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EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

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([1]) Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 143/2005

of 28 January 2005

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

(1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 29 January 2005.

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

Done at Brussels, 28 January 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

[1] 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 28 January 2005 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	123,3
	204	75,2
	212	176,1
	608	118,9
	624	163,5
	999	131,4
0707 00 05	052	155,2
	999	155,2
0709 90 70	052	175,4
	204	183,5
	624	56,7
	999	138,5
0805 10 20	052	43,3
	204	45,7
	212	54,1
	220	38,5
	421	38,1
	448	34,7
	624	71,7
	999	46,6
0805 20 10	204	65,1
	999	65,1
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	59,3
	204	86,3
	400	78,6
	464	138,7
	624	68,0
	662	27,9
	999	76,5
0805 50 10	052	70,5
	999	70,5
0808 10 80	400	82,6
	404	83,9
	720	64,7
	999	77,1
0808 20 50	388	79,5
	400	88,1
	528	87,7
	720	36,8
	999	73,0

(1) 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 144/2005

of 28 January 2005

concerning the 75th special invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 2799/1999

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 [1], and in particular Article 10 thereof,

Whereas:

(1) Pursuant to Article 26 of Commission Regulation (EC) No 2799/1999 of 17 December 1999 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed-milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder [2], intervention agencies have put up for sale by standing invitation to tender certain quantities of skimmed-milk powder held by them.

(2) According to Article 30 of Regulation (EC) No 2799/1999, in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no award.

(3) On the basis of the examination of the offers received, the tendering procedure should not be proceeded with.

(4) 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

For the 75th individual invitation to tender pursuant to Regulation (EC) No 2799/1999, in respect of which the time limit for the submission of tenders expired on 25 January 2005, no award shall be made.

Article 2

This Regulation shall enter into force on 29 January 2005.

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

Done at Brussels, 28 January 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

[1] OJ L 160, 26.6.1999, p. 48. Regulation as amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).
[2] OJ L 340, 31.12.1999, p. 3. Regulation as last amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

COMMISSION REGULATION (EC) No 145/2005

of 28 January 2005

imposing a provisional anti-dumping duty on imports of barium carbonate originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

After consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. INITIATION

(1) On 30 April 2004, the Commission announced, by a notice (notice of initiation) published in the *Official Journal of the European Union* [2], the initiation of an anti-dumping proceeding with regard to imports into the Community of barium carbonate originating in the People's Republic of China (PRC or country concerned).

(2) The proceeding was initiated as a result of a complaint lodged in March 2004 by Solvay Barium Strontium GmbH (the complainant), the sole producer of barium carbonate in the Community representing 100 % of the Community production. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. PARTIES CONCERNED BY THE PROCEEDING

(3) The Commission officially advised the complainant, the exporting producers, importers, suppliers and users known to be concerned, and representatives of the PRC, of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) The complainant producer, exporting producers, importers, users and user associations made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(5) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent MET and IT claim forms to the Chinese companies known to be concerned. Five companies requested MET pursuant to Article 2(7) of the basic Regulation or IT should the investigation establish that they did not meet the conditions for MET.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ C 104, 30.4.2004, p. 58.

(6) In the notice of initiation, the Commission indicated that in view of the apparent large number of exporters/producers and importers sampling may be applied in this investigation. However, given the lower than expected number of exporting producers in the PRC and importers and users in the Community, which indicated their willingness to cooperate, it was decided that sampling was not necessary.

(7) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from the complainant Community producer, five unrelated importers, one raw material supplier, six users, one association of users and five exporting producers in the PRC.

(8) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) *Community producer:*

— Solvay Barium Strontium GmbH, Germany.

(b) *exporting producers in the PRC:*

— Hubei Jingshan Chutian Barium Salt Corp. Ltd,

— Zaozhuang Yongli Chemical Co.,

— Guizhou Hongkaj Chemical Co. Ltd and related Hengyang Hong Xiang Co. Ltd,

— Guizhou Red Star Developing Co.,

— Hebei Xinji Chemical Group Co. Ltd.

(c) *unrelated importers:*

— Kimpe Sarl, France,

— Norkem BV, Netherlands.

(d) *Community users:*

— Ilpea SpA, Italy.

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

— Chemical Products Corporation (CPC), Cartersville, producer in the United States of America.

3. INVESTIGATION PERIOD

(10) The investigation of dumping and injury covered the period from 1 January 2003 to 31 December 2003 (IP). The examination of trends relevant for the assessment of injury covered the period from January 2000 to the end of the IP (period considered).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. PRODUCT CONCERNED

(11) The product concerned is certain barium carbonate with a strontium content of more than 0,07 % by weight and a sulphur content of more than 0,0015 % by weight, whether in powder, pressed granular or calcined granular form, originating in the PRC, falling within CN code ex 2836 60 00.

2. LIKE PRODUCT

(12) No differences were found between the product concerned and the barium carbonate produced and sold on the domestic market in the PRC and the United States of America (USA), which served as an analogue country for the purpose of establishing the normal value with respect to imports from the PRC. Indeed, barium carbonate produced and sold in the USA has the same basic physical and chemical characteristics and uses compared with that exported from the PRC to the Community. Likewise, no differences were found between the product concerned and the barium carbonate produced by the Community industry and sold on the Community market. They both share the same physical and chemical characteristics and uses. Consequently, barium carbonate produced and sold on the domestic market of the PRC and barium carbonate produced and sold on the domestic market of the analogue country, as well as barium carbonate produced and sold in the Community by the Community industry have the same basic physical and chemical characteristics and uses. It is therefore concluded that all types of barium carbonate are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

1. MARKET ECONOMY TREATMENT

(13) In anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2(7)(b) of the basic Regulation for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(14) Briefly, and for ease of reference only, these criteria, fulfilment of which the applicant companies have to demonstrate, are set out in summarised form below:

— business decisions and costs are made in response to market signals, and without significant State interference,

— accounting records are independently audited in line with international accounting standards and applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— legal certainty and stability are provided by bankruptcy and property laws,

— currency exchanges are carried out at the market rate.

(15) Five exporting producers in the PRC requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers.

(16) The request of two companies has been rejected on the basis of a first analysis of the MET claim form which failed to show that all the criteria were met. In particular these companies, which were fully or predominantly State owned, and had a board of directors entirely or predominantly consisting of State nominated directors, could not demonstrate that there was no significant state interference in their business decisions. For the remaining three companies, the Commission sought and verified at the premises of these companies all information submitted in the MET applications and deemed necessary.

(17) The investigation showed that two companies fulfilled all the criteria required and they were therefore granted MET. The exporting producers in the PRC which were granted MET are:

— Hubei Jingshan Chutian Barium Salt Corp. Ltd

— Zaozhuang Yongli Chemical Co.

(18) The following table summarises the determination for the three companies for which MET was not granted against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation.

Company	Criteria				
	Article 2(7)(c) indent 1	Article 2(7)(c) indent 2	Article 2(7)(c) indent 3	Article 2(7)(c) indent 4	Article 2(7)(c) indent 5
1	Not met				
2	Not met	Not met	Not met	Met	Met
3	Not met				

Source: Verified questionnaire replies of cooperating Chinese exporters.

(19) The companies concerned were given an opportunity to comment on the above findings.

(20) As far as company 2 is concerned, the shareholders of its related company could not be identified and it could not be established who ultimately controlled this company. Therefore, significant State interference could not be excluded. Although the company contested this fact, it could not provide any information or evidence which would have shown that it was mainly controlled by private entrepreneurs and free from significant State interference. It was therefore concluded that the criteria laid down in Article 2(7)(c) indent 1 of the basic Regulation was not fulfilled.

(21) For the same company, the investigation revealed significant deficiencies in the audited accounts. Thus, the company's own auditors made reservations with regard to, amongst others, the booked sales figures, assets valuation and depreciation. However, no corrections were made in order to rectify the shortcomings identified by the auditors and no explanations could be given by the company as to why so far no account was taken of the reservations expressed by the auditors. Given these shortcomings, it would not have been possible to make a reliable dumping calculation on this basis. Although the company contested these conclusions, it did not provide any reasonable explanation why its accounts would be reliable despite these deficiencies. In view of the elements set out above which put into question the reliability of the accounts and that the problems identified by the auditors were not corrected, it is concluded that the criterion set out under Article 2(7)(c) indent 2 of the basic Regulation is not met.

(22) Finally, as far as the acquisition of company 2's assets is concerned, the company could not explain under which conditions some of the company's assets were transferred from the collectively-owned pre-existing company. The Commission therefore concluded that the conditions of Article 2(7)(c) indent 3 of the basic Regulation were not met. Company 2 disagreed with these conclusions, but did not provide any information or evidence with regard to the transfer of assets which would have shown that there are no significant distortions from the former non-market economy regime. The claim made by company 2 was therefore unfounded and was rejected.

(23) The Advisory Committee was consulted and the parties directly concerned were informed accordingly. The Community industry was given the opportunity to comment, and did not oppose to the MET determination.

2. INDIVIDUAL TREATMENT (IT)

(24) Further to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under Article 2(7) of the basic Regulation, except in those cases where companies are able to demonstrate, in accordance with Article 9(5) of the basic Regulation, that (a) they are free to repatriate capital and profits; (b) their export prices and quantities, as well as the conditions and terms of the sales are freely determined; (c) the majority of shares belong to private persons. State officials in the board of Directors or holding key management positions are either a minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference; (d) exchange rate conversions are carried out at market rates, and (e) any State interference is not such as to permit circumvention of measures if exporters are given different rates of duty.

(25) The three exporting producers to which MET was not granted also claimed individual treatment. Therefore, the Commission examined whether these three exporting producers demonstrated that they are complying with the criteria set out in Article 9(5) of the basic Regulation.

(26) Two companies (company 1 and 3) were found to be fully or predominately State owned and had a board of directors consisting fully or entirely of State nominated directors. These companies could not demonstrate that they were sufficiently independent from State interference and consequently did not meet the conditions set in Article 9(5)(c) of the basic Regulation.

(27) Although the third exporting producer (company 2) was partly privately owned, it could not demonstrate who ultimately controlled it and significant State interference could therefore not be excluded. As a consequence, the company was not able to demonstrate that it met criterion 9(5)(c) of the basic Regulation.

(28) Furthermore, for all three companies, it was found that there is a risk of circumvention of the measures if these exporters would be given an individual duty rate. This risk results partly from the above-mentioned State influence in the operation of two of the companies, and the fact that the other exporter could not demonstrate the absence of significant State influence either. Moreover, given the commodity nature of the product concerned, which cannot be identified as having been produced by a particular producer, the risk of circumvention of measures by way of exporting via a company with a lower duty was also deemed significant. The companies therefore did not meet the conditions set in Article 9(5)(e) of the basic Regulation.

(29) Consequently, none of the three exporting producers met the conditions set in Article 9(5) of the basic Regulation. It was therefore concluded that IT should not be granted to any of the exporting producers to which MET was not granted.

3. NORMAL VALUE

3.1. **Determination of normal value for all exporting producers not granted MET**

(a) *Analogue country*

(30) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET has to be established on the basis of the prices or constructed value in a market economy third country (analogue country).

(31) In the notice of initiation, the USA was envisaged as an appropriate market economy third country for the purpose of establishing normal value for the PRC. Interested parties were invited to comment on this choice.

(32) Three exporting producers contested this choice claiming that the level of economic development, the manufacturing process and the access to raw materials were different in the USA and the PRC. Furthermore, it was argued that the level of competition in the USA was low given that there was only one barium carbonate producer and that the domestic market was protected by anti-dumping duties. South Korea, Russia and India were proposed as alternative analogue countries.

(33) The Commission sought cooperation from other potential analogue countries such as India, Japan and Brazil. However, none of the producers in these countries was willing to cooperate.

(34) In any case, the Commission concluded that South Korea was not an appropriate analogue country because it had no domestic source of barite, the most important raw material, and only an insignificant production of barium carbonate. Furthermore, the Commission rejected Russia as an appropriate analogue country because the barium carbonate produced in Russia was of a significantly lower quality and therefore not comparable to the product produced in the PRC and the Community. The investigation revealed, also that the domestic market in Brazil was small and that the level of protection was higher than in the USA. Brazil was therefore not considered as an appropriate analogue country. Furthermore, no evidence was available indicating that any of the countries proposed as an alternative analogue country was more suitable than the USA.

(35) With regard to the USA, it was found that the production volume was substantial and representative with regard to Chinese exports of barium carbonate.

(36) As far as the level of economic development and the different production processes are concerned it was considered that there might indeed be some differences. USA is a highly industrialised economy and the producer in the USA employed a more advanced and more efficient production method than that used in the PRC. However, it should be noted that even if these differences would affect normal value, they should normally result in a lower normal value in the USA and thus be to the advantage of the Chinese exporting producers. Furthermore, it is recalled that, if necessary, appropriate adjustment can be made. In any case, although local variations of the production processes cannot be excluded, it has not been demonstrated that in any particular country other than the USA the production process would be more comparable to the one used in the PRC.

(37) Regarding the competition on the domestic market of the USA, the USA producer was subject to competition from imports from the PRC, Germany and Mexico. Imports of these countries represented approximately 30 % of the market, which was considered substantial. It was therefore concluded that there was a fair level of competition in the USA.

(38) As far as the access to raw materials is concerned, it was found that the USA was, together with the PRC, one of the largest barite producers and had substantial barite reserves. It was therefore concluded that the access to the raw material in terms of availability was comparable in the USA and in the PRC.

(39) In view of the above, it was provisionally concluded that the United States constitutes an appropriate analogue country in accordance with Article 2(7) of the basic Regulation.

(b) *Determination of normal value in the analogue country*

(40) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET was established on the basis of verified information received from the producer in the analogue country with regard to domestic costs and sales of the like product in the USA market for comparable product types.

(41) Normal value was established by using the methodology outlined in recitals 43 to 47 and 53 to 59. Domestic sales in the USA were representative, albeit certain product types were not sold in the ordinary course of trade, i.e. were sold at losses. For these product types, normal value was constructed in accordance with Article 2(3) and 2(6) of the basic Regulation, by adding a reasonable amount of selling, general and administrative (SG&A) expenses and profit margin to the cost of manufacturing. Since domestic sales of the product concerned were representative, the company's SG&A were considered reliable and were used. As far as the profit margin is concerned, the company's own profit margin realised for domestic sales of the product concerned could not be used because these sales were overall made at a loss. Since no other producer in the US cooperated, the Commission used the profit margin applicable to the production and sales of the same general category of products in accordance with Article 2(6)(b) of the basic Regulation.

(42) For all other product types, normal value was established as the weighted average domestic sales price to unrelated customers by the cooperating producer in the USA, adjusted as described below.

3.2. **Determination of normal value for exporting producers granted MET**

(43) As far as the determination of normal value is concerned, the Commission first established, for each cooperating exporting producer, whether its total domestic sales of barium carbonate were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total volume of such sales represented at least 5 % of the total export sales volume of the producer to the Community. On this basis, for both exporting producers overall domestic sales of the product concerned during the IP were made in representative quantities.

(44) The Commission subsequently identified those types of the product concerned sold domestically that were identical or directly comparable with the types sold for export to the Community.

(45) For each type sold by the exporting producers on their domestic markets and found to be directly comparable with the type of barium carbonate sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of barium carbonate were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type of barium carbonate exported to the Community. As a result of this analysis, all product types but one, were sold in representative quantities.

(46) The Commission subsequently examined whether the domestic sales of each type of barium carbonate, sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers of the barium carbonate type in question.

(47) Domestic sales transactions were considered profitable where the unit price of a specific product type was equal to or above the cost of production. Cost of production for each product type sold on the domestic market during the IP was therefore determined.

(48) One exporting producer claimed an adjustment for start-up costs on the basis that production at normal capacity utilisation rates only started after the beginning of the IP. The company started producing barium carbonate only shortly before the beginning of the IP. The company argued that after it bought its production lines it invested substantial amounts in repairs before test production and finally normal production started. It was claimed that the average start-up phase for both production lines was 11 months and that normal production would have started eight months after beginning of the IP.

(49) In contrast to what was claimed by this exporting producer, it was found that the monthly production and sales volumes were at the same level during the entire IP and in some cases even exceeded the monthly volumes produced and sold in the period where allegedly normal capacity utilisation rates were reached. The substantial sales volumes throughout the entire IP did not point to sales from a mere test production. It was consequently concluded that the company produced at normal capacity utilisation rates throughout the entire IP. Furthermore, the company did not show that during the alleged start-up phase, unit production costs were higher than in the period where allegedly normal capacity utilisation rates were reached. In any case, even if costs would have been higher, this would not have been a consequence of lower production volumes as evidenced above. It was consequently concluded that the claim for an adjustment with regard to start-up costs was contradictory and not confirmed by any evidence and was therefore rejected.

(50) The same producer claimed that the depreciation method used by the company for 'investments on fixed assets' did not reasonably reflect the costs associated with the production and sale of the product concerned. The investments made corresponded to the initial repair costs of the production lines after their acquisition and were accounted for in one financial year, given that the company considered that the useful life of the repaired assets would be less than one year. The company expected to then make further investments after this period. Given, however, that no further repairs were needed to the production lines, the actual lifetime of the investments was longer than originally expected. The company claimed that the depreciation period should thus be adapted in accordance with the economic reality and the costs as booked in the accounts adjusted accordingly pursuant to Article 2(5) of the basic Regulation.

(51) With regard to the above claim, it is considered that higher than normal repair expenses in the first year of the ownership of used equipment is not unusual and to book such higher costs in the first year corresponds to normal accounting practices. The methodology chosen by the company was therefore not unreasonable, but corresponded to normal practice. The fact that no further repair cost incurred afterwards does not justify departing from normal accounting practice. The company's claim to adjust costs in this regard was therefore not warranted and was rejected.

(52) The other exporting producer claimed that the value of a by-product (sulphur) should be deducted from the cost of production of the product concerned. Sulphur is further processed from a gas (H_2S) which is set free automatically when producing barium carbonate. However, the company had no technical means to measure the quantity of gas used in the production of sulphur and could therefore not quantify its claim. Furthermore, in the company's accounting system, sulphur and the product concerned were treated as two separate products and the costs of producing barium carbonate were established without taking into account the value of sulphur. On this basis, the claim was provisionally rejected.

(53) As mentioned in recital 46, the proportion of profitable sales to independent customers in the domestic market of the product type in question was established. In cases where the sales volume of the barium carbonate type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of the barium carbonate type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

(54) In cases where the volume of profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(55) As a result of the above analysis, it was found that all product types, except one, were sold in the ordinary course of trade by reason of price.

(56) For all product types which were either not sold in representative quantities or which were not sold in the ordinary course of trade by reason of price, domestic prices of the exporting producer in question could not be used in order to establish normal value and another method had to be applied.

(57) In this regard, the Commission used constructed normal value, in accordance with Articles 2(3) and 2(6) of the basic Regulation.

(58) In accordance with Article 2(3) of the basic Regulation, normal value was constructed on the basis of each exporting producer's own cost of manufacturing plus a reasonable amount for selling, general and administrative (SG&A) expenses and for profit.

(59) Since SG&A and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data within the meaning of Article 2(6) of the basic Regulation, the exporting producers' own SG&A and profit were used in all cases where normal value was constructed.

4. EXPORT PRICES

(60) For all cooperating Chinese exporting producers which were granted MET, export sales were determined on an individual company basis. All export sales to the Community of the exporting producers concerned were made directly to independent customers in the Community and therefore, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

5. COMPARISON

(61) The normal value and export prices were compared on an ex-works basis at the same level of trade. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

(62) On this basis, allowances for differences in packing costs, credit cost, discounts and rebates, commissions, inland freight, insurance, handling, after sales services and level of trade were made. As far as bank charges are concerned, an adjustment according to Article 2(10)(k) of the basic Regulation was made.

(63) As far as the level of trade is concerned, it was found that the majority of the domestic sales in the USA were made to end-users, while export sales of the product concerned from the PRC were made exclusively to distributors. The adjustment was calculated on the basis of the average price difference of sales to end-users and sales to distributors on the USA domestic market in accordance with Article 2(10)(d) of the basic Regulation.

(64) It was further found that in the PRC large quantities of the main raw material barite were accessible without any specific mining process while in the USA barite was mined either surface or underground. In addition, the raw material in China was transported to near-by factories involving practically no transport cost, while in the USA the cost to transport barite from the mines to the factories was substantial.

(65) It was therefore considered that appropriate adjustments to the normal value in the USA were warranted in order to bring the conditions of the production of barium carbonate in the USA to a comparable level with the ones in the PRC. Therefore, the normal value was adjusted by taking into account the major differences in the production conditions, i.e. the differences in costs for the production and transport of the main raw material barite.

(66) Finally, it was found that in the USA substantial environmental costs were incurred, while in the PRC such costs were non-existent. Therefore, the normal value was adjusted accordingly.

6. DUMPING MARGIN

6.1. **For the cooperating exporting producers granted MET**

(67) According to Article 2(11) of the basic Regulation, the dumping margin for each exporting producer was established on the basis of a comparison between the weighted average normal value with the weighted average export price per product type, as determined above.

(68) The provisional dumping margins for the cooperating exporting producers to which MET was granted, expressed as a percentage of the cif net free-at-Community-frontier price, before duty, are:

— Hubei Jingshan Chutian Barium Salt Corp. Ltd	11,2 %
— Zaozhuang Yongli Chemical	24,4 %.

6.2. **For all other exporting producers**

(69) In order to calculate the country-wide dumping margin applicable to all other exporters in the PRC, the Commission first established the level of cooperation. A comparison was made between the total imports of the product concerned originating in the PRC, calculated on the basis of Eurostat, and the actual questionnaire replies received from the exporters in the PRC to which MET was not granted. On this basis, it was established that the level of cooperation was close to 100 %.

(70) The dumping margin for the remaining cooperating exporters which were not granted MET was consequently calculated by comparing the weighted average normal value established for the analogue country and the weighted average export price reported by the cooperating exporters to arrive at a weighted average dumping margin for the remaining cooperating exporters.

(71) On this basis the country-wide level of dumping was provisionally established at 34,0 % of the cif Community frontier price.

D. **INJURY**

1. DEFINITION OF THE COMMUNITY INDUSTRY

(72) The sole cooperating Community producer accounted for 100 % of the Community production of barium carbonate during the IP. It is therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(73) As the Community industry is thus constituted of only one producer, all figures relating to the latter had to be indexed for reasons of confidentiality.

2. COMMUNITY CONSUMPTION

(74) Community consumption was established on the basis of sales volumes of the Community industry on the Community market plus imports from the PRC and other third countries, based on Eurostat. Community consumption of barium carbonate decreased by 10 % between 2000 and 2002 due to the difficult economic situation in general. Afterwards, it recovered to the level of 2000, whereas the imports from the PRC has increased, as shown in the table below.

	2000	2001	2002	IP
Community consumption (tonnes)	137 742	130 243	124 568	136 722

3. IMPORTS FROM THE COUNTRY CONCERNED

(a) *Volume and market share*

(75) The import volume of barium carbonate from the PRC into the Community increased from 54 167 tonnes in 2000 to 63 742 tonnes in the IP, i.e. by 18 % over the period considered. It is to be noted that imports decreased to 48 900 tonnes in 2002, before quickly recovering in the IP.

(76) The corresponding market share was around 40 % in 2000 and increased by 19 % over the period considered, mainly due to the substantial increase of imports from the PRC in 2003.

(b) *Prices*

(77) Average prices for imports from the PRC decreased constantly from EUR 253/tonne in 2000 to EUR 186/tonne during the IP.

(c) *Price undercutting*

(78) For the purposes of analysing price undercutting, the weighted average sales prices per product type of the Community industry to unrelated customers on the Community market, adjusted to an ex-works basis, were compared to the corresponding weighted average export prices of the imports concerned, established on a cif basis with an appropriate adjustment for the customs duties and post-importation costs. The comparison was made after deduction of rebates and discounts.

(79) Unlike imports from the PRC, the Community industry guarantees a stable product according to the customer specifications with always exactly the same impurities and offers customer services such as laboratory analyses. The market value of these services was taken into account in the price comparison by making an adjustment of 25 % to the prices of the Community industry, based on information received from the Community industry.

(80) It was submitted by several importers and users that the Community industry charges higher prices due to the higher reactivity of its product. This argument had to be rejected as the PRC exporters are able to supply equivalent products for each grade produced by the Community industry due to technical progress they made during recent years. In addition, the most reactive grade of barium carbonate accounts for less than 5 % of the sales of the Community industry. Therefore, it was considered that an adjustment for differences in reactivity was not necessary.

(81) The comparison showed that during the IP the product concerned originating in the PRC was sold in the Community at prices which undercut the Community industry's prices by 28 % to 31 %, when expressed as a percentage of the latter.

4. SITUATION OF THE COMMUNITY INDUSTRY

(82) In accordance with Article 3(5) of the Basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

(83) It was analysed whether the Community industry is still in the process of recovering from the effects of past subsidisation or dumping, but no evidence was found that this should be the case.

(a) *Production*

(84) The Community industry's production decreased by 13 % over the period considered. It remained stable between 2000 and 2001 and diminished subsequently.

(b) *Capacity and capacity utilisation*

(85) The capacity utilisation decreased by 14 % over the period considered. This is not explained by a small increase of 2 % in the total production capacity of the Community industry between 2001 and 2002 over the period considered.

(c) *Sales, prices and market share*

(86) The sales volume to unrelated parties in the Community decreased by 17 % from 2000 to the IP (sales to related customers consisted of less than 1 % of total sales volume) thereby reducing the market share from somewhere in the range between 55 % to 60 % to somewhere in the range between 45 % and 50 %. As the average price per tonne fell by 7 %, the turnover went down by 23 %.

(d) *Inventories*

(87) Stocks of finished products almost tripled between 2000 and 2001. They were reduced considerably over the two following years and amounted to almost the double of 2000 during the IP.

(e) *Employment, productivity and wages*

(88) Employment in the Community industry decreased by 10 % over the period considered. Wages increased gradually by 10 % during the same time calculated on the basis of tonnes produced per employee first increased by 3 % between 2000 and 2002 and subsequently went down by almost 6 %.

(f) *Growth*

(89) While Community consumption remained basically stable between 2000 and the IP, the sales volume of the Community industry decreased by 17 %. On the other hand, the volume of imports concerned went up by 18 %. The trend was even more pronounced between 2002 and the IP, with Community consumption going up by around 10 %, Community industry sales volume falling by more than 10 % and the imports from the PRC rising by more than 30 %. Thus, the sales of the Community industry went down despite growing demand in the period between 2002 and the IP. Consequently, the market share of the Community industry fell by almost 9 percentage points, mostly due to imports from the PRC. In contrast, the Chinese market share increased by more than 7 percentage points between 2002 and the IP.

(g) *Investment*

(90) Investments more than doubled between 2000 and 2001. In 2002, they remained stable before returning to the level of 2000 in 2003. The investments were made mainly for environmental protection and maintenance.

(h) *Profitability, return on investment, cash flow and ability to raise capital*

(91) The sales of the Community industry of the like product were not profitable during the whole period considered. While the Community industry was almost at break-even level in 2000, the situation deteriorated and sales were highly unprofitable during the IP (more than – 10 %).

(92) The return on investment, expressed as profits/losses in relation to the net book value of assets, was also negative during the whole period considered and deteriorated year after year. In the IP, the return on investment was in the range of – 25 % to – 20 %.

(93) The cash flow generated by the products produced and sold in the Community decreased sharply between 2000 and the IP. While it was still highly positive in 2000, it became negative in 2001 and declined during the following two years amounting to more than - EUR 1 000 000 during the IP.

(94) As investments were very low, the Community industry was not found to be experiencing difficulties in its ability to raise capital either in the form of loans from banks or equity from the parent company.

(i) *Magnitude of dumping margin*

(95) Given the volume and the prices of the dumped imports from the country concerned, the impact of the actual margins of dumping cannot be considered negligible.

5. CONCLUSION ON INJURY

(96) The examination of the abovementioned factors shows that between 2000 and the IP, the situation of the Community industry deteriorated considerably. The sales volume fell by 17 % over the period considered, resulting in a significant loss of market share. Average prices fell and consequently the turnover diminished even more significantly. The production volume and capacity utilisation followed the same trend. Due to these negative developments, the profitability, return on investment and the cash flow deteriorated considerably over the period considered.

(97) The situation of the Community industry is thus found to have deteriorated to such an extent that it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3(1) and 3(5) of the basic Regulation.

E. **CAUSALITY**

1. INTRODUCTION

(98) In accordance with Article 3(6) of the basic Regulation, the Commission has examined whether the dumped imports of barium carbonate originating in the country concerned have caused injury to the Community industry to a degree that enables it to be classified as material. In accordance with Article 3(7) of the basic Regulation, known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. EFFECT OF THE DUMPED IMPORTS

(99) Over the period considered, dumped imports from the country concerned increased significantly in terms of volume (from 54 167 tonnes to 63 742 tonnes) and market share (by more than 7 percentage points). The most important increase in import volumes occurred during the IP (increase by 30,4 % compared to 2002), while import prices decreased during the whole period considered.

(100) This coincided with a decrease in sales and a resulting loss of market share of the Community industry of almost 9 percentage points and with a drop in average sales prices. The Community industry had to lower its sales prices as they were significantly undercut during the IP by the dumped imports from the PRC. Due to the low sales prices, the Community industry was not able to cover the costs of production and was therefore unprofitable.

3. EFFECT OF OTHER FACTORS

(a) *Imports from other third countries*

(101) Over the period considered, the import volume of barium carbonate from third countries increased from 6 500 tonnes to 8 700 tonnes, representing a market share of less than 10 % during the IP. The main other third countries exporting barium carbonate to the Community were Brazil and Russia.

(102) During the IP, the average price of imports from Russia amounted to EUR 278/tonne. This means that Russian products were considerably more expensive than imports from the PRC and only slightly cheaper than the products sold by the Community industry. According to importers and users, the quality of barium carbonate imported from Russia is lower than the quality of both the product concerned imported from the PRC and the like product sold by the Community industry. Due to the fact that barium carbonate from Russia is of lower quality but more expensive than imports from the PRC, it is not competitive on the Community market. Compared to the product sold by the Community industry, the quality of barium carbonate from Russia is significantly lower and not compensated by the small price difference. As the Russian product is not competitive, its market share diminished over the period considered. It was therefore provisionally concluded that imports from Russia did not break the causal link between dumping and material injury caused by the Chinese imports.

(103) The average price of imports from Brazil was EUR 186/tonne during the IP. Over the period considered, the market share of imports from Brazil rose by around 2 percentage points. Taking into account the small increase in sales and the market share of below 5 %, it was provisionally concluded that these imports did not break the causal link between dumping and material injury caused by the Chinese imports.

(104) In view of the above findings, it was provisionally concluded that imports from other third countries did not break the causal link between dumping and material injury caused by the Chinese imports to the Community industry.

(b) *Development of demand*

(105) As to the development of demand, the apparent consumption of barium carbonate decreased between 2000 and 2002 but the Community industry was able to keep its market share. Subsequently, the sales and the market share of the Community industry went down although the consumption increased considerably during the IP. At the same time, Chinese imports were able to gain market share, increasing with more than 7 percent points over the period concerned. Therefore, the material injury suffered by the Community industry cannot be attributed to a contraction in demand on the Community market.

(c) *Currency fluctuations*

(106) Some interested parties have claimed that the depreciation of the USD against the euro has favoured imports of barium carbonate into the European Community. The vast majority of import transactions from the country concerned into the European Community are indeed invoiced in USD. The euro appreciated against the USD as from mid 2002, and significantly during the IP, thus favouring exports into the euro area.

(107) However, even based on the exchange rate prevailing at the beginning of 2002, imports from the PRC undercut the prices of the Community industry. In addition, this favourable exchange rate situation would also have had an impact on imports from other third countries as they are also mainly invoiced in USD. The fact that currency fluctuations did not have a major effect on imports from other countries, indicates that it cannot be considered as the main causal factor for the important surge of dumped imports from the country concerned.

(108) Therefore, it was provisionally concluded that, although the appreciation of the Euro in respect of the USD might have favoured imports of barium carbonate into the European Community, it is not sufficient to break the causal link between the dumped imports and the material injury suffered by the Community industry.

(d) *Imports by the Community industry*

(109) It was submitted that the Community industry imported barium carbonate from the PRC and thereby contributed to the injury suffered. However, the Community industry did not purchase any products from the PRC after 2001 and had imported it before that year only in negligible quantities (around 1 % of their own production). Therefore, it is provisionally concluded that imports by the Community industry of the product concerned from the PRC, if any, could not be a determining reason for the material injury suffered by the Community industry.

(e) *Further factors*

(110) Several users and importers argued that the Community is suffering injury due to the competition by a water suspended slurry of barium carbonate which eliminates the toxic dust generated when using barium carbonate in powder form. The slurry is produced by the importers in the Community, by using powder imported from the PRC and adding water and specific additives after importation.

(111) This argument has to be rejected because the Community industry has the know-how to produce slurry but does not promote it as it considers it not to be economical to transport water. Therefore, it has developed in cooperation with other European companies, an equipment specific to the brick and tile industry which enables the users of barium carbonate to mix the powder with water at the point of production, eliminating also the generation of toxic dust. Thus the Community industry offers a competitive product to slurry. However, since the slurry is produced with barium carbonate imported from China at dumped prices, it could be sold at prices which are below the prices of powder supplied by the Community industry. Therefore, it is not be considered as another factor causing injury, because the impact of slurry results itself from the dumped imports. Indeed, had the product concerned not been imported at dumped prices, the product offered by the Community industry which is in competition with the slurry, would have been able to compete on fair terms with the slurry.

4. CONCLUSION ON CAUSATION

(112) The above analysis has demonstrated that there was a substantial increase in volume and market share of the imports originating in the country concerned, especially between 2002 and the IP, together with a considerable decrease in their sales prices and a high level of price undercutting during the IP. This increase in market share of the low-priced Chinese imports coincided with a significant drop in market share of the Community industry, which, together with the downward pressure on prices, resulted, *inter alia*, in substantial losses of the Community industry during the IP. On the other hand, the examination of the other factors which could have injured the Community industry revealed that none of these could have had a significant negative impact or could break the causal link between the dumped imports from the PRC and the material injury suffered by the Community industry.

(113) Based on the above analysis which has properly distinguished and separated the effects of all known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is provisionally concluded that the imports from the PRC have caused material injury to the Community within the meaning of Article 3(6) of the basic Regulation.

F. **COMMUNITY INTEREST**

1. PRELIMINARY REMARK

(114) In accordance with Article 21 of the basic Regulation, the Commission examined whether, despite the conclusion on injurious dumping, compelling reasons existed for concluding that it is not in the Community interest to adopt measures in this particular case. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers and the users of the product concerned.

2. INVESTIGATION

(115) In order to assess the likely impact of the imposition or non-imposition of measures, the Commission requested information from all interested parties. The Commission sent questionnaires to the Community industry, 10 suppliers of raw materials, 18 importers and 38 users of the product concerned. The Community producer, one supplier of raw materials, five importers, six users and one association of users replied.

3. COMMUNITY INDUSTRY

(116) The Community industry has a fully-automated production line, operating very cost-efficiently as regards off-spec material and number of employees per tonne produced. It also made replacement investments and continued to export.

(117) It is considered that the imposition of measures will restore fair competition on the market. If measures are taken, the Community industry will be able to regain at least part of its lost market share with a consequent positive impact on its profitability.

(118) As mentioned above, the Community industry suffered material injury caused by dumped imports originating in the country concerned. If measures are not imposed, a further deterioration in the situation of the Community industry is probable. This would entail a further loss of employment. The price-depressive effect of the dumped imports would continue to foil all efforts by the Community industry, in particular, to regain a profitable level. Not taking measures would jeopardise the long-term presence of the industry and it cannot be excluded that the sole Community producer might have to shut down as a result of the competition from dumped imports if measures are not imposed.

4. SUPPLIERS OF RAW MATERIALS

(119) One questionnaire reply was received from a supplier of raw materials supplying natural barium sulphate to the Community industry it is the sole supplier of the main raw material for the production of barium carbonate located in the Community.

(120) If measures are imposed and the Community industry regains lost market share, the supplier of raw material will also be able to sell more of its product. As the raw material concerned constitutes a major part of the turnover of this company, this will improve the financial situation of the raw material supplier.

(121) If measures are not imposed, the sales of the Community industry will continue to go down and consequently also their demand for raw materials. This will negatively affect the profitability of the raw material supplier.

5. IMPORTERS

(122) Five questionnaire replies were received from importers who were all against the imposition of measures.

(123) Some of the product concerned imported in powder form from the PRC is subsequently transformed by the importers into slurry, by adding water and special additives. As the profit margin of the importers for sales of the product concerned and slurry is on a weighted average basis 6,8 %, the importers will be able to bear part of the possible price increases and pass on part to their customers. In view of the relatively low duties to be imposed on the companies operating under market economy conditions and the alternative sources available without any duties, the possible price increases will be limited.

(124) Taking into account the fact that sales of the product concerned and the slurry account on average for around 15 % of the importers' total turnover, the financial situation of the importers will not be seriously affected by the imposition of a duty.

(125) On the basis of the above, it was provisionally concluded that the effect of the anti-dumping measures, if any, will most likely not have a material impact on importers.

6. USERS

(126) Six questionnaire replies from users and one submission from an association of users were received. One verification visit was carried out at the company purchasing the biggest quantity of barium carbonate during the IP. The six cooperating users represented around 9 % of the total Community consumption of barium carbonate during the IP. The number of staff in these companies directly related to products using barium carbonate was around 570 people. All cooperating users, except one who is purchasing from the Community industry, have taken position against the imposition of anti-dumping duties for fear of losing a cheap source of supply, which would harm their competitiveness in the downstream market, vis-à-vis competitors in third countries.

(127) Users of barium carbonate are mainly concentrated in TV glass production, the bricks and tiles industry, the ceramics sector and in the production of ferrite. Based on the questionnaire replies and information submitted during a hearing, the share of barium carbonate in the total costs of production of users was established to be below 8 % on average.

(128) The duties will not result in a significant reduction of competition or a shortage of supply. Instead, it can be foreseen that imports from China will remain available at competitive prices, as the individual duties proposed for the Chinese exporting producers are below the levels of undercutting found. In addition, alternative sources of supply from other third countries with no duties are also available. On the basis of all this, it is concluded that users will continue to be able to buy barium carbonate at competitive prices and it is expected that the impact of duties on the competitiveness of the users vis-à-vis their competitors in third countries will be limited.

(129) It was submitted that the Community industry is not in a position to satisfy the whole demand for barium carbonate in the Community. In this respect, it has to be recalled that measures are not intended to prevent imports into the Community but to ensure that they are not made at injurious dumped prices. Imports from various origins will continue to satisfy a significant part of the Community demand. Therefore, no shortage of supply is expected.

(130) On the basis of the above, it was provisionally concluded that the effect of the anti-dumping measures, if any, will most likely not have a material impact on users.

7. COMPETITION AND TRADE DISTORTING EFFECTS

(131) With respect to the effects of possible measures on competition in the Community, the cooperating exporting producers concerned, given their strong market positions, will probably continue to sell their products, albeit at non-dumped prices. Indeed, the relatively low duty rates for the two Chinese exporting producers operating under market economy conditions should allow them to operate under fair market conditions in the Community. Thus, given the overall range of duties imposed, it is likely that there will still be a sufficient number of major competitors on the Community market, including the producers in the country concerned, Brazil, Russia and India. Therefore, users will continue to have the choice of different suppliers of barium carbonate. If, on the other hand, no measures were to be imposed, the future of the sole Community producer would be at stake. Its disappearance would effectively reduce competition on the Community market.

8. CONCLUSION ON COMMUNITY INTEREST

(132) Given the above reasons, it is provisionally concluded that there are no compelling reasons against the imposition of anti-dumping duties in the present case.

G. **PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES**

1. INJURY ELIMINATION LEVEL

(133) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional anti-dumping measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.

(134) In order to establish the level of duty, account has been taken of the level of the dumping margins found and of the amount of the duty necessary to eliminate the injury suffered by the Community industry.

(135) As the Community industry was suffering from the dumped imports since 1999, the profit that could be achieved in the absence of dumped imports was based on the weighted average profit margin of the like product during the years 1996 to 1998. On this basis, it was found that a profit margin of 7,2 % of turnover could be regarded as an appropriate minimum which the Community industry could have expected to obtain in the absence of injurious dumping. The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry by the actual loss made during the IP and by adding the abovementioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

(136) As the injury elimination level was higher than the dumping margin established, the provisional measures should be based on the latter.

2. PROVISIONAL MEASURES

(137) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties should be imposed in respect of imports originating in the PRC at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule. In this case, the individual duty rates as well as the country-wide duty should accordingly be set at the level of the dumping margins found.

(138) As the product is fungible and the price differences for the different product types are not substantial, it was found that the duty should be imposed in the form of a specific amount per tonne in order to ensure the efficiency of the measures and to discourage any absorption of the anti-dumping measure through a decrease in the export prices. This amount results from the application of the dumping margin to the export prices used in the calculation of the dumping during the IP.

(139) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(140) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

(141) The product concerned is fungible, as explained above, and not branded. The variance of the individual duty rates is significant and there are a number of exporting producers. All these elements may facilitate attempts to re-channel the export flows through the traditional exporters benefiting from the lowest duty rates.

[1] European Commission
Directorate-General for Trade
Direction B
B-1049 Brussels.

(142) Consequently, should the exports by one of the companies benefiting from lower individual duty rates increase by more than 30 % in volume, the individual measures concerned would be considered as being likely to be insufficient to counteract the injurious dumping found. Consequently, and provided that the requisite elements are met, an investigation may be initiated in order to correct appropriately the measures in their form or level.

H. **FINAL PROVISION**

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of barium carbonate with a strontium content of more than 0,07 % by weight and a sulphur content of more than 0,0015 % by weight, whether in powder, pressed granular or calcined granular form, falling within CN code ex 2836 60 00 (TARIC code 2836 60 00 10), originating in the People's Republic of China.

2. The amount of the provisional anti-dumping duty shall be equal to a fixed amount as specified below for products produced by the following manufacturers:

Country	Manufacturer	Rate of duty (EUR/t)	TARIC additional code
People's Republic of China	Hubei Jingshan Chutian Barium Salt Corp. Ltd 62, Qinglong Road, Songhe Town, Jingshan County Hubei Province, PRC	20,6	A606
	Zaozhuang Yongli Chemical Co. South Zhuzibukuang Qichun, Zaozhuang City Center District Shangdong Province, PRC	45,7	A607
	All other companies	60,8	A999

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

4. In cases where the goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 [1], the amount of the anti-dumping duty, calculated on the basis of the fixed amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

[1] OJ L 253, 11.10.1993, p. 1.

Article 2

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

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

Article 3

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

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

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

Done at Brussels, 28 January 2005.

For the Commission
Peter MANDELSON
Member of the Commission

COMMISSION REGULATION (EC) No 146/2005

of 28 January 2005

fixing a percentage for acceptance of contracts concluded for the optional distillation of table wine

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1623/2000 of 25 July 2000 laying down detailed rules for implementing Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine with regard to market mechanisms [1], and in particular Article 63a(5) thereof,

Whereas:

(1) Article 63a of Regulation (EC) No 1623/2000 lays down the detailed rules for applying the arrangements for distilling wine as referred to in Article 29 of Council Regulation (EC) No 1493/1999 [2]. This is optional, subsidised distillation intended to support the wine market and help ensure an uninterrupted supply to the potable alcohol sector. To that end, contracts are concluded between wine producers and distillers. These contracts were notified to the Commission by the Member States up to 15 January 2005.

(2) For the 2004/05 wine year, distillation was opened in the period 1 October to 23 December. The quantities of wine covered by distillation contracts notified to the Commission by the Member States exceed the limits imposed by available budget resources and the absorption capacity of the potable alcohol sector. A single percentage should therefore be fixed for acceptance of the quantities notified for distillation.

(3) Under the first subparagraph of Article 63a(6) of Regulation (EC) No 1623/2000, the Member States are to approve distillation contracts within a period beginning on 30 January. This Regulation should therefore enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities of wine for which contracts were concluded and notified to the Commission under Article 63a(4) of Regulation (EC) No 1623/2000 up to 15 January 2005 shall be accepted up to 84,30 %.

Article 2

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

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

Done at Brussels, 28 January 2005.

For the Commission
J. M. SILVA RODRÍGUEZ
Director-General for Agriculture and Rural Development

[1] OJ L 194, 31.7.2000, p. 45. Regulation as last amended by Regulation (EC) No 1774/2004 (OJ L 316, 15.10.2004, p. 61).
[2] OJ L 179, 14.7.1999, p. 1. Regulation as last amended by Commission Regulation (EC) No 1795/2003 (OJ L 262, 14.10.2003, p. 13).

COMMISSION REGULATION (EC) No 147/2005

of 28 January 2005

fixing the maximum aid for cream, butter and concentrated butter for the 156th individual invitation to tender under the standing invitation to tender provided for in Regulation (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 [1], and in particular Article 10 thereof,

Whereas:

(1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice cream and other foodstuffs [2], to sell by invitation to tender certain quantities of butter of intervention stocks that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

(2) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum aid and processing securities applying for the 156th individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 29 January 2005.

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

Done at Brussels, 28 January 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

[1] 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).
[2] OJ L 350, 20.12.1997, p. 3. Regulation as last amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

ANNEX

to the Commission Regulation of 28 January 2005 fixing the maximum aid for cream, butter and concentrated butter for the 156th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula		A		B	
Incorporation procedure		With tracers	Without tracers	With tracers	Without tracers
Maximum aid	Butter ≥ 82 %	56,5	53	57	53
	Butter < 82 %	55,1	51,8	—	51
	Concentrated butter	68	64,5	68	64,5
	Cream			26	22
Processing security	Butter	62	—	63	—
	Concentrated butter	75	—	75	—
	Cream	—	—	29	—

COMMISSION REGULATION (EC) No 148/2005

of 28 January 2005

fixing the minimum selling prices for butter for the 156th individual invitation to tender under the standing invitation to tender provided for in Regulation (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 [1], and in particular Article 10 thereof,

Whereas:

(1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs [2], to sell by invitation to tender certain quantities of butter from intervention stocks that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

(2) 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

The minimum selling prices of butter from intervention stocks and processing securities applying for the 156th individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 29 January 2005.

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

Done at Brussels, 28 January 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

[1] 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).
[2] OJ L 350, 20.12.1997, p. 3. Regulation as last amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

ANNEX

to the Commission Regulation of 28 January 2005 fixing the minimum selling prices for butter for the 156th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	207	210	—	212
		Concentrated	—	—	—	—
Processing security		Unaltered	73	73	—	73
		Concentrated	—	—	—	—

COMMISSION REGULATION (EC) No 149/2005

of 28 January 2005

fixing the maximum aid for concentrated butter for the 328th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90

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 [1], and in particular Article 10 thereof,

Whereas:

(1) In accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community [2], the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter. Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; the end-use security must be fixed accordingly.

(2) In the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly.

(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

For the 328th tender under the standing invitation to tender opened by Regulation (EEC) No 429/90 the maximum aid and the end-use security are fixed as follows:

— maximum aid: 67 EUR/100 kg,

— end-use security: 74 EUR/100 kg.

Article 2

This Regulation shall enter into force on 29 January 2005.

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

Done at Brussels, 28 January 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

[1] 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).
[2] OJ L 45, 21.2.1990, p. 8. Regulation as last amended by Commission Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

COMMISSION REGULATION (EC) No 150/2005

of 28 January 2005

fixing the minimum selling price for butter for the 12th individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 2771/1999

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 [1], and in particular Article 10(c) thereof,

Whereas:

(1) Pursuant to Article 21 of Commission Regulation (EC) No 2771/1999 of 16 December 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 [2], intervention agencies have put up for sale by standing invitation to tender certain quantities of butter held by them.

(2) In the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no award, in accordance with Article 24a of Regulation (EC) No 2771/1999.

(3) In the light of the tenders received, a minimum selling price should be fixed.

(4) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

For the 12th individual invitation to tender pursuant to Regulation (EC) No 2771/1999, in respect of which the time limit for the submission of tenders expired on 25 January 2005, the minimum selling price for butter is fixed at 270 EUR/100 kg.

Article 2

This Regulation shall enter into force on 29 January 2005.

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

Done at Brussels, 28 January 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

[1] 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).
[2] OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

COMMISSION REGULATION (EC) No 151/2005

of 28 January 2005

concerning the 11th individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 214/2001

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 [1], and in particular Article 10(c) thereof,

Whereas:

(1) Pursuant to Article 21 of Commission Regulation (EC) No 214/2001 of 12 January 2001 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in skimmed milk [2], intervention agencies have put up for sale by standing invitation to tender certain quantities of skimmed-milk powder held by them.

(2) In the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no award, in accordance with Article 24a of Regulation (EC) No 214/2001.

(3) On the basis of the examination of the offers received, the tendering offer should not be proceeded with.

(4) 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

For the 11th individual invitation to tender pursuant to Regulation (EC) No 214/2001, in respect of which the time limit for the submission of tenders expired on 25 January 2005, no offer shall be proceeded with.

Article 2

This Regulation shall enter into force on 29 January 2005.

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

Done at Brussels, 28 January 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

[1] 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).
[2] OJ L 37, 7.2.2001, p. 100. Regulation as last amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

COMMISSION REGULATION (EC) No 152/2005

of 28 January 2005

specifying the extent to which applications lodged in January 2005 for import certificates in respect of young male bovine animals for fattening as part of a tariff quota provided for in Regulation (EC) No 1202/2004 may be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1],

Having regard to Commission Regulation (EC) No 1202/2004 of 29 June 2004 opening and providing for the administration of an import tariff quota for young male bovine animals for fattening (1 July 2004 to 30 June 2005) [2], and in particular Articles 1(4) and 4 thereof,

Whereas:

(1) Article 1(3)(b) of Regulation (EC) No 1202/2004 lays down the number of young male bovine animals which may be imported on special terms during the period from 1 January to 31 March 2005. The quantities covered by import licence applications submitted are such that applications may by accepted in full.

(2) The quantities in respect of which licences may be applied for from 1 April 2005 should be fixed within the scope of the total quantity of 169 000 animals, conforming to Article 1(4) of Regulation (EC) No 1202/2004,

HAS ADOPTED THIS REGULATION:

Article 1

1. All applications for import certificates made in the month of January 2005 pursuant to Article 3(3), second subparagraph, third indent, of Regulation (EC) No 1202/2004 are hereby met in full.

2. The number of animals referred to in Article 1(3)(d) of Regulation (EC) No 1202/2004 is 113 950.

Article 2

This Regulation shall enter into force on 29 January 2005.

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

Done at Brussels, 28 January 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

[1] OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).

[2] OJ L 230, 30.6.2004, p. 19.

COMMISSION REGULATION (EC) No 153/2005

of 28 January 2005

fixing the definitive rate of refund and the percentage of system B export licences to be issued in the fruit and vegetables sector (tomatoes, oranges, lemons, table grapes and apples)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [1],

Having regard to Commission Regulation (EC) No 1961/2001 of 8 October 2001 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables [2], and in particular Article 6(7) thereof,

Whereas:

(1) Commission Regulation (EC) No 1855/2004 [3] fixed the indicative quantities for the issue of B system export licences.

(2) The definitive rate of refund for tomatoes, oranges, lemons, table grapes and apples covered by licences applied for under system B between 16 November 2004 to 14 January 2005, should be fixed at the indicative rate, and the percentage of licences to be issued for the quantities applied for should be laid down,

HAS ADOPTED THIS REGULATION:

Article 1

For applications for system B export licences submitted pursuant to Article 1 of Regulation (EC) No 1855/2004 between 16 November 2004 and 14 January 2005, the percentages of licences to be issued and the rates of refund applicable are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 29 January 2005.

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

Done at Brussels, 28 January 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

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

[2] OJ L 268, 9.10.2001, p. 8. Regulation as amended by Regulation (EC) No 1176/2002 (OJ L 170, 29.6.2002, p. 69).

[3] OJ L 324, 27.10.2004, p. 3.

ANNEX

Percentages for the issuing of licences and rates of refund applicable to system B licences applied for between 16 November 2004 to 14 January 2005 (tomatoes, oranges, lemons, table grapes and apples)

Product	Rate of refund (EUR/t net)	Percentages of licences to be issued for the quantities applied for
Tomatoes	30	100 %
Oranges	24	100 %
Lemons	43	100 %
Table grapes	35	100 %
Apples	28	100 %

COMMISSION REGULATION (EC) No 154/2005

of 28 January 2005

concerning tenders submitted in response to the invitation to tender for the export to certain third countries of wholly milled and parboiled long grain rice B issued in Regulation (EC) No 2032/2004

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1785/2003 of 29 September 2003 on the common organisation of the market in rice [1], and in particular Article 14(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2032/2004 [2].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [3], allows the Commission to decide, in accordance with the procedure laid down in Article 26 of Regulation (EC) No 1785/2003 and on the basis of the tenders submitted, to make no award.

(3) On the basis of the criteria laid down in Article 14(4) of Regulation (EC) No 1785/2003 a maximum refund should not be fixed.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders submitted from 24 to 27 January 2005 in response to the invitation to tender for the export refund on wholly milled and parboiled long grain rice B to certain third countries issued in Regulation (EC) No 2032/2004.

Article 2

This Regulation shall enter into force on 29 January 2005.

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

Done at Brussels, 28 January 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

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[1] OJ L 270, 21.10.2003, p. 96.
[2] OJ L 353, 27.11.2004, p. 6.
[3] OJ L 61, 7.3.1975, p. 25. Regulation as last amended by Regulation (EC) No 1948/2002 (OJ L 299, 1.11.2002, p. 18).

COMMISSION REGULATION (EC) No 155/2005

of 28 January 2005

concerning tenders submitted under tendering procedure for the refund on consignment of husked long grain B rice to the island of Réunion referred to in Regulation (EC) No 2033/2004

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1785/2003 of 29 September 2003 on the common organisation of the market in rice [1], and in particular Article 5(3) thereof,

Having regard to Commission Regulation (EEC) No 2692/89 of 6 September 1989 laying down detailed rules for exports of rice to Réunion [2], and in particular Article 9(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 2033/2004 [3] opens an invitation to tender for the subsidy on rice exported to Réunion.

(2) Article 9 of Regulation (EEC) No 2692/89 allows the Commission to decide, in accordance with the procedure laid down in Article 2b(2) of Regulation (EC) No 1785/2003 and on the basis of the tenders submitted, to make no award.

(3) On the basis of the criteria laid down in Articles 2 and 3 of Regulation (EEC) No 2692/89, a maximum subsidy should not be fixed.

(4) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders submitted from 24 to 27 January 2005 in response to the invitation to tender referred to in Regulation (EC) No 2033/2004 for the subsidy on exports to Réunion of husked long grain B rice falling within CN code 1006 20 98.

Article 2

This Regulation shall enter into force on 29 January 2005.

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

Done at Brussels, 28 January 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

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[1] OJ L 270, 21.10.2003, p. 96.
[2] OJ L 261, 7.9.1989, p. 8. Regulation as last amended by Regulation (EC) No 1275/2004 (OJ L 241, 13.7.2004, p. 8).
[3] OJ L 353, 27.11.2004, p. 9.

COMMISSION REGULATION (EC) No 156/2005

of 28 January 2005

concerning tenders submitted in response to the invitation to tender for the export to certain third countries of wholly milled and medium and long grain A rice issued in Regulation (EC) No 2031/2004

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1785/2003 of 29 September 2003 on the common organisation of the market in rice [1], and in particular Article 14(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2031/2004 [2].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [3], allows the Commission to decide, in accordance with the procedure laid down in Article 26(2) of Regulation (EC) No 1785/2003 and on the basis of the tenders submitted, to make no award.

(3) On the basis of the criteria laid down in Article 14(4) of Regulation (EC) No 1785/2003, a maximum refund should not be fixed.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders submitted from 24 to 27 January 2005 in response to the invitation to tender for the export refund on wholly milled rand, medium and long grain A rice to certain third European countries issued in Regulation (EC) No 2031/2004.

Article 2

This Regulation shall enter into force on 29 January 2005.

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

Done at Brussels, 28 January 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

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[1] OJ L 270, 21.10.2003, p. 96.
[2] OJ L 353, 27.11.2004, p. 3.
[3] OJ L 61, 7.3.1975, p. 25. Regulation as last amended by Regulation (EC) No 1948/2002 (OJ L 299, 1.11.2002, p. 18).

COMMISSION DIRECTIVE 2005/5/EC

of 26 January 2005

amending Directive 2002/26/EC as regards sampling methods and methods of analysis for the official control of the levels of ochratoxin A in certain foodstuffs

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 85/591/EEC of 20 December 1985 concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption [1], and in particular Article 1 thereof,

Whereas:

(1) Commission Regulation (EC) No 466/2001 of 8 March 2001 setting maximum levels for certain contaminants in foodstuffs [2], fixes maximum limits for ochratoxin A in roasted coffee beans, ground roasted coffee, soluble coffee, wine and grape juice.

(2) Sampling plays a crucial part in the precision of the determination of the levels of ochratoxin A. Commission Directive 2002/26/EC of 13 March 2002 laying down the sampling methods and methods of analysis for the official control of the levels of ochratoxin A in foodstuffs [3], should include provisions related to roasted coffee beans, ground roasted coffee, soluble coffee, wine and grape juice.

(3) Directive 2002/26/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 2002/26/EC is amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive 12 months after the entry into force at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 26 January 2005.

For the Commission
Markos KYPRIANOU
Member of the Commission

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[1] OJ L 372, 31.12.1985, p. 50. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).
[2] OJ L 77, 16.3.2001, p. 1. Regulation as last amended by Regulation (EC) No 78/2005 (OJ L 16, 20.1.2005, p. 43).
[3] OJ L 75, 16.3.2002, p. 38. Directive as amended by Directive 2004/43/EC (OJ L 113, 20.4.2004, p. 14).

ANNEX

Annex I to Directive 2002/26/EC is amended as follows:

(a) points 4.3, 4.4 and 4.5 are replaced by the following:

'4.3. *General survey of the sampling procedure for cereals, dried vine fruit and roasted coffee*

TABLE 1

Subdivision of lots into sublots depending on product and lot weight

Commodity	Lot weight (ton)	Weight or number of sublots	No of incremental samples	Aggregate sample weight (kg)
Cereals and cereal products	≥ 1 500 > 300 and < 1 500 ≥ 50 and ≤ 300 < 50	500 tonnes 3 sublots 100 tonnes —	100 100 100 3-100 (*)	10 10 10 1-10
Dried vine fruit (currants, raisins and sultanas)	≥ 15 < 15	15-30 tonnes —	100 10-100 (**)	10 1-10
Roasted coffee beans, ground roasted coffee and soluble coffee	≥ 15 < 15	15-30 tonnes —	100 10-100 (**)	10 1-10

(*) Depending on the lot weight — see table 2 of this Annex.
(**) Depending on the lot weight — see table 3 of this Annex.

4.4. *Sampling procedure for cereals and cereal products (lots ≥ 50 tonnes) and for roasted coffee beans, ground roasted coffee, soluble coffee and dried vine fruit (lots ≥ 15 tonnes)*

— On condition that the sublot can be separated physically, each lot must be subdivided into sublots following table 1. Taking into account that the weight of the lot is not always an exact multiple of the weight of the sublots, the weight of the sublot may vary from the mentioned weight by a maximum of 20 %.

— Each sublot must to be sampled separately.

— Number of incremental samples: 100.

— Weight of the aggregate sample = 10 kg.

— If it is not possible to carry out the method of sampling described above because of the commercial consequences resulting from damage to the lot (because of packaging forms, means of transport, etc.) an alternative method of sampling may be applied provided that it is as representative as possible and is fully described and documented.

4.5. *Sampling provisions for cereals and cereal products (lots < 50 tonnes) and for roasted coffee beans, ground roasted coffee, soluble coffee, dried vine fruit (lots < 15 tonnes)*

For cereal lots under 50 tonnes and for roasted coffee beans, ground roasted coffee, soluble coffee and dried vine fruit lots under 15 tonnes the sampling plan has to be used with 10 to 100 incremental samples, depending on the lot weight, resulting in an aggregate sample of 1 to 10 kg. For very small lots (≤ 0,5 tonnes) of cereals and cereal products a lower number of incremental samples can be taken, but the aggregate sample uniting all incremental samples shall be also in that case at least 1 kg.

The figures in the following table can be used to determine the number of incremental samples to be taken.

TABLE 2

Number of incremental samples to be taken depending on the weight of the lot of cereals and cereal products

Lot weight (tonnes)	No of incremental samples
≤ 0,05	3
> 0,05-≤ 0,5	5
> 0,5-≤ 1	10
> 1-≤ 3	20
> 3-≤ 10	40
> 10-≤ 20	60
> 20-≤ 50	100

TABLE 3

Number of incremental samples to be taken depending on the weight of the lot of roasted coffee beans, ground roasted coffee, soluble coffee and dried vine fruit

Lot weight (tonnes)	No of incremental samples
≤ 0,1	10
> 0,1-≤ 0,2	15
> 0,2-≤ 0,5	20
> 0,5-≤ 1,0	30
> 1,0-≤ 2,0	40
> 2,0-≤ 5,0	60
> 5,0-≤ 10,0	80
> 10,0-≤ 15,0	100’

(b) the following point 4.6(a) is inserted after point 4.6:

‘4.6(a) *Sampling provisions for wine and grape juice*

The aggregate sample shall be at least 1 kg except where it is not possible e.g. when the sample consists of 1 bottle.

The minimum number of incremental samples to be taken from the lot shall be as given in table 4. The number of incremental samples determined is function of the usual form in which the products concerned are commercialised. In the case of bulk liquid products, the lot shall be thoroughly mixed insofar as possible and insofar as it does not affect the quality of the product, by either manual or mechanical means immediately prior to sampling. In this case, a homogeneous distribution of ochratoxin A can be assumed within a given lot. It is therefore sufficient to take three incremental samples from a lot to form the aggregate sample.

The incremental samples, which might frequently be a bottle or a package, shall be of similar weight. The weight of an incremental sample should be at least 100 grams, resulting in an aggregate sample of at least about 1 kg. Departure from this procedure must be recorded in the record provided for in point 3.8.

TABLE 4

Minimum number of incremental samples to be taken from the lot

Form of commercialisation	Weight of lot (in litres)	Minimum number of incremental samples to be taken
Bulk (grape juice, wine)	…	3
Bottles/packages grape juice	≤ 50	3
Bottles/packages grape juice	50 to 500	5
Bottles/packages grape juice	> 500	10
Bottles/packages wine	≤ 50	1
Bottles/packages wine	50 to 500	2
Bottles/packages wine	> 500	3’

COMMISSION DIRECTIVE 2005/7/EC

of 27 January 2005

amending Directive 2002/70/EC establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feedingstuffs

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/373/EEC of 20 July 1970 on the introduction of Community methods of sampling and analysis for the official control of feeding-stuffs [1], and in particular Article 2 thereof,

Whereas:

(1) Commission Directive 2002/70/EC of 26 July 2002 establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feedingstuffs [2], lays down specific provisions concerning the methods of analysis to be applied for the official control provided for in Directive 70/373/EEC.

(2) The sampling procedure laid down in Commission Directive 76/371/EEC of 1 March 1976 establishing Community methods of sampling for the official control of feedingstuffs [3] has to be applied for the official control of the levels of dioxins and the determination of dioxin-like PCBs in certain feedingstuffs. It is appropriate to specify that the quantitative requirements in relation to the control of substances or products uniformly distributed throughout the feedingstuffs should be applied.

(3) It is of major importance that analytical results are reported and interpreted in a uniform way in order to ensure a harmonised implementation approach in all Member States.

(4) Directive 2002/70/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Annexes to Directive 2002/70/EC are amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive 12 months after the entry into force at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 27 January 2005.

For the Commission

Markos KYPRIANOU

Member of the Commission

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[1] OJ L 170, 3.8.1970, p. 2. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

[2] OJ L 209, 6.8.2002, p. 15.

[3] OJ L 102, 15.4.1976, p. 1.

ANNEX

The Annexes to Directive 2002/70/EC are amended as follows:

(1) Annex I is replaced by the following:

'1. **Purpose and scope**

The samples intended for the official control of the levels of dioxins (PCDD/PCDF) content, as well for the determination of the content of dioxin like PCBs (*) in feedingstuffs, shall be taken in accordance with the provisions of Directive 76/371/EEC. The quantitative requirements in relation to the control of substances or products uniformly distributed throughout the feedingstuffs as provided for in point 5.A of the Annex to Directive 76/371/EEC have to be applied. Aggregate samples thus obtained shall be considered as representative for the lots or sublots from which they are taken. Compliance with maximum levels laid down in Directive 2002/32/EC of the European Parliament and of the Council (**) shall be established on the basis of the levels determined in the laboratory samples.

2. **Compliance of the lot or sublot with the specification**

The lot is accepted if the analytical result of a single analysis does not exceed the respective maximum level as laid down in Directive 2002/32/EC taking into account the measurement uncertainty.

The lot is non-compliant with the maximum level as laid down in Directive 2002/32/EC, if the analytical result confirmed by duplicate analysis and calculated as mean of at least two separate determinations exceeds the maximum level beyond reasonable doubt taking into account the measurement uncertainty.

Measurement uncertainty may be taken into account according to one of the following approaches:
— by calculating the expanded uncertainty, using a coverage factor of 2 which gives a level of confidence of approximately 95 %,
— by establishing the decision limit (CCα) in accordance with Commission Decision 2002/657/EC (***) (point 3.1.2.5 of the Annex — the case of substances with established permitted level).

The present interpretation rules apply for the analytical result obtained on the sample for official control. It does not affect the right of Member States to apply national rules to analyses for defence or referee purposes referred to in Article 18 of Directive 95/53 (****).

(*) Table of dioxin-like PCBs

Congener	TEF value	Congener	TEF value
Dibenzo-p-dioxins **("PCDDs")**		OCDF	0,0001
2,3,7,8-TCDD	1	*"Dioxin-like" PCBs:* **Non-ortho PCBs + Mono-ortho PCBs)**	
1,2,3,7,8-PeCDD	1		
1,2,3,4,7,8-HxCDD	0,1	**Non-ortho PCBs**	
1,2,3,6,7,8-HxCDD	0,1	PCB 77	0,0001
1,2,3,7,8,9-HxCDD	0,1	PCB 81	0,0001
1,2,3,4,6,7,8-HpCDD	0,01	PCB 126	0,1
OCDD	0,0001	PCB 169	0,01
Dibenzofurans **("PCDFs")**		**Mono-ortho PCBs**	
2,3,7,8-TCDF	0,1	PCB 105	0,0001
1,2,3,7,8-PeCDF	0,05	PCB 114	0,0005
2,3,4,7,8-PeCDF	0,5	PCB 118	0,0001
1,2,3,4,7,8-HxCDF	0,1	PCB 123	0,0001
1,2,3,6,7,8-HxCDF	0,1	PCB 156	0,0005
1,2,3,7,8,9-HxCDF	0,1	PCB 157	0,0005
2,3,4,6,7,8-HxCDF	0,1	PCB 167	0,00001
1,2,3,4,6,7,8-HpCDF	0,01	PCB 189	0,0001
1,2,3,4,7,8,9-HpCDF	0,01		

Abbreviations used: "T" = tetra; "Pe" = penta; "Hx" = hexa; "Hp" = hepta; "O" = octa; "CDD" = chlorodibenzo-p-dioxin; "CDF" = chlorodibenzofuran; "CB" = chlorobiphenyl.

(**) OJ L 140, 30.5.2002, p. 10.
(***) OJ L 221, 17.8.2002, p. 8.
(****) OJ L 265, 8.11.1995, p. 17.'

(2) In Annex II, the following paragraph is added at the end of point 2 Background:

'For the purposes of this Directive only, the accepted specific limit of quantification of an individual congener is the concentration of an analyte in the extract of a sample which produces an instrumental response at two different ions to be monitored with an S/N (signal/noise) ratio of 3:1 for the less sensitive signal and fulfilment of the basic requirements such as e.g. retention time, isotope ratio according to the determination procedure as described in EPA method 1613 revision B.'

COMMISSION DIRECTIVE 2005/8/EC

of 27 January 2005

amending Annex I to Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed [1], and in particular Article 8(1) thereof,

Whereas:

(1) Directive 2002/32/EC provides that the use of products intended for animal feed which contain levels of undesirable substances exceeding the maximum levels laid down in Annex I thereto is prohibited.

(2) When Directive 2002/32/EC was adopted, the Commission stated that the provisions laid down in Annex I to that Directive would be reviewed on the basis of updated scientific risk assessments and taking into account the prohibition of any dilution of contaminated non-complying products intended for animal feed.

(3) Before a complete review based on an updated scientific risk assessment can be carried out, it is necessary to provide for certain amendments in the light of developments in scientific and technical knowledge.

(4) It is appropriate to clarify the term green fodder.

(5) Since the supply of calcium carbonate, an essential and valuable feed material, could be endangered because the level of total mercury due to normal background contamination is close to or exceeds the maximum level laid down in the Annex I to Directive 2002/32/EC, that maximum level should be amended, taking into account that mercury is present in calcium carbonate in its inorganic form and that the Scientific Committee for Animal Nutrition confirms that mercury in inorganic form is significantly less toxic than organic mercury, in particular methyl mercury.

(6) The maximum level for fluorine in other complementary feedingstuffs is 125 mg/kg per 1 % phosphorus. For environmental reasons, the level of phosphorus in animal feed is restricted and the digestibility and bioavailability of phosphorus is improved by making use of an enzyme such as phytase. It is therefore no longer appropriate to establish the maximum level as per 1 % of phosphorus but to establish the maximum level for complementary feed relative to a feedingstuff with a moisture content of 12 %.

(7) Directive 2002/32/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 2002/32/EC is amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive twelve months after the entry into force at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

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

[1] OJ L 140, 30.5.2002, p. 10. Directive as last amended by Commission Directive 2003/100/EC (OJ L 285, 1.11.2003, p. 33).

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 27 January 2005.

For the Commission
Markos KYPRIANOU
Member of the Commission

ANNEX

Annex I to Directive 2002/32/EC is amended as follows:

1. In column 2 of row 2, Lead, the following footnote is inserted after the word green fodder:

   '(*) green fodder includes products intended for animal feed such as hay, silage, fresh grass, etc …'.

2. Row 3, Fluorine, is amended as follows:

   (a) Footnotes ([1]) and ([2]) are deleted

   (b) The words 'Mineral mixtures for cattle, sheep and goats — 2 000 ([1])' and 'Other complementary feedingstuffs — 125 ([2])' are replaced by the words 'Complementary feedingstuffs containing ≤ 4 % phosphorus — 500' and 'Complementary feedingstuffs containing > 4 % phosphorus — 125 per 1 % phosphorus'.

3. Row 4, Mercury, is replaced by the following:

Undesirable substances	Products intended for animal feed	Maximum content in mg/kg (ppm) relative to a feedingstuff with a moisture content of 12 %
(1)	(2)	(3)
'4. Mercury	Feed materials with the exception of:	0,1
	— feedingstuffs produced by the processing of fish or other marine animals	0,5
	— calcium carbonate	0,3
	Complete feedingstuffs with the exception of:	0,1
	— complete feedingstuffs for dogs and cats	0,4
	Complementary feedingstuffs except	0,2'
	— complementary feedingstuffs for dogs and cats	

COMMISSION DIRECTIVE 2005/9/EC

of 28 January 2005

amending Council Directive 76/768/EEC, concerning cosmetic products, for the purposes of adapting Annex VII thereto to technical progress

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products [1], and in particular Article 8(2) thereof,

After consulting the Scientific Committee on Cosmetic Products and Non-food Products intended for Consumers,

Whereas:

(1) Part 1 of Annex VII to Directive 76/768/EEC establishes a list of UV filters which cosmetic products may contain.

(2) The Scientific Committee on Cosmetic Products and Non-food Products intended for consumers is of the opinion that the use of benzoic acid, 2-[4-(diethylamino) -2-hydroxybenzoyl]-, hexylester up to 10 % in sunscreen products, alone or in combination with other UV absorbers, is safe. Consequently, benzoic acid, 2-[4-(diethylamino)-2-hydroxybenzoyl]-, hexylester should be included in Part 1 of Annex VII to Directive 76/768/EEC as reference number 28.

(3) Directive 76/768/EEC should therefore be amended accordingly.

(4) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Cosmetic Products,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex VII to Directive 76/768/EEC is amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 28 July 2005 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 28 January 2005.

For the Commission
Günter VERHEUGEN
Vice-President

[1] OJ L 262, 27.9.1976, p. 169. Directive as last amended by Commission Directive 2004/93/EC (OJ L 300, 25.9.2004, p. 13).

ANNEX

In Part 1 of Annex VII to Directive 76/768/EEC, the following reference number 28 is added:

Reference No	Substances	Maximum authorised concentration	Other limitations and requirements	Conditions of use and warnings which must be printed on the label
a	b	c	d	e
'28	Benzoic acid, 2-[-4-(diethylamino)-2-hydroxybenzoyl]-, hexylester (INCI name: Diethylamino Hydroxybenzoyl Hexyl Benzoate; CAS No 302776-68-7)	10 % in sunscreen products'		

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 January 2005

implementing Council Directive 92/65/EEC as regards import conditions for cats, dogs and ferrets for approved bodies, institutes or centres

(notified under document number C(2005) 118)

(Text with EEA relevance)

(2005/64/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC [1], and in particular Article 19 thereof,

Whereas:

(1) Directive 92/65/EEC lays down the animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos. That Directive provides that the import conditions for cats, dogs and ferrets must be at least equivalent to the conditions set out in Regulation (EC) No 998/2003 of the European Parliament and of the Council of 26 May 2003 on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC [2]. The intention of this equivalency between conditions applying to non-commercial and commercial movements of these species was to avoid fraud in the pets trade.

(2) The risk of fraud is negligible as regards movements of these species between bodies, institutes or centres approved in accordance with Directive 92/65/EEC.

(3) It is appropriate to lay down specific conditions for the importation of cats, dogs and ferrets when they are destined for bodies, institutes or centres approved in accordance with Directive 92/65/EEC.

(4) It is necessary to set out a model health certificate for the import of cats, dogs, and ferrets destined for approved bodies, institutes or centres.

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

HAS ADOPTED THIS DECISION:

Article 1

The importation of cats, dogs and ferrets destined for bodies, institutes or centres approved in accordance with Directive 92/65/EEC shall comply with the following requirements:

(a) they must come from a third country or territory listed in Section 2 of Part B or in Part C of Annex II to Regulation (EC) No 998/2003, and

(b) they must be accompanied by a veterinary certificate corresponding to the model health certificate set out in the Annex to this Decision.

Article 2

This Decision shall apply from 1 February 2005.

[1] OJ L 268, 14.9.1992, p. 54. Directive as last amended by Directive 2004/68/EC (OJ L 139, 30.4.2004, p. 320).

[2] OJ L 146, 13.6.2003, p. 1. Directive as last amended by Commission Regulation (EC) No 2054/2004 (OJ L 355, 1.12.2004, p. 14).

Article 3

This Decision is addressed to the Member States

Done at Brussels, 26 January 2005.

For the Commission
Markos KYPRIANOU
Member of the Commission

ANNEX

VETERINARY CERTIFICATE FOR IMPORT OF DOGS, CATS AND FERRETS DESTINED FOR BODIES, INSTITUTES OR CENTRES APPROVED IN ACCORDANCE WITH ANNEX C TO COUNCIL DIRECTIVE 92/65/EEC		
Note for the importer: This certificate is for veterinary purposes only and must accompany the consignment until it reaches the border inspection post.		
1. Country of origin and competent authority ([1]):	2. Health certificate No:	☐ ORIGINAL ([2]) ☐ COPY ([3])

I. **ORIGIN OF THE ANIMALS**	
3. Name and address of the holding of origin:	4. Name and address of the consignor:
5. Place of loading:	6. Means of transport:

II. **DESTINATION OF THE ANIMALS**	
7. Member State of destination:	
8. Name and address or registration code of the body, institute or centre of destination:	9. Name and address of the consignee:

III. **INDIVIDUAL IDENTITY OF THE ANIMALS**

	10. Animal species	11. Sex	12. Birth date or age	13. Individual identification (microchip or tattoo ([4]))
10.1.				
10.2.				
10.3.				
10.4.				
10.5.				
10.6.				
10.7.				
10.8.				
10.9.				
10.10. ([5])				

IV. **VACCINATION AGAINST RABIES** (when required — strike out when not certified)		
Manufacturer and name of vaccine:		
Batch number:	Vaccination date:	Valid until:

([1]) The third country must be listed in Section 2 of Part B or in Part C of Annex II to Regulation (EC) No 998/2003.

([2]) The original must accompany the consignment to the final destination.

([3]) The copy must be kept by the responsible of the holding of origin.

([4]) Depending on the requirements of the Member State of destination.

([5]) Continue as necessary.

V. **RABIES SEROLOGICAL TEST** (when required — strike out when not certified)

I have seen (an) official record(s) of the result(s) of the serological test(s) for the animal(s), carried out on (a) sample(s) taken on _____, and tested in an EU-approved laboratory, which state(s) that the rabies neutralising antibody titre was equal to or greater than 0,5 IU/ml.

VI. **CLINICAL EXAMINATION**

I declare that the animal(s) is(are) at present free of clinical signs and transportable and come(s) from a holding approved or registered by the competent authority for the breeding of the species concerned, and which is not subject to any official restrictions for health reasons.

VII. **TICK TREATMENT** (when required — strike out when not certified)

Manufacturer and name of product:

Date and time of treatment (24-hour clock):

VIII. **ECHINOCOCCUS TREATMENT** (when required — strike out when not certified)

Manufacturer and name of product:

Date and time of treatment (24-hour clock):

NAME AND QUALIFICATION OF THE UNDERSIGNED (approved veterinarian/official veterinarian)

First name:	Surname:
Address:	Signature, date and stamp:
Postcode:	
City:	
Country ([1]):	
Telephone:	

NOTES FOR GUIDANCE

1. Identification of the animal (tattoo or microchip) must be verified before any entries are made on the certificate.
2. The rabies vaccine used must be an inactivated vaccine produced in accordance with OIE standards.
3. This certificate shall be valid for 10 days from the date of signature for the purpose of import into the EU and controls at its borders. It shall be valid for four months from the date of signature for the purpose of further movement between EU Member States, in place of the pet passport.
4. Animals from, or prepared in, third countries not listed in Annex II to Regulation (EC) No 998/2003, may not enter Ireland, Sweden or the United Kingdom, either directly or via another country listed in Annex II, unless brought into conformity with National Rules.
5. The clinical examination (Part VI) must be done within 24 hours before movement.
6. Parts not certified must be struck out.

APPLICABLE CONDITIONS

Completion of Part VI is compulsory.

Parts IV, V, VII and VIII shall be completed depending on the request of the Member State of destination. Member States can derogate to any of these conditions.

COMMISSION DECISION

of 28 January 2005

as regards certain transitional additional guarantees for Denmark in relation to the change of its non-vaccinating status against Newcastle disease

(notified under document number C(2005) 143)

(Text with EEA relevance)

(2005/65/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs [1], and in particular Article 12(2) and (3) thereof,

Whereas:

(1) Commission Decision 91/552/EEC of 27 September 1991 establishing the status of Denmark as regards Newcastle disease [2], established the status of Denmark as a non-vaccinating Member State against Newcastle disease for the purpose of intra-Community trade and imports from third countries in live poultry.

(2) Due to recent developments in relation to its Newcastle disease situation, Denmark intends to introduce vaccination of poultry against that disease and its status of a non-vaccinating Member State should therefore be suspended as provided for in Directive 90/539/EEC.

(3) In order to safeguard the current poultry health situation in Denmark during the introductory phase of vaccination against Newcastle disease, it is appropriate to lay down transitional rules for additional guarantees concerning consignments to that Member State for a certain period.

(4) Accordingly, Denmark should be granted certain additional guarantees, which may include the testing of live poultry as provided for in Commission Decision 92/340/EEC [3] on testing of poultry for Newcastle disease prior to movement.

(5) Decision 91/552/EEC should therefore be repealed.

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

HAS ADOPTED THIS DECISION:

Article 1

Scope and subject matter

This Decision shall apply to intra-Community trade in poultry, such as defined in Article 2(1) of Directive 90/539/EEC, to be dispatched to Denmark from Member States which do not have a non-vaccinating status against Newcastle disease, as provided for in Article 12(2) of that Directive, and from third countries.

Article 2

Prior authorisation for consignments of poultry to Denmark

The prior authorisation from the competent veterinary authority of Denmark shall be requested before the dispatch of poultry.

That request for authorisation shall include information on the type of vaccine and the vaccination scheme used for the immunisation of the poultry against Newcastle disease.

Article 3

Sampling and testing of poultry for consignment to Denmark

The competent authority of Denmark may require testing of the poultry in accordance with Articles 1 and 2 of Decision 92/340/EEC, taking into account the information provided in accordance with Article 2 of this Decision.

Article 4

Refusal of consignments of poultry by Denmark

If Denmark, taking into account the information provided for in accordance with Article 2 of this Decision and the outcome of the testing referred to in Article 3 of this Decision, decides not to authorise the introduction of a consignment of poultry onto its territory, it shall inform the Commission and the other Member State or third countries concerned on the grounds for its Decision to.

[1] OJ L 303, 31.10.1990, p. 6. Directive as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).
[2] OJ L 298, 29.10.1991, p. 21.
[3] OJ L 188, 8.7.1992, p. 34.

Article 5

Repeal of Decision 91/552/EEC

Decision 91/552/EEC is repealed.

Article 6

Applicability

This Decision shall apply until 28 February 2006.

Article 7

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 28 January 2005.

For the Commission
Markos KYPRIANOU
Member of the Commission

COMMISSION DECISION

of 28 January 2005

repealing Decision 2003/363/EC approving the plan for the eradication of classical swine fever in feral pigs in certain areas of Belgium

(notified under document number C(2005) 144)

(Only the French and Dutch texts are authentic)

(Text with EEA relevance)

(2005/66/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever [1], and in particular Article 16(1), thereof,

Whereas:

(1) In November 2002 classical swine fever was confirmed in the feral pig population in Belgium.

(2) By Commission Decision 2003/363/EC [2], the Commission approved the plan presented by Belgium for the eradication of classical swine fever in the feral pig population in certain areas of Belgium.

(3) Belgium has submitted information indicating that classical swine fever in the feral pig population has been successfully eradicated in Belgium and that the approved eradication plan does not need to be applied anymore.

(4) It is therefore appropriate to repeal Decision 2003/363/EC.

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

HAS ADOPTED THIS DECISION:

Article 1

Decision 2003/363/EC is repealed.

Article 2

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 28 January 2005.

For the Commission

Markos KYPRIANOU

Member of the Commission

[1] OJ L 316, 1.12.2001, p. 5. Directive as amended by the 2003 Act of Accession.

[2] OJ L 124, 20.5.2003, p. 43.

COMMISSION DECISION

of 28 January 2005

amending Annexes I and II to Decision 2003/634/EC approving programmes for the purpose of obtaining the status of approved zones and of approved farms in non approved zones with regard to viral haemorrhagic septicaemia (VHS) and infectious haematopoietic necrosis (IHN) in fish

(notified under document number C(2005) 148)

(Text with EEA relevance)

(2005/67/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/67/EEC of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products [1], and in particular Article 10(2) thereof,

Whereas:

(1) Commission Decision 2003/634/EC [2] approves and lists programmes submitted by various Member States. The programmes are designed to enable the Member State subsequently to initiate the procedures for a zone, or a farm situated in a non-approved zone, to obtain the status of approved zone or of approved farm situated in a non approved zone, as regards one or more of the fish diseases viral haemorrhagic septicaemia (VHS) and infectious haematopoietic necrosis (IHN).

(2) By letter dated 20 April 2004, Cyprus applied for approval of the programme to be applied in the entire territory of Cyprus. The application submitted has been found to comply with Article 10 of Directive 91/67/EEC and the programme should therefore be approved.

(3) The programmes applicable to the Zona Val Brembana and to the farm Azienda Troticoltura S. Cristina in Italy have been finalised. Therefore, they should be deleted from Annexes I and II to Decision 2003/634/EC.

(4) Decision 2003/634/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

Decision 2003/634/EC is amended as follows:

1. Annex I is replaced by Annex I to this Decision.

2. Annex II is replaced by Annex II to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 28 January 2005.

For the Commission
Markos KYPRIANOU
Member of the Commission

[1] OJ L 46, 19.2.1991, p. 1. Directive as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).
[2] OJ L 220, 3.9.2003, p. 8. Decision as last amended by Decision 2004/328/EC (OJ L 104, 8.4.2004, p. 129).

ANNEX I

'ANNEX I

PROGRAMMES SUBMITTED FOR THE PURPOSE OF OBTAINING APPROVED ZONE STATUS WITH REGARD TO ONE OR MORE OF THE FISH DISEASES VHS AND IHN

1. *DENMARK*

THE PROGRAMMES SUBMITTED BY DENMARK ON 22 MAY 1995 COVERING:

— the catchment area of FISKEBÆK Å,

— all PARTS OF JUTLAND south and west of the catchment areas of Storåen, Karup å, Gudenåen and Grejs å,

— the area of all THE DANISH ISLES.

2. *GERMANY*

THE PROGRAMME SUBMITTED BY GERMANY ON 25 FEBRUARY 1999 COVERING:

— a zone in the water catchment area OBERN NAGOLD.

3. *ITALY*

3.1. THE PROGRAMME SUBMITTED BY ITALY IN THE AUTONOMOUS PROVINCE OF BOLZANO ON 6 OCTOBER 2001 AS AMENDED BY LETTER OF 27 MARCH 2003, COVERING:

Zona Province of Bolzano

— The zone comprises all water catchment areas within the Province of Bolzano.

The zone includes the upper part of the zone ZONA VAL DELL'ADIGE — i.e. the water catchment areas of Adige river from its sources in the Province of Bolzano to the border with the Province of Trento.

(*NB*: The remaining, lower part of the zone ZONA VAL DELL'ADIGE is under the approved programme of the Autonomous Province of Trento. The upper and lower parts of this zone have to be viewed as one epidemiological unit.)

3.2. THE PROGRAMMES SUBMITTED BY ITALY IN THE AUTONOMOUS PROVINCE OF TRENTO ON 23 DECEMBER 1996 AND 14 JULY 1997 COVERING:

Zona Val di Sole e di Non

— The water catchment area from the source of the stream Noce to the dam of S. Giustina.

Zona Val dell'Adige — lower part

— The water catchment areas of the Adige river and its sources located within the territory of the Autonomous Province of Trento, from the border with the Province of Bolzano to the dam of Ala (hydroelectric generating station).

(*NB*: The upstream part of the zone ZONA VAL DELL'ADIGE is under the approved programme of the Province of Bolzano. The upper and lower parts of this zone have to be viewed as one epidemiological unit.)

Zona Torrente Arnò

— The water catchment area from the source of Arnò torrent to the down-stream barriers, situated before the Arnò torrent flows into the Sarca river.

Zona Val Banale

— The water catchment area of the Ambies stream basin to the dam of a hydroelectric generating station.

Zona Varone

— The water catchment area from the source of the Magnone stream to the waterfall.

Zona Alto e Basso Chiese

— The water catchment area of the Chiese river from the source to the dam of Condino, except the Adanà and Palvico torrents basins.

Zona Torrente Palvico

— The water catchment area of the Palvico torrent basin to a barrier made of concrete and stones.

3.3. THE PROGRAMME SUBMITTED BYITALY IN THE REGION OF VENETO ON 21 FEBRUARY 2001 COVERING:

Zona Torrente Astico

— The water catchment area of Astico river, from its sources (in the Autonomous Province of Trento and in the Province of Vicenza, the Region of Veneto) to the dam located close to the Pedescala bridge in the Province of Vicenza.

The downstream part of Astico river, between the dam close to the Pedescala bridge and the Pria Maglio dam, is considered as a buffer zone.

3.4. THE PROGRAMME SUBMITTED BY ITALY IN THE REGION OF UMBRIA ON 20 FEBRUARY 2002 COVERING:

Zona Fosso de Monterivoso: the water catchment area of Monterivoso river, from its sources to the impassible barriers near Ferentillo.

3.5. THE PROGRAMME SUBMITTED BY ITALY IN THE REGION OF LOMBARDIA ON 23 DECEMBER 2003 COVERING:

Zona Valle de Torrente Venina: the water catchment area of the Vienna river from its sources and the following boundaries:

— west: Livrio valley,

— south: Orobie Alps from Publino Pass to Redorta Peak,

— east: Armisa and Armisola valleys.

4. *FINLAND*

4.1. THE PROGRAMME SUBMITTED BY FINLAND ON 29 MAY 1995 COVERING

— all continental and coastal areas of FINLAND except:

— the Province of Åland,

— the restriction area in Pyhtää,

— the restriction area covering the municipalities of Uusikaupunki, Pyhäranta and Rauma.

4.2. THE PROGRAMME INCLUDING SPECIFIC ERADICATION MEASURES SUBMITTED BY FINLAND ON 29 MAY 1995, AS AMENDED BY LETTERS OF 27 MARCH 2002, 4 JUNE 2002, 12 MARCH 2003, 12 JUNE 2003 AND 20 OCTOBER 2003 COVERING:

— the whole Province of Åland,

— the restriction area in Pyhtää,

— the restriction area covering the municipalities of Uusikaupunki, Pyhäranta and Rauma.

5. *CYPRUS*

THE PROGRAMMES SUBMITTED BY CYPRUS ON 20 APRIL 2004 COVERING:

— the entire territory of Cyprus.'

ANNEX II

'ANNEX II

PROGRAMMES SUBMITTED FOR THE PURPOSE OF OBTAINING STATUS AS APPROVED FARM SITUATED IN A NON-APPROVED ZONE WITH REGARD TO ONE OR MORE OF THE FISH DISEASES VHS AND IHN

1. *ITALY*

1.1. THE PROGRAMME SUBMITTED BY ITALY IN THE REGION OF FRIULI VENEZIA GIULIA, PROVINCE OF UDINE ON 2 MAY 2000 COVERING:

farms in the drainage basin of the Tagliamento river:

— Azienda Vidotti Giulio s.n.c., Sutrio

1.2. THE PROGRAMME SUBMITTED BY ITALY IN THE REGION OF VENETO ON 21 DECEMBER 2003 COVERING:

the farm:

— Azienda agricola Bassan Antonio

1.3. THE PROGRAMME SUBMITTED BY ITALY IN THE REGION OF PIEMONTE ON 5 SEPTEMBER 2002 COVERING:

the farm:

— Incubatoio ittico di valle — Loc. Cascina Prelle — Traversella (TO)'

(Acts adopted under Title V of the Treaty on European Union)

COUNCIL DECISION

of 24 January 2005

amending Decision 2004/197/CFSP establishing a mechanism to administer the financing of the common costs of the European Union operations having military or defence implications (Athena)

(2005/68/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the European Union, and in particular Article 13(3) and Article 28(3) thereof,

Whereas:

(1) On 23 February 2004, the Council adopted Decision 2004/197/CFSP [1] which provides that its first review is to take place before the end of 2004.

(2) The Council in its conclusions of 14 May 2003 confirmed the need for a rapid reaction capability, in particular for humanitarian and rescue tasks.

(3) The EU Military Committee defined in detail the concept of EU Military Rapid Response in its Report of 3 March 2004. It further defined the EU Battle Groups concept on 14 June 2004.

(4) The European Council on 17 June 2004 endorsed a Report on ESDP which underlined that work on EU Rapid Response capacities should be taken forward with a view to an initial operational capability by early 2005.

(5) In view of these developments, the early financing of EU military operations should be improved, in particular in view of Rapid Response operations. The new scheme for the early financing is therefore intended first and foremost for Rapid Response operations; under specific circumstances, a contribution paid in anticipation may however be used for the early financing of a regular operation, in particular one with a short delay between the adoption of the Joint Action to take action and the decision to launch the operation.

(6) Decision 2004/197/CFSP should therefore be amended,

HAS DECIDED AS FOLLOWS:

Article 1

Decision 2004/197/CFSP is hereby amended as follows:

1. Article 25 shall be replaced by the following:

'Article 25

Early financing

1. In the case of an EU Military Rapid Response operation, contributions shall be due by contributing Member States at the level of the reference amount. Without prejudice to Article 24(4), payments shall be made as defined below.

2. For the purpose of the early financing of EU Military Rapid Response operations, the participating Member States shall:

(a) either pay contributions to Athena in anticipation;

(b) or, when the Council decides to conduct an EU Military Rapid Response operation to the financing of which they contribute, pay their contributions to the common costs of that operation within five days following despatch of the call at the level of the reference amount, unless the Council decides otherwise.

[1] OJ L 63, 28.2.2004, p. 68.

3. For the purpose referred to above, the Special Committee, composed of one representative of each of the Member States which have chosen to pay contributions in anticipation (hereafter anticipating Member States), shall establish provisional appropriations in a specific title in the budget. These provisional appropriations shall be covered by contributions payable by the anticipating Member States within 90 days following despatch of the call for these contributions. However, the contributions in anticipation due for the year 2005 shall be paid in two instalments, payable by 30 April and 30 November 2005 respectively.

4. Without prejudice to Article 24(4), the contributions due by an anticipating Member State for an operation, up to the level of the contribution it has paid to the provisional appropriations referred to in paragraph 3 of this Article, shall be payable within 90 days following despatch of the call. A similar amount may be made available to the operation commander from the contributions paid in anticipation.

5. Notwithstanding Article 20, any provisional appropriations referred to under paragraph 3 of this Article which are used for an operation shall be replenished within 90 days following despatch of the call.

6. Without prejudice to paragraph 1, any anticipating Member State may in specific circumstances authorize the administrator to use its contribution paid in anticipation to cover its contribution to an operation in which it participates, other than a Rapid Response operation. The contribution paid in anticipation shall be replenished by the Member State concerned within 90 days following despatch of the call.

7. Notwithstanding Article 31(3), the operation commander may commit and pay the amounts made available to him.

8. Any Member State may reverse its option by notifying the administrator at least three months in advance.'

2. Article 24(6) shall be amended to read as follows:

'6. Without prejudice to the other provisions in this Decision, the contributions shall be paid within 30 days following despatch of the relevant call for contributions.'

Article 2

This Decision shall take effect on 1 February 2005.

Article 3

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

Done at Brussels, 24 January 2005.

For the Council
The President
F. BODEN

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL COMMON POSITION 2005/69/JHA

of 24 January 2005

on exchanging certain data with Interpol

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 30(1)(b) and 34(2)(a) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) One of the Union's objectives is to provide citizens with a high level of safety within an area of freedom, security and justice. Closer cooperation between Member States' competent law enforcement authorities is essential for the achievement of that objective.

(2) The protection of the Union against threats posed by international and organised crime, including terrorism, requires that common action includes the exchange of information between Member States' law enforcement authorities competent in criminal matters, as well as with international partners.

(3) Issued and blank stolen, lost or misappropriated passports are used to elude law enforcement with the object of carrying out illicit activities capable of jeopardising the security of the Union and of each one of the Member States. Meaningful action can only be taken at Union level by reason of the very nature of the threat. Action by the Member States individually could not achieve the abovementioned objective. This Common Position does not go beyond what is necessary to achieve that objective.

(4) All Member States are affiliated to the International Criminal Police Organisation — Interpol. To fulfil its mission, Interpol receives, stores, and circulates data to assist competent law enforcement authorities to prevent and combat international crime. The Interpol database on Stolen Travel Documents permits Interpol's members to share between themselves the data on lost and stolen passports.

(5) The European Council of 25 March 2004, in its Declaration on combating terrorism, instructed the Council to take forward work on the creation by end 2005 of an integrated system for the exchange of information on stolen and lost passports having recourse to the Schengen Information System (SIS) and the Interpol database. This Common Position is a first response to that request that should be followed-up by the setting up of the technical functionality in the SIS to achieve that aim.

(6) The exchange of Member States' data on stolen, lost or misappropriated passports with the Interpol database on Stolen Travel Documents as well as the processing of these data, should respect applicable data protection rules both of the individual Member States and of Interpol.

(7) This Common Position obliges Member States to ensure that their competent authorities will exchange the aforementioned data with the Interpol database on Stolen Travel Documents, in parallel to entering them in the relevant national database, and the SIS, as regards the Member States participating in it. The obligation arises from the moment the national authorities become aware of the theft, loss or misappropriation. A further requirement to set up the necessary infrastructure to facilitate the consultation of the Interpol database acknowledges the law enforcement relevance of the latter.

(8) The conditions of the exchange shall be agreed with Interpol in order to ensure that the data exchanged will respect the data protection principles that lie at the heart of data exchange within the Union, in particular with regard to the exchange and automatic processing of such data.

(9) This Common Position respects the fundamental rights and observes the principles recognised in particular by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS COMMON POSITION:

Article 1

Purpose

The purpose of this Common Position is to prevent and combat serious and organised crime, including terrorism, by ensuring that Member States take the measures necessary to improve cooperation between their competent law enforcement authorities and between them and such authorities in third Countries by exchanging passport data with Interpol.

Article 2

Definitions

For the purpose of this Common Position, the following definitions shall apply:

1. 'Passport data' shall mean data on issued and blank passports that are stolen, lost or misappropriated and formatted for integration in a specific information system. Passport data that will be exchanged with the Interpol database shall consist only of the passport number, country of issuance and the document type.

2. 'Interpol database' shall mean the Automatic Search Facility — Stolen Travel Document database managed by the International Criminal Police Organisation — Interpol.

3. 'Relevant national database' shall mean the police or judicial database or databases in a Member State that contain data on issued and blank passports that are stolen, lost or misappropriated.

Article 3

Common action

1. The competent law enforcement authorities of the Member States shall exchange all present and future passport data with Interpol. They shall only share them with other Interpol members that ensure an adequate level of protection of personal data. It shall also be ensured that fundamental rights and liberties regarding the automatic processing of personal data shall be respected. Member States may decide that they shall only share their data with other Interpol members that have committed themselves to exchange at least the same data.

2. Each Member State may, subject to the requirements set forth in paragraph 1, agree with Interpol the modalities for exchanging all present passport data in its possession with Interpol. Such data are contained in the relevant national database, or in the SIS, if it participates.

3. Each Member State shall ensure that immediately after data have been entered in its relevant national database or in the SIS, if it participates, these data are also exchanged with Interpol.

4. Member States shall ensure that their competent law enforcement authorities will query the Interpol database for the purpose of this Common Position each time when appropriate for the performance of their task. Member States shall ensure that they set up the infrastructures required to facilitate consultation as soon as possible but at the latest by December 2005.

5. The exchange of personal data in compliance with the obligation laid down in this Common Position shall take place for the purpose set out in Article 1, ensuring an adequate level of protection of personal data in the relevant Interpol Member Country and the respect for fundamental rights and liberties regarding the automatic processing of personal data. To that end, Member States shall ensure that the exchange and sharing of data takes place on the appropriate conditions and subject to the above requirements.

6. Each Member State shall ensure that if a positive identification (hit) occurs against the Interpol database its competent authorities shall take action in accordance with their national law, e.g. verify, when appropriate, the correctness of the data with the country that introduced the data.

Article 4

Monitoring and evaluation

On the basis of information provided by the Member States, the Commission shall, by December 2005, submit a report to the Council on the operation of this Common Position. The Council shall assess the extent to which Member States comply with this Common Position and take the appropriate action.

Article 5

Taking effect

This Common Position shall take effect on the date of its adoption.

Article 6

Publication

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 24 January 2005.

For the Council
The President
F. BODEN