendment of this Convention received by the Director-General of FAO from a Contracting Party shall be presented to a regular or special session of the Commission for approval and, if the amendment involves important technical changes or imposes additional obligations on the Contracting Parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Commission.
3. Notice of any proposed amendment of this Convention, other than amendments to the Annex, shall be transmitted to the Contracting Parties by the Director-General of FAO not later than the time when the agenda of the session of the Commission at which the matter is to be considered is dispatched.
4. Any such proposed amendment of this Convention shall require the approval of the Commission and shall come into force as from the 30th day after acceptance by two-thirds of the Contracting Parties. For the purpose of this Article, an instrument deposited by a Member Organisation of FAO shall not be counted as additional to those deposited by Member States of such an organisation.
5. Amendments involving new obligations for Contracting Parties, however, shall come into force in respect of each Contracting Party only on acceptance by it and as from the 30th day after such acceptance. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General of FAO, who shall inform all Contracting Parties of the receipt of acceptance and the entry into force of amendments.
6. Proposals for amendments to the model phytosanitary certificates set out in the Annex to this Convention shall be sent to the Secretary and shall be considered for approval by the Commission. Approved amendments to the model phytosanitary certificates set out in the Annex to this Convention shall become effective 90 days after their notification to the Contracting Parties by the Secretary.
7. For a period of not more than 12 months from an amendment to the model phytosanitary certificates set out in the Annex to this Convention becoming effective, the previous version of the phytosanitary certificates shall also be legally valid for the purpose of this Convention.

*Article XXII*

**Entry into force**

As soon as this Convention has been ratified by three signatory States it shall come into force among them. It shall come into force for each State or Member Organisation of FAO ratifying or adhering thereafter from the date of deposit of its instrument of ratification or adherence.

*Article XXIII*

**Denunciation**

1. Any Contracting Party may at any time give notice of denunciation of this Convention by notification addressed to the Director-General of FAO. The Director-General shall at once inform all Contracting Parties.
2. Denunciation shall take effect one year from the date of receipt of the notification by the Director-General of FAO.

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## ANNEX TO ANNEX I

**MODEL PHYTOSANITARY CERTIFICATE**

No \_\_\_\_\_

Plant protection organisation of \_\_\_\_\_

To: Plant protection organisation(s) of \_\_\_\_\_

**I. Description of consignment**

Name and address of exporter: \_\_\_\_\_

Declared name and address of consignee: \_\_\_\_\_

Number and description of packages: \_\_\_\_\_

Distinguishing marks: \_\_\_\_\_

Place of origin: \_\_\_\_\_

Declared means of conveyance: \_\_\_\_\_

Declared point of entry: \_\_\_\_\_

Name of produce and quantity declared: \_\_\_\_\_

Botanical name of plants: \_\_\_\_\_

This is to certify that the plants, plant products or other regulated articles described herein have been inspected and/or tested according to appropriate official procedures and are considered to be free from the quarantine pests specified by the importing contracting party and to conform with the current phytosanitary requirements of the importing contracting party, including those for regulated non-quarantine pests.

They are deemed to be practically free from other pests.\*

**II. Additional declaration****III. Disinfestation and/or disinfection treatment**

Date \_\_\_\_\_ Treatment \_\_\_\_\_ Chemical (active ingredient) \_\_\_\_\_

Duration and temperature \_\_\_\_\_

Concentration \_\_\_\_\_

Additional information \_\_\_\_\_

Place of issue \_\_\_\_\_

(Stamp of Organisation) \_\_\_\_\_ Name of authorised officer \_\_\_\_\_

Date \_\_\_\_\_

(Signature)

No financial liability with respect to this certificate shall attach to \_\_\_\_\_ (name of plant protection organisation) or to any of its officers or representatives.\*

\* Optional clause.

**MODEL PHYTOSANITARY CERTIFICATE FOR RE-EXPORT**

No \_\_\_\_\_

Plant protection organisation

of \_\_\_\_\_ (contracting party of re-export)

To: Plant protection organisation(s)

of \_\_\_\_\_ (contracting party(ies) of import)

**I. Description of consignment**

Name and address of exporter: \_\_\_\_\_

Declared name and address of consignee: \_\_\_\_\_

Number and description of packages: \_\_\_\_\_

Distinguishing marks: \_\_\_\_\_

Place of origin: \_\_\_\_\_

Declared means of conveyance: \_\_\_\_\_

Declared point of entry: \_\_\_\_\_

Name of produce and quantity declared: \_\_\_\_\_

Botanical name of plants: \_\_\_\_\_

This is to certify that the plants, plant products or other regulated articles described above \_\_\_\_\_ were imported into (contracting party of re-export) \_\_\_\_\_ from \_\_\_\_\_ (contracting party of origin) covered by Phytosanitary Certificate No \_\_\_\_\_, \*original  certified true copy  of which is attached to this certificate; that they are packed  repacked  in original  \*new  containers, that based on the original phytosanitary certificate  and additional inspection , they are considered to conform with the current phytosanitary requirements of the importing contracting party, and that during storage in \_\_\_\_\_ (contracting party of re-export), the consignment has not been subjected to the risk of infestation or infection.

\_\_\_\_\_

\* Insert tick in appropriate  boxes.

*ANNEX II***Declaration by the European Community on the exercise of competence according to Article XVII(3) of the International Plant Protection Convention**

In accordance with the provisions of Article II(7) of the FAO Constitution, the European Community hereby declares that its declaration of competence submitted to FAO under Article II(5) of the FAO Constitution still applies in the light of its adherence to the International Plant Protection Convention.

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# COMMISSION

## COMMISSION DECISION

of 13 August 2004

### on a financial contribution from the Community towards the eradication of classical swine fever in Luxembourg in 2003

(notified under document number C(2004) 3084)

(Only the French text is authentic)

(2004/598/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field<sup>(1)</sup>, and in particular Article 3(3) and Article 5(3) thereof,

Whereas:

(1) An outbreak of classical swine fever occurred in Luxembourg in 2003. The emergence of this disease represents a serious risk to the Community's livestock population.

(2) With a view to helping to eradicate the disease as rapidly as possible, the Community may contribute financially to eligible costs incurred by the Member State, as provided for in Decision 90/424/EEC.

(3) Pursuant to Article 3(2) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy<sup>(2)</sup>, veterinary and plant

health measures undertaken in accordance with Community rules shall be financed under the Guarantee section of the European Agricultural Guidance and Guarantee Fund. The auditing of these measures comes under Articles 8 and 9 of the said Regulation.

(4) The payment of the Community financial contribution must be subject to the condition that the planned activities were actually implemented and the authorities provide all the necessary information within certain deadlines.

(5) On 12 March 2004, Luxembourg submitted an official request for reimbursement for all the expenditure incurred on its territory. According to this request 1 351 animals were culled.

(6) The terms 'swift and adequate compensation of the livestock farmers' used in Article 3 of Decision 90/424/EEC, 'reasonable payments' and 'justified payments' and the categories of eligible expenditure under 'other costs' associated with the compulsory culling should all be defined.

(7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

<sup>(1)</sup> OJ L 224, 18.8.1990, p. 19. Directive as last amended by Directive 2003/99/EC of the European Parliament and of the Council (OJ L 325, 12.12.2003, p. 31).

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 103.



HAS DECIDED AS FOLLOWS:

*Article 1*

**Granting of a financial contribution from the Community to Luxembourg**

In order to eradicate classical swine fever in 2003, Luxembourg may benefit from a Community financial contribution for 50 % of the expenditure incurred for:

- (a) the swift and adequate compensation of farmers forced to cull their animals as part of the measures to eradicate the outbreaks of classical swine fever in 2003, pursuant to the provisions of the first and seventh indents of Article 3(2) of Decision 90/424/EEC and in accordance with this Decision;
- (b) the operational expenditure associated with the culling of the animals, the destruction of carcasses and products, the cleaning and disinfecting of premises and the cleaning and disinfecting, or destruction if necessary, of contaminated equipment, pursuant to the provisions of the first, the second and third indents of Article 3(2) of Decision 90/424/EEC and in accordance with this Decision.

*Article 2*

**Definitions**

In this Decision, the following definitions shall apply:

- (a) 'swift and adequate compensation' means payment, within 90 days of the culling of the animals, for compensation corresponding to the market value as defined in Article 3(1);
- (b) 'reasonable payments' means payments for the purchase of materials or services at proportionate prices compared to the market prices before the outbreak of the classical swine fever;
- (c) 'justified payments' means payments for the purchase of materials or services of which the nature and the direct link with the compulsory culling of animals, as referred to in Article 1(a) is demonstrated.

*Article 3*

**The eligible expenditure covered by the financial contribution from the Community**

1. The maximum amount per animal of the compensation to the owners of the animals shall be based on the market value the animals had before their contamination or culling.

2. When the compensation payments made by Luxembourg pursuant to Article 1(a) are effected after the 90 days deadline laid down in Article 2(a), the eligible amounts shall be reduced for expenditure effected after the deadline as follows:

- 25 % for payments made between 91 and 105 days after the culling of the animals,
- 50 % for payments made between 106 and 120 days after the culling of the animals,
- 75 % for payments made between 121 and 135 days after the culling of the animals,
- 100 % for payments beyond 135 days after the culling of the animals.

However, the Commission will apply a different time-scale and/or lower reductions or none at all, if exceptional management conditions are encountered for certain measures, or if other well-founded justifications are introduced by Luxembourg.

3. The costs referred to in Article 1(b) eligible for a financial contribution shall only be those set out in Annex III.

4. The calculation of the financial contribution from the Community shall exclude:

- (a) value added tax;
- (b) salaries of civil servants;
- (c) use of public material other than consumables.

*Article 4*

**Conditions for payment and supporting documentation**

1. The financial contribution from the Community shall be fixed in accordance with the procedure laid down in Article 41 of Council Decision 90/424/EEC on the basis of:

- (a) a claim submitted in accordance with Annexes I and II within the time-limit provided for in paragraph 2;

(b) detailed documents confirming the figures in the claim referred to in point (a);

(c) the results of the on-the-spot checks, if any, by the Commission as referred to in Article 5.

The documents referred to in point (b) as well as relevant commercial information shall be made available for on-the-spot checks by the Commission.

2. The claim referred to in paragraph 1(a) shall be provided in computerised form in accordance with Annex I and Annex II within 60 calendar days after the notification of the present Decision.

When this deadline is not observed, the financial contribution from the Community shall be reduced by 25 % for each month of delay.

#### *Article 5*

#### **On-the-spot checks by the Commission**

The Commission may make on-the-spot checks, with the cooperation of the competent national authorities, on the implementation of the classical swine fever eradication measures and the related costs incurred.

#### *Article 6*

#### **Recipients**

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels, 13 August 2004.

*For the Commission*

David BYRNE

*Member of the Commission*



## ANNEX II

**Claim as referred to in Article 4**

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'Other costs' incurred for (if applicable) holding No ... or list  
(excluding compensation for the value of animals)

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Item	Amount without VAT
Culling	
Destruction of carcasses (transport and treatment)	
Cleaning and disinfection (salary and products)	
Feedingstuffs (compensation and destruction)	
Equipment (compensation and destruction)	
Total	

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## ANNEX III

**Eligible costs as referred to in Article 3(3)**

1. Costs for the compulsory culling of the animals:
    - (a) salaries and fees of the culling-men specifically employed;
    - (b) consumables and specific equipment used for the culling;
    - (c) the procurement of services or the renting of equipment used for transporting the animals to the culling place.
  2. Costs for the destruction of carcasses:
    - (a) rendering: the procurement of services or the renting of equipment used for transporting carcasses to the storage premises and to the rendering plant, the storage of carcasses, the treatment of carcasses in the rendering plant and the destruction of the meal;
    - (b) burying: salaries and fees of staff specifically employed, the procurement of services or the renting of equipment for the transport and the burying of the carcasses, and products used for the disinfection of the burying spot;
    - (c) burning: salaries and fees of staff specifically employed, combustibles or other materials used, the procurement of services or the renting of equipment for the transport of the carcasses, and products used for the disinfection of the burning plant.
  3. Costs for the cleaning and disinfection of holdings:
    - (a) products used for cleaning and disinfection;
    - (b) salaries and fees for the staff specifically employed.
  4. Costs for the destruction of contaminated feedingstuffs:
    - (a) compensation at purchase price of the feedingstuffs;
    - (b) the procurement of services or the renting of equipment for the transport and destruction of the feedingstuffs.
  5. Cost related to the compensation for destruction of contaminated equipment at market value of such equipment. Compensation costs for reconstruction or renewal of farm buildings, and infrastructure costs, are ineligible.
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