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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2228/2003

of 22 December 2003

terminating the partial interim review of the anti-dumping measures applicable to imports of urea originating in Russia

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] (the 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) On 10 May 2001, the Council, pursuant to Regulation (EC) No 901/2001 [2], imposed a definitive anti-dumping duty on imports of urea originating in Russia. The duty took the form of a variable duty on the basis of a minimum import price (MIP).

2. *Initiation*

(2) On 13 June 2002, the Commission announced by a notice [3] published in the *Official Journal of the European Union* (notice of initiation) the initiation of a partial interim review of the anti-dumping measures applicable to imports into the Community of urea originating in Russia, pursuant to Article 11(3) of the basic Regulation.

(3) The review was initiated on the initiative of the Commission in order to examine the appropriateness of the form of the measures in force, currently an MIP, as it does not differentiate between sales made to related parties and sales made to unrelated parties, or between first sales and successive sales to the Community and it had become apparent that this could lead to enforcement problems. Consequently, the existing measures did not appear sufficient to counteract the dumping which is causing injury.

3. *Investigation*

(4) The Commission officially advised the importers, the users known to be concerned and their associations, the representatives of the exporting country concerned and the Community producers about the initiation of the proceeding. 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.

(5) An association of Community producers, an association of importers, two associations of users, one user and a company representing 10 Italian importers, traders and users made their views known in writing. All parties which so requested within the time limit, and which demonstrated that there were particular reasons why they should be heard, were granted the opportunity to be heard.

(6) The Commission sought and verified all the information it deemed necessary for the purpose of determining the appropriateness of the measures in force.

B. **FINDINGS OF THE INVESTIGATION**

(7) The initiation of an interim review was motivated by the necessity of limiting the risk of duty avoidance. Such duty avoidance can occur in different circumstances. When exporters, currently subject to the measures imposing an MIP, export to the Community, they could be in a position to invoice at a price above the MIP, and subsequently to compensate such a price after customs declaration by an agreement with the importers. This may render the MIP ineffective, as it would mean that the product concerned is effectively still exported below the MIP to the Community. Accordingly, this could lead to subsequent resale prices in the Community which prevent the intended effects of the measure, i.e. to remove the injurious effects of dumping, from being achieved. The substantial risk of price manipulation when duties take the form of an MIP was highlighted by the findings of the European Court of Auditors in its 2000 Annual Report [4]. In order to address this problem, it was envisaged to replace the MIP by an *ad valorem* duty.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ L 127, 9.5.2001, p. 11.
[3] OJ C 140, 13.6.2002, p. 5.
[4] OJ C 359, 15.12.2001, p. 1, recitals 1.31 and 1.35.

(8) Although an *ad valorem* duty is, in general, considered to be more appropriate to avoid the risk of price manipulation, it was found that in the specific circumstances of the current case the risk of price manipulation is very low since, over a sustained period of time, import prices in general have actually been above the MIP. Therefore, exporters would not have any reason to manipulate prices in the way set out in recital 7 in order to stay competitive. This was also confirmed by the comments made by interested parties which, with the exception of the association of Community producers, considered that the form of the measure should not be changed.

(9) The association of Community producers considered that a specific duty would have been more appropriate to avoid the risk of price manipulation. It also considered that an *ad valorem* duty would be more effective than an MIP. It was, however, established that in the specific circumstances of the current case the risk of price manipulation is very low. Nevertheless, should the situation of the urea market change and evidence is provided to the Commission that this change increases the risk of price manipulation, appropriate action may be taken. Meanwhile, the Commission will pay particular attention to the import prices of urea originating in Russia and the attention of the customs authorities is drawn to this issue.

(10) It is therefore concluded that, due to the particular and very specific circumstances of the present case, there are currently no reasons to change the form of the measure concerning imports of urea originating in Russia and the current partial interim review should be terminated without any amendment to the anti-dumping measures imposed by Regulation (EC) No 901/2001,

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-dumping measures applicable to imports of urea originating in Russia, initiated pursuant to Article 11(3) of Regulation (EC) No 384/96, is hereby terminated without amending the anti-dumping duty in force.

Article 2

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

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

Done at Brussels, 22 December 2003.

For the Council
The President
A. MATTEOLI

COUNCIL REGULATION (EC) No 2229/2003

of 22 December 2003

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of silicon originating Russia

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] (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

1. **Procedure**

1.1. Provisional measures

(1) The Commission, by Regulation (EC) No 1235/2003 [2] ('provisional Regulation'), imposed provisional anti-dumping measures on imports of silicon originating in Russia. The measures were expressed as an *ad valorem* duty, ranging between 24,0 % and 25,2 %.

(2) It is recalled that the investigation of dumping and injury covered the period from 1 October 2001 to 30 September 2002 ('investigation period' or 'IP'). The examination of the trends in the context of the investigation of injury analysis covered the period from 1 January 1998 to the end of the IP ('period under consideration').

1.2. Other measures in force

(3) Anti-dumping duties at an *ad valorem* rate of 49 % are currently in force on imports of silicon originating in the People's Republic of China ('China') [3]. A review [4] of these measures pursuant to Article 11(2) of the basic Regulation is ongoing.

1.3. Subsequent procedure

(4) Following the imposition of provisional anti-dumping duties, parties received a disclosure of the facts and considerations on which the provisional Regulation was based. Some parties submitted comments in writing. All interested parties who so requested were granted an opportunity to be heard by the Commission.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the interested parties were considered and, where appropriate, the definitive findings have been changed accordingly.

(7) The Commission continued to seek all information it deemed necessary for the purpose of its definitive findings.

(8) In addition to the verification visits undertaken at the premises of the companies mentioned in recital 7 of the provisional Regulation, it should be noted that after the imposition of provisional measures, an on-spot visit was carried out at the premises of the following Community users:

— GE Bayer Silicones, Leverkusen, Germany,

— Raffinera Metalli Capra SpA, Brescia, Italy,

— Vedani Carlo Metalli SpA, Milan, Italy.

2. **Product concerned and like product**

2.1. Product concerned

2.1.1. Comments from exporting producers

(9) In recital 9 of the provisional Regulation, the product concerned was defined as silicon currently classifiable within CN code 2804 69 00. Some exporters queried whether silica fumes, which is a by-product of silica, obtained by a filtering process during the production of Silicon, is covered by the present proceeding.

(10) It should be noted that silica fumes does not correspond to the definition of the product concerned provided in recitals 9 and 10 of the provisional Regulation since it is merely a by-product from the production of silicon taking the form of a powder which is used as an additive to concrete. It is therefore confirmed that this product, covered under CN code ex 2811 22 00, is outside the scope of this proceeding.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Council Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ L 173, 11.7.2003, p. 14.
[3] Council Regulation (EC) No 2496/97 of 11 December 1997 imposing a definitive anti-dumping duty on imports of metal originating in the People's Republic of China (OJ L 345, 16.12.1997, p. 1).
[4] OJ C 246, 12.10.2002, p. 9.

(11) The definition of the product concerned was questioned by one Russian exporting producer, which claimed that there are in fact two distinct types of silicon, within this CN code, one type destined to metallurgical users and one type to chemical users. In support of this assertion, the Russian producer claimed that the two grades have significantly different chemical compositions based on their trace element content, with different end uses; that there are two distinct sets of users which do not compete with each other; and that there is no significant interchangeability between the two grades.

(12) The investigation showed that silicon is produced in different grades and that silicon sold on the EU market during the IP, whether produced by the Community industry or imported from Russia, contained more than 95 % silicon by weight. The grade of the silicon is determined in the first place by the percentage of silicon, and in the second place by the other elements, in particular the content of iron and calcium. For specialist users, particularly chemical users, the proportions of other trace elements determine whether the silicon is suitable for the intended use. Commonly, for a specialist user, silicon is manufactured to specific requirements and is only purchased following a lengthy verification process by the individual user. However, whilst the levels of trace elements are important to chemical users, this is not sufficient to conclude that it is a separate product from silicon consumed by metallurgical users.

(13) Evidence was also provided to show that the high-grade material was not sold exclusively to chemical users, and that chemical users also purchased certain quantities of the lower grade so-called metallurgical silicon. It is also generally accepted that users with lower quality requirements, in particular secondary metallurgical users, are able to use higher-grade silicon. For them the determinant factor is the price, as they are not willing to pay a premium for silicon of a higher grade than they require.

2.1.2. Comments of users

(14) A number of users also questioned the provisional determination of the product concerned. The submissions made were very similar to those received by exporting producers, particularly from the metallurgical users. All metallurgical users argued that there are three distinct product types i.e. chemical, and a split between standard, and low grade silicon for metallurgical users. However, all accepted that they are able to use any of these grades in their production process, although they prefer low grade silicon on cost grounds. These comments were repeated by a metallurgical users' organisation.

(15) One chemical user commented on the issue of product concerned. They confirmed that the silicon they purchase is tailor-made to their specifications and that the trace elements within the silicon are the most important factor for them.

2.1.3. Comments of the Community industry

(16) The Community industry agreed with the provisional determination that all grades of silicon falling under the definition used in recitals 9 and 10 of the provisional regulation should be considered as the product concerned. They also pointed out that many of the arguments are not raised within the context of the product concerned but within the context of the like product determination, and that the exporting producers are confusing these two issues.

2.1.4. Conclusion on product concerned

(17) Silicon is a product which is manufactured in several grades, depending firstly on the iron content, then on the calcium content, and thirdly on other trace elements. The production process employed in the EU and in Russia, i.e. electric arc furnaces, is largely the same.

(18) On the EU market, there are essentially two different user groups: chemical users mainly manufacturing silicones, and metallurgical users manufacturing aluminium. The metallurgical users can also be subdivided between primary aluminium producers and secondary (recycled) aluminium producers. However, all of the silicon used contains at least 95 % silicon by weight, and is typically 98 or 99 % silicon.

(19) Three grades of silicon have been identified, high grade, standard grade, and low grade, based upon the percentages of iron and calcium in the silicon. Between these grades, it was found that there is some overlap in the use made by different user groups. It is generally accepted that there are no physical, chemical, or technical characteristics which would prevent secondary aluminium producers from using any of the grades of silicon, or primary aluminium producers from using standard or high grade silicon. There is not the same degree of interchangeability in the opposite direction, although evidence has been submitted of chemical users being prepared to use standard and low grade silicon. The cost of the different grades usually determines which grade is used by which user group.

(20) The investigation has shown, as mentioned above, that all types of silicon, despite any differences in terms of the content of other chemical elements, have the same basic physical, chemical, and technical characteristics. Whilst the silicon can be used for different end uses, it was found that there was substitutability to a greater or lesser degree between the different grades and different uses.

(21) Therefore, the findings at recitals 9 and 10 of the provisional Regulation are definitively confirmed.

2.2. Like product

(22) After analysis, it was found that the claim concerning the product control number (PCN) addressed in recital 14 of the provisional Regulation concerned the price comparison of silicon originating in Russia with Community produced silicon and the correspondent injury elimination level. Differences in prices, quality and in uses do not necessarily lead to the conclusion that the products are not alike. Indeed, what matters in this context is whether the product types in question share the same basic physical and chemical characteristics and basic uses. The aforementioned differences will be taken into account in the comparison between export price and normal value and in determining e.g. price undercutting and the injury elimination level).

(23) One Russian exporting producer referred to the anti-dumping measures currently imposed on imports of silicon from China (see recital 3). In particular, they refer to recital 55 of Council Regulation (EC) No 2496/97 which states that 'the quality of silicon metal from Russia and Ukraine is not comparable to European or Chinese silicon metal'.

(24) In response to this point, it should first be pointed out that this statement was made in an investigation dating back more than five years, was based on information submitted in that investigation, and that this is not confirmed in the current investigation. In addition recital 55 of the above Regulation deals with the issue of causality only. It is clear from the wording that the product concerned, and indeed the like product from all sources, be it China, Russia, the EU, or the analogue country, i.e. Norway is silicon. This silicon forms one like product within the definition of Article 1(4) of the basic Regulation. Moreover, to the extent that quality differences can be found between different silicon producers in different countries, such differences can be adequately taken into consideration by means of adjustments. It is also noted that there were quality differences between the various types exported from Russia to the Community.

(25) Based on the above and based on the findings of the investigation, it is confirmed that the silicon produced in Russia and sold domestically as well as that exported to the Community, the silicon sold on the domestic market of the analogue country, and that manufactured and sold in the Community by the Community industry have the same basic physical and chemical characteristics. It is therefore concluded that all types of silicon forms one product family and are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. **Dumping**

3.1. Normal value

(26) In the absence of any comments, the recitals 15 to 18 concerning market economy treatment of the provisional Regulation are confirmed.

(27) All exporting producers made submissions arguing that the cost of electricity used at provisional stage should be amended. They emphasised that their main electricity supplier is a majority private-owned company and that its low price can be explained by the presence of the world's largest complex of hydro-electric power stations, based on a natural comparative advantage. This matter was further investigated, but since it was found that electricity prices in Russia are regulated and that the price charged by this electricity supplier was very low, even when compared to other suppliers of electricity generated by hydro-electric power stations in the analogue country Norway and also in Canada, it was decided to reject this claim and to confirm the provisional decision to use the electricity price charged by another electricity supplier in Russia. This price was found to be in line with the lowest price of representative electricity producers found in the Community.

(28) In the absence of any other comments, the recitals 19 to 26 concerning the determination of normal value of the provisional Regulation are confirmed.

3.2. Export price

(29) All exporting producers have argued that the companies involved in selling the product concerned to the EC which are located outside Russia are related parties and that these companies should be treated as a single economic entity together with the companies located in Russia. They claimed that the export price used should therefore be the price charged by these related companies to the first independent customer in the EC.

(30) In the case of the importer located in the Community (United Kingdom), no new evidence was presented which demonstrated that it was related to the exporting producer. The claim was therefore rejected and the provisional approach of establishing the export price on the basis of the sales price to this importer was maintained.

(31) In the case of the importer in Switzerland, an on-spot verification visit was carried out following the imposition of the provisional measure and it was found that this company was indeed related to the exporting producer. For the sales made through this importer, the export price was therefore based on the price of this importer to the first unrelated customer in the Community.

(32) As regards the importer located in the British Virgin Islands, it should first be noted that according to Article 2(8) of the basic Regulation the export price to be used is the 'price actually paid or payable when sold for export from the exporting country to the Community.' In other words, in cases where the export transaction to the Community involves intermediaries, it is not the price ultimately charged to the Community customer which matters (and which is often not known to the exporting producer), but the price at which the product 'leaves' the exporting country. This price may have to be substituted by subsequent resale prices in particular if the parties are related. Rusal has submitted new information which, in their view, proved such a relationship. However, it is considered that this relationship was not demonstrated in a conclusive and unambiguous way. In fact, there is no direct shareholding between the Rusal and the company in the British Virgin Islands and structures are complex and non-transparent. According to the company, the link is a result of indirect shareholding but no verifiable documentation to this effect was submitted. Moreover, according to the Rusal the company in the British Virgin Islands does not perform any economic activity in the sale or distribution of the exported products but is merely a letter box company. In other words, this is not really a sale via a third party. Rather the British Virgin Islands company is an addressee for unclear accounting purposes. There was no way to verify the true role of this company located in the British Virgin Islands or follow with sufficient certainty the payment flows. It was consequently decided to maintain the provisional approach and to establish the export price on the basis of the sales price to the company in the British Virgin Islands.

3.3. Comparison

(33) One exporting producer again claimed an adjustment for physical characteristics based on the fact that the average grade of silicon sold on the Russian market is of higher quality and therefore involves higher production costs. However, the company failed to present new evidence demonstrating that there was a consistent difference in quality between the product types sold on the domestic market and those exported to the Community. Therefore, the provisional approach was maintained and no adjustment for physical differences was made.

(34) Two companies repeated their claims concerning an adjustment for quantities and for level of trade. The request for an adjustment for quantities could not be taken into account since the company was not able to demonstrate that discounts or rebates had been specifically given for the purchase of different quantities and since these differences in quantity had already been taken into account by the level of trade adjustment for different types of customers granted at the provisional stage. With respect to the request for an additional adjustment for level of trade, the company was not able to demonstrate that the adjustment made at the provisional stage had been insufficient and therefore no additional adjustment could be granted.

3.4. Dumping margins

(35) In the absence of any comments, the determination of the dumping margin, as described in recitals 29 and 30 of the provisional Regulation are confirmed.

(36) The definitive dumping margins, expressed as a percentage of the CIF import price at the Community border, are as follows:

Company	Dumping margin
OJSC 'Bratsk Aluminium Plant' (RUSAL Group)	23,6 %
SKU LLC, Sual Kremny-Ural and ZAO Kremny (SUAL Group)	24,8 %
Russia	24,8 %

4. **Injury**

4.1. Community industry

(37) Since no comments were received regarding the definition of the Community industry, the contents and provisional conclusions of recitals 33 and 34 of the provisional Regulation are hereby confirmed.

4.2. Consumption of silicon in the Community

(38) In the absence of any new information on consumption, the provisional findings as described in recitals 35 and 36 of the provisional Regulation are confirmed.

4.3. Imports of silicon into the Community

4.3.1. Volume and market share of imports

(39) In the absence of any new information either on the imports of silicon into the Community or on their market share, the provisional findings as described in recitals 37 to 43 of the provisional Regulation are confirmed.

4.3.2. Price undercutting and price depression

(40) Undercutting calculations were revised to reflect adjustments for level of trade and quality. These adjustments were established on the basis of verified information and correspond to a reasonable estimate of the market value of the differences.

(41) Definitive undercutting margins showed that undercutting was 10,2 %.

(42) The existence and the level of undercutting should be seen in the light of the fact that prices were depressed. Prices decreased significantly over the period under consideration (– 16 %), to the extent that they were not covering the Community industry's full costs of production during the IP.

4.4. Economic situation of the Community industry

(43) The two Russian exporting producers claimed that the Community industry did not suffer material injury as most of the injury indicators showed positive developments. In particular, the exporting producers pointed to improvements for production, capacity, capacity utilisation, sales volume in the Community, market share, stocks, employment, and productivity over the period under consideration.

(44) However for the injury indicators, and as outlined in recitals 71 and 72 of the provisional Regulation, a closer examination showed that the main positive developments for the Community industry took place between 1998 and 2000. Between 2000 and the IP, nearly all indicators either rose only slightly, remained stagnant, or indeed fell. It is during this period that the material injury suffered by the Community industry is most apparent.

(45) It should be noted that as indicated in recital 72 of the provisional Regulation the relatively good performances of the Community industry up to 2000 was directly attributed to decisions taken by the Community industry to invest in additional community production facilities. Indeed, during that period the Community industry production, production capacity, sales volume, market share, employment and productivity increased. Profitability was set at 5 % of the net sales value.

(46) Subsequently, and mirroring the increased presence of low-priced dumped imports from Russia, the situation of the Community industry deteriorated. Market share, cash flow, investments, and return on investments saw important decreases.

(47) Moreover, the trend of other injury indicators, and in particular the decrease in profitability and sales prices suffered by the Community industry over the period under consideration led to the conclusion that the Community industry suffered material injury.

4.5. Conclusion on injury

(48) For these reasons, and in the absence of any new information that would necessitate a revision of the finding that the Community industry suffered material injury during the IP, in particular for prices and profitability, the arguments raised by the Russian exporting producers are rejected. The findings and the conclusion set out in recitals 71 to 73 of the provisional Regulation are confirmed.

5. **Causation**

(49) One Russian exporting producer argued that even if the finding of material injury is confirmed, this injury was not caused by the Russian imports of silicon. A number of other factors were alleged to be the true cause of the injury, if any, suffered by the Community industry. Other third countries with a much larger share of imports compared with Russia, Community industry's self-inflicted injury, the export performance of the Community industry, imports of silicon by the community industry itself, and the differences in the markets for chemical and metallurgical silicon were all cited as explanations for any injury suffered by the Community industry. One Russian producer also alleged that there was a 16 % difference between prices of the Community industry and Russian prices during the IP, and that such a large difference showed that there is no price competition between the silicon from the two sources on the Community market.

5.1. Imports from other third countries

(50) As outlined in recital 98 of the provisional Regulation, imports from a number of other third countries were made at much higher volumes than those from Russia. However, with the exception of China, imports from each of these countries actually fell in volume between 2000 and the IP i.e. when the Community industry saw a downturn in its economic situation. Furthermore, the prices of these other imports were in all cases higher than those of the Russian imports, and where they did undercut the Community industry's prices, the price differential was very limited.

(51) One Russian exporting producer claimed that the information from Eurostat could not be relied upon as no account is taken of differences in product mix. They pointed out that there are important price differences between the predominantly lower quality silicon exported from Russia, and the higher quality silicon from other third countries. Rather, they claimed that the prices actually paid by users for silicon from different sources should be used when comparing prices.

(52) This producer did not adduce any evidence in support of its claim. Moreover, due to the lack of substantial data from users as to the price they paid for silicon from other third countries, this price comparison could not be made. The information available from Eurostat represents in these circumstances the best source for establishing prices of silicon from third countries. In relation to the information available for the parallel expiry review against China, it emerged that the average undercutting margin found when prices were compared on a grade-by grade basis was in line with the margin found when Eurostat average import price was compared to Community industry average price.

(53) Furthermore, it should also be noted that for a fair comparison of import prices, Eurostat data was used in all cases. For Russia, where verified information was available for the IP, the true price of the imports was actually slightly lower than that recorded on Eurostat.

5.2. Self-inflicted injury

(54) It was claimed that the injury suffered by the Community industry was primarily due to increasing costs incurred for new production capacities in an effort to increase market share. To this end it was claimed that the Community industry has the highest average costs of production (COP) in the world. This claim was based upon a comparison of the verified cost of production for the Community industry and Russian producers in this proceeding against published costs for other third countries. However, the cost elements included in the published figures were not clearly identified and therefore there was no evidence to indicate that these COP could be compared with the COP verified during the investigation. Typically it appeared that these published figures are based on manufacturing cost only, and do not include essential cost elements such as SG & A. In addition, it is interesting to note that the Russian producer did not provide any corresponding published data for Community producers. On this basis it is considered that this claim could not be addressed and the arguments raised by the Russian exporter were rejected. In support of this approach, it was found that the verified COP in the analogue country, Norway, was indeed higher than that provided by the Russian producer. When adjusted to full costs, the verified COP in Norway was found to be consistent to that of the Community industry.

(55) Nevertheless, even if the costs of the Community industry were comparatively higher, this fact would not break in itself the link between the low-priced dumped imports and the injury suffered by the Community industry. As outlined at recital 83 of the provisional Regulation, had prices not fallen between the year 2000 and the IP, then the Community industry would have made a profit of 1,7 %, as opposed to an actual loss of 2,1 %.

5.3. Exports by the Community industry

(56) It was claimed that the reduction in export sales by the Community industry would have impacted on the profitability of their EU sales. However, no evidence to support this claim was submitted.

(57) The total fall in export sales between 1998 and the IP represented only 2,3 % of all Community industry sales during the IP. Their impact, if any, on the prices and profitability of the Community industry on the EU market can, therefore have been of only a minor nature. It can also reasonably be assumed that the reduction in export is partly due to the demand for Community produced silicon during the IP.

5.4. Imports of silicon by the Community industry

(58) One Russian producer queried the conclusion at recital 85 of the provisional Regulation that companies related to the Community industry, and which purchase silicon, have taken such decision on their own behalf and without influence from the Community industry. In support of this point, it was claimed that these related companies were not allowed to express their opinion on the proceeding. This was said to prove that these companies are indeed controlled by the Community industry.

(59) The fact that the companies related to the Community industry do not make comments opposing anti-dumping measures in this proceeding does not mean that they are not free to source their own raw materials based on financial considerations. As these companies were seen to buy silicon from the Community industry, from Russia, and indeed from any other source as they wished, the conclusion at recital 85 of the provisional Regulation are therefore confirmed.

5.5. Differences between the markets for chemical and metallurgical silicon

(60) It was alleged that the problems faced by the Community industry from 2000 onwards were due to a downturn in the demand for chemical grade silicon caused by a downturn in demand for the products of this user industry. It was claimed that the Community industry sells a higher proportion of its silicon to these chemical users than it does to metallurgical users, whilst the opposite is true for Russian exporting producers. Therefore, as Russian silicon does not compete with Community produced silicon in the chemical market, any problems faced by the Community industry cannot be attributed to Russian imports.

(61) The table below outlines the trends in prices and volumes for Community industry sales of silicon to their chemical customers.

Community industry sales to chemical customers

	1998	1999	2000	2001	IP
Tonnes	48 907	59 924	74 880	74 435	69 652
Index	100	123	153	152	142
EUR per tonne	1 488	1 313	1 287	1 316	1 301
Index	100	88	86	88	87

Source: Community industry.

(62) From this table, it can be seen that over the period under consideration, the sales of silicon sold to chemical users increased by 42 % in volume but fell by 13 % in terms of average price. This compares with a 57 % increase in volume and a 16 % fall in prices for all sales of silicon over the period under consideration (see Tables 8 and 9 of the provisional Regulation).

(63) During the period between 2000 and the IP, when the injury trend showed a particular downturn in respect of prices and profitability, sales to chemical users fell by around five thousand tonnes (– 7,0 %), but average prices increased by EUR 14 per tonne (+ 1,1 %). For all sales the comparable figures show an increase of around three thousand tonnes (+ 2,1 %) whilst average prices fell by EUR 46 per tonne (– 3,7 %).

(64) Therefore, there are no reasons to believe that the injury suffered by the Community industry was caused by a downturn in sales to chemical customers. In fact, given the nature of the injury suffered, the reverse is true.

(65) Accordingly, the argument that it is the trend for the sales of the Community industry to chemical customers that was the real cause of the injury suffered during the IP is rejected.

5.6. Price competition

(66) Concerning the price difference between the silicon produced in the Community and the silicon imported from Russia, it is confirmed that this difference is not 16 %, as claimed by a Russian exporter, but 11 % on average during the IP (see recital 46 of the provisional Regulation). This difference existed despite Community industry price falls of 7 % between 2001 and the IP. This is seen as a clear indication of the effect that Russian prices had on those of the Community industry. To claim that the price undercutting is so large that it cannot have been the cause of the injury to the Community industry would be counter intuitive.

(67) Indeed, the investigation showed that large quantities of silicon are sold by both the Community industry and the Russian exporting producers to the same customers or customers operating in the same sector. It is also clear that the low level of the Russian price was used as a lever by these users when negotiating prices with the Community industry.

5.7. Conclusion on causation

(68) In light of the above, the arguments raised by the Russian exporting producers are rejected and the findings and conclusions set out in recitals 101 and 102 of the provisional Regulation are confirmed.

6. **Community interest**

(69) Following the provisional determination, that the imposition of measures was not against the Community interest, interested parties were invited to come forward and to cooperate in the proceeding. Comments were received from four users and a users' association which had cooperated during the provisional stage of the proceeding. In addition five users and one users' association which did not cooperate during the provisional stage of the proceeding made comments on the provisional findings. No importers of silicon made any comments. Three Community suppliers of raw materials to the Russian producers had already submitted comments at the provisional stage.

(70) Those comments which were made following the publication of the provisional Regulation concerned only the need to differentiate between chemical and metallurgical silicon i.e. on issues concerning the product concerned and the like product. The users submitted no comments regarding the impact of any measures either on their costs or on their profitability, nor provided the necessary information to allow such an assessment to be made.

(71) However, following on-spot visits to users, it was found that whilst these users are opposed to measures as this will increase their costs, they were generally in agreement with the methods we employed in our analysis. It is likely that the measure will have an impact on users. The information available indicates that duties will increase the costs for metallurgical users in the order of EUR 11 per tonne of finished product, i.e. by 0,8 %.

(72) For the Community suppliers of raw materials, even it were accepted that the imposition of measures may have some negative consequences on their turnover and profitability. no evidence was submitted that would lead to the conclusion that this impact would be such as to outweigh the expected benefits to the Community industry.

(73) Therefore, there was no new information provided at all that could lead to a finding that the imposition of definitive measures would be against the Community interest. Accordingly, the conclusion reached in recital 118 of the provisional Regulation is definitively confirmed.

7. **Definitive measures**

(74) In view of the conclusions reached regarding dumping, injury, causation and Community interest, it is considered that definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Community industry by dumped imports from Russia.

7.1. Injury elimination level

(75) A number of claims were made regarding the methodology used for calculating the injury elimination level at the provisional stage.

7.1.1. PCN Table

(76) As stated in recital 14 of the provisional Regulation, it was claimed that the product control number (PCN) table which identifies all types of silicon did not include sufficient details of the chemical composition of the different types of silicon and that it was therefore not possible to make a proper comparison of the different grades of silicon. It was thus proposed to amend the PCN table to clearly identify the types imported from Russia as compared to those sold by the Community industry.

(77) One company claimed that an extra grade should be included to cover silicon with an iron content of above 0,8 %. Whilst it may be that silicon with high levels of iron command lower prices on the market, no evidence was submitted to show that there was a clear market difference between silicon containing more than 0,5 % iron and that containing more than 0,8 %. As any price differences resulting from these different iron contents can, in any case be addressed by way of a price adjustment, which was indeed given, this claim is rejected.

(78) The other Russian exporting producers requested two changes to the PCN Table. They firstly requested that a new grade be defined where the trace elements are the main determining factor. It was claimed that without this adjustment, silicon sold to metallurgical users could be unfairly compared with silicon sold to chemical users. They also requested that the silicon containing exactly 0,5 % iron be classified as low quality instead of standard quality as in the current PCN table.

(79) The acceptance of the first request would not have led to a more accurate PCN Table, but would instead have resulted in poorly defined criteria, with a risk that the interested parties would have a degree of freedom in allocating sales to particular PCNs. Such a freedom would undermine the reliability of the information provided by PCN and thus on the reliability that could be placed on the injury elimination level. There is also no evidence indicating that maintaining the current PCN structure would lead to erroneous or less accurate findings. For example an underselling calculation based on standard and low quality silicon only would result in margins which changed by at most 0,2 %. For these reasons, the claim is rejected.

(80) As to the second claim, again no evidence to support this change has been provided. Indeed there are indications that silicon containing 0,5 % iron is seen as the standard grade by users. Accordingly, no change to the PCN Table was considered necessary.

7.1.2. Profit margin

(81) It was provisionally found that a profit margin of 6,5 % on total turnover could be regarded as an appropriate minimum which the Community industry could reasonably expect to obtain in the absence of injurious dumping. It was claimed that this margin was too high and that a margin of around 3 % would be more appropriate.

(82) The request to use a 3 % margin is not borne out by the facts. Indeed, a profit of 6,5 % is in line with the profits achieved by the Community industry when fair market conditions prevailed on the Community market, i.e. between 1998 and 2000. Moreover, given the level of the dumping margins found and the volume of imports from Russia, it is also likely that the Community industry would have achieved profits of at least this level during the IP.

7.1.3. Quality adjustment

(83) One Russian producer claimed that the silicon produced at one of its plants was of a lower quality than that produced at the other plant due to differences in the production process. Accordingly it was claimed that the lower quality silicon should be adjusted to allow a fair comparison with the prices of the Community industry. The adjustment claimed was the difference in the average cost of production between the two plants.

(84) It is indeed accepted that there is a quality difference between the two plants. However, for any adjustment to be merited, it should be demonstrated that these differences impact on the prices that can be achieved in the market, in this case the EU. A comparison was, therefore made on a grade-by-grade basis to see if there was a consistent difference in the sales prices achieved between the two plants. For the high quality silicon, no sales were made of silicon from the lower quality plant, and no adjustment was necessary. For the standard grade, a clear price difference was observed, and an adjustment of 4 % was made for sales of this quality from the relevant plant. For the low quality silicon, no price difference was found and thus no adjustment was warranted.

(85) The second Russian producer claimed that all of its silicon was of such low quality, that it could not be directly compared even with the prices of low-quality silicon produced by the Community industry.

(86) It is again accepted that the iron level in particular is higher in the silicon produced by this producer compared to that produced by both the Community industry and by the other Russian producer. In order to calculate the quality effect, if any, on the prices achieved by this producer on the EU market, a comparison was made with the average prices achieved by the other Russian producer, again on a grade-by-grade basis.

(87) The results of this comparison showed that an adjustment to the prices of low-quality silicon from this Russian producer should be granted so that it could be compared with the prices of the low-quality silicon produced by the Community industry.

7.1.4. Level of trade adjustment

(88) The Russian producers claimed a price adjustment to allow for different levels of trade for their EU sales. It was found that one Russian producer sold all of its silicon via a trader in the British Virgin Islands. The second producer sold via a related trader in Switzerland, via an unrelated trader in the EU, and directly to end users. The Community industry sold almost all of its silicon directly to end-users.

(89) In order to determine if a level of trade adjustment was warranted, all sales of the same grade from the same producer via the different sales channels were analysed to see if there was a consistent price differential. As a result of this analysis, a level of trade adjustment was granted for all sales via an unrelated trader.

7.2. Form and level of the definitive duty

(90) In accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed at the level of the dumping or injury margins found, whichever are the lower. These measures, as with the provisional measures, should take the form of an *ad valorem* duty.

7.3. Definitive collection of the provisional duty

(91) In view of the magnitude of the dumping margins found for the exporting producers in Russia and in light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation, i.e. Commission Regulation (EC) No 1235/2003, should be definitively collected to the extent of the amount of definitive duties imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.

(92) 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 forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic sales and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duties.

7.4. Undertakings

(93) Subsequent to the imposition of provisional measures, and after disclosure of the definitive findings, one exporting producer in Russia offered a price undertaking in accordance with Article 8(1) of the basic Regulation.

(94) The exporting producer concerned is a producer of different types of products which can be sold together. This raises a potential risk of cross-compensation i.e. that any undertaking prices would be formally respected but that prices for products other than the one concerned would be lowered when sold together with the product concerned. All this would render the commitment to respect a minimum price for silicon easy to circumvent and very difficult to monitor effectively.

(95) For the reasons set out above, it was therefore concluded that the undertakings offered subsequent to the disclosure of the definitive findings could not be accepted as such in their current form. The interested parties were informed accordingly and the deficiencies of the undertaking offered were disclosed in detail to the exporters concerned,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of silicon with a silicon content less than 99,99 % by weight, falling within CN code 2804 69 00, originating in Russia.

2. The rate of the definitive anti-dumping duty applicable for the product produced by the companies named below and originating in Russia shall be as follows:

Companies	Rate of duty (%)	TARIC additional code
OJSC Bratsk Aluminium Plant, Bratsk, Irkutsk Region, Russia	23,6%	A464
SKU LLC, Sual-Kremny-Ural, Kamensk, Ural Region, Russia, and ZAO KREMNY, Irkutsk, Irkutsk Region, Russia	22,7%	A465
All other companies	23,6%	A999

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

Article 2

The amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EC) No 1235/2003 on imports of silicon with a silicon content less than 99,99 % by weight, falling within CN code 2804 69 00, originating in Russia shall be definitively collected in accordance with the rules set out below.

The amounts secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article 3

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, 22 December 2003.

For the Council
The President
A. MATTEOLI

COMMISSION REGULATION (EC) No 2230/2003

of 23 December 2003

establishing sub-order numbers for certain tariff quotas for egg products originating in Estonia, Poland and the Czech and Slovak Republics

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 2003/463/EC of 18 March 2003 concerning the conclusion of a Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, to take account of the outcome of negotiations between the parties on new mutual agricultural concessions ([1]), and in particular Article 3(2) thereof,

Having regard to Council Decision 2003/263/EC of 27 March 2003 concerning the conclusion of a Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, to take account of the outcome of negotiations between the parties on new mutual agricultural concessions ([2]), and in particular Article 3(2) thereof,

Having regard to Council Decision 2003/298/EC of 14 April 2003 on the conclusion of a Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, to take account of the outcome of negotiations between the parties on new mutual agricultural concessions ([3]), and in particular Article 3(2) thereof,

Having regard to Council Decision 2003/299/EC of 14 April 2003 on the conclusion of a Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, to take account of the outcome of negotiations between the parties on new mutual agricultural concessions ([4]), and in particular Article 3(2) thereof,

Whereas:

(1) Decisions 2003/263/EC, 2003/298/EC, 2003/299/EC and 2003/463/EC provide for the direct management on entry into the territory of the Community of quotas of certain products in the egg sector originating in Poland, the Czech and Slovak Republics and Estonia, respectively, and imported at a reduced rate of customs duty.

(2) In order to facilitate the management of these tariff quotas and to provide for optimum conditions for electronic data processing sub-order numbers should be established for those tariff quotas covering several egg products to which different conversion coefficients are applied.

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

HAS ADOPTED THIS REGULATION:

Article 1

The order numbers referred to in the Annex shall be subdivided as shown in that Annex.

Article 2

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

It shall apply from 1 January 2004.

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

Done at Brussels, 23 December 2003.

For the Commission
Franz FISCHLER
Member of the Commission

([1]) OJ L 156, 25.6.2003, p. 31.
([2]) OJ L 97, 15.4.2003, p. 53.
([3]) OJ L 107, 30.4.2003, p. 12.
([4]) OJ L 107, 30.4.2003, p. 36.

ANNEX

Order number	Annual quantity	Sub-order number	CN code(s)	Coefficient
Part A: Estonia				
09.6651	245 t (dried egg equivalent)	09.6651	0408 11 80	1
		09.5910	0408 19 81 0408 19 89	0,466
		09.6651	0408 91 80	1
		09.5911	0408 99 80	0,257
Part B: Poland				
09.5819	375 t (dried egg equivalent)	09.5819	0408 91 80	1
		09.5913	0408 99 80	0,257
Part C: Czech Republic				
09.5875	375 t (liquid equivalent)	09.5915	0408 11 80	2,12
		09.5875	0408 19 81 0408 19 89	1
09.5876	2 750 t (liquid equivalent)	09.5916	0408 91 80	3,9
		09.5876	0408 99 80	1
Part D: Slovak Republic				
09.5884	250 t (liquid equivalent)	09.5918	0408 11 80	2,12
		09.5884	0408 19 81 0408 19 89	1
09.5885	1 250 t (liquid equivalent)	09.5919	0408 91 80	3,9
		09.5885	0408 99 80	1

COMMISSION REGULATION (EC) No 2231/2003

of 23 December 2003

opening tariff quotas for the year 2004 for imports into the European Community of certain products originating in the Czech Republic and the Slovak Republic

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products [1], and in particular Article 7(2) thereof,

Having regard to Council Decision 98/707/EC of 22 October 1998 relating to the conclusion of a Protocol for the adaptation of the trade aspects of the Europe Agreement between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, to take into account the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the results of the agricultural negotiations of the Uruguay Round, including the improvements of the existing preferential regime [2], and in particular Article 2(1) of that Decision and Articles 2 and 6 of that Protocol,

Having regard to Council Decision 98/638/EC of 5 October 1998 relating to the conclusion of a Protocol for the adaptation of the trade aspects of the Europe Agreement between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, to take into account the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the results of the agricultural negotiations of the Uruguay Round, including the improvements of the existing preferential regime [3], and in particular Article 2(1) of that Decision and Articles 2 and 6 of that Protocol,

Whereas:

(1) Protocols 3 on trade in processed agricultural products to the Europe Agreements with the Czech Republic and Slovak Republic, as amended by the Protocols for the adapting of those Agreements, provide for the granting of annual tariff quotas for imports of products originating in the Czech Republic and Slovak Republic. Those quotas should be opened for 2004.

(2) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Common Customs Code [4] lays down rules for the management of tariff quotas. It is appropriate to provide that the tariff quotas opened by this Regulation are to be managed in accordance with those rules.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for horizontal questions concerning trade in processed agricultural products not listed in Annex I,

HAS ADOPTED THIS REGULATION

Article 1

The annual quotas for the products originating in the Czech Republic and in the Slovak Republic, set out in Annexes I and II shall be open from 1 January 2004 to 30 April 2004 under the conditions set out in the said Annexes.

Article 2

The Community tariff quotas referred to in Article 1 shall be managed by the Commission in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 3

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

It shall apply from 1 January 2004.

[1] OJ L 318, 20.12.1993, p. 18; Regulation as last amended by Regulation (EC) No 2580/2000 (OJ L 298, 25.11.2000, p. 5).
[2] OJ L 341, 16.12.1998, p. 1.
[3] OJ L 306, 16.11.1998, p. 1.
[4] OJ L 253, 11.10.1993, p. 1; Regulation as last amended by Regulation (EC) No 1335/2003 (OJ L 187, 26.7.2003, p. 16).

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

Done at Brussels, 23 December 2003.

For the Commission
Erkki LIIKANEN
Member of the Commission

ANNEX I

Czech Republic

Serial No	CN code	Description	Quota from 1.1. to 30.4.2004	Rate of duty applicable
09.5417	0403 10 51 0403 10 91 0403 10 93 0403 10 99	Yogurt, flavoured or containing added fruit, nuts or cocoa	1 812 000 EUR	0 + EAR (1)
	0405 20 30	Dairy spreads of a fat content, by weight, of 60 % or more, but not exceeding 75 %		
	ex 1704 90 99 (TARIC code 1704 90 99 90)	Sugar confectionery (including white chocolate), not containing cocoa, containing 70 % or more by weight of sucrose (including invert sugar expressed as sucrose)		
	1806 10 90	Cocoa powder containing 80 % or more by weight of sucrose (including invert sugar expressed as sucrose) or isoglucose expressed as sucrose		
	ex 1806 20 80 (TARIC code 1806 20 80 90)	Chocolate and other food preparations containing cocoa, other preparations in blocks, slaps or bars weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings of a content exceeding 2 kg, chocolate flavour coating, containing less than 70 % by weight of sucrose (including invert sugar expressed as sucrose)		
		Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous whether or not prepared.		
		– uncooked pasta, not stuffed or otherwise prepared		
	1902 11 00	– – containing eggs		
		– – other		
	1902 19 10	– – – containing no common wheat flour or meal		
	1902 19 90	– – – other		
	1902 20 91	– stuffed pasta whether or not cooked or otherwise prepared		
		– – other		
		– – – cooked		
	2106 90 10	Cheese fondues (2)		

(1) EAR = reduced agricultural components (calculated in accordance with the basic amounts set out in Protocol 3 to the Agreement) applicable within the quantitative limits of the quotas. Such reduced agricultural components are subject to the maximum duty laid down in the common customs tariff, if any.

(2) Eligibility to benefit from this preference is subject to conditions laid down in the relevant Community provisions.

ANNEX II

Slovak Republic

Serial No	CN code	Description	Quota from 1.1. to 30.4.2004	Rate of duty applicable
09.5417	0403 10 51 0403 10 53 0403 10 59 0403 10 91 0403 10 93 0403 10 99	Yogurt, flavoured or containing added fruit, nuts or cocoa	906 000 EUR	0 + EAR (1)
	0403 90 71 0403 90 73 0403 90 79 0403 90 91 0403 90 93 0403 90 99	Other, flavoured or containing added fruit, nuts or cocoa		
	1806 10 90	Cocoa powder containing 80 % or more by weight of sucrose (including invert sugar expressed as sucrose) or isoglucose expressed as sucrose		
	2106 90 10	Cheese fondues (2)		

(1) EAR = reduced agricultural components (calculated in accordance with the basic amounts set out in Protocol 3 to the Agreement) applicable within the quantitative limits of the quotas. Such reduced agricultural components are subject to the maximum duty laid down in the common customs tariff, if any.

(2) Eligibility to benefit from this preference is subject to conditions laid down in the relevant Community provisions.

COMMISSION REGULATION (EC) No 2232/2003

of 23 December 2003

concerning the opening of tariff quotas applicable to the importation into the European Community of certain processed agricultural products originating in Switzerland

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products [1], and in particular Article 7(2) thereof,

Having regard to Council Decision 2000/239/EC of 13 March 2000 concerning the conclusion of an Agreement in the form of an Exchange of Letters between the European Community, of the one part, and the Swiss Confederation, of the other part, on Protocol 2 to the Agreement between the European Economic Community and the Swiss Confederation [2], and in particular Article 2 thereof,

Whereas:

(1) The annual tariff quotas for certain processed agricultural products provided for in the Agreement in the form of an Exchange of Letters between the European Community, of the one part, and the Swiss Confederation, of the other part, on Protocol 2 to the Agreement between the European Economic Community and the Swiss Confederation, hereinafter 'the Agreement', should be opened for 2004.

(2) The annual quota for goods classified under CN codes 2202 10 00 and ex 2202 90 10, laid down in the Agreement, has been exhausted. In accordance with the Agreement it should in consequence be increased by 10 % for 2004.

(3) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [3], lays down rules for the management of tariff quotas. It is appropriate to provide that the tariff quotas opened by this Regulation are to be managed in accordance with those rules.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I to the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

The Community tariff quotas for imports of the processed agricultural products originating in Switzerland listed in the Annex shall be open duty-exempt from 1 January to 31 December 2004.

For imports of goods listed in table 2 of the Annex which exceed the duty-exempt quota, a duty of 9,1 % shall be applied.

Article 2

The Community tariff quotas referred to in Article 1 shall be managed by the Commission in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 3

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

It shall apply with effect from 1 January 2004.

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

Done at Brussels, 23 December 2003.

For the Commission
Erkki LIIKANEN
Member of the Commission

[1] OJ L 318, 20.12.1993, p. 18. Regulation as last amended by Regulation (EC) No 2580/2000 (OJ L 298, 25.11.2000, p. 5).
[2] OJ L 76, 25.3.2000, p. 11.
[3] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1335/2003 (OJ L 187, 26.7.2003, p. 16).

ANNEX

Table 1

Serial number	CN code	Description	Quantities for 2004 (net weight)	Applicable rate of duty
09.0911	1302 20 10	Pectic substances, pectinates and pectates: dry	666 tonnes	Exempt
09.0912	2101 11 11	Extracts, essences and concentrates with a coffee-based dry matter content of 95 % or more by weight	2 057 tonnes	Exempt
09.0913	2101 20 20	Extracts, essences and concentrates of tea or maté	145 tonnes	Exempt
09.0914	2106 90 92	Food preparations/other containing no milk fats, sucrose, isoglucose, glucose or starch or containing, by weight, less than 1,5 % milk fat, 5 % sucrose or isoglucose, 5 % glucose or starch	1 029 tonnes	Exempt

Table 2

Serial number	CN code	Description	Volume	Rate of duty applicable within the quota	Rate of duty applicable outside the quota
09.0916	2202 10 00	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured	109 807 500 litres	Exempt	9,1 %
	ex 2202 90 10 (TARIC code 10)	Other non-alcoholic beverages, containing sugar			

COMMISSION REGULATION (EC) No 2233/2003

of 23 December 2003

opening Community tariff quotas for 2004 for sheep, goats, sheepmeat and goatmeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2529/2001 of 19 December 2001 on the common organisation of the market in sheepmeat and goatmeat [1], and in particular Article 16(1) thereof,

Whereas:

(1) Community tariff quotas for sheepmeat and goatmeat should be opened for 2004. The duties and quantities referred to in Regulation (EC) No 2529/2001 should be fixed in accordance with the respective international agreements in force during the year 2004.

(2) Subject to the ratification of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, the Czech Republic, Slovenia and Slovakia will accede to the European Union on 1 May 2004. The quotas attributable to those countries should therefore only be opened until the date of their accession.

(3) Council Regulation (EC) No 312/2003 of 18 February 2003 implementing for the Community the tariff provisions laid down in the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part [2], has provided for an additional bilateral tariff quota of 2 000 tonnes with a 10 % annual increase to be opened for product code 0204 from 1 February 2003. That quota should be added to the GATT/WTO quota for Chile and both quotas should be managed in the same way from 1 January 2004.

(4) Council Regulation (EC) No 1329/2003 of 21 July 2003 amending Regulation (EC) No 992/95 as regards tariff quotas for certain agricultural and fishery products originating in Norway [3] grants additional bilateral trade concessions concerning agricultural products.

(5) Certain tariff quotas for sheepmeat and goatmeat products have been granted to the ACP States under the Cotonou Agreement [4].

(6) Since imports are managed on a calendar-year basis, for the quotas defined for a period from 1 July to 30 June, the quantities fixed for 2004 are the sum of half of the quantity for the period from 1 July 2003 to 30 June 2004 and half of the quantity for the period from 1 July 2004 to 30 June 2005.

(7) A carcase-weight equivalent needs to be fixed in order to ensure a proper functioning of the Community tariff quotas. Furthermore, since certain tariff quotas provide for the option of importing either the live animals or their meat, a conversion factor is required.

(8) Experience with the administration of the Community tariff quotas has shown a need to improve the management of such quotas. Experience in the use of the first-come, first-served management system has been positive in other agricultural sectors. In the interest of administrative simplification, quotas concerning products of the sheepmeat and goatmeat sector originating in third countries should, by way of derogation from Commission Regulation (EC) No 1439/95 of 26 June 1995 laying down detailed rules for the application of Council Regulation (EEC) No 3013/89 as regards the import and export of products in the sheepmeat and goatmeat sector [5], be managed in conformity with Article 16(2)(a) of Regulation (EC) No 2529/2001. This should be done in accordance with Articles 308a, 308b and 308c(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [6]. Where imports are managed in accordance with these provisions, no import licences should be required any more.

(9) In order to avoid any discrimination among exporting countries, and given that equivalent tariff quotas have not been quickly exhausted in the last two years, tariff quotas under this Regulation should be regarded initially as non-critical within the meaning of Article 308c of Regulation (EEC) No 2454/93 when managed under the first-come first-served system. Therefore, customs authorities should be authorised to waive the requirement for security in respect of goods initially imported under those quotas in accordance with Articles 308c(1) and 248(4) of Regulation (EEC) No 2454/93. Due to the particularities of the transfer from one management system to the other Article 308c(2) and (3) of that Regulation should not apply.

[1] OJ L 341, 22.12.2001, p. 3. Regulation as amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).
[2] OJ L 46, 20.2.2003, p. 1.
[3] OJ L 187, 26.7.2003, p. 1.
[4] OJ L 317, 15.12.2000, p. 3.
[5] OJ L 143, 27.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 272/2001 (OJ L 41, 10.2.2001, p. 3).
[6] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1335/2003 (OJ L 187, 26.7.2003, p. 16).

(10) The implementation of the first-come first-served system requires some additional preparatory work in the cases of Australia and New Zealand, given the high volume of the quotas and their traditional use. For that reason, the first-come, first-served system should only apply to the imports from those two countries as of 1 May 2004 and the import licensing should be continued until 30 April 2004 in accordance with the rules laid down in Regulation (EC) No 1439/95. Provisions should therefore be made with regard to the available quantities under each of those management systems.

(11) It should be clarified which kind of proof certifying the origin of products has to be provided to benefit from the tariff quotas under the first-come, first served system.

(12) When sheepmeat products are presented to the customs authorities for import, it is difficult for those authorities to establish whether they originate from domestic sheep or other sheep, which determines the application of different duty rates. It is therefore appropriate to provide that the proof of origin contains a clarification to that end.

(13) In accordance with Article 3 of Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from third countries [1], and with Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC [2], imports may be authorised only for products meeting the requirements of the veterinary rules and certification currently in force in the Community.

(14) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sheep and Goats,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation opens Community tariff quotas for sheep, goats, sheepmeat and goatmeat for the period from 1 January to 31 December 2004.

Article 2

The customs duties applicable to imports into the Community of sheep, goats, sheepmeat and goatmeat falling within CN codes 0104 10 30, 0104 10 80, 0104 20 90, 0210 99 21, 0210 99 29 and 0204 originating in the countries indicated in the Annex shall be suspended or reduced in accordance with this Regulation.

Article 3

1. The quantities, expressed in carcase-weight equivalent, for the import of meat, falling within CN code 0204, and of live animals falling within CN codes 0104 10 30, 0104 10 80 and 0104 20 90, as well as the customs duty applicable shall be those as laid down in the Annex.

2. For the purpose of calculating the quantities of 'carcase-weight equivalent' referred to in paragraph 1 the net weight of sheep and goat products shall be multiplied by the following coefficients:

(a) for live animals: 0,47;

(b) for boneless lamb and boneless goatmeat of kid: 1,67;

(c) for boneless mutton, boneless sheep and boneless goatmeat other than of kid and mixtures of any of these: 1,81;

(d) for bone-in products: 1,00.

3. 'Kid' shall mean goats of up to one year old.

Article 4

By way of derogation from Title II(A) and (B) of Regulation (EC) No 1439/95, the tariff quotas set out in the Annex to this Regulation for the countries of country groups Nos 2, 3, 4 and 5 and for Argentina, Uruguay, Chile, Iceland and Slovenia, shall be managed on a first-come, first-served basis in accordance with Articles 308a, 308b and 308c(1) of Regulation (EEC) No 2454/93 from 1 January to 31 December 2004. Article 308c(2) and (3) of that Regulation shall not apply. No import licences shall be required.

Article 5

1. From 1 January to 30 April 2004, the tariff quotas provided for Australia and New Zealand as set out in the Annex under country group No 1 shall be managed in accordance with the rules laid down in Title II(A) of Regulation (EC) No 1439/95.

2. From 1 May 2004 to 31 December 2004, by way of derogation from Title II(A) of Regulation (EC) No 1439/95, the tariff quotas referred to in paragraph 1 shall be managed in accordance with Article 4 of this Regulation.

However, import licences issued by 30 April 2004 at the latest under paragraph 1 shall remain valid until the expiry of their period of validity.

3. The quantity managed in accordance with paragraph 2 shall, on a provisional basis, be the annual quantities of 18 650 tonnes for Australia and 226 700 tonnes for New Zealand minus the estimated respective quantity in carcase-weight equivalent for which import licences are issued by 30 April 2004 at the latest.

That provisional quantity shall subsequently be adjusted on the basis of the licences effectively issued during the month of April. The quantity established on 1 May shall subsequently be increased by the quantity in carcase-weight equivalent for which, on the basis of licences returned to the competent authorities, licences issued have not been used or have been used only partly. Licences not returned by 15 August shall be considered as fully used licences.

[1] OJ L 302, 31.12.1972, p. 28. Directive as last amended by Council Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).
[2] OJ L 268, 24.9.1991, p. 56. Directive as last amended by Directive 96/43/EC (OJ L 162, 1.7.1996, p. 1).

4. For the purpose of paragraph 3, Member States shall:

(a) communicate the quantities referred to in Article 19(2)(a) of Regulation (EC) No 1439/95, also in carcase-weight equivalent;

(b) communicate to the Commission each first working day of the week, for the month of April 2004 and further to the requirements laid down in Article 19(2) of Regulation (EC) No 1439/95, the import licences issued in respect of the preceding week as well as the corresponding carcase-weight equivalent;

(c) by way of derogation from Article 19(2)(a) of Regulation (EC) No 1439/95, communicate the data referred to in that point no later than 25 August 2004.

5. For the purpose of calculating the carcase-weight equivalent referred to in paragraphs 3 and 4, the coefficients referred to in Article 3(2) shall apply.

Article 6

1. In order to benefit from the tariff quotas set out in the Annex and managed in accordance with Article 4, a valid proof of origin issued by the competent authorities of the third country concerned together with a customs declaration for release for free circulation for the goods concerned shall be presented to the Community customs authorities. The origin of products subject to tariff quotas other than those resulting from preferential tariff agreements shall be determined in accordance with the provisions in force in the Community.

2. The proof of origin referred to in paragraph 1 shall be as follows:

(a) in the case of a tariff quota which is part of a preferential tariff agreement, it shall be the proof of origin laid down in that agreement;

(b) in the case of other tariff quotas, it shall be a proof established in accordance with Article 47 of Regulation (EEC) No 2454/93, including, in addition to the elements provided for in that Article, the following data:

— the CN code (at least the first four digits),

— the order number or order numbers of the tariff quota concerned in accordance with the third subparagraph of this paragraph,

— the total net weight per coefficient category as specified in Article 3(2) of this Regulation;

(c) in the case of a country whose quota falls under points (a) and (b) and are merged, it shall be the proof referred to in point (a).

In the case referred to in point (b), forms under Annex II to Regulation (EC) No 1439/95 that include all additional information required in that point may be used during the year 2004, crossing out the text referring to import licences when Article 4 of this Regulation applies.

Where the proof of origin referred to in point (b) is presented as supporting document for only one declaration for release for free circulation, it may contain several order numbers. In all other cases, it shall only contain one order number.

3. In order to benefit from the tariff quota set out in the Annex for country group 4 in respect of products falling under CN codes ex 0204, ex 0210 99 21 and ex 0210 99 29 the proof of origin shall contain, in the box concerning the description of the products, one of the following:

(a) 'sheep product/s from the species domestic sheep';

(b) 'product/s from the species other than domestic sheep'.

Those indications shall correspond to the indications in the veterinary certificate accompanying those products.

Article 7

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

It shall apply from 1 January 2004.

With regard to the Czech Republic, Slovenia and Slovakia it shall apply until 30 April 2004, subject to the entry into force of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

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

Done at Brussels, 23 December 2003.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

SHEEPMEAT AND GOATMEAT in tonnes (t) of carcasse weight equivalent

COMMUNITY TARIFF QUOTAS FOR 2004

Country group No	CN codes	*Ad valorem* duty %	Specific duty EUR/100 kg	Order number (1) under Title II(A) of Regulation (EC) No 1439/95	Order number under 'first come, first served' (2)				Origin	Annual volume in tonnes of carcasse-weight equivalent
					Live animals (Coefficient = 0,47)	Boneless lamb (3) (Coefficient = 1,67)	Boneless mutton/ sheep (4) (Coefficient = 1,81)	Bone-in and carcasses (Coefficient = 1,00)		
1	0204	Zero	Zero		—	09.2101	09.2102	09.2011	Argentina	23 000
				09.4132	—	09.2105	09.2106	09.2012	Australia	18 650
				09.4134	—	09.2109	09.2110	09.2013	New Zealand	226 700
					—	09.2111	09.2112	09.2014	Uruguay	5 800
					—	09.2115	09.2116	09.1922	Chile	5 183
					—	09.2119	09.2120	09.0790	Iceland	1 350
					—	09.5931	09.5932	09.1763	Slovenia (5)	50
2	0104 10 30 0104 10 80 0104 20 90 0204	Zero	Zero		09.5935	09.5936	09.5937	09.5874	Czech Republic (5)	2 150
					09.5939	—	—	09.5882	Slovakia (5) (6)	4 300
	0204	Zero	Zero		—	09.2121	09.2122	09.0781	Norway	300
3	0204	Zero	Zero		—	09.2125	09.2126	09.0693	Greenland	100
					—	09.2129	09.2130	09.0690	Faeroes	20
					—	09.2131	09.2132	09.0227	Turkey	200

Country group No	CN codes	*Ad valorem* duty %	Specific duty EUR/100 kg	Order number (1) under Title II(A) of Regulation (EC) No 1439/95	Order number under 'first come, first served' (2)				Origin	Annual volume in tonnes of carcasse-weight equivalent
					Live animals (Coefficient = 0,47)	Boneless lamb (3) (Coefficient = 1,67)	Boneless mutton/ sheep (4) (Coefficient = 1,81)	Bone-in and carcasses (Coefficient = 1,00)		
4	0104 10 30, 0104 10 80 and 0104 20 90. For the species 'domestic sheep' only: ex 0204, ex 0210 99 21 and ex 0210 99 29.	Zero	Zero		09.2141	09.2145	09.2149	09.1622	ACP States	100
	For the species 'domestic sheep' only: ex 0204, ex 0210 99 21 and ex 0210 99 29.	Zero	65 % reduction of specific duties		—	09.2161	09.2165	09.1626	ACP States	500
5 (7)	0204	Zero	Zero		—	09.2171	09.2175	09.2015	Others	200
	0104 10 30 0104 10 80 0104 20 90	10 %	Zero		09.2181	—	—	09.2019	Others	49

(1) Order numbers applicable from 1 January to 30 April 2004 in accordance with Article 5(1). The amounts of import licences issued under those order numbers shall be taken into account for the final calculation of the remaining quota under the first come, first served system.
(2) In the cases of Australia and New Zealand, these order numbers shall apply as of 1 May 2004 in accordance with Article 5(2).
(3) And goatmeat of kid.
(4) And goatmeat other than of kid.
(5) Tariff quotas for the new Member States shall be opened for the period 1 January to 30 April 2004 in accordance with Article 7.
(6) For Slovakia the tariff quota shall only refer to CN codes 0104 10 30, 0104 10 80 and 0104 20 90.
(7) 'Others' shall refer to all origins including the ACP States and excluding the other countries mentioned in the current table.

COMMISSION REGULATION (EC) No 2234/2003

of 23 December 2003

laying down detailed rules for the application in 2004 of the tariff quotas for 'baby beef' products originating in Croatia, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia and Montenegro

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], and in particular the first subparagraph of Article 32(1) thereof,

Whereas:

(1) Article 4(2) of Council Regulation (EC) No 2007/2000 of 18 September 2000 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's stabilisation and association process, amending Regulation (EC) No 2820/98, and repealing Regulations (EC) No 1763/1999 and (EC) No 6/2000 [2], provides for an annual preferential tariff quota of 11 475 tonnes of 'baby beef', distributed among Bosnia and Herzegovina and Serbia and Montenegro including Kosovo.

(2) The Interim Agreements with Croatia and the former Yugoslav Republic of Macedonia, approved by Council Decision 2002/107/EC of 28 January 2002 on the conclusion of an Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Croatia, of the other part [3], and by Council Decision 2001/330/EC of 9 April 2001 on the conclusion of the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the former Yugoslav Republic of Macedonia, of the other part [4], lay down annual preferential tariff quotas of 9 400 tonnes and 1 650 tonnes respectively.

(3) Article 2 of Council Regulation (EC) No 2248/2001 of 19 November 2001 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part and for applying the Interim Agreement between the European Community and the Republic of Croatia [5] and Article 2 of Council Regulation (EC) No 153/2002 of 21 January 2002 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, and for applying the Interim Agreement between the European Community and the former Yugoslav Republic of Macedonia [6] provide that detailed rules for the implementation of concessions on 'baby beef' should be laid down.

(4) For control purposes, Regulation (EC) No 2007/2000 makes imports under the quotas of 'baby beef' for Bosnia and Herzegovina and Serbia and Montenegro, including Kosovo, subject to the presentation of a certificate of authenticity attesting that the goods originate from the issuing country and that they correspond exactly to the definition in Annex II to that Regulation. For the sake of harmonisation, imports under the quotas of 'baby beef' originating in Croatia and the former Yugoslav Republic of Macedonia should also be made subject to the presentation of a certificate of authenticity attesting that the goods originate from the issuing country and that they correspond exactly to the definition in Annex III to the Interim Agreements with the former Yugoslav Republic of Macedonia and with Croatia. A model should also be established for the certificates of authenticity and detailed rules laid down for their use.

(5) Kosovo, as defined by United Nations Security Council Resolution 1244 of 10 June 1999, is subject to an international civil administration by the United Nations Mission in Kosovo (UNMIK), which has also set up a separate customs service. There should therefore also be a specific certificate of authenticity for goods originating in Serbia and Montenegro/Kosovo.

(6) The quotas concerned should be managed through the use of import licences. To this end, Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [7] and Commission Regulation (EC) No 1445/95 on rules of application for import and export licences in the beef and veal sector and repealing Regulation (EEC) No 2377/80 [8] should be applicable, subject to this Regulation.

[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 240, 23.9.2000, p. 1. Regulation as last amended by Commission Regulation (EC) No 607/2003 (OJ L 86, 3.4.2003, p. 18).
[3] OJ L 40, 12.2.2002, p. 9.
[4] OJ L 124, 4.5.2001, p. 1.
[5] OJ L 304, 21.11.2001, p. 1. Regulation as amended by Regulation (EC) No 2/2003 (OJ L 1, 4.1.2003, p. 18).
[6] OJ L 25, 29.1.2002, p. 16. Regulation as amended by Regulation (EC) No 3/2003 (OJ L 1, 4.1.2003, p. 30).
[7] OJ L 152, 24.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 325/2003 (OJ L 47, 21.2.2003, p. 21).
[8] OJ L 143, 27.6.1995, p. 35. Regulation as last amended by Regulation (EC) No 852/2003 (OJ L 123, 17.5.2003, p. 9).

(7) In order to ensure proper management of imports of the products concerned, import licences should be issued subject to verification, in particular of entries on certificates of authenticity.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

1. The following tariff quotas are hereby opened for the period 1 January to 31 December 2004:

(a) 9 400 tonnes of 'baby beef', expressed in carcase weight, originating in Croatia;

(b) 1 500 tonnes of 'baby beef', expressed in carcase weight, originating in Bosnia and Herzegovina;

(c) 1 650 tonnes of 'baby beef', expressed in carcase weight, originating in the former Yugoslav Republic of Macedonia;

(d) 9 975 tonnes of 'baby beef', expressed in carcase weight, originating in Serbia and Montenegro including Kosovo.

The quotas referred to in the first subparagraph shall bear the serial Nos 09.4503, 09.4504, 09.4505 and 09.4506 respectively.

For the purposes of attributing those quotas, 100 kilograms live weight shall be equivalent to 50 kilograms carcase weight.

2. The customs duty applicable under the quotas referred to in paragraph 1 shall be 20 % of the *ad valorem* duty and 20 % of the specific duty as laid down in the Common Customs Tariff.

3. Importation under the quotas referred to in paragraph 1 shall be reserved for certain live animals and certain meat falling within the following CN codes, referred to in Annex II to Regulation (EC) No 2007/2000 and in Annex III to the Interim Agreements concluded with Croatia and the former Yugoslav Republic of Macedonia:

— ex 0102 90 51, ex 0102 90 59, ex 0102 90 71 and ex 0102 90 79,

— ex 0201 10 00 and ex 0201 20 20,

— ex 0201 20 30,

— ex 0201 20 50.

Article 2

Save as otherwise provided in this Regulation, Regulations (EC) No 1291/2000 and (EC) No 1445/95 shall apply to importing operations under the quotas referred to in Article 1.

Article 3

1. Imports of the quantities set out in Article 1 shall be subject to presentation, on release for free circulation, of an import licence.

2. Section 8 of licence applications and licences shall show the country or customs territory of origin. Licences shall carry with them an obligation to import from the country or customs territory indicated.

Section 20 of licence applications and licences shall show one of the following entries:

— 'Baby beef' [Reglamento (CE) nº 2234/2003]

— 'Baby beef' [forordning (EF) nr. 2234/2003]

— 'Baby beef' [Verordnung (EG) Nr. 2234/2003]

— 'Baby beef' [Κανονισμός (ΕΚ) αριθ. 2234/2003]

— 'Baby beef' (Regulation (EC) No 2234/2003)

— 'Baby beef' [Règlement (CE) nº 2234/2003]

— 'Baby beef' [regolamento (CE) n. 2234/2003]

— 'Baby beef' [Verordening (EG) nr. 2234/2003]

— 'Baby beef' [Regulamento (CE) n.º 2234/2003]

— 'Baby beef' (asetus (EY) N:o 2234/2003)

— 'Baby beef' [förordning (EG) nr 2234/2003].

3. The original of the certificate of authenticity drawn up in accordance with Article 4 plus a copy thereof shall be presented to the competent authority together with the application for the first import licence relating to the certificate of authenticity. The original of the certificate of authenticity shall be kept by the competent authority.

Certificates of authenticity may be used for the issue of more than one import licence for quantities not exceeding that shown on the certificate. Where more than one licence is issued in respect of a certificate, the competent authority shall endorse the certificate of authenticity to show the quantity attributed.

4. The competent authorities may issue import licences only after they are satisfied that all the information on the certificate of authenticity corresponds to that received each week from the Commission for the imports concerned. The licences shall be issued immediately thereafter.

Article 4

1. All applications for imports licences under the quotas referred to in Article 1 shall be accompanied by a certificate of authenticity issued by the authorities of the exporting country or customs territory listed in Annex VI attesting that the goods originate in that country or customs territory and that they correspond to the definition given, as the case may be, in Annex II to Regulation (EC) No 2007/2000 or Annex III to the Interim Agreements referred to in Article 1(3).

2. Certificates of authenticity shall be made out in one original and two copies, to be printed and completed in one of the official languages of the Community, in accordance with the relevant model in Annexes I, II, III, IV and V for the exporting countries and the customs territory concerned. They may also be printed and completed in the official language or one of the official languages of the exporting country or customs territory.

The competent authorities of the Member State in which the import licence application is submitted may require a translation of the certificate to be provided.

3. The original and copies of the certificate of authenticity may be typed or hand-written. In the latter case, they shall be completed in black ink and in block capitals.

The certificate forms shall measure 210 x 297 mm. The paper used shall weigh not less than 40 g/m^2. The original shall be white, the first copy pink and the second copy yellow.

4. Each certificate shall have its own individual serial number followed by the name of the issuing country or customs territory.

The copies shall bear the same serial number and the same name as the original.

5. Certificates shall be valid only if they are duly endorsed by an issuing authority listed in Annex VI.

6. Certificates shall be deemed to have been duly endorsed if they state the date and place of issue and if they bear the stamp of the issuing authority and the signature of the person or persons empowered to sign them.

Article 5

1. The issuing authorities listed in Annex VI shall:

(a) be recognised as such by the exporting country or customs territory concerned;

(b) undertake to verify entries on the certificates;

(c) undertake to forward to the Commission at least once a week any information enabling the entries on the certificates of authenticity to be verified, in particular with regard to the number of the certificate, the exporter, the consignee, the country of destination, the product (live animals/meat), the net weight and the date of signature.

2. The list in Annex VI shall be revised by the Commission where the requirement referred to in paragraph 1(a) is no longer met, where an issuing authority fails to fulfil one or more of the obligations incumbent on it or where a new issuing authority is designated.

Article 6

Certificates of authenticity and import licences shall be valid for three months from their respective dates of issue. However, their term of validity shall expire on 31 December 2004.

Article 7

The exporting countries and the custom territory concerned shall communicate to the Commission specimens of the stamp imprints used by their issuing authorities and the names and signatures of the persons empowered to sign certificates of authenticity. The Commission shall communicate that information to the competent authorities of the Member States.

Article 8

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

It shall apply from 1 January 2004.

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

Done at Brussels, 23 December 2003.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

<table>
<tr><td>1. Consignor (full name and address)</td><td colspan="4">CERTIFICATE No 0000
Original
CROATIA</td></tr>
<tr><td>2. Consignee (full name and address)</td><td colspan="4">CERTIFICATE OF AUTHENTICITY
for exports to the Community of bovine animals and meat of bovine animals
(application of Regulation (EC) No 2234/2003)</td></tr>
<tr><td colspan="5">NOTES
A. This certificate shall be prepared in one original and two copies.
B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in black ink and in block capitals.</td></tr>
<tr><td>3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods</td><td>4. Combined Nomenclature code</td><td>5. Gross weight (kg)</td><td>6. Net weight (kg)</td></tr>
<tr><td colspan="4">7. Net weight (kg) (in words)</td></tr>
<tr><td colspan="4">8. I, the undersigned ……., acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at ……., in accordance with the attached veterinary certificate of ……., originate in and come from the Republic of Croatia and correspond exactly to the definition contained in Annex III to the Interim Agreement set out in Decision 2002/107/EC (OJ L 40, 12.2.2002, p. 9).</td></tr>
<tr><td rowspan="2">9. Authorised issuing body</td><td colspan="3">Place: Date:</td></tr>
<tr><td>(stamp of issuing body)</td><td colspan="2">.....
(signature)</td></tr>
</table>

ANNEX II

<table>
<tr><td>1. Consignor (full name and address)</td><td colspan="4">CERTIFICATE No 0000
Original
BOSNIA and HERZEGOVINA</td></tr>
<tr><td>2. Consignee (full name and address)</td><td colspan="4">CERTIFICATE OF AUTHENTICITY
for exports to the Community of bovine animals and meat of bovine animals
(application of Regulation (EC) No 2234/2003)</td></tr>
<tr><td colspan="5">NOTES
A. This certificate shall be prepared in one original and two copies.
B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in black ink and in block capitals.</td></tr>
<tr><td>3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods</td><td>4. Combined Nomenclature code</td><td>5. Gross weight (kg)</td><td>6. Net weight (kg)</td></tr>
<tr><td colspan="4">7. Net weight (kg) (in words)</td></tr>
<tr><td colspan="4">8. I, the undersigned ……., acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at ……., in accordance with the attached veterinary certificate of ……., originate in and come from the Republic of Bosnia and Herzegovina and correspond exactly to the definition contained in Annex II to Council Regulation (EC) No 2007/2000 (OJ L 240, 23.9.2000, p. 1).</td></tr>
<tr><td rowspan="2">9. Authorised issuing body</td><td colspan="3">Place: Date:</td></tr>
<tr><td>(stamp of issuing body)</td><td colspan="2">.....
(signature)</td></tr>
</table>

ANNEX III

<table>
<tr><td>1. Consignor (full name and address)</td><td colspan="4">CERTIFICATE No 0000
Original
FORMER YUGOSLAV REPUBLIC OF MACEDONIA</td></tr>
<tr><td>2. Consignee (full name and address)</td><td colspan="4">CERTIFICATE OF AUTHENTICITY
for exports to the Community of bovine animals and meat of bovine animals
(application of Regulation (EC) No 2234/2003)</td></tr>
<tr><td colspan="5">NOTES
A. This certificate shall be prepared in one original and two copies.
B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in black ink and in block capitals.</td></tr>
<tr><td>3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods</td><td>4. Combined Nomenclature code</td><td>5. Gross weight (kg)</td><td>6. Net weight (kg)</td></tr>
<tr><td colspan="4">7. Net weight (kg) (in words)</td></tr>
<tr><td colspan="4">8. I, the undersigned ……., acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at ……., in accordance with the attached veterinary certificate of ……., originate in and come from the former Yugoslav Republic of Macedonia and correspond exactly to the definition contained in Annex III to the Interim Agreement set out in Decision 2001/330/EC (OJ L 124, 4.5.2001, p. 2).</td></tr>
<tr><td rowspan="2">9. Authorised issuing body</td><td colspan="3">Place: Date:</td></tr>
<tr><td>(stamp of issuing body)</td><td colspan="2">.....
(signature)</td></tr>
</table>

ANNEX IV

<table>
<tr><td>1. Consignor (full name and address)</td><td colspan="4">CERTIFICATE No 0000
Original
SERBIA AND MONTENEGRO (1)</td></tr>
<tr><td>2. Consignee (full name and address)</td><td colspan="4">CERTIFICATE OF AUTHENTICITY
for exports to the Community of bovine animals and meat of bovine animals
(application of Regulation (EC) No 2234/2003)</td></tr>
<tr><td colspan="5">NOTES
A. This certificate shall be prepared in one original and two copies.
B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in black ink and in block capitals.</td></tr>
<tr><td>3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods</td><td>4. Combined Nomenclature code</td><td>5. Gross weight (kg)</td><td>6. Net weight (kg)</td></tr>
<tr><td colspan="4">7. Net weight (kg) (in words)</td></tr>
<tr><td colspan="4">8. I, the undersigned ……., acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at ……., in accordance with the attached veterinary certificate of ……., originate in and come from Serbia and Montenegro and correspond exactly to the definition contained in Annex II to Council Regulation (EC) No 2007/2000 (OJ L 240, 23.9.2000, p. 1).</td></tr>
<tr><td rowspan="2">9. Authorised issuing body</td><td colspan="3">Place: Date:</td></tr>
<tr><td>(stamp of issuing body)</td><td colspan="2">.....
(signature)</td></tr>
<tr><td colspan="4">(1) Not including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999.</td></tr>
</table>

ANNEX V

<table>
<tr><td>1. Consignor (full name and address)</td><td colspan="4">CERTIFICATE No 0000
Original
International civil administration of the United Nations Mission in KOSOVO (UNMIK)</td></tr>
<tr><td>2. Consignee (full name and address)</td><td colspan="4">CERTIFICATE OF AUTHENTICITY
for exports to the Community of bovine animals and meat of bovine animals
(application of Regulation (EC) No 2234/2003)</td></tr>
<tr><td colspan="5">NOTES
A. This certificate shall be prepared in one original and two copies.
B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in black ink and in block capitals.</td></tr>
<tr><td>3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods</td><td>4. Combined Nomenclature code</td><td>5. Gross weight (kg)</td><td>6. Net weight (kg)</td></tr>
<tr><td colspan="4">7. Net weight (kg) (in words)</td></tr>
<tr><td colspan="4">8. I, the undersigned ……., acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at ……., in accordance with the attached veterinary certificate of ……., originate in and come from Serbia and Montenegro/Kosovo and correspond exactly to the definition contained in Annex II to Council Regulation (EC) No 2007/2000 (OJ L 240, 23.9.2000, p. 1).</td></tr>
<tr><td rowspan="2">9. Authorised issuing body</td><td colspan="3">Place: Date:</td></tr>
<tr><td>(stamp of issuing body)</td><td colspan="2">.....
(signature)</td></tr>
</table>

ANNEX VI

Issuing authorities:

— Republic of Croatia: 'Euroinspekt', Zagreb, Croatia.

— Bosnia-Herzegovina:

— Former Yugoslav Republic of Macedonia:

— Serbia and Montenegro ([1]): 'YU Institute for Meat Hygiene and Technology', Kacanskog 13, Belgrade, Yugoslavia.

— Serbia and Montenegro/Kosovo:

([1]) Not including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999.

COMMISSION REGULATION (EC) No 2235/2003

of 23 December 2003

laying down common rules for the application of Council Regulations (EC) No 1782/2003 and (EC) No 1868/94 as regards potato starch

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 [1], and in particular Article 145(c) thereof,

Having regard to Council Regulation (EC) No 1868/94 of 27 July 1994 establishing a quota system in relation to the production of potato starch [2], and in particular Article 8 thereof,

Whereas:

(1) Chapter 6 of Title IV of Regulation (EC) No 1782/2003 provides for an aid for farmers producing potatoes intended for the manufacture of potato starch. According to Article 93 of that Regulation, the amount of the payment applies to the quantity of potatoes needed for making one tonne of starch.

(2) Article 4a of Regulation (EC) No 1868/94 provides for a minimum price for potatoes intended for the manufacture of potato starch. This price shall be adjusted according to the starch content of the potatoes. Article 5 of that Regulation provides for a premium to be paid to undertakings producing potato starch for the quantity of potato starch produced.

(3) It is necessary to establish common rules for the determination of the weight of the potatoes and the payments of the aid for starch potato, the minimum price, and the premium in relation to the starch content of the potatoes.

(4) The measures provided for in this Regulation are in accordance with the opinions of the Management Committee for Direct Payments and of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of Articles 93 and 94 of Regulations (EC) No 1782/2003 and of Articles 4a and 5 of Regulation (EC) No 1868/94, the weight of the potatoes shall be determined in accordance with Annex I to this Regulation.

The payments of the aid for starch potato provided for in Article 93 of Regulation (EC) No 1782/2003, the minimum price and the premium in relation to the starch content of the potatoes provided for in Articles 4a and 5 of Regulation (EC) No 1868/94 shall be as set out in Annex II to this Regulation.

Article 2

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

It shall apply from the marketing year 2004/05.

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

Done at Brussels, 23 December 2003.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 270, 21.10.2003, p. 1.

[2] OJ L 197, 30.7.1994, p. 4. Regulation as last amended by Regulation (EC) No 1782/2003.

ANNEX I

The weight of the potatoes shall be determined in accordance with one of the following methods:

Method A

The net weight of the potatoes is determined by taking samples. Samples are taken from several parts of the means of transport used and at three different levels, namely the upper, middle and lower levels.

The residual earth is discharged before the means of transport is weighed empty.

Samples taken for weight checking should weigh not less than 20 kilograms. The tubers are washed, cleaned of any extraneous matter and reweighed.

The recorded weight is reduced by 2 % to allow for the quantity of water absorbed during washing. The result constitutes the total reduction to be applied to 1 000 kilograms of potatoes.

Method B

The potatoes constituting a batch from a single grower are collected in silos.

The potatoes are washed, the extraneous matter is removed and the total actual weight of the potatoes in the silos is determined, allowing 2 % for absorbed water.

Method C

1. This method of determining the actual weight of the potatoes shall apply where batches of potatoes from different growers are collected in the same silo, provided that the growers have first agreed to the use of this method.

   Before the total actual weight of the batches is determined, the net weight of each batch must be determined by means of Method A.

2. The potatoes collected in the silo are then washed, the extraneous matter is removed and their total actual weight is determined, allowing 2 % for absorbed water.

3. If the total weight of the batches of washed potatoes is different from the sum of the weights obtained by means of Method A, the following correction is applied: the total weight mentioned at point 2 above is multiplied by the net weight obtained by means of Method A for each batch in turn.

   Each result is divided by the total net weight of the batches as determined by means of Method A.

ANNEX II

Underwater weight of 5 050 g of potatoes (grams)	Starch content of potatoes (%)	Quantity of potatoes needed for the manufacture of 1 000 kg of starch (kg)	Minimum price to be paid to the potato producer per 1 000 kg of potatoes (EUR)	Premium to be paid to the starch producer per 1 000 kg of potatoes (EUR)	Payment to be paid to the producer per 1 000 kg of potatoes (EUR)	
					Regulation (EC) No 1782/2003 Article 93	
					first indent	second indent
(1)	(2)	(3)	(4)	(5)	(6)	(7)
352	13,0	6 533	27,29	3,406	16,92	10,15
353	13,1	6 509	27,39	3,418	16,98	10,19
354	13,1	6 486	27,49	3,430	17,04	10,23
355	13,2	6 463	27,59	3,443	17,10	10,26
356	13,2	6 439	27,69	3,456	17,17	10,30
357	13,3	6 416	27,79	3,468	17,23	10,34
358	13,3	6 393	27,89	3,480	17,29	10,37
359	13,4	6 369	28,00	3,493	17,36	10,41
360	13,4	6 346	28,10	3,506	17,42	10,45
361	13,5	6 322	28,20	3,519	17,48	10,49
362	13,5	6 299	28,31	3,532	17,55	10,53
363	13,6	6 276	28,41	3,545	17,61	10,57
364	13,6	6 252	28,52	3,559	17,68	10,61
365	13,7	6 229	28,63	3,572	17,75	10,65
366	13,7	6 206	28,73	3,585	17,81	10,69
367	13,8	6 182	28,84	3,599	17,88	10,73
368	13,8	6 159	28,95	3,613	17,95	10,77
369	13,9	6 136	29,06	3,626	18,01	10,81
370	13,9	6 112	29,17	3,640	18,09	10,85
371	14,0	6 089	29,28	3,654	18,15	10,89
372	14,0	6 065	29,40	3,669	18,23	10,93
373	14,1	6 047	29,49	3,680	18,28	10,97
374	14,1	6 028	29,58	3,691	18,34	11,00
375	14,2	6 005	29,69	3,705	18,41	11,04
376	14,2	5 981	29,81	3,720	18,48	11,09
377	14,3	5 963	29,90	3,731	18,54	11,12
378	14,3	5 944	30,00	3,743	18,60	11,16
379	14,4	5 921	30,11	3,758	18,67	11,20
380	14,4	5 897	30,24	3,773	18,75	11,25

Underwater weight of 5 050 g of potatoes (grams)	Starch content of potatoes (%)	Quantity of potatoes needed for the manufacture of 1 000 kg of starch (kg)	Minimum price to be paid to the potato producer per 1 000 kg of potatoes (EUR)	Premium to be paid to the starch producer per 1 000 kg of potatoes (EUR)	Payment to be paid to the producer per 1 000 kg of potatoes (EUR)	
					Regulation (EC) No 1782/2003 Article 93	
					first indent	second indent
(1)	(2)	(3)	(4)	(5)	(6)	(7)
381	14,5	5 879	30,33	3,785	18,80	11,28
382	14,5	5 860	30,43	3,797	18,86	11,32
383	14,6	5 841	30,53	3,809	18,92	11,35
384	14,6	5 822	30,63	3,822	18,99	11,39
385	14,7	5 799	30,75	3,837	19,06	11,44
386	14,7	5 776	30,87	3,852	19,14	11,48
387	14,8	5 757	30,97	3,865	19,20	11,52
388	14,8	5 738	31,08	3,878	19,26	11,56
389	14,9	5 720	31,17	3,890	19,33	11,59
390	14,9	5 701	31,28	3,903	19,39	11,63
391	15,0	5 682	31,38	3,916	19,45	11,67
392	15,0	5 664	31,48	3,928	19,52	11,71
393	15,1	5 626	31,69	3,955	19,65	11,79
394	15,2	5 607	31,80	3,968	19,71	11,83
395	15,2	5 589	31,90	3,981	19,78	11,87
396	15,3	5 570	32,01	3,995	19,85	11,91
397	15,3	5 551	32,12	4,008	19,91	11,95
398	15,4	5 542	32,17	4,015	19,95	11,97
399	15,4	5 533	32,23	4,021	19,98	11,99
400	15,4	5 523	32,28	4,029	20,01	12,01
401	15,5	5 486	32,50	4,056	20,15	12,09
402	15,6	5 467	32,62	4,070	20,22	12,13
403	15,6	5 449	32,72	4,083	20,29	12,17
404	15,7	5 430	32,84	4,098	20,36	12,21
405	15,7	5 411	32,95	4,112	20,43	12,26
406	15,8	5 393	33,06	4,126	20,50	12,30
407	15,8	5 374	33,18	4,140	20,57	12,34
408	15,9	5 364	33,24	4,148	20,61	12,36
409	15,9	5 355	33,30	4,155	20,64	12,38
410	15,9	5 346	33,35	4,162	20,68	12,41
411	16,0	5 327	33,47	4,177	20,75	12,45

Underwater weight of 5 050 g of potatoes (grams)	Starch content of potatoes (%)	Quantity of potatoes needed for the manufacture of 1 000 kg of starch (kg)	Minimum price to be paid to the potato producer per 1 000 kg of potatoes (EUR)	Premium to be paid to the starch producer per 1 000 kg of potatoes (EUR)	Payment to be paid to the producer per 1 000 kg of potatoes (EUR)	
					Regulation (EC) No 1782/2003 Article 93	
					first indent	second indent
(1)	(2)	(3)	(4)	(5)	(6)	(7)
412	16,0	5 308	33,59	4,192	20,83	12,49
413	16,1	5 280	33,77	4,214	20,94	12,56
414	16,2	5 266	33,86	4,225	20,99	12,59
415	16,2	5 252	33,95	4,236	21,05	12,63
416	16,3	5 234	34,07	4,251	21,12	12,67
417	16,3	5 215	34,19	4,267	21,20	12,72
418	16,4	5 206	34,25	4,274	21,23	12,74
419	16,4	5 196	34,32	4,282	21,27	12,76
420	16,4	5 187	34,38	4,290	21,31	12,79
421	16,5	5 150	34,62	4,320	21,46	12,88
422	16,6	5 136	34,72	4,332	21,52	12,91
423	16,6	5 121	34,82	4,345	21,59	12,95
424	16,7	5 107	34,91	4,357	21,64	12,99
425	16,7	5 093	35,01	4,369	21,70	13,02
426	16,8	5 075	35,13	4,384	21,78	13,07
427	16,8	5 056	35,27	4,401	21,86	13,12
428	16,9	5 042	35,36	4,413	21,92	13,15
429	16,9	5 028	35,46	4,425	21,98	13,19
430	17,0	5 000	35,66	4,450	22,11	13,26
431	17,1	4 986	35,76	4,462	22,17	13,30
432	17,1	4 972	35,86	4,475	22,23	13,34
433	17,2	4 963	35,93	4,483	22,27	13,36
434	17,2	4 953	36,00	4,492	22,32	13,39
435	17,2	4 944	36,07	4,500	22,36	13,41
436	17,3	4 930	36,17	4,513	22,42	13,45
437	17,3	4 916	36,27	4,526	22,49	13,49
438	17,4	4 902	36,37	4,539	22,55	13,53
439	17,4	4 888	36,48	4,552	22,61	13,57
440	17,5	4 874	36,58	4,565	22,68	13,61
441	17,5	4 860	36,69	4,578	22,74	13,65
442	17,6	4 846	36,80	4,591	22,81	13,69

Underwater weight of 5 050 g of potatoes (grams)	Starch content of potatoes (%)	Quantity of potatoes needed for the manufacture of 1 000 kg of starch (kg)	Minimum price to be paid to the potato producer per 1 000 kg of potatoes (EUR)	Premium to be paid to the starch producer per 1 000 kg of potatoes (EUR)	Payment to be paid to the producer per 1 000 kg of potatoes (EUR)	
					Regulation (EC) No 1782/2003 Article 93	
					first indent	second indent
(1)	(2)	(3)	(4)	(5)	(6)	(7)
443	17,6	4 832	36,90	4,605	22,88	13,73
444	17,7	4 818	37,01	4,618	22,94	13,77
445	17,7	4 804	37,12	4,632	23,01	13,81
446	17,8	4 790	37,23	4,645	23,08	13,85
447	17,8	4 776	37,33	4,659	23,14	13,89
448	17,9	4 762	37,44	4,672	23,21	13,93
449	17,9	4 748	37,55	4,686	23,28	13,97
450	18,0	4 720	37,78	4,714	23,42	14,05
451	18,1	4 706	37,89	4,728	23,49	14,09
452	18,1	4 692	38,00	4,742	23,56	14,13
453	18,2	4 685	38,06	4,749	23,59	14,16
454	18,2	4 679	38,11	4,755	23,62	14,17
455	18,2	4 673	38,16	4,761	23,66	14,19
456	18,3	4 645	38,39	4,790	23,80	14,28
457	18,4	4 631	38,50	4,805	23,87	14,32
458	18,4	4 617	38,62	4,819	23,94	14,36
459	18,5	4 607	38,70	4,830	23,99	14,40
460	18,5	4 598	38,78	4,839	24,04	14,42
461	18,6	4 584	38,90	4,854	24,11	14,47
462	18,6	4 570	39,02	4,869	24,19	14,51
463	18,7	4 561	39,09	4,878	24,24	14,54
464	18,7	4 551	39,18	4,889	24,29	14,57
465	18,7	4 542	39,26	4,899	24,34	14,60
466	18,8	4 523	39,42	4,919	24,44	14,66
467	18,9	4 509	39,55	4,935	24,52	14,71
468	18,9	4 495	39,67	4,950	24,59	14,75
469	19,0	4 481	39,79	4,965	24,67	14,80
470	19,0	4 467	39,92	4,981	24,75	14,85
471	19,1	4 458	40,00	4,991	24,80	14,88
472	19,1	4 449	40,08	5,001	24,85	14,91
473	19,2	4 437	40,19	5,015	24,91	14,95

Underwater weight of 5 050 g of potatoes (grams)	Starch content of potatoes (%)	Quantity of potatoes needed for the manufacture of 1 000 kg of starch (kg)	Minimum price to be paid to the potato producer per 1 000 kg of potatoes (EUR)	Premium to be paid to the starch producer per 1 000 kg of potatoes (EUR)	Payment to be paid to the producer per 1 000 kg of potatoes (EUR)	
					Regulation (EC) No 1782/2003 Article 93	
					first indent	second indent
(1)	(2)	(3)	(4)	(5)	(6)	(7)
474	19,2	4 425	40,30	5,028	24,98	14,99
475	19,3	4 414	40,40	5,041	25,04	15,02
476	19,3	4 402	40,51	5,055	25,11	15,07
477	19,4	4 390	40,62	5,068	25,18	15,11
478	19,4	4 379	40,72	5,081	25,24	15,15
479	19,5	4 367	40,83	5,095	25,31	15,19
480	19,5	4 355	40,94	5,109	25,38	15,23
481	19,6	4 343	41,06	5,123	25,45	15,27
481,6	19,6	4 337	41,11	5,130	25,49	15,29
482	19,7	4 335	41,13	5,133	25,50	15,30
483	19,7	4 332	41,16	5,136	25,52	15,31
483,2	19,7	4 332	41,16	5,136	25,52	15,31
484	19,8	4 325	41,23	5,145	25,56	15,33
484,8	19,8	4 318	41,29	5,153	25,60	15,36
485	19,9	4 317	41,30	5,154	25,61	15,36
486	19,9	4 311	41,36	5,161	25,64	15,38
486,4	19,9	4 309	41,38	5,164	25,65	15,39
487	20,0	4 305	41,42	5,168	25,68	15,41
488	20,0	4 299	41,48	5,176	25,71	15,43
489	20,1	4 294	41,53	5,182	25,74	15,44
490	20,1	4 290	41,56	5,186	25,77	15,46
491	20,2	4 287	41,59	5,190	25,78	15,47
492	20,2	4 285	41,61	5,193	25,80	15,48
493	20,3	4 283	41,63	5,195	25,81	15,48
494	20,3	4 280	41,66	5,199	25,83	15,50
495	20,4	4 278	41,68	5,201	25,84	15,50
496	20,4	4 276	41,70	5,203	25,85	15,51
497	20,5	4 273	41,73	5,207	25,87	15,52
498	20,5	4 271	41,75	5,210	25,88	15,53
499	20,6	4 266	41,80	5,216	25,91	15,55
500	20,6	4 262	41,84	5,221	25,94	15,56

Underwater weight of 5 050 g of potatoes (grams)	Starch content of potatoes (%)	Quantity of potatoes needed for the manufacture of 1 000 kg of starch (kg)	Minimum price to be paid to the potato producer per 1 000 kg of potatoes (EUR)	Premium to be paid to the starch producer per 1 000 kg of potatoes (EUR)	Payment to be paid to the producer per 1 000 kg of potatoes (EUR)	
					Regulation (EC) No 1782/2003 Article 93	
					first indent	second indent
(1)	(2)	(3)	(4)	(5)	(6)	(7)
501	20,7	4 259	41,87	5,224	25,95	15,57
502	20,7	4 257	41,89	5,227	25,97	15,58
503	20,8	4 255	41,91	5,229	25,98	15,59
504	20,8	4 252	41,94	5,233	26,00	15,60
505	20,9	4 248	41,98	5,238	26,02	15,61
506	20,9	4 243	42,02	5,244	26,05	15,63
507	21,0	4 238	42,07	5,250	26,08	15,65
508	21,0	4 234	42,11	5,255	26,11	15,66
509	21,1	4 229	42,16	5,261	26,14	15,68
509,9	21,1	4 224	42,21	5,268	26,17	15,70
510	21,1	4 224	42,21	5,268	26,17	15,70
511	21,2	4 219	42,26	5,274	26,20	15,72
511,8	21,2	4 215	42,30	5,279	26,23	15,73
512	21,3	4 214	42,31	5,280	26,23	15,74
513	21,3	4 209	42,36	5,286	26,26	15,76
513,7	21,3	4 206	42,39	5,290	26,28	15,77
514	21,4	4 204	42,41	5,293	26,29	15,78
515	21,4	4 199	42,46	5,299	26,33	15,79
515,6	21,4	4 196	42,50	5,303	26,34	15,81
516	21,5	4 194	42,52	5,305	26,36	15,81
517	21,5	4 189	42,57	5,312	26,39	15,83
517,5	21,5	4 187	42,59	5,314	26,40	15,84
518	21,6	4 184	42,62	5,318	26,42	15,85
519	21,6	4 180	42,66	5,323	26,44	15,87
519,4	21,6	4 178	42,68	5,326	26,46	15,87
520	21,7	4 175	42,71	5,329	26,48	15,89
521	21,7	4 170	42,76	5,336	26,51	15,90
521,3	21,7	4 168	42,78	5,338	26,52	15,91
522	21,8	4 165	42,81	5,342	26,54	15,92
523	21,8	4 160	42,86	5,349	26,57	15,94
523,2	21,8	4 159	42,87	5,350	26,58	15,95

Underwater weight of 5 050 g of potatoes (grams)	Starch content of potatoes (%)	Quantity of potatoes needed for the manufacture of 1 000 kg of starch (kg)	Minimum price to be paid to the potato producer per 1 000 kg of potatoes (EUR)	Premium to be paid to the starch producer per 1 000 kg of potatoes (EUR)	Payment to be paid to the producer per 1 000 kg of potatoes (EUR)	
					Regulation (EC) No 1782/2003 Article 93	
					first indent	second indent
(1)	(2)	(3)	(4)	(5)	(6)	(7)
524	21,9	4 155	42,91	5,355	26,60	15,96
525	21,9	4 150	42,97	5,361	26,64	15,98
525,1	21,9	4 150	42,97	5,361	26,64	15,98
526	22,0	4 145	43,02	5,368	26,67	16,00
527	22,0	4 140	43,07	5,374	26,70	16,02
528	22,1	4 135	43,12	5,381	26,73	16,04
528,8	22,1	4 131	43,16	5,386	26,76	16,05
529	22,2	4 130	43,17	5,387	26,77	16,06
530	22,2	4 125	43,23	5,394	26,80	16,08
530,6	22,2	4 122	43,26	5,398	26,82	16,09
531	22,3	4 119	43,29	5,402	26,84	16,10
532	22,3	4 114	43,34	5,408	26,87	16,12
532,4	22,3	4 112	43,36	5,411	26,88	16,13
533	22,4	4 111	43,37	5,412	26,89	16,13
534	22,4	4 108	43,41	5,416	26,91	16,14
534,2	22,4	4 108	43,41	5,416	26,91	16,14
535	22,5	4 103	43,46	5,423	26,94	16,16
536	22,5	4 098	43,51	5,429	26,97	16,18
537	22,6	4 093	43,56	5,436	27,01	16,20
537,8	22,6	4 089	43,61	5,441	27,03	16,22
538	22,7	4 088	43,62	5,443	27,04	16,22
539	22,7	4 083	43,67	5,449	27,07	16,24
539,6	22,7	4 080	43,70	5,453	27,09	16,25
540	22,8	4 078	43,72	5,456	27,11	16,26
541	22,8	4 076	43,75	5,459	27,12	16,27
541,4	22,8	4 075	43,76	5,460	27,13	16,27
542	22,9	4 072	43,79	5,464	27,15	16,29
543	22,9	4 066	43,85	5,472	27,19	16,31
543,2	22,9	4 066	43,85	5,472	27,19	16,31
544	23,0	4 061	43,91	5,479	27,22	16,33
545	23,0	4 056	43,96	5,486	27,25	16,35
and more						

COMMISSION REGULATION (EC) No 2236/2003

of 23 December 2003

laying down detailed rules for the application of Council Regulation (EC) No 1868/94 establishing a quota system in relation to the production of potato starch

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1868/94 of 27 July 1994 establishing a quota system in relation to the production of potato starch [1], and in particular Article 8 thereof,

Whereas:

(1) Commission Regulation (EC) No 97/95 [2] laid down rules concerning the application of Regulation (EC) No 1868/94. By reason of the amendments of Regulation (EC) No 1868/94 by the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and by the Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, Regulation (EC) No 97/95 should be adapted in order to take into account those amendments. For the sake of clarity and legal certainty, it is therefore necessary to repeal Regulation (EC) No 97/95 and to replace it by a new text.

(2) In order to benefit from the Community aid under the system of quotas laid down by Regulation (EC) No 1868/94, undertakings producing potato starch should conclude cultivation contracts with potato producers.

(3) It is necessary to specify what matters should be covered by a cultivation contract between an undertaking producing potato starch and a producer so as to prevent the conclusion of contracts in excess of the undertaking's subquota. Such undertakings should be prohibited from accepting delivery of potatoes not covered by a cultivation contract, as this would put at risk the effectiveness of the quota system and the requirement that the minimum price set out in Article 4a of Regulation (EC) No 1868/94 be paid for all potatoes intended for starch production. Nevertheless, it should be possible, where climatic reasons lead to production in the areas covered by the cultivation contract of a larger quantity of potatoes or of potatoes with a higher starch content than was originally foreseen, for an undertaking producing potato starch to accept such potatoes provided that it pays the minimum price.

(4) Potatoes having a starch content of less than 13 % cannot be considered potatoes intended for the manufacture of potato starch. Potatoes with a starch content of less than 13 % should not be accepted by starch-producing undertakings. The Commission should, where climatic reasons lead to a lower starch content, and at the request of a Member State, be able to authorise the acceptance of potatoes having a starch content lower than 13 % under certain conditions.

(5) It is necessary to define acceptable methods for determining the underwater weight of potatoes and to provide a table showing the corresponding starch content and aid payable.

(6) Inspection measures should be introduced to ensure that only starch produced in accordance with the provisions of this Regulation gives rise to payment of the premium. In order to protect producers of potatoes intended for the production of starch, it is essential for the minimum price set out in Article 4(a) of Regulation (EC) No 1868/94 to be paid for all potatoes. It is therefore necessary to provide for sanctions where the minimum price has not been paid, or where starch-producing undertakings have accepted potatoes not covered by a cultivation contract.

(7) Rules are necessary to ensure that potato starch produced in excess of a starch-producing undertaking's subquota is exported without export refund, as is required by Article 6(1) of Regulation (EC) No 1868/94. Sanctions should be applied in the event of any breach.

(8) It is necessary to specify what will happen to the subquota of starch-producing undertakings which merge, change ownership or cease trading.

(9) It is necessary to enable the Member States and the Commission to control the operation of the quota system. The information to be communicated by undertakings producing potato starch to the Member State, and by the Member State to the Commission, should be specified.

[1] OJ L 197, 30.7.1994, p. 4. Regulation as last amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).

[2] OJ L 16, 24.1.1995, p. 3. Regulation as last amended by Regulation (EC) No 1350/2003 (OJ L 192, 31.7.2003, p. 7).

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

DEFINITIONS — QUOTA SYSTEM

Article 1

For the purposes of this Regulation, the following definitions shall apply:

(a) quota: the quota laid down for each Member State by Article 2(1) and (3) of Regulation (EC) No 1868/94;

(b) subquota: that part of the quota allocated by the Member State to a starch-producing undertaking;

(c) starch-producing undertaking: any natural or legal person established on the territory of the Member State concerned which receives the subquota and premium referred to in Article 5 of Regulation (EC) No 1868/94;

(d) producer: any natural or legal person or group of such persons, which delivers to a starch-producing undertaking potatoes produced by itself or its members, in its own name and on its own behalf under a cultivation contract concluded by itself or in its own name;

(e) cultivation contract: any contract concluded between a producer or group of producers and the starch-producing undertaking;

(f) potatoes: potatoes intended for the manufacture of potato starch as referred to in Article 93 of Regulation (EC) No 1782/2003 and having a starch content of at least 13 %;

(g) unprocessed starch: starch produced under CN code 1108 13 00 which has not undergone any processing;

(h) merger of starch-producing undertakings: the consolidation into a single undertaking of two or more starch-producing undertakings;

(i) transfer of ownership of a starch-producing undertaking: the assignment or absorption of the assets of an undertaking holding a subquota, to one or more starch-producing undertakings;

(j) transfer of ownership of a starch factory: the assignment of ownership of a technical unit, including all the plant required to manufacture starch, to one or more undertakings, resulting in the partial or total absorption of the outpost of the undertaking making the assignment;

(k) lease of a factory: the leasehold contract of a technical unit including all the plant required for the manufacture of starch, with a view to its operation, concluded for a period of at least three consecutive marketing years with an undertaking which is established within the same Member State as the factory in question, if, after the lease takes effect, the undertaking which rents the factory can be considered a single starch-producing undertaking for its entire production;

(l) aid for starch potato: aid established for farmers producing potatoes intended for the manufacturing of potato starch referred to in Article 93 of Regulation (EC) No 1782/2003.

Article 2

Where Article 6(2) of Regulation (EC) No 1868/94 applies, the subquotas allocated shall be adjusted accordingly at the beginning of the marketing year following that in which the quota was exceeded.

CHAPTER II

PRICE AND PAYMENT SYSTEM

Article 3

1. A cultivation contract shall be concluded for each marketing year. Each contract shall have an identification number and include at least the following information:

(a) the name and address of the producer or group of producers;

(b) the name and address of the starch-producing undertaking;

(c) the areas cultivated, expressed in hectares with two decimals and identified in conformity with Commission Regulation (EC) No 2419/2001 [1] on the integrated administration and control system (IACS);

(d) the foreseen quantity of potatoes in tonnes to be harvested there and delivered to the starch-producing undertaking;

(e) the foreseen average starch content of the potatoes, based on the average starch content of the potatoes delivered by the producer to the starch-producing undertaking over the last three marketing years or, if such information is not available, on the average content for the area of supply;

(f) a commitment by the starch-producing undertaking to pay the producer the minimum price referred to in Article 4a of Regulation (EC) No 1868/94.

2. Each starch-producing undertaking shall forward to the competent authority before the beginning of the marketing year a summary of the contracts, including for each contract, the identification number, the name of the producer, the areas cultivated, and the tonnage contracted, expressed in terms of starch equivalent, before a date to be fixed by the Member State before the beginning of the marketing year, in order to ensure the necessary controls.

3. The total in starch equivalent of the quantities listed in the cultivation contracts shall not exceed the subquota established for that starch-producing undertaking.

[1] OJ L 327, 12.12.2001, p. 11.

4. Where the quantity actually produced under the cultivation contract in starch equivalent exceeds the quantity stated in the contract, that quantity may be delivered, if the starch-producing undertaking so chooses, provided the minimum price referred to in Article 4a of Regulation (EC) No 1868/94 is paid for it.

5. A starch-producing undertaking may not take delivery of potatoes not covered by a cultivation contract.

Article 4

1. Delivery of potatoes shall take place either at the starch-producing undertakings themselves or at their delivery points.

2. The determination the weight of the potatoes and the starch content, in conformity with Articles 5 and 7, shall be carried out at the time of delivery and under the authority of an inspector approved by the Member State.

Article 5

1. Where so required for the purposes of one of the methods referred to in Annex I of Regulation (EC) No 2235/2003 [1], the gross weight of the potatoes shall be determined for each load at the time of delivery by comparative weighing of the means of transport used, loaded and empty.

2. The net weight of the potatoes shall be determined by one of the methods described in Annex I of Regulation (EC) No 2235/2003.

3. Accepted consignments must have a starch content of not less than 13 %.

However, starch-producing undertakings may accept consignments of potatoes with a starch content below 13 %, provided that the quantity of starch that can be manufactured from these potatoes does not exceed 1 % of the subquota. The minimum price to be paid in this case shall be that valid for a starch content of 13 %.

Article 6

The starch content of the potatoes shall be determined on the basis of an underwater weight valid for 5 050 grams of potatoes supplied.

The water used shall be clean and without additives and its temperature shall be less than 18 °C.

Article 7

1. The premium shall be granted to starch-producing undertakings in respect of starch produced from potatoes of sound and fair marketable quality, on the basis of the quantity of potatoes used and their starch content, at the rates laid down in Annex II of Regulation (EC) No 2235/2003 up to the quantity of starch for which they hold a subquota. No premium shall be granted for starch produced from potatoes that are not of sound and fair marketable quality nor for starch produced from potatoes whose starch content is below 13 %, except where the second subparagraph of Article 5(3) applies.

Where the starch content of the potatoes is calculated by Reimann's or Parrow's scale and corresponds to a figure appearing on two or three lines in the second column in Annex II of Regulation (EC) No 2235/2003, the rates applicable shall be those for the second or third line.

2. Where the batches delivered contain 25 % or more of potatoes which can pass through a screen with a square mesh of 28 mm (hereinafter described as 'tailings'), the net weight used for determining the minimum price to be paid by the starch manufacturer shall be reduced as follows:

Percentage of tailings	Percentage reduction
25 to 30 %	10 %
31 to 40 %	15 %
41 to 50 %	20 %

If the batches contain more than 50 % of tailings, they shall be dealt with by mutual agreement and no premium shall be paid thereon.

The percentage of tailings shall be determined at the same time as the net weight.

3. Observance of the limits of the subquota by the starch-producing undertakings shall be determined on the basis of the quantity and starch content of the potatoes used, in accordance with the rates laid down in Annex II of Regulation (EC) No 2235/2003.

Article 8

1. A receipt form shall be drawn up under the joint responsibility of the starch-producing undertaking, the approved inspector and the supplier. The starch-producing undertaking shall deliver a copy to the producer and retain the original so that it may, if necessary, be submitted to the agency responsible for the monitoring of premiums.

2. The receipt form shall contain at least the following information where this appears from operations carried out pursuant to Articles 4 to 7:

(a) date of delivery;

(b) delivery number;

(c) number of the cultivation contract;

(d) name and address of the potato producer;

(e) weight of the means of transport on arrival at the starch factory or delivery point;

(f) weight of the means of transport after unloading and removal of residual earth;

(g) gross weight of the delivery;

(h) reduction for extraneous matter and weight of water absorbed during washing, expressed as a percentage and applied to the gross weight of the delivery;

(i) reduction, expressed in weight, applied to the gross weight of the delivery as a result of extraneous matter;

[1] See page 36 of this Official Journal.

(j) percentage of tailings;

(k) total net weight of the delivery (gross weight less the reduction, including the correction for tailings);

(l) starch content, expressed as a percentage or underwater weight;

(m) unit price to be paid.

Article 9

For each producer, the starch-producing undertaking shall draw up a summary payment slip containing the following particulars:

(a) business name of the starch-producing undertaking;

(b) name and address of the potato producer;

(c) cultivation contract number;

(d) date and number of the receipt forms;

(e) net weight of each delivery after any reductions as provided for in Article 8(2);

(f) unit price per delivery;

(g) total amount due to the grower;

(h) sums paid to the potato producer and date of payments;

(i) signature and stamp of the starch manufacturer.

CHAPTER III

PAYMENTS — PENALTIES

Article 10

1. The payment of the premium referred to in Article 5 of Regulation (EC) No 1868/94 shall be subject to the condition that the starch-producing undertaking provides proof that following requirements have been fulfilled:

— the starch in question has been produced during the marketing year concerned,

— the price which has been paid to the producers is not less than that referred to in Article 4a of Regulation (EC) No 1868/94 at the delivered-to-factory stage for the whole quantity of potatoes produced in the Community and used for the production of starch,

— the starch in question was produced using potatoes covered by the cultivation contracts referred to in Article 3.

2. The proof referred to in paragraph 1 shall be furnished by submission of the summary payment slip provided for in Article 9, accompanied either by certification of payment by the producer or by a voucher issued by the financial undertaking that made the payment on the order of the starch manufacturer, certifying that such payment has been made.

3. The premium for starch producing undertakings shall be paid by the Member State on whose territory the potato starch was manufactured within four months following the date on which the proof referred to in paragraph 1 was furnished.

Article 11

1. The Member States shall introduce inspection arrangements for on-the-spot verification of the operations conferring entitlement to the premium and compliance with the subquota laid down for each starch-producing undertaking. In order to carry out such checks, inspectors shall have access to the stock records and accounts of undertakings and to manufacturing and storage premises.

During each processing period, inspection shall cover the entire processing of at least 10 % of the potatoes supplied to the starch-producing undertaking.

2. Member States shall inform each starch-producing undertaking, as appropriate, of the amounts of starch by which it has exceeded its subquota.

3. Should the competent body establish that the requirement specified in the second indent of Article 10(1) has not been respected by the starch-producing undertaking, that undertaking shall, in the absence of *force majeure*, lose entitlement to premiums, in whole or in part, as follows:

— if the requirement has not been observed in respect of a quantity of starch less than 20 % of the total quantity of starch produced by the undertaking, the premium granted shall be reduced by five times the percentage in question,

— if the percentage in question is 20 or more, no premium shall be granted.

4. If contravention of the prohibition contained in Article 3(5) is established, the premium paid for the subquota shall be reduced as follows:

— if the check shows a quantity of starch equivalent accepted by the undertaking of less than 10 % of its subquota, the total premiums to be paid to the undertaking for the marketing year in question shall be reduced by 10 times the percentage recorded,

— if the quantity not covered by production contracts is greater than the amount specified in the first indent, no premium shall be granted for the marketing year in question; furthermore, no premium shall be paid to the undertaking for the following marketing year.

5. If, contrary to Article 5(3), the starch that can be manufactured from consignments accepted with a starch content below 13 %:

— exceeds 1 % of the processing undertaking's subquota, no premium shall be granted for the excess quantity; furthermore, the premium granted for the subquota shall be reduced by ten times the excess percentage recorded;

— exceeds 11 % of the processing undertaking's subquota; no premium shall be granted for the marketing year in question; furthermore, the processing undertaking shall be ineligible for the premium for the following marketing year.

6. Inspections undertaken pursuant to this Article shall be without prejudice to any further verification by the competent authorities.

Article 12

1. The export operation referred to in Article 6 of Regulation (EC) No 1868/94 shall be regarded as having taken place when:

(a) the competent body of the Member State of production, irrespective of the Member State from which the starch was exported, has received the proof referred to in Article 13(2);

(b) the Member State of exportation has accepted the relevant export declaration before 1 January following the end of the marketing year during which the starch was produced;

(c) the starch in question has left the customs territory of the Community no later than 60 days after 1 January as specified in point (b);

(d) the product has been exported without refund.

Except in cases of *force majeure*, if all the conditions set out in the first subparagraph are not complied with, any quantity of starch which exceeds the subquota shall be regarded as having been disposed of on the internal market.

2. In cases of *force majeure*, the competent body of the Member State on whose territory the starch was produced shall adopt measures appropriate to the circumstances cited by the party concerned.

Where the starch is exported from the territory of a Member State other than the one where it was produced, these measures shall be taken after receiving the views of the competent authorities of that Member State.

3. For the purposes of this Regulation, Article 36 of Commission Regulation (EC) No 800/1999 [1] may be not invoked.

Article 13

1. By way of derogation from Article 12 of Commission Regulation (EC) No 1342/2003 [2] the security for export licences shall be EUR 23 per tonne.

2. Proof that the starch-producing undertaking in question has complied with the conditions laid down in the first subparagraph of Article 12(1) shall be furnished to the competent body of the Member State on whose territory the starch was produced, before 1 April of the calendar year following the end of the marketing year during which it was produced.

3. Such proof shall be furnished by the production of:

(a) an export licence issued to the starch-producing undertaking in question by the competent authority of the Member State referred to in paragraph 2 bearing one of the following statements, by way of derogation from Article 3 of Regulation (EEC) No 1518/95 [3]:

— «Para exportación sin restitución, de conformidad con el artículo 6 del Reglamento (CE) nº 1868/94»

— »Skal eksporteres uden restitution, jf. artikel 6 i forordning (EF) nr. 1868/94«

— „Ausfuhr ohne Erstattung gemäß Artikel 6 der Verordnung (EG) Nr. 1868/94“

— «Προς εξαγωγή χωρίς επιστροφή σύμφωνα με το άρθρο 6 του κανονισμού (ΕΚ) αριθ. 1868/94»

— 'For export without refund under Article 6 of Regulation (EC) No 1868/94'

— «À exporter sans restitution conformément à l'article 6 du règlement (CE) nº 1868/94»

— «Da esportare senza restituzione a norma dell'articolo 6 del regolamento (CE) n. 1868/94»

— „Overeenkomstig artikel 6 van Verordening (EG) nr. 1868/94 zonder restitutie uit te voeren”

— «A exportar sem restituição em conformidade com o artigo 6.º do Regulamento (CE) n.º 1868/94»

— ”Viedään tuetta asetuksen (EY) N:o 1868/94 6 artiklan mukaisesti”

— ”För export utan exportbidrag enligt artikel 6 i förordning (EG) nr 1868/94”

(b) the documents referred to in Articles 32 and 33 of Commission Regulation (EC) No 1291/2000 [4] required for the release of the security;

(c) a statement by the starch-producing undertaking certifying that it produced the starch.

4. When the unprocessed starch produced by a starch-producing undertaking is stored for export in a silo, warehouse or bin outside the factory of the manufacturer in the Member State of production, or in any other Member State, where other unprocessed starch produced by other undertakings or by the same one is also stored so that the products so stored cannot be physically distinguished, all such products shall be placed under administrative supervision offering guarantees equivalent to those of the customs services until the export declaration referred to in Article 12(1)(b) has been accepted, and shall be placed under customs supervision as soon as the declaration is accepted.

In the circumstances referred to in the first subparagraph when withdrawal from stock occurs before acceptance of the export declaration referred to in Article 12(1)(b), a proof shall be provided by the competent authorities of the Member State where storage took place.

When withdrawal from stock occurs after acceptance of the export declaration referred to in Article 12(1)(b), a proof within the meaning of Article 33(2)(a) of Regulation (EC) No 1291/2000 shall be provided by the customs authorities of the Member State where storage took place.

[1] OJ L 102, 17.4.1999, p. 11.
[2] OJ L 189, 29.7.2003, p. 12.
[3] OJ L 147, 30.6.1995, p. 55.
[4] OJ L 152, 24.6.2000, p. 1.

The proof referred to in the second and third subparagraphs shall testify to the withdrawal from stock of the product in question or the corresponding substitute quantity within the meaning of the first subparagraph.

Article 14

Where unprocessed starch produced by a starch-producing undertaking is stored loose under the customs warehousing or free-zone procedure for the advance refund as defined in Council Regulation (EEC) No 565/80 [1], that starch may, in addition to the operations referred to in Article 29(4) of Regulation (EC) No 800/1999, also be mixed in the same storage place with other starches falling within the same subheading of the nomenclature used for the refunds, which have the same technical characteristics and fulfil the conditions required for the granting of export refunds and are also placed under the arrangements provided for by Regulation (EC) No 800/1999 or Regulation (EEC) No 565/80.

Article 15

1. The Member State concerned shall impose on the quantities which are considered to have been disposed of on the internal market, within the meaning of the second subparagraph of Article 12(1), in the case of unprocessed starch or any derived product listed in the Annex to Commission Regulation (EC) No 1518/95 [2] or falling within the scope of Commission Regulation (EC) No 1520/2000 [3], a flat rate amount calculated by tonne of unprocessed starch and equal to the Common Customs Tariff applicable by tonne of starch under CN code 1108 13 00 during the marketing year during which the starch or derived products were produced, plus 10 %.

2. The Member State concerned shall, before 1 May following 1 January as specified in Article 12(1)(b), notify the starch-producing undertakings of the total amount to be paid.

That total amount shall be paid by the starch-producing undertakings in question no later than 20 May of that year.

Article 16

1. In the event of the merger of starch-producing undertakings, the Member State shall allocate to the undertaking resulting from the merger a subquota equal to the sum of the subquotas allocated prior to the merger to the starch-producing undertakings concerned;

In the event of the transfer of ownership of a starch-producing undertaking, the Member State shall allocate to the transferee undertaking the subquota of the undertaking transferred. Where there is more than one transferee undertaking, the subquota shall be allocated in proportion to the production of starch which each has absorbed;

In the event of the transfer ownership of a starch factory, the Member State shall reduce the subquota of the undertaking transferring ownership of the factory and increase the subquota of the starch-producing undertaking or undertakings purchasing the factory in question by the quantity deducted, in proportion to the production absorbed.

2. In the event of the closure, in circumstances other than those referred to in paragraph 1, of a starch-producing undertaking, or of one or more factories of a starch-producing undertaking, the Member State may allocate the subquotas involved by such closure to one or more starch-producing undertakings.

3. In the event of the lease of a factory belonging to a starch-producing undertaking, the Member State shall reduce the subquota of the undertaking which offers the factory for rent and shall allocate the portion by which the subquota was reduced to the undertaking which rents the factory in order to produce starch in it.

If the lease is terminated before the term referred to in Article 1(k), the adjustment of the subquota pursuant to the preceding subparagraph shall be cancelled retroactively by the Member State as from the date on which the lease took effect.

4. If following the application of the first subparagraph of paragraph 1 production ceases in the factories of one or more of the starch-producing undertakings that have merged, thus seriously threatening the continuing production of potatoes for the manufacture of starch in the area which had previously supplied this undertaking or these undertakings, the Member State may direct the merged undertaking to transfer to the Member State the subquota initially allocated to the enterprise whose factories have since ceased production. Any quota transferred in accordance with the first subparagraph may be reallocated by the Member State to any starch-producing undertaking that undertakes to manufacture the starch in the area concerned.

Article 17

When the closure of the undertaking or factory, the merger or transfer occurs between 1 July and 31 March of the following year, the measures referred to in Article 16 shall take effect for the marketing year current during that period.

When the closure of the undertaking or factory, the merger or transfer occurs between 1 April and 30 June of the same year, the measures referred to in Article 16 shall take effect for the marketing year following that period.

[1] OJ L 62, 7.3.1980, p. 5.
[2] OJ L 147, 30.6.1995, p. 55.
[3] OJ L 177, 15.7.2000, p. 1.

CHAPTER IV

NOTIFICATIONS

Article 18

By 30 April of each marketing year at the latest, the starch-producing undertakings shall notify the competent authorities of:

— the quantities of starch potatoes which have benefited from the aid provided for in Article 93 of Regulation (EC) No 1782/2003,

— the quantities of potato starch on which the premium provided for in Article 5 of Regulation (EC) No 1868/94 has been paid.

Article 19

1. By 30 June of each marketing year at the latest, the Member States shall notify the Commission of:

(a) the quantities of starch potatoes which have qualified under Article 93 of Regulation (EC) No 1782/2003;

(b) the quantities of starch on which the premium provided for in Article 5 of Regulation (EC) No 1868/94 has been paid;

(c) the quantities and subquotas for the starch-producing undertakings concerned by Article 6(2) of Regulation (EC) No 1868/94 during the marketing year and the subquotas available for the following marketing year;

(d) the quantities to be exported without attracting refunds in accordance with Article 6 of Regulation (EC) No 1868/94;

(e) the quantities referred to in Article 11(3) and (4) of this Regulation;

(f) the quantities referred to in Article 15 of this Regulation.

2. Where Article 16 applies, by 30 June of each marketing year at the latest, the Member States shall supply the Commission with all the detailed information relating thereto, together with supporting documents showing that the conditions laid down have been observed.

CHAPTER V

GENERAL AND FINAL PROVISIONS

Article 20

The conversion rate to be used to express the minimum price referred to in Article 4a of Regulation (EC) No 1868/94 and the premium referred to in Article 5 of that Regulation in national currency shall be the most recently published by the European Central Bank prior to the day on which the potatoes are received by the starch manufacturer.

Article 21

Regulation (EC) No 97/95 is hereby repealed with effect from 1 July 2004.

Article 22

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

It shall apply from the marketing year 2004/05.

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

Done at Brussels, 23 December 2003.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 2237/2003

of 23 December 2003

laying down detailed rules for the application of certain support schemes provided for in Title IV of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 [1], and in particular Article 145(c), (e), (f), (q) and Article 155 thereof,

Whereas:

(1) Title IV of Regulation (EC) No 1782/2003 establishes certain support schemes for farmers. For the sake of simplification it is appropriate to provide for one single regulation laying down the implementing rules of those schemes which enter into force in 2004.

(2) Starting from 2005 the integrated administration and control system provided for in Title II, Chapter 4 of Regulation (EC) No 1782/2003 (hereinafter referred as 'the IACS') shall apply to those support schemes. Some of those support schemes as well as some of the products receiving direct payments under some of those support schemes are already covered by the IACS. In order to facilitate the transition from the arrangements provided for by Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes [2] to the arrangements provided for by the IACS, it is appropriate to make applicable the existing rules under Regulation (EEC) No 3508/92 and its implementing rules provided for in Commission Regulation (EC) No 2419/2001 [3] to those support schemes.

(3) For the efficiency and good administration of the schemes, the area payments must be restricted to certain areas and conditions to be specified.

(4) The sowing of land for the sole purpose of qualifying for area payments should be prevented. Certain conditions relating to the sowing and cultivation of crops must be specified, in particular as regards durum wheat, protein plants and rice. Local standards must be respected in order to reflect the diversity of agricultural practice within the Community.

(5) Only one application for an area payment should be permitted in respect of any parcel cultivated in a given year except in the cases where the area payment is given as a supplement to the same crop or the aid concerns the production of seeds. Area payments can be granted on crops subsidised under a scheme falling within the Community's structural or environmental policies.

(6) Support schemes based on area aid provide that where the area for which aid is claimed exceeds the maximum guaranteed area or base areas or subbase areas, the area per farmer for which aid is claimed shall be reduced proportionately in that year. It is therefore appropriate to establish the modalities and deadlines for the exchange of information between the Commission and the Member States in order to establish the coefficient of reduction and to inform the Commission of the areas for which the aid has been paid. The same provisions shall apply for the reduction of the total amount of individual reference quantities in case of application of Article 95(4) of Regulation (EC) No 1782/2003.

(7) According to Article 73 of Regulation (EC) No 1782/2003, granting of the specific quality premium for durum wheat is subject to the use of certain quantities of certified seeds of varieties recognised, in the production zone, as being of high quality for the production of semolina or pasta. In order to ensure that those requirements are respected, the criteria for the variety screening method in each Member States should be fixed and the procedure for the establishment of the eligible varieties list as well as the minimum quantity of certified seeds to be used should be fixed.

(8) The short time between the adoption of Regulation (EC) No 1782/2003 and the entry into force of the specific quality premium for durum wheat makes it impossible to establish a list of eligible varieties for the granting of the aid in the years 2004 and 2005 according to the envisaged screening method. It is therefore necessary for Member States to establish a transitional list based on a selection of current varieties.

[1] OJ L 270, 21.10.2003, p. 1.
[2] OJ L 355, 5.12.1992, p. 1. Regulation as last amended by Commission Regulation (EC) No 495/2001 (OJ L 72, 14.3.2001, p. 6).
[3] OJ L 327, 12.12.2001, p. 11. Regulation as amended by Regulation (EC) No 2550/2001 (OJ L 341, 22.12.2001, p. 105).

(9) In view of the obligation, for the purpose of the eligibility to the specific quality premium for durum wheat, to use a certain quantity of certified seeds, an appropriate control procedure should be set up in order to verify that the eligible seeds and the required quantities are effectively used.

(10) In some regions, the protein crops are traditionally sown in a mixture with cereals for agronomical reasons. The resulting crop principally consists of protein crops. For the purpose of granting the protein crop premium, the areas thus sown should therefore be considered as areas of protein crops.

(11) In the interest of efficiency and good management of the aid scheme for nuts, the area aid granted should not be used to finance marginal plantations or isolated trees. A minimum plot size and a minimum tree density of a specialised orchard should therefore be defined. In order to facilitate the transition between the existing improvement plans which expire later than the introduction of the new aid scheme, it is appropriate to provide for transitional measures.

(12) The terms of payment as well as the crop-specific payment for rice calculation depend not only on the base area or areas fixed for each producing Member State fixed by Regulation (EC) No 1782/2003, but also on the possible subdivision of those base areas into subbase areas and on the objective criteria chosen by each Member State to perform this subdivision, on conditions in which the cultivated parcels are put into cultivation and on the minimum size of the latter. As a consequence, detailed rules should be set for the establishment, the management and the cultivation modalities applicable to base areas and subbase areas.

(13) The observation of a possible overrun of the base area referred to in Article 82 of Regulation (EC) No 1782/2003 implies a reduction of the crop-specific payment for rice. In order to set the calculation modalities for this reduction, criteria to be taken into consideration as well as applicable coefficients should be defined.

(14) The follow-up of the payments of the crop-specific payment for rice presumes that the Commission has been forwarded certain information related to the cultivation of base areas and subbase areas. For this purpose, the detailed information that the Member States should communicate to the Commission as well as the deadlines for those communications should be determined.

(15) The crop-specific payment for rice replaces the compensatory payments whose detailed rules where provided for in Commission Regulation (EC) No 613/97 of 8 April 1997 laying down rules for the application of Council Regulation (EC) No 3072/95 as regards the conditions for granting compensatory payments under the aid scheme for rice producers [1]. That Regulation becomes without object and should therefore be repealed.

(16) Articles 93 and 94 of Regulation (EC) No 1782/2003 provide for an aid to farmers producing potatoes intended for the manufacture of potato starch subject to a cultivation contract and within the quota limit established by Council Regulation (EC) No 1868/94 of 27 July 1994 establishing a quota system in relation to the production of potato starch [2]. The conditions for the granting of the aid should therefore be established and, where the case may be, cross references should be made to the existing provisions concerning the quota system provided for in Regulation (EC) No 1868/94. Taking into account that the potatoes are delivered progressively to starch undertaking and, until now, the aid has been paid on the quantities delivered, it is appropriate to maintain for the year 2004 the current payment system. In the interest of efficiency and good management of the aid scheme, provisions on checks should be provided for.

(17) Articles 95 and 96 Regulation (EC) No 1782/2003 provide that the dairy premium and additional payment are paid to producers. Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector [3] provides for specific provisions in case of inactivity. It is therefore appropriate to provide, when a natural or legal person holding an individual reference quantity no longer meets the conditions referred to in Article 5(c) of Council Regulation (EC) No 1788/2003 during the 12-month period preceding 31 March of the year concerned, for an exclusion from the benefiting of the premium and payment. In the interest of efficiency and good management of the aid scheme, provisions on checks should be provided for.

(18) Articles 88 to 92 of Regulation (EC) No 1782/2003 provide for a new aid scheme for energy crops to be granted to farmers. As this is a new aid scheme requiring complex management and control measures, the implementing rules should be limited to 2004 to permit a review, in the light of experience, in subsequent years.

(19) In line with Commission Regulation (EC) No 2461/1999 of 19 November 1999 laying down detailed rules for the application of Council Regulation (EC) No 1251/1999 as regards the use of land set aside for the production of raw materials for the manufacture within the Community of products not primarily intended for human or animal consumption [4], which excludes sugar beet from the aid, the cultivation of sugar beet should be excluded from the aid scheme for energy crops.

[1] OJ L 94, 9.4.1997, p. 1. Regulation as last amended by Regulation (EC) No 1127/98 (OJ L 157, 30.5.1998, p. 86).
[2] OJ L 197, 30.7.1994, p. 4. Regulation as last amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).
[3] OJ L 270, 21.10.2003, p. 123.
[4] OJ L 299, 20.11.1999, p. 16. Regulation as last amended by Regulation (EC) No 345/2002 (OJ L 55, 26.2.2002, p. 10).

(20) The terms of eligibility for this aid must be laid down. To this end it should be laid down that a contract must be concluded between the producer and the first processor with respect to the agricultural raw materials concerned. The conditions where processing is carried out by the farmer on the holding should also be defined.

(21) To ensure that the raw material is processed into the specified energy product, first processors must lodge a security, despite the fact that the aid is granted not to first processors but to farmers. The security must be high enough to prevent any risk that the raw materials are ultimately diverted from their destination. In addition, in order to make the control system for the scheme effective, sales of raw materials and of semi-processed products should be limited to a maximum of two before final processing.

(22) An explicit distinction must be made between the applicant's obligations, which end once the total quantity of raw material harvested is delivered, and the obligations incumbent on first processors, which commence on delivery and end with the final processing of the raw materials into energy products.

(23) Certain transport operations within Community territory involving raw materials and products derived therefrom should be subject to controls entailing the use of T5 control copies to be issued in accordance with Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [1]. Provision should be made for alternative evidence should the T5 control copy be lost as a result of circumstances for which the first processor is not responsible. In the interest of efficiency and good management of the aid scheme, provisions on checks should be provided for.

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

HAS ADOPTED THIS REGULATION:

CHAPTER 1

SCOPE AND GENERAL PROVISIONS

Article 1

Subject matter and scope

This Regulation lays down detailed rules for the implementation of the following support schemes provided for in Title IV of Regulation (EC) No 1782/2003:

(a) specific quality premium for durum wheat provided for in Title IV Chapter 1 of that Regulation;

(b) protein crop premium provided for in Title IV Chapter 2 of that Regulation;

(c) crop-specific payment for rice provided for in Title IV Chapter 3 of that Regulation;

(d) area payment for nuts provided for in Title IV Chapter 4 of that Regulation;

(e) for 2004, aid for energy crops provided for in Title IV Chapter 5 of that Regulation;

(f) aid for starch potato provided for in Title IV Chapter 6 of that Regulation;

(g) dairy premium and additional payments provided for in Title IV Chapter 7 of that Regulation.

Article 2

Application of the integrated administration and control system

Regulation (EEC) No 3508/92 and Regulation (EC) No 2419/2001 shall apply to the applications, for the calendar year 2004, for direct payments referred to in Article 1(a) to (e), save as otherwise provided.

For the calendar year 2004, Articles 11 to 15, 17, 20, 44 and 46 to 51 of Regulation (EC) No 2419/2001 shall apply to the applications for direct payments referred to in Article 1 (f) and (g).

For the calendar year 2004, Articles 2(r), 4, 22 and 23 of Regulation (EC) No 2419/2001 shall apply to the applications for direct payments referred to in Article 1(f).

Article 3

Date for applications

Farmers shall apply to the support schemes referred to in Article 1 by a date to be fixed by Member States, but not later than 15 May. In Finland and in Sweden, the date of 15 May may be postponed, but not later than 15 June.

However, the Commission, in accordance with the procedure referred to in Article 144(2) of Regulation (EC) No 1782/2003, may allow the dates referred to in the first subparagraph to be postponed in certain zones where exceptional climatic conditions render the normal dates inapplicable.

Article 8 of Regulation (EC) No 2419/2001 shall only apply with regard to area-related aid applications. For starch potato, in Finland and Sweden amendments to the aid application may be done up to 30 June.

Article 4

Conditions for the payment

1. The direct payment referred to in Article 1(a), (b), (c) and (e) shall be granted only for the areas, per each type of crop, which have been the subject of application in respect of at least 0,3 hectare, where each cultivated parcel exceeds the minimum size set by the Member State within the limit set up in Article 4 of Regulation (EC) No 2419/2001.

[1] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1335/2003 (L 187, 26.7.2003, p. 16).

2. The direct payment referred to in Article 1(a), (b) and (c) shall be granted only for the areas entirely sown and on which all normal cultivation conditions have been performed in accordance with local standards.

However, in the case of the specific quality premium for durum wheat provided for in Title IV Chapter 1 of Regulation (EC) No 1782/2003, crops grown on areas which are fully sown and which are cultivated in accordance with local standards, but which do not attain the stage of flowering as a result of exceptional weather conditions recognised by the Member State concerned, shall remain eligible for aid provided that the areas in question are not used for any other purpose up to this growing stage.

3. Without prejudice to the time period provided for in Article 28(2) of Regulation (EC) No 1782/2003, direct payments under this Regulation shall be paid after the checks made pursuant to Regulation (EC) No 2419/2001 and this Regulation are carried out.

4. In a given year, no more than one application for an area payment under a scheme financed under Article 1(2)(b) of Council Regulation (EC) No 1257/1999 [1] may be made in respect of any cultivated parcel.

However, any cultivated parcel which is covered in respect of the same year by an application for:

(a) specific quality premium for durum wheat provided for in Title IV Chapter 1 of Regulation (EC) No 1782/2003 or protein crop premium provided for in Title IV Chapter 2 of Regulation (EC) No 1782/2003 may be the subject of an application for arable crops payments referred to in Articles 2, 4 and 5 of Council Regulation (EC) No 1251/1999 [2] or in Title IV Chapter 10 of Regulation (EC) No 1782/2003;

(b) crop-specific payment for rice provided for in Title IV Chapter 3 of Regulation (EC) No 1782/2003 or protein crop premium provided for in Title IV Chapter 2 of Regulation (EC) No 1782/2003 may be the subject of an application for seed aid referred to in Article 3 of Council Regulation (EEC) No 2358/71 [3] or in Title IV Chapter 9 of Regulation (EC) No 1782/2003;

(c) aid for energy crops provided for in Title IV Chapter 5 of Regulation (EC) No 1782/2003 may be the subject of an application for arable crops payments referred to in Articles 2, 4 and 5 of Regulation (EC) No 1251/1999 or in Title IV Chapter 10 of Regulation (EC) No 1782/2003, without prejudice to the second subparagraph of Article 90 of Regulation (EC) No 1782/2003 or crop-specific payment for rice provided for in Title IV Chapter 3 of Regulation (EC) No 1782/2003;

(d) arable crops payments referred to in Articles 2, 4 and 5 of Regulation (EC) No 1251/1999 or in Title IV Chapter 10 of Regulation (EC) No 1782/2003 may be the subject of an application for seed aid referred to in Article 3 of Regulation (EEC) No 2358/71 or in Title IV Chapter 9 of Regulation (EC) No 1782/2003.

Land used to produce raw materials cultivated under the energy crop aid provided for in Title IV Chapter 5 of Regulation (EC) No 1782/2003 shall not be eligible for Community aid as provided for in Chapter VIII of Council Regulation (EC) No 1257/1999 [4], with the exception of support granted in respect of the costs of planting fast-growing species as provided for in the second subparagraph of Article 31(3) thereof.

Article 5

Communications

The Member States shall communicate, by electronic transmission, to the Commission, in accordance with the following timetable:

(a) by 15 September of the year concerned, at the latest: the areas, or the quantities in the case referred to in Articles 95 and 96 of Regulation (EC) No 1782/2003, for which the aid has been claimed for that calendar year, where the case may be subdivided for each subbase area;

(b) by 31 October, at the latest: definitive data, on the areas or quantities, obtained taking into account checks already carried out;

(c) by 31 July of the following year, at the latest: the final data corresponding to the areas or quantities for which the aid has actually been paid for that calendar year, after, where applicable, deduction of the reductions in area provided for in Article 32 of Regulation (EC) No 2419/2001.

The areas shall be expressed in hectares to two decimal places. The quantities shall be expressed in tonnes to three decimal places.

Article 6

Coefficient of reduction

1. The coefficient of reduction of area in the case referred to in Articles 75, 78(2), 82, 85 and 89(2) of Regulation (EC) No 1782/2003 or of the quantities and the objective criteria in the case referred to in Article 95(4) of that Regulation shall be fixed at the latest by 15 November of the year concerned on the basis of the data communicated in accordance with Article 5(b) of this Regulation.

2. In the cases referred to in Articles 75, 82, 85 and 95(4) of Regulation (EC) No 1782/2003, the Member States shall communicate to the Commission, by 1 December of the year concerned at the latest, the coefficient of reduction applied and, in the case referred to in Article 95(4) of that Regulation, the objective criteria applied.

[1] OJ L 160, 26.6.1999, p. 103.
[2] OJ L 160, 26.6.1999, p. 1.
[3] OJ L 246, 5.11.1971, p. 1.
[4] OJ L 160, 26.6.1999, p. 80.

CHAPTER 2

SPECIFIC QUALITY PREMIUM FOR DURUM WHEAT

Article 7

Variety screening

1. Member States listed in Article 74(1) of Regulation (EC) No 1782/2003 shall establish the list of durum wheat varieties eligible for the special quality premium referred to in Article 72 of Regulation (EC) No 1782/2003 in accordance with the variety screening method laid down in paragraphs 2 to 5 of this Article.

2. Member States shall, at least every two years, identify at least two representative varieties. The representative varieties shall be the most certified durum wheat varieties.

3. Member States shall analyse durum wheat varieties according to the following quality parameters and assign to each parameter the relevant weighting:

(a) protein content (40 %),

(b) gluten quality (30 %),

(c) yellow index (20 %),

(d) specific weight or weight of one thousand kernels (10 %).

The sum of the averages of the quality parameters referred to in (a) to (d), multiplied by the indicated value in percentage, shall constitute the quality index of the varieties.

Each Member State shall compare, over a period of at least two years, the quality indexes of the durum wheat varieties with those of the representative varieties at regional level. The varieties to be examined shall be those which are registered in the national catalogue of each Member State, with the exclusion of those varieties for which no analytical data are available for the last three years because they are not used or certified any more.

To that end, based on the average quality index of 100 attributed to the representative varieties, each Member State shall calculate, for each of quality parameters referred to in (a) to (d), the percentage to be assigned to the other durum wheat varieties in comparison with the index of 100. Only durum wheat varieties with an index equal to or higher than 98 shall be eligible for the quality premium for durum wheat.

4. A Member State may exclude from the list of eligible varieties the varieties which have an average rate of loss of vitreous aspect of durum wheat (mitadinage) exceeding 27 %.

5. Varieties, which are registered in the national catalogue of another Member State, may also be examined for their eligibility.

Article 8

Analysis methods

1. The analysis methods of the protein content, specific weight and the rate of loss of vitreous aspect of durum wheat (mitadinage) shall be those laid down in Commission Regulation (EC) 824/2000 [1].

2. The yellow index shall be measured according to the ICC 152 method or an equivalent recognised method.

3. The gluten quality shall be measured according to the ICC 158 method or according to the ICC 151 method.

Article 9

Quantity of certified seeds

Member States shall fix, before 1 October of the year preceding the year in respect of which the premium is granted, the minimum quantity of seed, certified in accordance with Council Directive 66/402/EEC [2], to be used in accordance with the current agricultural practices in the production zone concerned.

Article 10

Publications and communications

1. Member States shall publish the list of selected varieties which are eligible at national or regional level to the special quality premium for durum wheat, not later than 1 October, for winter varieties, and not later than 31 December, for spring varieties, of the year preceding the year in respect of which the premium is granted.

2. Member States shall communicate to the Commission, not later than one month after the dates provided for in paragraph 1, the list referred to in paragraph 1 as well as, if modified, the minimum quantity of certified seed to be used.

Article 11

Validity

1. The varieties admitted in the list referred to in Article 10(1) shall be eligible for the special quality premium for durum wheat for periods of five years starting from the date of their first admission in that list.

2. The eligibility of each variety may be extended for a period of five years, based on the results of the qualitative analyses carried out during the second and third year of the five-year eligibility period.

Article 12

Transitional measures

1. Member States shall publish before 15 May 2004 the list of the varieties, which are eligible for the premium only in 2004 and 2005 and shall communicate the list to the Commission before 30 June 2004.

2. Member States shall establish the list referred to in paragraph 1 by eliminating from the list of varieties which are registered in the national catalogue the varieties which have not been certified in 2002 and 2003 and those which do not satisfy at least two of the following parameters:

(a) a minimum protein content of 11,5 %;

(b) a minimum specific weight of 78 kg/hl;

[1] OJ L 100, 20.4.2000, p. 31.

[2] OJ 125, 11.7.1966, p. 2309/1966.

(c) a minimum weight of 1 000 kernels of 42 g;

(d) a maximum rate of loss of vitreous aspect of durum wheat (mitadinage) of 27 %;

(e) a minimum gluten content of 10 %.

3. The lists of varieties which are eligible for the premium in 2004, 2005 and 2006 may include varieties which are in the list of selected varieties of another Member State on the basis of the results of the qualitative analyses carried out by this other Member State.

Article 13

Control measures

1. The aid application for the specific quality premium for durum wheat shall be accompanied by proof, given according to the rules fixed by the Member State, that the minimum quantity of certified seed has been used.

2. In case a difference is established between the minimum quantity of certified seeds fixed by the Member State and the quantity effectively used, the determined area within the meaning of Article 2(r) of Regulation (EC) No 2419/2001 shall be calculated by dividing the total quantity of certified seeds, for which proof of use was given by the farmer, by the minimum quantity of certified seeds per hectare fixed by the Member State in the production zone concerned.

CHAPTER 3

PROTEIN CROP PREMIUM

Article 14

Mixture of cereals and protein crops

In regions where protein crops are traditionally sown in a mixture with cereals, the protein crop premium shall be paid at the request of the applicant provided that he proves, to the satisfaction of the competent authorities, that the protein crops are predominant in the mixture. The areas concerned shall not be eligible for the specific regional aid for arable crops referred to in Article 98 of Regulation (EC) No 1782/2003.

CHAPTER 4

CROP-SPECIFIC PAYMENT FOR RICE

Article 15

Application

In the aid application, the farmers shall specify the variety of rice sown for each cultivated parcel for which he claims the crop-specific payment for rice referred to in Article 79 of Regulation (EC) No 1782/2003.

Article 16

Dates for sowings

To be eligible for the crop-specific payment for rice, the declared area shall be sown at the latest:

(a) on 30 June preceding the harvest in question, for Spain and Portugal,

(b) on 31 May for the other producing Member States referred to in Article 80(2) of Regulation (EC) No 1782/2003.

However, in French Guiana, the areas shall be sown respectively for each of the two sowing cycles, at the latest on 31 December and 30 June preceding each of them and the crop-specific payment for rice shall be granted on the basis of the average of the areas sown for each of the two sowing cycles.

Article 17

Coefficient of reduction

The coefficient of reduction of the crop-specific payment for rice referred to in Article 82 of Regulation (EC) No 1782/2003 shall be calculated according to Annex I.

Article 18

Communications

1. Member States shall communicate, by electronic transmission, to the Commission, before 15 May 2004, the measures taken for the application of this Chapter and, as the case may be:

(a) the subdivision of their base area or areas in subbase areas,

(b) the objective criteria on which those subdivisions are based.

2. Member States shall communicate to the Commission, according to Article 5, the following information:

(a) by 15 September at the latest:

(i) the list of the varieties registered in the national catalogue, classified according to the criteria defined in Annex I, item 2, of Council Regulation (EC) No 1785/2003 [1],

(ii) the sown areas for which applications for crop-specific payment for rice have been submitted, by variety of rice and by base area and subbase area, in accordance with the table in Annex II(A) to this Regulation, including the overruns of the base areas and subbase areas, defined by each Member State in accordance with paragraph 1 of this Article;

(b) by 31 October at the latest, the modifications with regard to the sown areas for which applications for the crop-specific payment for rice have been submitted, communicated according to subparagraph 1, in accordance with the table in Annex II(B) to this Regulation;

[1] OJ L 270, 21.10.2003, p. 96.

(c) by 31 July at the latest, the information concerning the sown areas for which the crop-specific payment for rice has actually been paid for the past marketing year, according to the calculation method defined in Annex I to this Regulation, in accordance with the table in Annex II(C) to this Regulation.

3. For French Guiana, the information concerning the sown areas is communicated on the basis of the average of the areas sown during the two sowing cycles.

4. Member States may revise annually the base sub-areas and the objective criteria referred to in paragraph 1. They shall communicate this information to the Commission at the latest on 15 May preceding the harvest in question.

CHAPTER 5

AREA PAYMENT FOR NUTS

Article 19

Eligibility conditions for the Community aid

1. For the purposes of this Chapter, an orchard shall mean a homogeneous and cohesive area planted with nut trees which is not intersected by other crops or plantations and which is geographically continuous. Isolated trees or a single row of nut trees planted alongside roads or other crops shall not be considered an orchard.

By way of derogation from the first subparagraph, Member States may allow the presence of trees other than nut trees within a limit corresponding to 10 % of the number of trees laid down in paragraph 3. Moreover, Member States may allow the presence of chestnut trees if the number of trees laid down in paragraph 3 is respected by the eligible nut trees.

2. Only orchards producing nuts and meeting the conditions referred to in paragraphs 3 and 4 at the date to be fixed in conformity with Article 3 of this Regulation are eligible for the area payment provided for in Article 83 of Regulation (EC) No 1782/2003.

In the case of an orchard where different types of nuts are grown and when the aid is differentiated in function of the products, the eligibility conditions and/or the level of the aid specific to the nut type which is predominant shall apply.

3. The minimum plot size of orchards may not be less than a surface area of 0,10 hectare.

The number of nut trees per hectare of orchards may not be less than:

— 125 for hazelnuts,

— 50 for almonds,

— 50 for walnuts,

— 50 for pistachios,

— 30 for locust beans.

4. Member States may fix the minimum plot size and tree density at a higher level than those laid down in paragraph 3 according to objective criteria and in order to take into account the specific characteristic of the areas and productions concerned.

Article 20

Eligibility conditions for national aid

Article 19 of this Regulation shall apply to the national aid referred to in Article 87 of Regulation (EC) No 1782/2003.

Without prejudice to Article 87 of Regulation (EC) No 1782/2003, a Member State may establish further eligibility criteria, provided that such criteria are consistent with the environmental, rural, social and economic objectives of the aid scheme and do not introduce discrimination between producers. Member States shall establish the necessary arrangements in order to control those criteria.

Article 21

Application

In the aid application, farmers shall specify the number of nut trees per type and per agricultural parcel.

Article 22

Communications

1. Member States shall communicate to the Commission before the date referred to in Article 3 and at the latest by 15 May 2004:

(a) where a Member State applies for Community aid under Article 83(2) of Regulation (EC) No 1782/2003, the level of the area payment per products and/or the modified national guaranteed area (hereinafter referred to as 'NGA');

(b) the higher levels and the criteria referred to in Article 19(4) of this Regulation;

(c) the additional criteria referred to in Article 20 of this Regulation,

and, in the following years, by 31 March the data referred to in points (b) and (c) and by 15 May the date referred to in point (a).

2. Any modification of the communications referred to in paragraph 1 shall apply to the following year and shall be immediately communicated by the Member States to the Commission accompanied by the objective criteria justifying such changes.

Article 23

Transitional measures

1. Member States may determine whether and on what conditions the improvement plans referred to in Article 86(2) of Regulation (EC) No 1782/2003 may be ceased before their normal expiry and relative areas become eligible under this scheme.

2. When setting the conditions referred to in paragraph 1, the Member State shall ensure that:

(a) the plan is not ceased before the complete implementation of an annual period,

(b) the initial objectives of the plan have been reached to the satisfaction of the Member State.

CHAPTER 6

AID FOR STARCH POTATO

Article 24

Eligibility

The aid for starch potato provided for in Article 93 of Regulation (EC) No 1782/2003 shall be granted for potatoes which are covered by a cultivation contract provided for in Article 3 of Regulation (EC) No 2236/2003 [1], of sound and fair marketable quality, on the basis of the net weight of the potatoes determined by one of the methods described in Annex I of Regulation (EC) No 2235/2003 [2] and the starch content of the potatoes delivered, in accordance with the rates fixed in Annex II of Regulation (EC) No 2235/2003.

No aid for starch potato shall be granted for potatoes which are not of sound and fair marketable quality nor for potatoes whose starch content is below 13. %, except where the second subparagraph of Article 5(3) of Regulation (EC) No 2236/2003 applies.

Article 25

Application

For 2004, the farmer shall submit an aid application containing all information necessary to establish eligibility for the aid, in particular:

(a) the identity of the farmer;

(b) a copy of the cultivation contract referred to in Article 24;

(c) a statement from the farmer that he is aware of the requirements pertaining to aid in question.

Article 26

Minimum price

The aid for starch potato shall be subject to the requirement that proof is provided that a price not less than that referred to in Article 4(a) of Regulation (EC) No 1868/94 has been paid at the delivered-to-factory stage in accordance with the rates fixed in Annex II of Regulation (EC) No 2235/2003.

The proof referred to in Article 10(2) of Regulation (EC) No 2236/2003 shall apply.

Article 27

Payment

1. By way of derogation from Article 28(2) of Regulation (EC) No 1782/2003 and without prejudice to the time period fixed in the same Article, for 2004, the aid for starch potato shall be paid to the farmers by the Member State on whose territory the potato starch was manufactured for the quantities delivered to the starch-producing undertaking within four months after the date on which the proof referred to in Article 26 of this Regulation has been provided and the conditions referred to in Article 24 of this Regulation have been respected.

2. The conversion rate to be used to express aid for starch potato in national currency shall be the one applied under Article 20 of Regulation (EC) No 2236/2003.

Article 28

Checks and reductions

1. Member States shall provide each other with mutual assistance as necessary for the purposes of checks provided for by this Article as well as in the event that potatoes intended for the manufacture of potato starch are the subject of intra-Community trade.

2. On-the-spot checks shall cover for 2004 at least 3 % of the producers having concluded cultivation contracts with starch-producing undertakings.

3. On-the-spot checks shall be selected on the basis of a risk analysis which takes account of:

(a) quantities of potatoes intended for the manufacture of potato starch with regard to the surfaces as declared in the cultivation contract referred to in Article 24;

(b) other parameters to be defined.

4. If it is found that the area actually cultivated is more than 10 % lower than the declared surface, the aid to be paid to the producer concerned for the current harvest shall be reduced by twice the difference found.

CHAPTER 7

DAIRY PREMIUM AND ADDITIONAL PAYMENTS

Article 29

Aid application

For 2004, the producer shall submit an aid application containing all information necessary to establish eligibility for the aid, in particular the identity of the producer and a statement of the producer that he is aware of the requirements pertaining to aid in question.

Article 30

Cases of inactivity

1. When a natural or legal person holding an individual reference quantity does not meet the conditions referred to in Article 5(c) of Regulation (EC) No 1788/2003 during the 12-month period ending on 31 March of the year concerned, no dairy premiums and additional payment shall be paid for the year concerned, unless he proves before the deadline for the application and to the satisfaction of the competent authority that production has been taken up.

[1] See page 45 of this Official Journal.
[2] See page 36 of this Official Journal.

2. Paragraph 1 shall not apply in cases of *force majeure* and in duly justified cases temporarily affecting the production capacity of the producers concerned and recognised by the competent authority.

Article 31

Checks and sanctions

1. At least 2 % of all applicants shall be subject each year of on-the-spot checks. On-the-spot checks shall cover the conditions for the eligibility to the dairy premium and to the additional payment, notably on the basis of the farmers' accounting or other registers.

2. Articles 31, 32(1) and 33 of Regulation (EC) No 2419/2001 shall apply to the extent that 'area' is read as 'individual reference quantity'.

Where in the case referred to in Article 30(1) of this Regulation the person concerned does not take up production by the deadline for the application, the individual reference quantity determined within the meaning of the preceding sub-paragraph shall be deemed to be zero. In this case, the aid application of the person concerned for the year in question shall be refused. An amount equal to the amount covered by the refused application shall be set-off against aid payments under any of the aid schemes referred to in Article 1(1) of Regulation (EEC) No 3508/92 to which the person is entitled in the context of applications he lodges in the course of the calendar year following the calendar year of the finding.

3. The reference to Article 1(1) of Regulation (EEC) No 3508/92 contained in Article 32(2) and in the second subparagraph of Article 33 of Regulation (EC) No 2419/2001 as well as in paragraph 2 of this Article shall be read as referring to the aid schemes established under Titles III and IV of Regulation (EC) No 1782/2003.

CHAPTER 8

AID FOR ENERGY CROPS

SECTION 1

Definitions

Article 32

Definitions

For the purposes of this Chapter:

(a) 'applicant' means any farmer cultivating the areas referred to in Article 88 of Regulation (EC) No 1782/2003 with a view to obtaining the aid referred to in that Article;

(b) 'first processor' means any user of agricultural raw materials who undertakes the first processing thereof with a view to obtaining one or more of the products referred to in Article 88 of Regulation (EC) No 1782/2003.

SECTION 2

Contract

Article 33

Use of raw material

1. Any agricultural raw material with the exception of sugar beet may be grown on the areas covered by the aid provided for in Article 88 of Regulation (EC) No 1782/2003 provided that they are intended primarily for use in the production of the energy products referred to in the said Article.

The economic value of the energy products referred to in the first subparagraph obtained by processing raw materials shall be higher than that of all other products intended for other uses and obtained by such processing, as determined by the valuation method set out in Article 49(3).

2. The raw materials referred to in paragraph 1 must be covered by a contract in accordance with Article 90 of Regulation (EC) No 1782/2003 under the conditions laid down below.

3. Applicants shall deliver all raw materials harvested to a first processor who shall take delivery of them and ensure that an equivalent quantity of such raw materials is used within the Community for the manufacture of one or more energy products as referred to in Article 88 of Regulation (EC) No 1782/2003.

Where the first processor uses the raw material actually harvested to manufacture an intermediate product or a by-product, he may use an equivalent quantity of such intermediate products or by-products to manufacture one or more end products as referred to in the first subparagraph.

In the case referred to in the second subparagraph, the first processor shall so inform the competent authority with whom the security is lodged. Where such equivalent quantity is used in a Member State other than that in which the raw material is harvested, the competent authorities of the Member States concerned shall inform each other of the details of such transaction.

4. Within the context of national provisions governing contractual relations, the first processor may delegate to a third party the collection of the raw material from the farmer applying for the aid. The delegate must act in the name and on behalf of the processor who remains solely responsible with regard to the obligations laid down by this Chapter.

Article 34

Derogations

1. Notwithstanding Article 33(2) and (3), Member States may permit applicants to:

(a) use all the cereals or oilseeds covered by CN codes 1201 00 90, ex 1205 00 90 and 1206 00 91 harvested:

(i) as fuel for heating their agricultural holding;

(ii) for the production on the holding of power or biofuels;

(b) process into biogas (CN code 2711 29 00) on their holdings all raw materials harvested.

2. In the cases referred to in paragraph 1 applicants shall undertake, by way of a declaration in place of the contract referred to in Article 35, to use or process directly the raw material covered by the declaration. Articles 35 to 50 shall apply *mutatis mutandis*.

In addition, applicants must have all the raw material harvested weighed by a body or an undertaking designated by the Member State and must keep separate accounts for the raw material used and the products and by-products resulting from its processing.

However, in the case of cereals and oilseeds, and of straw, and where the entire plant is used, weighing may be replaced by volumetric measurement of the raw material.

3. Member States applying paragraph 1 shall introduce adequate control measures to ensure that the raw material is directly used on the holding or is processed into biogas falling within CN code 2711 29 00.

4. Cereals and oilseeds used in accordance with paragraph 1(a) must be denatured in accordance with the method laid down by the Member State. The Member States may authorise the oil produced by processing oilseeds in accordance with paragraph 1(a)(ii) to be denatured instead of the oilseeds themselves, provided that such denaturing takes place immediately after the seeds are processed into oil and that the use to which the seeds are put is checked.

Article 35

Contract

1. In support of their aid applications, applicants shall submit to their competent authorities the contracts they have concluded with a first processor.

2. Applicants shall ensure that such contracts specify the following:

(a) the names and addresses of the parties to the contract;

(b) the duration of the contract;

(c) the species of all raw materials concerned and the area planted with each species;

(d) any conditions applicable to the delivery of the forecast quantities of raw materials;

(e) an undertaking to fulfil their obligations pursuant to Article 33(3);

(f) the intended primary end uses for the raw material, each end use complying with the conditions laid down in Articles 33(1) and 49(3).

3. Applicants shall ensure that the contracts are concluded in time to allow the first processor to deposit a copy with the competent authority of the applicant within the time limits laid down in Article 44(1).

4. For the purposes of control, Member States may require each applicant to conclude a single supply contract for each raw material.

SECTION 3

Amendment and termination of contract

Article 36

Amendment and termination of contract

Where the parties to the contract amend or terminate the latter after applicants have lodged an aid application, applicants may maintain such aid applications only on condition that, with a view to allowing the requisite inspections to be carried out, they inform their competent authority of such amendment or termination, no later than the closing date set in the Member State concerned for amendment of the application.

Article 37

Exceptional circumstances

Without prejudice to Article 36, where applicants inform their competent authorities that, owing to exceptional circumstances, they will be unable to supply all or part of the raw materials specified in the contract, the competent authorities may, after obtaining sufficient evidence of such exceptional circumstances, authorise such amendments to contracts as appear justified, or may authorise their termination.

Where the land covered by contracts is reduced as a result of amendments thereto or where contracts are terminated, applicants shall forfeit their right to the aid referred to in this Chapter for the areas withdrawn from the contract.

Article 38

Changes in end uses

Without prejudice to Article 36, first processors may alter the intended primary end uses of raw materials, as referred to in Article 35(2)(f), once the raw materials under contract have been delivered to them and once the conditions laid down in Article 40(1) and in the first subparagraph of Article 44(3) have been fulfilled.

Changes in end uses shall be made in compliance with the conditions laid down in the second subparagraph of Article 33(1) and Article 49(3).

The first processors shall give prior notice to their competent authorities with a view to the requisite controls.

SECTION 4

Representative yields and quantities delivered

Article 39

Representative yields

Each year the Member States shall establish, using an appropriate procedure, representative yields which must be attained, and shall inform the applicants concerned thereof.

Article 40

Quantities to be delivered

1. Applicants shall declare the total quantity of raw materials harvested by species to their competent authorities and shall confirm the quantities of raw materials delivered and the parties to whom such deliveries are made.

2. The actual quantities to be delivered by the applicants to the first processors must at least correspond to the representative yield.

However, in duly justified cases, the Member States may, by way of an exception, accept a quantity up to 10 % below the representative yield.

Furthermore, where the competent authorities have authorised the amendment or termination of contracts in accordance with Article 37, they may, where it seems justified to do so, reduce the quantities that applicants are required to deliver under the first subparagraph.

Article 41

Reduction of the aid

Where applicants fail to deliver the requisite quantity of any given raw material pursuant to this Chapter, they shall be deemed, for the purposes of Article 32 of Regulation (EC) No 2419/2001, to have failed to fulfil their obligations as regards parcels intended for energy purposes in respect of an area calculated by multiplying the area of land cultivated and used by them for the production of the raw materials in accordance with the criteria laid down in this Chapter by the percentage shortfall in deliveries of that raw material.

SECTION 5

Conditions of payment of the aid

Article 42

Payment

1. The aid may be paid to applicants before the raw material is processed. However, such payments shall be made only where the requisite quantities of raw materials pursuant to this Chapter have been delivered to the first processor and where:

(a) the declaration referred to in Article 40 has been made;

(b) a copy of the contract has been deposited with the first processor's competent authority and the conditions referred to in Article 33(1) have been fulfilled;

(c) the competent authority has received proof that the full security provided for in Article 45(2) has been lodged;

(d) the competent authority responsible for the payment has checked that the conditions laid down in Article 35 have been met in respect of each application.

2. In the case of biennial crops, where the raw materials are harvested, and hence delivered, in the course of the second year of cultivation only, payment shall be made in each of the two years following the conclusion of the contract as provided for in Article 35, on condition that the competent authorities establish that:

(a) the obligations laid down in paragraph 1(b), (c) and (d) of this Article are fulfilled as from the first year of cultivation; and

(b) the obligations laid down in paragraph 1(a) of this Article are fulfilled, and the information referred to in the first subparagraph of Article 44(3) is communicated, in the second year of cultivation.

Payments shall be made only in respect of the first year of cultivation if the competent authorities have received proof that the security as provided for in Article 45(2) has been lodged. In respect of the second year of cultivation, the security does not have to be lodged for the payment to be made.

3. In the case of permanent or multiannual crops, the payment of the aid shall be made each year from the conclusion of the contract. The conditions laid down in paragraph 2 shall be applied *mutatis mutandis*.

SECTION 6

Contract and obligations on applicants and first processors

Article 43

Number of processors

Energy products must be obtained at most by a second processor.

Article 44

Contract and obligations on applicants and first processors

1. First processors shall deposit a copy of the contract with their competent authorities no later than the closing date for the submission of aid applications for the year in question in the Member State concerned.

Where applicants and first processors amend or terminate contracts prior to the date referred to in Article 36 in a given year, the first processors shall deposit with their competent authorities a copy of the amended or terminated contract, no later than that date.

2. First processors shall provide their competent authorities with the requisite information on the processing chain in question, in particular as regards prices and the technical processing coefficients to be used for determining the quantities of end products that may be obtained. The coefficients shall be those set out in Article 50(1).

3. First processors who have taken over the raw materials from applicants shall inform their competent authorities of the quantities of raw materials received, specifying the species, the name and address of the party to the contract who delivered the raw materials, the place of delivery and the contract reference, within a time limit to be set by the Member States that allows the payments to be made within the period specified in Article 28 of Regulation (EC) No 1782/2003.

Where the Member States of the first processors are not the same as the Member States in which the raw materials have been grown, then, within 40 working days of receipt of the information referred to in the first subparagraph, the competent authorities concerned shall inform the authorities of the applicants of the total quantities of raw materials delivered.

SECTION 7

Securities

Article 45

First processors

1. First processors shall lodge a full security as provided for in paragraph 2 with their competent authorities by the closing date for submission of payment applications for the year in question in the Member State concerned.

2. The securities to be lodged in respect of each raw material shall be calculated by multiplying the sum of all areas cultivated under this scheme, covered by a contract signed by the first processor concerned and used to produce that raw material, by the rate of EUR 60 per hectare.

3. Where contracts are amended or terminated in accordance with Articles 36 or 37, the securities lodged shall be adjusted accordingly.

4. A percentage of the security shall be released for each raw material on condition that the competent authority of the first processor concerned is in possession of proof that that the quantity of raw material in question has been processed in compliance with the requirement laid down in Article 35(2)(f), account being taken, where necessary, of any changes pursuant to the Article 38.

Article 46

Primary and subordinate requirements

1. The following obligations shall constitute primary requirements within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 ([1]):

(a) the obligation to process the quantities of raw materials principally into the end products specified in the contract. The raw materials shall be processed by 31 July of the second year following that of harvest;

(b) the obligation that products be accompanied by a T5 control copy in accordance with Articles 47 and 48.

2. The following obligations, incumbent on first processors, shall constitute subordinate requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85:

(a) the obligation to take delivery of all raw materials delivered by applicants pursuant to Article 33(3);

(b) the obligation to deposit copies of contracts in accordance with Article 44(1);

(c) the obligation to provide the information required in accordance with the first and second subparagraphs of Article 44(3);

(d) the obligation to lodge a security in accordance with Article 45(1).

SECTION 8

Documents for sale in, transfer to or delivery to another Member State or export

Article 47

T5 control copy

Where first processors sell or transfer to second processors in other Member States intermediate products covered by contracts as provided for in Article 35, the products shall be accompanied by T5 control copies issued in accordance with Regulation (EEC) No 2454/93.

One of the following shall be entered under the heading 'Other' in box 104 of the T5 control copies:

— Producto destinado a su transformación o entrega de acuerdo con lo establecido en el artículo 34 del Reglamento (CE) nº 2237/2003 de la Comisión

— Skal anvendes til forarbejdning eller levering i overensstemmelse med artikel 34 i Kommissionens forordning (EF) nr. 2237/2003

([1]) OJ L 205, 3.8.1985, p. 5.

— Zur Verarbeitung oder Lieferung gemäß Artikel 34 der Verordnung (EG) Nr. 2237/2003 der Kommission zu verwenden

— Προς χρήση για μεταποίηση ή παράδοση σύμφωνα με το άρθρο 34 του κανονισμού (ΕΚ) αριθ. 2237/2003 της Επιτροπής

— To be used for processing or delivery in accordance with Article 34 of Commission Regulation (EC) No 2237/2003

— À utiliser pour transformation ou livraison conformément aux dispositions de l'article 34 du règlement (CE) nº 2237/2003 de la Commission

— Da consegnare o trasformare conformemente all'articolo 34 del regolamento (CE) n. 2237/2003 della Commissione

— Te gebruiken voor verwerking of aflevering overeenkomstig artikel 34 van Verordening (EG) nr. 2237/2003 van de Commissie

— A utilizar para transformação ou entrega em conformidade com o artigo 34.º do Regulamento (CE) n.º 2237/2003 da Comissão

— Käytetään jalostamiseen tai toimittamiseen komission asetuksen (EY) N:o 2237/2003 mukaisesti

— Används till bearbetning eller leverans i enlighet med kommissionens förordning (EG) nr 2237/2003.

Article 48

Alternatives to the T5 control copy

Notwithstanding Article 46(1)(b), if the T5 control copy is not returned to the office of departure of the body responsible for control in the Member State in which the first processor is established three months before expiry of the deadline provided for in Article 46(1)(a), as a result of circumstances for which the first processor is not responsible, the following documents may be accepted as alternatives to the T5 control copy:

(a) purchase invoices for the intermediate products;

(b) statements by the second processor verifying the final processing of the raw materials into energy products as referred to in Article 88 of Regulation (EC) No 1782/2003; and

(c) certified photocopies from the second processor of accounting documents proving that processing has been carried out.

SECTION 9

Checks

Article 49

Record keeping

1. The competent authority of the Member State shall specify the records to be kept by processors and the frequency thereof, which shall be at least monthly. Such records shall comprise at least the following:

(a) the quantities of different raw materials purchased for processing;

(b) the quantities of raw materials processed and the quantities and types of end products, co-products and by-products obtained therefrom;

(c) wastage during processing;

(d) the quantities destroyed and the reasons for such destruction;

(e) the quantities and types of products sold or transferred by the processor and the prices obtained;

(f) where applicable, the names and addresses of the subsequent processors.

2. The competent authority of the first processor shall check that the contract submitted complies with the conditions laid down in Article 33(1). Where those conditions are not met, the applicants' competent authorities shall be notified.

3. With a view to calculating the economic value of the products referred to in Article 33(1), the competent authorities concerned shall, on the basis of the information referred to in Article 44(2), compare the sum of the values of all energy products with the sum of the values of all other products intended for other uses and obtained from the same processing operation. Each value shall equal the relevant quantity multiplied by the average of the ex-factory prices recorded during the previous marketing year. Where such prices are not available, the competent authorities shall determine the relevant prices, in particular on the basis of the information referred to in Article 44(2).

Article 50

Checks at the premises of processors

1. The competent authorities of the Member States in which processing takes place shall verify compliance with Article 33(1) at the premises of at least 25 % of the processors installed in their territory, selected on the basis of a risk analysis. Such controls shall involve at least:

(a) a comparison of the sum of the values of all the energy products with the sum of the values of all other products intended for other uses and obtained from the same processing operation;

(b) analysis of the processor's production system, comprising physical checks and inspections of commercial documents, with a view to verifying, in the case of processors, that deliveries of raw materials, end products, co-products and by-products tally.

For the purpose of the controls referred to in point (b) of the first subparagraph, the competent authorities shall base themselves in particular on the technical processing coefficients for the raw materials concerned. Where such coefficients exist for exports in Community legislation, they shall be applied. Where they do not but other coefficients do exist in Community legislation, they shall be applied. In all other cases, inspection shall rely mainly on the coefficients generally accepted by the processing industry.

2. Notwithstanding paragraph 1, for the processing operations referred to in Article 34, checks shall be carried out on 10 % of applicants selected on the basis of a risk analysis taking account of:

(a) aid amounts;

(b) the number of agricultural parcels and the area covered by an aid application;

(c) developments since the previous year;

(d) the findings of checks made in past years;

(e) other parameters to be defined by the Member States, based on the representativeness of the contracts submitted.

3. Where the checks referred to in paragraph 2 reveal irregularities in at least 3 % of cases, the competent authority shall carry out additional checks during the year and shall consequently increase the percentage of farmers to be subject to an on-the-spot check the following year.

4. If it has been provided that certain elements of the checks referred to in paragraphs 1 and 2 may be carried out on the basis of a sample, that sample must guarantee a reliable and representative level of control.

5. Every on-the-spot check shall be the subject of an inspection report signed by the inspector giving the details of the checks carried out. The report shall indicate in particular:

(a) the date of the check;

(b) the persons present;

(c) the period checked;

(d) the checking techniques used including, where applicable, reference to sampling methods;

(e) results of the check.

Article 51

Hemp production

The provisions relating to hemp referred to in Article 3(1a), the third paragraph of Article 5 and Article 21a of Regulation (EC) No 2461/1999 shall apply.

Article 52

Additional measures and mutual assistance

1. The Member States shall take all further measures required for the proper application of this Chapter and shall give the mutual assistance needed for the purposes of checks required pursuant to this Chapter. In this respect the Member States may, where this Chapter does not provide for appropriate reductions and exclusions, also apply appropriate national sanctions against market participants involved in the procedure for granting aid.

2. As far as necessary or as required by this Chapter, the Member States shall assist one another mutually to ensure effective controls, and enable the authenticity of documents submitted and the accuracy of the data exchanged to be verified.

SECTION 10

Exclusion from the scheme and evaluation

Article 53

Exclusion of raw materials from the scheme

The Member States may exclude any agricultural raw material from the scheme established by this Chapter where such materials raise difficulties from the viewpoint of controls, public health, the environment, criminal law, or a reduced rate of final energy products.

Article 54

Evaluation

Before 15 October following the end of the marketing year in question, the Member States shall forward to the Commission all the information needed to evaluate the scheme introduced by this Chapter.

Such information shall include, in particular:

(a) the areas corresponding to each species of raw material;

(b) the quantities of each type of raw material, end product, by-product and co-product obtained, with details of the type of raw material used;

(c) the measures taken under Article 34;

(d) the raw materials excluded from the scheme under Article 53.

CHAPTER 9

FINAL PROVISIONS

Article 55

Repeals

Regulation (EC) No 613/97 is repealed.

Article 56

This Regulation shall enter into force on the seventh 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, 23 December 2003.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX I

CROP-SPECIFIC PAYMENT FOR RICE

Calculation of the coefficient of reduction referred to in Article 17

1. For the observation of a possible overrun of the base area referred to in Article 82 of the Regulation (EC) No 1782/2003, the competent authority of the Member State shall take into account, on the one hand, the base areas or subbase areas, fixed in Article 81 of the aforementioned Regulation, and on the other hand, the total of the areas for which aid applications have been submitted for these base areas and subbase areas.

2. In establishing the total area for which aid applications have been submitted, account shall not be taken of applications or parts of applications that a check has shown to be clearly unjustified.

3. If an overrun is observed for certain base areas or subbase areas, the Member State shall establish for these, the percentage of overrun, calculated with two decimal places according to the deadline fixed in Article 18(2) of this Regulation. When an overrun can be foreseen, the Member State shall inform the producers forthwith.

4. The coefficient of reduction of the crop-specific payment for rice shall be calculated, in accordance with Article 82 of Regulation (EC) No 1782/2003, according to the following formula:

   Reduction coefficient = reference area of the subbase area divided by the total area for which aid applications have been submitted for this subbase area.

   The reduced crop-specific payment for rice, shall be calculated according to the following formula:

   reduced crop-specific aid for rice = crop-specific aid for rice multiplied by the reduction coefficient.

   This reduction coefficient and this reduced crop-specific payment for rice shall be calculated for each subbase area, after application of the redistribution provided for in Article 82(2) of the aforementioned Regulation. Redistribution shall be done to the profit of the subbase areas for which limits have been exceeded. It shall be done proportionally to the overruns noted in the subbase areas for which limits have been exceeded.

ANNEX II

Crop-specific payment for rice

A. Area sown for which an aid has been applied (provisional data).
Information referred to in Article 18(2)(a).
To be sent by Member States to the following e-mail address: AGRI-C2-RICE@CEC.EU.INT

Marketing year: 2. . ./2… Member State: .....

(for France only) base area: .....

Subarea	Reference area (in hectares) (*)	Variety	Area sown for which an aid has been applied (in hectares) (**)	Percentage overrun
Name of subarea 1		Variety 1		
		Variety 2		
		Variety 3		
		Variety 4		
		Variety 5		
		…..		
		Total		
Name of subarea 2		Variety 1		
		Variety 2		
		Variety 3		
		Variety 4		
		Variety 5		
		…..		
		Total		
Name of subarea 3		Variety 1		
		Variety 2		
		Variety 3		
		Variety 4		
		Variety 5		
		…..		
		Total		
…..		Variety 1		
		Variety 2		
		Variety 3		
		Variety 4		
		Variety 5		
		…..		
		Total		
Total				

(1) Article 81 of Regulation (EC) No 1782/2003.
(2) Article 80(1) of Regulation (EC) No 1782/2003.

B. Area sown for which an aid has been applied (definitive data).
Information referred to in Article 18(2)(b).
To be sent by Member States to the following e-mail address: AGRI-C2-RICE@CEC.EU.INT

Marketing year 2. . ./2. . . Member State: .....

(for France only) base area: .....

Subarea	Reference area (in hectares) (*)	Variety	Area sown for which an aid has been applied (in hectares) (**)	Percentage overrun
Name of subarea 1		Variety 1		
		Variety 2		
		Variety 3		
		Variety 4		
		Variety 5		
		…..		
		Total		
Name of subarea 2		Variety 1		
		Variety 2		
		Variety 3		
		Variety 4		
		Variety 5		
		…..		
		Total		
Name of subarea 3		Variety 1		
		Variety 2		
		Variety 3		
		Variety 4		
		Variety 5		
		…..		
		Total		
…..		Variety 1		
		Variety 2		
		Variety 3		
		Variety 4		
		Variety 5		
		…..		
		Total		
Total				

(1) Article 81 of Regulation (EC) No 1782/2003.
(2) Article 80(1) of Regulation (EC) No 1782/2003.

C. Area sown for which an aid has been paid.
Information referred to in Article 18(2)(c).
To be sent by Member States to the following e-mail address:: AGRI-C2-RICE@CEC.EU.INT

Marketing year: 2. . ./2. . . Member State: .....

(for France only) base area: .....

Subarea	Reference area (in hectares) (*)	Variety	Area sown for which an aid has been paid (in hectares)	Specific aid paid (EUR/ha) (**)
Name of subarea 1		Variety 1		
		Variety 2		
		Variety 3		
		Variety 4		
		Variety 5		
		…..		
		Total		
Name of subarea 2		Variety 1		
		Variety 2		
		Variety 3		
		Variety 4		
		Variety 5		
		…..		
		Total		
Name of subarea 3		Variety 1		
		Variety 2		
		Variety 3		
		Variety 4		
		Variety 5		
		…..		
		Total		
…..		Variety 1		
		Variety 2		
		Variety 3		
		Variety 4		
		Variety 5		
		…..		
		Total		
Total				

(1) Article 81 of Regulation (EC) No 1782/2003.
(2) Article 82 of Regulation (EC) No 1782/2003 and Annex I of this Regulation.

COMMISSION DIRECTIVE 2003/124/EC

of 22 December 2003

implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) [1], and in particular the second paragraph of Article 1 and the first, second and third indents of Article 6(10) thereof,

After consulting the Committee of European Securities Regulators (CESR) [2] for technical advice,

Whereas:

(1) Reasonable investors base their investment decisions on information already available to them, that is to say, on *ex ante* available information. Therefore, the question whether, in making an investment decision, a reasonable investor would be likely to take into account a particular piece of information should be appraised on the basis of the *ex ante* available information. Such an assessment has to take into consideration the anticipated impact of the information in light of the totality of the related issuer's activity, the reliability of the source of information and any other market variables likely to affect the related financial instrument or derivative financial instrument related thereto in the given circumstances.

(2) *Ex post* information may be used to check the presumption that the *ex ante* information was price sensitive, but should not be used to take action against someone who drew reasonable conclusions from *ex ante* information available to him.

(3) Legal certainty for market participants should be enhanced through a closer definition of two of the elements essential to the definition of inside information, namely the precise nature of that information and the significance of its potential effect on the prices of financial instruments or related derivative financial instruments.

(4) Not only does the protection of investors require timely public disclosure of inside information by issuers, it also requires such disclosure to be as fast and as synchronised as possible between all categories of investors in all Member States in which the issuer has requested or approved admission of its financial instruments to trading on a regulated market, in order to guarantee at Community level equal access of investors to such information and to prevent insider dealing. To this end Member States may officially appoint mechanisms to be used for such disclosure.

(5) In order to protect the legitimate interests of issuers, it should be permissible, in closely defined specific circumstances, to delay public disclosure of inside information. However, the protection of investors requires that in such cases the information be kept confidential in order to prevent insider dealing.

(6) In order to guide both market participants and competent authorities, signals have to be taken into account when examining possibly manipulative behaviours.

(7) The measures provided for in this Directive are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Inside information

1. For the purposes of applying point 1 of Article 1 of Directive 2003/6/EC, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.

2. For the purposes of applying point 1 of Article 1 of Directive 2003/6/EC, 'information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments' shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.

[1] OJ L 96, 12.4.2003, p. 16.
[2] CESR was established by Commission Decision 2001/527/EC (OJ L 191,13.7.2001, p. 43).

Article 2

Means and time-limits for public disclosure of inside information

1. For the purposes of applying Article 6(1) of Directive 2003/6/EC, Articles 102(1) and Article 103 of Directive 2001/34/EC of the European Parliament and of the Council [1] shall apply.

Furthermore, Member States shall ensure that the inside information is made public by the issuer in a manner which enables fast access and complete, correct and timely assessment of the information by the public.

In addition, Member States shall ensure that the issuer does not combine, in a manner likely to be misleading, the provision of inside information to the public with the marketing of its activities.

2. Member States shall ensure that issuers are deemed to have complied with the first subparagraph of Article 6(1) of Directive 2003/6/EC where, upon the coming into existence of a set of circumstances or the occurrence of an event, albeit not yet formalised, the issuers have promptly informed the public thereof.

3. Any significant changes concerning already publicly disclosed inside information shall be publicly disclosed promptly after these changes occur, through the same channel as the one used for public disclosure of the original information.

4. Member States shall require issuers to take reasonable care to ensure that the disclosure of inside information to the public is synchronised as closely as possible between all categories of investors in all Member States in which those issuers have requested or approved the admission to trading of their financial instruments on a regulated market.

Article 3

Legitimate interests for delaying public disclosure and confidentiality

1. For the purposes of applying Article 6(2) of Directive 2003/6/EC, legitimate interests may, in particular, relate to the following non-exhaustive circumstances:

(a) negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer;

(b) decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, where the organisation of such an issuer requires the separation between these bodies, provided that a public disclosure of the information before such approval together with the simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by the public.

2. For the purposes of applying Article 6(2) of Directive 2003/6/EC, Member States shall require that, in order to be able to ensure the confidentiality of inside information, an issuer controls access to such information and, in particular, that:

(a) the issuer has established effective arrangements to deny access to such information to persons other than those who require it for the exercise of their functions within the issuer;

(b) the issuer has taken the necessary measures to ensure that any person with access to such information acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information;

(c) the issuer has in place measures which allow immediate public disclosure in case the issuer was not able to ensure the confidentiality of the relevant inside information, without prejudice to the second subparagraph of Article 6 (3) of Directive 2003/6/EC.

Article 4

Manipulative behaviour related to false or misleading signals and to price securing

For the purposes of applying point 2(a) of Article 1 of Directive 2003/6/EC, and without prejudice to the examples set out in the second paragraph of point 2 thereof, Member States shall ensure that the following non-exhaustive signals, which should not necessarily be deemed in themselves to constitute market manipulation, are taken into account when transactions or orders to trade are examined by market participants and competent authorities:

(a) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the regulated market concerned, in particular when these activities lead to a significant change in the price of the financial instrument;

(b) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a financial instrument lead to significant changes in the price of the financial instrument or related derivative or underlying asset admitted to trading on a regulated market;

(c) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument admitted to trading on a regulated market;

[1] OJ L 184, 6.7.2001, p. 1.

(d) the extent to which orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the regulated market concerned, and might be associated with significant changes in the price of a financial instrument admitted to trading on a regulated market;

(e) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;

(f) the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument admitted to trading on a regulated market, or more generally the representation of the order book available to market participants, and are removed before they are executed;

(g) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

Article 5

Manipulative behaviours related to the employment of fictitious devices or any other form of deception or contrivance

For the purposes of applying point 2(b) of Article 1 of Directive 2003/6/EC, and without prejudice to the examples set out in the second paragraph of point 2 thereof, Member States shall ensure that the following non-exhaustive signals, which should not necessarily be deemed in themselves to constitute market manipulation, are taken into account when transactions or orders to trade are examined by market participants and competent authorities:

(a) whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them;

(b) whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate research or investment recommendations which are erroneous or biased or demonstrably influenced by material interest.

Article 6

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 October 2004 at the latest. They shall forthwith communicate to the Commission the text of the 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 national law which they adopt in the field covered by this Directive.

Article 7

Entry into force

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

Article 8

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 22 December 2003.

For the Commission

Frederik BOLKESTEIN

Member of the Commission

COMMISSION DIRECTIVE 2003/125/EC

of 22 December 2003

implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) [1], and in particular the sixth indent of Article 6(10) thereof,

After consulting the Committee of European Securities Regulators (CESR) [2] for technical advice,

Whereas:

(1) Harmonised standards are necessary for the fair, clear and accurate presentation of information and disclosure of interests and conflicts of interest, to be complied with by persons producing or disseminating information recommending or suggesting an investment strategy, intended for distribution channels or for the public. In particular, market integrity requires high standards of fairness, probity and transparency when information recommending or suggesting an investment strategy is presented.

(2) Recommending or suggesting an investment strategy is either done explicitly (such as 'buy', 'hold' or 'sell' recommendations) or implicitly (by reference to a price target or otherwise).

(3) Investment advice, through the provision of a personal recommendation to a client in respect of one or more transactions relating to financial instruments (in particular informal short-term investment recommendations originating from inside the sales or trading departments of an investment firm or a credit institution expressed to their clients), which are not likely to become publicly available, should not be considered in themselves as recommendations within the meaning of this Directive.

(4) Investment recommendations that constitute a possible basis for investment decisions should be produced and disseminated in accordance with high standards of care in order to avoid misleading market participants.

(5) The identity of the producer of investment recommendations, his conduct of business rules and the identity of his competent authority should be disclosed, since it may be a valuable piece of information for investors to consider in relation to their investment decisions.

(6) Recommendations should be presented clearly and accurately.

(7) Own interests or conflicts of interest of persons recommending or suggesting investment strategy may influence the opinion that they express in investment recommendations. In order to ensure that the objectivity and reliability of the information can be evaluated, appropriate disclosure should be made of significant financial interests in any financial instrument which is the subject of the information recommending investment strategies, or of any conflicts of interest or control relationship with respect to the issuer to whom the information relates, directly or indirectly. However, this Directive should not require relevant persons producing investment recommendations to breach effective information barriers put in place in order to prevent and avoid conflicts of interest.

(8) Investment recommendations may be disseminated in unaltered, altered or summarised form by a person other than the producer. The way in which disseminators handle such recommendations may have an important impact on the evaluation of those recommendations by investors. In particular, the knowledge of the identity of the disseminator of investment recommendations, his conduct of business rules or the extent of alteration of the original recommendation can be a valuable piece of information for investors when considering their investment decisions.

(9) Posting of investment recommendations on internet sites should be in accordance with the rules on transfer of personal data to third countries as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the movement of such data [3].

(10) Credit rating agencies issue opinions on the creditworthiness of a particular issuer or financial instrument as of a given date. As such, these opinions do not constitute a recommendation within the meaning of this Directive. However, credit rating agencies should consider adopting internal policies and procedures designed to ensure that credit ratings published by them are fairly presented and that they appropriately disclose any significant interests or conflicts of interest concerning the financial instruments or the issuers to which their credit ratings relate.

[1] OJ L 96, 12.4.2003, p. 16.
[2] CESR was established by Commission Decision 2001/527/EC (OJ L 191,13.7.2001, p. 43).
[3] OJ L 281, 23.11.1995, p. 31.

(11) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and in particular by Article 11 thereof and Article 10 of the European Convention on Human Rights. In this regard, this Directive does not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media.

(12) The measures provided for in this Directive are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

DEFINITIONS

Article 1

Definitions

For the purposes of this Directive, the following definitions shall apply in addition to those laid down in Directive 2003/6/EC:

1. 'investment firm' means any person as defined in Article 1(2) of Council Directive 93/22/EEC [1];

2. 'credit institution' means any person as defined in Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council [2];

3. 'recommendation' means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public;

4. 'research or other information recommending or suggesting investment strategy' means:

   (a) information produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce recommendations or a natural person working for them under a contract of employment or otherwise, that, directly or indirectly, expresses a particular investment recommendation in respect of a financial instrument or an issuer of financial instruments;

   (b) information produced by persons other than the persons referred to in (a) which directly recommends a particular investment decision in respect of a financial instrument;

5. 'relevant person' means a natural or legal person producing or disseminating recommendations in the exercise of his profession or the conduct of his business;

6. 'issuer' means the issuer of a financial instrument to which a recommendation relates, directly or indirectly;

7. 'distribution channels' shall mean a channel through which information is, or is likely to become, publicly available. 'Likely to become publicly available information' shall mean information to which a large number of persons have access;

8. 'appropriate regulation' shall mean any regulation, including self-regulation, in place in Member States as referred to by Directive 2003/6/EC.

CHAPTER II

PRODUCTION OF RECOMMENDATIONS

Article 2

Identity of producers of recommendations

1. Member States shall ensure that there is appropriate regulation in place to ensure that any recommendation discloses clearly and prominently the identity of the person responsible for its production, in particular, the name and job title of the individual who prepared the recommendation and the name of the legal person responsible for its production.

2. Where the relevant person is an investment firm or a credit institution, Member States shall require that the identity of the relevant competent authority be disclosed.

Where the relevant person is neither an investment firm nor a credit institution, but is subject to self-regulatory standards or codes of conduct, Member States shall ensure that a reference to those standards or codes is disclosed.

3. Member States shall ensure that there is appropriate regulation in place to ensure that the requirements laid down in paragraphs 1 and 2 are adapted in order not to be disproportionate in the case of non-written recommendations. Such adaptation may include a reference to the place where such disclosures can be directly and easily accessed by the public, such as an appropriate internet site of the relevant person.

4. Paragraphs 1 and 2 shall not apply to journalists subject to equivalent appropriate regulation, including equivalent appropriate self regulation, in the Member States, provided that such regulation achieves similar effects as those of paragraphs 1 and 2.

Article 3

General standard for fair presentation of recommendations

1. Member States shall ensure that there is appropriate regulation in place to ensure that all relevant persons take reasonable care to ensure that:

(a) facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;

[1] OJ L 141, 11.6.1993, p. 27.
[2] OJ L 126, 26.5.2000, p. 1.

(b) all sources are reliable or, where there is any doubt as to whether a source is reliable, this is clearly indicated;

(c) all projections, forecasts and price targets are clearly labelled as such and that the material assumptions made in producing or using them are indicated.

2. Member States shall ensure that there is appropriate regulation in place to ensure that the requirements laid down in paragraph 1 are adapted in order not to be disproportionate in the case of non-written recommendations.

3. Member States shall require that all relevant persons take reasonable care to ensure that any recommendation can be substantiated as reasonable, upon request by the competent authorities.

4. Paragraphs 1 and 3 shall not apply to journalists subject to equivalent appropriate regulation in the Member States, including equivalent appropriate self regulation, provided that such regulation achieves similar effects as those of paragraphs 1 and 3.

Article 4

Additional obligations in relation to fair presentation of recommendations

1. In addition to the obligations laid down in Article 3, where the relevant person is an independent analyst, an investment firm, a credit institution, any related legal person, any other relevant person whose main business is to produce recommendations, or a natural person working for them under a contract of employment or otherwise, Member States shall ensure that there is appropriate regulation in place to ensure that person to take reasonable care to ensure that at least:

(a) all substantially material sources are indicated, as appropriate, including the relevant issuer, together with the fact whether the recommendation has been disclosed to that issuer and amended following this disclosure before its dissemination;

(b) any basis of valuation or methodology used to evaluate a financial instrument or an issuer of a financial instrument, or to set a price target for a financial instrument, is adequately summarised;

(c) the meaning of any recommendation made, such as buy, sell or hold, which may include the time horizon of the investment to which the recommendation relates, is adequately explained and any appropriate risk warning, including a sensitivity analysis of the relevant assumptions, indicated;

(d) reference is made to the planned frequency, if any, of updates of the recommendation and to any major changes in the coverage policy previously announced;

(e) the date at which the recommendation was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any financial instrument price mentioned;

(f) where a recommendation differs from a recommendation concerning the same financial instrument or issuer, issued during the 12-month period immediately preceding its release, this change and the date of the earlier recommendation are indicated clearly and prominently.

2. Member States shall ensure that, where the requirements laid down in points (a), (b) or (c) of paragraph 1 would be disproportionate in relation to the length of the recommendation distributed, it shall suffice to make clear and prominent reference in the recommendation itself to the place where the required information can be directly and easily accessed by the public, such as a direct Internet link to that information on an appropriate internet site of the relevant person, provided that there has been no change in the methodology or basis of valuation used.

3. Member States shall ensure that there is appropriate regulation in place to ensure that, in the case of non-written recommendations, the requirements of paragraph 1 are adapted so that they are not disproportionate.

Article 5

General standard for disclosure of interests and conflicts of interest

1. Member States shall ensure that there is appropriate regulation in place to ensure that relevant persons disclose all relationships and circumstances that may reasonably be expected to impair the objectivity of the recommendation, in particular where relevant persons have a significant financial interest in one or more of the financial instruments which are the subject of the recommendation, or a significant conflict of interest with respect to an issuer to which the recommendation relates.

Where the relevant person is a legal person, that requirement shall apply also to any legal or natural person working for it, under a contract of employment or otherwise, who was involved in preparing the recommendation.

2. Where the relevant person is a legal person, the information to be disclosed in accordance with paragraph 1 shall at least include the following:

(a) any interests or conflicts of interest of the relevant person or of related legal persons that are accessible or reasonably expected to be accessible to the persons involved in the preparation of the recommendation;

(b) any interests or conflicts of interest of the relevant person or of related legal persons known to persons who, although not involved in the preparation of the recommendation, had or could reasonably be expected to have access to the recommendation prior to its dissemination to customers or the public.

3. Member States shall ensure that there is appropriate regulation in place to ensure that the recommendation itself shall include the disclosures provided for in paragraphs 1 and 2. Where such disclosures would be disproportionate in relation to the length of the recommendation distributed, it shall suffice to make clear and prominent reference in the recommendation itself to the place where such disclosures can be directly and easily accessed by the public, such as a direct Internet link to the disclosure on an appropriate internet site of the relevant person.

4. Member States shall ensure that there is appropriate regulation in place to ensure that the requirements laid down in paragraph 1 are adapted in order not to be disproportionate in the case of non-written recommendations.

5. Paragraphs 1 to 3 shall not apply to journalists subject to equivalent appropriate regulation, including equivalent appropriate self regulation, in the Member States, provided that such regulation achieves similar effects as those of paragraphs 1 to 3.

Article 6

Additional obligations in relation to disclosure of interests or conflicts of interest

1. In addition to the obligations laid down in Article 5, Member States shall require that any recommendation produced by an independent analyst, an investment firm, a credit institution, any related legal person, or any other relevant person whose main business is to produce recommendations, discloses clearly and prominently the following information on their interests and conflicts of interest:

(a) major shareholdings that exist between the relevant person or any related legal person on the one hand and the issuer on the other hand. These major shareholdings include at least the following instances:

— when shareholdings exceeding 5 % of the total issued share capital in the issuer are held by the relevant person or any related legal person, or

— when shareholdings exceeding 5 % of the total issued share capital of the relevant person or any related legal person are held by the issuer.

Member States may provide for lower thresholds than the 5 % threshold as provided for in these two instances;

(b) other significant financial interests held by the relevant person or any related legal person in relation to the issuer;

(c) where applicable, a statement that the relevant person or any related legal person is a market maker or liquidity provider in the financial instruments of the issuer;

(d) where applicable, a statement that the relevant person or any related legal person has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of financial instruments of the issuer;

(e) where applicable, a statement that the relevant person or any related legal person is party to any other agreement with the issuer relating to the provision of investment banking services, provided that this would not entail the disclosure of any confidential commercial information and that the agreement has been in effect over the previous 12 months or has given rise during the same period to the payment of a compensation or to the promise to get a compensation paid;

(f) where applicable, a statement that the relevant person or any related legal person is party to an agreement with the issuer relating to the production of the recommendation.

2. Member States shall require disclosure, in general terms, of the effective organisational and administrative arrangements set up within the investment firm or the credit institution for the prevention and avoidance of conflicts of interest with respect to recommendations, including information barriers.

3. Member States shall require that for natural or legal persons working for an investment firm or a credit institution, under a contract of employment or otherwise, and who were involved in preparing the recommendation, the requirement under the second subparagraph of paragraph 1 of Article 5 shall include, in particular, disclosure of whether the remuneration of such persons is tied to investment banking transactions performed by the investment firm or credit institution or any related legal person.

Where those natural persons receive or purchase the shares of the issuers prior to a public offering of such shares, the price at which the shares were acquired and the date of acquisition shall also be disclosed.

4. Member States shall require that investment firms and credit institutions disclose, on a quarterly basis, the proportion of all recommendations that are 'buy', 'hold', 'sell' or equivalent terms, as well as the proportion of issuers corresponding to each of these categories to which the investment firm or the credit institution has supplied material investment banking services over the previous 12 months.

5. Member States shall ensure that the recommendation itself includes the disclosures required by paragraphs 1 to 4. Where the requirements under paragraphs 1 to 4 would be disproportionate in relation to the length of the recommendation distributed, it shall suffice to make clear and prominent reference in the recommendation itself to the place where such disclosure can be directly and easily accessed by the public, such as a direct Internet link to the disclosure on an appropriate internet site of the investment firm or credit institution.

6. Member States shall ensure that there is appropriate regulation in place to ensure that, in the case of non-written recommendations, the requirements of paragraph 1 are adapted so that they are not disproportionate.

CHAPTER III

DISSEMINATION OF RECOMMENDATIONS PRODUCED BY THIRD PARTIES

Article 7

Identity of disseminators of recommendations

Member States shall ensure that there is appropriate regulation in place to ensure that, whenever a relevant person under his own responsibility disseminates a recommendation produced by a third party, the recommendation indicates clearly and prominently the identity of that relevant person.

Article 8

General standard for dissemination of recommendations

Member States shall ensure that there is appropriate regulation in place to ensure that whenever a recommendation produced by a third party is substantially altered within disseminated information, that information clearly indicates the substantial alteration in detail. Member States shall ensure that whenever the substantial alteration consists of a change of the direction of the recommendation (such as changing a 'buy' recommendation into a 'hold' or 'sell' recommendation or vice versa), the requirements laid down in Articles 2 to 5 on producers are met by the disseminator, to the extent of the substantial alteration.

In addition, Member States shall ensure that there is appropriate regulation in place to ensure that relevant legal persons who themselves, or through natural persons, disseminate a substantially altered recommendation have a formal written policy so that the persons receiving the information may be directed to where they can have access to the identity of the producer of the recommendation, the recommendation itself and the disclosure of the producer's interests or conflicts of interest, provided that these elements are publicly available.

The first and second paragraphs do not apply to news reporting on recommendations produced by a third party where the substance of the recommendation is not altered.

In case of dissemination of a summary of a recommendation produced by a third party, the relevant persons disseminating such summary shall ensure that the summary is clear and not misleading, mentioning the source document and where the disclosures related to the source document can be directly and easily accessed by the public provided that they are publicly available.

Article 9

Additional obligations for investment firms and credit institutions

In addition to the obligations laid down in Articles 7 and 8, whenever the relevant person is an investment firm, a credit institution or a natural person working for such persons under a contract of employment or otherwise, and disseminates recommendations produced by a third party, Member States shall require that:

(a) the name of the competent authority of the investment firm or credit institution is clearly and prominently indicated;

(b) if the producer of the recommendation has not already disseminated it through a distribution channel, the requirements laid down in Article 6 on producers are met by the disseminator;

(c) if the investment firm or credit institution has substantially altered the recommendation, the requirements laid down in Articles 2 to 6 on producers are met.

CHAPTER IV

FINAL PROVISIONS

Article 10

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 October 2004 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between these 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 national law which they adopt in the field covered by this Directive.

Article 11

Entry into force

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

Article 12

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 22 December 2003.

For the Commission

Frederik BOLKESTEIN

Member of the Commission

COMMISSION DIRECTIVE 2003/126/EC

of 23 December 2003

on the analytical method for the determination of constituents of animal origin for the official control of 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 feedingstuffs [1], and in particular Article 2 thereof,

Whereas:

(1) Pursuant to Directive 70/373/EEC, official controls of feedingstuffs, for the purpose of checking compliance with the requirements of the laws, regulations and administrative provisions governing their quality and composition, are to be carried out using Community sampling and analysis methods.

(2) Provisions on the labelling of feedingstuffs and requirements prohibiting the use of certain types of animal proteins in feedingstuffs for certain categories of animals imply the need to provide for reliable analytical methods to establish their presence and, if appropriate, their percentage.

(3) The method described in Commission Directive 98/88/EC of 13 November 1998 establishing guidelines for the microscopic identification and estimation of constituents of animal origin for the official control of feedingstuffs [2] is currently the only method validated to control the presence of animal proteins including these proteins treated at 133 °C/3 Bar/20', in feedingstuffs.

(4) An intercomparison study for the determination of processed animal proteins recently demonstrated that the variation in the application of the microscopic tests laid down in Directive 98/88/EC resulted in significant differences in the sensitivity, specificity and accuracy of the method. In order to harmonise and improve determination of processed animal proteins the provisions concerning the microscopic method should be further specified and made mandatory. It is necessary to ensure that analysts performing the method are adequately trained since the performance depends on the skills of the analyst.

(5) Directive 98/88/EC should therefore be replaced.

(6) 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

Member States shall provide that where official analysis of feedingstuffs is carried out with a view to officially controlling the presence, identification and/or estimation of the amount of constituents of animal origin in feedingstuffs, in the framework of the coordinated inspection programme in the field of animal nutrition in accordance with Council Directive 95/53/EC [3], it shall be carried out in accordance with the provisions of the Annex to this Directive.

Article 2

Member States shall ensure that laboratories carrying out official controls on the presence of animal constituents in feedingstuffs participate periodically in proficiency testing on the analytical methods, and that laboratory personnel carrying out analyses receive adequate training.

Article 3

Directive 98/88/EC is repealed.

References to the repealed Directive shall be construed as references to this Directive.

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2004 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.

[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 318, 27.11.1998, p. 45.
[3] OJ L 265, 8.11.1995, p. 17. Directive as last amended by Directive 2001/46/EC of the European Parliament and of the Council (OJ L 234, 1.9.2001, p. 55).

Article 5

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

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 23 December 2003.

For the Commission
David BYRNE
Member of the Commission

ANNEX

Conditions for the microscopic detection, identification or estimation of constituents of animal origin in feedingstuffs

1. **Objective and field of application**

These conditions shall be used when detection of constituents of animal origin (defined as products from processing bodies and body parts of mammals, poultry and fish) in feedingstuffs is carried out by means of microscopic examination in the framework of the coordinated inspection programme in the field of animal nutrition in accordance with Council Directive 95/53/EC. Provided that the methods in this Annex are used in all official tests, a second test may also be carried out using variant or alternative methods, in order to improve the detection of certain types of animal constituents or to specify further the origin of the animal constituents. Furthermore, a variant protocol may be used when examining certain specific animal constituents such as plasma or bones in tallow (see also point 9), provided that these analyses are made in addition to the analyses foreseen in the coordinated inspection programme.

2. **Sensitivity**

Dependent on the nature of the constituents of animal origin, very small amounts (< 0,1 %) in feedingstuffs can be detected.

3. **Principle**

A representative sample, taken in accordance with the provisions laid down in Commission Directive 76/371/EEC of 1 March 1976 establishing Community methods of sampling for the official control of feedingstuffs [1] which has undergone suitable preparation is used for the identification. The following protocol is fit for handling feed with low moisture content. Feed with an amount of moisture higher than 14 % shall be dried (condensed) prior to handling. Special feed or feed materials (e.g. fats, oils) need dedicated treatment (see point 9). The constituents of animal origin are identified on the basis of typical, microscopically identifiable characteristics (i.e. muscle fibres and other meat particles, cartilage, bones, horn, hair, bristles, blood, feathers, egg shells, fish bones, scales). The identification has to be done both on the sieve fraction (6.1) and the concentrated sediment (6.2) of the sample.

4. **Reagents**

4.1. *Embedding agent*

4.1.1. Chloral hydrate (aqueous, 60 % w/v)

4.1.2. Lye (NaOH 2,5 % w/v or KOH 2,5 % w/v) for sieve fractions

4.1.3. Paraffin oil or glycerol (viscosity: 68-81) for microscopic observations in the sediment

4.2. *Rinsing agents*

4.2.1. Alcohol, 96 %

4.2.2. Acetone

4.3. *Concentrating agent*

4.3.1. Tetrachloroethylene (density 1,62)

4.4. *Staining reagents*

4.4.1. Iodine/potassium iodide solution (Dissolve 2 g potassium iodide in 100 ml water and add 1 g iodine while shaking frequently)

4.4.2. Alizarin Red (Dilute 2,5 ml 1M hydrocloric acid in 100 ml water and add 200 mg alizarine red to this solution)

4.4.3. Cystine reagent (2 g lead acetate, 10 g NaOH/100 ml H_2O)

4.4.4. Iodine/potassium iodide solution (dissolved in 70 % ethanol)

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

4.5. *Bleaching reagent*

4.5.1. Commercial sodium hypochlorite solution (9.6 % active chlorine)

5. **Equipment and accessories**

5.1. Analytical balance (accuracy of 0,01 g except for the concentrated sediment: 0,001 g)

5.2. Material for grinding (grinding mill or a mortar, especially for feed containing > 15 % fat on analysis)

5.3. Sieve fitted with sieve mesh with square meshes of width of 0,50 mm maximum

5.4. Separation funnel or conical bottomed settling beaker

5.5. Stereomicroscope (minimum 40' magnification)

5.6. Compound microscope (minimum 400' magnification), transmitted light or polarised light

5.7. Standard laboratory glassware

All equipment shall be thoroughly cleaned. Separation funnels and glassware need washing in a washing machine. Sieves need cleaning using a brush with stiff hairs.

6. **Procedure**

Pelleted feeds may be pre-sieved if both fractions are analysed as a separate sample.

At least 50 g of the sample shall be treated (ground with care using the suitable grinding equipment (5.2) if necessary in order to achieve an appropriate structure). From the ground material two representative portions shall be taken, one for the sieve fraction (at least 5 g) (6.1) and one for the concentrated sediment (at least 5 g) (6.2). Colouring with staining reagents (6.3) can additionally be applied for the identification.

In order to indicate the nature of the animal proteins and the origin of the particles, a decision support system such as Aries can be used and reference samples can be documented.

6.1. *Identification of constituents of animal origin in the sieve fractions*

At least 5 g of the sample is sieved through the sieve (5.3) in two fractions.

The sieve fraction(s) with the large particles (or a representative part of the fraction) is applied as a thin layer to a suitable support and screened systematically under the stereomicroscope (5.5) at various magnifications for constituents of animal origin.

Slides made with the sieve fraction(s) with the fine particles are screened systematically under the compound microscope (5.6) at various magnifications for constituents of animal origin.

6.2. *Identification of constituents of animal origin from the concentrated sediment*

At least 5 g (accurate to 0,01 g) of the sample shall be transferred into a separation funnel or conical bottomed settling beaker and treated with at least 50 ml of tetrachloroethylene (4.3.1). The mixture shall be shaken or stirred repeatedly.

— If a closed separation funnel is used the sediment shall be left to stand for a sufficient time (at least three minutes) before the sediment is separated off. Shaking shall be repeated and the sediment shall be left to stand again at least three minutes. The sediment shall be separated off again.

— If an open beaker is used, the sediment shall be left to stand for at least five minutes before the sediment is separated off.

The total sediment shall be dried and subsequently weighed (accurate to 0,001 g). The weighing is only necessary in case an estimation is required. If the sediment consists of many large particles it may be sieved through a sieve (5.3) in two fractions. The dried sediment shall be examined for bone constituents under the stereomicroscope (5.5) and the compound microscope (5.6).

6.3. *Use of embedding agents and staining reagents*

The microscopic identification of the constituents of animal origin can be supported by the use of special embedding agents and staining reagents.

Chloral hydrate (4.1.1):	By carefully heating, cell structures can be seen more clearly because starch grains gelatinise and unwanted cell contents are removed.
Lye (4.1.2):	Either sodiumhydroxide or potassiumhydroxide clears the material of the feed, assisting the detection of muscle fibres, hairs and other keratin structures.
Paraffin oil and glycerol (4.1.3):	Bone constituents can be well identified in this embedding agent because most lacunae remain filled with air and appear as black holes about 5-15 µm.
Iodine/potassium iodide solution (4.4.1):	Used for the detection of starch (blue-violet colour) and protein (yellow-orange colour). Solutions may be diluted if required.
Alizarin red solution (4.4.2):	Red/pink colouring of bones, fish bones and scales. Before drying the sediment (see section 6.2), the total sediment shall be transferred into a glass test tube and rinsed twice with approximately 5 ml alcohol (4.2.1) (each time a vortex shall be used, the solvent shall be let settle about one minute and poured off). Before using this staining reagent, the sediment shall be bleached by adding at least 1 ml sodium hypochlorite solution (4.5.1). The reaction shall be allowed to continue for 10 minutes. The tube shall be filled with water, the sediment shall be let settle two to three minutes, and the water and the suspended particles shall be poured off. The sediment shall be rinsed twice more with about 10 ml of water (a vortex shall be used, let settle, and the water poured off each time). Two to 10 or more drops (depending on the amount of residue) of the alizarine red solution shall be added. The mixture shall be shaken and the reaction shall be let occur a few seconds. The coloured sediment shall be rinsed twice with approximately 5 ml alcohol (4.2.1) followed by one rinse with acetone (4.2.2) (each time a vortex shall be used, the solvent shall be let settle about one minute and poured off). The sediment is then ready to be dried.
Cystin reagent (4.4.3):	By carefully heating, cystin-containing constituents (hair, feathers, etc.) become black-brown.

6.4. *Examination in feed possibly containing fishmeal*

At least one slide shall be examined from the fine sieve fraction and from the fine fraction of the sediment under the compound microscope (see sections 6.1 and 6.2).

Where the label indicates that the ingredients include fishmeal, or if the presence of fishmeal is suspected or detected in the initial examination, at least two additional slides of the fine sieve fraction from the original sample, and the total sediment fraction shall be examined.

7. **Calculation and evaluation**

Member States shall ensure that the procedures described in this point are used where an official analysis is carried out with a view to estimating the amount (and not simply the presence) of animal constituents.

The calculation can only be made if the constituents of animal origin contain bone fragments.

Bone fragments of terrestrial warm-blooded species (i.e. mammals and birds) can be distinguished from the different types of fish bone on the microscopic slide by means of the typical lacunae. The proportion of constituents of animal origin in the sample material is estimated taking into consideration:

— the estimated proportion (weight %) of bone fragments in the concentrated sediment and

— the proportion (weight %) of bone in the constituents of animal origin.

The estimate has to be based on at least three (if possible) slides and at least five fields per slide. In compound feedingstuffs, the concentrated sediment as a rule contains not only terrestrial animal bone and fish bone fragments, but also other particles of high specific weight, e.g. minerals, sand, lignified plant fragments and the like.

7.1. *Estimated value of the percentage of bone fragments*

% terrestrial bone fragments = (S × c)/W

% fish bone and scale fragments = (S × d)/W

(S = sediment weight (mg), c = correction factor (%) for the estimated portion of terrestrial animal bones in the sediment, d = correction factor (%) for the estimated portion of fish bones and scale fragments in the sediment, W = weight of the sample material for the sedimentation (mg)).

7.2. *Estimated value of constituents of animal origin*

The proportion of bone in animal products can vary greatly. (The percentage of bone in the case of bonemeals is of the order of 50 to 60 % and in the case of meat meals of the order of 20 to 30 %; in the case of fish meals bone and scale contents vary according to the category and origin of the fishmeal, normally in the order of 10 to 20 %).

If the type of animal meal present in the sample is known, it is possible to estimate the content:

Estimated content of constituents of terrestrial animal products (%) = (S × c)/(W × f) × 100

Estimated content of constituents of fish products (%) = (S × d)/(W × f) × 100

(S = sediment weight (mg), c = correction factor (%) for the estimated portion of terrestrial animal bone constituents in the sediment, d = correction factor (%) for the estimated portion of fish bones and scale fragments in the sediment, f = correction factor for the proportion of bone in the constituents of animal origin in the sample examined, W = weight of the sample material for the sedimentation (mg)).

8. **Expression of the result of the examination**

The report shall at least contain information on the presence of constituents derived from terrestrial animals and from fishmeal. The different cases shall be reported in the following way:

8.1. *With regard to the presence of constituents derived from terrestrial animals:*

— As far as was discernible using a microscope, no constituents derived from terrestrial animals were found in the submitted sample,

or:

— As far as was discernible using a microscope, constituents derived from terrestrial animals were found in the submitted sample.

8.2. *With regard to the presence of fishmeal:*

— As far as was discernible using a microscope, no constituents derived from fish were found in the submitted sample,

or:

— As far as was discernible using a microscope, constituents derived from fish were found in the submitted sample.

In case constituents derived from fish or terrestrial animals are found, the report of the examination result, if required, can further indicate an estimation of the amount of constituents detected (x %, < 0,1 %, 0,1-0,5 %, 0,5-5 % or > 5 %), further specification of the type of terrestrial animal if possible and the animal constituents identified (muscle fibres, cartilage, bones, horn, hair, bristles, feathers, blood, egg shells, fish bones, scales).

For the case where the amount of animal ingredients is estimated the correction factor f used shall be mentioned.

For the cases where bone constituents from terrestrial animals are identified, the report shall contain the additional clause:

'The possibility that the above constituents are derived from mammals cannot be excluded.'

This additional clause is not necessary in cases where the bone fragments from terrestrial animals have been specified as bone fragments from poultry or mammals.

9. **Optional protocol for analysing fat or oil**

The following protocol may be used for the analysis of fat or oil:

— If the fat is solid, it is warmed for example in a microwave oven until it is liquid.

— Using a pipette, 40 ml of fat is transferred from the bottom of the sample to a centrifugation tube.

— Centrifuge for 10 minutes at 4 000 rpm.

— If the fat is solid after centrifugation, it is warmed once more in an oven until it is liquid. Repeat the centrifugation for five minutes at 4 000 rpm.

— Using a small spoon or a spatula, one half of the decanted impurities is transferred to a small petri dish or a microscopic slide for microscopic identification of a possible content of animal constituents (meat fibres, feathers, bone fragments). As an embedding agent for microscopy, paraffin oil or glycerol is recommended.

— The remaining impurities are used for sedimentation as described in point 6.2.