

Official Journal

of the European Union

L 129

English edition

Legislation

Volume 49

17 May 2006

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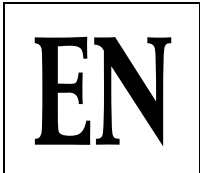
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⁽¹⁾ Text with EEA relevance

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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 733/2006
of 16 May 2006
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 17 May 2006.

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

Done at Brussels, 16 May 2006.

For the Commission

J. L. DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 16 May 2006 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	86,7
	204	63,6
	212	153,3
	999	101,2
0707 00 05	052	124,3
	628	155,5
	999	139,9
0709 90 70	052	124,8
	204	25,1
	999	75,0
0805 10 20	204	35,5
	212	64,4
	220	36,9
	400	20,3
	448	50,4
	624	49,1
	999	42,8
0805 50 10	052	42,4
	388	59,4
	508	40,3
	528	40,5
	624	54,7
	999	47,5
0808 10 80	388	85,2
	400	118,4
	404	110,0
	508	78,0
	512	81,6
	524	61,2
	528	95,6
	720	85,0
	804	109,7
	999	91,6

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 734/2006**of 16 May 2006****laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards the granting of private storage aid for certain cheeses in the 2006/2007 storage period**

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) Under Article 9 of Regulation (EC) No 1255/1999, private storage aid may be granted for long-keeping cheeses and for cheeses which are manufactured from sheep's and/or goat's milk and require at least six months for maturing, if for those cheeses price developments and the stock situation indicate a serious imbalance of the market which may be eliminated or reduced by seasonal storage.

(2) The seasonal nature of the production of certain long-keeping cheeses and Pecorino Romano, Kefalotyri and Kasseri cheese is aggravated by the fact that the seasonality of consumption is the inverse of the seasonality of production. The fragmented production of such cheeses further aggravates the consequences of that seasonality. Therefore, provision should be made for recourse to seasonal storage in respect of a quantity corresponding to the difference between summer and winter production.

(3) The types of cheeses eligible for aid and the maximum quantities which may qualify for it should be laid down, as well as the duration of the contracts in relation to the real requirements of the market and the keeping qualities of the cheeses in question.

(4) It is necessary to specify the terms of the storage contract and the essential measures to enable the cheese covered by a contract to be identified and subjected to checks. The amount of aid should be fixed with reference to storage costs and the balance to be maintained between cheeses qualifying for the aid and other cheeses marketed. In view of these elements, and of the available resources, the amounts per day of storage for

the warehousing costs should be reduced. The amount for the financial costs should be calculated on the basis of an interest rate of 2,5 %. As for the fixed costs, the aid measure should no longer compensate for other than daily storage costs and financial costs, as storage does not give rise to supplementary fixed costs, being part of the normal manufacturing process of those cheeses.

(5) Detailed rules should also be laid down regarding documentation, accounting and the frequency and nature of checks. In this connection, it should be laid down that the Member States may charge the costs of checks fully or in part to the contractor.

(6) It should be clarified that only whole cheeses are eligible for the private storage aid.

(7) 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***Subject matter**

This Regulation lays down the detailed rules for granting Community aid for private storage of certain cheeses (hereinafter referred to as aid) pursuant to Article 9 of Regulation (EC) No 1255/1999 during the 2006/2007 storage period.

*Article 2***Definitions**

For the purpose of this Regulation:

(a) 'storage lot' means a quantity of cheese weighing at least two tonnes, of the same type and taken into storage in a single storage depot on a single day;

(b) 'day of commencement of contractual storage' means the day following that of entry into storage;

(c) 'last day of contractual storage' means the day before that of removal from storage;

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

(d) 'storage period' means the period during which the cheese can be covered by the private storage scheme, as specified for each type of cheese in the Annex.

Article 3

Cheeses eligible for aid

1. Aid shall be granted in respect of certain long-keeping cheeses, Pecorino Romano, Kefalotyri and Kasseri cheese under the terms laid down in the Annex. Only whole cheeses are eligible.

2. The cheeses must have been manufactured in the Community and satisfy the following conditions:

- (a) be indelibly marked with an indication of the undertaking in which they were manufactured and of the day and month of manufacture; the above details may be in code form;
- (b) have undergone quality tests which establish their classification after maturing in the categories laid down in the Annex.

Article 4

Storage contract

1. Contracts relating to the private storage of cheese shall be concluded between the intervention agency of the Member State on whose territory the cheese is stored and natural or legal persons, hereinafter called 'contractors'.

2. Storage contracts shall be drawn up in writing on the basis of an application to draw up a contract.

Applications must reach intervention agencies within no more than 30 days of the date of entry into storage and may relate only to lots of cheese which have been fully taken into storage. The intervention agencies shall register the date on which each application is received.

If the application reaches the intervention agency within 10 working days following the deadline, the storage contract may still be concluded but the aid shall be reduced by 30 %.

3. Storage contracts shall be concluded for one or more storage lots and shall include, in particular, provisions concerning:

- (a) the quantity of cheese to which the contract applies;
- (b) the dates relating to the execution of the contract;

(c) the amount of aid;

(d) the identity of the storage depots.

4. Storage contracts shall be concluded within no more than 30 days of the date of registration of the application to draw up a contract.

5. Inspection measures, particularly those referred to in Article 7, shall be the subject of specifications drawn up by the intervention agency. The storage contract shall refer to those specifications.

Article 5

Entry into and removal from storage

1. The periods of entry into and removal from storage shall be as laid down in the Annex.

2. Removal from storage shall be in whole storage lots.

3. Where, at the end of the first 60 days of contractual storage, the deterioration in the quality of the cheese is greater than is normal in store, contractors may be authorised, once per storage lot, to replace the defective quantity, at their own expense.

If checks during storage or on removal from storage reveal defective quantities, no aid may be paid for those quantities. In addition, the part of the lot which is still eligible for aid may not be less than two tonnes.

The second subparagraph shall apply where part of a lot is removed before the start of the period of removal from storage referred to in paragraph 1 or before expiry of the minimum storage period referred to in Article 8(2).

4. For the purpose of calculating the aid in the case referred to in the first subparagraph of paragraph 3, the first day of contractual storage shall be the day of commencement of contractual storage.

Article 6

Storage conditions

1. The Member State shall ensure that all the conditions granting entitlement to payment of the aid are fulfilled.

2. The contractor or, at the request of the Member State or with its authorisation, the person responsible for the storage depot shall make available to the competent authority responsible for inspection any documentation permitting verification of the following particulars of products placed in private storage:

- (a) ownership at the time of entry in storage;
- (b) the origin and the date of manufacture of the cheeses;

(c) the date of entry in storage;

(d) presence in the store and the address of the store;

(e) the date of removal from storage.

3. The contractor or, where applicable, the person responsible for the storage depot shall keep stock records available at the depot for each contract, covering:

(a) the identification, by storage lot number, of the products placed in private storage;

(b) the dates of entry into and removal from storage;

(c) the number of cheeses and their weight by storage lot;

(d) the location of the products in the store.

4. Products stored must be easily identifiable, easily accessible and identified individually by contract. A special mark shall be affixed to stored cheeses.

Article 7

Checks

1. On entry into storage the competent agency shall conduct checks, in particular to ensure that products stored are eligible for the aid and to prevent any possibility of substitution of products during storage under contract.

2. The competent agency shall make an unannounced check, by sampling, to ensure that the products are present in the storage depot. The sample concerned must be representative and must correspond to at least 10 % of the overall quantity under contract for a private storage aid measure.

Such checks must include, in addition to an examination of the accounts referred to in Article 6(3), a physical check of the weight and type of products and their identification. Such physical checks must relate to at least 5 % of the quantity subjected to the unannounced check.

3. At the end of the contractual storage period, the competent agency shall check to see that the products are present. However, where the products are still in storage after expiry of the maximum contractual storage period, this check may be made when the products are removed from storage.

For the purposes of the check referred to in the first subparagraph, the contractor shall notify the competent authority, indicating the storage lots concerned, at least five working days

before the expiry of the contractual storage period or the start of the removal operations, where these take place during or after the contractual storage period.

The Member State may accept a shorter time-limit than the five working days specified in the second subparagraph.

4. A report shall be drawn up on the checks carried out pursuant to paragraphs 1, 2 and 3, specifying:

(a) the date of the check;

(b) its duration;

(c) the operations carried out.

The report must be signed by the inspector responsible and countersigned by the contractor or, as the case may be, the person responsible for the storage depot, and must be included in the payment dossier.

5. In the case of irregularities affecting at least 5 % of the quantities of products checked, the check shall be extended to a larger sample to be determined by the competent authority.

The Member States shall notify such cases to the Commission within four weeks.

6. Member States may provide that the costs of checks are to be fully or in part charged to the contractor.

Article 8

Storage aid

1. The aid shall be as follows:

(a) EUR 0,10 per tonne per day of storage under contract for the warehousing costs;

(b) for the financial costs per day of contractual storage:

(i) EUR 0,28 per tonne for long-keeping cheeses;

(ii) EUR 0,35 per tonne for Pecorino Romano;

(iii) EUR 0,49 per tonne for Kefalotyri and Kasseri.

2. No aid shall be granted in respect of storage under contract for less than 60 days. The maximum aid payable shall not exceed an amount corresponding to 180 days storage under contract.

Where the contractor fails to comply with the time-limit referred to in the second or, as the case may be, third subparagraph of Article 7(3), the aid shall be reduced by 15 % and shall be paid only in respect of the period for which the contractor supplies satisfactory proof to the competent agency that the cheeses have remained in contractual storage.

3. The aid shall be paid on application by the contractor, at the end of the contractual storage period, within 120 days of receipt of the application, provided that the checks referred to

in Article 7(3) have been carried out and that the conditions for entitlement to the aid have been met.

However, if it has been necessary to commence an administrative inquiry into entitlement to the aid, payment shall not be made until entitlement has been recognised.

Article 9

Entry into force

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

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

Done at Brussels, 16 May 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

ANNEX

Categories of cheeses	Quantities eligible for aid	Minimum age for cheeses	Period of entry into storage	Period of removal from storage
French long-keeping cheeses: — protected designation of origin Beaufort and Comté cheeses — 'Label Rouge' Emmental grand cru — class A or B Emmental and Gruyère cheeses	16 000 t	10 days	From 1 June to 30 September 2006	From 1 October 2006 to 31 March 2007
German long-keeping cheeses: 'Markenkäse' or 'Klasse fein' Emmentaler/Bergkäse	1 000 t	10 days	From 1 June to 30 September 2006	From 1 October 2006 to 31 March 2007
Irish long-keeping cheeses: 'Irish long-keeping cheese. Emmental, special grade'	900 t	10 days	From 1 June to 30 September 2006	From 1 October 2006 to 31 March 2007
Austrian long-keeping cheeses: '1. Güteklasse Emmentaler/Bergkäse/Alpkäse'	1 700 t	10 days	From 1 June to 30 September 2006	From 1 October 2006 to 31 March 2007
Finnish long-keeping cheeses: '1 luokka'	1 700 t	10 days	From 1 June to 30 September 2006	From 1 October 2006 to 31 March 2007
Swedish long-keeping cheeses: 'Västerbotten/Prästost/Svecia/Grevé'	1 700 t	10 days	From 1 June to 30 September 2006	From 1 October 2006 to 31 March 2007
Polish long-keeping cheeses: 'Podlaski/Piwny/Emental ski/Ser Corregio/Bursztyn/Wielkopolski'	3 000 t	10 days	From 1 June to 30 September 2006	From 1 October 2006 to 31 March 2007
Slovenian long-keeping cheeses: 'Ementalec/Zbrinc'	200 t	10 days	From 1 June to 30 September 2006	From 1 October 2006 to 31 March 2007
Lithuanian long-keeping cheeses: 'Goja/Džiugas'	700 t	10 days	From 1 June to 30 September 2006	From 1 October 2006 to 31 March 2007
Latvian long-keeping cheeses: 'Rigamond, Ementāles tipa un Ekstra klases siers'	500 t	10 days	From 1 June to 30 September 2006	From 1 October 2006 to 31 March 2007

Categories of cheeses	Quantities eligible for aid	Minimum age for cheeses	Period of entry into storage	Period of removal from storage
Hungarian long-keeping cheeses: 'Hajdú'	300 t	10 days	From 1 June to 30 September 2006	From 1 October 2006 to 31 March 2007
Pecorino Romano	19 000 t	90 days and produced after 1 October 2005	From 1 June to 31 December 2006	Before 31 March 2007
Kefalotyri and Kasseri made from sheep's or goat's milk or a mixture of the two	2 500 t	90 days and produced after 30 November 2005	From 1 June to 30 November 2006	Before 31 March 2007

COMMISSION REGULATION (EC) No 735/2006**of 16 May 2006****amending Regulation (EC) No 2659/94 on detailed rules for the granting of private storage aid for Grana padano, Parmigiano-Reggiano and Provolone cheeses**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

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(b) thereof,

Article 6(1) of Regulation (EC) No 2659/94 is replaced by the following:

Whereas:

‘1. The amount of private storage aid for cheese shall be as follows:

(1) Article 6(1) of Commission Regulation (EC) No 2659/94 ⁽²⁾ lays down the amounts of private storage aid for Grana padano, Parmigiano-Reggiano and Provolone cheeses. In view of the financial resources available and taking account of the development in storage costs and of market price forecasts, it is necessary to amend those amounts. As for the fixed costs, the aid measure should no longer compensate for other than daily storage costs and financial costs, as storage does not give rise to supplementary fixed costs, being part of the normal manufacturing process of those cheeses.

(a) EUR 0,10 per tonne per day of storage under contract for the warehousing costs;

(b) for the financial costs, per day of storage under contract:

— EUR 0,38 per tonne for Grana padano;

— EUR 0,46 per tonne for Parmigiano-Reggiano;

— EUR 0,30 per tonne for Provolone.’

(2) Regulation (EC) No 2659/94 should be amended accordingly.

Article 2

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

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

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

Done at Brussels, 16 May 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 284, 1.11.1994, p. 26. Regulation last amended by Regulation (EC) No 826/2005 (OJ L 137, 31.5.2005, p. 15).

COMMISSION REGULATION (EC) No 736/2006**of 16 May 2006****on working methods of the European Aviation Safety Agency for conducting standardisation inspections****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency ⁽¹⁾, and in particular Article 16 thereof,

After consulting the committee referred to in Article 54(1) of Regulation (EC) No 1592/2002,

Whereas:

(1) Article 12(2)(d) of Regulation (EC) No 1592/2002 requires the European Aviation Safety Agency, hereinafter referred to as 'the Agency', to conduct inspections and investigations as necessary to fulfil its tasks.

(2) Articles 16(1) and 45(1) of Regulation (EC) No 1592/2002 request the Agency to assist the Commission in the monitoring of the application of its provisions, as well its implementing rules by conducting standardisation inspections of Member States' competent authorities.

(3) Article 45(4) of Regulation (EC) No 1592/2002 stipulates that where an inspection of a Member State competent authority entails an inspection of an undertaking or an association of undertakings, the Agency should follow the provisions of its Article 46.

(4) The Agency should report to the Commission on the inspections carried out in application of Article 45 of Regulation (EC) No 1592/2002.

(5) Article 16(4) of Regulation (EC) No 1592/2002 requires the Commission to set out the working methods of the Agency when conducting standardisation inspections.

(6) These working methods should take into account the legal provisions of Member States relating to the authorisation and empowerment of their personnel participating in inspections carried out by the Agency.

(7) Commission Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations ⁽²⁾ foresees the procedure to be followed by national aviation authorities when carrying out these rules.

(8) Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks ⁽³⁾ foresees the procedure to be followed by national aviation authorities when carrying out these rules.

(9) The working methods provided for in this Regulation are without prejudice to the enforcement powers conferred by the Treaty on the Commission.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the working methods for conducting standardisation inspections of Member States' national aviation authorities in the fields covered by Article 1(1) of Regulation (EC) No 1592/2002.

⁽¹⁾ OJ L 240, 7.9.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 1701/2003 (OJ L 243, 27.9.2003, p. 5).

⁽²⁾ OJ L 243, 27.9.2003, p. 6. Regulation as amended by Regulation (EC) No 706/2006 (OJ L 122, 9.5.2006, p. 16).

⁽³⁾ OJ L 315, 28.11.2003, p. 1. Regulation as amended by Regulation (EC) No 707/2006 (OJ L 122, 9.5.2006, p. 17).

*Article 2***Definitions**

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

- (a) 'inspection' shall mean the standardisation inspection referred to in Articles 16(1) and 45 of Regulation (EC) No 1592/2002 carried out by the Agency for the purpose of monitoring the application of that Regulation and of its implementing rules by the national aviation authorities;
- (b) 'national aviation authorities' shall mean the competent authorities of Member States referred to in Article 45 of Regulation (EC) No 1592/2002;
- (c) 'authorised personnel of the Agency' shall mean the persons who are legally authorised by the Agency to carry out inspections of Member States competent authorities and inspections of undertakings or association of undertakings for the purpose of verifying the application of Regulation (EC) No 1592/2002 by these authorities;
- (d) 'authorised personnel of Member States' shall mean the persons legally authorised by the competent authorities of the Member States to assist the Agency in carrying out inspections.

*Article 3***Principles for carrying out inspections**

1. For the purpose of assessing compliance with the requirements of Regulation (EC) No 1592/2002 and its implementing rules, the Agency shall carry out inspections of national aviation authorities whereby it shall examine in particular compliance of these authorities with the provisions of the Annex, Part 21 to Regulation (EC) No 1702/2003 and Annexes I (Part M), II (Part 145), III (Part 66) and IV (Part 147) to Regulation (EC) No 2042/2003 and shall establish a report thereon.
2. Standardisation inspections may include, for the purpose of paragraph 1, inspections of undertakings or associations of undertakings under the oversight of the inspected national aviation authority.
3. Standardisation inspections shall be conducted in a transparent, effective, harmonised and consistent manner.

4. Standardisation inspections shall be conducted by the Agency on a regular and, where appropriate, on an ad-hoc basis.

5. The present Regulation is without prejudice to Articles 11 and 47 of Regulation (EC) No 1592/2002 and to Commission Decision 2001/844/EC, ECSC, Euratom ⁽¹⁾.

*Article 4***Exchange of information**

1. National aviation authorities shall provide the Agency upon request with all necessary information for the purpose of carrying out inspections.
2. When submitting such a request for information to a national aviation authority of a Member State and/or an undertaking or an association of undertakings the Agency shall state its legal basis and purpose, specify what information is required and fix the time-limit within which the information is to be provided.

*Article 5***Training and qualification criteria for inspection teams and team leaders**

1. The Agency shall establish training programmes for the appropriate qualification of its staff, as prospective authorised personnel of the Agency, and of the authorised personnel of Member States to participate in inspections of national aviation authorities and, where necessary, inspections of undertakings or associations of undertakings.
2. The Agency shall establish qualification criteria for its staff and for personnel of Member States who participate in inspection teams. Such qualification criteria shall include knowledge and experience of auditing techniques and theoretical knowledge and practical experience in the relevant technical matters covered by Regulation (EC) No 1592/2002 and its implementing rules.
3. Team leaders shall have significant working experience in the fields covered by Regulation (EC) No 1592/2002 and its implementing rules and at least 5 years as inspectors and/or auditors in the area of standardisation. Both team leaders and team members shall be trained in the applicable standardisation requirements and procedures. Team members shall have practical experience of at least 5 years in the relevant field covered by the inspection and shall be familiar with the concept of quality system investigation.

⁽¹⁾ OJ L 317, 3.12.2001, p. 1.

*Article 6***Setting up teams for inspections**

1. Inspections shall be carried out by teams set up by the Agency. Every team shall have a leader and a minimum of two members. In case of ad hoc inspections the Agency may adjust the size of the inspection teams. Team leaders shall be authorised personnel of the Agency. Team members may be authorised personnel of the Agency and/or of Member States.

2. Personnel of Member States who have been appropriately trained by the Agency, meet the qualification criteria established in Article 5 and have been participating in inspections of national aviation authorities and/or undertakings or associations of undertakings under their oversight, may be seconded by their national authorities to participate as authorised personnel of Member States in inspection teams lead by the Agency. Authorised personnel of Member States are excluded from inspections of the competent authority of their Member State.

3. The Agency shall ensure that, in setting up the teams, there shall be no conflict of interests either with the national authorities inspected or with the undertakings or associations of undertakings inspected. In case of authorised personnel of Member States, a declaration of absence of conflict of interest shall be issued by the national aviation authority seconding the official.

4. Member States shall appoint a national coordinator to assist the Agency at all stages of the process and shall ensure that the inspection team(s) are accompanied throughout the inspection.

5. The Agency shall request in due time before launching an inspection information from national aviation authorities as to the availability of authorised personnel of Member States for its conduct. In planning inspections the Agency shall endeavour to balance the participation of authorised personnel from different Member States.

6. Expenses arising from the participation of national coordinators as provided for in Article 9(1)(a) and of authorised personnel of Member States in inspections and investigations carried out by the Agency shall be borne, in compliance with Community rules and without prejudice to the annual Community budgetary procedure, by the Agency.

*Article 7***Conduct and reporting of inspections**

A standardisation inspection of a national aviation authority and, if necessary, an undertaking or an association of undertakings shall include the following phases:

- (a) a preparatory phase lasting a minimum of 10 weeks prior to the inspection;
- (b) a visiting phase;
- (c) a reporting phase lasting a maximum of 12 weeks following the inspection and;
- (d) a follow-up phase lasting a maximum of 16 weeks following the reporting phase;
- (e) a closure phase to take place at the end of the follow-up phase.

*Article 8***Preparatory phase**

During the preparatory phase the Agency shall:

- (a) give notice of inspection to the national aviation authority at least 10 weeks before the inspection visit, then collect the necessary information for the preparation of the inspection visit, define the programme of the visit and decide the composition of the inspection team, as well as any prospective changes thereto, and
- (b) communicate to the national aviation authority along with the notice of inspection an inspection questionnaire for completion at least 6 weeks before the inspection visit by the inspected national aviation authority and, where necessary, by the undertaking or association of undertakings to be inspected in the course of the inspection of that national aviation authority.

*Article 9***Visiting phase**

1. During the visiting phase the Agency shall:

- (a) organise preliminary and wrap-up meetings between the inspection team and the national coordinator of the national aviation authority being inspected either at the premises of that national aviation authority or in its own premises; the purpose of such meetings being mainly focused on organisational aspects and the overall conduct of the inspection visit;
- (b) conduct on-site visits, including an opening and a closing session, of the main offices and, if necessary, of regional offices of the national aviation authority; inspections of national aviation authorities may also include inspections of undertakings or associations of undertakings under their oversight;

- (c) carry out interviews with the staff of the national aviation authority inspected and examine records, data, procedures and any other relevant material by using the mechanisms to be established pursuant to Article 18 of this Regulation, ensuring the transparency and consistency of the inspection;
- (d) present a preliminary report of the inspection to the national aviation authority inspected at the closing session; this report should include comments presented by the national aviation authority inspected during the inspection visit, if any, and a request to the national aviation authority to take immediate effective remedial action to eliminate an immediate safety hazard, where such hazard is detected during an inspection;
- (e) require that evidence of the remedial action undertaken by the national aviation authority inspected be presented at the wrap-up meeting referred to under (a).

2. While performing its tasks in the phase referred to in paragraph 1, the Agency may interview any natural or legal person for the purpose of collecting information relating to the subject matter of an inspection. Where such interview is conducted in the premises of an undertaking, the Agency shall inform with a notice of 2 weeks the national aviation authority of the Member State in whose territory the interview takes place as well as the aviation authority which exercises the oversight over the undertaking in question. If so requested by the national aviation authority of that Member State, its personnel may assist the authorised personnel of the Agency to conduct the interview.

Article 10

Reporting phase

During the reporting phase the Agency shall establish a final inspection report containing details of the conduct of the inspection and addressing in particular findings identified during the inspection as described in Article 13. This report shall also include comments of the national aviation authority inspected, if any. The final inspection report shall be addressed to the national aviation authority inspected, to the Commission and to the Member State concerned. The Commission may subsequently transmit this report to all national aviation authorities.

Where preliminary inspection reports request immediate remedial actions as provided for in Article 9(1)(d) and such requests are not answered satisfactorily by the national aviation authority concerned, the final inspection report shall contain evidence of such failure.

Article 11

Follow-up phase

During the follow-up phase the Agency shall:

- (a) agree within 16 week since the starting of such phase an action plan with the national aviation authority inspected, defining any remedial action and relevant timeframe within which such action has to be undertaken to resolve any findings made according to Article 7;
- (b) start monitoring the progress of the agreed remedial actions; the national aviation authority inspected shall provide to the Agency information as remedial actions are put in place.

Article 12

Closure phase

During the closure phase the Agency shall:

- (a) verify and validate the satisfactory progressive implementation of the action plan; to this end the national aviation authority inspected shall provide to the Agency information as remedial actions are put in place;
- (b) issue a statement of closure findings once satisfied with the actions undertaken by the national aviation authority inspected. Such statement shall be addressed to the aviation authority inspected, to the Member State concerned and to the Commission. The Commission may subsequently transmit this report to all national aviation authorities.

Article 13

Inspection findings

When assessing compliance with the requirements of Regulation (EC) No 1592/2002 and its implementing rules, the findings in the relevant final inspection report shall be classified as:

- (a) fully compliant;
- (b) compliant, but improvement is recommended in areas (reference to the rules affected) for better efficiency;
- (c) not compliant, with objective evidence of minor deficiencies showing non-compliance with the applicable requirements in areas (reference to the rules affected), which could raise standardisation concerns;

- (d) not compliant, with objective evidence of significant deficiencies showing non-compliance with the applicable requirements in areas (reference to the rules affected), which, besides standardisations concerns raise safety concerns if not promptly corrected;
- (e) not applicable;
- (f) not confirmed, when the national aviation authority inspected commits to produce shortly after the visit material evidence of compliance on findings otherwise classified as in (c) or (d), this material evidence not being directly available at the time of the visit.

Article 14

Access to information contained in inspection reports

Where information contained in an inspection report concerns an undertaking under the regulatory authority of a third country and falls within the scope of application of a Community agreement concluded pursuant to Article 9 of Regulation (EC) No 1592/2002, such information shall be made available to the third country as a party to such an agreement according to its respective provisions.

Article 15

Action taken following an inspection report

1. The Agency may at any time, or upon request from the Commission, conduct inspections of national aviation authorities and, where necessary, of undertakings or associations of undertakings to assess the satisfactory completion of remedial actions. Such inspections must be announced to the national aviation authority concerned with a notice of 2 weeks but need not to comply with the deadlines and the procedures foreseen in Article 8 to 12, except for the need of a final inspection report.
2. Where during the reporting phase final inspection reports contain non-compliance findings made pursuant to Article 13 (c), (d) or (f), the Agency shall address a request for clarifications and/or request remedial action to the national aviation authority of the Member State inspected, setting a deadline which shall not exceed 2 weeks for findings made pursuant to Article 13 (d) and (f) and 10 weeks for findings made pursuant to Article 13 (c).
3. If the clarifications provided by the national aviation authority of the Member State inspected do not satisfy the Agency or where no satisfactory remedial action is timely proposed or is not duly implemented by that authority, the Agency shall address a supplementary report to the national aviation authority concerned, as well as to the Commission

and to the Member State concerned. The Commission may subsequently transmit this report to all national aviation authorities.

4. Following presentation of the report provided for in paragraph 3 and without prejudice to Article 226 of the Treaty, in the event of findings made pursuant to Article 13 (c) and (d) of this Regulation, the Commission may take any of the following steps:

- (a) address comments to the Member State concerned or request further explanation to clarify all or part of the findings;
- (b) require the Agency to carry out all necessary inspections of national aviation authorities to check the implementation of remedial actions, the minimum notice for such a follow-up action being 2 weeks.

Article 16

Ad hoc inspections

The Agency shall conduct ad hoc inspections of national aviation authorities upon request from the Commission whenever deemed necessary for safety reasons. Such inspections must be announced to the national aviation authority concerned with a notice of 2 weeks but need not to comply with the deadlines and the procedures foreseen in Articles 7 to 12, except for the need of a final inspection report.

Article 17

Standardisation inspection programme and annual report

The Agency shall define an annual programme for inspections in each field regulated by the implementing rules of Regulation (EC) No 1592/2002. Such annual programme shall be communicated to the Commission and the other members of the Management Board of the Agency as part of the Agency's work programme pursuant to the provisions of Article 24(2)(c) of Regulation (EC) No 1592/2002.

Before 31 March each year, the Agency shall submit an annual report to the Commission presenting an analysis of standardisation inspections carried out the previous year.

Article 18

Working procedures

The Agency shall establish appropriate working procedures for implementing the tasks conferred upon it under Articles 5 to 16 of this Regulation not later than two months following its entry into force.

*Article 19***Entry into force**

This Regulation shall enter into force on the first day of the month following the date 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, 16 May 2006.

For the Commission

Jacques BARROT

Vice-President

COMMISSION REGULATION (EC) No 737/2006
of 16 May 2006
amending the import duties in the cereals sector applicable from 17 May 2006

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 731/2006 ⁽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 731/2006,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 731/2006 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 17 May 2006.

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

Done at Brussels, 16 May 2006.

For the Commission

J. L. DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 270, 29.9.2003, p. 78. Regulation as amended by Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽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 128, 16.5.2006, p. 5.

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EC) No 1784/2003 applicable from 17 May 2006

CN code	Description	Import duty ⁽¹⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	19,13
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	56,42
1005 10 90	Maize seed other than hybrid	60,00
1005 90 00	Maize other than seed ⁽²⁾	60,00
1007 00 90	Grain sorghum other than hybrids for sowing	56,42

⁽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

(15.5.2006)

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	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	140,18 (***)	75,75	152,03	142,03	122,03	85,15
Gulf premium (EUR/t)	—	9,75	—			—
Great Lakes premium (EUR/t)	23,04	—	—			—

(*) 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).

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

Freight/cost: Gulf of Mexico–Rotterdam: 16,96 EUR/t; Great Lakes–Rotterdam: 20,86 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 3 January 2006

on the national provisions notified by the Kingdom of Sweden under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers

(notified under document number C(2005) 5532)

(Only the Swedish text is authentic)

(Text with EEA relevance)

(2006/347/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 95(6) thereof,

Whereas:

identification, labelling or packaging, to prohibit, restrict or hinder the marketing of fertilisers marked 'EC fertiliser' which comply with the provisions of this Directive.

I. FACTS

1. Community legislation

- (1) Council Directive 76/116/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to fertilisers ⁽¹⁾, laid down the requirements that fertilisers must fulfil in order to be placed on the market with the designation 'EC fertilisers'.
- (2) Annex I to Directive 76/116/EEC set out the type designation and the corresponding requirements, e.g. with respect to its composition, that each EC-designated fertiliser must fulfil. EC-designated fertilisers included in this list are grouped into categories, depending on the content of the primary nutrients, i.e. the elements nitrogen, phosphorus and potassium.
- (3) According to Article 7 of Directive 76/116/EEC, Member States were not permitted on grounds of composition,

- (4) Commission Decision 2002/399/EC of 24 May 2002 on the national provisions notified by the Kingdom of Sweden under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers ⁽²⁾, granted a derogation to Directive 76/116/EEC, by approving the Swedish provisions which prohibit the placing on the Swedish market of fertilisers containing in excess of 100 grams of cadmium per tonne of phosphorus. This derogation was applicable until 31 December 2005.
- (5) Directive 76/116/EEC, as amended, has been replaced by Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers ⁽³⁾.
- (6) Article 35(2), of Regulation (EC) No 2003/2003 states that derogations from Article 7 of Directive 76/116/EEC that were granted by the Commission under Article 95(6) of the Treaty shall be construed as derogations from Article 5 of the present Regulation and shall continue to produce their effects notwithstanding the entry into force of this Regulation.

⁽¹⁾ OJ L 24, 30.1.1976, p. 21. Directive as last amended by the 2003 Act of Accession.

⁽²⁾ OJ L 138, 28.5.2002, p. 24.

⁽³⁾ OJ L 304, 21.11.2003, p. 1. Regulation as amended by Commission Regulation (EC) No 2076/2004 (OJ L 359, 4.12.2004, p. 25).

- (7) Recital 15 of Regulation (EC) No 2003/2003 announces that the Commission will address the issue of unintentional cadmium content in mineral fertilisers and will, where appropriate, draw up a proposal for a Regulation and will present it to the European Parliament and the Council.
- (8) Work is in progress to prepare a Commission proposal on cadmium in fertilisers.

2. The accession of Sweden

- (9) Sweden acceded to the European Union on 1 January 1995. The Act of Accession ⁽⁴⁾ lays down transitional provisions concerning the use and marketing of cadmium in that State. Article 112(1) provides that during a period of four years from the date of accession, the provisions referred to in Annex XII of the Act shall, in accordance with that Annex and subject to the conditions set out therein, not apply to Sweden. Article 112 of and point 4 of Annex XII to the Act of Accession provide that Article 7 of Directive 76/116/EEC, in so far as it concerns the cadmium content of fertilisers, shall not apply to Sweden before 1 January 1999 and that the provisions of Directive 76/116/EEC will be reviewed in accordance with Community procedures by 31 December 1998.
- (10) Article 2 of the Act of Accession provides that 'from the date of accession, the provisions of the original Treaties and the Acts adopted by the institutions before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act'. Article 168 of the Act of Accession stipulates that 'the new Member States shall put into effect the measures necessary for them to comply, from the date of accession, with the provisions of directives and decisions within the meaning of Article 189 (now Article 249) of the EC Treaty (...), unless a time limit is provided for in the list of Annex XIX or in any other provisions of this Act'.
- (11) Directive 98/97/EC of the European Parliament and of the Council ⁽⁵⁾ subsequently amended Directive 76/116/EEC as regards the marketing in Austria, Finland and Sweden of fertilisers containing cadmium. Article 1 provides that, *inter alia*, Sweden may prohibit the marketing on its territory of fertilisers containing cadmium at concentrations in excess of that which

were fixed nationally at the date of accession and that this derogation applies for the period from 1 January 1999 until 31 December 2001.

- (12) On 7 December 2001, the Kingdom of Sweden notified existing national legislation, deviating from the provisions of Directive 76/116/EEC on the approximation of the laws of the Member States relating to fertilisers. After careful consideration, Decision 2002/399/EC granted a prolongation of the derogation from Directive 76/116/EEC until 31 December 2005.

3. National provisions

- (13) 'The Chemicals Products (Handling, Import and Export Prohibitions) Ordinance' (1998:944) ⁽⁶⁾ contains provisions relating, *inter alia*, to the maximum permissible cadmium content in fertilisers, including EC-designated fertilisers. Section 3, paragraph 3, of the Ordinance, provides that fertilisers covered by customs tariffs numbers 25.10, 28.09, 28.35, 31.03 and 31.05 containing in excess of 100 grams of cadmium per tonne of phosphorous may not be offered for sale or transferred.
- (14) The provisions relating to the maximum permissible cadmium content in fertilisers have been in force since 1985 following the adoption of 'The Cadmium Ordinance' (1985:839). 'The Chemicals Products Ordinance' (1998:944) codifies different provisions relating to the protection of the environment, including those contained in 'The Cadmium Ordinance' (1985:839).

II. PROCEDURE

- (15) By letter of 29 June 2005, the Kingdom of Sweden notified the Commission that, in accordance with article 95(4) of the EC Treaty, it intends to continue to apply from 1 January 2006 national provisions concerning the cadmium content in fertilisers. The Swedish authorities request an extension of the current derogation provided by Decision 2002/399/EC.
- (16) By letter of 29 July 2005, the Commission informed the Swedish authorities that it had received the notification under Article 95(4) and that the six-month period for its examination according to Article 95(6) started on 30 June 2005, the day following the one when the notification was received.

⁽⁴⁾ OJ C 241, 29.8.1994, p. 41 and p. 316.

⁽⁵⁾ OJ L 18, 23.1.1999, p. 60.

⁽⁶⁾ Swedish Code of Statutes (SFS Svensk Författningssamling) of 14 July 1998.

- (17) By letter of 10 August 2005, the Commission informed the other Member States about the request received from Sweden. The Commission also published a notice regarding the request in the *Official Journal of the European Union* ⁽⁷⁾ in order to inform other interested parties of the national measures that Sweden intends to maintain.

the European Union. As indicated above, the Act of Accession lays down transitional provisions allowing Sweden to continue to apply its national provisions concerning the cadmium content of fertilisers to products covered by Directive 76/116/EEC for a period of four years. By Directive 98/97/EC Sweden was authorised to continue to apply the above national provisions until 31 December 2001. Decision 2002/399/EC extended the derogation until December 2005.

III. ASSESSMENT

1. Consideration of admissibility

- (18) Article 95(4) of the Treaty provides that, if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

- (23) As required by Article 95(4), as interpreted in the light of Articles 2 and 168 of the Act of Accession, Sweden notified the Commission of the actual wording of the national provisions adopted before the accession to the European Union that it intends to maintain, accompanying the request by an explanation of the reasons which, in its opinion, justify the maintenance of those provisions.

- (19) The notification submitted by the Swedish authorities on 29 June 2005 intends to obtain authorisation to extend, beyond 31 December 2005, the current derogation provided in Decision 2002/399/EC. This Decision allows Sweden to maintain the application of national provisions incompatible with those concerning the composition of EC-denominated fertilisers contained in Regulation (EC) No 2003/2003.

- (24) The reasons provided by the Swedish authorities are those already submitted in the past and that lead the Commission, in Decision 2002/399/EC, to grant a derogation until 31 December 2005. This period was granted on the assumption that harmonised legislation would be in place by end 2005. Although work is in progress, legislation would not be adopted at Community level before the end of the year.

- (20) As already indicated, Article 5 of Regulation (EC) No 2003/2003 prevents Member States from restricting the marketing of EC-denominated fertilisers because of their composition, but the rules governing composition do not set any limit value for cadmium content. This means that pursuant to Article 5 of Regulation (EC) No 2003/2003, EC-denominated fertilisers complying with the requirements of that Regulation can be placed on the market regardless of their cadmium content.

- (25) The notification submitted by Sweden on 29 June 2005 in order to obtain approval for maintaining national provisions derogating from the provisions of Regulation (EC) No 2003/2003 is therefore to be considered admissible under Article 95(4) as interpreted in the light of Articles 2 and 168 of the Act of Accession.

2. Assessment of merits

- (21) In the light of the abovementioned, it is clear that the national provisions notified by Sweden, in so far as they prohibit the placing on the market of EC-denominated fertilisers with a cadmium content exceeding 100 grams per tonne of phosphorus, are more restrictive than those contained in Regulation (EC) No 2003/2003.

- (26) In accordance with Article 95 of the Treaty, the Commission has to ensure that all the conditions enabling a Member State to avail itself of the possibilities of derogation provided for in this article are fulfilled.

- (22) The national provisions notified by the Swedish authorities were adopted in 1985 before Sweden acceded to

- (27) In particular, the Commission has to assess whether the provisions notified by the Member State are justified on grounds of major needs referred to in Article 30 of the Treaty, or relating to the protection of the environment or the working environment.

⁽⁷⁾ OJ C 197, 12.8.2005, p. 6.

(28) In addition, pursuant to Article 95(6) of the Treaty, where it considers that the national provisions are justified, the Commission must check whether or not those national provisions are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.

(29) Sweden has based its request on the need of protection of human health and the environment. Cadmium in fertilisers is deemed to pose a threat to the environment and human health. In support of its request, Sweden makes reference to the conclusions of a Swedish study published in October 2000 ⁽⁸⁾ which contains an assessment of the risks posed by cadmium-containing fertilisers.

2.1. Justification on grounds of major needs

(30) As regards the general information on cadmium, from the scientific data available up to now, it can be concluded that cadmium metal and cadmium oxide in general can be considered to pose serious risks to health. In particular, cadmium oxide has been classified as a carcinogen, mutagen or substance toxic for reproduction, category 2. It is also generally agreed that cadmium in fertilisers is by far the most important source of cadmium input to soil and to the food chain.

(31) As regards cadmium in fertilisers, the most relevant information of the risk assessment carried out by Sweden can be summarised as follows:

— concerning surface water, the Swedish risk assessment report states that 'the chosen PNEC ⁽⁹⁾ value implies that in most rivers in southern Sweden, certain biota would already be affected by cadmium i.e. risk characterisation ratios ⁽¹⁰⁾ are larger than one ⁽¹¹⁾. If higher cadmium content in fertilisers would be allowed, a further increase in the exposure of and the concern for effects in the aquatic environment is expected to occur',

— concerning the soil, the Swedish risk assessment report states that 'by using the Swedish fertiliser for 100 years on common Swedish soils (PNEC 0,25 mg/kg), no concern for ecological effects is predicted when potatoes or wheat are grown. A concern is predicted when carrots are grown, but

this concern is also present at time zero. With the EC fertiliser, a concern is predicted in all cases. In acid, sandy soils that are poor in clay and organic matter (PNEC 0,06 mg/kg), a risk is predicted even if the cadmium content in fertilisers is zero'.

(32) It is clear that these conclusions refer to the specific situation of the Swedish soil as well as the climatic conditions prevailing in Sweden.

(33) In conclusion, the risk assessment carried out by Sweden shows that if fertilisers with a higher cadmium content than currently permitted would be allowed, this would lead to:

— a substantial increase in the cadmium concentrations of soils, which in turn would lead to toxic effects on soil organisms. Unacceptable concentrations could also appear in watercourses in agricultural regions,

— a substantial increase in the dietary intake of cadmium. The safety margin between current exposure and the World Health Organisation provisional tolerable weekly intake level is extremely small. For some high-risk groups, such as women with low body iron stores, there are no safety margins at all. A high dietary intake of cadmium could therefore lead to a larger number of people becoming subject to reduced kidney function and increased osteoporosis.

(34) The risk assessment submitted by the Swedish authorities has been carried out according to the procedures and the methodology established at Community level, which are considered to ensure a high degree of reliability of the information obtained.

(35) The Commission already examined the information contained in the risk assessment in the context of Decision 2002/399/EC which allowed Sweden to maintain their national provisions until 31 December 2005.

(36) No other scientific and technical data was provided by Sweden in 2005. The accumulation process is a slow one which is not significantly modified on a three-year period. Therefore, it could be considered that the situation is similar as in 2002.

⁽⁸⁾ Swedish National Chemical Inspectorate, Assessment of risks to health and the environment in Sweden from cadmium in fertilisers, 4 October 2000.

⁽⁹⁾ PNEC: predicted no effect concentration.

⁽¹⁰⁾ These ratios are PEC/PNEC where PEC is the predicted environmental concentration.

⁽¹¹⁾ A PEC/PNEC ratio greater than 1 indicates that there will be adverse effects.

- (37) The validity of the data provided by Sweden is confirmed by the following scientific basis used to support the preparation of the Commission proposal on cadmium in fertilisers:

- the opinion delivered on 24 September 2002 by the SCTEE⁽¹²⁾ (now renamed SCHER⁽¹³⁾) concerning cadmium accumulation in agricultural soils due to fertiliser application. This opinion was based on risk assessment reports of nine Member States which address only the accumulation and not the possible risks to health and environment; the conclusion of the SCTEE was that the content of cadmium in fertilisers does need to be limited to prevent accumulation of cadmium in the soil,
- the final draft of the general risk assessment of cadmium and cadmium oxide, dated September 2004 produced in accordance with Council Regulation (EEC) No 793/93⁽¹⁴⁾ and which considers all sources of cadmium. The draft endorses the opinion of the SCTEE concerning the accumulation in soil. Although it states that the contribution from cadmium in fertilisers may not, by itself, be sufficient to cause a severe and immediate risk to human health or to the environment, caution is needed, as the risk to human health cannot be excluded for all local and regional situations because of the large variability in food cadmium concentrations, dietary habits and nutritional status.

Pending finalisation of the general risk assessment on cadmium and cadmium oxide as well as the potential follow-up work on risk reduction measures, the Commission proposal on cadmium in fertilisers has been subject to some delays.

- (38) Therefore, after having re-examined the scientific evidence in the light of the Swedish request, the Commission considers that the Swedish authorities have shown that cadmium-containing fertilisers pose environmental and human health risks, and that the national provisions notified by the Swedish authorities aiming to limit to the minimum the exposure of the Swedish environment to cadmium-containing fertilisers are justified.

2.2. *Absence of arbitrary discrimination*

- (39) Article 95(6) obliges the Commission to verify that the envisaged measures are not a means of arbitrary discrimination.

According to the ruling of the Court of Justice, the absence of discrimination means that national restrictions on trade cannot be used in such a way as to create discrimination in respect of goods originating in other Member States.

- (40) The envisaged national provisions are general and apply to national and imported phosphorous based EC-designated fertilisers alike. As a result, there is no evidence that they can be used as a means of arbitrary discrimination between economic operators in the Community.

2.3. *Absence of a disguised restriction on trade*

- (41) More restrictive national measures governing the composition of EC-designated fertilisers that derogate from the provisions of a Community Directive normally constitute a barrier to trade. Products that can be legally placed on the market in the rest of the Community cannot be placed on the market in the Member State concerned. The concept enshrined in Article 95(6) is intended to prevent the national provisions based on the criteria set out in paragraphs 4 and 5 being applied for inappropriate reasons, and in reality constituting economic measures to be introduced to impede the import of products from other Member States in order to indirectly protect national production.

- (42) As already established, there is concern with regard to the protection of the environment and human health due to the application on soil of cadmium-containing fertilisers. Therefore, the protection of the environment and human health appears to be the goal of maintaining the national provisions and not the creation of disguised barriers to trade.

2.4. *Absence of obstacles to the functioning of the internal market*

- (43) This condition cannot be interpreted in such a way that it prohibits the approval of any national measure likely to affect the establishment of the internal market. In fact, any national measure derogating from a harmonisation measure aiming at the establishment and operation of the internal market, constitutes in substance a measure that is likely to affect the internal market. Consequently, to preserve the useful character of the procedure for derogation provided for by Article 95 of the EC Treaty, the Commission considers that, in the context of the Article 95(6), the concept of obstacle to the functioning of the internal market has to be understood as a disproportionate effect in relation to the pursued objective.

⁽¹²⁾ Scientific Committee on Toxicity, Ecotoxicity and the Environment.

⁽¹³⁾ Scientific Committee on Health and Environmental Risks.

⁽¹⁴⁾ OJ L 84, 5.4.1993, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

(44) In view of the risks for both the environment and human health resulting from the application of cadmium-containing fertilisers to the Swedish soil and taking into account that:

- as indicated above, the Act of Accession and Directive 98/97/EC allowed Sweden to continue to apply its national provisions concerning the cadmium content in fertilisers awaiting the completion of the review of Directive 76/116/EEC as regards the issue of the cadmium content in fertilisers, and
- Decision 2002/399/EC allowed Sweden to maintain their national provisions until 31 December 2005 based on the risk assessment provided by the Swedish authorities, and
- ongoing work within the Commission for an approximation of Community limit values for the cadmium content in fertilisers does not lead to believe that a less restrictive measure would provide sufficient protection of health and environment in Sweden. The risk assessment shows that the specific soil and climatic condition of Sweden require national provision for the protection of the environment because some areas are more vulnerable to cadmium inputs due in particular to the acidic pH of their soil. Under acidic conditions, the solubility of cadmium increases and therefore could be more easily taken up by the crops.

The Commission considers that, at this stage of the review, there is no evidence indicating that the national provisions do constitute a disproportionate obstacle to the functioning of the internal market in relation to the pursued objectives.

2.5. Limitation in time

(45) The period for which the derogation is granted should allow sufficient time for the Commission to propose, and for the Council and the European Parliament to adopt legislation concerning cadmium in fertilisers at Community level. In order to avoid the implications of possible delays during the interinstitutional debate, the provisions of the current Decision should therefore be valid until the harmonised measure is applicable at EU level.

IV. CONCLUSION

- (46) In the light of the foregoing, it can be concluded that the request by the Kingdom of Sweden for maintaining national provisions that are more restrictive than the provisions of Directive 76/116/EEC with regard to the cadmium content of fertilisers, as submitted on 29 June 2005, is admissible.
- (47) Moreover, the Commission finds that the national provisions:
- meet needs on grounds of the protection of human health and the environment,
 - are proportionate to the objectives pursued,
 - are not a means of arbitrary discrimination, and
 - do not constitute a disguised restriction on trade between Member States.

The Commission therefore considers that they can be approved,

HAS ADOPTED THIS DECISION:

Article 1

In derogation from Regulation (EC) No 2003/2003, the Swedish provisions which prohibit the placing on the Swedish market of fertilisers containing in excess of 100 grams of cadmium per tonne of phosphorous are approved.

The derogation shall apply until harmonised measures on cadmium in fertilisers are applied at Community level.

Article 2

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 3 January 2006.

For the Commission
Günter VERHEUGEN
Vice-President

COMMISSION DECISION**of 3 January 2006****on the national provisions notified by the Republic of Finland under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers***(notified under document number C(2005) 5542)***(Only the Finnish and Swedish texts are authentic)****(Text with EEA relevance)**

(2006/348/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 95(6) thereof,

Whereas:

I. FACTS**1. Community legislation**

- (1) Council Directive 76/116/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to fertilisers ⁽¹⁾, laid down the requirements that fertilisers must fulfil in order to be placed on the market with the designation 'EC fertilisers'.
- (2) Annex I to Directive 76/116/EEC set out the type designation and the corresponding requirements, e.g. with respect to its composition, that each EC-designated fertiliser must fulfil. EC-designated fertilisers included in this list are grouped into categories, depending on the content of the primary nutrients, i.e. the elements nitrogen, phosphorus and potassium.
- (3) According to Article 7 of Directive 76/116/EEC Member States were not permitted on grounds of composition, identification, labelling or packaging, to prohibit, restrict or hinder the marketing of fertilisers marked 'EC fertiliser' which comply with the provisions of this Directive.
- (4) Commission Decision 2002/398/EC of 24 May 2002 on the national provisions notified by the Republic of Finland under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers ⁽²⁾ granted a derogation to Directive 76/116/EEC, by approving the Finnish provisions which prohibit the placing on the Finnish market of phosphorous mineral fertilisers with a cadmium content exceeding 50 mg for each kilogram of phosphorus. This derogation was applicable until 31 December 2005.

- (5) Directive 76/116/EEC, as amended, has been replaced by Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers ⁽³⁾.

- (6) Article 35(2), of Regulation (EC) No 2003/2003 states that derogations from Article 7 of Directive 76/116/EEC that were granted by the Commission under Article 95(6) of the Treaty shall be construed as derogations from Article 5 of the present Regulation and shall continue to produce their effects notwithstanding the entry into force of this Regulation.

- (7) Recital 15 of Regulation (EC) No 2003/2003 announces that the Commission will address the issue of unintentional cadmium content in mineral fertilisers and will, where appropriate, draw up a proposal for a Regulation and will present it to the European Parliament and the Council.

- (8) Work is in progress to prepare a Commission proposal on cadmium in fertilisers.

2. The accession of Finland

- (9) Finland acceded to the European Union on 1 January 1995. The Act of Accession ⁽⁴⁾ lays down transitional provisions concerning the use and marketing of cadmium in that State. Article 84(1) provides that during a period of four years from the date of accession, the provisions referred to in Annex X of the Act shall, in accordance with that Annex and subject to the conditions set out therein, not apply to Finland. Article 84 of and point 2 of Annex X to the Act of Accession provide that Article 7 of Directive 76/116/EEC, in so far as it concerns the cadmium content of fertilisers, shall not apply to Finland before 1 January 1999 and that the provisions of Directive 76/116/EEC will be reviewed in accordance with Community procedures by 31 December 1998.

⁽¹⁾ OJ L 24, 30.1.1976, p. 21. Directive as last amended by the 2003 Act of Accession.

⁽²⁾ OJ L 138, 28.5.2002, p. 15.

⁽³⁾ OJ L 304, 21.11.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 2076/2004 (OJ L 359, 4.12.2004, p. 25).

⁽⁴⁾ OJ C 241, 29.8.1994, p. 37 and p. 308.

- (10) Article 2 of the Act of Accession provides that 'from the date of accession, the provisions of the original Treaties and the acts adopted by the institutions before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act'. Article 168 of the Act of Accession stipulates that 'the new Member States shall put into effect the measures necessary for them to comply, from the date of accession, with the provisions of directives and decisions within the meaning of Article 189 (now Article 249) of the EC Treaty (...), unless a time limit is provided for in the list of Annex XIX or in any other provisions of this Act'.
- (11) Directive 98/97/EC of the European Parliament and of the Council ⁽⁵⁾, subsequently amended Directive 76/116/EEC as regards the marketing in Austria, Finland and Sweden of fertilisers containing cadmium. Article 1 provides that, *inter alia*, Finland may prohibit the marketing on its territory of fertilisers containing cadmium at concentrations in excess of that which were fixed nationally at the date of accession and that this derogation applies for the period from 1 January 1999 until 31 December 2001.
- (12) On 7 December 2001, the Republic of Finland notified existing national legislation, deviating from the provisions of Directive 76/116/EEC on the approximation of the laws of the Member States relating to fertilisers. After careful consideration, Decision 2002/398/EC granted a prolongation of the derogation from Directive 76/116/EEC until 31 December 2005.

3. National provisions

- (13) The Decision of Finland's Ministry of Agriculture and Forestry on fertilisers ⁽⁶⁾ No 45/1994 of 21 January 1994, *inter alia*, lays down a limit value for the cadmium content in fertilisers, including EC-designated fertilisers. According to Section 3, it is prohibited to place on the Finnish market phosphorus mineral fertilisers with a cadmium content exceeding 50 mg for each kilogram of phosphorus.

II. PROCEDURE

- (14) By letter of 7 June 2005 the Republic of Finland notified the Commission that, in accordance with article 95(4) of the EC Treaty, it intends to continue to apply from 1 January 2006 national provisions concerning the cadmium content in fertilisers. The Finnish authorities request an extension of the current derogation provided by Decision 2002/398/EC.
- (15) By letter of 30 June 2005, the Commission informed the Finnish authorities that it had received the notification under Article 95(4) and that the six months period for its examination according to Article 95(6) started on 8 June 2005, the day following the one when the notification was received.
- (16) By letter of 10 August 2005, the Commission informed the other Member States about the request received from Finland. The Commission also published a notice regarding the request in the *Official Journal of the European Union* ⁽⁷⁾ in order to inform other interested parties of the national measures that Finland intends to maintain.

III. ASSESSMENT

1. Consideration of admissibility

- (17) Article 95(4) of the Treaty provides that, if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.
- (18) The notification submitted by the Finnish authorities on 7 June 2005 intends to obtain authorisation to extend beyond 31 December 2005 the current derogation provided in Decision 2002/398/EC. This Decision allows Finland to maintain the application of national provisions incompatible with those concerning the composition of EC-denominated fertilisers contained in Regulation (EC) No 2003/2003.
- (19) As already indicated, Article 5 of Regulation (EC) No 2003/2003 prevents Member States from restricting the marketing of EC-denominated fertilisers because of their composition, but the rules governing composition do not set any limit value for cadmium content. This means that pursuant to Article 5 of Regulation (EC) No 2003/2003, EC-denominated fertilisers complying with the requirements of that Regulation can be placed on the market regardless of their cadmium content.
- (20) In the light of the abovementioned, it is clear that the national provisions notified by Finland, in so far as they prohibit the placing on the market of EC-denominated phosphorus mineral fertilisers with a cadmium content exceeding 50 mg for each kilogram of phosphorus, are more restrictive than those contained in Regulation (EC) No 2003/2003.

⁽⁵⁾ OJ L 18, 23.1.1999, p. 60.

⁽⁶⁾ Statutes of Finland No 45/1994 of 26 January 1994, p. 117.

⁽⁷⁾ OJ C 197, 12.8.2005, p. 4.

- (21) The national provisions notified by the Finnish authorities were adopted before Finland acceded to the European Union. As indicated above, the Act of Accession lays down transitional provisions allowing Finland to continue to apply its national provisions concerning the cadmium content of fertilisers to products covered by Directive 76/116/EEC for a period of four years. By Directive 98/97/EC Finland was authorised to continue to apply the above national provisions until 31 December 2001. Decision 2002/398/EC extended the derogation until December 2005.
- (22) As required by Article 95(4), as interpreted in the light of Articles 2 and 168 of the Act of Accession, Finland notified the Commission of the actual wording of the national provisions adopted before the accession to the European Union that it intends to maintain, accompanying the request by an explanation of the reasons which, in its opinion, justify the maintenance of those provisions.
- (23) The reasons provided by the Finnish authorities are those already submitted in the past and that lead the Commission, in Decision 2002/398/EC, to grant a derogation until 31 December 2005. This period was granted on the assumption that harmonised legislation would be in place by end 2005. Although work is in progress, legislation would not be adopted at Community level before the end of the year.
- (24) The notification submitted by Finland on 7 June 2005 in order to obtain approval for maintaining national provisions derogating from the provisions of Regulation (EC) No 2003/2003 is therefore to be considered admissible under Article 95(4) as interpreted in the light of Articles 2 and 168 of the Act of Accession.

2. Assessment of merits

- (25) In accordance with Article 95 of the Treaty, the Commission has to ensure that all the conditions enabling a Member State to avail itself of the possibilities of derogation provided for in this article are fulfilled.
- (26) In particular, the Commission has to assess whether the provisions notified by the Member State are justified on grounds of major needs referred to in Article 30 of the Treaty, or relating to the protection of the environment or the working environment.
- (27) In addition, pursuant to Article 95(6) of the Treaty, where it considers that the national provisions are

justified, the Commission must check whether or not those national provisions are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.

- (28) Finland has based its request on the need of protection of human health and the environment. Cadmium in fertilisers is deemed to pose a threat to the environment and human health. In support of its request, Finland makes reference to the conclusions of a Finnish study published in April 2000⁽⁸⁾ which contains an assessment of the risks posed by cadmium-containing fertilisers.

2.1. Justification on grounds of major needs

- (29) As regards the general information on cadmium, from the scientific data available up to now, it can be concluded that cadmium metal and cadmium oxide in general can be considered to pose serious risks to health. In particular, cadmium oxide has been classified as a carcinogen, mutagen or substance toxic for reproduction, category 2. It is also generally agreed that cadmium in fertilisers is by far the most important source of cadmium input to soil and to the food chain.
- (30) As regards cadmium in fertilisers, the most relevant information of the risk assessment carried out by Finland can be summarised as follows:

— concerning water, the Finnish risk assessment report states that 'risk characterisation reveals that there is risk for aquatic environment for all calculated scenarios, both at present time and in the future. In practice this means that no margin of safety can be established, and any increase to the natural background concentrations is likely to present a risk for the aquatic environment',

— concerning the soil, the Finnish risk assessment states that 'based on the available data, the current cadmium concentrations in Finnish agricultural soils present a risk for the soil environment. This conclusion can be reached both by using mean extractable cadmium concentrations⁽⁹⁾ and 90 percentile values in the five Finnish cultivation zones for the year 1987. Only in the most northern zone, the PEC/PNEC ratio⁽¹⁰⁾ using the mean concentration is below 1. Risk ratios for the different cultivation zones vary from 1,2 to 2,8',

⁽⁸⁾ Finnish Ministry of Agriculture and Forestry, Cadmium in fertilisers, risks to human health and the environment, April 2000.

⁽⁹⁾ The concentration of cadmium that is available for uptake by plants.

⁽¹⁰⁾ PEC = predicted environmental concentration, PNEC = predicted no effect concentration. A PEC/PNEC ratio greater than one indicates that there will be adverse effects.

— concerning human health, the Finnish risk assessment report states that 'in Finland, there is no margin of safety for the risk group (worst cases) between the estimated urinary levels and the critical levels that have been associated with adverse health effects caused by cadmium'. The Finnish risk assessment report also states that 'if phosphorus fertilisers containing average Community level of cadmium were to be used in Finland the dietary intake of cadmium would increase by more than 40 % over one hundred years, based on model calculations'.

(31) It is clear that these conclusions refer to the specific situation of the Finnish soil as well as the climatic conditions prevailing in Finland.

(32) In conclusion, the risk assessment carried out by Finland shows that present cadmium concentrations in Finnish agricultural soil pose a risk for soil organisms and that the leaching of cadmium from the agricultural soil is causing a risk for the aquatic environment. Finland maintains that the risk assessment concludes also that there is a risk of adverse health effects as a result of the present total cadmium exposure in the Finnish population. While the average cadmium intake from food alone does not pose a risk in Finland, some sectors of the population are at risk because of high dietary intake, increased absorption and/or smoking.

(33) The risk assessment submitted by the Finnish authorities has been carried out according to the procedures and the methodology established at Community level, which are considered to ensure a high degree of reliability of the information obtained.

(34) The Commission already examined the information contained in the risk assessment in the context of Decision 2002/398/EC which allowed Finland to maintain their national provisions until 31 December 2005.

(35) No other scientific and technical data was provided by Finland in 2005. The accumulation process is a slow one which is not significantly modified on a three-year period. Therefore, it could be considered that the situation is similar as in 2002.

(36) The validity of the data provided by Finland is confirmed by the following scientific basis used to support the preparation of the Commission proposal on cadmium in fertilisers:

— the opinion issued on 24 September 2002 by the SCTEE⁽¹¹⁾ (now renamed SCHER⁽¹²⁾) concerning cadmium accumulation in agricultural soils due to fertiliser application. This opinion was based on risk assessment reports of nine Member States which address only the accumulation and not the possible risks to health and environment; the conclusion of the SCTEE was that the content of cadmium in fertilisers does need to be limited to prevent accumulation of cadmium in the soil,

— the final draft of the general risk assessment of cadmium and cadmium oxide, dated September 2004 produced in accordance with Council Regulation (EEC) No 793/93⁽¹³⁾ and which considers all sources of cadmium. The draft endorses the opinion of the SCTEE concerning the accumulation in soil. Although it states that the contribution from cadmium in fertilisers may not by itself be sufficient to cause a severe and immediate risk to human health or to the environment, caution is needed, as the risk to human health cannot be excluded for all local and regional situations because of the large variability in food cadmium concentrations, dietary habits and nutritional status.

Pending finalisation of the general risk assessment on cadmium and cadmium oxide as well as the potential follow-up work on risk reduction measures, the Commission proposal on cadmium in fertilisers has been subject to some delays.

(37) Therefore, after having re-examined the scientific evidence in the light of the Finnish request, the Commission considers that the Finnish authorities have shown that cadmium-containing fertilisers pose environmental and human health risks, and that the national provisions notified by the Finnish authorities aiming to limit to the minimum the exposure of the Finnish environment to cadmium-containing fertilisers are justified.

2.2. Absence of arbitrary discrimination

(38) Article 95(6) obliges the Commission to verify that the envisaged measures are not a means of arbitrary discrimination. According to the ruling of the Court of Justice, the absence of discrimination means that national restrictions on trade cannot be used in such a way as to create discrimination in respect of goods originating in other Member States.

⁽¹¹⁾ Scientific Committee on Toxicity, Ecotoxicity and the Environment.

⁽¹²⁾ Scientific Committee on Health and Environmental Risks.

⁽¹³⁾ OJ L 84, 5.4.1993, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

- (39) The envisaged national provisions are general and apply to national and imported phosphorous based EC-designated fertilisers alike. As a result, there is no evidence that they can be used as a means of arbitrary discrimination between economic operators in the Community.

2.3. *Absence of a disguised restriction on trade*

- (40) More restrictive national measures governing the composition of EC-designated fertilisers that derogate from the provisions of a Community Directive normally constitute a barrier to trade. Products that can be legally placed on the market in the rest of the Community cannot be placed on the market in the Member State concerned. The concept enshrined in Article 95(6) is intended to prevent the national provisions based on the criteria set out in paragraphs 4 and 5 being applied for inappropriate reasons, and in reality constituting economic measures to be introduced to impede the import of products from other Member States in order to indirectly protect national production.

- (41) As already established, there is concern with regard to the protection of the environment and human health due to the application on soil of cadmium-containing fertilisers. Therefore, the protection of the environment and human health appears to be the goal of maintaining the national provisions and not the creation of disguised barriers to trade.

2.4. *Absence of obstacles to the functioning of the internal market*

- (42) This condition cannot be interpreted in such a way that it prohibits the approval of any national measure likely to affect the establishment of the internal market. In fact, any national measure derogating from a harmonisation measure aiming at the establishment and operation of the internal market, constitutes in substance a measure that is likely to affect the internal market. Consequently, to preserve the useful character of the procedure for derogation provided for by Article 95 of the EC Treaty, the Commission considers that, in the context of the Article 95(6), the concept of obstacle to the functioning of the internal market has to be understood as a disproportionate effect in relation to the pursued objective.
- (43) In view of the risks for both the environment and human health resulting from the application of cadmium-containing fertilisers to the Finnish soil and taking into account that:

— as indicated above, the Act of Accession and Directive 98/97/EC allowed Finland to continue to apply its national provisions concerning the cadmium content in fertilisers awaiting the completion of the review of Directive 76/116/EEC as regards the issue of the cadmium content in fertilisers, and

— Decision 2002/398/EC allowed Finland to maintain their national provisions until 31 December 2005 based on the risk assessment provided by the Finnish authorities, and

— ongoing work within the Commission for an approximation of Community limit values for the cadmium content in fertilisers does not lead to believe that a less restrictive measure would provide sufficient protection of health and environment in Finland. The risk assessment shows that the specific soil and climatic condition of Finland require national provision for the protection of the environment because some areas are more vulnerable to cadmium inputs due in particular to the acidic pH of their soil. Under acidic conditions, the solubility of cadmium increases and therefore could be more easily taken up by the crops.

The Commission considers that, at this stage of the review, there is no evidence indicating that the national provisions do constitute a disproportionate obstacle to the functioning of the internal market in relation to the pursued objectives.

2.5. *Limitation in due time*

- (44) The period for which the derogation is granted should allow sufficient time for the Commission to propose, and for the Council and the European Parliament to adopt legislation concerning cadmium in fertilisers at Community level. In order to avoid the implications of possible delays during the inter-institutional debate, the provisions of the current Decision should therefore be valid until the harmonised measure is applicable at EU level.

IV. CONCLUSION

- (45) In the light of the foregoing, it can be concluded that the request by the Republic of Finland for maintaining national provisions that are more restrictive than the provisions of Directive 76/116/EEC with regard to the cadmium content of fertilisers, as submitted on 7 June 2005, is admissible.

- (46) Moreover, the Commission finds that the national provisions:

— meet needs on grounds of the protection of human health and the environment,

— are proportionate to the objectives pursued,

- are not a means of arbitrary discrimination, and
- do not constitute a disguised restriction on trade between Member States.

The Commission therefore considers that they can be approved,

The derogation shall apply until harmonised measures on cadmium in fertilisers are applicable at Community level.

Article 2

This Decision is addressed to the Republic of Finland.

HAS ADOPTED THIS REGULATION:

Article 1

Done at Brussels, 3 January 2006.

In derogation from Regulation (EC) No 2003/2003, the Finnish provisions which prohibit the placing on the Finnish market of phosphorous mineral fertilisers with a cadmium content exceeding 50 mg for each kilogram of phosphorous are approved.

For the Commission
Günter VERHEUGEN
Vice-President

COMMISSION DECISION

of 3 January 2006

on the national provisions notified by the Republic of Austria under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers

*(notified under document number C(2005) 5549)***(Only the German text is authentic)****(Text with EEA relevance)**

(2006/349/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 95(6) thereof,

Whereas:

I. FACTS**1. Community legislation**

- (1) Council Directive 76/116/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to fertilisers ⁽¹⁾, laid down the requirements that fertilisers must fulfil in order to be placed on the market with the designation 'EC fertilisers'.
- (2) Annex I to Directive 76/116/EEC set out the type designation and the corresponding requirements, e.g. with respect to its composition, that each EC-designated fertiliser must fulfil. EC-designated fertilisers included in this list are grouped into categories, depending on the content of the primary nutrients, i.e. the elements nitrogen, phosphorus and potassium.
- (3) According to Article 7 of Directive 76/116/EEC, Member States were not permitted on grounds of composition, identification, labelling or packaging, to prohibit, restrict or hinder the marketing of fertilisers marked 'EC fertiliser' which comply with the provisions of this Directive.
- (4) Commission Decision 2002/366/EC of 15 May 2002 on the national provisions notified by the Republic of Austria under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers ⁽²⁾, granted a derogation to Directive 76/116/EEC, by approving the Austrian provisions which prohibit the placing on the Austrian market of phosphorous mineral fertilisers (containing 5 % P₂O₅ or more) with a cadmium content exceeding 75 mg/kg P₂O₅. This derogation was applicable until 31 December 2005.

- (5) Directive 76/116/EEC, as amended, has been replaced by Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers ⁽³⁾.

- (6) Article 35(2), of Regulation (EC) No 2003/2003 states that derogations from Article 7 of Directive 76/116/EEC that were granted by the Commission under Article 95(6) of the Treaty shall be construed as derogations from Article 5 of the present Regulation and shall continue to produce their effects notwithstanding the entry into force of this Regulation.

- (7) Recital 15 of Regulation (EC) No 2003/2003 announces that the Commission will address the issue of unintentional cadmium content in mineral fertilisers and will, where appropriate, draw up a proposal for a Regulation and will present it to the European Parliament and the Council.

- (8) Work is in progress to prepare a Commission proposal on cadmium in fertilisers.

2. The accession of Austria

- (9) Austria acceded to the European Union on 1 January 1995. The Act of Accession ⁽⁴⁾ lays down transitional provisions concerning the use and marketing of cadmium in that State. Article 69(1) provides that during a period of four years from the date of accession, the provisions referred to in Annex VIII of the Act shall, in accordance with that Annex and subject to the conditions set out therein, not apply to Austria. Article 69 of and point 4 of Annex VIII the Act of Accession provide that Article 7 of Directive 76/116/EEC, in so far as it concerns the cadmium content of fertilisers, shall not apply to Austria before 1 January 1999 and that the provisions of Directive 76/116/EEC will be reviewed in accordance with Community procedures by 31 December 1998.

⁽¹⁾ OJ L 24, 30.1.1976, p. 21. Directive as last amended by the 2003 Act of Accession.

⁽²⁾ OJ L 132, 17.5.2002, p. 65.

⁽³⁾ OJ L 304, 21.11.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 2076/2004 (OJ L 359, 4.12.2004, p. 25).

⁽⁴⁾ OJ C 241, 29.8.1994, p. 35 and p. 305.

- (10) Article 2 of the Act of Accession provides that 'from the date of accession, the provisions of the original Treaties and the Acts adopted by the institutions before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act'. Article 168 of the Act of Accession stipulates that 'the new Member States shall put into effect the measures necessary for them to comply, from the date of accession, with the provisions of directives and decisions within the meaning of Article 189 (now Article 249) of the EC Treaty (...), unless a time limit is provided for in the list of Annex XIX or in any other provisions of this Act'.
- (11) Directive 98/97/EC of the European Parliament and of the Council ⁽⁵⁾, subsequently amended Directive 76/116/EEC as regards the marketing in Austria, Finland and Sweden of fertilisers containing cadmium. Article 1 provides that, *inter alia*, Austria may prohibit the marketing on its territory of fertilisers containing cadmium at concentrations in excess of that which were fixed nationally at the date of accession and that this derogation applies for the period from 1 January 1999 until 31 December 2001.
- (12) On 16 November 2001, the Republic of Austria notified existing national legislation, deviating from the provisions of Directive 76/116/EEC on the approximation of the laws of the Member States relating to fertilisers. After careful consideration, Decision 2002/366/EC granted a prolongation of the derogation from Directive 76/116/EEC until 31 December 2005.

3. National provisions

- (13) Austria's 2004 Ordinance on Fertilisers ⁽⁶⁾, *inter alia*, lays down a limit value for the cadmium content in fertilisers, including EC-designated fertilisers. According to Article 2(4), in conjunction with Annex 2, section 2, it is prohibited to place on the Austrian market phosphorus mineral fertilisers (containing 5 % P₂O₅ or more) with a cadmium content exceeding 75 mg/kg P₂O₅.
- (14) The provisions relating to the maximum permissible cadmium content in fertilisers have been in force since 1985, when a limit value of 120 mg/kg P₂O₅ was established. The current level of 75 mg/kg P₂O₅ was introduced by Austria's 1994 Ordinance on Fertilisers ⁽⁷⁾, which has been subsequently repealed by the Ordinance on Fertilisers from 2004 to adapt the legislation to Regu-

lation (EC) No 2003/2003. The provisions on Cadmium in fertilisers have not been modified.

II. PROCEDURE

- (15) By letter of 14 June 2005, the Republic of Austria notified the Commission that, in accordance with Article 95(4) of the EC Treaty, it intends to continue to apply, from 1 January 2006, national provisions concerning the cadmium content in fertilisers. The Austrian authorities request an extension of the current derogation provided by Decision 2002/366/EC.
- (16) By letter of 30 June 2005, the Commission informed the Austrian authorities that it had received the notification under Article 95(4) and that the six months period for its examination according to Article 95(6) started on 15 June 2005, the day following the one when the notification was received.
- (17) By letter of 10 August 2005, the Commission informed the other Member States about the request received from Austria. The Commission also published a notice regarding the request in the *Official Journal of the European Union* ⁽⁸⁾ in order to inform other interested parties of the national measures that Austria intends to maintain.

III. ASSESSMENT

1. Consideration of admissibility

- (18) Article 95(4) of the Treaty provides that, if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.
- (19) The notification submitted by the Austrian authorities on 7 June 2005 intends to obtain authorisation to extend, beyond 31 December 2005, the current derogation provided in Decision 2002/366/EC. This Decision allows Austria to maintain the application of national provisions incompatible with those concerning the composition of EC-denominated fertilisers contained in Regulation (EC) No 2003/2003.

⁽⁵⁾ OJ L 18, 23.1.1999, p. 60.

⁽⁶⁾ Federal Law Gazette for the Republic of Austria, No 100/2004, Series II, of 27 February 2004.

⁽⁷⁾ Federal Law Gazette for the Republic of Austria, No 1007/1994, Series Issue 309 of 21 December 1994, p. 7235.

⁽⁸⁾ OJ C 197, 12.8.2005, p. 2.

(20) As already indicated, Article 5 of Regulation (EC) No 2003/2003 prevents Member States from restricting the marketing of EC-denominated fertilisers because of their composition, but the rules governing composition do not set any limit value for cadmium content. This means that pursuant to Article 5 of Regulation (EC) No 2003/2003, EC-denominated fertilisers complying with the requirements of that Regulation can be placed on the market regardless of their cadmium content.

(21) In the light of the abovementioned, it is clear that the national provisions notified by Austria, in so far as they prohibit the placing on the market of EC-denominated phosphorus mineral fertilisers with a cadmium content exceeding 75 mg/kg P₂O₅, are more restrictive than those contained in Regulation (EC) No 2003/2003.

(22) The national provisions notified by the Austrian authorities were adopted before Austria acceded to the European Union. As indicated above, the Act of Accession lays down transitional provisions allowing Austria to continue to apply its national provisions concerning the cadmium content of fertilisers to products covered by Directive 76/116/EEC for a period of four years. By Directive 98/97/EC Austria was authorised to continue to apply the above national provisions until 31 December 2001. Decision 2002/366/EC extended the derogation until December 2005.

(23) As required by Article 95(4), as interpreted in the light of Articles 2 and 168 of the Act of Accession, Austria notified the Commission of the actual wording of the national provisions adopted before the accession to the European Union that it intends to maintain, accompanying the request by an explanation of the reasons which, in its opinion, justify the maintenance of those provisions.

(24) The reasons provided by the Austrian authorities are those already submitted in the past and that lead the Commission, in Decision 2002/366/EC, to grant a derogation until 31 December 2005. This period was granted on the assumption that harmonised legislation would be in place by end 2005. Although work is in progress, legislation would not be adopted at Community level before the end of the year.

(25) The notification submitted by Austria on 14 June 2005, in order to obtain approval for maintaining national provisions derogating from the provisions of Regulation

(EC) No 2003/2003, is therefore to be considered admissible under Article 95(4) as interpreted in the light of Articles 2 and 168 of the Act of Accession.

2. Assessment of merits

(26) In accordance with Article 95 of the Treaty, the Commission has to ensure that all the conditions enabling a Member State to avail itself of the possibilities of derogation provided for in this Article are fulfilled.

(27) In particular, the Commission has to assess whether the provisions notified by the Member State are justified on grounds of major needs referred to in Article 30 of the Treaty, or relating to the protection of the environment or the working environment.

(28) In addition, pursuant to Article 95(6) of the Treaty, where it considers that the national provisions are justified, the Commission must check whether or not those national provisions are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.

(29) Austria has based its request on the need of protection of human health and the environment. Cadmium in fertilisers is deemed to pose a threat to the environment and human health. In support of its request, Austria makes reference to the conclusions of an Austrian study published in October 2000⁽⁹⁾ which contains an assessment of the risks posed by cadmium-containing fertilisers.

2.1. Justification on grounds of major needs

(30) As regards the general information on cadmium, from the scientific data available up to now, it can be concluded that cadmium metal and cadmium oxide in general can be considered to pose serious risks to health. In particular, cadmium oxide has been classified as a carcinogen, mutagen or substance toxic for reproduction, category 2. It is also generally agreed that cadmium in fertilisers is by far the most important source of cadmium input to soil and to the food chain.

⁽⁹⁾ Austrian Federal Environment Agency, 'A Risk assessment for cadmium in Austria based on the recommendations of ERM', 10 October 2000 (ERM — Environmental Resources Management — is the consultant who developed the methodology for the risk assessment).

- (31) As regards cadmium in fertilisers, the most relevant information of the risk assessment carried out by Austria can be summarised as follows:
- concerning water, the report states that ‘when fertiliser is applied with an average concentration of 25 mg Cd/kg P_2O_5 the PNEC ⁽¹⁰⁾ value is exceeded both now and in 100 years’,
 - concerning the soil, the report states that ‘when fertiliser is applied with an average concentration of 25 mg Cd/kg P_2O_5 or of 90 mg Cd/kg P_2O_5 , the PNEC value is exceeded both now and in 100 years’.
- (32) It is clear that these conclusions refer to the specific situation of the Austrian soil as well as the climatic conditions prevailing in Austria.
- (33) In conclusion, the risk assessment carried out by Austria shows that PEC value (predicted environmental concentration) from cadmium in mineral fertilisers in Austria, exceeds the PNEC value ⁽¹¹⁾ (predicted no effect concentration) for water in most investigated regions. This also applies to soil in 5 % of the 52 Austrian arable regions if bio-available values are used. In the view of the Austrian authorities, this means that, according to the European Community risk assessment methodology, the substance is of concern and there is a need to take further steps.
- (34) The risk assessment submitted by the Austrian authorities has been carried out according to the procedures and the methodology established at Community level, which are considered to ensure a high degree of reliability of the information obtained.
- (35) The Commission already examined the information contained in the risk assessment in the context of Decision 2002/366/EC which allowed Austria to maintain their national provisions until 31 December 2005.
- (36) No other scientific and technical data was provided by Austria in 2005. The accumulation process is a slow one which is not significantly modified on a three year period. Therefore, it could be considered that the situation is similar as in 2002.
- (37) The validity of the data provided by Austria is confirmed by the following scientific basis used to support the preparation of the Commission proposal on cadmium in fertilisers:
- the opinion delivered on 24 September 2002 by the SCTEE ⁽¹²⁾ (now renamed SCHER ⁽¹³⁾) concerning cadmium accumulation in agricultural soils due to fertiliser application. This opinion was based on risk assessment reports of nine Member States which address only the accumulation and not the possible risks to health and environment; the conclusion of the SCTEE was that the content of cadmium in fertilisers does need to be limited to prevent accumulation of cadmium in the soil,
 - the final draft of the general risk assessment of cadmium and cadmium oxide, dated September 2004 produced in accordance with Council Regulation (EEC) No 793/93 ⁽¹⁴⁾ and which considers all sources of cadmium. The draft endorses the opinion of the SCTEE concerning the accumulation in soil. Although it states that the contribution from cadmium in fertilisers may not, by itself, be sufficient to cause a severe and immediate risk to human health or to the environment, caution is needed, as the risk to human health cannot be excluded for all local and regional situations because of the large variability in food cadmium concentrations, dietary habits and nutritional status.
- Pending finalisation of the general risk assessment on cadmium and cadmium oxide as well as the potential follow-up work on risk reduction measures, the Commission proposal on cadmium in fertilisers has been subject to some delays.
- (38) Therefore, after having re-examined the scientific evidence in the light of the Austrian request, the Commission considers that the Austrian authorities have shown that cadmium-containing fertilisers pose environmental and human health risks, and that the national provisions notified by the Austrian authorities aiming to limit to the minimum the exposure of the Austrian environment to cadmium-containing fertilisers are justified.

⁽¹⁰⁾ PNEC = Predicted No Effect Concentration.

⁽¹¹⁾ This indicates that there will be adverse effects.

⁽¹²⁾ Scientific Committee on Toxicity, Ecotoxicity and the Environment.

⁽¹³⁾ Scientific Committee on Health and Environmental Risks.

⁽¹⁴⁾ OJ L 84, 5.4.1993, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

2.2. *Absence of arbitrary discrimination*

- (39) Article 95(6) obliges the Commission to verify that the envisaged measures are not a means of arbitrary discrimination. According to the ruling of the Court of Justice, the absence of discrimination means that national restrictions on trade cannot be used in such a way as to create discrimination in respect of goods originating in other Member States.

- (40) The envisaged national provisions are general and apply to national and imported phosphorous based EC-designated fertilisers alike. As a result, there is no evidence that they can be used as a means of arbitrary discrimination between economic operators in the Community.

2.3. *Absence of a disguised restriction on trade*

- (41) More restrictive national measures governing the composition of EC-designated fertilisers that derogate from the provisions of a Community Directive normally constitute a barrier to trade. Products that can be legally placed on the market in the rest of the Community cannot be placed on the market in the Member State concerned. The concept enshrined in Article 95(6) is intended to prevent the national provisions based on the criteria set out in paragraphs 4 and 5 being applied for inappropriate reasons, and in reality constituting economic measures to be introduced to impede the import of products from other Member States in order to indirectly protect national production.

- (42) As already established, there is concern with regard to the protection of the environment and human health due to the application on soil of cadmium-containing fertilisers. Therefore, the protection of the environment and human health appears to be the goal of maintaining the national provisions and not the creation of disguised barriers to trade.

2.4. *Absence of obstacles to the functioning of the internal market*

- (43) This condition cannot be interpreted in such a way that it prohibits the approval of any national measure likely to affect the establishment of the internal market. In fact, any national measure derogating from a harmonisation measure aiming at the establishment and operation of the internal market, constitutes in substance a measure that is likely to affect the internal market. Consequently, to preserve the useful character of the procedure for derogation provided for by Article 95 of the EC Treaty, the Commission considers that, in the context of the Article 95(6), the concept of obstacle to the functioning

of the internal market has to be understood as a disproportionate effect in relation to the pursued objective.

- (44) In view of the risks for both the environment and human health resulting from the application of cadmium-containing fertilisers to the Austrian soil and taking into account that:

— as indicated above, the Act of Accession and Directive 98/97/EC allowed Austria to continue to apply its national provisions concerning the cadmium content in fertilisers awaiting the completion of the review of Directive 76/116/EEC as regards the issue of the cadmium content in fertilisers, and

— Decision 2002/366/EC allowed Austria to maintain its national provisions until 31 December 2005 based on the risk assessment provided by the Austrian authorities, and

— ongoing work within the Commission for an approximation of Community limit values for the cadmium content in fertilisers does not lead to believe that a less restrictive measure would provide sufficient protection of health and environment in Austria. The risk assessment shows that the specific soil and climatic condition of Austria require national provision for the protection of the environment because some areas are more vulnerable to cadmium inputs due in particular to the acidic pH of their soil. Under acidic conditions, the solubility of cadmium increases and therefore could be more easily taken up by the crops.

The Commission considers that, at this stage of the review, there is no evidence indicating that the national provisions do constitute a disproportionate obstacle to the functioning of the internal market in relation to the pursued objectives.

2.5. *Limitation of time*

- (45) The period for which the derogation is granted should allow sufficient time for the Commission to propose, and for the Council and the European Parliament to adopt legislation concerning cadmium in fertilisers at Community level. In order to avoid the implications of possible delays during the interinstitutional debate, the provisions of the current Decision should therefore be valid until the harmonised measure is applicable at EU level.

IV. **CONCLUSION**

- (46) In the light of the foregoing, it can be concluded that the request by the Republic of Austria for maintaining national provisions that are more restrictive than the provisions of Directive 76/116/EEC with regard to the cadmium content of fertilisers, as submitted on 14 June 2005, is admissible.
- (47) Moreover, the Commission finds that the national provisions:
- meet needs on grounds of the protection of human health and the environment,
 - are proportionate to the objectives pursued,
 - are not a means of arbitrary discrimination, and
 - do not constitute a disguised restriction on trade between Member States.

The Commission therefore considers that they can be approved,

HAS ADOPTED THIS DECISION:

Article 1

In derogation from Regulation (EC) No 2003/2003, the Austrian provisions which prohibit the placing on the Austrian market of phosphorous mineral fertilisers (containing 5 % P_2O_5 or more) with a cadmium content exceeding 75 mg/kg P_2O_5 are approved.

The derogation shall apply until harmonised measures on cadmium in fertilisers are applicable at Community level.

Article 2

This Decision is addressed to the Republic of Austria.

Done at Brussels, 3 January 2006.

For the Commission
Günter VERHEUGEN
Vice-President