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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.

EN

(1) Text with EEA relevance

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 825/2009

of 7 September 2009

amending Regulation (EC) No 1659/2005 imposing a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (hereinafter referred to as basic Regulation), and in particular Article 11(3) thereof,

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

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) The Council, by Regulation (EC) No 1659/2005 [2] (hereinafter referred to as original Regulation), imposed a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China (PRC). The measures consist of an *ad valorem* duty rate of 39,9 %, with the exception of six companies expressly mentioned in the original Regulation which are subject to individual duty rates.

1.2. Request for a review

(2) Subsequent to the imposition of definitive measures, the Commission received an application to initiate a partial interim review of the original Regulation (hereinafter referred to as interim review), pursuant to Article 11(3) of the basic Regulation, from a Chinese exporting producer, Bayuquan Refractories Company Limited (hereinafter referred to as 'the applicant' or 'BRC'). The applicant did not participate in the investigation which led to the findings and conclusions laid down in the original Regulation (hereinafter referred to as the original investigation) and therefore the residual anti-dumping duty is applied to it.

(3) In its application for the interim review BRC claimed that it meets the criteria for market economy treatment (hereinafter referred to as MET) and individual treatment (hereinafter referred to as IT). BRC was purchased by the Vesuvius Group which resulted in changes in its corporate structure. The applicant argued that a comparison of its domestic prices and cost of production and export prices to the Community indicates that the dumping margin is substantially lower than the current level of measure. Therefore, it claimed that the continued application of the measure at its current level was no longer necessary to offset dumping.

1.3. Initiation of a partial interim review

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission decided to initiate a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping as far as BRC is concerned. The Commission published a notice of initiation on 12 June 2008 in the *Official Journal of the European Union* [3] and commenced an investigation.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 267, 12.10.2005, p. 1.
[3] OJ C 146, 12.6.2008, p. 27.

1.4. **Product concerned and like product**

(5) The product concerned by the interim review is the same as that described in the original Regulation, i.e. chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, originating in the PRC (hereinafter referred to as the product concerned), currently falling within CN codes ex 6815 91 00, ex 6815 99 10 and ex 6815 99 90 (TARIC codes 6815 91 00 10, 6815 99 10 20 and 6815 99 90 20).

(6) The product produced and sold on the Chinese domestic market and that exported to the Community, as well as that produced and sold in the USA, have the same basic physical, technical and chemical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

1.5. **Parties concerned**

(7) The Commission officially advised the Community industry, the applicant and the representatives of the exporting country of the initiation of the interim review. Interested parties were given the opportunity to make their views known in writing and to be heard. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(8) The Commission sent a MET claim form and a questionnaire to the applicant and received a reply within the deadline set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping, and verification visits were carried out at the premises of the following companies:

— Bayuquan Refractories Co. Ltd. (the applicant), PRC,

— Vesuvius UK Co. Ltd. (related importer), UK,

— Vesuvius Iberica Refractories S.A. (related importer), Spain,

— Vesuvius Deutschland GmbH (related importer), Germany,

— Vesuvius Italia S.P.A. (related importer), Italy,

1.6. **Investigation period**

(9) The investigation of dumping covered the period from 1 April 2007 to 31 March 2008 (hereinafter referred to as 'investigation period' or 'IP').

2. **RESULTS OF THE INVESTIGATION**

2.1. **Market Economy Treatment (MET)**

(10) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports from the PRC, normal value shall be determined in accordance with Article 2(1) to (6) 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, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. These criteria are set out in a summarised form below:

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

— firms have one clear set of basic accounting records which are independently audited in line with International Accounting Standards (IAS) and applied for all purposes,

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

— bankruptcy and property laws guarantee stability and legal certainty,

— currency exchanges are carried out at market rates.

(11) The applicant requested MET pursuant to Article 2(7)(b) of the basic Regulation by submitting a duly substantiated MET claim form within the given deadline. The information and data presented therein were subsequently subject to an on-spot investigation.

(12) The investigation established that the applicant did not meet MET criteria referred to in Article 2(7)(c) second and third indent of the basic Regulation. The company did not substantiate that it had one clear set of basic accounting records which were prepared and audited in compliance with IAS. Its financial statements and individual accounts showed breaches of IAS and accounting principles such as incorrect booking and depreciation of fixed assets and incorrect booking of accounts 'payable' and 'advanced payments'. The auditor did not mention these irregularities, and thus it was concluded that the financial statements were not audited in line with IAS. Furthermore, the company did not demonstrate that it was free from significant distortions carried over from the former non-market economy, in particular because the land use rights were obtained significantly below their market price.

(13) Based on the above facts and considerations, the applicant could not be granted MET.

(14) The Community industry, the applicant and the authorities of the exporting country were given the opportunity to comment on the findings concerning MET. Subsequently, the applicant and the Community industry submitted their comments.

(15) The applicant argued that the issues raised on its accounting records were not material and/or were subsequently corrected in 2008. It should be mentioned that the inconsistencies found in the accounts of the applicant for 2007 led to a significantly distorted picture of the applicant's financial situation. The inspection of the accounts for the IP revealed that the problems encountered in 2007 still existed in 2008. The claim made by the applicant that its accounting practices were changed at the end of 2008 could not be accepted since these changes occurred nine months after the IP and, in addition, could not be verified during the on-spot visit.

(16) The Community industry argued that the applicant failed on criterion one because the various export restrictions imposed by the Chinese Government on the main raw material to produce the product concerned led to distorted prices of that raw material on the domestic market. As a result the Chinese producers of magnesia bricks can obtain the raw material at better conditions compared to their competitors in other countries.

(17) For the investigation of this claim the purchase prices of the main raw material, magnesia, by BRC and publicly quoted prices for Chinese magnesia (source: Price Watch/ Industrial minerals) provided by the Community industry were examined. The comparison showed that the price difference in the IP could not be considered as significant. Moreover, it could be verified during the investigation that BRC was free to purchase magnesia from various suppliers, and that prices were negotiated without any State interference. On that basis it appears that any distortions concerning raw material prices did not have any significant impact on BRC during the IP.

(18) On the basis of the above, the findings and the conclusion that MET should not be granted to BRC are confirmed.

2.2. **Individual Treatment (IT)**

(19) Pursuant to Article 2(7) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria for IT set out in Article 9(5) of the basic Regulation. These criteria are set out in a summarised form below:

— in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits,

— export prices and quantities, and conditions and terms of sale are freely determined,

— the majority of the shares belong to private persons, and it must be demonstrated that BRC is sufficiently independent from State interference,

— exchange rate conversions are carried out at the market rate,

— State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

(20) The applicant, as well as requesting MET, also claimed IT in the event of not being granted MET.

(21) The investigation showed that the applicant met all the above criteria. No facts were established during the investigation which would lead to the rejection of the IT claim of the applicant. It is therefore concluded that IT could be granted to BRC.

2.3. **Normal value**

(22) According to Article 2(7) of the basic Regulation, in case of imports from non-market-economy countries and to the extent that MET could not be granted, for countries specified in Article 2(7)(b) of the basic Regulation, normal value has to be established on the basis of the price or constructed value in an analogue country.

(23) In the notice of initiation the Commission indicated its intention to use the United States of America (USA) as an appropriate analogue country for the purpose of establishing normal value for the PRC, as this analogue country was used in the original investigation. One producer in the USA agreed to cooperate in the investigation for the purpose of establishing normal value for BRC. No comments were received from the interested parties with regard to this proposal.

(24) Hence, pursuant to Article 2(7)(a) of the basic Regulation, the normal value for the applicant was established on the basis of verified information received from the cooperating producer in the analogue country.

(25) In order to ensure that normal values could be established for the vast majority of types exported from the PRC, in particular because the data of the analogue country was used, it was considered appropriate to adjust the criteria used to identify the different product types accordingly. The dumping calculations were, therefore, revised on the basis of the adjusted criteria.

(26) For the determination of normal value it was first established whether the cooperating US producer's total volume of domestic sales of the like product was representative in comparison with its total volume of export sales to the Community. In accordance with Article 2(2) of the basic Regulation domestic sales are considered representative when the total domestic sales volume was at least 5 % of the total volume of corresponding export sales to the Community. It was found that all sales by the US producer concerned on the domestic market were sold in representative volumes.

(27) Subsequently, those types of the like product sold on the domestic market that were identical and directly comparable to the types sold for export to the Community, were identified.

(28) For each product type sold by the cooperating producer in the USA on its domestic market and found to be directly comparable to the type of magnesia bricks sold by BRC to the Community, it was established whether US domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of magnesia bricks were considered sufficiently representative when the total domestic sales volume in the USA of that type during the IP represented 5 % or more of the total sales volume of the comparable type of magnesia bricks exported by BRC to the Community. It was found that all product types were sold in sufficient quantity on the domestic market to be considered representative.

(29) The Commission subsequently examined whether the domestic sales in the USA of each type of magnesia bricks sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the magnesia bricks type in question.

(30) 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 of each type sold on the domestic market of the USA during the IP was therefore determined.

(31) As a result of the above analysis, it was found that, except for one product type, all other types were sold in the ordinary course of trade in the USA. Thus, the normal value for these product types was established on the basis of all prices paid or payable on the domestic market of the USA for product types comparable to those exported to the Community by BRC. Normal value was established as the weighted average domestic sales price charged to unrelated customers in the USA.

(32) The majority of the product types exported by BRC to the Community were those with additional treatment and were not sold or not sold in representative quantities by the cooperating producer in the USA. Hence, normal value for these product types was based on sales in the USA, as described in recital (31) for corresponding product types without additional treatment, further adjusted to reflect the differences in physical characteristics of the product. The level of the adjustment was calculated on the basis of data provided and verified for the Community industry during the original investigation.

(33) For the only product type where domestic prices could not be used as mentioned in recital (31) above, another method had to be applied. In this regard, the Commission used constructed normal value. In accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. Pursuant to Article 2(6) of the basic Regulation, the amounts for SG&A and profit margin were based on the average SG&A and profit margin of sales in the ordinary course of trade of the like product.

2.4. **Export price**

(34) Since all export sales of BRC to the Community were made via related importers, the ex-works export price had to be constructed in accordance with Article 2(9) of the basic Regulation, on the basis of the price at which the imported products were first resold to the first independent buyer in the Community, adjusted for all costs incurred between importation and resale, as well as a reasonable margin for SG&A and for profits. In this regard the SG&A costs of the related importers were used.

(35) As regards a reasonable importer's profit to be used for this purpose, in the absence of data from unrelated importers, since the current interim review is limited to the examination of dumping in relation to one company, i.e. the applicant, the profit margin was based on the profit achieved by a cooperating unrelated importer from the original investigation.

2.5. **Comparison**

(36) The average normal value and the average export price for each type of the product concerned were compared on an ex-works basis and at the same level of trade and at the same level of indirect taxation. In order to ensure a fair comparison between normal value and export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. For this purpose, adjustments for transport costs, insurance, handling charges, credit costs, and actual anti-dumping duties paid were made where applicable and justified.

(37) The investigation has established that the VAT paid on export sales was not refunded. In the disclosure which was provided to the applicant pursuant to Article 20 of the basic Regulation, it was therefore indicated that both the export price and the normal value would be established on a VAT paid or payable basis. The applicant argued that this approach is not acceptable as it would increase the normal value by an amount exceeding the VAT amount which should have been deducted from the export price.

(38) Regarding this argument, it should be noted that during the review investigation period no VAT on export sales was refunded. Therefore, no adjustment in respect of VAT, neither to the export price nor to normal value, was necessary. In addition, the method used is neutral. Indeed it has the same effect, also if, for instance for certain products or transactions, a company sells to the Community at an export price which does not result in dumping. In other words, even assuming that the inclusion of VAT on both sides of the equation would increase the difference between the two elements, which would also be the case for those models for which there was no dumping.

2.6. **Dumping margin**

(39) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison showed no existence of dumping.

3. **LASTING NATURE OF CHANGED CIRCUMSTANCES**

(40) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.

(41) In this respect it is recalled that the applicant only sold a limited quantity of magnesia bricks at the end of the IP of the original Regulation and thus did not participate in the original investigation, therefore a residual duty of 39,9 % was applied to it. Subsequently, BRC which existed during the original investigation was purchased by the Vesuvius Group and it resulted in changes in the corporate structure of BRC.

(42) The applicant provided full cooperation in this interim review and the data collected and verified allowed to establish a dumping margin based on its individual export prices to the Community. The result of this calculation indicates that the continued application of the measure at its current level is no longer justified.

(43) Evidence obtained and verified during the investigation also showed that the changes in the applicant's corporate structure are to be considered lasting. No element emerged in the course of the investigation that would suggest otherwise. The circumstances that led to the initiation of this interim review are unlikely to change in the foreseeable future in a manner that would affect the findings of the current review. Therefore it is concluded that the changed circumstances are considered to be of a lasting nature.

4. **ANTI-DUMPING MEASURES**

(44) In the light of the results of this review investigation, it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned from BRC to 0 %.

(45) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend an amendment of Regulation (EC) No 1659/2005 and were given an opportunity to comment. The comments were taken into account where appropriate,

HAS ADOPTED THIS REGULATION:

Article 1

In the table in Article 1(2) of Regulation (EC) No 1659/2005 the following entry shall be inserted after the entry concerning Dashiqiao Sanqiang Refractory Materials Co. Ltd.

Manufacturer	Anti-dumping duty	TARIC additional code
'Bayuquan Refractories Co. Ltd Qinglongshan Street, Bayuquan District Yingkou 115007, Liaoning Province, PRC	0 %	A960'

Article 2

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

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

Done at Brussels, 7 September 2009.

For the Council
The President
E. ERLANDSSON

COUNCIL REGULATION (EC) No 826/2009

of 7 September 2009

amending Regulation (EC) No 1659/2005 imposing a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (basic Regulation), and in particular Article 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, by Regulation (EC) No 1659/2005 [2] (original Regulation), imposed a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China (PRC). The measures consist of an *ad valorem* duty rate of 39,9 %, with the exception of six companies expressly mentioned in the original Regulation which are subject to individual duty rates.

2. Request for review

(2) In 2008, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation (interim review). The request, limited in scope to the examination of dumping, was lodged by a Chinese exporting producer, Dashiqiao Sanqiang Refractory Materials Company Limited (DSRM or the applicant). The rate of the definitive anti-dumping duty applicable to products manufactured by DSRM is 27,7 %.

(3) In its request for the interim review the applicant claimed that the circumstances on the basis of which the measure was imposed had changed and that these changes were of a lasting nature. The applicant argued that a comparison of its domestic prices and cost of production and export prices to the Community indicates that the dumping margin is substantially lower than the current level of measure. Therefore, it claimed that the continued application of the measure at its current level would no longer be necessary to offset dumping. In particular, the applicant provided *prima facie* evidence showing that it meets the criteria for market economy treatment (MET).

3. Initiation

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission decided to initiate an interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping as far as DSRM is concerned. The Commission published a notice of initiation on 12 June 2008 in the *Official Journal of the European Union* [3] and commenced an investigation.

4. Product concerned and like product

(5) The product concerned by the interim review is the same as that described in the original Regulation, i.e. chemically bonded, unfired magnesia bricks, the magnesia component of which contains at least 80 % MgO, whether or not containing magnesite, originating in the PRC (product concerned), currently falling within CN codes ex 6815 91 00, ex 6815 99 10 and ex 6815 99 90 (TARIC codes 6815 91 00 10, 6815 99 10 20 and 6815 99 90 20).

(6) The product produced and sold on the Chinese domestic market and that exported to the Community, as well as that produced and sold in the USA have the same basic physical, technical and chemical characteristics and uses, and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

5. Parties concerned

(7) The Commission officially advised the Community industry, the applicant and the authorities of the exporting country of the initiation of the interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 267, 12.10.2005, p. 1.
[3] OJ C 146, 12.6.2008, p. 30.

(8) A market economy treatment (MET) claim form and a questionnaire were sent to DSRM and its related companies, all of which replied within the deadlines set for that purpose. The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

(a) The PRC

— Dashiqiao Sanqiang Refractory Materials Co. Limited (the applicant), Dashiqiao, Liaoning Province,

(b) Italy

— Duferco Commerciale S.p.A., Genova,

(c) France

— Duferco, Aubervilliers,

(d) Switzerland

— Duferco SA, Lugano.

6. **Investigation period**

(9) The investigation of dumping covered the period from 1 January 2007 to 31 March 2008 (investigation period or IP).

B. RESULTS OF THE INVESTIGATION

1. Market Economy Treatment (MET)

(10) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports from the PRC, normal value shall be determined in accordance with paragraphs (1) to (6) of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. These criteria are set out in a summarised form below:

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

— firms have one clear set of basic accounting records which are independently audited in line with International Accounting Standards (IAS) and applied for all purposes,

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

— bankruptcy and property laws guarantee stability and legal certainty,

— currency exchanges are carried out at market rates.

(11) The applicant requested MET pursuant to Article 2(7)(b) of the basic Regulation by submitting a duly substantiated MET claim form within the given deadline. The information and data presented therein was subsequently subject to an on-spot investigation.

(12) The investigation found that the applicant met all five MET criteria. It was found that during the IP, DSRM made its business decisions without any State interference or distortions related to non-market economy conditions. DSRM is subject to Chinese bankruptcy and property laws without any derogation. The company has one set of independently audited accounting records and accounting system and its practice was found to be in line with internationally accepted general accounting principles and IAS. Costs and prices were found to reflect market values and exchange rate conversions were carried out at market rates.

(13) Based on the above facts and considerations, the applicant could be granted MET.

(14) The Community industry, the applicant and the authorities of the exporting country were given an opportunity to comment on the findings concerning MET. Subsequently, the applicant and the Community industry submitted their comments.

(15) The Community industry argued that the applicant failed on criterion one because the various export restrictions imposed by the Chinese Government on the main raw material to produce the product concerned led to distorted prices of that raw material on the domestic market. As a result, the Chinese producers of magnesia bricks can obtain the raw material at better conditions compared to their competitors in other countries.

(16) For the investigation of this claim the purchase prices of the main raw material, i.e. magnesia, by DSRM and the publicly quoted prices for Chinese magnesia (source: Price Watch/Industrial minerals) provided by the Community industry were examined. The comparison showed that the price difference in the IP could not be considered as significant. Moreover, it could be verified during the investigation that DSRM was free to purchase magnesia from various suppliers, and that prices were negotiated without any State interference. On that basis, it appears that any distortions concerning raw material prices did not have any significant impact on this specific company during the IP.

(17) On the basis of the above, the findings and the conclusion that MET should be granted to DSRM are confirmed.

2. **Normal value**

(18) For the determination of normal value it was first established whether DSRM's total volume of domestic sales of the like product was representative in comparison with its total volume of export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales are considered representative when the total domestic sales volume is at least 5 % of the total volume of corresponding export sales to the Community. It was found that all sales by DSRM on the domestic market were sold in representative volumes.

(19) Subsequently, those types of the like product sold on the domestic market by DSRM that were identical and directly comparable to the types sold for export to the Community, were identified.

(20) For each type sold by DSRM on the domestic market and found to be directly comparable with the type sold for export to the Community, it was established whether domestic sales were sold in representative volume for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type 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 exported to the Community.

(21) It was also examined whether the domestic sales of each type could be regarded as having been made in the ordinary course of trade, pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable sales to independent customers on the domestic market of each exported type of the product concerned during the IP.

(22) Where the sales volume of a product 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 unit cost of production, normal value was based on the actual domestic price. This price was 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.

(23) Where the volume of profitable sales of a product 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 unit cost of production, normal value was based on the actual domestic price, which was calculated as the weighted average price of only the profitable domestic sales of the type in question made during the IP.

(24) Wherever domestic prices of a particular product type sold by DSRM could not be used in order to establish the normal value, another method had to be applied. In this regard, the Commission used constructed normal value. In accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. Pursuant to Article 2(6) of the basic Regulation, the amounts for SG&A and profit margin were based on the average SG&A and profit margin of DSRM sales in the ordinary course of trade of the like product.

3. **Export price**

(25) Since all export sales to the Community were made via DSRM's related companies either in the Community or in Switzerland, the ex-works export price had to be constructed in accordance with Article 2(9) of the basic Regulation, on the basis of the price at which the imported products were first resold to the first independent buyer in the Community, adjusted for all costs incurred between importation and resale, as well as a reasonable margin for SG&A and for profits. In this regard the SG&A costs of the related importers were used.

(26) As regards a reasonable importer's profit to be used for this purpose, in the absence of data from unrelated importers, since the current interim review is limited to the examination of dumping in relation to one company, the profit margin was based on the profit achieved by a cooperating unrelated importer from the original investigation.

(27) Further, to the final disclosure DSRM claimed that the SG&A ratio used when constructing the export price for one of its related importers did not reflect the reality, since it was calculated as a ratio of the total turnover without taking into account the fact that the majority of the sales made by this company were on a commission basis and that only the amount of the commission had been reported in the turnover.

(28) In this respect, the Commission re-examined the evidence collected during the inspection at the premises of this related importer. On this basis, the claim of DSRM was found to be warranted and the SG&A ratio used for the calculation of the constructed export price via this related importer was subsequently revised. This revised SG&A ratio was also found to be in line with the findings in respect of the other related importers.

4. **Comparison**

(29) The average normal value and the average export price for each type of the product concerned were compared on an ex-works basis and at the same level of trade and at the same level of indirect taxation. In order to ensure a fair comparison between normal value and export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. For this purpose, adjustments for transport costs, insurance, handling and loading charges, credit costs, and actual anti-dumping duties paid were made where applicable and justified.

(30) The investigation has established that the VAT paid on export sales was not refunded (not even partially, which was the case in the original investigation). In the disclosure which was provided to the applicant pursuant to Article 20 of the basic Regulation, it was therefore indicated that both the export price and the normal value would be established on a VAT paid or payable basis. The applicant argues that this approach would be unlawful. Regarding his arguments, the following can be noted.

(31) Firstly, regarding the argument that in the original investigation another methodology was used (i.e. the deduction of VAT both from the normal value and the export price), it must be emphasised that the circumstances which were applicable during the review investigation period (RIP) were not the same as those applicable during the original investigation period. Whereas during the original investigation period, as stated above, VAT was partially refunded, which necessitated an adjustment pursuant to Article 2(10), during the RIP, no VAT on export sales was refunded. Therefore, no adjustment in respect of VAT, neither to the export price nor to normal value, was necessary. Even if this could be qualified as a change in methodology, it is justified under Article 11(9) of the basic Regulation since the circumstances have changed.

(32) The second argument which the applicant makes is that the method used in this review would artificially inflate the dumping margin. This argument cannot be accepted. The method used is neutral. It has the same effect, also if, for instance for certain products or transactions, the company sells to the Community at an export price which does not result in dumping. In other words, even assuming that the inclusion of VAT on both sides of the equation would increase the difference between the two elements, that would also be the case for those models for which there was no dumping.

5. **Dumping margin**

(33) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison showed the existence of dumping.

(34) DSRM's dumping margin expressed as a percentage of the net, free-at-Community-frontier price, duty unpaid, was found to be 14,4 %.

C. **LASTING NATURE OF CHANGED CIRCUMSTANCES**

(35) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances which were found to exist could reasonably be considered to be of a lasting nature.

(36) In this respect it is recalled that in the original investigation DSRM did not obtain MET because its accounting was not in line with internationally accepted accounting principles and IAS. It was, however, granted individual treatment.

(37) On 8 December 2006, i.e. after the original investigation, DSRM became a Sino-foreign joint-venture with the Duferco group as foreign shareholder, with a 25 % ownership. The current investigation showed that this shareholding led to fundamental changes in DSRM's management and accounting practices. Indeed, DSRM acquired Duferco's know-how and support regarding management accounting and financial control and became part of Duferco's international sales network. Evidence obtained and verified during the investigation also shows that these changes in the applicant's corporate structure are of a lasting nature.

(38) In contrast to the original investigation, where the normal value was based on data obtained from the analogue country, the data collected and verified during the present review showed that DSRM could be granted MET and consequently the dumping calculation could be based on its own data. The result of this calculation indicates that the continued application of the measure at its current level is no longer justified.

(39) In the light of the above, it is therefore considered that the circumstances that led to the initiation of this review are unlikely to change in the foreseeable future in a manner that would affect the findings of the current review. Therefore, it is concluded that the changes are considered to be of a lasting nature.

D. **ANTI-DUMPING MEASURES**

(40) In the light of the results of the investigation, it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned from DSRM to 14,4 %.

(41) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend an amendment of Regulation (EC) No 1659/2005 and were given an opportunity to comment. The comments were taken into account, where appropriate,

HAS ADOPTED THIS REGULATION:

Article 1

The entry concerning the Dashiqiao Sanqiang Refractory Materials Co. Ltd. in the table in Article 1(2) of Regulation (EC) No 1659/2005 shall be replaced by the following:

Manufacturer	Anti-dumping duty	TARIC additional code
'Dashiqiao Sanqiang Refractory Materials Co. Ltd., Biangan Village, Nanlou Economic Development Zone, Dashiqiao City, Liaoning Province, 115100, PRC	14,4 %	A638'

Article 2

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

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

Done at Brussels, 7 September 2009.

For the Council
The President
E. ERLANDSSON

COMMISSION REGULATION (EC) No 827/2009

of 10 September 2009

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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector [2], and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 September 2009.

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

Done at Brussels, 10 September 2009.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 350, 31.12.2007, p. 1.

ANNEX

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	MK	37,2
	XS	31,8
	ZZ	34,5
0707 00 05	TR	72,7
	ZZ	72,7
0709 90 70	TR	102,7
	ZZ	102,7
0805 50 10	AR	143,1
	UY	71,8
	ZA	112,5
	ZZ	109,1
0806 10 10	IL	143,8
	TR	102,0
	ZZ	122,9
0808 10 80	AR	124,5
	BR	70,4
	CL	82,3
	NZ	87,5
	US	85,9
	ZA	76,0
	ZZ	87,8
0808 20 50	AR	160,8
	CN	61,6
	TR	87,5
	ZA	74,3
	ZZ	96,1
0809 30	TR	114,0
	US	212,2
	ZZ	163,1
0809 40 05	IL	126,5
	TR	78,6
	ZZ	102,6

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 828/2009

of 10 September 2009

laying down detailed rules of application for the marketing years 2009/2010 to 2014/2015 for the import and refining of sugar products of tariff heading 1701 under preferential agreements

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1], and in particular Article 156 in conjunction with Article 4 thereof,

Having regard to Council Regulation (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements [2], and in particular Article 9(5) thereof,

Having regard to Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007 [3], and in particular Article 11(7) thereof,

Whereas:

(1) Article 7(1) of Regulation (EC) No 1528/2007 eliminates, as from 1 October 2009, the import duties of tariff heading 1701 for the regions and states listed in its Annex I to that Regulation. However, if imports reach the double threshold specified in Article 9 of Regulation (EC) No 1528/2007, this preference may be suspended for the regions or states listed in Annex I thereto and which are not least-developed countries listed in Annex I to Regulation (EC) No 732/2008. In accordance with Article 9(2), a regional safeguard threshold should be fixed.

(2) Article 11(3) of Regulation (EC) No 732/2008 suspends entirely, as from 1 October 2009, the Common Customs Tariff duties on the products under tariff heading 1701 for the countries which according to its Annex I to that Regulation benefits from the special arrangements for the least-developed countries.

(3) In accordance with Article 11(6) of Regulation (EC) No 732/2008, for the period from 1 October 2009 to 30 September 2015, imports of products under tariff heading 1701 require an import licence.

(4) To simplify the licensing procedure, each reference number should be linked to a country listed under Annex I of this Regulation. To avoid fraudulent applications, this list shall be limited to those countries identified as current or potential sugar exporters to the European Union. Any country not currently listed in Annex I to this Regulation but listed either in Annex I to Regulation (EC) No 1528/2007 or in Annex I to Regulation (EC) No 732/2008 is eligible to be included in Annex I of this Regulation. To this effect, such a country shall request the Commission to be listed in Annex I of this Regulation.

(5) Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [4] should apply to import licences issued under this Regulation, except as otherwise provided by this Regulation.

(6) To ensure uniform and equitable treatment for all operators, the period in which licence applications may be submitted and licences issued should be determined.

(7) In accordance with Article 5 of Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences [5], operators should submit, to the Member States in which they are registered for VAT purposes, proof that they have been trading sugar during a certain period. Nevertheless, operators approved in accordance with Article 7 of Commission Regulation (EC) No 952/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards the management of the Community market in sugar and the quota system [6] should be able to participate in the trading of preferential sugar.

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 348, 31.12.2007, p. 1.
[3] OJ L 211, 6.8.2008, p. 1.
[4] OJ L 114, 26.4.2008, p. 3.
[5] OJ L 238, 1.9.2006, p. 13.
[6] OJ L 178, 1.7.2006, p. 39.

(8) Sugar imported for refining needs specific monitoring by the Member States. Therefore operators should specify as from the import licence application if the imported sugar is intended for refining or not.

(9) To avoid speculation or merchandising of import licences and to ensure that the applicant has commercial contacts with the exporting third country, import licence applications should be accompanied by an export document issued by a competent authority of the exporting third country for a quantity equal to the quantity of the import licence application.

(10) In accordance with Article 11(4) of Regulation (EC) No 732/2008 and Article 8 of Regulation (EC) No 1528/2007, the importer has to undertake to purchase the products of CN code 1701 at a price not lower than 90 % of the reference price (on a c.i.f. basis) set in Article 8 paragraph 1 point (c) of Regulation (EC) No 1234/2007.

(11) When the quantities resulting from import licence applications exceed the quantities specified in Article 9(1)(a) of Regulation (EC) No 1528/2007, the issuance of licenses by Member States should be subject to an allocation coefficient to be fixed by the Commission similarly to what provided by Regulation (EC) No 1301/2006. In accordance with Article 9(2) of Regulation (EC) No 1528/2007, that coefficient should be calculated on a regional level.

(12) Article 9(2) of Regulation (EC) No 1528/2007 increases the possibility of exceeding the quantities specified in Article 9(1) of Regulation (EC) No 1528/2007. The Commission should therefore report on the application of the transitional safeguard mechanism for sugar and, if necessary, make appropriate proposals. This report should include an overview of the import flows during the first marketing years of application of this regulation, analyse future trade developments and evaluate any possible risk of an overshoot and the quantities involved.

(13) The thresholds for the management of the transitional safeguard mechanism for sugar are based on imports during a specific marketing year. Import licences should therefore be valid between 1 October and 30 September.

(14) Article 8 of Regulation (EC) No 1528/2007 restricts the benefit of the elimination of import duties to those importers who pay a price not lower than 90 % of the reference price on a c.i.f. basis. In international trade, such contracts imply that the importer bears full responsibility of the sugar as from the date of loading. For licences valid until 30 September for which the sugar was loaded at the latest by 15 September, small delays in the logistic chain other than *force majeure* could lead to physical imports after 30 September. To avoid the risk of paying the full import duty of EUR 419 per tonne and the forfeit of the security, importers should be given the possibility to import that sugar loaded at the latest by 15 September of a marketing year based on an import licence issued for that marketing year. Therefore Member States should extend the validity of the import licence if the importer submits proof that the sugar was loaded at the latest by 15 September.

(15) The distinction 'sugar intended for refining' and 'sugar not intended for refining' is not linked to the distinction between white and raw sugar as defined in points 1 and 2 of Part II of Annex III of Regulation (EC) No 1234/2007. Therefore the CN codes authorised for imports under each group of import licences should be identified.

(16) For the sake of sound management of the agreements, the Commission should receive the relevant information in good time.

(17) Article 153(3) of Regulation (EC) No 1234/2007 restricts, during the first three months of each marketing year and within the limit referred to in Article 153(1) of Regulation (EC) No 1234/2007, the issuing of import licences to full-time refiners. During that period, only full-time refiners should be able to apply for import licences for sugar for refining. Such licences shall be valid to the end of the marketing year for which they are issued.

(18) The obligation to refine sugar should be verified by the Member States. If the original holder of the import licence is not able to provide the proof, a penalty should be paid.

(19) All imported sugar refined by an approved operator should be based on an import licence for sugar for refining. Quantities for which such proof cannot be given should be charged a penalty.

(20) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation lays down for the marketing years 2009/2010 to 2014/2015 detailed rules applying on imports of products of tariff heading 1701 referred to in:

(a) Article 9(1) of Regulation (EC) No 1528/2007;

(b) Article 11(4) of Regulation (EC) No 732/2008.

2. Imports from third countries which are least-developed countries (LDC) listed in Annex I to Regulation (EC) No 732/2008, whether they belong to African, Caribbean and Pacific Group of States (ACP countries) or not (NON-ACP countries), shall be duty free and quota free and shall bear the reference numbers as shown in Part I of Annex I to this Regulation.

3. Imports from the ACP countries which are not least-developed countries (NON-LDC) listed in Annex I to Regulation (EC) No 732/2008 shall be duty free subject to the transitional safeguard mechanism for sugar in accordance with the provisions referred to in Article 9 of Regulation (EC) No 1528/2007 and shall bear the reference numbers as shown in Part II of Annex I to this Regulation.

In accordance with Article 9(2) of Regulation (EC) No 1528/2007, a regional safeguard threshold is set up in Part II of Annex I to this Regulation for each marketing year.

4. A country listed in Annex I to Regulation (EC) No 1528/2007 or in Annex I to Regulation (EC) No 732/2008 is eligible to be added to Annex I to this Regulation. To this effect, such a country shall request to the Commission to be listed in Annex I of this Regulation.

Article 2

Definitions

For the purposes of this Regulation:

(a) 'tel quel weight' means the weight of the sugar in the natural state;

(b) 'refining' means the processing of raw sugars into white sugars as defined in points 1 and 2 of Part II of Annex III to Regulation (EC) No 1234/2007, and any equivalent technical operation applied to bulk white sugar.

CHAPTER II

IMPORT LICENCES

Article 3

Applicability of Regulation (EC) 376/2008

Regulation (EC) No 376/2008 shall apply save as otherwise provided for in this Regulation.

Article 4

Import licence applications and import licences

1. Import licence applications shall be submitted each week, from Monday to Friday, starting on the second Monday of September prior to the marketing year for which they are applied.

No applications may be lodged from Friday 11 December 2009 1 p.m. (Brussels time) till Friday 1 January 2010 1 p.m. (Brussels time).

2. Article 5 of Regulation (EC) No 1301/2006 shall apply mutatis mutandis. However, the submission of proof provided for in that Article may not be required for operators approved in accordance with Article 7 of Regulation (EC) No 952/2006.

3. Import licence applications and import licences shall contain the following entries:

(a) in box 8: the country of origin (one of the countries listed in Annex I to this Regulation).

The word 'yes' being marked with a cross;

(b) in box 16, a single eight digit CN code;

(c) in boxes 17 and 18: the quantity of sugar in white sugar equivalent;

(d) in box 20:

(i) 'sugar intended for refining' or 'sugar not intended for refining';

(ii) at least one of the entries listed in part A of Annex V;

(iii) the marketing year to which they are related;

(e) in box 24: at least one of the entries listed in part B of Annex V.

4. Import licence applications shall be accompanied by:

(a) proof that the applicant has lodged a security of EUR 20 per tonne of the quantity of sugar indicated in box 17 of the licence;

(b) the originals of the export licences issued by the competent authorities of the exporting third country in accordance with the model set out in Annex III, for a quantity equal to that mentioned in the licence applications;

(c) in the case of sugar for refining, the undertaking by the applicant to refine the quantities of sugar in question before the end of the third month following that in which the import licence concerned expires;

(d) for the marketing years 2009/2010, 2010/2011, 2011/2012, the applicant's pledge to purchase the sugar at a price not lower than 90 % of the reference price (on a c.i.f. basis) set in Article 8(c) of Regulation (EC) No 1234/2007 for the relevant marketing year as well as a binding document relating to the transaction and signed by both the buyer and the supplier.

The export licences referred to in point (b) may be replaced by certified copies, issued by the competent authorities of the exporting third country, of the proof of origin provided for in Article 14 of Annex II to Regulation (EC) No 1528/2007 for countries listed in Annex I to that Regulation or Articles 67 to 97 of Commission Regulation (EEC) No 2454/93 [1] for countries not listed in Annex I of Regulation (EC) No 1528/2007 but listed in Annex I to Regulation (EC) No 732/2008.

5. The originals of the export licences referred to in paragraph 4, point (b) or the certified copies referred to in the second subparagraph of paragraph 4 shall be kept by the competent authority of the Member State.

6. Where it is found that a document submitted by an applicant in accordance with paragraph 4 provides false information and where such information is decisive for the attribution of preferential import licences, the competent authorities of the Member States shall exclude the applicant from the licence application system for the current and following marketing year, unless the applicant proves, to the satisfaction of the competent authority, that this is not due to his gross negligence or that it is due to *force majeure* or to obvious error.

Article 5

Transitional Safeguard mechanism for sugar

1. When the total quantity resulting from the licence applications for reference numbers 09.4231 to 09.4247 exceeds 3,5 million tonnes and the total quantity resulting from the licence applications for reference numbers 09.4241 to 09.4247 exceeds the quantity referred to in Annex II for the marketing year concerned, the Commission shall fix an allocation coefficient for the reference numbers 09.4241 to 09.4247 which the Member States shall apply to the quantities covered by each application for these reference numbers.

The allocation coefficient for a reference number is calculated in proportion to the available quantity of the regional safeguard threshold for that reference number and marketing year concerned.

If, after applying the allocation coefficients to the weekly applications, the quantity resulting from the licence applications for reference numbers 09.4231 to 09.4247 are less than 3,5 million tonnes or the quantity resulting from the licence applications for reference numbers 09.4241 to 09.4247 are less than the quantity referred to in Annex II for the marketing year concerned, the greater difference is distributed between the reference numbers 09.4241 to 09.4247 with an allocation coefficient less than 100 % in proportion to the weekly quantity not allocated for that reference number. For those reference numbers, the allocation coefficient is recalculated taking account of this increased allocation.

The algorithm used for the calculation of the allocation coefficient is laid down in Annex IV.

2. In case allocation coefficients are fixed pursuant to paragraph 1, the Commission shall suspend the submission of applications for licences until the end of the marketing year for the reference numbers for which the regional safeguard threshold has been reached. However, the Commission shall withdraw the suspension and readmit applications when quantities become available again according to the notifications referred to in Article 9(3).

3. The Commission shall present before 31st March 2013 a report on the functioning of the transitional safeguard mechanism for sugar, and, if necessary, make appropriate proposals. The report shall take account of sugar trade flows from third countries referred to in Annex I to this Regulation.

Article 6

Issue of import licences

1. On Thursday or Friday at the latest of each week, Member States shall issue licences for the applications submitted the preceding week and notified as provided for in Article 9(1), as the case may be taking account of the allocation coefficient fixed by the Commission in accordance with Article 5(1).

Import licences shall not be issued for quantities that had not been notified.

2. Licences shall be valid as from their date of issue or 1 October of the marketing year for which they are issued whatever is the latest.

Licences shall be valid to the end of the third month following their start validity date without exceeding 30 September of the marketing year for which they are issued.

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

Article 7

Extension of validity of import licences

For import licences with a validity ending on 30 September of a marketing year and at the request of the import licence holder, the competent body of the Member State of issue shall extend the period of validity of the import licence to 31 October if the titular holder submits proof, such as the bill of lading; acceptable to that competent body of the Member State of issue, that the sugar was loaded at the latest by 15 September of that marketing year. Member States shall notify this to the Commission not later than the first working day of the week following the extension of the validity.

Article 8

Release for free circulation

Import licences containing in box 20 the entry 'sugar intended for refining' may be used for the import of CN codes 1701 11 10, 1701 91 00, 1701 99 10 or 1701 99 90.

Import licences containing in box 20 the entry 'sugar not intended for refining' may be used for the import of CN codes 1701 11 90, 1701 91 00, 1701 99 10 or 1701 99 90.

Article 9

Notifications to the Commission

1. Member States shall notify the Commission, between Friday 1 p.m. (Brussels time) and the following Monday 6 p.m. (Brussels time), of the quantities of sugar, including nil returns, for which import licence applications have been submitted in accordance with Article 4.

2. Member States shall notify the Commission, between Friday 1 p.m. (Brussels time) and the following Monday 6 p.m. (Brussels time), the quantities of sugar, including nil returns, for which import licences have been issued as from the preceding Thursday in accordance with Article 6.

3. Member States shall notify the Commission, between Friday 1 p.m. (Brussels time) and the following Monday 6 p.m. (Brussels time), of the quantities, including nil returns, covered by unused or partly used import licences and corresponding to the difference between the quantities entered on the back of the import licences and the quantities for which they were issued.

4. The quantities mentioned under paragraphs 1, 2 and 3 shall be broken down by reference number, country of origin, the eight-digit CN code, the marketing year concerned and whether or not they involve sugar intended for refining. They shall be expressed in kilograms white sugar equivalent.

5. Member States shall notify the Commission before 1 March and for the previous marketing year of the quantities of sugar which has actually been refined, broken down by reference number and country of origin and expressed in kilograms *'tel quel'* weight and in white sugar equivalent.

6. The notifications shall be transmitted electronically in accordance with models and methods made available to the Member States by the Commission.

7. Member States shall forward details of the quantities of products released for free circulation in accordance with Article 308d of Regulation (EEC) No 2454/93.

CHAPTER III

TRADITIONAL SUPPLY NEEDS

Article 10

Full-time refiners' regime

1. Only full-time refiners may apply for import licences for sugar intended for refining with a start validity date during the first three months of each marketing year. By way of derogation from the second subparagraph of Article 6(2) such licences shall be valid to the end of the marketing year for which they are issued.

2. If, before the 1 January of each marketing year, applications for import licences for sugar for refining for that marketing year are equal or superior to the total of the quantities referred to in Article 153(1) of Regulation (EC) No 1234/2007, the Commission shall inform the Member States that the limit of the traditional supply needs for that marketing year has been reached at Community level.

From the date of that notification, paragraph 1 shall not apply for the marketing year concerned.

Article 11

Proof of refining and penalties

1. Each original holder of an import licence for sugar for refining shall, within six months following the expiry of the import licence concerned, provide the Member State which issued it with proof acceptable to it that refining has taken place within the period set in Article 4(4)(c).

Where such a proof is not provided, the applicant shall pay, before 1 June following the marketing year concerned, an amount equal to EUR 500 per tonne for the quantities of sugar concerned, except for exceptional reasons of force majeure.

2. Sugar producers approved in accordance with Article 57 of Regulation (EC) No 1234/2007 shall declare to the competent authority in the Member State before 1 March following the marketing year concerned the quantities of sugar which they have refined in that marketing year, stating:

(a) the quantities of sugar corresponding to import licences for sugar for refining;

(b) the quantities of sugar produced in the Community, giving the references of the approved undertaking which produced that sugar;

(c) other quantities of sugar, stating their origin.

Producers shall pay, before 1 June following the marketing year concerned, an amount equal to EUR 500 per tonne for the quantities of sugar referred to in point (c) of the first subparagraph for which they cannot provide proof acceptable to the Member State that they were refined, except for exceptional reasons of *force majeure*.

CHAPTER IV

FINAL PROVISION

Article 12

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

It shall apply until 30 September 2015.

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

Done at Brussels, 10 September 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX I

REFERENCE NUMBERS

Part I: Least Developed Countries

Group Label	Third Country	Reference number
NON-ACP-LDC	Bangladesh Cambodia Laos Nepal	09.4221
ACP-LDC	Benin Democratic Republic of Congo Ethiopia Madagascar Malawi Mozambique Senegal Sierra Leone Sudan Tanzania Togo Zambia	09.4231

Part II: Non Least-Developed Countries

Region	Third Country	Reference number	Regional safeguard threshold 2009/2010 (tonnes white sugar equivalent)	Regional safeguard threshold 2010/2011 (tonnes white sugar equivalent)	Regional safeguard threshold 2011/2012 2012/2013 2013/2014 2014/2015 (tonnes white sugar equivalent)
CentralAfrica-NON-LDC		09.4241	10 186,1	10 186,1	10 186,1
Western Africa-NON-LDC	Côte d'Ivoire	09.4242	10 186,1	10 186,1	10 186,1
SADC-NON-LDC	Swaziland	09.4243	166 081,2	174 631,9	192 954,5
EAC-NON-LDC	Kenya	09.4244	12 907,9	13 572,4	14 996,5
ESA-NON-LDC	Mauritius Zimbabwe	09.4245	544 711,6	572 755,9	632 850,9
PACIFIC-NON-LDC	Fiji	09.4246	181 570,5	190 918,6	210 950,3
CARIFORUM-NON-LDC	Barbados Belize Dominican Republic Guyana Jamaica Trinidad & Tobago	09.4247	454 356,6	477 749,0	527 875,6

ANNEX II

2009/2010 (tonnes white sugar equivalent)	2010/2011 (tonnes white sugar equivalent)	2011/2012 2012/2013 2013/2014 2014/2015 (tonnes white sugar equivalent)
1 380 000	1 450 000	1 600 000

ANNEX III

Model export licence referred to in Articles 4(4)(b)

<table>
<tr><td>1. Exporter (name, full address, country)</td><td>ORIGINAL
3. Marketing year</td><td>2.
No</td></tr>
<tr><td>4. Importer (name, full address, country) (optional)</td><td colspan="2">LICENCE FOR PREFERENTIAL SUGAR
EXPORT TO THE EU</td></tr>
<tr><td rowspan="2">5. Place and date of loading — means of transport (optional)</td><td>6. Country of origin</td><td>7. Country/group of countries or territory of destination</td></tr>
<tr><td colspan="2">8. Additional details</td></tr>
<tr><td colspan="2">9. Description of goods</td><td>10. CN code (8-digit)
11. Quantity (kg)</td></tr>
<tr><td colspan="3">12. CERTIFICATION BY COMPETENT AUTHORITY</td></tr>
<tr><td>13. Competent authority (name, full address, country)</td><td colspan="2">At: ..... on: .....
(signature) (stamp)</td></tr>
</table>

ANNEX IV

I. Definitions:

TACPLDC = Cumulated week application ACP_LDC countries (reference number 09.4231)

N = reference number for ACP-NON-LDC countries (09.4241 to 09.4247)

RSTN = Regional Safeguard Threshold reference number N

WAN = Week application for reference number N

CWAN = Cumulated week applications for reference number N without the last communication

ACN = Allocation coefficient for reference number N

RESQ = Residual quantity to be distributed after application of ACN

RESQN = Residual quantity for reference number N

II. Calculation of the allocation coefficient referred to in Article 5(1)

II.1. For each N:

ACN = ((RSTN − CWAN)/WAN * 100) %

If ACN is negative, ACN is put to 0 %

If ACN is 100 % or more, ACN is put to 100 %

II.2. If

(TACPLDC + Σ ((CWAN + ACN * WAN) for all regions with a RST) is less than 3,5 million tonnes

OR

Σ ((CWAN + ACN * WAN) for all regions with a RST) is less than RST

Then:

RESQ = Maximum of

3,5 Million tonnes − (TACPDLC + Σ ((CWAN + ACN * WAN) for all regions with a RST))

and

RST − Σ ((CWAN + ACN * WAN) for all regions with a RST))

When ACN is less than 100 %:

RESQN = RESQ * (((1−ACN) * WAN)/(Σ (((1−ACN) * WAN) for reference numbers with ACN < 100 %)))

'new ACN' = (('old ACN'*WAN) + RESQN)/WAN

ANNEX V

A. Entries referred to in Articles 4(3)(d)(ii)

— *in Bulgarian:* Прилагане на Регламент (ЕО) № 828/2009, ВОО/СИП. Референтен номер [вписва се референтен номер в съответствие с приложение I]

— *in Spanish:* Aplicación del Reglamento (CE) nº 828/2009, TMA/AAE. Número de referencia [el número de referencia se incluirá conforme a lo dispuesto en el anexo I]

— *in Czech:* Použití nařízení (ES) č. 828/2009, EBA/EPA. Referenční číslo (vloží se referenční číslo v souladu s přílohou I)

— *in Danish:* Anvendelse af forordning (EF) nr. 828/2009 EBA/EPA. Referencenummer [referencenummer skal indsættes i overensstemmelse med bilag I]

— *in German:* Anwendung der Verordnung (EG) Nr. 828/2009, EBA/EPA. Referenznummer [Referenznummer gemäß Anhang I einfügen]

— *in Estonian:* Kohaldatakse määrust (EÜ) nr 828/2009, EBA/EPA. Viitenumber [lisatakse vastavalt I lisale]

— *in Greek:* Εφαρμογή του κανονισμού (ΕΚ) αριθ. 828/2009, ΕΒ Α/ΕΡΑ. Αύξων αριθμός (να συμπληρώνεται ο αύξων αριθμός σύμφωνα με το παράρτημα I)

— *in English:* Application of Regulation (EC) No 828/2009, EBA/EPA. Reference number [reference number to be inserted in accordance with Annex I]

— *in French:* Application du règlement (CE) nº 828/2009, EBA/APE. Numéro de référence (numéro de référence à insérer conformément à l'annexe I)

— *in Italian:* Applicazione del regolamento (CE) n. 828/2009, EBA/APE. Numero di riferimento (inserire in base all'allegato I)

— *in Latvian:* Regulas (EK) Nr. 828/2009 piemērošana, EBA/EPA. Atsauces numurs [jāieraksta atsauces numurs saskaņā ar I pielikumu]

— *in Lithuanian:* Taikomas reglamentas (EB) Nr. 828/2009, EBA/EPS. Eilės Nr. (eilės numeris įrašytinas pagal I priedą)

— *in Hungarian:* A(z) 828/2009/EK rendelet alkalmazása, EBA/GPM. Hivatkozási szám [hivatkozási szám az I. melléklet szerint]

— *in Maltese:* Applikazzjoni tar-Regolament (KE) Nru 828/2009, EBA/EPA. Numru ta' referenza [in-numru ta' referenza għandu jiddaħħal skont l-Anness I]

— *in Dutch:* Toepassing van Verordening (EG) nr. 828/2009, EBA/EPO. Referentienummer [zie bijlage I]

— *in Polish:* Zastosowanie rozporządzenia (WE) nr 828/2009, EBA/EPA. Numer referencyjny [numer referencyjny należy wstawić zgodnie z załącznikiem I]

— *in Portuguese:* Aplicação do Regulamento (CE) n.º 828/2009, TMA/APE. Número de referência [número de referência a inserir em conformidade com o anexo I]

— *in Romanian:* Aplicarea Regulamentului (CE) nr. 828/2009, EBA/EPA. Număr de referință [a se introduce numărul de referință în conformitate cu anexa I]

— *in Slovak:* Uplatňovanie nariadenia (ES) č. 828/2009, EBA/EPA. Referenčné číslo (referenčné číslo sa vloží podľa prílohy I)

— *in Slovenian:* Uporaba Uredbe (ES) št. 828/2009, EBA/EPA. Zaporedna številka [vstaviti zaporedno številko v skladu s Prilogo I].

— *in Finnish:* Asetuksen (EY) N:o 828/2009 soveltaminen, kaikki paitsi aseet/talouskumppanuussopimus. Viitenumero [viitenumero lisätään liitteen I mukaisesti]

— *in Swedish:* Tillämpning av förordning (EG) nr 828/2009, EBA/EPA. Referensnummer [referensnumret ska anges i enlighet med bilaga I]

B. Entries referred to in Articles 4(3)(e)

— *in Bulgarian:*	Мито „0“ — Регламент (ЕО) № 828/2009
— *in Spanish:*	Derecho de aduana «0» — Reglamento (CE) nº 828/2009,
— *in Czech:*	Clo „0“ – nařízení (ES) č. 828/2009
— *in Danish:*	Toldsats »0« — Forordning (EF) nr. 828/2009
— *in German:*	Zollsatz „0“ — Verordnung (EG) Nr. 828/2009
— *in Estonian:*	Tollimaks „0” – määrus (EÜ) nr 828/2009
— *in Greek:*	Τελωνειακός δασμός «0» — Κανονισμός (ΕΚ) αριθ. 828/2009 της ΕΕ
— *in English:*	Customs duty ‘0’ — Regulation (EC) No 828/2009
— *in French:*	Droit de douane «0» — règlement (CE) nº 828/2009
— *in Italian:*	Dazio doganale nullo — Regolamento (CE) n. 828/2009
— *in Latvian:*	Muitas nodoklis ar “0” likmi – Regula (EK) Nr. 828/2009
— *in Lithuanian:*	Muito mokestis „0“ – Reglamentas (EB) Nr. 828/2009
— *in Hungarian:*	„0” vámtétel – 828/2009/EK rendelet
— *in Maltese:*	Id-dazju tad-dwana “0” – Ir-Regolament (KE) Nru 828/2009
— *in Dutch:*	Douanerecht „0” — Verordening (EG) nr. 828/2009
— *in Polish:*	Stawka celna „0” – rozporządzenie (WE) nr 828/2009
— *in Portuguese:*	Direito aduaneiro nulo — Regulamento (CE) n.º 828/2009
— *in Romanian:*	Taxă vamală „0” – Regulamentul (CE) nr. 828/2009
— *in Slovak:*	Clo „0“ – nariadenie (ES) č. 828/2009
— *in Slovenian:*	Carina „0“ – Uredba (ES) št. 828/2009
— *in Finnish:*	Tulli ”0” – Asetus (EY) N:o 828/2009
— *in Swedish:*	Tullsats ”0” – Förordning (EG) nr 828/2009

COMMISSION REGULATION (EC) No 829/2009

of 9 September 2009

establishing a prohibition of fishing for roundnose grenadier in Community waters and waters not under the sovereignty or jurisdiction of third countries of Vb, VI, VII by vessels flying the flag of Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy [1], and in particular Article 26(4) thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy [2], and in particular Article 21(3) thereof,

Whereas:

(1) Council Regulation (EC) No 1359/2008 of 28 November 2008 fixing for 2009 and 2010 the fishing opportunities for Community fishing vessels for certain deep-sea fish stocks [3] lays down quotas for 2009 and 2010.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of, or registered in, the Member State referred to therein have exhausted the quota allocated for 2009.

(3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

Article 1

Quota exhaustion

The fishing quota allocated for 2009 to the Member State referred to in the Annex to this Regulation for the stock referred to therein shall be deemed to be exhausted from the date stated in that Annex.

Article 2

Prohibitions

Fishing for the stock referred to in the Annex to this Regulation by vessels flying the flag of, or registered in, the Member State referred to therein shall be prohibited from the date stated in that Annex. After that date it shall also be prohibited to retain on board, tranship or land such stock caught by those vessels.

Article 3

Entry into force

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

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

Done at Brussels, 9 September 2009.

For the Commission
Fokion FOTIADIS
Director-General for Maritime Affairs and Fisheries

[1] OJ L 358, 31.12.2002, p. 59.
[2] OJ L 261, 20.10.1993, p. 1.
[3] OJ L 352, 31.12.2008, p. 1.

ANNEX

No	4/DSS
Member State	Spain
Stock	RNG/5B67-
Species	Roundnose grenadier (*Coryphaenoides rupestris*)
Area	Community waters and waters not under the sovereignty or jurisdiction of third countries of Vb, VI, VII
Date	28.7.2009

COMMISSION REGULATION (EC) No 830/2009

of 9 September 2009

establishing a prohibition of fishing for blue ling in Community waters and waters not under the sovereignty or jurisdiction of third countries of II, IV and V by vessels flying the flag of the United Kingdom

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy [1], and in particular Article 26(4) thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy [2], and in particular Article 21(3) thereof,

Whereas:

(1) Council Regulation (EC) No 1359/2008 of 28 November 2008 fixing for 2009 and 2010 the fishing opportunities for Community fishing vessels for certain deep-sea fish stocks [3] lays down quotas for 2009 and 2010.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of, or registered in, the Member State referred to therein have exhausted the quota allocated for 2009.

(3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

Article 1

Quota exhaustion

The fishing quota allocated for 2009 to the Member State referred to in the Annex to this Regulation for the stock referred to therein shall be deemed to be exhausted from the date stated in that Annex.

Article 2

Prohibitions

Fishing for the stock referred to in the Annex to this Regulation by vessels flying the flag of, or registered in, the Member State referred to therein shall be prohibited from the date stated in that Annex. After that date it shall also be prohibited to retain on board, tranship or land such stock caught by those vessels.

Article 3

Entry into force

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

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

Done at Brussels, 9 September 2009.

For the Commission
Fokion FOTIADIS
Director-General for Maritime Affairs and Fisheries

[1] OJ L 358, 31.12.2002, p. 59.
[2] OJ L 261, 20.10.1993, p. 1.
[3] OJ L 352, 31.12.2008, p. 1.

ANNEX

No	2/DSS
Member State	United Kingdom/GBR
Stock	BLI/245-
Species	Blue ling (*Molva dypterygia*)
Area	Community waters and waters not under the sovereignty or jurisdiction of third countries of II, IV and V
Date	8.8.2009

COMMISSION REGULATION (EC) No 831/2009

of 10 September 2009

fixing the maximum reduction in the duty on maize imported under the invitation to tender issued in Regulation (EC) No 676/2009

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1], and in particular Article 144(1) in conjunction with Article 4 thereof,

Whereas:

(1) An invitation to tender for the maximum reduction in the duty on maize imported into Spain from third countries was opened by Commission Regulation (EC) No 676/2009 [2].

(2) Under Article 8 of Commission Regulation (EC) No 1296/2008 of 18 December 2008 laying down detailed rules for the application of tariff quotas for imports of maize and sorghum into Spain and imports of maize into Portugal [3] the Commission, in accordance the procedure laid down in Article 195(2) of Regulation (EC) No 1234/2007, may decide to fix a maximum reduction in the import duty. In fixing this maximum the criteria provided for in Articles 7 and 8 of Regulation (EC) No 1296/2008 must be taken into account.

(3) A contract is awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty.

(4) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders lodged from 28 August 2009 to 10 September 2009 under the invitation to tender issued in Regulation (EC) No 676/2009, the maximum reduction in the duty on maize imported shall be EUR 32,00 EUR/t for a total maximum quantity of 14 166 t.

Article 2

This Regulation shall enter into force on 11 September 2009.

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

Done at Brussels, 10 September 2009.

For the Commission
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 196, 28.7.2009, p. 6.
[3] OJ L 340, 19.12.2008, p. 57.

COMMISSION REGULATION (EC) No 832/2009

of 10 September 2009

fixing the maximum reduction in the duty on maize imported under the invitation to tender issued in Regulation (EC) No 677/2009

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ([1]), and in particular Article 144(1) in conjunction with Article 4 thereof,

Whereas:

(1) An invitation to tender for the maximum reduction in the duty on maize imported into Portugal from third countries was opened by Commission Regulation (EC) No 677/2009 ([2]).

(2) Under Article 8 of Commission Regulation (EC) No 1296/2008 of 18 December 2008 laying down detailed rules for the application of tariff quotas for imports of maize and sorghum into Spain and imports of maize into Portugal ([3]) the Commission, in accordance the procedure laid down in Article 195(2) of Regulation (EC) No 1234/2007, may decide to fix a maximum reduction in the import duty. In fixing this maximum the criteria provided for in Articles 7 and 8 of Regulation (EC) No 1296/2008 must be taken into account.

(3) A contract is awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty.

(4) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders lodged from 28 August 2009 to 10 September 2009 under the invitation to tender issued in Regulation (EC) No 677/2009, the maximum reduction in the duty on maize imported shall be EUR 25,95/t for a total maximum quantity of 6 396 t.

Article 2

This Regulation shall enter into force on 11 September 2009.

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

Done at Brussels, 10 September 2009.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

([1]) OJ L 299, 16.11.2007, p. 1.
([2]) OJ L 196, 28.7.2009, p. 7.
([3]) OJ L 340, 19.12.2008, p. 57.

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 10 September 2009

recognising in principle the completeness of the dossier submitted for detailed examination in view of the possible inclusion of bixafen in Annex I to Council Directive 91/414/EEC

(notified under document C(2009) 6771)

(Text with EEA relevance)

(2009/700/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market [1], and in particular Article 6(3) thereof,

Whereas:

(1) Directive 91/414/EEC provides for the development of a Community list of active substances authorised for incorporation in plant protection products.

(2) A dossier for the active substance bixafen was submitted by Bayer CropScience to the authorities of the United Kingdom on 8 October 2008 with an application to obtain its inclusion in Annex I to Directive 91/414/EEC.

(3) The United Kingdom authorities have indicated to the Commission that, on preliminary examination, the dossier for the active substance concerned appears to satisfy the data and information requirements set out in Annex II to Directive 91/414/EEC. The dossier submitted appears also to satisfy the data and information requirements set out in Annex III to Directive 91/414/EEC in respect of one plant protection product containing the active substance concerned. In accordance with Article 6(2) of Directive 91/414/EEC, the dossier was subsequently forwarded by the respective applicant to the Commission and other Member States, and was referred to the Standing Committee on the Food Chain and Animal Health.

(4) By this Decision it should be formally confirmed at Community level that the dossier is considered as satisfying in principle the data and information requirements set out in Annex II and, for at least one plant protection product containing the active substance concerned, the requirements set out in Annex III to Directive 91/414/EEC.

(5) This Decision should not prejudice the right of the Commission to request the applicant to submit further data or information in order to clarify certain points in the dossier.

(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

Without prejudice to Article 6(4) of Directive 91/414/EEC, the dossier concerning the active substance identified in the Annex to this Decision, which was submitted to the Commission and the Member States with a view to obtaining the inclusion of that substance in Annex I to that Directive, satisfies in principle the data and information requirements set out in Annex II to that Directive.

[1] OJ L 230, 19.8.1991, p. 1.

The dossier also satisfies the data and information requirements set out in Annex III to that Directive in respect of one plant protection product containing the active substance, taking into account the uses proposed.

Article 2

The rapporteur Member State shall pursue the detailed examination for the dossier referred to in Article 1 and shall communicate to the Commission the conclusions of its examination accompanied by a recommendation on the inclusion or non-inclusion in Annex I to Directive 91/414/EEC of the active substance referred to in Article 1 and any conditions for that inclusion as soon as possible and at the latest within a period of 1 year from the date of publication of this Decision in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 10 September 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

ANNEX

ACTIVE SUBSTANCE CONCERNED BY THIS DECISION

Common name, CIPAC identification number	Applicant	Date of application	Rapporteur Member State
Bixafen CIPAC-No: not attributed yet	Bayer CropScience	8 October 2008	UK

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