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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1941/2004

of 2 November 2004

terminating the 'new exporter' review of Regulation (EC) No 2605/2000 imposing definitive anti-dumping duties on imports of certain electronic weighing scales (REWS) originating, *inter alia*, in Taiwan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the basic Regulation), and in particular Article 11(4) thereof,

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

Whereas:

A. MEASURES IN FORCE

- (1) The measures currently in force on imports into the Community of certain electronic weighing scales (REWS) originating in Taiwan are definitive anti-dumping duties imposed by Regulation (EC) No 2605/2000⁽²⁾. Pursuant to the same Regulation, anti-dumping duties were also imposed on imports of REWS originating in the People's Republic of China and the Republic of Korea. There are also anti-dumping measures in force on REWS originating in Japan and Singapore⁽³⁾.

B. CURRENT INVESTIGATION

1. Request for a review

- (2) After the imposition of definitive anti-dumping duties on imports of REWS originating in Taiwan, the Commission

received a request to initiate a 'new exporter' review of Regulation (EC) No 2605/2000, pursuant to Article 11(4) of the basic Regulation, from a Taiwanese company, Charder Electronic Co., Ltd (Charder). This company claimed that it was not related to any of the exporting producers in Taiwan subject to the anti-dumping measures in force with regard to REWS. Furthermore, it claimed that it had not exported REWS to the Community during the original investigation period (i.e. the period from 1 September 1998 to 31 August 1999), but had started to export REWS to the Community thereafter.

2. Initiation of a 'new exporter' review

- (3) The Commission examined the evidence submitted by Charder and considered it sufficient to justify the initiation of a review in accordance with Article 11(4) of the basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 2034/2003⁽⁴⁾, a review of Regulation (EC) No 2605/2000 with regard to Charder and commenced its investigation.
- (4) Pursuant to Regulation (EC) No 2034/2003 initiating the review, the anti-dumping duty of 13,4% imposed by Regulation (EC) No 2605/2000 on imports of REWS produced by Charder was repealed. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register such imports.

3. Product concerned

- (5) The product covered by the current review is the same as in the original investigation, i.e. electronic weighing scales for use in the retail trade, having a maximum weighing capacity not exceeding 30 kg, which incorporate a digital display of the weight, unit price and price to be paid (whether or not including a means of printing this data), normally declared within CN code ex 8423 81 50 (TARIC code 8423 81 50 10) and originating in Taiwan.

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

⁽²⁾ OJ L 301, 30.11.2000, p. 42. Regulation as amended by Commission Regulation (EC) No 1408/2004 (OJ L 256, 3.8.2004, p. 8).

⁽³⁾ Council Regulation (EC) No 468/2001 of 6 March 2001 imposing a definitive anti-dumping duty on imports of certain electronic weighing scales originating in Japan (OJ L 67, 9.3.2001, p. 24) and Council Regulation (EC) No 469/2001 of 6 March 2001 imposing a definitive anti-dumping duty on imports of certain electronic weighing scales originating in Singapore (OJ L 67, 9.3.2001, p. 37).

⁽⁴⁾ OJ L 302, 20.11.2003, p. 3.

4. Parties concerned

- (6) The Commission officially advised Charder and the representatives of the exporting country of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.
- (7) The Commission also sent out a questionnaire to Charder and received a reply within the deadline. The Commission sought and verified all the information it deemed necessary for the determination of dumping, and a verification visit was carried out at the premises of Charder and of a company in the Community importing products manufactured by Charder (the importer).

5. Investigation period

- (8) The investigation of dumping covered the period from 1 October 2002 to 30 September 2003 (the investigation period or IP).

C. RESULTS OF THE INVESTIGATION

- (9) The investigation confirmed that Charder had not exported the product concerned during the original investigation period.
- (10) Furthermore, Charder was able to demonstrate that it was not related to any of the exporters or producers in Taiwan which are subject to the anti-dumping measures imposed on imports of REWS originating in Taiwan.
- (11) However, Article 11(4) of the basic Regulation also requires that a new exporter has actually exported the product concerned to the Community following the original investigation period or that it can demonstrate that it has entered into an irrevocable contractual obligation to export a significant quantity of the product concerned to the Community. In this respect, it was found that the products produced and exported to the Community by Charder during the IP, reported as the product concerned, were not in a condition to be sold to end-users. Although these products were declared by Charder and the importer as the product concerned, they were found to be unfinished products and had different physical characteristics than the product concerned.

These unfinished products were further processed by the importer and transformed into electronic weighing scales. Moreover, it should also be noted that none of the further processed scales were sold in the IP. For these reasons, the imported products cannot be classified as the product concerned. Furthermore, Charder did not demonstrate that it had entered into an irrevocable contractual obligation to export a significant quantity of the product concerned to the Community.

- (12) For the above reasons, it is concluded that Charder was not able to demonstrate that it actually fulfilled the criteria to be considered as a new exporter within the meaning of Article 11(4) of the basic Regulation.

D. TERMINATION OF THE REVIEW

- (13) In the light of the results of the investigation, the review should be terminated without amending the level of the duty applicable to Charder, which should be maintained at the level of the definitive countrywide anti-dumping duty rate established in the original investigation, i.e. 13,4 %.

E. RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

- (14) In the light of the above findings, the anti-dumping duty applicable to Charder shall be levied retroactively on imports of the product concerned, which have been made subject to registration pursuant to Article 3 of Regulation (EC) No 2034/2003.

F. DISCLOSURE

- (15) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to terminate the present review and to impose the anti-dumping duty retroactively on imports made subject to registration. No objections were raised to the facts and considerations disclosed.
- (16) This review should therefore be terminated without any amendment to Regulation (EC) No 2605/2000,

HAS ADOPTED THIS REGULATION:

Article 1

1. The 'new exporter' review of Regulation (EC) No 2605/2000 imposing definitive anti-dumping duties on imports of certain electronic weighing scales (REWS) originating, *inter alia*, in Taiwan, initiated pursuant to Article 11(4) of Regulation (EC) No 384/96, is hereby terminated without amending the anti-dumping duties in force.

2. The duty of 13,4% imposed by Regulation (EC) No 2605/2000 on imports of certain electronic weighing scales

(REWS) originating, *inter alia*, in Taiwan shall be levied retroactively on imports of the product concerned, which have been registered pursuant to Article 3 of Regulation (EC) No 2034/2003.

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

Article 2

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

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

Done at Brussels, 2 November 2004.

For the Council
The President
B. R. BOT

COUNCIL REGULATION (EC) No 1942/2004**of 2 November 2004****imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of okoumé plywood originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

writing. The parties who so requested were also granted an opportunity to be heard orally.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. After the imposition of provisional measures, an on-spot verification visit was carried out at the premises of Ekol Kontraplak, Taskopru, Turkey, in view of the fact that Turkey was considered as a possible analogue country for establishing normal value.

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

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 988/2004⁽²⁾ (the provisional Regulation) imposed provisional anti-dumping duties on imports of okoumé plywood, defined as plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with at least one outer ply of okoumé, falling within CN code ex 4412 13 10, originating in the People's Republic of China (PRC).

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

C. PRODUCT CONCERNED AND LIKE PRODUCT**1. Product concerned**

(2) It is recalled that the investigation of dumping and injury covered the period from 1 July 2002 to 30 June 2003 (investigation period or IP). The examination of trends relevant for the injury analysis covered the period from 1 January 1999 to the end of the IP (period under consideration).

(7) The product concerned is plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with at least one outer ply of okoumé, originating in the PRC, currently classifiable within CN code ex 4412 13 10. This definition covers both plywood made solely with okoumé (full okoumé) and plywood with one or two outer faces made of okoumé (faced okoumé), the inner layers being made of other species of wood.

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of a provisional anti-dumping duty on imports of okoumé plywood originating in the PRC, some interested parties submitted comments in

(8) Several importers have argued that full okoumé and faced okoumé cannot be considered the same product, since the composition of the inner layers substantially affects the characteristics of the plywood. In addition, it was argued that these products have significant differences in price and use.

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

⁽²⁾ OJ L 181, 18.5.2004, p. 5.

- (9) From the beginning of the investigation, it was recognised that okoumé plywood is produced in a variety of different types and has a wide range of applications in the building, furniture, transport and other industries. Some applications require particular okoumé plywood types, while in others different types can be used interchangeably. The most essential characteristic of okoumé wood, however, is that it can be peeled into very large veneers without knots or other blemishes, allowing plywood to be produced with a good finish and a homogeneous, seamless surface. This means that the essential characteristics of okoumé plywood, which make it unique compared to other types of plywood, reside in the appearance of its face (outer) layers.
- (10) The inner layers of plywood can be made from a variety of tropical or temperate wood species. When producing plywood fully from tropical wood, okoumé plywood producers tend to use okoumé in the inner layers, due to the natural complementarities in the production process rather than the particular characteristics of okoumé as compared to other tropical woods. The type of wood, or woods, used in the inner layers clearly affects the cost of the final product, its properties and its suitability for certain applications. It is considered, however, that these aspects can be dealt adequately by distinguishing different product types in the context of the investigation, so that only the prices of identical plywood types are compared when assessing dumping and injury. The product coding system used in the investigation distinguishes, among other characteristics, full okoumé from faced okoumé. Therefore, the claim that full okoumé and faced okoumé cannot be considered the same product was rejected.
- (11) In the provisional Regulation, it was decided to exclude film-faced okoumé plywood from the scope of the investigation for the reasons set out in recital 19 of the provisional Regulation. Film-faced okoumé plywood is made from faced or full okoumé, covered by a film from other materials. The Community Industry argued that these products should not be excluded, since they are part of the same market as the remaining okoumé products. However, the presence of a film over the surface of the wood makes the above-mentioned essential characteristics of okoumé plywood, i.e. the exterior appearance, much less relevant. Film-faced okoumé plywood does therefore not share the same physical and technical characteristics as the product concerned. Moreover, film-faced okoumé plywood is mostly destined to one particular application, that of concrete casting, contrary to the product concerned. Therefore, this argument should be dismissed.
- (12) In the absence of any other comments, the conclusions on the definition of the product concerned set out in recitals 18 and 19 of the provisional Regulation are hereby confirmed.
- ## 2. Like product
- (13) Several parties submitted that there are a number of differences between the product concerned manufactured in the PRC and the one manufactured and sold in the Community by the Community industry, to the extent that these products cannot be considered to be alike within the meaning of Article 1(4) of the basic Regulation. Specifically, it was claimed that:
- (a) the Chinese exporting producers sell faced okoumé, whereas the Community industry sells full okoumé;
 - (b) the Chinese exporting producers sell the standard 2 440 × 1 220 mm and 2 500 × 1 250 mm panel sizes, whereas the Community industry sells the so-called 'jumbo' sizes of 3 100 × 1 530 mm and 3 100 × 1 700 mm;
 - (c) the Chinese exporting producers sell interior grade plywood, whereas the Community industry sells weather-resistant, or exterior grade plywood;
 - (d) the quality of the faces is generally lower in the case of the panels sold by the Chinese exporting producers (B/BB against BB/CC quality);
 - (e) the faces of the panels sold by the Chinese exporting producers are thinner than those of the panels sold by the Community industry (0,6 mm against 1 mm);
 - (f) the quality of the inner layers is generally lower in the case of the panels sold by the Chinese exporting producers;
 - (g) the quality of the glue is generally lower in the case of the panels sold by the Chinese exporting producers.

(14) Regarding the first three characteristics referred to under recital 13(a) to 13(c), the investigation has shown that the Chinese exporting producers, as well as the Community industry, sold both full and faced okoumé, both interior and exterior grade plywood, and a wide range of panel sizes. Since these characteristics are normally shown in the sales documentation, they have been included in the product control numbers (PCN) for the purpose of calculating the dumping and injury margins. Therefore, as far as those characteristics are concerned, any differences are fully taken into account and only like products are being compared.

(15) The fourth characteristic mentioned under recital 13(d) was not included in the PCN, since it is not mentioned in the majority of transaction documents made available to the Commission during the investigation. Based on the transactions for which the quality grade of the faces was indicated, it was found that the Chinese exporting producers, as well as the Community industry, sold a variety of grades, and it did not appear that the grades of the Community industry like product are typically of a higher quality than those of the Chinese exporting producers.

(16) The last three characteristics referred to under recital 13(e) to 13(g) were also not included in the PCN, since they do not appear in most of the transaction data. However, it was recognised that a majority of the exports from the PRC have thinner faces than the Community like product. Similarly, the differences in quality of gluing and of the inner layers, albeit variable, is sufficiently generalised to play a role in some buyers' perception, and should not be ignored. An adjustment for these differences was thus applied when calculating the undercutting and injury margins, as set out in recital 80 of the provisional Regulation.

(17) It should also be noted that these quality differences are not sufficient to create a perception from the buyers that the product concerned exported by the PRC is an entirely different product. On the contrary, the investigation showed concrete instances where the Chinese exports had replaced the Community industry products in the purchases of some customers on the Community market.

(18) It is therefore concluded that the alleged differences between the product concerned and the product manu-

factured and sold in the Community by the Community industry, as far as they have been demonstrated, have been fully taken into account either through the PCN or via an adjustment. Since these differences in any event do not change the fact that the product concerned and the product manufactured and sold in the Community by the Community industry have the same basic characteristics and uses, the claim that the product concerned and the product manufactured and sold in the Community by the Community industry are not alike, must be dismissed.

(19) In the absence of any other comments concerning the like product, recital (20) of the provisional Regulation is hereby confirmed.

D. DUMPING

1. Market economy treatment (MET)

(20) One exporting producer to which MET was not granted stated that the Commission did not take into account the comments it submitted after disclosure of the Commission's determinations. However, its arguments were examined and explicitly addressed in recitals 29 to 32 of the provisional Regulation. This claim was therefore rejected.

(21) Another exporting producer which was considered to be non-cooperating argued that it had cooperated with the Commission. It should be noted that this same argument, which had already been raised by the same company after disclosure of the findings of the Commission regarding MET, was specifically addressed in recitals 33 to 35 of the provisional Regulation. This claim was therefore rejected.

(22) In the absence of other comments, recitals 21 to 35 of the provisional Regulation concerning market economy treatment are hereby confirmed.

2. Individual treatment

(23) In the absence of any comments, recitals 36 to 40 of the provisional Regulation concerning individual treatment are hereby confirmed.

3. Normal value

3.1. *Determination of normal value for cooperating exporting producers granted MET*

(24) One of the cooperating exporting producers claimed that the calculation of the cost of its purchases of poplar veneers, as explained in recital 49 of the provisional Regulation, was not correct, and that some tax credits allegedly received on the purchase of these veneers should have been deducted from this cost. By its nature, such a claim should have been substantiated by verifiable evidence submitted in good time. The company, however, was unable to provide sufficient evidence that the VAT reimbursement effectively took place, although it had been requested to do so during the investigation at its premises. Therefore, this claim had to be rejected.

(25) It should be noted that minor adjustments due to clerical errors were made after the publication of the provisional Regulation in the calculation of the profit rate of three cooperating exporting producers granted MET. This led to a slight change in the normal values calculated for them.

(26) In the absence of other comments, the provisional findings concerning the determination of normal value for cooperating exporting producers granted MET, as described in recitals 41 to 51 of the provisional Regulation, are hereby confirmed.

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

(27) Morocco had provisionally been chosen as an analogue market economy third country for the purpose of establishing normal value for the PRC. However, as set out in recital (56) of the provisional Regulation, three exporting producers had opposed this choice.

(28) The Commission's investigation had shown that there was only one producer on the Moroccan domestic market, where, in addition, a high import customs duty existed. Therefore, it was decided to further investigate whether a more suitable analogue country could be chosen. Turkey, where one producer had accepted to cooperate with the Commission, was envisaged as a potential alternative analogue country.

(29) Further to the publication of the provisional Regulation, more comments on the original choice of Morocco were received from several importers and several Chinese exporting producers. They argued that the choice of Morocco as an analogue market economy third country was inappropriate because of an alleged difference in quality between the okoumé plywood made by the Chinese producers and the okoumé plywood made in Morocco.

(30) It was found that on the Turkish market no high customs duty was imposed and that several competitors were producing okoumé plywood. In addition, the investigation later confirmed that the sales of the cooperating Turkish producer were substantial and sufficiently representative to establish a normal value for Chinese exports of the product concerned. Therefore, it was decided to choose Turkey as an analogue country.

(31) In order to establish whether sales on the Turkish market of the products comparable to those sold by the Chinese exporting producers to the Community were made in the ordinary course of trade, the domestic selling price was compared to the full cost of production (i.e. the cost of manufacturing plus selling, general and administrative expenses). Since the large majority of the sales volume of the types sold on the domestic market were sold in the ordinary course of trade, normal value was based on the domestic price for the comparable product types.

(32) An adjustment for physical differences according to Article 2(10)(a) of the basic Regulation was made to the normal value, to take into account the difference in the types of glue used for the comparable product types sold in Turkey and for the product concerned.

4. Export price

(33) In the absence of any comments, the provisional findings concerning the determination of the export price, as described in recitals 60 and 61 of the provisional Regulation, are hereby confirmed. However, with regard to the determination of the export price for non-cooperating exporters, the following change has been made: instead of using as a basis a limited volume of sales for the cooperating exporting producer who was not granted MET, the whole volume of this company's faced okoumé sales was used, which – on the basis of information available – was generally more representative for the large majority of Chinese exports.

5. Comparison

- (34) One exporting producer claimed that transport costs had been unduly deducted from sales which had been made on a fob basis. However, this adjustment was made only after the entirety of the sales values had been converted to a cif basis, according to a method agreed with the company. Therefore, the claim had to be rejected.
- (35) One exporting producer objected to an adjustment made on its export price to take into account a deferred discount granted to one of its traders, as described in recital 63 of the provisional Regulation. The exporter claimed that this discount was already reflected into the prices as reported by the company. However, the company could not demonstrate during the investigation that this was the case. Therefore, this claim had to be rejected.
- (36) One exporting producer argued that its sales of the product concerned were made to different categories of customers when for export or for its domestic market and that the data submitted by the company showed consistent price differences between the various categories of customers. It requested that this should be duly taken into account in the dumping calculation, in the form of an adjustment of its export price for level of trade, pursuant to Article 2(10)(d) of the basic Regulation. Although this claim was deemed justified, the level of adjustment requested by the exporter was based on a single example, and was considered not representative. After an analysis of the price data, an appropriate level of adjustment was quantified and applied to the export price.

6. Dumping margins

- (37) Some claims having been accepted, as set out above, and the methodology and calculations refined, namely with respect to the choice of the analogue country, the dumping margins finally determined, expressed as a percentage of the cif Community frontier price, duty unpaid, are:

Company	Dumping margin
Nantong Zongyi Plywood Co., Ltd	9,6 %
Zhejiang Deren Bamboo-Wood Technologies Co., Ltd	23,5 %
Zhonglin Enterprise (Dangshan) Co., Ltd	6,5 %
Jiaxing Jinlin Lumber Co., Ltd	17,0 %

- (38) In the absence of any comments, the methodology for calculating the country-wide dumping margin, as described in recitals 67 to 69 of the provisional Regulation, are hereby confirmed. Due to the use of Turkey as analogue country, as explained in recitals 27 to 32, a new country-wide level of dumping was established at 66,7 % of the cif Community frontier price, duty unpaid.

E. COMMUNITY INDUSTRY

- (39) In the absence of any comments, the provisional findings concerning the Community industry, as described in recitals 70 to 72 of the provisional Regulation, are hereby confirmed.

F. INJURY

1. Community consumption

- (40) In the absence of any comments, the provisional findings concerning the Community consumption, as described in recitals 74 to 75 of the provisional Regulation, are hereby confirmed.

2. Imports from the country concerned

- (41) For the purpose of analysing price undercutting, the provisional Regulation added a 10 % adjustment to the CIF Community frontier price of the cooperating exporting producers. This adjustment is intended to account for the generally recognised, but difficult to quantify, difference in quality between the Community and Chinese okoumé plywood. This adjustment was established on the following basis. Information available to the Commission concerning offers from Chinese producers of the product concerned with face thicknesses of either 1 mm or 0,6 mm shows that the difference in face thickness could mean a price difference of between 3,5 % and 5,5 %. In the absence of further quantified information, it can reasonably be assumed that the remaining quality aspects mentioned in recital 16, namely the quality of gluing and of the inner layers, could have a comparable impact importance to that of face thickness. The cumulative impact of those quality differences could thus correspond to a price difference in the range of 10-15 %. It should be recalled, however, that the abovementioned quality differences cannot be verified on a transaction-by-transaction basis, and are not likely to apply to the entirety of the exports from the PRC during the investigation period. Rather, the investigation has shown that the Chinese exporting producers offer products of varying and evolving quality and characteristics.

- (42) One importer argued that the allowance should be 25 % rather than 10 %, but did not provide any objective justification for the higher figure. Under those circumstances, there appears to be no reason to change the approach set out in the provisional Regulation.
- (43) In the absence of any other comments, the conclusions drawn in recitals 76 to 81 of the provisional Regulation are hereby confirmed.

3. Situation of the Community industry

- (44) Two exporting producers questioned the injurious impact of imports by pointing out that prices have remained rather stable, with a nominal increase of 3 %, or a slight decrease in real terms, during the period under consideration. It should be recalled, however, that the average prices shown in recital 91 of the provisional Regulation refer to a range of different product types, of which the lower-priced types suffered most from the effects of the Chinese imports. Even if the prices of these lower-priced products had decreased throughout the period, since their relative share in the product mix also decreased, the overall price per cubic meter would not have decreased necessarily. This shift in the product mix of the Community producers was already pointed out in recital 91 of the provisional Regulation. Furthermore, at the time the Chinese exports surged into the Community market, the Community industry was emerging from a downturn characterised by relatively low selling margins. In such conditions, the Community industry did not have much room to face competition by decreasing its prices, and most of the injurious effects of imports took place via a volume effect, as explained in recitals 85 to 90 of the provisional Regulation. Therefore, the above argument has to be rejected.
- (45) In the absence of any other comments, the conclusions drawn in recitals 82 to 99 of the provisional Regulation are hereby confirmed.

4. Conclusion on injury

- (46) In the absence of any other comments on the injury findings, the conclusions reached, as set out in recitals 100 to 102 of the provisional Regulation, are hereby confirmed.

G. CAUSATION

- (47) Two exporters submitted that the increase in average unit costs of the Community industry in the period under consideration was a significant factor behind the deterioration of the profitability of the Community industry, to the point of breaking the causal link between dumping and injury. As noted in recital 113 of the provisional Regulation, the development in costs of the sampled Community producers is not out of line with the development of costs and prices in the Community in general. As such, this type of cost increases, such as those of raw materials, do not represent an external factor with which this industry would not be able to cope under normal economic conditions and in the absence of the strong price pressure by the dumped imports in particular. Furthermore, at least part of the observed increase in average costs may be attributed to lower capacity utilisation and to a shift towards more expensive product types, which are in turn related to the competition from the dumped imports. The argument cannot, therefore, be accepted.
- (48) With regard to the possible effect of imports originating in third countries other than the PRC, recital 109 of the provisional Regulation noted that the average prices of other major exporters, such as Gabon and Morocco, are about 50 % higher than those of the PRC and could therefore not be considered a determinant factor in the injury to the Community industry. One importer pointed out that the exports of those two countries concerned exclusively or mostly full okoumé, whereas the majority of the exports of the PRC consist of faced okoumé, which is by nature less expensive. Although this remark may be correct, the price difference between the prices of full and faced okoumé, which the investigation has shown to be around 15 %, does not account for the 50 % price difference mentioned above. Furthermore, the findings set out in the provisional Regulation, that these countries' market shares are much lower than that of the PRC, and that the volume and prices of their exports have remained relatively stable throughout the period under consideration, remain valid. Therefore, the above-mentioned remark does not invalidate the conclusion that imports from these third countries did not exert a competitive pressure on the Community industry to the extent that imports from the PRC did, and have not been a determining reason for the injurious situation of the Community industry.

(49) The same exporters argued that the decline of the export performance of the Community industry, mentioned in recital 111 of the provisional Regulation, was not negligible and, added to other factors not related to the Chinese exports, would account for the deterioration of the financial situation of the Community industry. Although exports of the Community industry indeed decreased, by nearly 2 000 tonnes over 3,5 years, as explained in recital (111) of the provisional Regulation, this decline cannot be compared to the impact of Chinese exports into the Community market, which reached more than 80 000 tonnes in 2,5 years between 2 000 and the IP. This argument is therefore dismissed.

(50) In the absence of any other comments on causation, the findings and the conclusion reached, as set out in recitals 103 to 117 of the provisional Regulation, are hereby confirmed.

H. COMMUNITY INTEREST

(51) Two exporters argued that the Commission failed to provide an economic analysis of impact of the measures upon users, traders and consumers in its assessment of the Community interest aspects. It should first be noted that exporters do not have standing in the context of the examination of Community interest. Nevertheless, with regard to the substance of the argument, it should be recalled that no users, traders or consumers have cooperated in the investigation or come forward during the proceeding, and that therefore no specific data is available to the Commission to quantify such an impact. Therefore, this argument cannot be accepted.

(52) It was further argued by one importer that the country-wide duty of 48,5 % was prohibitive and that the limited number of suppliers of okoumé products in Europe would lead to a lack of competition in Europe, to the detriment of user industries. As noted in recital 125 of the provisional Regulation, however, the anti-dumping measures are intended only to restore a level playing field in this market, and not to foreclose competition, which should be ensured in view of the number of different producers and exporting countries besides China. Therefore, this argument must be dismissed.

(53) In the absence of any other new information submitted on the Community interest, the findings and the conclusion reached, as set out in recitals 118 to 127 of the provisional Regulation, are hereby confirmed.

I. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

- (54) In the absence of any comments, the methodology used for establishing the injury elimination level, as described in recitals 128 to 132 of the provisional Regulation, is hereby confirmed.
- (55) Based on this methodology, an injury elimination level has been calculated for the purposes of establishing the level of measures to be definitively imposed.

2. Form and level of the duties

- (56) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margins found, since for all the exporting producers concerned the injury margins were found to be higher than the dumping margins.

- (57) On the basis of the above, the definitive duties are as follows:

Company	Dumping margin
Nantong Zongyi Plywood Co., Ltd	9,6 %
Zhejiang Deren Bamboo-Wood Technologies Co., Ltd	23,5 %
Zhonglin Enterprise (Dangshan) Co., Ltd	6,5 %
Jiaxing Jinlin Lumber Co., Ltd	17,0 %
Country-wide dumping margin	66,7 %

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

- (59) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (60) In order to minimise the risks of circumvention due to the substantial level of non-cooperation (80 %) and the high difference in the amounts of duty, it is considered that special provisions are needed in this case to ensure the proper application of the anti-dumping duty.
- (61) These special provisions include the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to the Regulation. Only imports accompanied by such an invoice shall be declared under the applicable Taric additional codes of the producer in question. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters. The companies concerned have also been invited to submit regular reports to the Commission in order to ensure a proper follow up of their sales of okoumé plywood to the Community. In cases where reports are not submitted, or where the reports disclose that the measures are not adequate to eliminate the effects of injurious dumping, it may be necessary to initiate an interim review in accordance with Article 11(3) of the basic Regulation. This could, *inter alia*, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty.

3. Undertakings

- (62) Subsequent to the adoption of provisional anti-dumping measures, and in accordance with Article 8(1) of the basic Regulation, one cooperating exporting producer expressed its willingness to offer an undertaking. However, the minimum export prices that the company was prepared to offer for certain products were at levels which did not eliminate the injurious effects of the dumping. Accordingly, this offer could not be accepted.

4. Collection of provisional duties

- (63) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the

Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, i.e. Regulation (EC) No 988/2004, be collected definitively to the extent of the amount of the duty definitively imposed by the present Regulation if this amount is equal to or lower than the amount of the provisional duty. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be collected definitively.

- (64) As set out in recital 11, film-faced okoumé plywood has been excluded from the scope of the investigation. Given that Article 1(1) of the provisional Regulation did not provide for such an exclusion, any amounts secured for this product types should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of okoumé plywood, defined as plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with at least one outer ply of okoumé not coated by a permanent film of other materials, falling within CN code ex 4412 13 10 (TARIC code 4412 13 10 10) and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows, provided that they are imported in conformity with paragraph 3:

Manufacturer	Rate of duty %	TARIC additional code
Nantong Zongyi Plywood Co., Ltd Xingdong Town, Tongzhou City, Jiangsu Province, People's Republic of China	9,6	A526
Zhejiang Deren Bamboo-Wood Technologies Co., Ltd Linhai Economic Development Zone, Zhejiang, People's Republic of China	23,5	A527
Zhonglin Enterprise (Dangshan) Co., Ltd Xue Lou Miao Pu, Dangshan County, Anhui Province 235323, People's Republic of China	6,5	A528
Jiaxing Jinlin Lumber Co., Ltd North of Ganyao Town, Jiashan, Zhejiang Province, People's Republic of China	17,0	A529
All other companies	66,7	A999

⁽¹⁾ European Commission, Directorate-General for Trade, Direction B, office J-79 5/16, B-1049 Brussels.

3. The application of the individual duty rates specified for the four companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

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

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EC) No 988/2004 on

imports of okoumé plywood falling within CN code ex 4412 13 10 (TARIC code 4412 13 10 10), originating in the People's Republic of China shall be definitively collected, in accordance with the rules set out below. The amounts secured in excess of the amount of the definitive anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected. Amounts secured for the import of film-faced okoumé plywood should be released.

Article 3

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

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

Done at Brussels, 2 November 2004.

For the Council
The President
B. R. BOT

ANNEX

The valid commercial invoice referred to in Article 1(3) of the Regulation must include a declaration signed by an official of the company, in the following format:

1. the name and function of the official of the company which has issued the commercial invoice;
 2. the following declaration:
'I, the undersigned, certify that the (volume) of okoumé plywood sold for export to the European Community covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country); I declare that the information provided in this invoice is complete and correct.';
 3. Date and signature.
-

COMMISSION REGULATION (EC) No 1943/2004**of 11 November 2004****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 12 November 2004.

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

Done at Brussels, 11 November 2004.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

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

ANNEX

to Commission Regulation of 11 November 2004 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	64,3
	204	96,8
	999	80,6
0707 00 05	052	86,7
	999	86,7
0709 90 70	052	90,3
	204	73,3
	999	81,8
0805 20 10	204	55,2
	999	55,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	66,5
	528	27,1
	624	95,9
	999	63,2
0805 50 10	052	53,0
	388	49,2
	524	67,3
	528	44,7
	999	53,6
0806 10 10	052	97,8
	400	226,4
	508	234,1
	999	186,1
0808 10 20, 0808 10 50, 0808 10 90	052	90,5
	388	108,1
	400	97,6
	404	96,6
	512	104,6
	720	70,7
	800	204,9
	804	102,2
	999	109,4
0808 20 50	052	67,3
	720	61,9
	999	64,6

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

COMMISSION REGULATION (EC) No 1944/2004**of 10 November 2004****authorising transfers between the quantitative limits of textiles and clothing products originating in the People's Republic of China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries⁽¹⁾, and in particular Article 7 thereof,

Whereas:

(1) Article 5 of the Agreement between the European Economic Community and the People's Republic of China on trade in textile products, initialled on 9 December 1988 and approved by Council Decision 90/647/EEC⁽²⁾, as last amended and extended by an Agreement in the form of an Exchange of Letters, initialled on 19 May 2000 and approved by Council Decision 2000/787/EC⁽³⁾, provides that transfers may be made between quota years. Those flexibility provisions were notified to the Textiles Monitoring Body of the World Trade Organisation following China's accession to it.

(2) On 2 August 2004 the People's Republic of China submitted a request for transfers of quantities from the quota year 2003 to the quota year 2004.

(3) The transfers requested by the People's Republic of China fall within the limits of the flexibility provisions referred to in Article 5 of the Agreement between the European Economic Community and the People's Republic of China on trade in textile products, initialled on 9 December 1988, and as set out in Annex VIII, column 9 to Regulation (EEC) No 3030/93.

(4) It is appropriate to grant the request, to the extent that quantities are available.

(5) It is desirable for this Regulation to enter into force on the day after its publication in order to allow operators to benefit from it as soon as possible.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Textile Committee set up by Article 17 of Regulation (EEC) No 3030/93,

HAS ADOPTED THIS REGULATION:

Article 1

Transfers between the quantitative limits for textile goods originating in the People's Republic of China fixed by the Agreement between the European Community and the People's Republic of China on trade in textile products are authorised for the quota year 2004 in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 10 November 2004.

For the Commission

Pascal LAMY

Member of the Commission

⁽¹⁾ OJ L 275, 8.11.1993, p. 1. Regulation as last amended by Regulation (EC) No 1627/2004, (OJ No L 295, 18.9.2004, p. 1).

⁽²⁾ OJ L 352, 15.12.1990, p. 1.

⁽³⁾ OJ L 314, 14.12.2000, p. 13.

ANNEX

720 China					ADJUSTMENT Transfers from quota year 2003		
Group	Category	Unit	Limit 2004	Working level after implementing normal flexibilities	Quantity	%	New adjusted working level
IA	1	kgs	4 770 000	4 455 350	190 800	4,0	4 646 150
IA	2a	kgs	4 359 000	4 533 360	121 624	2,8	4 654 984
IA	3	kgs	8 088 000	8 233 380	30 631	0,4	8 264 011
IA	3a	kgs	2 769 000	2 879 760	89 653	3,2	2 969 413
IB	5	pcs	39 422 000	39 814 430	63 825	0,2	39 878 255
IB	5a	pcs	250 000	257 500	10 000	4,0	267 500
IB	6	pcs	40 913 000	41 294 420	176 003	0,4	41 470 423
IB	7	pcs	17 093 000	17 605 790	683 720	4,0	18 289 510
IB	8	pcs	27 723 000	28 554 690	462	0,002	28 555 152
IIA	9	kgs	6 962 000	7 406 210	61 956	0,9	7 468 166
IIA	20/39	kgs	11 361 000	11 901 840	99 954	0,9	12 001 794
IIA	22	kgs	19 351 000	16 780 878	774 040	4,0	17 554 918
IIA	23	kgs	11 847 000	3 202 410	473 880	4,0	3 676 290
IIB	13	pcs	586 244 000	613 195 160	285 710	0,05	613 480 870
IIB	14	pcs	17 887 000	18 423 610	715 480	4,0	19 139 090
IIB	15	pcs	20 131 000	21 072 590	274 510	1,4	21 347 100
IIB	16	pcs	17 181 000	18 241 410	149 117	0,9	18 390 527
IIB	17	pcs	13 061 000	13 452 830	522 440	4,0	13 975 270
IIB	26	pcs	6 645 000	7 077 360	180 460	2,7	7 257 820
IIB	28	pcs	92 909 000	101 270 810	3 220 806	3,5	104 491 616
IIB	29	pcs	15 687 000	16 410 980	126 255	0,8	16 537 235
IIB	31	pcs	96 488 000	100 979 370	42 992	0,04	101 022 362
IIB	78	kgs	36 651 000	36 762 570	934 242	2,5	37 696 812
IIB	83	kgs	10 883 000	11 378 820	274 079	2,5	11 652 899
IIIB	97	kgs	2 861 000	3 118 490	114 440	4,0	3 232 930
	163	kgs	8 481 000	8 921 840	13 235	0,2	8 935 075
Other	X20	kgs	59 000	60 770	2 380	4,0	63 130

720 China					ADJUSTMENT Transfers from quota year 2003		
Group	Category	Unit	Limit 2004	Working level after implementing normal flexibilities	Quantity	%	New adjusted working level
Other	X117	kgs	684 000	745 560	27 360	4,0	772 920
Other	X118	kgs	1 513 000	1 649 170	60 520	4,0	1 709 690
Other	X122	kgs	220 000	226 600	8 800	4,0	235 400
Other	X136A	kgs	462 000	475 860	18 480	4,0	494 340
Other	X156	kgs	3 986 000	4 105 580	159 440	4,0	4 265 020
Other	X157	kgs	13 738 000	13 933 540	549 520	4,0	14 483 060
Other	X159	kgs	4 352 000	4 482 560	174 080	4,0	4 656 640

COMMISSION REGULATION (EC) No 1945/2004**of 11 November 2004****fixing, for 2005, the reduction percentages to be applied to applications for an allocation by non-traditional operators under the tariff quotas A/B and C for imports of bananas**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas ⁽¹⁾,

Having regard to Commission Regulation (EC) No 896/2001 of 7 May 2001 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community ⁽²⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Member States' notifications pursuant to Article 9(1) of Regulation (EC) No 896/2001 indicate that the sum of allocations applied for is 4 941 057,500 t for all non-traditional operators A/B and 479 315,000 t for all non-traditional operators C.

- (2) The percentages to be applied for determining the allocations for non-traditional operators under the tariff quotas A/B and C for 2005 should therefore be fixed.

- (3) So that the operators have sufficient time to lodge licence applications for the first quarter of 2005, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

For the tariff quotas A/B and C provided for in Article 18 of Regulation (EEC) No 404/93, the allocation to be granted to each non-traditional operator for 2005 pursuant to Article 9(2) of Regulation (EC) No 896/2001 shall be the following percentage of the allocation applied for:

- (a) for each non-traditional operator A/B: 9,12780 %,
(b) for each non-traditional operator C: 17,21206 %.

Article 2

This Regulation shall enter into force on 12 November 2004.

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

Done at Brussels, 11 November 2004.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 47, 25.2.1993, p. 1. Regulation as last amended by the 2003 Act of Accession.

⁽²⁾ OJ L 126, 8.5.2001, p. 6. Regulation as last amended by Regulation (EC) No 838/2004 (OJ L 127, 26.4.2004, p. 52).

COMMISSION REGULATION (EC) No 1946/2004**of 11 November 2004****fixing the representative prices and the additional import duties for molasses in the sugar sector
applicable from 12 November 2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the market in sugar⁽¹⁾, and in particular Article 24(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68⁽²⁾, stipulates that the cif import price for molasses established in accordance with Commission Regulation (EEC) No 785/68⁽³⁾, is to be considered the representative price. That price is fixed for the standard quality defined in Article 1 of Regulation (EEC) No 785/68.
- (2) For the purpose of fixing the representative prices, account must be taken of all the information provided for in Article 3 of Regulation (EEC) No 785/68, except in the cases provided for in Article 4 of that Regulation and those prices should be fixed, where appropriate, in accordance with the method provided for in Article 7 of that Regulation.
- (3) Prices not referring to the standard quality should be adjusted upwards or downwards, according to the

quality of the molasses offered, in accordance with Article 6 of Regulation (EEC) No 785/68.

- (4) Where there is a difference between the trigger price for the product concerned and the representative price, additional import duties should be fixed under the terms laid down in Article 3 of Regulation (EC) No 1422/95. Should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed.
- (5) The representative prices and additional import duties for the products concerned should be fixed in accordance with Articles 1(2) and 3(1) of Regulation (EC) No 1422/95.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 November 2004.

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

Done at Brussels, 11 November 2004.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

⁽²⁾ OJ L 141, 24.6.1995, p. 12. Regulation as amended by Regulation (EC) No 79/2003 (OJ L 13, 18.1.2003, p. 4).

⁽³⁾ OJ L 145, 27.6.1968, p. 12. Regulation as amended by Regulation (EC) No 1422/95 (OJ L 141, 24.6.1995, p. 12).

ANNEX

Representative prices and additional duties for imports of molasses in the sugar sector applicable from 12 November 2004

(EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽¹⁾
1703 10 00 ⁽²⁾	8,40	—	0
1703 90 00 ⁽²⁾	9,63	—	0

⁽¹⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

⁽²⁾ For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

COMMISSION REGULATION (EC) No 1947/2004**of 11 November 2004****fixing the export refunds on white sugar and raw sugar exported in its unaltered state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector⁽¹⁾, and in particular the second subparagraph of Article 27(5) thereof,

Whereas:

- (1) Article 27 of Regulation (EC) No 1260/2001 provides that the difference between quotations or prices on the world market for the products listed in Article 1(1)(a) of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) Regulation (EC) No 1260/2001 provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 28 of that Regulation. The same Article provides that the economic aspect of the proposed exports should also be taken into account.
- (3) The refund on raw sugar must be fixed in respect of the standard quality. The latter is defined in Annex I, point II, to Regulation (EC) No 1260/2001. Furthermore, this refund should be fixed in accordance with Article 28(4) of that Regulation. Candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector⁽²⁾. The refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content.
- (4) In special cases, the amount of the refund may be fixed by other legal instruments.

- (5) The refund must be fixed every two weeks. It may be altered in the intervening period.
- (6) The first subparagraph of Article 27(5) of Regulation (EC) No 1260/2001 provides that refunds on the products referred to in Article 1 of that Regulation may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.
- (7) The significant and rapid increase in preferential imports of sugar from the western Balkan countries since the start of 2001 and in exports of sugar to those countries from the Community seems to be highly artificial.
- (8) To prevent any abuse through the re-import into the Community of sugar products in receipt of an export refund, no refund should be set for all the countries of the western Balkans for the products covered by this Regulation.
- (9) In view of the above and of the present situation on the market in sugar, and in particular of the quotations or prices for sugar within the Community and on the world market, refunds should be set at the appropriate amounts.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 1260/2001, undenatured and exported in the natural state, are hereby fixed to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 November 2004.

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

Done at Brussels, 11 November 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

⁽²⁾ OJ L 214, 8.9.1995, p. 16.

ANNEX

**REFUNDS ON WHITE SUGAR AND RAW SUGAR EXPORTED WITHOUT FURTHER PROCESSING
APPLICABLE FROM 12 NOVEMBER 2004**

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	S00	EUR/100 kg	39,56 ⁽¹⁾
1701 11 90 9910	S00	EUR/100 kg	39,80 ⁽¹⁾
1701 12 90 9100	S00	EUR/100 kg	39,56 ⁽¹⁾
1701 12 90 9910	S00	EUR/100 kg	39,80 ⁽¹⁾
1701 91 00 9000	S00	EUR/1 % of sucrose × 100 kg product net	0,4300
1701 99 10 9100	S00	EUR/100 kg	43,00
1701 99 10 9910	S00	EUR/100 kg	43,26
1701 99 10 9950	S00	EUR/100 kg	43,26
1701 99 90 9100	S00	EUR/1 % of sucrose × 100 kg of net product	0,4300

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1).

The numeric destination codes are set out in Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

The other destinations are:

S00: all destinations (third countries, other territories, victualling and destinations treated as exports from the Community) with the exception of Albania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro (including Kosovo, as defined in UN Security Council Resolution 1244 of 10 June 1999), the former Yugoslav Republic of Macedonia, save for sugar incorporated in the products referred to in Article 1(2)(b) of Council Regulation (EC) No 2201/96 (OJ L 297, 21.11.1996, p. 29).

⁽¹⁾ This amount is applicable to raw sugar with a yield of 92 %. Where the yield for exported raw sugar differs from 92 %, the refund amount applicable shall be calculated in accordance with Article 28(4) of Regulation (EC) No 1260/2001.

COMMISSION REGULATION (EC) No 1948/2004**of 11 November 2004****fixing the maximum export refund for white sugar to certain third countries for the 12th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1327/2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector⁽¹⁾ and in particular the second indent of Article 27(5) thereof,

Whereas:

(1) Commission Regulation (EC) No 1327/2004 of 19 July 2004 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar⁽²⁾, for the 2004/2005 marketing year, requires partial invitations to tender to be issued for the export of this sugar to certain third countries.

(2) Pursuant to Article 9(1) of Regulation (EC) No 1327/2004 a maximum export refund shall be fixed,

as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 12th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1327/2004 the maximum amount of the export refund shall be 46,402 EUR/100 kg.

Article 2

This Regulation shall enter into force on 12 November 2004.

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

Done at Brussels, 11 November 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

⁽²⁾ OJ L 246, 20.7.2004, p. 23. Regulation as amended by Regulation (EC) No 1685/2004 (OJ L 303, 30.9.2004, p. 21).

COMMISSION REGULATION (EC) No 1949/2004
of 11 November 2004
fixing the export refunds on milk and milk products

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 31(3) thereof,

Whereas:

(1) Article 31 of Regulation (EC) No 1255/1999 provides that the difference between prices in international trade for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund within the limits resulting from agreements concluded in accordance with Article 300 of the Treaty.

(2) Regulation (EC) No 1255/1999 provides that when the refunds on the products listed in Article 1 of the above-mentioned Regulation, exported in the natural state, are being fixed, account must be taken of:

- the existing situation and the future trend with regard to prices and availabilities of milk and milk products on the Community market and prices for milk and milk products in international trade,
- marketing costs and the most favourable transport charges from Community markets to ports or other points of export in the Community, as well as costs incurred in placing the goods on the market of the country of destination,
- the aims of the common organisation of the market in milk and milk products which are to ensure equilibrium and the natural development of prices and trade on this market,
- the limits resulting from agreements concluded in accordance with Article 300 of the Treaty, and
- the need to avoid disturbances on the Community market, and
- the economic aspect of the proposed exports.

(3) Article 31(5) of Regulation (EC) No 1255/1999 provides that when prices within the Community are being determined account should be taken of the ruling

prices which are most favourable for exportation, and that when prices in international trade are being determined particular account should be taken of:

- (a) prices ruling on third-country markets;
- (b) the most favourable prices in third countries of destination for third-country imports;
- (c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries; and
- (d) free-at-Community-frontier offer prices.

(4) Article 31(3) of Regulation (EC) No 1255/1999 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund on the products listed in Article 1 of the abovementioned Regulation according to destination.

(5) Article 31(3) of Regulation (EC) No 1255/1999 provides that the list of products on which export refunds are granted and the amount of such refunds should be fixed at least once every four weeks; the amount of the refund may, however, remain at the same level for more than four weeks.

(6) In accordance with Article 16 of Commission Regulation (EC) No 174/1999 of 26 January 1999 on specific detailed rules for the application of Council Regulation (EC) No 804/68 as regards export licences and export refunds on milk and milk products⁽²⁾, the refund granted for milk products containing added sugar is equal to the sum of the two components; one is intended to take account of the quantity of milk products and is calculated by multiplying the basic amount by the milk products content in the product concerned; the other is intended to take account of the quantity of added sucrose and is calculated by multiplying the sucrose content of the entire product by the basic amount of the refund valid on the day of exportation for the products listed in Article 1(1)(d) of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector⁽³⁾, however, this second component is applied only if the added sucrose has been produced using sugar beet or cane harvested in the Community.

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

⁽²⁾ OJ L 20, 27.1.1999, p. 8. Regulation as last amended by Regulation (EC) No 1948/2003 (OJ L 287, 5.11.2003, p. 13).

⁽³⁾ OJ L 178, 30.6.2001, p. 1. Regulation as amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

- (7) Commission Regulation (EEC) No 896/84⁽¹⁾ laid down additional provisions concerning the granting of refunds on the change from one milk year to another; those provisions provide for the possibility of varying refunds according to the date of manufacture of the products.
- (8) For the calculation of the refund for processed cheese provision must be made where casein or caseinates are added for that quantity not to be taken into account.
- (9) It follows from applying the rules set out above to the present situation on the market in milk and in particular to quotations or prices for milk products within the Community and on the world market that the refund should be as set out in the Annex to this Regulation.

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds referred to in Article 31 of Regulation (EC) No 1255/1999 on products exported in the natural state shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 12 November 2004.

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

Done at Brussels, 11 November 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 91, 1.4.1984, p. 71. Regulation as last amended by Regulation (EEC) No 222/88 (OJ L 28, 1.2.1988, p. 1).

ANNEX

to the Commission Regulation of 11 November 2004 fixing the export refunds on milk and milk products

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0401 10 10 9000	970	EUR/100 kg	1,548	0402 21 11 9300	L01	EUR/100 kg	—
0401 10 90 9000	970	EUR/100 kg	1,548		068	EUR/100 kg	—
0401 20 11 9500	970	EUR/100 kg	2,393		L02	EUR/100 kg	49,04
0401 20 19 9500	970	EUR/100 kg	2,393		A01	EUR/100 kg	62,93
0401 20 91 9000	970	EUR/100 kg	3,028	0402 21 11 9500	L01	EUR/100 kg	—
0401 30 11 9400	970	EUR/100 kg	6,987		068	EUR/100 kg	—
0401 30 11 9700	970	EUR/100 kg	10,49		L02	EUR/100 kg	51,17
0401 30 31 9100	L01	EUR/100 kg	—		A01	EUR/100 kg	65,69
	L02	EUR/100 kg	17,84	0402 21 11 9900	L01	EUR/100 kg	—
	A01	EUR/100 kg	25,49		068	EUR/100 kg	—
0401 30 31 9400	L01	EUR/100 kg	—		L02	EUR/100 kg	54,53
	L02	EUR/100 kg	27,87		A01	EUR/100 kg	70,00
	A01	EUR/100 kg	39,82	0402 21 17 9000	L01	EUR/100 kg	—
0401 30 31 9700	L01	EUR/100 kg	—		068	EUR/100 kg	—
	L02	EUR/100 kg	30,74		L02	EUR/100 kg	24,03
	A01	EUR/100 kg	43,91		A01	EUR/100 kg	29,00
0401 30 39 9100	L01	EUR/100 kg	—	0402 21 19 9300	L01	EUR/100 kg	—
	L02	EUR/100 kg	17,84		068	EUR/100 kg	—
	A01	EUR/100 kg	25,49		L02	EUR/100 kg	49,04
0401 30 39 9400	L01	EUR/100 kg	—		A01	EUR/100 kg	62,93
	L02	EUR/100 kg	27,87	0402 21 19 9500	L01	EUR/100 kg	—
	A01	EUR/100 kg	39,82		068	EUR/100 kg	—
0401 30 39 9700	L01	EUR/100 kg	—		L02	EUR/100 kg	51,17
	L02	EUR/100 kg	30,74		A01	EUR/100 kg	65,69
	A01	EUR/100 kg	43,91	0402 21 19 9900	L01	EUR/100 kg	—
0401 30 91 9100	L01	EUR/100 kg	—		068	EUR/100 kg	—
	L02	EUR/100 kg	35,03		L02	EUR/100 kg	54,53
	A01	EUR/100 kg	50,05		A01	EUR/100 kg	70,00
0401 30 99 9100	L01	EUR/100 kg	—	0402 21 91 9100	L01	EUR/100 kg	—
	L02	EUR/100 kg	35,03		068	EUR/100 kg	—
	A01	EUR/100 kg	50,05		L02	EUR/100 kg	54,87
0401 30 99 9500	L01	EUR/100 kg	—		A01	EUR/100 kg	70,43
	L02	EUR/100 kg	51,49	0402 21 91 9200	L01	EUR/100 kg	—
	A01	EUR/100 kg	73,55		068	EUR/100 kg	—
0402 10 11 9000	L01	EUR/100 kg	—		L02	EUR/100 kg	55,19
	068	EUR/100 kg	—		A01	EUR/100 kg	70,85
	L02	EUR/100 kg	24,03	0402 21 91 9350	L01	EUR/100 kg	—
	A01	EUR/100 kg	29,00		068	EUR/100 kg	—
0402 10 19 9000	L01	EUR/100 kg	—		L02	EUR/100 kg	55,76
	068	EUR/100 kg	—		A01	EUR/100 kg	71,58
	L02	EUR/100 kg	24,03	0402 21 91 9500	L01	EUR/100 kg	—
	A01	EUR/100 kg	29,00		068	EUR/100 kg	—
0402 10 91 9000	L01	EUR/kg	—		L02	EUR/100 kg	59,93
	068	EUR/kg	—		A01	EUR/100 kg	76,93
	L02	EUR/kg	0,2403	0402 21 99 9100	L01	EUR/100 kg	—
	A01	EUR/kg	0,2900		068	EUR/100 kg	—
0402 10 99 9000	L01	EUR/kg	—		L02	EUR/100 kg	54,87
	068	EUR/kg	—		A01	EUR/100 kg	70,43
	L02	EUR/kg	0,2403	0402 21 99 9200	L01	EUR/100 kg	—
	A01	EUR/kg	0,2900		068	EUR/100 kg	—
0402 21 11 9200	L01	EUR/100 kg	—		L02	EUR/100 kg	55,19
	068	EUR/100 kg	—		A01	EUR/100 kg	70,85
	L02	EUR/100 kg	24,03				
	A01	EUR/100 kg	29,00				

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0402 21 99 9300	L01	EUR/100 kg	—	0402 91 19 9370	L01	EUR/100 kg	—
	068	EUR/100 kg	—		L02	EUR/100 kg	4,958
	L02	EUR/100 kg	55,76		A01	EUR/100 kg	7,083
	A01	EUR/100 kg	71,58	0402 91 31 9300	L01	EUR/100 kg	—
0402 21 99 9400	L01	EUR/100 kg	—		L02	EUR/100 kg	5,859
	068	EUR/100 kg	—		A01	EUR/100 kg	8,371
	L02	EUR/100 kg	58,85	0402 91 39 9300	L01	EUR/100 kg	—
	A01	EUR/100 kg	75,55		L02	EUR/100 kg	5,859
0402 21 99 9500	L01	EUR/100 kg	—		A01	EUR/100 kg	8,371
	068	EUR/100 kg	—	0402 91 99 9000	L01	EUR/100 kg	—
	L02	EUR/100 kg	59,93		L02	EUR/100 kg	21,53
	A01	EUR/100 kg	76,93		A01	EUR/100 kg	30,75
0402 21 99 9600	L01	EUR/100 kg	—	0402 99 11 9350	L01	EUR/kg	—
	068	EUR/100 kg	—		L02	EUR/kg	0,1268
	L02	EUR/100 kg	64,15		A01	EUR/kg	0,1812
	A01	EUR/100 kg	82,35	0402 99 19 9350	L01	EUR/kg	—
0402 21 99 9700	L01	EUR/100 kg	—		L02	EUR/kg	0,1268
	068	EUR/100 kg	—		A01	EUR/kg	0,1812
	L02	EUR/100 kg	66,54	0402 99 31 9150	L01	EUR/kg	—
	A01	EUR/100 kg	85,43		L02	EUR/kg	0,1316
0402 21 99 9900	L01	EUR/100 kg	—		A01	EUR/kg	0,1880
	068	EUR/100 kg	—	0402 99 31 9300	L01	EUR/kg	—
	L02	EUR/100 kg	69,32		L02	EUR/kg	0,1288
	A01	EUR/100 kg	88,97		A01	EUR/kg	0,1840
0402 29 15 9200	L01	EUR/kg	—	0402 99 39 9150	L01	EUR/kg	—
	L02	EUR/kg	0,2403		L02	EUR/kg	0,1316
	A01	EUR/kg	0,2900		A01	EUR/kg	0,1880
0402 29 15 9300	L01	EUR/kg	—	0403 90 11 9000	L01	EUR/100 kg	—
	L02	EUR/kg	0,4904		L02	EUR/100 kg	23,69
	A01	EUR/kg	0,6293		A01	EUR/100 kg	28,59
0402 29 15 9500	L01	EUR/kg	—	0403 90 13 9200	L01	EUR/100 kg	—
	L02	EUR/kg	0,5117		L02	EUR/100 kg	23,69
	A01	EUR/kg	0,6569		A01	EUR/100 kg	28,59
0402 29 15 9900	L01	EUR/kg	—	0403 90 13 9300	L01	EUR/100 kg	—
	L02	EUR/kg	0,5453		L02	EUR/100 kg	48,59
	A01	EUR/kg	0,7000		A01	EUR/100 kg	62,37
0402 29 19 9300	L01	EUR/kg	—	0403 90 13 9500	L01	EUR/100 kg	—
	L02	EUR/kg	0,4904		L02	EUR/100 kg	50,72
	A01	EUR/kg	0,6293		A01	EUR/100 kg	65,10
0402 29 19 9500	L01	EUR/kg	—	0403 90 13 9900	L01	EUR/100 kg	—
	L02	EUR/kg	0,5117		L02	EUR/100 kg	54,05
	A01	EUR/kg	0,6569		A01	EUR/100 kg	69,37
0402 29 19 9900	L01	EUR/kg	—	0403 90 19 9000	L01	EUR/100 kg	—
	L02	EUR/kg	0,5453		L02	EUR/100 kg	54,38
	A01	EUR/kg	0,7000		A01	EUR/100 kg	69,80
0402 29 91 9000	L01	EUR/kg	—	0403 90 33 9400	L01	EUR/kg	—
	L02	EUR/kg	0,5487		L02	EUR/kg	0,4859
	A01	EUR/kg	0,7043		A01	EUR/kg	0,6237
0402 29 99 9100	L01	EUR/kg	—	0403 90 33 9900	L01	EUR/kg	—
	L02	EUR/kg	0,5487		L02	EUR/kg	0,5405
	A01	EUR/kg	0,7043		A01	EUR/kg	0,6937
0402 29 99 9500	L01	EUR/kg	—	0403 90 51 9100	970	EUR/100 kg	1,548
	L02	EUR/kg	0,5885		970	EUR/100 kg	10,49
	A01	EUR/kg	0,7555	0403 90 59 9170	L01	EUR/100 kg	—
0402 91 11 9370	L01	EUR/100 kg	—		L02	EUR/100 kg	17,84
	L02	EUR/100 kg	4,958		A01	EUR/100 kg	25,49
	A01	EUR/100 kg	7,083				

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0403 90 59 9340	L01	EUR/100 kg	—	0405 10 11 9500	L01	EUR/100 kg	—
	L02	EUR/100 kg	26,11		075	EUR/100 kg	119,99
	A01	EUR/100 kg	37,29		L02	EUR/100 kg	94,80
0403 90 59 9370	L01	EUR/100 kg	—	0405 10 11 9700	A01	EUR/100 kg	127,81
	L02	EUR/100 kg	26,11		L01	EUR/100 kg	—
	A01	EUR/100 kg	37,29		075	EUR/100 kg	122,98
0403 90 59 9510	L01	EUR/100 kg	—	0405 10 19 9500	L02	EUR/100 kg	97,16
	L02	EUR/100 kg	26,11		A01	EUR/100 kg	131,00
	A01	EUR/100 kg	37,29		L01	EUR/100 kg	—
0404 90 21 9120	L01	EUR/100 kg	—	0405 10 19 9700	075	EUR/100 kg	119,99
	L02	EUR/100 kg	20,49		L02	EUR/100 kg	94,80
	A01	EUR/100 kg	24,74		A01	EUR/100 kg	127,81
0404 90 21 9160	L01	EUR/100 kg	—	0405 10 30 9100	L01	EUR/100 kg	—
	L02	EUR/100 kg	24,03		075	EUR/100 kg	122,98
	A01	EUR/100 kg	29,00		L02	EUR/100 kg	97,16
0404 90 23 9120	L01	EUR/100 kg	—	0405 10 30 9300	A01	EUR/100 kg	131,00
	L02	EUR/100 kg	24,03		L01	EUR/100 kg	—
	A01	EUR/100 kg	29,00		075	EUR/100 kg	119,99
0404 90 23 9130	L01	EUR/100 kg	—	0405 10 30 9700	L02	EUR/100 kg	94,80
	L02	EUR/100 kg	49,04		A01	EUR/100 kg	127,81
	A01	EUR/100 kg	62,93		L01	EUR/100 kg	—
0404 90 23 9140	L01	EUR/100 kg	—	0405 10 50 9300	075	EUR/100 kg	122,98
	L02	EUR/100 kg	51,17		L02	EUR/100 kg	97,16
	A01	EUR/100 kg	65,69		A01	EUR/100 kg	131,00
0404 90 23 9150	L01	EUR/100 kg	—	0405 10 50 9500	L01	EUR/100 kg	—
	L02	EUR/100 kg	54,53		075	EUR/100 kg	122,98
	A01	EUR/100 kg	70,00		L02	EUR/100 kg	97,16
0404 90 29 9110	L01	EUR/100 kg	—	0405 10 50 9700	A01	EUR/100 kg	131,00
	L02	EUR/100 kg	54,87		L01	EUR/100 kg	—
	A01	EUR/100 kg	70,43		075	EUR/100 kg	122,98
0404 90 29 9115	L01	EUR/100 kg	—	0405 10 90 9000	L02	EUR/100 kg	97,16
	L02	EUR/100 kg	55,19		A01	EUR/100 kg	131,00
	A01	EUR/100 kg	70,85		L01	EUR/100 kg	—
0404 90 29 9125	L01	EUR/100 kg	—	0405 20 90 9500	075	EUR/100 kg	119,99
	L02	EUR/100 kg	55,76		L02	EUR/100 kg	94,80
	A01	EUR/100 kg	71,58		A01	EUR/100 kg	127,81
0404 90 29 9140	L01	EUR/100 kg	—	0405 20 90 9700	L01	EUR/100 kg	—
	L02	EUR/100 kg	59,93		075	EUR/100 kg	122,98
	A01	EUR/100 kg	76,93		L02	EUR/100 kg	97,16
0404 90 81 9100	L01	EUR/kg	—	0405 90 10 9000	A01	EUR/100 kg	131,00
	L02	EUR/kg	0,2403		L01	EUR/100 kg	—
	A01	EUR/kg	0,2900		075	EUR/100 kg	127,49
0404 90 83 9110	L01	EUR/kg	—	0405 20 90 9500	L02	EUR/100 kg	100,71
	L02	EUR/kg	0,2403		A01	EUR/100 kg	135,79
	A01	EUR/kg	0,2900		L01	EUR/100 kg	—
0404 90 83 9130	L01	EUR/kg	—	0405 20 90 9700	075	EUR/100 kg	112,50
	L02	EUR/kg	0,4904		L02	EUR/100 kg	88,87
	A01	EUR/kg	0,6293		A01	EUR/100 kg	119,83
0404 90 83 9150	L01	EUR/kg	—	0405 90 10 9000	L01	EUR/100 kg	—
	L02	EUR/kg	0,5117		075	EUR/100 kg	116,99
	A01	EUR/kg	0,6569		L02	EUR/100 kg	92,42
0404 90 83 9170	L01	EUR/kg	—	0405 90 10 9000	A01	EUR/100 kg	124,61
	L02	EUR/kg	0,5453		L01	EUR/100 kg	—
	A01	EUR/kg	0,7000		075	EUR/100 kg	155,77
0404 90 83 9936	L01	EUR/kg	—	0405 90 10 9000	L02	EUR/100 kg	123,06
	L02	EUR/kg	0,1268		A01	EUR/100 kg	165,93
	A01	EUR/kg	0,1812				

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0405 90 90 9000	L01	EUR/100 kg	—	0406 20 90 9919	L03	EUR/100 kg	—
	075	EUR/100 kg	124,60		L04	EUR/100 kg	44,50
	L02	EUR/100 kg	98,43		400	EUR/100 kg	—
	A01	EUR/100 kg	132,71		A01	EUR/100 kg	55,63
0406 10 20 9100	A00	EUR/100 kg	—	0406 30 31 9710	L03	EUR/100 kg	—
0406 10 20 9230	L03	EUR/100 kg	—		L04	EUR/100 kg	3,38
	L04	EUR/100 kg	16,39		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	7,88
0406 10 20 9290	A01	EUR/100 kg	20,48	0406 30 31 9730	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	4,93
	L04	EUR/100 kg	15,25		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	11,57
0406 10 20 9300	A01	EUR/100 kg	19,05	0406 30 31 9910	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	3,38
	L04	EUR/100 kg	6,69		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	7,88
0406 10 20 9610	A01	EUR/100 kg	8,36	0406 30 31 9930	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	4,93
	L04	EUR/100 kg	22,22		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	11,57
0406 10 20 9620	A01	EUR/100 kg	27,79	0406 30 31 9950	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	7,18
	L04	EUR/100 kg	22,55		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	16,82
0406 10 20 9630	A01	EUR/100 kg	28,18	0406 30 39 9500	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	4,93
	L04	EUR/100 kg	25,17		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	11,57
0406 10 20 9640	A01	EUR/100 kg	31,46	0406 30 39 9700	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	7,18
	L04	EUR/100 kg	36,98		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	16,82
0406 10 20 9650	A01	EUR/100 kg	46,22	0406 30 39 9930	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	7,18
	L04	EUR/100 kg	30,82		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	16,82
0406 10 20 9830	A01	EUR/100 kg	38,52	0406 30 39 9950	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	8,12
	L04	EUR/100 kg	11,44		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	19,03
0406 10 20 9850	A01	EUR/100 kg	14,29	0406 30 90 9000	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	8,51
	L04	EUR/100 kg	13,86		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	19,96
0406 20 90 9100	A00	EUR/100 kg	—	0406 40 50 9000	L03	EUR/100 kg	—
0406 20 90 9913	L03	EUR/100 kg	—		L04	EUR/100 kg	43,49
	L04	EUR/100 kg	28,39		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	54,36
0406 20 90 9915	A01	EUR/100 kg	35,49	0406 40 90 9000	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	44,66
	L04	EUR/100 kg	37,47		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	55,82
0406 20 90 9917	A01	EUR/100 kg	46,84	0406 90 13 9000	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	49,11
	L04	EUR/100 kg	39,83		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	70,29
	A01	EUR/100 kg	49,77				

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0406 90 15 9100	L03	EUR/100 kg	—	0406 90 63 9100	L03	EUR/100 kg	—
	L04	EUR/100 kg	50,75		L04	EUR/100 kg	53,84
	400	EUR/100 kg	—		400	EUR/100 kg	—
	A01	EUR/100 kg	72,63		A01	EUR/100 kg	77,65
0406 90 17 9100	L03	EUR/100 kg	—	0406 90 63 9900	L03	EUR/100 kg	—
	L04	EUR/100 kg	50,75		L04	EUR/100 kg	51,76
	400	EUR/100 kg	—		400	EUR/100 kg	—
	A01	EUR/100 kg	72,63		A01	EUR/100 kg	75,00
0406 90 21 9900	L03	EUR/100 kg	—	0406 90 69 9100	A00	EUR/100 kg	—
	L04	EUR/100 kg	49,73	0406 90 69 9910	L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	51,76
	A01	EUR/100 kg	71,00		400	EUR/100 kg	—
0406 90 23 9900	L03	EUR/100 kg	—		A01	EUR/100 kg	75,00
	L04	EUR/100 kg	43,67	0406 90 73 9900	L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	45,08
	A01	EUR/100 kg	62,77		400	EUR/100 kg	—
0406 90 25 9900	L03	EUR/100 kg	—		A01	EUR/100 kg	64,58
	L04	EUR/100 kg	43,38	0406 90 75 9900	L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	45,38
	A01	EUR/100 kg	62,09		400	EUR/100 kg	—
0406 90 27 9900	L03	EUR/100 kg	—		A01	EUR/100 kg	65,27
	L04	EUR/100 kg	39,28	0406 90 76 9300	L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	40,92
	A01	EUR/100 kg	56,24		400	EUR/100 kg	—
0406 90 31 9119	L03	EUR/100 kg	—		A01	EUR/100 kg	58,58
	L04	EUR/100 kg	36,11	0406 90 76 9400	L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	45,83
	A01	EUR/100 kg	51,76		400	EUR/100 kg	—
0406 90 33 9119	L03	EUR/100 kg	—		A01	EUR/100 kg	65,61
	L04	EUR/100 kg	36,11	0406 90 76 9500	L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	43,60
	A01	EUR/100 kg	51,76		400	EUR/100 kg	—
0406 90 33 9919	L03	EUR/100 kg	—		A01	EUR/100 kg	61,88
	L04	EUR/100 kg	32,99	0406 90 78 9100	L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	42,28
	A01	EUR/100 kg	47,48		400	EUR/100 kg	—
0406 90 33 9951	L03	EUR/100 kg	—		A01	EUR/100 kg	61,77
	L04	EUR/100 kg	33,33	0406 90 78 9300	L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	44,83
	A01	EUR/100 kg	47,50		400	EUR/100 kg	—
0406 90 35 9190	L03	EUR/100 kg	—		A01	EUR/100 kg	64,02
	L04	EUR/100 kg	51,07	0406 90 78 9500	L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	44,41
	A01	EUR/100 kg	73,43		400	EUR/100 kg	—
0406 90 35 9990	L03	EUR/100 kg	—		A01	EUR/100 kg	63,03
	L04	EUR/100 kg	51,07	0406 90 79 9900	L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	36,26
	A01	EUR/100 kg	73,43		400	EUR/100 kg	—
0406 90 37 9000	L03	EUR/100 kg	—		A01	EUR/100 kg	52,11
	L04	EUR/100 kg	49,11	0406 90 81 9900	L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	45,83
	A01	EUR/100 kg	70,29		400	EUR/100 kg	—
0406 90 61 9000	L03	EUR/100 kg	—		A01	EUR/100 kg	65,61
	L04	EUR/100 kg	54,11	0406 90 85 9930	L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	49,49
	A01	EUR/100 kg	78,30		400	EUR/100 kg	—
					A01	EUR/100 kg	71,21

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0406 90 85 9970	L03	EUR/100 kg	—	0406 90 87 9951	L03	EUR/100 kg	—
	L04	EUR/100 kg	45,38		L04	EUR/100 kg	45,01
	400	EUR/100 kg	—		400	EUR/100 kg	—
	A01	EUR/100 kg	65,27		A01	EUR/100 kg	64,43
0406 90 86 9100	A00	EUR/100 kg	—	0406 90 87 9971	L03	EUR/100 kg	—
0406 90 86 9200	L03	EUR/100 kg	—		L04	EUR/100 kg	45,01
		EUR/100 kg	41,64		400	EUR/100 kg	—
		EUR/100 kg	—		A01	EUR/100 kg	64,43
0406 90 86 9300	L03	EUR/100 kg	61,76	0406 90 87 9972	L03	EUR/100 kg	—
		EUR/100 kg	—		L04	EUR/100 kg	19,18
		EUR/100 kg	42,25		400	EUR/100 kg	—
		EUR/100 kg	—		A01	EUR/100 kg	27,57
0406 90 86 9400	L03	EUR/100 kg	62,41	0406 90 87 9973	L03	EUR/100 kg	—
		EUR/100 kg	—		L04	EUR/100 kg	44,20
		EUR/100 kg	44,87		400	EUR/100 kg	—
		EUR/100 kg	—		A01	EUR/100 kg	63,26
0406 90 86 9900	L03	EUR/100 kg	65,61	0406 90 87 9974	L03	EUR/100 kg	—
		EUR/100 kg	—		L04	EUR/100 kg	47,97
		EUR/100 kg	49,49		400	EUR/100 kg	—
		EUR/100 kg	—		A01	EUR/100 kg	68,37
0406 90 87 9100	L03	EUR/100 kg	71,21	0406 90 87 9975	L03	EUR/100 kg	—
		EUR/100 kg	—		L04	EUR/100 kg	48,92
		EUR/100 kg	—		400	EUR/100 kg	—
		EUR/100 kg	—		A01	EUR/100 kg	69,13
0406 90 87 9200	L03	EUR/100 kg	34,71	0406 90 87 9979	L03	EUR/100 kg	—
		EUR/100 kg	—		L04	EUR/100 kg	43,67
		EUR/100 kg	—		400	EUR/100 kg	—
		EUR/100 kg	51,45		A01	EUR/100 kg	62,77
0406 90 87 9300	L03	EUR/100 kg	—	0406 90 88 9100	A00	EUR/100 kg	—
		EUR/100 kg	38,78		L03	EUR/100 kg	—
		EUR/100 kg	—			EUR/100 kg	34,26
		EUR/100 kg	57,31			EUR/100 kg	—
0406 90 87 9400	L03	EUR/100 kg	—	0406 90 88 9300	L04	EUR/100 kg	—
		EUR/100 kg	39,80		400	EUR/100 kg	—
		EUR/100 kg	—		A01	EUR/100 kg	50,44
		EUR/100 kg	58,18			EUR/100 kg	—

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

The other destinations are defined as follows:

L01 Holy See, the United States of America and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control,

L02 Andorra and Gibraltar,

L03 Ceuta, Melilla, Iceland, Norway, Switzerland, Liechtenstein, Andorra, Gibraltar, Holy See (often referred to as Vatican City), Turkey, Romania, Bulgaria, Croatia, Canada, Australia, New Zealand and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control,

L04 Albania, Bosnia and Herzegovina, Serbia and Montenegro and the former Yugoslav Republic of Macedonia.

'970' includes the exports referred to in Articles 36(1)(a) and (c) and 44(1)(a) and (b) of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999, p. 11) and exports under contracts with armed forces stationed on the territory of a Member State which do not come under its flag.

COMMISSION REGULATION (EC) No 1950/2004**of 11 November 2004****fixing the maximum export refund for butter in the framework of the standing invitation to tender provided for in Regulation (EC) No 581/2004**

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 the third subparagraph of Article 31(3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 581/2004 of 26 March 2004 opening a standing invitation to tender for export refunds concerning certain types of butter⁽²⁾ provides for a permanent tender.
- (2) Pursuant to Article 5 of Commission Regulation (EC) No 580/2004 of 26 March 2004 establishing a tender procedure concerning export refunds for certain milk products⁽³⁾ and following an examination of the

tenders submitted in response to the invitation to tender, it is appropriate to fix a maximum export refund for the tendering period ending on 10 November 2004.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the permanent tender opened by Regulation (EC) No 581/2004, for the tendering period ending on 10 November 2004, the maximum amount of refund for the products referred to in Article 1(1) of that Regulation shall be as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 12 November 2004.

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

Done at Brussels, 11 November 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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

⁽²⁾ OJ L 90, 27.3.2004, p. 64.

⁽³⁾ OJ L 90, 27.3.2004, p. 58.

ANNEX

(EUR/100 kg)

Product	Export refund Code	Maximum amount of export refund	
		For export to the destination referred to in the first indent of Article 1(1) of Regulation (EC) No 581/2004	For export to the destinations referred to in the second indent of Article 1(1) of Regulation (EC) No 581/2004
Butter	ex 0405 10 19 9500	—	—
Butter	ex 0405 10 19 9700	—	139,00
Butteroil	ex 0405 90 10 9000	160,00	170,00

COMMISSION REGULATION (EC) No 1951/2004**of 11 November 2004****fixing the maximum export refund for skimmed milk powder in the framework of the standing invitation to tender provided for in Regulation (EC) No 582/2004**

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 the third subparagraph of Article 31(3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 582/2004 of 26 March 2004 opening a standing invitation to tender for export refunds for skimmed milk powder⁽²⁾ provides for a permanent tender.
- (2) Pursuant to Article 5 of Commission Regulation (EC) No 580/2004 of 26 March 2004 establishing a tender procedure concerning export refunds for certain milk products⁽³⁾ and following an examination of the tenders submitted in response to the invitation to

tender, it is appropriate to fix a maximum export refund for the tendering period ending on 10 November 2004.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the permanent tender opened by Regulation (EC) No 582/2004, for the tendering period ending on 10 November 2004, the maximum amount of refund for the product and destinations referred to in Article 1(1) of that Regulation shall be 31,00 EUR/100 kg.

Article 2

This Regulation shall enter into force on 12 November 2004.

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

Done at Brussels, 11 November 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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

⁽²⁾ OJ L 90, 27.3.2004, p. 67.

⁽³⁾ OJ L 90, 27.3.2004, p. 58.

COMMISSION REGULATION (EC) No 1952/2004**of 11 November 2004****fixing the maximum export refund on barley in connection with the invitation to tender issued in
Regulation (EC) No 1757/2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the refund for the export of barley to certain third countries was opened pursuant to Commission Regulation (EC) No 1757/2004 ⁽²⁾.

(2) In accordance with Article 7 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, the Commission may, on the basis of the tenders notified, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95.

In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund.

(3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed.

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified on 5 to 11 November 2004, pursuant to the invitation to tender issued in Regulation (EC) No 1757/2004, the maximum refund on exportation of barley shall be 18,99 EUR/t.

Article 2

This Regulation shall enter into force on 12 November 2004.

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

Done at Brussels, 11 November 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78.

⁽²⁾ OJ L 313, 12.10.2004, p. 10.

⁽³⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

COMMISSION REGULATION (EC) No 1953/2004**of 11 November 2004****concerning tenders notified in response to the invitation to tender for the export of oats issued in Regulation (EC) No 1565/2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 5 to 11 November 2004 in response to the invitation to tender for the refund for the export of oats issued in Regulation (EC) No 1565/2004.

Article 2

This Regulation shall enter into force on 12 November 2004.

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

Done at Brussels, 11 November 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78.

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

⁽³⁾ OJ L 285, 4.9.2004, p. 3.

COMMISSION REGULATION (EC) No 1954/2004**of 11 November 2004****concerning tenders notified in response to the invitation to tender for the import of sorghum
issued in Regulation (EC) No 238/2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003, on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 12(1) thereof,

Whereas:

- (1) An invitation to tender for the maximum reduction in the duty on sorghum imported into Spain was opened pursuant to Commission Regulation (EC) No 238/2004 ⁽²⁾.
- (2) Article 5 of Commission Regulation (EC) No 1839/95 ⁽³⁾, allows the Commission to decide, in accordance with the procedure laid down in Article 25 of Regulation (EC) No 1784/2003 and on the basis of the tenders notified to make no award.

- (3) On the basis of the criteria laid down in Articles 6 and 7 of Regulation (EC) No 1839/95 a maximum reduction in the duty should not be fixed.

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 5 to 11 November 2004 in response to the invitation to tender for the reduction in the duty on imported sorghum issued in Regulation (EC) No 238/2004.

Article 2

This Regulation shall enter into force on 12 November 2004.

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

Done at Brussels, 11 November 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78.

⁽²⁾ OJ L 40, 12.2.2004, p. 23.

⁽³⁾ OJ L 177, 28.7.1995, p. 4. Regulation as last amended by Regulation (EC) No 2235/2000 (OJ L 256, 10.10.2000, p. 13).

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 2 November 2004

authorising Austria to apply a measure derogating from Article 21 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2004/758/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of VAT: uniform basis of assessment ⁽¹⁾ and in particular Article 27(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

requested measures are to be considered as measures to prevent certain types of tax evasion or avoidance in the above sectors.

(3) Where goods are supplied as collateral by one VAT taxable person to the recipient of security in execution of the security, this usually reflects a situation where the guarantor supplying the goods has a limited capacity to settle his debts, including his tax debts. When the collateral taker who received the goods exercises his rights and sells the collateral to a third party, this sale also generates a supply from the guarantor to the collateral taker. In such scenarios VAT losses occurred in many cases because the collateral taker could not be refused his right to deduct and the supplying guarantor could not be held responsible because he was insolvent or had disappeared. The dimension of the problems encountered by the Austrian administration requires legal measures. A similar derogation has already been granted to Germany by Decision 2002/439/EC ⁽²⁾.

(1) In a request submitted to the Commission and registered by the Commission's Secretariat-General on 3 March 2004, the Austrian Government sought authorisation to introduce three measures derogating from Article 21(1)(a) of Directive 77/388/EEC.

(2) The purpose of the derogation requested by Austria is to make the recipient liable for the VAT due in three specific cases: Firstly on the supply of goods provided as security by one VAT taxable person to another person in execution of that security, secondly on the supply of goods following the cession of the reservation of ownership to an assignee and the exercising of this right by the assignee and thirdly on the supply of immovable property by a judgment debtor in a compulsory sale procedure to another person. The

(4) In cases where a buyer of goods has a limited capacity to settle his debts for a purchase, the supplier of the goods will reserve the ownership and may cede the right to exercise this reservation as well as the purchase price claim to a third party, usually a bank, as a security for a loan granted by the bank to the buyer. If the buyer of the goods discontinues settling his debts for the loan, the bank will exercise its right of ownership; this involves a supply of the goods from the original buyer to the bank. In such a case the bank would usually not pay the original buyer the turnover tax due on the supply to it, but use it to settle the original buyer's debt for the loan, with the consequence of VAT losses for the fiscal authorities because the original buyers are usually insolvent or have disappeared before the tax administration can identify them and recover VAT. Therefore this scenario is similar to the execution of a security described above.

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

⁽²⁾ OJ L 151, 11.6.2002, p. 12.

- (5) VAT losses also occurred in cases of taxable supplies of immovable property sold by the judgment debtor in a compulsory sale procedure to another person. This is particularly relevant for such cases where the supplier had opted for tax liability although at the time of supply he was not in a financial position to pay the tax authorities the tax which he has invoiced to the purchaser. The buyer could usually exercise his right to deduct and the supplier did not pay VAT to the fiscal authorities. The dimension of the problem encountered by the Austrian administration requires legal measures. Immovable property is a high value good; thus also the taxable amount and the losses in terms of VAT — even on one single transaction — are particularly high. The value of the immovable property usually contains hidden VAT and the maintaining of the option is necessary to keep the VAT system neutral. Against this background, it appears that the envisaged liability of the recipient for VAT is the most appropriate solution in the specific circumstances and for the particularly high risk involved. The requested derogation avoids the loss of VAT because there is no VAT paid from the fiscal authorities to one of the economic operators involved. The solution also avoids a double tax responsibility of supplier and recipient, which would involve a higher economic risk for the recipient and burdensome recovery procedures for the fiscal authorities which could only address the recipient, when recovery from the supplier proved to be impossible. It avoids the fiscal responsibility of a third person like the notary, which would result in higher charges for supplier and recipient. Similar derogations have already been granted to Germany by Decisions 2002/439/EC and 2004/290/EC⁽¹⁾.
- (6) The derogation in question does not affect the amount of VAT due at the final consumption stage and has no adverse impact on the Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 21(1)(a) of Directive 77/388/EEC, as amended by Article 28(g) thereof, the Republic of Austria is hereby authorised to designate the recipient of the supplies of goods referred to in Article 2 of this Decision as the person liable to pay VAT.

Article 2

In the following instances the recipient of the supply may be designated as the person liable to pay VAT:

1. the supply of goods provided as security by one VAT taxable person to another person in execution of that security;
2. the supply of goods following the cession of the reservation of ownership to an assignee and the exercising of this right by the assignee;
3. the supply of immovable property sold by the judgment debtor in a compulsory sale procedure to another person.

Article 3

This Decision shall expire on 31 December 2008.

Article 4

This Decision is addressed to the Republic of Austria.

Done at Brussels, 2 November 2004.

For the Council

The President

B. R. BOT

⁽¹⁾ OJ L 94, 31.3.2004, p. 59.

COUNCIL DECISION
of 2 November 2004
appointing a member of the Court of Auditors
(2004/759/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 247(1), (2) and (3) thereof,

Article 1

Mr Kikis KAZAMIAS is hereby appointed a member of the Court of Auditors for a period of six years with effect from the date of adoption of this Decision.

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 160b(3) thereof,

Article 2

This Decision shall take effect on the day of its adoption.

Having regard to the 2003 Act of Accession, and in particular Article 47 thereof,

Article 3

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

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas:

Done at Brussels, 2 November 2004.

Article 47 of the 2003 Act of Accession makes provision for the appointment of 10 additional members of the Court of Auditors for a term of office of six years. The Council has yet to appoint one of those additional members, to round off the appointment of nine members on 7 May 2004⁽²⁾,

For the Council

The President

B. R. BOT

⁽¹⁾ Opinion delivered on 28 October 2004 (not yet published in the Official Journal).

⁽²⁾ OJ L 187, 26.5.2004, p. 7.