

Official Journal

of the European Union

L 295

English edition

Legislation

Volume 47

18 September 2004

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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1627/2004
of 13 September 2004
amending Regulation (EEC) No 3030/93 on common rules for imports of certain textile products
from third countries**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) As from 1 May 2004, 10 new Member States have joined the European Union. Article 6(7) of the 2003 Act of Accession establishes that the new Member States are to apply the common trade policy concerning textiles and that the quantitative restrictions applied by the Community on imports of textile and clothing products are to be adjusted to take account of the accession of the new Member States to the Community.
- (2) With effect from 1 May 2004, Council Regulation (EEC) No 3030/93⁽¹⁾ was last amended by Council Regulation (EC) No 487/2004⁽²⁾. It adjusted the quantitative limits for imports of certain textile products from third countries into the enlarged Community, taking into account traditional imports into the 10 new Member States and using a formula of the average imports of years 2000 to 2002 adjusted *pro rata temporis*. This

same methodology should now be applied to adjust the quantitative limits for imports of certain textile products from the Socialist Republic of Vietnam.

- (3) Regulation (EEC) No 3030/93 should therefore be amended accordingly.
- (4) It is desirable for this Regulation to enter into force on the day after its publication in order to allow operators to benefit from it as soon as possible,

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EEC) No 3030/93, the Community quantitative limits for Vietnam for 2004 set out in Annex V and in Annex VII to that Regulation shall be replaced by the Community quantitative limits set out in Part A and Part B of the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 13 September 2004.

For the Council
The President
B. R. BOT

⁽¹⁾ OJ L 275, 8.11.1993, p. 1.

⁽²⁾ OJ L 79, 17.3.2004, p. 1.

ANNEX

PART A

In Annex V to Regulation (EEC) No 3030/93, the Community quantitative limits for Vietnam for 2004 shall be replaced by the following:

Third country	Category	Unit	Community quantitative limits
			2004
Vietnam	GROUP IB		
	4	1 000 pieces	22 276
	5	1 000 pieces	7 669
	6	1 000 pieces	9 755
	7	1 000 pieces	6 408
	8	1 000 pieces	22 628
	GROUP IIA		
	9	tonnes	1 067
	20	tonnes	289
	39	tonnes	266
	GROUP IIB		
	12	1 000 pairs	5 539
	13	1 000 pieces	14 984
	14	1 000 pieces	636
	15	1 000 pieces	1 061
	18	tonnes	2 132
	21	1 000 pieces	22 942
	26	1 000 pieces	2 348
	28	1 000 pieces	7 110
	29	1 000 pieces	747
	31	1 000 pieces	8 088
	68	tonnes	790
	73	1 000 pieces	2 093
	76	tonnes	2 050
	78	tonnes	2 126
	83	tonnes	710
	GROUP IIIA		
	35	tonnes	1 341
	41	tonnes	1 336
	GROUP IIIB		
	10	1 000 pairs	6 841
	97	tonnes	367
	GROUP IV		
	118	tonnes	295
	GROUP V		
	161	tonnes	545'

PART B

In Annex VII to Regulation (EEC) No 3030/93, the Community quantitative limits for 2004 for goods re-imported under OPT for Vietnam shall be replaced by the following:

Third country	Category	Unit	Community quantitative limits
			2004
Vietnam	GROUP IB		
	4	1 000 pieces	1 065
	5	1 000 pieces	812
	6	1 000 pieces	765
	7	1 000 pieces	1 418
	8	1 000 pieces	3 287
	GROUP IIB		
	12	1 000 pairs	3 348
	13	1 000 pieces	1 024
	15	1 000 pieces	331
	18	tonnes	385
	21	1 000 pieces	2 239
	26	1 000 pieces	210
	31	1 000 pieces	1 869
	68	tonnes	156
	76	tonnes	532
	78	tonnes	372'

COUNCIL REGULATION (EC) No 1628/2004**of 13 September 2004****imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community⁽¹⁾ (the basic Regulation), and in particular Article 15 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

- (1) On 19 May, the Commission, by Regulation (EC) No 1008/2004⁽²⁾ (the provisional Regulation), imposed a provisional countervailing duty on imports into the Community of certain graphite electrode systems originating in India.

B. SUBSEQUENT PROCEDURE

- (2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional countervailing measures, several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard.
- (3) The Commission continued to seek and verify all information it deemed necessary for the definitive findings.
- (4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing

duty on imports of certain graphite electrode systems originating in India and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which to make representations subsequent to the disclosure of the essential facts and considerations.

- (5) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

- (6) Since no new comments were received regarding the product concerned and the like product, recitals 12 to 16 of the provisional Regulation are hereby confirmed.

D. SUBSIDISATION**1. Duty entitlement passbook scheme (DEPB)**

- (7) Following disclosure after the imposition of provisional measures and subsequent to final disclosure, a number of comments were received from the Government of India (the GOI) and from the exporting producers. It was firstly claimed that the DEPB on post-export basis is a drawback scheme and, as a consequence, any benefit under the scheme should be restricted to any excess remission of import duties that may have been given. It was further claimed that the quantification of any benefit should be based on the date of receipt of the DEPB licences and not on the date of their utilisation or sale, as was taken by the Commission. Finally, it was claimed that the amount of benefit should be reduced as it was alleged that the DEPB rate for the product concerned was reduced from 19 to 11 % in February 2004, namely after the IP.
- (8) In response to the first claim, it is noted in recital 33 of the provisional Regulation that 'the basic Regulation provides for an exception for, *inter alia*, drawback and substitution drawback schemes which conform to the *strict rules* laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback)'.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 183, 20.5.2004, p. 35.

- (9) In this context, it must be noted that the GOI did not apply an effective verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). Additionally, the GOI did not carry out a post-export examination based on actual inputs involved to determine whether an excess payment occurred, although this would normally be required in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation). Furthermore in recital 37 of the provisional Regulation it was considered that 'the DEPB on post-export basis cannot be considered as a permitted drawback or substitution drawback scheme (Annex III) under Article 2(1)(a)(ii) of the basic Regulation'. For these reasons, the conclusion in recital 38 of the provisional Regulation, that 'the countervailable benefit is the remission of total import duties normally due on all imports' is hereby confirmed.
- (10) To be eligible for benefits under this scheme, a company must export goods. At the point in time of the export transaction, a declaration must be made by the exporter to the authorities in India indicating that the export is taking place under the DEPB scheme. In order for the goods to be exported, the Indian customs authorities issue, in advance of the goods being exported, an export shipping bill which shows, *inter alia*, the amount of DEPB credit which is to be granted for that export transaction. At this point in time of export, the company knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPB credit. It was also verified that any change to the DEPB rates between the actual export and the issuance of a DEPB licence will not affect the level of benefit granted. The relevant DEPB rate is that which applied at the time the export declaration is made. Therefore, there is no possibility for a retroactive amendment to the level of the benefit. Accordingly, the moment the export transaction is made, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 2(1)(a)(i) of the basic Regulation.
- (11) Article 1(1) of the basic Regulation provides that a 'countervailing duty may be imposed for the purpose of offsetting any subsidy granted [...] whose release for free circulation in the Community causes injury'. The rationale for imposing such a duty is that the prices of the imported goods are lower as a result of having received subsidies and that such lower prices cause injury. In this case, when exporters of graphite electrode systems are negotiating prices for an export sale, they are aware that that sale benefits from a subsidy under the DEPB scheme. By virtue of the fact that the exporters are aware that they will receive such subsidy, and indeed benefits under other schemes, these companies are already in a competitively more advantageous position at the point in time when they are negotiating prices, that is to say they can reflect the subsidies through offering lower prices.
- (12) The Indian accounting standards provide for booking credits, such as those received under the DEPB scheme, on an accrual basis as income, once (i) such benefits have been earned; and (ii) it is reasonably certain that the ultimate collection of the proceeds of the export transaction will be made. What is relevant here is the point at which 'benefits have been earned'. As stated in recital 10 above, once the customs authorities issue an export shipping bill which shows, *inter alia*, the amount of DEPB credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy and it has no discretion as to the amount of the subsidy. Also, as stated above in the same recital, any change to the DEPB rates between the actual export and the issuance of a DEPB licence has no retroactive effect on the level of benefit granted. Finally, as stated in recital 11 above, the prices of export transactions are considered to reflect the subsidies (that is to say through lower prices) from which they can benefit. In these circumstances, it is considered that benefits are earned when the export transaction is made. On this basis, companies can, in line with Indian accounting standards, book the DEPB credit as income at the stage of export transaction.
- (13) In accordance with Articles 2(2) and 5 of the basic Regulation, the amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient, which is found to exist during the investigation period. In light of the above, it is considered appropriate to assess the benefit under this scheme as being the sum of the credits earned on all export transactions made under this scheme during the investigation period. This differs from the approach followed in the provisional Regulation where the sum of the credits utilised was assessed. In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted.

- (14) In respect of the final argument relating to the alleged reduction of the DEPB rate, it is accepted that *prima facie* evidence has been submitted to show that the DEPB rate for the product concerned was reduced to 11 % with effect from 9 February 2004. However, as the amount of benefit is assessed on the basis of the amount of benefit earned on all export transactions made during the IP, the reduction in the DEPB rate after this period will have no effect on the level of subsidy determined.
- (15) On the basis of these changes, the benefit under this scheme for the two cooperating companies was revised to 16,6 and 14,4 % respectively.

2. Export promotion capital goods scheme (EPCGS)

- (16) In the absence of any comments from interested parties, the conclusions outlined in recitals 56 to 58 of the provisional Regulation, are hereby confirmed.

3. Advance licence scheme (ALS)

- (17) At the provisional stage, one exporting producer in India was deemed to have received a countervailable benefit under this scheme. The representatives of this exporter claimed both that (i) the scheme was not countervailable; and (ii) in any case, any benefit received was only granted to a business unit of the company which did not manufacture the product concerned and which had been sold off by the company subsequent to the IP. Accordingly, it was claimed that no benefit under the ALS should be attributed to the exporter.
- (18) In respect of the first claim, no new evidence was provided to show that the ALS was not a countervailable export subsidy. In this context, it is recalled that the GOI did not apply an effective verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). Additionally, the GOI did not carry out a post-export examination based on actual inputs involved to determine whether an excess payment occurred, although this would

normally be required in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation). For these reasons, the conclusions in recitals 64 to 70 of the provisional Regulation are hereby confirmed.

- (19) In respect of the second claim, it was found that during the IP the exporter concerned had benefited from the scheme and had, as a result, received a countervailable benefit. Furthermore, the fact that the business unit producing this product was sold subsequent to the IP, is not relevant for determining whether the company benefited of a subsidy during the IP. In addition, it is not considered to be relevant when assessing the level of the subsidisation of the company as a whole, whether the subsidy scheme was targeted at a unit of the company that did not itself produce the product concerned. Indeed, it is the company as a whole which is examined, and thus any benefit to one of the units is considered to represent a benefit for the company as a whole. To that end, it is confirmed that during the IP, the business unit which benefited from the ALS scheme and the business units which manufactured the product concerned, formed one legal economic entity. Therefore, the conclusion outlined in recital 71 of the provisional Regulation is hereby confirmed.

4. Export processing zones (EPZ)/export orientated unit (EOU)

- (20) In the absence of any comments from interested parties, the conclusion outlined in recital 72 of the provisional Regulation, is hereby confirmed.

5. Income tax exemption (ITE)

- (21) In the absence of any comments from interested parties, the conclusion outlined in recital 74 of the provisional Regulation, is hereby confirmed.

6. Amount of countervailable subsidies

- (22) In light of the conclusions outlined above, the amount of countervailable subsidies is definitively confirmed, as follows:

Type of subsidy	DEPB	EPCGS	ALS	EPZ/EOU	ITE	TOTAL
Graphite India Limited (GIL)	16,6 %	0,1 %				16,7 %
Hindustan Electro Graphite (HEG) Limited	14,4 %	0,3 %	0,2 %			14,9 %
All others						16,7 %

E. COMMUNITY INDUSTRY

- (23) In the absence of any substantially new information or argument in this particular respect, recitals 76 to 79 of the provisional Regulation are hereby confirmed.

F. INJURY

- (24) Following the provisional disclosure, the Indian exporters pointed to the divergence in the undercutting margin of one particular type of the product concerned, as compared with the undercutting margins of similar types. The claim was properly examined and it was found that the discrepancy was due to a mistake in the reporting of a number of credit notes and discounts of one particular Community producer. The claim was therefore accepted and the undercutting margin of this particular type and, where applicable, of other types were corrected accordingly.
- (25) It was further found that a number of sale transactions of the Community industry used for the undercutting calculations were double-counted. In view of this, the double-counted transactions had to be eliminated and the undercutting calculations had to be modified accordingly. However, this double-counting had not taken place when establishing the figures used for assessing the injury indicators. Therefore, there was no need to modify the injury indicators.
- (26) As a result, the comparison showed that during the IP the prices of the product concerned originating in India and sold in the Community undercut the Community industry's prices by between 3 and 11 %.
- (27) In the absence of any substantially new information or argument in this particular respect, recitals 80 to 116 of the provisional Regulation are hereby confirmed, with the exception of recital 86 (see recitals 24 to 26 above).

G. CAUSATION**1. Return to normal competition conditions after the dismantling of the cartel**

- (28) The Indian exporters reiterated their argument that the establishment of a causal link between the subsidised imports and the injury suffered by the Community industry is based on data which would be unreliable because of the existence of a cartel up until the beginning of 1998. However, the Indian exporters did not provide any new information within the deadline set for submitting comments in this particular respect.
- (29) In the absence of any substantially new information or argument, recitals 117 to 137 of the provisional Regulation are hereby confirmed.

H. COMMUNITY INTEREST

- (30) An association representing users and a user company reiterated their main concern that, by excluding Indian suppliers from the Community market, the imposition of any measure would reduce overall competition on the Community market for this particular product and inevitably lead to an increase in prices. However, as assessed under recital 147 of the provisional Regulation, the impact of any increase in the price of the like product for final customers is likely to be minimal. It is further recalled that the purpose of any countervailing measure is by no means to stop access into the Community of products from India, but rather to restore a level playing field that had been distorted by unfair trade practices. Finally, it is considered that the level of the measures is not such as to exclude the Indian producers from the Community market.
- (31) In the absence of any substantially new information or argument in this particular respect, recitals 138 to 151 of the provisional Regulation are hereby confirmed.

I. INJURY ELIMINATION LEVEL

- (32) Further to disclosure of provisional findings, several interested parties claimed that the profit level of 9,4% deemed to represent the financial situation of the Community industry in the absence of injurious subsidisation from India was too high. It was alleged that the normal practice was to set a 5% profit ratio for commodity goods sectors such as steel, textiles and base chemicals. The same parties further claimed that the methodology used to arrive at this figure should be fully disclosed.
- (33) As explained under recital 154 of the provisional Regulation, the profit of 9,4% was the result of a reasoned assessment established on the basis of a number of elements, amongst which (i) the profit achieved by the Community industry in 1999, when the market share of the dumped imports was at its lowest; (ii) the market conditions at that time; and (iii) the output drawn from a database on company accounts. As regards this database, it consists of company accounts data, which are first collected by national central banks of the largest industrialised countries, i.e. most of the Member States of the European Union, the United States of America and Japan, and then aggregated, by sectors, by the European Committee of Central Balance Sheet Data Offices and the European Commission. The database has been updated between provisional and definitive determination. An analysis of the updated data referring to the EU Member States, plus the United States of America and Japan shows that the average profit before extraordinary items for companies belonging to the nearest available business sector was of 7,5% in 2002, which is the last year available in the database.

- (34) However, it is further considered that, when setting the profit that could have been achieved in the absence of subsidisation, due consideration has to be paid to all qualitative and quantitative elements relevant for this purpose. In particular, as this has been done under recital 154 of the provisional Regulation, a proper examination was made of Community industry's profit levels when the market share of subsidised imports was at its lowest (namely 1999), and of any other causes and circumstances that might affect the representativity of the latter period. Finally, it is noted that the product concerned is used in demanding applications and has to strictly match certain parameters, notably in terms of electrical resistance. This entails both a highly capital intensive manufacturing process and a not negligible amount of research and development costs. The fact that only a limited number of producers in the world master this technology is a further indication that this product can certainly not be considered as a basic commodity.
- (35) Taking all these circumstances and elements into account, it is definitively concluded that the profit margin that can reasonably be deemed to represent the financial situation of the Community industry in the absence of injurious subsidisation from India should be set at 8 % for the purpose of the calculation of the injury margin.
- (36) As a consequence of the above and of the finding regarding undercutting (see recitals 24 to 26), the injury margins were revised as follows.

Graphite India Limited (GIL)	15,7 %
Hindustan Electro Graphite (HEG) Limited	7,0 %

J. DEFINITIVE MEASURES

- (37) In view of the conclusions reached with regard to subsidisation, injury, causation and Community interest, it is considered that a definitive countervailing duty should be imposed in order to prevent further injury being caused to the Community industry by the subsidised imports. The definitive measures should be imposed at the level of the subsidy margin found, but should not be higher than the injury margin calculated above in accordance with Article 15(1) of the basic Regulation. Given that the level of the overall cooperation for India was high, the residual subsidy margin for all other companies was set

at the level for the company with the highest individual margin, that is to say 16,7 %.

K. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

- (38) In view of the magnitude of the subsidy margins found for the exporting producers in India and given the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional countervailing duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of definitive duties imposed. As the definitive countervailing duty for Graphite India Limited (GIL) is higher than the provisional countervailing duty, the amounts secured by way of provisional countervailing duty imposed by the provisional Regulation shall be definitively collected. Conversely, as the definitive countervailing duty for Hindustan Electro Graphite (HEG) Limited is lower than the provisional countervailing duty, amounts provisionally secured in excess of the definitive rate of countervailing duties shall be released.
- (39) The individual countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all others') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all others'.

- (40) Any claim requesting the application of these individual countervailing duty rates (for example, 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 for example 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.

L. UNDERTAKINGS

- (41) During the course of the investigation, the two exporting producers in India, Graphite India Limited and Hindustan Electro Graphite Limited offered price undertakings in accordance with Article 13(1) of the basic Regulation. However, significant differences were observed between the investigation period and the present time for raw material costs, this being due to the general volatility of this particular market. It follows that if undertakings were accepted in this case, on the basis of minimum import prices established solely on the data collected relating to the investigation period, as currently offered, this would have negative consequences on the effectiveness of the said undertakings in removing injurious subsidisation. In addition, one of the exporting producers concerned, subsequent to its undertaking offer, acquired a graphite electrode production company situated in the Community which raises the risk of circumvention of its undertaking offer. In view of both of these developments it was not possible to finalise workable, and therefore acceptable, undertakings within the time limits of the present investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 µΩ.m or less, falling within CN code ex 8545 11 00 (TARIC code 8545 11 00 10) and nipples used for such electrodes, falling within CN code ex 8545 90 90 (TARIC code 8545 90 90 10) whether imported together or separately originating in India.

2. The rate of the definitive countervailing duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the companies listed below shall be as follows:

Company	Definitive duty	TARIC additional code
Graphite India Limited (GIL), 31 Chowringhee Road, Kolkatta — 700016, West Bengal	15,7 %	A530
Hindustan Electro Graphite (HEG) Limited, Bhilwara Towers, A-12, Sector-1, Noida — 201301, Uttar Pradesh	7,0 %	A531
All others	15,7 %	A999

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

Article 2

The amounts secured by way of provisional countervailing duties pursuant to the provisional Regulation on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 µΩ.m or less, falling within CN code ex 8545 11 00 (TARIC code 8545 11 00 10) and nipples used for such electrodes, falling within CN code ex 8545 90 90 (TARIC code 8545 90 90 10) whether imported together or separately originating in India shall be definitively collected as follows.

The amounts secured in excess of the definitive rate of countervailing 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 that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 13 September 2004.

For the Council

The President

B. R. BOT

COUNCIL REGULATION (EC) No 1629/2004**of 13 September 2004****imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India**

THE COUNCIL OF THE EUROPEAN UNION,

- (3) The Commission continued to seek and verify all information it deemed necessary for the definitive findings.

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,

- (4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which to make representations subsequent to the disclosure of the essential facts and considerations.

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

- (5) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

Whereas:

A. PROVISIONAL MEASURES

- (1) On 19 May 2004, the Commission, by Regulation (EC) No 1009/2004⁽²⁾ (the provisional Regulation), imposed a provisional anti-dumping duty on imports into the Community of certain graphite electrode systems originating in India.

C. PRODUCT CONCERNED AND LIKE PRODUCT

- (6) Since no new comments were received regarding the product concerned and the like product, recitals 11 to 15 of the provisional Regulation are hereby confirmed.

B. SUBSEQUENT PROCEDURE

- (2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures, several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard.

D. DUMPING**1. Claims made by the exporting producers**

- (7) The two cooperating exporting producers reiterated their claim that a duty drawback adjustment on the normal value should have been granted, pursuant to Article 2(10)(b) 'Import charges and indirect taxes' or under Article 2(10)(k) 'Other factors' of the basic Regulation, for the benefits received under the Duty Entitlement Passbook Scheme (DEPB) on a post-export basis. Pursuant to Article 2(10)(b), they claimed that at least the amount of DEPB credits used against imports of raw materials consumed in the production process of the exported product should be granted as allowance.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 183, 20.5.2004, p. 61.

(8) In this regard, it should be noted that no adjustment could be granted because, as was explained in recital 25 of the provisional Regulation, the investigation showed that no direct link could be established between the DEPB credits granted and the raw materials purchased as the credits could be used against duties payable on any goods to be imported, except for capital goods and goods subject to import restrictions or prohibitions. Moreover, even when the credits were used against imports of raw materials necessary for the production of graphite electrodes, the exporting producers could not demonstrate that these raw materials had been used for the production of the exported product. In addition, the DEPB benefit was accounted for as an income and not as a negative item in the cost accounting system of the companies. Therefore, on the basis of the companies' accounting records, there was no link between the pricing of the exported goods and the DEPB income received. Finally, no new arguments justifying the application of Article 2(10)(k) of the basic Regulation were submitted. Therefore, these claims could not be accepted and the findings set out in recitals 25 and 26 of the provisional Regulation are hereby confirmed.

(9) Both cooperating exporting producers also reiterated their claims pursuant to Article 2(10)(d)(ii) of the basic Regulation, with regard to differences in levels of trade. However, no new arguments were brought forward. Therefore the findings set out in recitals 27 and 28 of the provisional Regulation are hereby confirmed.

(10) The cooperating exporting producers contested the exchange rates used in the calculation of the export prices. They claimed that the exchange rates used should be those prevailing at the date of payment instead of the date of the invoice. Moreover, they also claimed that instead of using the average exchange rates of the month in which the invoice was issued, it would have been more accurate to use the actual daily exchange rates.

(11) In this respect, it should be noted that it is the Commission's consistent practice to use exchange rates pertaining to the date of the invoice, because the price determination takes into consideration the exchange rates at the moment of invoicing. The claim to use the exchange rates prevailing at the date of payment was therefore rejected. However, it was agreed to use the actual exchange rates prevailing at the date of invoice instead of the average monthly exchange rates pertaining to that date. In view of this, the dumping calculations were amended accordingly.

(12) When the matter was examined, a clerical error was discovered in the provided average monthly exchange

rates. As these exchange rates were replaced by the daily exchange rates, as explained in recital 11, this error is considered to be corrected.

2. Dumping calculations

(13) Following the adjustments with regard to the exchange rates used, as described in recitals 10 to 12, the amount of dumping finally determined, expressed as a percentage of the CIF net free-at-Community-frontier price, is as follows:

Graphite India Limited (GIL)	31,1 %
Hindustan Electro Graphite (HEG) Limited	22,4 %
All others	31,1 %

E. COMMUNITY INDUSTRY

(14) In the absence of any substantially new information or argument in this particular respect, recitals 32 to 35 of the provisional Regulation are hereby confirmed.

F. INJURY

(15) Following the provisional disclosure, the Indian exporters pointed to the divergence in the undercutting margin of one particular type of the product concerned, as compared with the undercutting margins of similar types. The claim was properly examined and it was found that the discrepancy was due to a mistake in the reporting of a number of credit notes and discounts of one particular Community producer. The claim was therefore accepted and the undercutting margin of this particular type and, where applicable, of other types were corrected accordingly.

(16) It was further found that a number of sale transactions of the Community industry used for the undercutting calculations were double counted. In view of this, the double counted transactions had to be eliminated and the undercutting calculations had to be modified accordingly. However, this double-counting had not taken place when establishing the figures used for assessing the injury indicators. Therefore, there was no need to modify the injury indicators.

(17) As a result, the comparison showed that during the IP the prices of the product concerned originating in India and sold in the Community undercut the Community industry's prices by between 3 % and 11 %.

- (18) In the absence of any substantially new information or argument in this particular respect, recitals 36 to 72 of the provisional Regulation are hereby confirmed, with the exception of recital 42 (see recitals 15 to 17 above).

G. CAUSATION

1. Return to normal competition conditions after the dismantling of the cartel

- (19) The Indian exporters re-iterated their argument that the establishment of a causal link between the dumped imports and the injury felt by the Community industry is based on data which would be unreliable because of the existence of a cartel up until the beginning of 1998. However, the Indian exporters did not provide any new information within the deadline set for submitting comments in this particular respect.

2. Imports from other third countries

- (20) Several interested parties submitted that the Commission should have initiated this proceeding also against imports of the like product from Japan. At the time of the initiation of the current proceeding, the Commission did not have sufficient evidence regarding injurious dumping that would have justified the initiation of a proceeding against imports originating in Japan in line with the requirements of Article 5 of the basic Regulation. The information provided by certain parties after the initiation does not constitute such sufficient evidence, whether taken into account separately or together with other information available to the Commission at the time of the investigation, as no evidence of injurious dumping emanates therefrom. For example, the evidence provided by the abovementioned parties contained only information on average domestic and export prices for Japanese graphite electrodes, without any indication as to whether these graphite electrodes actually met the parameters defining the product concerned, as set in recital 13 of the provisional Regulation. In any event, the fact that imports originating in Japan are not subject to the proceeding does not in any way alter the conclusions of the investigation regarding the existence of a causal link.
- (21) In the absence of any substantially new information or argument, recitals 73 to 93 of the provisional Regulation are hereby confirmed.

H. COMMUNITY INTEREST

- (22) An association representing users and a user company reiterated their main concern that, by excluding Indian

suppliers from the Community market, the imposition of any measure would reduce overall competition on the Community market for this particular product and inevitably lead to an increase in prices. However, as assessed under recital 103 of the provisional Regulation, the impact of any increase in the price of the like product for final customers is likely to be minimal. It is further recalled that the purpose of any anti-dumping measure is by no means to stop access into the Community of products from India, but rather to restore a level playing field that had been distorted by unfair trade practices. Finally, it is considered that the level of the measures is not such as to exclude the Indian producers from the Community market.

- (23) In the absence of any substantially new information or argument in this particular respect, recitals 94 to 107 of the provisional Regulation are hereby confirmed.

I. INJURY ELIMINATION LEVEL

- (24) Further to disclosure of provisional findings, several interested parties claimed that the profit level of 9,4% deemed to represent the financial situation of the Community industry in the absence of injurious dumping from India was too high. It was alleged that the normal practice was to set a 5 % profit ratio for commodity goods sectors such as steel, textiles and base chemicals. The same parties further claimed that the methodology used to arrive at this figure should be fully disclosed.
- (25) As explained under recital 110 of the provisional Regulation, the profit of 9,4% was the result of a reasoned assessment established on the basis of a number of elements, amongst which (i) the profit achieved by the Community industry in 1999, when the market share of the dumped imports was at its lowest; (ii) the market conditions at that time; and (iii) the output drawn from a database on company accounts. As regards this database, it consists of company accounts data, which are first collected by national central banks of the largest industrialised countries, i.e. most of the member countries of the European Union, the United States of America and Japan, and then aggregated, by sectors, by the European Committee of Central Balance Sheet Data Offices and the European Commission. The database has been updated between provisional and definitive determination. An analysis of the updated data referring to the EU Member States, plus the United States of America and Japan shows that the average profit before extraordinary items for companies belonging to the nearest available business sector was of 7,5% in 2002, which is the last year available in the database.

- (26) However, it is further considered that, when setting the profit that could have been achieved in the absence of dumping, due consideration has to be paid to all qualitative and quantitative elements relevant for this purpose. In particular, as this has been done under recital 110 of the provisional Regulation, a proper examination was made of Community industry's profit levels when the market share of dumped imports was at its lowest (i.e. 1999), and of any other causes and circumstances that might affect the representativity of the latter period. Finally, it is noted that the product concerned is used in demanding applications and has to match strictly certain parameters, notably in terms of electrical resistance. This entails both a highly capital intensive manufacturing process and a not negligible amount of Research and Development costs. The fact that only a limited number of producers in the world master this technology is a further indication that this product can certainly not be considered as a basic commodity.
- (27) Taking all these circumstances and elements into account, it is definitively concluded that the profit margin that can reasonably be deemed to represent the financial situation of the Community industry in the absence of injurious dumping from India should be set at 8 % for the purpose of the calculation of the injury margin.
- (28) As a result of the above, of the findings regarding undercutting (see recitals 15 to 17 above), and due account

being taken of the revision of the exchange rates (see recital 11 above), injury margins were revised as follows.

Graphite India Limited (GIL)	15,7 %
Hindustan Electro Graphite (HEG) Limited	7,0 %

J. DEFINITIVE MEASURES

- (29) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margin found, but should not be higher than the injury margin calculated above.
- (30) The correction made to the dumping and injury margins had no effect on the application of the lesser duty rule. Therefore, the methodology used for establishing the anti-dumping duty rates, taking into account the parallel imposition of countervailing duties on imports of the same product from India, as described in recitals 114 and 115 of the provisional Regulation is hereby confirmed. The definitive duties will therefore be as follows:

Company	Injury elimination margin	Dumping margin	Countervailing duty	Proposed anti-dumping duty
Graphite India Limited (GIL)	15,7 %	31,1 %	15,7 %	0 %
Hindustan Electro Graphite (HEG) Limited	7,0 %	22,4 %	7,0 %	0 %
All others	15,7 %	31,1 %	15,7 %	0 %

K. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

- (31) In view of the magnitude of the dumping margins found for the exporting producers in India and given 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 should be definitively collected to the extent of the amount of definitive duties imposed. As the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released.
- (32) The individual company anti-dumping duty rates specified in this Regulation were established on the

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

- (33) 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,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 µΩ.m or less, falling within CN code ex 8545 11 00 (Taric code 8545 11 00 10) and nipples used for such electrodes, falling within CN code ex 8545 90 90 (Taric code 8545 90 90 10) whether imported together or separately originating in India.

2. The rate of the definitive anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the companies listed below shall be as follows:

Company	Definitive duty	Taric additional code
Graphite India Limited (GIL), 31 Chowringhee Road, Kolkatta — 700016, West Bengal	0 %	A530
Hindustan Electro Graphite (HEG) Limited, Bhilwara Towers, A-12, Sector-1, Noida — 201301, Uttar Pradesh	0 %	A531
All others	0 %	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 the provisional Regulation on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 µΩ.m or less, falling within CN code ex 8545 11 00 (Taric code 8545 11 00 10) and nipples used for such electrodes, falling within CN code ex 8545 90 90 (Taric code 8545 90 90 10) whether imported together or separately originating in India shall be definitively collected as follows.

The amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

Article 3

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

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

Done at Brussels, 13 September 2004.

For the Council
The President
B. R. BOT

COMMISSION REGULATION (EC) No 1630/2004**of 17 September 2004****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

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

ANNEX

to Commission Regulation of 17 September 2004 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	38,9
	999	38,9
0707 00 05	052	101,8
	096	12,9
	999	57,4
0709 90 70	052	74,2
	999	74,2
0805 50 10	382	67,7
	388	61,6
	508	37,1
	524	39,7
	528	58,9
	999	53,0
0806 10 10	052	88,6
	220	129,7
	400	169,8
	624	144,8
	999	133,2
0808 10 20, 0808 10 50, 0808 10 90	388	89,3
	400	105,8
	508	68,9
	512	105,3
	528	86,4
	800	177,0
	804	93,3
	999	103,7
0808 20 50	052	102,8
	388	79,0
	999	90,9
0809 30 10, 0809 30 90	052	111,4
	999	111,4
0809 40 05	066	52,2
	094	29,3
	624	130,7
	999	70,7

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

COMMISSION REGULATION (EC) No 1631/2004**of 17 September 2004****applying a reduction coefficient to refund certificates for goods not covered by Annex I to the Treaty, as provided for by Article 8(5) of Regulation (EC) No 1520/2000**

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⁾,

Having regard to Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty and the criteria for fixing the amount of such refunds ⁽²⁾, and in particular Article 8(5) thereof,

Whereas:

- (1) Member States' notifications pursuant to Article 8(2) of Regulation (EC) No 1520/2000 indicate that the total amount of applications received reaches 310 936 040 EUR while the available amount for the tranche of

refund certificates for use from 1 October 2004 as referred to in Article 8(4) of Regulation (EC) No 1520/2000 is 114 000 000 EUR.

- (2) A reduction coefficient shall be calculated on the basis of Article 8(3) and (4) of Regulation (EC) No 1520/2000. Such coefficient should therefore be applied to amounts requested in the form of refund certificates for use from 1 October 2004 as established in Article 8(6) of Regulation (EC) No 1520/2000,

HAS ADOPTED THIS REGULATION:

Article 1

The amounts for applications of refund certificates for use from 1 October 2004 are subject to a reduction coefficient of 0,634.

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

Olli REHN

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 177, 15.7.2000, p. 1. Regulation as last amended by Regulation (EC) No 886/2004 (OJ L 168, 1.5.2004, p. 14).

COMMISSION REGULATION (EC) No 1632/2004**of 17 September 2004****fixing the minimum selling prices for butter for the 148th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs⁽²⁾, to sell by invitation to tender certain quantities of butter from intervention stocks that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price or aid may vary according to the

intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices of butter from intervention stocks and processing securities applying for the 148th individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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

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

ANNEX

to the Commission Regulation of 17 September 2004 fixing the minimum selling prices for butter for the 148th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	211,1	215,1	—	215,1
		Concentrated	209,1	—	—	—
Processing security		Unaltered	129	129	—	129
		Concentrated	129	—	—	—

COMMISSION REGULATION (EC) No 1633/2004**of 17 September 2004****fixing the maximum aid for cream, butter and concentrated butter for the 148th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice cream and other foodstuffs⁽²⁾, to sell by invitation to tender certain quantities of butter of intervention stocks that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further

stipulated that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum aid and processing securities applying for the 148th individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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

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

ANNEX

to the Commission Regulation of 17 September 2004 fixing the maximum aid for cream, butter and concentrated butter for the 148th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula		A		B	
Incorporation procedure		With tracers	Without tracers	With tracers	Without tracers
Maximum aid	Butter $\geq$ 82 %	59	55	—	55
	Butter < 82 %	57	53	—	—
	Concentrated butter	74	67	74	65
	Cream			—	23
Processing security	Butter	65	—	—	—
	Concentrated butter	81	—	81	—
	Cream	—	—	—	—

COMMISSION REGULATION (EC) No 1634/2004**of 17 September 2004****fixing the minimum selling price for butter for the 4th individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 2771/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Pursuant to Article 21 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream⁽²⁾, intervention agencies have put up for sale by standing invitation to tender certain quantities of butter held by them.
- (2) In the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no award, in accordance with Article 24a of Regulation (EC) No 2771/1999.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 4th individual invitation to tender pursuant to Regulation (EC) No 2771/1999, in respect of which the time limit for the submission of tenders expired on 14 September 2004, the minimum selling price for butter is fixed at 270 EUR/100 kg.

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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

⁽²⁾ OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 1448/2004 (OJ L 267, 14.8.2004, p. 30).

COMMISSION REGULATION (EC) No 1635/2004**of 17 September 2004****fixing the minimum selling price for skimmed-milk powder for the 67th individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 2799/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Pursuant to Article 26 of Commission Regulation (EC) No 2799/1999 of 17 December 1999 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder⁽²⁾, intervention agencies have put up for sale by standing invitation to tender certain quantities of skimmed-milk powder held by them.
- (2) According to Article 30 of the said Regulation, in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no award. The amount of the processing security shall also be fixed taking account of the difference between the market price of skimmed-milk powder and the minimum selling price.

- (3) In the light of the tenders received, the minimum selling price should be fixed at the level specified below and the processing security determined accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 67th individual invitation to tender pursuant to Regulation (EC) No 2799/1999, in respect of which the time limit for the submission of tenders expired on 14 September 2004, the minimum selling price and the processing security are fixed as follows:

- | | |
|--------------------------|--------------------|
| — minimum selling price: | 186,24 EUR/100 kg, |
| — processing security: | 40,00 EUR/100 kg. |

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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

⁽²⁾ OJ L 340, 31.12.1999, p. 3. Regulation as last amended by Regulation (EC) No 1338/2004 (OJ L 249, 23.7.2004, p. 3).

COMMISSION REGULATION (EC) No 1636/2004**of 17 September 2004****fixing the maximum aid for concentrated butter for the 320th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 320th tender under the standing invitation to tender opened by Regulation (EEC) No 429/90 the maximum aid and the end-use security are fixed as follows:

- | | |
|---------------------|----------------|
| — maximum aid: | 74 EUR/100 kg, |
| — end-use security: | 82 EUR/100 kg. |

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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

⁽²⁾ OJ L 45, 21.2.1990, p. 8. Regulation as last amended by Commission Regulation (EC) No 921/2004 (OJ L 163, 30.4.2004, p. 94).

COMMISSION REGULATION (EC) No 1637/2004**of 17 September 2004****fixing the minimum selling price for skimmed-milk powder for the 3rd individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 214/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 3rd individual invitation to tender pursuant to Regulation (EC) No 214/2001, in respect of which the time limit for the submission of tenders expired on 14 September 2004, the minimum selling price for skimmed milk is fixed at 188,50 EUR/100 kg.

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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

⁽²⁾ OJ L 37, 7.2.2001, p. 100. Regulation as last amended by Regulation (EC) No 1339/2004 (OJ L 249, 23.7.2004, p. 4).

COMMISSION REGULATION (EC) No 1638/2004**of 17 September 2004****amending Council Regulation (EC) No 2793/1999 to take account of Commission Regulations (EC) No 2031/2001 and (EC) No 1789/2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2793/1999 of 17 December 1999 on certain procedures for applying the Trade, Development and Cooperation Agreement between the European Community and the Republic of South Africa⁽¹⁾, and in particular Articles 5 and 6 thereof,

Whereas:

- (1) Commission Regulations (EC) No 2031/2001⁽²⁾ of 6 August 2001 and (EC) No 1789/2003⁽³⁾ of 11 September 2003 amending Annex I to Council Regulation (EEC) No 2658/87⁽⁴⁾ on the tariff and statistical nomenclature and on the Common Customs Tariff have made changes to the nomenclature for certain preserved fruits, fruit juice and ferro-chromium covered by Regulation (EC) No 2793/1999.
- (2) The Annex to Regulation (EC) No 2793/1999 should therefore be amended accordingly with effect from the date of entry into force of Regulations (EC) No 2031/2001 and (EC) No 1789/2003.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

In the second column of Annex to Regulation (EC) No 2793/1999, the following amendments are incorporated:

- (a) for order No 09.1813:
 - CN codes '2008 40 91' and '2008 40 99' are replaced by CN code '2008 40 90';
 - CN codes '2008 70 94' and '2008 70 99' are replaced by CN code '2008 70 98'.
- (b) for order No 09.1821:
 - CN code '2009 40 30' is replaced by CN codes '2009 41 10' and '2009 49 30';
 - CN codes '2009 70 11 to 2009 70 99' are replaced by CN codes '2009 71 10, 2009 71 91, 2009 71 99, 2009 79 11, 2009 79 19, 2009 79 30, 2009 79 91, 2009 79 93, 2009 79 99'.
- (c) for order No 09.1827:
 - CN codes '7202 41 91' and '7202 41 99' are replaced by CN code '7202 41 90'.

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

Article 1(b) shall apply from 1 January 2002. Article 1(a) and 1(c) shall apply from 1 January 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

Frederik BOLKESTEIN

Member of the Commission

⁽¹⁾ OJ L 337, 30.12.1999, p. 29. Regulation as last amended by Council Regulation (EC) No 120/2002 (OJ L 28, 30.1.2002, p. 1).

⁽²⁾ OJ L 279, 23.10.2001, p. 1. Regulation as last amended by Council Regulation (EC) No 1558/2004 (OJ L 283, 2.9.2004, p. 7).

⁽³⁾ OJ L 281, 30.10.2003, p. 1.

⁽⁴⁾ OJ L 256, 7.9.1987, p. 1.

COMMISSION REGULATION (EC) No 1639/2004**of 17 September 2004****concerning tenders notified in response to the invitation to tender for the export of oats issued in Regulation (EC) No 1565/2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 7 thereof,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽²⁾, and in particular Article 7 thereof,

Having regard to Commission Regulation (EC) No 1565/2004 of 3 September 2004 on a special intervention measure for cereals in Finland and Sweden for the 2004/2005 marketing year ⁽³⁾,

Whereas:

- (1) An invitation to tender for the refund for the export of oats produced in Finland and Sweden for export from

Finland and Sweden to all third countries, with the exception of Bulgaria, Norway, Romania and Switzerland was opened pursuant to Regulation (EC) No 1565/2004.

- (2) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95, a maximum refund should not be fixed.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 10 to 16 September 2004 in response to the invitation to tender for the refund for the export of oats issued in Regulation (EC) No 1565/2004.

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78.

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 1431/2003 (OJ L 203, 12.8.2003, p. 16).

⁽³⁾ OJ L 285, 4.9.2004, p. 3.

COMMISSION REGULATION (EC) No 1640/2004**of 17 September 2004****on the issue of import licences for rice originating in the least developed countries**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2501/2001 of 10 December 2001 applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004 ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1401/2002 of 31 July 2002 laying down detailed rules for the opening and administration of the tariff quotas for rice, originating in the least developed countries, for the marketing years 2002/2003 to 2008/2009 ⁽²⁾, and in particular Article 5(2) thereof,

Whereas:

- (1) Regulation (EC) No 1401/2002 opened a tariff quota for a quantity of 3 828 tonnes of husked rice equivalent for the 2004/2005 marketing year.

- (2) The quantities in respect of which applications have been submitted exceed the quantities available. It is therefore necessary to set a reduction percentage applicable to the quantities applied for,

HAS ADOPTED THIS REGULATION:

Article 1

For applications for import licences for rice originating in the least developed countries referred to in Article 9 of Regulation (EC) No 2501/2001, submitted during the first five working days of September 2004 pursuant to Article 4(3) of Regulation (EC) No 1401/2002 and notified to the Commission in accordance with Article 5(1) of the said Regulation licences shall be issued for the quantities given in the applications submitted multiplied by a reduction percentage of 91,8620 %.

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 346, 31.12.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 905/2004 (OJ L 163, 30.4.2004, p. 45).

⁽²⁾ OJ L 203, 1.8.2003, p. 42.

COMMISSION REGULATION (EC) No 1641/2004**of 17 September 2004****on the issue of import licences for rice originating in the ACP States and the overseas countries and territories against applications submitted in the first five working days of September 2004 pursuant to Regulation (EC) No 638/2003**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2286/2002 of 10 December 2002 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EC) No 1706/98 ⁽¹⁾,

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (Overseas Association Decision) ⁽²⁾,

Having regard to Commission Regulation (EC) No 638/2003 of 9 April 2003 laying down detailed rules for applying Council Regulation (EC) No 2286/2002 and Council Decision 2001/822/EC as regards the arrangements applicable to imports of rice originating in the African, Caribbean and Pacific States (ACP States) and the overseas countries and territories (OCT) ⁽³⁾, and in particular Article 17(2) thereof,

Whereas:

Examination of the quantities for which applications have been submitted shows that licences for the September 2004 tranche should be issued for the quantities applied for reduced, where appropriate, by the percentages not covered and fixing the quantities carried over to the subsequent tranche,

HAS ADOPTED THIS REGULATION:

Article 1

1. Import licences for rice against applications submitted during the first five working days of September 2004 pursuant to Regulation (EC) No 638/2003 and notified to the Commission shall be issued for the quantities applied for reduced, where appropriate, by the percentages set out in the Annex hereto.

2. The available quantities carried over to the subsequent tranche are set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 348, 21.12.2002, p. 5.

⁽²⁾ OJ L 314, 30.11.2001, p. 1.

⁽³⁾ OJ L 93, 10.4.2003, p. 3.

ANNEX

Reduction percentages to be applied to quantities applied for under the tranche for September 2004 and quantities carried over to the following tranche

Origin/product	Reduction percentage		Quantity carried over to the tranche for October 2004 (t)	
	Netherlands Antilles and Aruba	Least-developed OCTs	Netherlands Antilles and Aruba	Least-developed OCTs
OCT (Article 10(1)(a) and (b) of Regulation (EC) No 638/2003) — CN code 1006	0	—	582,275	10 000,000

Origin/product	Reduction percentage	Quantity carried over to the tranche for October 2004 (t)
ACP (Article 3(1) of Regulation (EC) No 638/2003) — CN codes 1006 10 21 to 1006 10 98, 1006 20 and 1006 30	88,7604	0

COMMISSION REGULATION (EC) No 1642/2004
of 17 September 2004
determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001⁽¹⁾,

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton⁽²⁾, and in particular Article 4 thereof,

Whereas:

- (1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 laying down detailed rules for applying the cotton aid scheme⁽³⁾. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.
- (2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned cotton is to be determined in respect of a product of specific characteristics and by reference to the most

favourable offers and quotations on the world market among those considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

- (3) The application of the above criteria gives the world market price for unginned cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling 20,451 EUR/100 kg.

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 148, 1.6.2001, p. 1.

⁽²⁾ OJ L 148, 1.6.2001, p. 3.

⁽³⁾ OJ L 210, 3.8.2001, p. 10. Regulation as amended by Regulation (EC) No 1486/2002 (OJ L 223, 20.8.2002, p. 3).

COMMISSION REGULATION (EC) No 1643/2004**of 17 September 2004****amending the import duties in the cereals sector applicable from 18 September 2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

- (1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 1612/2004⁽³⁾.

- (2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 1612/2004,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 1612/2004 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 18 September 2004.

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

Done at Brussels, 17 September 2004.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 270, 29.9.2003, p. 78.

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

⁽³⁾ OJ L 293, 16.9.2004, p. 7.

ANNEX I

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

CN code	Description	Import duty ⁽¹⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	9,98
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	Common high quality wheat other than for sowing	0,00
1002 00 00	Rye	43,08
1005 10 90	Maize seed other than hybrid	55,86
1005 90 00	Maize other than seed ⁽²⁾	55,86
1007 00 90	Grain sorghum other than hybrids for sowing	53,17

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

- EUR 3/t, where the port of unloading is on the Mediterranean Sea, or
- EUR 2/t, where the port of unloading is in Ireland, the United Kingdom, Denmark, Estonia, Latvia, Lithuania, Poland, Finland, Sweden or the Atlantic coasts of the Iberian peninsula.

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

ANNEX II

Factors for calculating duties

period from 15.9.-16.9.2004

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

Exchange quotations	Minneapolis	Chicago	Minneapolis	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2 (14 %)	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	124,11 (***)	72,93	145,08 (****)	135,08 (****)	115,08 (****)	82,38 (****)
Gulf premium (EUR/t)	—	11,62	—			—
Great Lakes premium (EUR/t)	13,74	—	—			—

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

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

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

(****) Fob Duluth.

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

Freight/cost: Gulf of Mexico–Rotterdam: 26,70 EUR/t; Great Lakes–Rotterdam: 31,97 EUR/t.

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 19 July 2004

concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of a maize product (*Zea mays* L. line NK603) genetically modified for glyphosate tolerance

(notified under document number C(2004) 2761)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2004/643/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

the Commission and to the competent authorities of other Member States with a positive opinion.

Having regard to the Treaty establishing the European Community,

(3) The competent authorities of other Member States raised objections to the placing on the market of the product.

Having regard to Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC⁽¹⁾, and in particular the first subparagraph of Article 18(1) thereof,

(4) The opinion adopted on 25 November 2003 by the European Food Safety Authority, as established by Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽²⁾, concluded that *Zea mays* L. line NK603 is as safe as conventional maize and that its placing on the market for food, feed or processing is therefore unlikely to have an adverse effect on human or animal health or, in that context, on the environment.

After consulting the European Food Safety Authority,

Whereas:

- (1) Pursuant to Directive 2001/18/EC, the placing on the market of a product containing or consisting of a genetically modified organism or a combination of genetically modified organisms is subject to written consent being granted by the competent authority of the Member State that received the notification for the placing on the market of that product in accordance with the procedure laid down in that Directive.
- (2) A notification concerning the placing on the market of a genetically modified maize product (*Zea mays* L. line NK603), to be used as any other maize but not for cultivation, was submitted by Monsanto SA to the competent authority of Spain which transmitted it to

- (5) An examination of each of the objections in the light of Directive 2001/18/EC, of the information submitted in the notification and of the opinion of the European Food Safety Authority, discloses no reason to believe that the placing on the market of *Zea mays* L. line NK603 will adversely affect human or animal health or the environment.
- (6) A unique identifier should be assigned to the product for the purposes of Regulation (EC) No 1830/2003.

⁽¹⁾ OJ L 106, 17.4.2001, p. 1. Directive as last amended by Regulation (EC) No 1830/2003 (OJ L 268, 18.10.2003, p. 24).

⁽²⁾ OJ L 31, 1.2.2002, p. 1. Regulation as amended by Regulation (EC) No 1642/2003 (OJ L 245, 29.9.2003, p. 4).

- (7) Adventitious or technically unavoidable traces of genetically modified organisms in products are exempted from labelling and traceability requirements in accordance with thresholds established under Directive 2001/18/EC and Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed⁽¹⁾.
- (8) Taking account of the opinion of the European Food Safety Authority, there is no reason to establish specific conditions with regard to the handling or packaging of the product and the protection of particular ecosystems/environments and/or geographical areas.
- (9) Prior to the placing on the market of the product, the necessary measures to ensure its labelling and traceability at all stages of its placing on the market, including verification by appropriate detection methodology, should be applicable.
- (10) The measures provided for in this Decision are not in accordance with the opinion of the Committee established under Article 30 of Directive 2001/18/EC and the Commission therefore submitted to the Council a proposal relating to these measures. Since on the expiry of the period laid down in Article 30(2) of Directive 2001/18/EC the Council had neither adopted the proposed measures nor indicated its opposition to them in accordance with Article 5(6) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽²⁾ the measures should be adopted by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

Consent

Without prejudice to other Community legislation, in particular Regulation (EC) No 258/97 of the European Parliament and of the Council⁽³⁾ and Regulation (EC) No 1829/2003, written consent shall be granted by the competent authority of Spain to the placing on the market, in accordance with this Decision, of the product identified in Article 2, as notified by Monsanto Europe SA (reference C/ES/00/01).

⁽¹⁾ OJ L 268, 18.10.2003, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

⁽³⁾ OJ L 43, 14.2.1997, p. 1. Regulation as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

The written consent shall, in accordance with Article 19(3) of Directive 2001/18/EC, explicitly specify the conditions to which the consent is subject, which are set out in Articles 3 and 4.

Article 2

Product

1. The genetically modified organisms to be placed on the market as or in products, hereinafter 'the product', are grains of maize (*Zea mays* L.), with increased tolerance to the herbicide glyphosate, derived from the maize line NK603 transformation event, which has been transformed using particle acceleration technology with a *Mlu*I restriction fragment isolated from plasmid PV-ZMGT32L and which contains the following DNA sequences in two intact cassettes:

(a) cassette 1:

a 5-enolpyruvylshikimate-3-phosphate synthase (*epsps*) gene derived from *Agrobacterium* sp. strain CP4 (CP4 EPSPS), which imparts tolerance to glyphosate, under the regulation of the rice actin 1 gene promoter, terminator sequences from *Agrobacterium tumefaciens* and the chloroplast transit peptide sequence from the *epsps* gene of *Arabidopsis thaliana*;

(b) cassette 2:

a 5-enolpyruvylshikimate-3-phosphate synthase (*epsps*) gene derived from *Agrobacterium* sp. strain CP4 (CP4 EPSPS), which imparts tolerance to glyphosate, under the regulation of an enhanced 35S promoter derived from cauliflower mosaic virus, terminator sequences from *Agrobacterium tumefaciens* and the chloroplast transit peptide sequence from the *epsps* gene of *Arabidopsis thaliana*.

The *Mlu*I restriction fragment, which contains the two cassettes specified in points (a) and (b) of the first subparagraph, does not contain the neomycin phosphotransferase type II gene conferring resistance to certain aminoglycoside antibiotics or the origin of replication from *Escherichia coli*, although both sequences are present in the original plasmid PV-ZMGT32L.

2. The unique identifier of the product is MON-00603-6.

3. The consent shall cover grains from progeny derived from crosses of maize line NK603 with any traditionally bred maize as or in products.

*Article 3***Conditions for placing on the market**

The product may be used as any other maize, with the exception of cultivation and uses as or in food, and may be placed on the market subject to the following conditions:

- (a) the period of validity of the written consent shall be for a period of 10 years;
- (b) the unique identifier of the product shall be MON-00603-6 in accordance with Article 2(2);
- (c) without prejudice to Article 25 of Directive 2001/18/EC, the consent holder shall make control samples available to the competent authorities on request;
- (d) the words 'This product contains genetically modified organisms' or 'This product contains genetically modified maize' shall appear either on a label or in a document accompanying the product, save where other Community legislation sets a threshold below which such information is not required;
- (e) as long as the product has not been authorised for the placing on the market for the purpose of cultivation, the words 'not for cultivation' shall appear either on a label or in a document accompanying the product.

*Article 4***Monitoring**

- 1. Throughout the period of validity of the consent, the consent holder is responsible for ensuring that the general surveillance plan, as contained in the notification, for any adverse effects on human health or the environment arising from handling or use of the product is put in place and implemented.
- 2. The consent holder shall directly inform the operators and users concerning the safety and general characteristics of the product and of the conditions as to general surveillance.

3. The consent holder shall, throughout the period of validity of the consent, without prejudice to Article 20 of Directive 2001/18/EC, submit to the Commission and to competent authorities of the Member States, annual reports on the results of the general surveillance and, in the light of the results, proposals for a revised monitoring plan.

4. The consent holder shall be in the position to give evidence to the Commission and the competent authorities of the Member States that:

- (a) the surveillance networks, particularly those specified in table 1 of the monitoring plan contained in the notification, collect the information relevant for the general surveillance of the product; and
- (b) that these surveillance networks have agreed to make available this information to the consent holder before the date of submission of the monitoring report to the Commission and competent authorities of the Member States in accordance with paragraph 3.

*Article 5***Applicability**

This Decision shall not apply before the date of application of a Community Decision authorising the placing on the market of the products referred to in Article 1 for uses as or in food within the meaning of Regulation (EC) No 178/2002 and including a method, validated by the Community reference laboratory, for detection of those products.

Article 6

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 19 July 2004.

For the Commission
Margot WALLSTRÖM
Member of the Commission

CORRIGENDA**Corrigendum to Commission Regulation (EC) No 53/2004 of 12 January 2004 amending Council Regulation (EC) No 747/2001 as regards Community tariff quotas and reference quantities for certain agricultural products originating in Egypt**

(Official Journal of the European Union L 7 of 13 January 2004)

On pages 26 to 29 in the heading of the fifth column:

for: 'Quota volume',

read: 'Quota volume (in tonnes net weight)'.
