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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 555/2005**of 17 February 2005**

on the conclusion of the Protocol defining for the period 1 January 2004 to 31 December 2006 the tuna fishing opportunities and the financial contribution provided for in the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar

THE COUNCIL OF THE EUROPEAN UNION,

(3) It is in the Community's interest to approve that Protocol.

Having regard to the Treaty establishing the European Community, and in particular Article 37 in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

(4) The method of allocating the fishing opportunities among the Member States should be defined on the basis of the traditional allocation of fishing opportunities under the Fisheries Agreement,

Having regard to the proposal from the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

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

The Protocol defining for the period 1 January 2004 to 31 December 2006 the tuna fishing opportunities and the financial contribution provided for in the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar is hereby approved on behalf of the Community.

Whereas:

The text of the Protocol is attached to this Regulation.

(1) Under the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar⁽²⁾, the two parties conducted negotiations to determine the amendments or additions to be made to the Agreement at the end of the period of application of the Protocol thereto.

Article 2

The fishing opportunities provided for in the Protocol shall be allocated among the Member States as follows:

(2) As a result of those negotiations, a new Protocol defining for the period 1 January 2004 to 31 December 2006 the fishing opportunities and the financial contribution provided for in that Agreement was initialled on 8 September 2003.

(a) tuna seiners:

Spain: 22 vessels

France: 16 vessels

Italy: 2 vessels

⁽¹⁾ Opinion of the European Parliament of 15 September 2004 (not yet published in the Official Journal).

⁽²⁾ OJ L 73, 18.3.1986, p. 26.

(b) surface longliners:

Spain: 24 vessels

France: 10 vessels

Portugal: 6 vessels

If licence applications from these Member States do not cover all the fishing opportunities laid down by the Protocol, the Commission may take into consideration licence applications from any other Member State.

Article 3

Member States whose vessels fish under this Protocol are obliged to notify the Commission of the quantities of each stock taken in the Malagasy fishing zone in accordance with the arrangements laid down in Commission Regulation (EC)

No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas ⁽¹⁾.

Article 4

The President of the Council is hereby authorised to designate the persons empowered to sign the Protocol in order to bind the Community.

Article 5

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

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

Done at Brussels, 17 February 2005.

For the Council

The President

J.-C. JUNCKER

⁽¹⁾ OJ L 73, 15.3.2001, p. 8.

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

concerning the provisional application of the Protocol defining for the period 1 January 2004 to 31 December 2006 the Tuna fishing opportunities and the financial contribution provided for in the agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar

A. Letter from the Government of Madagascar

Sir,

With reference to the Protocol initialled on 8 September 2003 in Antananarivo defining the tuna fishing opportunities and the financial contribution for the period 1 January 2004 to 31 December 2006, I have the honour to inform you that the Government of the Republic of Madagascar is prepared to apply this Protocol on a provisional basis with effect from 1 January 2004, pending its entry into force in accordance with Article 7 of the said Protocol, provided the Community is prepared to do likewise.

It is understood that, this being the case, the financial compensation provided for in Article 2 of the Protocol is to be paid before 30 September 2004.

I should be obliged if you would confirm the Community's agreement to such provisional application.

Please accept, Sir, the assurance of my highest consideration.

For the Government of the Republic of Madagascar

B. Letter from the Community

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

'With reference to the Protocol initialled on 8 September 2003 in Antananarivo defining the tuna fishing opportunities and the financial contribution for the period 1 January 2004 to 31 December 2006, I have the honour to inform you that the Government of the Republic of Madagascar is prepared to apply this Protocol on a provisional basis with effect from 1 January 2004, pending its entry into force in accordance with Article 7 of the said Protocol, provided the Community is prepared to do likewise.

It is understood that, this being the case, the financial compensation provided for in Article 2 of the Protocol is to be paid before 30 September 2004.

I should be obliged if you would confirm the Community's agreement to such provisional application.'

I have the honour to confirm the Community's agreement to such provisional application.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the Council of the European Union

PROTOCOL

defining for the period 1 January 2004 to 31 December 2006 the Tuna fishing opportunities and the financial contribution provided for in the agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar

Article 1

1. Under Article 2 of the Agreement, licences authorising fishing in the Malagasy fishing zone shall be granted to 40 freezer tuna seiners and 40 surface longliners for a period of three years beginning on 1 January 2004.

In addition, at the request of the Community, certain permits may be granted to other categories of fishing vessel under conditions to be defined within the Joint Committee referred to in Article 9 of the Agreement.

2. Vessels flying the flag of a Member State of the European Community may fish for tuna in Madagascar's fishing zone only if they are in possession of a fishing licence issued under this Protocol in accordance with the arrangements described in the Annex.

Article 2

1. The financial contribution referred to in Article 7 of the Agreement shall be fixed at EUR 825 000 per year, comprising EUR 320 000 in financial compensation, to be paid not later than 30 September for the first year and 30 April for the second and third years, and EUR 505 000 for the measures referred to in Article 3 of this Protocol.

However, the financial compensation to be paid for the first year of application of the Protocol (1 January 2004 to 31 December 2004) shall be EUR 196 385 following deduction of the amount already paid under the preceding Protocol in respect of the period 1 January 2004 to 20 May 2004.

2. The financial contribution shall cover an annual catch of 11 000 tonnes of tuna in Malagasy waters; if the tuna caught by Community vessels in the Malagasy fishing zone exceeds this weight, the amount referred to above shall be proportionately increased. However, the total amount of the financial contribution paid by the Community shall not be more than twice the amount indicated in paragraph 1.

3. The financial compensation shall be paid into an account opened with the Public Treasury, to be specified by the Malagasy authorities.

Article 3

1. In order to guarantee the development of sustainable, responsible fisheries, the two parties shall in their mutual interest encourage a partnership aimed at promoting in

particular: enhanced knowledge of fisheries resources and biological resources, fisheries inspection, development of non-industrial fishing, fishing communities and training.

2. From the financial contribution provided for in Article 2(1), the measures set out below shall be funded to the tune of EUR 505 000 per year, broken down as follows:

(a) EUR 90 000 for Malagasy scientific programmes to improve knowledge of fisheries resources and ensure sustainable management thereof. At the request of the Government of Madagascar, this contribution may take the form of assistance with expenses associated with international meetings to improve such knowledge, as well as management of fisheries resources.

(b) EUR 267 000 towards a system of fisheries monitoring, inspection and surveillance.

(c) EUR 60 000 for the financing of study grants and training courses and for the training of seamen.

(d) EUR 68 000 for assistance with the development of traditional fisheries.

(e) EUR 20 000 towards the management of observers.

3. The amounts referred to in points (a), (b), (d) and (e) shall be paid to the Ministry responsible for fisheries after a detailed annual programme, including a schedule and the objectives set for each of these targeted measures, has been presented to the Commission and no later than 30 September 2004 for the first year and 30 April for the second and third years; they shall be paid into the bank accounts of the relevant Malagasy authorities. The annual programme must reach the Commission by 31 July 2004 for the first year and by 28 February for the following years. However, for the first year, the programme must cover only the period 21 May 2004 to 31 December 2004.

The Commission reserves the right to request the Ministry responsible for fisheries for any additional information which may be considered necessary.

4. The amounts referred to at (c) shall be disbursed to the Ministry responsible for fisheries and paid, as the funds are used, into the bank accounts indicated by it.

5. The relevant Malagasy authorities shall send the Commission an annual report on the use of the funds allocated to the measures provided for in paragraph 2, and on the implementation of those measures and the results achieved, not later than 31 March of the following year. The Commission reserves the right to request the Ministry responsible for fisheries for any additional information. In the light of the actual implementation of those measures and after consulting the relevant Malagasy authorities in the context of a meeting of the Joint Committee provided for in Article 9 of the Agreement, the Commission may review the payments concerned.

Article 4

Should the European Community fail to make the payments provided for in Articles 2 and 3, Madagascar may suspend application of this Protocol.

Article 5

If serious circumstances, with the exception of natural phenomena, prevent the exercise of fishing activities in Mada-

gascar's fishing zone, payment of the financial contribution may be suspended by the European Community following prior consultations between the two parties.

Payment of the financial contribution shall be resumed as soon as normality is restored and after consultations between the two parties confirm that the situation is likely to permit a return to fishing activities.

The validity of the licences granted to Community vessels under Article 4 of the Agreement shall be extended by a period equal to the period during which fishing activities were suspended.

Article 6

The Annex to the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar is hereby repealed and replaced by the Annex to this Protocol.

Article 7

This Protocol shall enter into force on the date of its signing.

It shall apply from 1 January 2004.

ANNEX

CONDITIONS GOVERNING TUNA-FISHING ACTIVITIES BY EUROPEAN COMMUNITY VESSELS IN THE MALAGASY FISHING ZONE**1. LICENCE APPLICATION AND ISSUING FORMALITIES**

The procedure for applying for and issuing licences authorising Community vessels to fish in Malagasy waters shall be as follows:

(a) Through its representative in Madagascar, the Commission shall present simultaneously to the Malagasy authorities:

- A licence application for each vessel, completed by owners wishing to fish under this Agreement, no later than 1 December preceding the year of validity of the licence.

By way of derogation from the above provision, vessel-owners who have not submitted a licence application prior to 1 December may do so during the calendar year under way no later than 30 days before the start of the fishing activities. In such cases, vessel owners shall pay the entire fees due for the full year in accordance with point 2(b).

- An annual application for prior authorisation to enter Malagasy territorial waters; such authorisation shall be valid for the duration of the licence.

Licence applications shall be made on the form provided by Madagascar for this purpose, in accordance with the specimen given in Appendix 1; they shall be accompanied by proof of payment of the advance chargeable to the vessel-owner.

(b) Licences shall be issued for a specific vessel and shall not be transferable.

However, at the request of the Commission and in cases of *force majeure*, a vessel's licence shall be replaced by a new licence for another vessel whose features are similar to those of the vessel to be replaced. The owner of the vessel being replaced shall return the cancelled licence to the Malagasy Ministry responsible for sea fisheries via the Commission Delegation in Madagascar.

The new licence shall indicate:

- the date of issue,
- the fact that it invalidates and replaces the licence of the previous vessel.

No fee as laid down in Article 5 of the Agreement shall be due for the unexpired period of validity.

(c) The Malagasy authorities shall send the licence to the Commission representative in Madagascar.

(d) Licences shall be kept on board at all times; however, on receipt of the advance payment notification sent by the Commission to the Malagasy authorities, vessels shall be entered on a list of vessels authorised to fish, which shall be sent to the Malagasy authorities responsible for fisheries inspection. A copy of the said licence may be obtained by fax pending arrival of the licence itself; that copy shall be kept on board.

(e) Owners of tuna vessels shall be represented by an agent in Madagascar.

(f) Before the Protocol enters into force, the Malagasy authorities shall send the Commission Delegation in Madagascar full details of the bank accounts to be used for the payment of fees and advances.

2. VALIDITY OF LICENCES AND PAYMENT OF FEES

- (a) Notwithstanding Article 4(4) of the Agreement, licences shall be valid for a period of one calendar year, from 1 January to 31 December. They shall be renewable. However, for the first year of application of the Protocol (1 January 2004 to 31 December 2004), where on 1 January 2004 a vessel has a licence issued under the preceding Protocol which is due to expire on 20 May 2004, that licence shall remain valid until that date.
- (b) The fee shall be EUR 25 per tonne caught in waters under Malagasy jurisdiction. Licences shall be issued in return for the advance payment to the Malagasy Treasury of an annual sum of EUR 2 800 per tuna seiner, EUR 1 750 per surface longliner of more than 150 GRT and EUR 1 200 per surface longliner of 150 GRT or less. These advances correspond to the duties payable in respect of annual catches of 112 tonnes, 70 tonnes and 48 tonnes respectively in the Malagasy fishing zone.

However, for the first year of application of the Protocol (1 January 2004 to 31 December 2004), where on 1 January 2004 a vessel has a licence issued under the preceding Protocol which is due to expire on 20 May 2004, the advances for the unexpired period of that first year (21 May 2004 to 31 December 2004) shall be as follows:

- for tuna seiners: EUR 1 720,
- for surface longliners of more than 150 GRT: EUR 1 091,
- for surface longliners of 150 GRT or less: EUR 735.

3. CATCH DECLARATION AND STATEMENT OF FEES

- (a) Vessels authorised to fish in Madagascar's fishing zone under this Agreement shall send information about their catches to Madagascar's Fisheries Surveillance Centre through the Commission Delegation in Madagascar, in accordance with the following procedure:

Tuna seiners and surface longliners shall complete a fishing form corresponding to the specimen given in Appendix 2 for each period spent fishing in Madagascar's fishing zone. The forms shall be sent to the relevant authorities referred to above no later than 31 March of the year following the year for which the licences were valid.

Forms must be completed legibly and be signed by the skipper of the vessel. In addition, they must be completed by all vessels which have obtained a licence, even if they have not fished.

- (b) The statement of the fees due for the past calendar year shall be drawn up by the Commission by 30 June of the year following the year for which the licences were valid, after deducting the advances and fees indicated in point 2(b) above. This statement of fees shall be drawn up using the catch statement based on the catch declarations made by each vessel-owner. The catch statement must be confirmed by the scientific institutes responsible for checking catch data in the Member States, such as the Institut de Recherche pour le Développement (IRD), the Institut Français de Recherche et d'Exploitation de la Mer (IFREMER), the Instituto Español de Oceanografía (IEO), the Instituto Português de Investigação Marítima (IPIMAR) and the relevant Malagasy institute, the Antsiranana Tuna Statistical Unit (USTA).

The statement of fees drawn up by the Commission shall be forwarded to Madagascar's Fisheries Surveillance Centre for confirmation. The Surveillance Centre shall have 30 days to notify any reaction.

After that time, the statement of fees shall be forwarded to the vessel-owners.

In the event of a dispute, the parties shall hold consultations within the Joint Committee provided for in Article 9 of the Agreement to establish the final statement of fees, which shall then be sent to the vessel-owners.

Vessel-owners shall make any additional payments to the Malagasy fisheries authorities within 30 days of notification of the final statement of fees.

Where the statement of fees is lower than the advance referred to in 2(b) above, the resulting balance shall not be reimbursed to the vessel-owner.

4. COMMUNICATIONS

Skippers shall notify Madagascar's Fisheries Surveillance Centre, at least three hours in advance, by radio (dual frequency 8 755 Tx 8 231 Rx USB), by fax (261) 202 24 90 14 or by e-mail (csp-mprh@dts.mg) with confirmation of their intention to bring their vessel into or take it out of Madagascar's fishing zone.

When giving notification of their intention to enter the fishing zone, they shall also report the estimated quantities of catches on board, even when no catches have been made.

Finally, when notifying their intention to leave, they shall report on the estimated catches taken during the time they spent in the Malagasy fishing zone.

Radio transmissions shall be made during the working hours and days applicable in Madagascar.

These requirements shall also apply to Community fishing vessels intending to unload at any Malagasy port.

5. OBSERVERS

At the request of the Ministry responsible for fisheries, tuna seiners and surface longliners shall take an observer on board, who shall be treated as an officer. The time spent on board by observers shall be fixed by the Ministry responsible for fisheries, but, as a general rule, it should not exceed the time required to carry out their duties. The observers' specific activities are set out in Appendix 3.

The conditions governing their embarkation shall be defined by the Ministry responsible for fisheries, represented by Madagascar's Fisheries Surveillance Centre.

Vessel-owners or their agents shall inform Madagascar's Fisheries Surveillance Centre at least two days in advance of their vessel's arrival in a Malagasy port with a view to taking the observer on board.

Vessel-owners shall, via their agents, make a payment of EUR 20 to the Malagasy Government (Madagascar's Fisheries Surveillance Centre) for each day spent by each observer on board a tuna seiner or surface longliner.

The cost of approaching the Malagasy port of embarkation shall be borne by the Malagasy Government. The cost of taking observers on board and putting them ashore outside Madagascar shall be borne by the vessel-owners. Observers may be taken on board up to 30 % of the Community vessels operating in Madagascar's fishing zone. The time spent by observers on board shall depend on the length of the trip in that zone. If a Community vessel fails to go to a Malagasy port to take an observer on board, embarkation shall be carried out using a patrol vessel of Madagascar's Fisheries Surveillance Centre.

The spot where the observer is to be transferred and the associated approach costs shall be agreed with Madagascar's Fisheries Surveillance Centre, the costs being borne by the vessel-owner.

Transfer of the observer on to another vessel at sea shall be agreed between the skipper of the vessel and the Madagascar Fisheries Surveillance Centre.

If the observer is not present at the time and place agreed and during the 12 hours following the time agreed, vessel-owners shall be automatically absolved of their obligation to take the observer on board. If the vessel is delayed in getting under way, the vessel-owner shall bear the observer's board and lodging costs until the time of actual embarkation.

6. SIGNING-ON OF SEAMEN

- (a) At least forty Malagasy seamen shall be employed by the fleet of tuna seiners and surface longliners for the duration of the fishing season in the Malagasy fishing zone. The wages of the seamen employed shall be agreed between the vessel-owners' agents and the seamen concerned. The wages must cover social security benefits.

The employment contracts of those seamen shall be concluded between the agents and the seamen concerned.

A detailed list of the Malagasy seamen signed on (with their names, period of employment, wages, etc.) shall reach the Ministry responsible for fisheries no later than 31 January of the year following that for which the licence was valid.

If the fleet of tuna seiners and surface longliners is unable to employ a total of forty seamen, vessel-owners who have not signed on seamen shall be obliged to pay compensation for the seamen not employed; the amount of the compensation, which shall be payable for the duration of the fishing season in the Malagasy fishing zone, shall be set by the Joint Committee provided for in Article 9 of the Agreement. That sum shall be used to train Malagasy fishermen and shall be paid into an account whose number shall be notified to the agents, with a copy being sent to the Commission Delegation in Madagascar.

- (b) The ILO Declaration on Fundamental Principles and Rights at Work shall apply as of right to seamen signed on by Community vessels. This concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation.

Local seamen's employment contracts, a copy of which shall be given to the signatories, shall be drawn up between the vessel-owners' representative(s) and the seamen and/or their trade unions or their representatives in consultation with the responsible local authorities. These contracts shall guarantee the seamen the social security cover applicable to them, including life assurance and sickness and accident insurance. The wage conditions granted to local seamen/fishermen shall not be lower than those applied to Malagasy crews and shall under no circumstances be below ILO standards.

Where the employer is a local company, the employment contract shall specify the name of the vessel-owner and the name of the flag State.

Furthermore, vessel-owners shall guarantee local seamen who are recruited living and working conditions similar to those enjoyed by Community seamen.

7. FISHING ZONES

Community vessels shall have access to all waters under Madagascar's jurisdiction beyond 12 nautical miles from the coastline.

Should the Ministry responsible for fisheries decide to install experimental fish concentration devices, it shall inform the Commission and the agents of the vessel-owners concerned, indicating the geographical position of the devices.

From the 30th day after such notification, it shall be forbidden to go within 1.5 nautical miles of those devices. The dismantling of any experimental devices must be reported to the same parties immediately.

8. INSPECTION AND SURVEILLANCE OF FISHING ACTIVITIES

Vessels holding a licence shall allow on board any officials duly authorised by the Republic of Madagascar to inspect and monitor fishing activities and shall assist them in the accomplishment of their duties.

9. SATELLITE MONITORING

Since the Republic of Madagascar has introduced a Vessel Monitoring System (VMS) for its own fleet and intends to extend this system on a non-discriminatory basis to all vessels fishing in its fisheries zone, and Community vessels have been subject to satellite monitoring wherever they operate under Community legislation since 1 January 2000, it is recommended that the national authorities of the flag States and of the Republic of Madagascar should monitor by satellite as follows vessels fishing under the Agreement:

1. For the purposes of satellite monitoring, the Malagasy authorities have communicated to the Community the coordinates (latitudes and longitudes) of Madagascar's fishing zone (Table I). The map relating to the table of coordinates is attached in Appendix 4.

The Malagasy authorities shall transmit this information in electronic form, expressed in decimal degrees, to the WGS-84 datum system.

2. The parties shall exchange information on X.25 addresses and the specifications for electronic communications between their control centres in accordance with the conditions laid down in points 4 and 6. Such information shall include the following wherever possible: names, telephone, telex and fax numbers, and e-mail addresses (Internet or X.400) which may be used for general communications between control centres.
3. The position of vessels shall be determined with a margin of error of less than 500 metres and a confidence interval of 99 %.
4. When a vessel which is fishing under the Agreement and is the subject of satellite-based monitoring pursuant to Community legislation enters a fishing zone of the Republic of Madagascar, the subsequent position reports shall immediately be transmitted by the control centre of the flag State to Madagascar's Fisheries Surveillance Centre at intervals of no more than one hour (longitude, latitude, course and speed). The messages concerned shall be identified as position reports.
5. The messages specified in point 4 shall be transmitted electronically in X.25 format, without any further protocol. They shall be communicated in real time in the format set out in Table II.
6. Where the continuous satellite-monitoring equipment installed on board a fishing vessel develops a technical fault or breaks down, the skipper of the vessel shall transmit the information specified in point 4 to the control centre of the flag State in good time. In such circumstances, a global position report shall be sent at 6.00, 12.00 and 18.00 (Madagascar time) while the vessel is in the Malagasy fishing zone. This global position report shall include the position reports as registered by the skipper of the vessel on an hourly basis in accordance with the requirements laid down in point 4.

The control centre of the flag State or the fishing vessel shall send these messages immediately to the Fisheries Surveillance Centre. The defective equipment shall be repaired or replaced as soon as the vessel completes its fishing trip or within one month at the latest. After this deadline, the vessel in question may not undertake any further fishing trips until the equipment has been repaired or replaced.

7. The control centres of the flag States shall monitor the movements of their vessels in Malagasy waters at two-hourly intervals. If the vessels are not being monitored in accordance with the conditions laid down, the Fisheries Surveillance Centre shall be informed immediately and the procedure laid down in point 6 shall be applicable.
8. If the Fisheries Surveillance Centre establishes that the flag State is not transmitting the information specified in point 4, the other party shall be informed immediately.
9. The surveillance data communicated to the other party in accordance with these provisions is intended solely for the purposes of the Malagasy authorities in controlling and monitoring the Community fleet fishing under the EC/Madagascar Fisheries Agreement. Such data may not under any circumstances be communicated to other parties.

10. The parties agree to take all necessary steps to meet the message requirements laid down in points 4 and 6 as soon as possible, and in no case later than six months after these provisions enter into force.
11. The parties agree to exchange upon request information on the equipment used for satellite monitoring, in order to ensure that each piece of equipment is fully compatible with the requirements of the other party for the purposes of these provisions.
12. Any dispute over the interpretation or application of these provisions shall be the subject of consultation between the parties within the Joint Committee provided for in Article 9 of the Agreement.

Table I

Coordinates (latitudes and longitudes) of the Madagascar fishing zone

(see also map in Appendix 4)

Ref	Coordinates in decimal degrees		Coordinates in degrees and minutes	
	X	Y	X	Y
A	49,40	-10,3	49°24' E	10°18' S
B	51	-11,8	51°0' E	11°48' S
C	53,3	-12,7	53°18' E	12°42' S
D	52,2	-16,3	52°12' E	16°18' S
E	52,8	-18,8	52°48' E	18°48' S
F	52	-20,4	52°0' E	20°24' S
G	51,8	-21,9	51°48' E	21°54' S
H	50,4	-26,2	50°24' E	26°12' S
I	48,3	-28,2	48°18' E	28°12' S
J	45,4	-28,7	45°24' E	28°42' S
K	41,9	-27,8	41°54' E	27°48' S
L	40,6	-26	40°36' E	26°0' S
M	41,8	-24,3	41°48' E	24°18' S
N	41,6	-20,8	41°36' E	20°48' S
O	41,4	-19,3	41°24' E	19°18' S
P	43,2	-17,8	43°12' E	17°48' S
Q	43,4	-16,9	43°24' E	16°54' S
R	42,55	-15,6	42°33' E	15°36' S
S	43,15	-14,35	43°9' E	14°21' S
T	45	-14,5	45°0' E	14°30' S
U	46,8	-13,4	46°48' E	13°24' S
V	48,4	-11,2	48°24' E	11°12' S

Table II

Communication of VMS messages to Madagascar**Position report**

Data element	Code	Mandatory/ optional	Remarks
Start record	SR	M	System detail — indicates start of record
Recipient	AD	M	Message detail — recipient. Alpha 3 ISO country code
From	FR	M	Message detail — sender. Alpha 3 ISO country code
Flag State	FS	O	
Type of message	TM	M	Message detail — Message type 'POS'
Radio call sign	RC	M	Vessel detail — international radio call sign of vessel
Contracting party internal reference number	IR	O	Vessel detail. Unique contracting party number as flag State ISO-3 code followed by number)
External registration number	XR	O	Vessel detail; number marked on side of vessel
Latitude	LA	M	Vessel position detail — position in degrees and minutes N/S DDMM (WGS-84)
Longitude	LO	M	Vessel position detail — position in degrees and minutes E/W DDDMM (WGS-84)
Course	CO	M	Vessel course 360° scale
Speed	SP	M	Vessel speed in tenths of knots
Date	DA	M	Vessel position detail — date of record of UTC position (YYYYMMDD)
Time	TI	M	Vessel position detail — time of record of UTC position (HHMM)
End record	ER	M	System detail — indicates end of record

Character set: ISO 8859.1

Each data transmission is structured as follows:

— a double slash (//) and field code indicate the start of the message,

— a single slash (/) separates the field code and the data.

Optional data elements have to be inserted between the start and end of the record.

10. TRANSSHIPMENT

When fish are transhipped, freezer tuna seiners shall hand over the fish which they do not intend to keep to a company or body appointed by the Malagasy fisheries authorities.

11. SUPPLY OF SERVICES

Community vessel-owners operating in the Malagasy fishing zone shall practise positive discrimination in favour of Malagasy services (careening, handling, fuel-oil bunkering, consignment, etc.).

The Madagascar authorities shall define the terms for the use of port facilities together with the beneficiaries of the Agreement.

12. PENALTIES

Any breach of this Protocol or of Malagasy fisheries legislation shall be penalised in accordance with the Malagasy laws and regulations in force.

The Commission shall be informed in writing within 48 hours at the latest of any penalty imposed on any Community vessel, and of all the relevant facts concerning the case.

13. BOARDING OF VESSELS

1. Transmission of information

The Malagasy Ministry responsible for fisheries shall inform the Commission Delegation and the flag State in writing, within 48 hours, of the boarding of any Community fishing vessel operating under the Agreement in Madagascar's fishing zone and shall transmit a brief report of the circumstances and reasons leading to such boarding. The Commission Delegation and the flag State shall also be kept informed of any proceedings initiated and penalties imposed.

2. Settlement of boarding

In accordance with the law on fisheries and the relevant regulations, infringements may be settled:

- (a) either through a compromise procedure, in which case the amount of the fine shall be determined in accordance with Malagasy legislation laying down minimum and maximum figures;
- (b) or by legal proceedings, if no compromise settlement was possible, in accordance with Malagasy law.

3) The vessel shall be released and its crew authorised to leave the port:

- (a) either as soon as the obligations imposed by the compromise procedure have been completed on presentation of the receipt for the settlement, or
- (b) on presentation of proof that a bank security has been lodged, pending completion of the legal proceedings.

14. ENVIRONMENTAL PROTECTION

In the interests of the environment, the two parties undertake to introduce the following measures:

- no vessel may spill oil or derivatives thereof into the Malagasy fishing zone, or throw plastic materials or household waste into that zone,
- responsible fisheries, rational management and the preservation of tuna stocks shall be promoted within the IOTC,
- protected and prohibited species, such as whales, dolphins, turtles and sea birds, may not be caught.

The European Community shall be entrusted with the task of notifying the Ministry responsible for fisheries of any environmentally-unfriendly act committed by any vessel fishing in the Malagasy fishing zone.

Appendix 1

APPLICATION FORM FOR A FISHING LICENCE

1. New application or renewal:
2. Name of vessel and flag:
3. Period of validity: from to
4. Name of vessel-owner:
5. Address and fax number of vessel-owner:
.....
.....
6. Name and address of charterer (if different from 4 and 5):
7. Name and address of official representative in Madagascar:
.....
8. Name of skipper of vessel:
9. Type of vessel:
10. Registration number:
11. External identification of vessel:
12. Port and country of registration:
13. Overall length and breadth of vessel:
14. Gross and net tonnage of vessel:
15. Make and power of main engine:
16. Freezing capacity (t/d):.....
17. Hold capacity (m³):
18. Radio call sign and frequency:
19. Other communications equipment (telex, fax):
20. Fishing gear:
.....
21. Crew numbers, broken down by nationality:
.....
22. Fishing licence No (in the event of a renewal, attach licence):
.....

I, the undersigned,, certify that the above information is correct and undertake to comply therewith.

.....
(Stamp and signature of vessel-owner)

.....
(Date)

*Appendix 3***EMBARKATION OF OBSERVERS**

Tuna seiners and surface longliners authorised to fish in the Malagasy fishing zone shall take on board an observer from the Fisheries Surveillance Centre holding a professional identity card and a seaman's licence. The time spent on board by observers shall be fixed by Madagascar's Fisheries Surveillance Centre, but, as a general rule, it should not exceed the time required to carry out their duties.

While on board, observers shall:

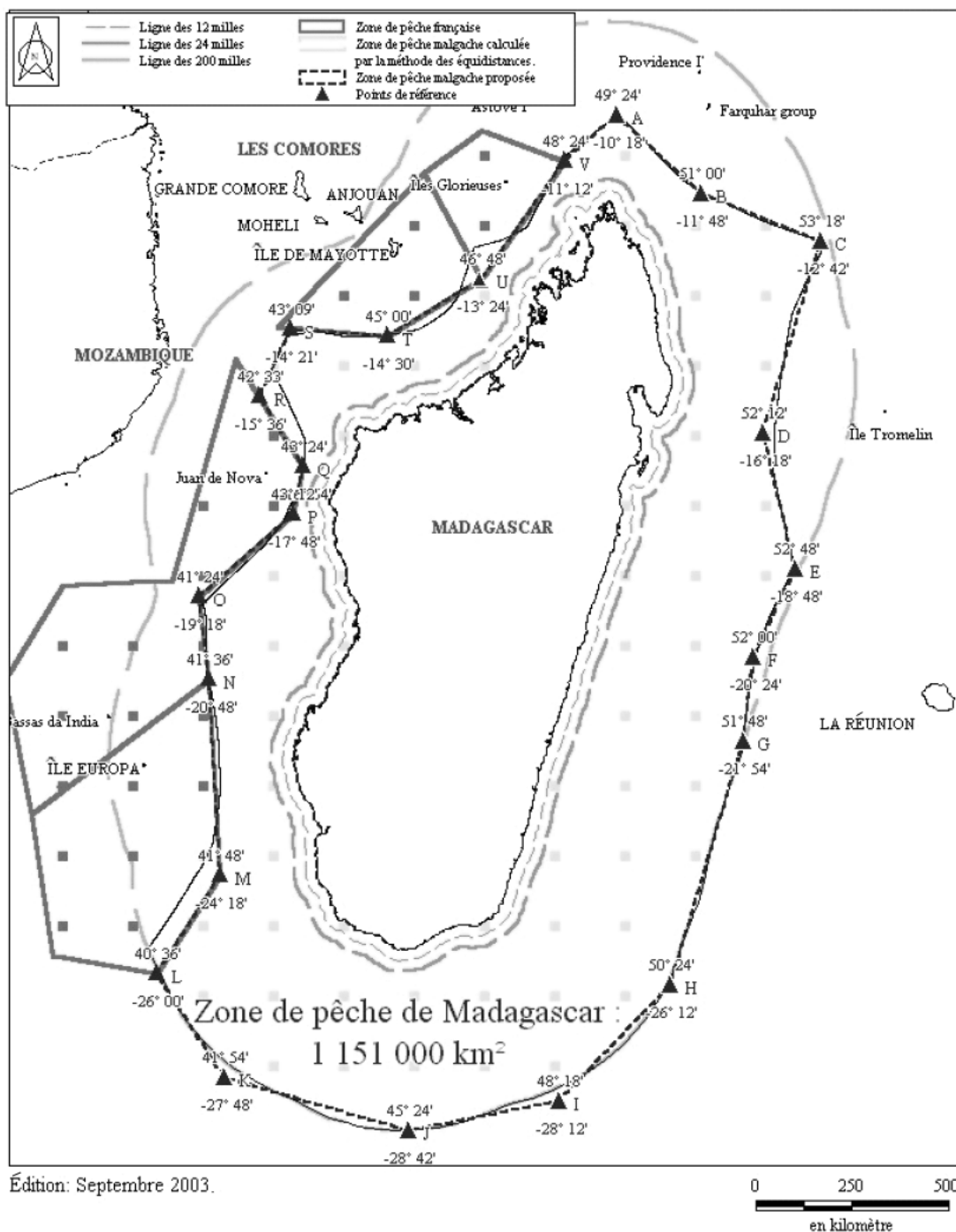
1. observe, record and report on the fishing activities of vessels in the Malagasy fishing zone;
2. verify the position of vessels engaged in fishing operations;
3. perform biological sampling in the context of scientific programmes;
4. note the fishing gear used;
5. collect the catch data for the fishing zone during their time on board;
6. take all appropriate steps to ensure that the conditions under which they are taken on board and their presence on board do not interrupt or hamper fishing activities;
7. respect the material and equipment on board and the confidentiality of any document belonging to the said vessel;
8. draw up a report on the trip and send it to Madagascar's Fisheries Surveillance Centre, and send a copy to the European Commission Delegation.

To that end, the owners and skippers of fishing vessels must:

1. allow observers to board the vessel to carry out their tasks and remain on board the vessel during the period specified in the request;
 2. provide a suitable working environment, including a table with adequate lighting;
 3. supply the information they possess on fishing activities in Madagascar's fishing zone;
 4. give the vessel's position (longitude and latitude);
 5. send or receive messages, or allow messages to be sent and received, using the means of communication on board the vessel;
 6. provide access to all parts of the vessel where fishing, processing and storage take place;
 7. allow samples to be taken;
 8. provide suitable storage facilities for samples, without prejudice to the vessel's storage capacity;
 9. provide assistance in examining and measuring the fishing gear on board the vessel;
 10. allow observers to remove the samples and documents obtained during their stay on board;
 11. where observers remain on board the vessel for more than four hours at a time, provide them with food and accommodation on the same terms as the vessel's officers.
-

Appendix 4

ZONE DE PÊCHE DE MADAGASCAR

Échelle: 1 / 14 000 000^e.

Zone de pêche de Madagascar:

- À l'ouest: Calage de la zone de pêche de Madagascar sur la zone de pêche française.
- Au sud et au sud-est: Calage sur la ligne des 200 milles calculée à partir du trait de côte.
- Au nord et à l'est: Calage sur la zone de pêche calculée par la méthode des équidistances.
- Simplification de la délimitation à partir de points de référence.

COMMISSION REGULATION (EC) No 556/2005**of 12 April 2005****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 13 April 2005.

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

Done at Brussels, 12 April 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽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 12 April 2005 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	84,4
	096	105,7
	204	55,5
	212	146,4
	624	104,9
	999	99,4
0707 00 05	052	135,5
	204	51,5
	999	93,5
0709 10 00	220	79,0
	999	79,0
0709 90 70	052	109,7
	096	75,1
	204	81,3
	999	88,7
0805 10 20	052	55,0
	204	47,9
	212	56,6
	220	48,9
	624	61,6
	999	54,0
0805 50 10	052	67,1
	220	71,1
	400	67,7
	624	70,3
	999	69,1
0808 10 80	388	86,4
	400	130,3
	404	81,4
	508	65,2
	512	73,5
	524	72,7
	528	72,3
	720	83,9
	804	107,7
	999	85,9
0808 20 50	388	84,5
	512	75,6
	528	61,7
	999	73,9

⁽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 557/2005**of 11 April 2005****prohibiting fishing for Northern prawns by vessels flying the flag of a Member State other than Estonia, Latvia, Lithuania or Poland**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy⁽¹⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 27/2005 of 22 December 2004 fixing for 2005 the fishing opportunities and associated fishing conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required, lays down quotas for Northern prawns for 2005⁽²⁾.
- (2) In order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated.
- (3) According to the information sent to the Commission, catches of Northern prawns in the waters of the NAFO

area 3L by vessels flying the flag of a Member State or registered in a Member State other than Estonia, Latvia, Lithuania or Poland have reached the quota for 2005. The Community has prohibited fishing for this stock from 24 February 2005. This date should be adopted in this Regulation also,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of Northern prawns in the waters of NAFO area 3L by vessels flying the flag of a Member State or registered in a Member State other than Estonia, Latvia, Lithuania or Poland are deemed to have exhausted the quota for 2005.

Fishing for Northern prawns in the waters of NAFO area 3L by vessels flying the flag of a Member State or registered in a Member State other than Estonia, Latvia, Lithuania or Poland is hereby prohibited, as are the retention on board, transhipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

Article 2

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

It shall apply from 24 February 2005.

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

Done at Brussels, 11 April 2005.

For the Commission

Jörgen HOLMQUIST

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 261, 20.10.1993, p. 1. Regulation last amended by Regulation (EC) No 1954/2003 (OJ L 289, 7.11.2003, p. 1).

⁽²⁾ OJ L 12, 14.1.2005, p. 1.

COMMISSION REGULATION (EC) No 558/2005**of 12 April 2005****amending Regulations (EEC) No 3846/87 establishing an agricultural product nomenclature for export refunds and (EC) No 174/1999 laying down special detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licences and export refunds in the case of 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 markets in milk and milk products⁽¹⁾, and in particular Article 31(14) thereof,

Whereas:

(1) Commission Regulation (EEC) No 3846/87⁽²⁾, on the basis of the Combined Nomenclature, establishes an agricultural product nomenclature for export refunds.

(2) The refund nomenclature provides for cheeses to be eligible for an export refund if they meet minimum requirements as regards milk dry matter and milk fat. A type of cheese produced in some new Member States may meet those necessary requirements but may not benefit from a refund since it is not covered by the present classification system of the export refund nomenclature. Given the importance of that cheese for the dairy industry, trade and milk producers involved, it is appropriate to add a product code under an 'other cheeses' position enabling that cheese to be classified under the export refund nomenclature.

(3) The quantities for which export licences are requested in the product category 'cheeses' are continually exceeding the profile of the export limits imposed on the Community in the framework of the Agreement on Agriculture following the Uruguay Round of Multilateral Trade Negotiations. The additional export licences which will be applied for under the newly created position will further increase the pressure on the category.

(4) Article 3 of Commission Regulation (EC) No 174/1999⁽³⁾ provides that no refund shall be granted on exports of cheese where the free-at-frontier price prior to application of the refund in the Member State of export is less than EUR 230 per 100 kilograms. Cheese falling within code 0406 90 33 9919 of the nomenclature for refunds is exempt from this provision. It is appropriate in these circumstances and given the high level of demand for export licences for cheeses to apply this provision to all cheeses without exception.

(5) Footnote 10 of Sector 9 of Annex I of Regulation (EEC) No 3846/87, applicable to grated, powdered and processed cheeses, states that added non-lactic matter will not be taken into account for the purpose of calculating the refund. It is appropriate to extend this provision to all cheeses and to better describe the non-lactic matter concerned. It may not be possible for the exporter and even more difficult for the competent authorities to determine the weight of these matters. It is therefore appropriate to reduce the refund by a standard amount.

(6) The refund is granted on the net weight of the cheeses. Some confusion may exist in cases where cheeses are contained in an envelope of paraffin, ash or wax or wrapped in a film of plastic. It is appropriate to provide that such packing are not a part of the net weight of the product for the purpose of calculating the refund. It may not be possible for the exporter and for the competent authorities, as regards the plastic film, the paraffin and the ash, to determine the weight of such materials. It is therefore suitable to reduce the refund by a standard amount.

(7) Regulations (EEC) No 3846/87 and (EC) No 174/1999 should be amended accordingly.

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

⁽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 366, 24.12.1987, p. 1. Regulation as last amended by Regulation (EC) No 2199/2004 (OJ L 380, 24.12.2004, p. 1).

⁽³⁾ OJ L 20, 27.1.1999, p. 8. Regulation as last amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EEC) No 3846/87 is amended in accordance with the Annex to this Regulation.

Article 2

In Article 3 of Regulation (EC) No 174/1999 the fourth paragraph is deleted.

Article 3

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

It shall apply on export licences applied for from 27 May 2005.

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

Done at Brussels, 12 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

ANNEX

Sector 9 of Annex I to Regulation (EEC) No 3846/87 is amended as follows:

1. The description of the CN code 'ex 0406' is replaced by the following: 'Cheese and curd ⁽⁷⁾ ⁽¹⁰⁾:'
2. The description of the CN code 'ex 0406 20' is replaced by the following: '— Grated or powdered cheese, of all kinds:'
3. The description of the CN code 'ex 0406 30' is replaced by the following: '— Processed cheese, not grated or powdered:'
4. The information relating to CN code 'ex 0406 90 88' is replaced by the following:

CN code	Description of goods	Additional requirements for using the product code		Product code
		Maximum water content in product weight (%)	Minimum fat content in the dry matter (%)	
'ex 0406 90 88'	----- Exceeding 62 % but not exceeding 72 %:			
	----- cheeses produced from whey			0406 90 88 9100
	----- Other:			
	----- Of a fat content, by weight, in the dry matter:			
	----- Of 10 % or more but less than 19 %	60	10	0406 90 88 9300
	----- Of 40 % or more:			
	----- Akawi	55	40	0406 90 88 9500'

5. Footnote 7 is replaced by the following text:

⁽⁷⁾ (a) In the case of cheeses presented in immediate packing which also contain preserving liquid, in particular brine, the refund is granted on the net weight, less the weight of the liquid.

(b) The film of plastic, the paraffin, the ash and the wax used as a packing are not considered as a part of the net weight of the product for the purpose of the refund.

(c) Where the cheese is presented in a film of plastic, and where the net weight declared includes the weight of the film in plastic, the refund amount shall be reduced by 0,5 %.

When completing customs formalities, the applicant shall state that the cheese is packed in a film of plastic and whether the declared net weight includes the weight of the film in plastic.

(d) Where the cheese is presented in paraffin or ash, and where the net weight declared includes the weight of the paraffin or the ash, the refund amount shall be reduced by 2 %.

When completing customs formalities, the applicant shall state that the cheese is packed in paraffin or in ash, and whether the declared net weight includes the weight of the ash or the paraffin.

(e) Where the cheese is presented in wax, when completing customs formalities, the applicant must state on the declaration the net weight of the cheese not incorporating the weight of the wax.'

6. Footnote 10 is replaced by the following:

- ⁽¹⁰⁾ (a) Where the product contains non-lactic ingredients, other than spices or herbs, such as in particular ham, nuts, shrimps, salmon, olives, raisins, the refund amount shall be reduced by 10 %.

When completing customs formalities, the applicant shall state on the declaration provided for that purpose that there is addition of such non-lactic ingredients.

- (b) Where the product contains herbs or spices, such as in particular mustard, basil, garlic, oregano, the refund amount shall be reduced by 1 %.

When completing customs formalities, the applicant shall state on the declaration provided for that purpose that there is addition of herbs or spices.

- (c) Where the product contains casein and/or caseinates and/or whey and/or products derived from whey and/or lactose and/or permeate and/or products covered by CN code 3504, the added casein and/or caseinates and/or whey and/or products derived from whey (excluding whey butter covered by CN code 0405 10 50) and/or lactose and/or permeate and/or products covered by CN code 3504 will not be taken into account for the purpose of calculating the refund.

When completing customs formalities, the applicant shall state on the declaration provided for that purpose whether or not casein and/or caseinates and/or whey and/or products derived from whey and/or lactose and/or permeate and/or products covered by CN code 3504 have been added and, where this is the case, the maximum content by weight of casein and/or caseinates and/or whey and/or products derived from whey (specifying where applicable the whey butter content) and/or lactose and/or permeate and/or products covered by CN code 3504 added per 100 kilograms of finished product.

- (d) The products referred to may contain quantities of added non-lactic matter required for their manufacture or preservation, such as salt, rennet or mould.'
-

COMMISSION REGULATION (EC) No 559/2005

of 12 April 2005

on initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 2074/2004 on imports of certain ring binder mechanisms originating in the People's Republic of China by imports of certain ring binder mechanisms consigned from Lao People's Democratic Republic, whether declared as originating in Lao People's Democratic Republic or not and making such imports subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

C. EXISTING MEASURES

Having regard to the Treaty establishing the European Community,

- (5) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Council Regulation (EC) No 2074/2004 ⁽²⁾ as extended to imports of the same product consigned from Vietnam ⁽³⁾.

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 Articles 13(3), 14(3) and 14(5) thereof,

D. GROUNDS

After having consulted the Advisory Committee,

- (6) The request contains sufficient *prima facie* evidence, that the anti-dumping measures on imports of the product concerned originating in the People's Republic of China are being circumvented by means of transshipment via Lao People's Democratic Republic and/or by assembly in Lao People's Democratic Republic of the product under investigation. The evidence submitted is as follows:

Whereas:

A. REQUEST

- (1) The Commission has received a request pursuant to Article 13(3) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of certain ring binder mechanisms originating in the People's Republic of China.
- (2) The request has been lodged on 28 February 2005 by Ring Alliance Ringbuchtechnik GmbH on behalf of producers representing more than 70 % of the Community production of certain ring binder mechanisms.

— The request shows a significant change in the pattern of trade, as imports of the product under investigation have increased substantially, whereas imports of the product concerned originating in the People's Republic of China have decreased following the imposition of measures, and that there is insufficient due cause or justification other than the imposition of the duty for such a change.

B. PRODUCT

- (3) The product concerned by the possible circumvention is certain ring binder mechanisms normally declared under CN code ex 8305 10 00 originating in the People's Republic of China (PRC). This CN code is given only for information.
- (4) The product under investigation is certain ring binder mechanisms consigned from Lao People's Democratic Republic (product under investigation) normally declared under the same codes as the product concerned originating in the People's Republic of China.

— This change in the pattern of trade appears to stem from a transshipment of certain ring binder mechanisms originating in the People's Republic of China via Lao People's Democratic Republic and/or the assembly of certain ring binder mechanisms in Lao People's Democratic Republic.

— Furthermore, the request contains sufficient *prima facie* evidence that the remedial effects of the existing anti-dumping measures on imports of the product concerned originating in the People's Republic of China are being undermined in terms of quantity and prices. Significant volumes of imports of certain ring binder mechanisms from Lao People's Democratic Republic appear to have replaced imports of the product concerned originating in the People's Republic of China.

⁽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 359, 4.12.2004, p. 11.

⁽³⁾ Council Regulation (EC) No 1208/2004 (OJ L 232, 1.7.2004, p. 1).

- Finally, the request contains sufficient *prima facie* evidence that the prices of the product under investigation are dumped in relation to the normal value previously established for certain ring binder mechanisms originating in the People's Republic of China.
- Should circumvention practices via Lao People's Democratic Republic covered by Article 13 of the basic Regulation, other than transshipment and assembly, be identified in the course of the investigation, the investigation may cover these practices also.

E. PROCEDURE

- (7) In light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13 of the basic Regulation and to make imports of certain ring binder mechanisms consigned from Lao People's Democratic Republic, whether declared as originating in Lao People's Democratic Republic or not, subject to registration, in accordance with Article 14(5) of the Basic Regulation.

(a) Questionnaires

- (8) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the exporters/producers and to the associations of exporters/producers in Lao People's Democratic Republic, to the exporters/producers and to the associations of exporters/producers in the People's Republic of China, to the importers and to the associations of importers in the Community which cooperated in the investigation that lead to the existing measures or which are listed in the request and to the authorities of the People's Republic of China and Lao People's Democratic Republic. Information, as appropriate, may also be sought from the Community industry.
- (9) In any event all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 in order to find out whether they are listed in the request and, if necessary, request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.
- (10) The authorities of the People's Republic of China and Lao People's Democratic Republic will be notified of the initiation of the investigation and provided with a copy of the request.

(b) Collection of information and holding of hearings

- (11) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) Exemption of registration of imports or measures

- (12) Since the possible circumvention takes place outside the Community, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers of the product concerned that can show that they are not related to any producer subject to the measures and that are found not to be engaged in circumvention practices as defined in Articles 13(1) and 13(2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

F. REGISTRATION

- (13) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied retroactively from the date of registration of such imports consigned from Lao People's Democratic Republic.

G. TIME LIMITS

- (14) In the interest of sound administration, time limits should be stated within which:
- interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,
 - producers in Lao People's Democratic Republic may request exemption from registration of imports or measures,
 - interested parties may make a written request to be heard by the Commission.

- (15) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits mentioned in Article 3 of this Regulation.

H. NON-COOPERATION

- (16) In cases in which any interested party refuses access to or otherwise does not provide necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.
- (17) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of facts available. If any interested party does not cooperate or cooperates only partially, and findings are therefore based on facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to the party than if it had cooperated,

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3) of Regulation (EC) No 384/96, in order to determine if imports into the Community of certain ring binder mechanisms, falling within CN code ex 8305 10 00 (TARIC code 8305 10 00 13 and 8305 10 00 23), consigned from Lao People's Democratic Republic, whether declared as originating in Lao People's Democratic Republic or not, are circumventing the measures imposed by Regulation (EC) No 2074/2004.

For the purpose of this Regulation, ring binder mechanisms shall consist of two rectangular steel sheets or wires with at least four half rings made of steel wire fixed on it and which are kept together by a steel cover. They can be opened either by pulling the half rings or with a small steel-made trigger mechanism fixed to the ring binder mechanism.

Article 2

The Customs authorities are hereby directed, pursuant to Articles 13(3) and 14(5) of Regulation (EC) No 384/96, to take the appropriate steps to register the imports into the Community identified in Article 1 of this Regulation.

Registration shall expire nine months following the date of entry into force of this Regulation.

The Commission, by regulation, may direct Customs authorities to cease registration in respect of imports into the Community of products manufactured by producers having applied for an exemption of registration and having been found not to be circumventing the anti-dumping duties.

Article 3

1. Questionnaires should be requested from the Commission within 15 days from publication of this Regulation in the *Official Journal of the European Union*.

2. If their representations are to be taken into account during the investigation, interested parties must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 40 days from the date of the publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

3. Producers in Lao People's Democratic Republic requesting exemption from registration of imports or measures should submit a request duly supported by evidence within the same 40-day time limit.

4. Interested parties may also apply to be heard by the Commission within the same 40-day time limit.

5. Any information relating to the matter, any request for a hearing or for a questionnaire as well as any request for exemption must be made in writing (not in electronic format, unless otherwise specified), must indicate the name, address, e-mail address, telephone, fax and/or telex numbers of the interested party. All written submission, including the information requested in this Regulation, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ⁽¹⁾ and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties' and should be sent to the following address:

European Commission
Directorate-General for Trade
Directorate B
J-79 5/16
B-1049 Brussels
Fax (32-2) 295 65 05.

Article 4

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

⁽¹⁾ This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of Regulation (EC) No 384/96 (OJ L 56, 6.3.1996, p. 1) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

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

Done at Brussels, 12 April 2005.

For the Commission
Peter MANDELSON
Member of the Commission

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 1 April 2005

laying down detailed rules on the monitoring of the reuse/recovery and reuse/recycling targets set out in Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles

(notified under document number C(2004) 2849)

(Text with EEA relevance)

(2005/293/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles ⁽¹⁾, and in particular the third subparagraph of Article 7(2) thereof,

Whereas:

(1) Under Directive 2000/53/EC the Commission is required to establish detailed rules necessary to control compliance of Member States with the targets set out in the first subparagraph of Article 7(2) of that Directive. It is sufficient that the Member States show that at least the required targets are met.

(2) It is necessary to harmonise the characteristics and presentation of the calculation of the targets set out in the first subparagraph of Article 7(2), in order to make the data produced by Member States comparable.

(3) The highest accuracy of the targets can only be achieved if the denominator for the calculation of the targets is based on the number of end-of-life vehicles entering a treatment system of a Member State.

(4) Balancing the risks of inaccuracies and the administrative efforts of achieving precise information, Member States are allowed to use a metal content assumption for the determination of the amount of metals from end-of-life vehicles which will be recovered.

(5) Readily available vehicle data in a standardised form should be used for the determination of the individual vehicle weight.

(6) Fuel removed during dismantling shall not be taken into account for the calculation of the targets, since reliable information about the amount of fuel in end-of-life vehicles is not available in all Member States. An EU average amount of fuel should be used for the purpose of monitoring compliance with the targets, in order to harmonise, as much as possible, the calculation methods and ensure the comparability of the national targets achieved in the Member States.

(7) As a consequence of the internal market, Member States may export the end-of-life vehicles generated on their territory to other countries for further treatment. In order to minimise allocation problems and to avoid extensive monitoring and calculation efforts, the recycling and recovery rates from exported vehicle parts will be credited to the exporting Member State.

(8) Shredder campaigns are necessary to determine the output streams of a shredder related to end-of-life vehicles.

⁽¹⁾ OJ L 269, 21.10.2000, p. 34. Directive as last amended by Commission Decision 2005/63/EC (OJ L 25, 28.1.2005, p. 73).

- (9) The Commission shall continue to monitor the calculation of the targets, including the mass relevance of the exports and its influence on the recycling and recovery rates. To this end, Member States should also report data prior to the year 2006. This data will be used for monitoring purposes only.
- (10) This Decision applies without prejudice to Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics ⁽¹⁾.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 18 of Council Directive 75/442/EEC ⁽²⁾,

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall calculate the reuse/recovery and reuse/recycling targets set out in the first subparagraph of Article 7(2) of Directive 2000/53/EC on the basis of the reused, recycled and recovered materials from de-pollution, dismantling and (post)-shredding operations. Member States shall ensure that for materials entering further treatment, the actually achieved recovery is taken into account.

To that end, Member States shall complete tables 1 to 4 set out in the Annex to this Decision together with an appropriate description of the data used.

2. When completing tables 1 to 4 of the Annex to this Decision, Member States may also use a data-based assumption concerning the average percentage of reused, recycled and recovered metals of end-of-life vehicles, hereinafter the 'metal content assumption'. That assumption shall be supported by detailed data explaining the assumed percentage of metal content, as well as the assumed percentage of metal reuse, recovery and recycling. This data should be valid in respect of at least 95 % of the end-of-life vehicles arising in the Member State in question.

3. In the data, Member States shall include a breakdown of the following:

- (a) the current national vehicle market;
- (b) the end-of-life vehicles on their territory; and

- (c) the vehicle materials and components included in this assumption, in order to avoid double counting.

Article 2

1. In the case of end-of-life vehicles, or materials or parts thereof, for which a certificate of destruction has been issued by a national authorised treatment facility, and which have been exported to other Member States or third countries for further treatment, that treatment shall be attributed to the exporting Member State, for the purpose of calculating the targets, if there is sound evidence that the recycling and/or recovery took place under conditions that are broadly equivalent to those prescribed by the Community legislation on the matter.

End-of-life vehicles for which another Member State or a third country has issued a certificate of destruction and which are imported for recovery and/or recycling into a Member State, shall not be counted as recovered or recycled in the importing Member State.

2. In the case of exports to third countries, the Member States shall determine whether additional documentation is necessary to provide evidence that the exported materials are actually recycled or recovered.

Article 3

1. The tables set out in the Annex shall be completed by the Member States on an annual basis, starting with data for 2006 and shall be sent to the Commission within 18 months of the end of the relevant year.

2. For the years prior to 2006, Member States shall report the available data to the Commission within 12 months of the end of the relevant year. The data related to the years prior to 2006 will be used for monitoring purposes only.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 1 April 2005.

For the Commission

Stavros DIMAS

Member of the Commission

⁽¹⁾ OJ L 332, 9.12.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 574/2004 (OJ L 90, 27.3.2004, p. 15).

⁽²⁾ OJ L 194, 25.7.1975, p. 39. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

ANNEX

Table 1: Materials from de-pollution and dismantling (in tonnes per year) of end-of-life vehicles arising in the Member State and treated within the Member State

Materials from de-pollution and dismantling (**)	Reuse (A)	Recycling (B1)	Energy recovery (C1)	Total recovery (D1 = B1 + C1)	Disposal E1
Batteries					
Liquids (excluding fuel)					
Oil filters					
Other materials arising from de-pollution (excluding fuel)					
Catalysts					
Metal components					
Tyres					
Large plastic parts					
Glass					
Other materials arising from dismantling					
Total					

Table 2: Materials from shredding (in tonnes per year) of end-of-life vehicles arising in the Member State and treated within the Member State

Materials from shredding (**)	Recycling (B2)	Energy recovery (C2)	Total recovery (D2 = B2 + C2)	Disposal E2
Ferrous scrap (steel)				
Non-ferrous materials (aluminium, copper, zinc, lead, etc.)				
Shredder Light Fraction (SLF)				
Other				
Total				

Table 3: Monitoring of (parts of) end-of-life vehicles arising in the Member State and exported for further treatment (in tonnes per year)

Total weight of end-of-life vehicles which are exported per country (**)	Total recycling of (part of) end-of-life vehicles exported (F1)	Total recovery of (part of) end-of-life vehicles exported (F2)	Total disposal of (part of) end-of-life vehicles exported (F3)

Table 4: Total reuse, recovery and recycling (in tonnes per year) of end-of-life vehicles arising in the Member State and treated within or outside the Member State

Reuse (A)	Total recycling (B1 + B2 + F1)	Total recovery (D1 + D2 + F2)	Total reuse and recycling (X1 = A + B1 + B2 + F1)	Total reuse and recovery (X2 = A + D1 + D2 + F2)
W (total number of end-of-life vehicles) = ...			%	%
W1 (total vehicle weight) = ...			X1/W1	X2/W1

Notes:

1. The grey parts of table 1 should only be completed on a voluntary basis.
2. Member States using the metal content assumption are obliged to use this in the parts of table 2 related to metals.
3. (*): Where possible, the LoW codes (list of waste codes) from the Annex to Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste⁽¹⁾ should be used.
4. Member States not using the metal content assumption shall calculate reuse (A) on the basis of the following subtraction method: the individual vehicle weight (Wi) minus weight of the de-polluted and dismantled end-of-life vehicle (body shell) (Wb) minus the weight of the de-polluted and dismantled materials sent for recovery, recycling or final disposal. Member States using the metal content assumption shall determine A (excluding the metal components) on the basis of declarations from the authorised treatment facilities.

The weight of the achieved recycling/recovery/disposal shall be determined on the basis of declarations from the receiving recycling/recovery or collection company, weighing notes, other forms of bookkeeping or disposal notes.

The individual vehicle weight (Wi) shall be calculated (i) from the weight of the vehicle in service mentioned in the registration documents⁽²⁾, or (ii) the weight of the vehicle in running order mentioned in the certificate of conformity, described in Annex IX to Council Directive 70/156/EEC⁽³⁾ as amended or, (iii) in the case these data are not available, the weight determined by manufacturers' specifications. In all cases, the individual vehicle weight shall not include the weight of the driver, which is set at 75 kg and the weight of the fuel, which is set at 40 kg.

The weight of the de-polluted and dismantled end-of-life vehicle (body shell) (Wb) shall be determined on the basis of information from the receiving treatment facility.
5. The total vehicle weight (W1) shall be calculated as the sum of the individual vehicle weights (Wi).

The total number of end-of-life vehicles (W) shall be calculated on the basis of the number of end-of-life vehicles arising in the Member State, which is when a national authorised treatment facility issues a certificate of destruction.
6. The output of end-of-life vehicle streams of a shredder shall be calculated on the basis of shredding campaigns in combination with the input of end-of-life vehicles to a shredder. The input of end-of-life vehicles to a shredder shall be calculated on the basis of weighing notes, receipts or other forms of bookkeeping. Member States shall report to the Commission on the number of shredder campaigns performed on their territory. The actual recycling/recovery of the calculated output (other than metals) must of be accounted for on the basis of declarations from the receiving recycling/recovery or collection company, weighing notes, other forms of bookkeeping or disposal notes.

⁽¹⁾ OJ L 226, 6.9.2000, p. 3.

⁽²⁾ From 1 June 2004, date of the entry into force of Council Directive 1999/37/EC on the registration documents for vehicles (OJ L 138, 1.6.1999, p. 57), the weight of the vehicle in service shall be recorded under item G.

⁽³⁾ OJ L 42, 23.2.1970, p. 1.

COMMISSION DECISION

of 5 April 2005

concerning a request for derogation under point 2(b) of Annex III to and Article 9 of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

*(notified under document number C(2005) 1032)***(Only the Danish text is authentic)**

(2005/294/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources⁽¹⁾, and in particular point 2(b) of Annex III thereof,

Whereas:

(1) The amount of manure that a Member state intends to apply per hectare each year, which is different from the one specified in point 2 of Annex III and point (a) of Annex III of Directive 91/676/EEC, must be fixed so as not to prejudice the achievement of the objectives specified in Article 1 of that Directive and must be justified on the basis of objective criteria, such as, in the present case, long growing seasons and crops with high nitrogen uptake.

(2) On 18 November 2002, the Commission adopted Decision 2002/915/EC⁽²⁾ concerning a request for derogation under point 2(b) of Annex III to and Article 9 of Directive 91/676/EEC. The derogation was applicable within the framework of the Danish action programme adopted for the year 1999 to 2003 and valid until 1 August 2004. It allowed the application of livestock manure containing up to 230 kg of nitrogen per hectare per year on specific cattle holdings.

(3) On 8 January 2004, Denmark requested an extension of the derogation. This request was completed by technical documents dated 2 February 2004, 2 April 2004, 23 April 2004, 14 June 2004, 2 August 2004, 14 September 2004 and 4 October 2004.

(4) Danish legislation transposing Directive 91/676/EEC can be considered to be in compliance with Directive and its provisions apply equally to the notified derogation.

(5) In December 2003 Denmark completed the evaluation of its second Action Plan on the Aquatic Environment which indicated the achievement of the reduction target for nitrate leaching of 48 % in the period 1985 to 2003.

(6) The Danish Parliamentary agreement on the third Danish Action Plan on the Aquatic Environment 2005 to 2015 set the objectives for a further reduction of nitrate leaching by 13 % in the period 2005 to 2015 and for a reduction of the phosphate surplus by 50 %.

(7) In conformity with Article 5 of Directive 91/676/EEC, Denmark has set action programmes that will ensure compliance with the objective of a maximum of 50 mg/l of nitrates in groundwater as set out in that Directive.

(8) Results of monitoring and controls show that, in period 2002 to 2003, 1 845 cattle holdings, 213 617 livestock units and 123 068 hectares, corresponding respectively to 4 %, 11 % and 5 % of the total in Denmark, were encompassed by the derogation, set in Decision 2002/915/EC.

(9) Calculations on nitrate leaching based on survey and nutrient analysis in agricultural catchments, in reference sites on sandy and clay soils, show that, in the period 1990 to 2003, nitrate leaching has been reduced by 42 % in loamy soils and by 52 % in sandy soils. This reduction is confirmed for 2002/2003.

(10) Trend analysis of measured nitrate concentration in water leaving the root zones shows that it has decreased steadily and is now approaching 50 mg/l, with a yearly decrease of 3,1 and 6,1 mg/l respectively for loamy and sandy soils. Nitrate concentration in streams in agricultural catchments decreased by 29 % in the period 1990 to 2003. In 2003, nitrate average concentration in upper groundwater was below 50 mg/l, both in sandy and loamy soils.

⁽¹⁾ OJ L 375, 31.12.1991, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 319, 23.11.2002, p. 24.

- (11) The Commission, after examination of Denmark's request and, more in particular, in the light of the experience gained from the derogation as provided in Decision 2002/915/EC, considers that the amount of manure envisaged by Denmark, 230 kg of nitrogen per hectare per year, will not prejudice the achievement of the objectives of Directive 91/676/EEC, if certain strict conditions are met.
- (12) This Decision is applicable in connection with the framework of the Danish action programme adopted for the years 2004 to 2007.
- (13) Decision 2002/915/EC expired on 1 August 2004. In view of the experience gained under that Decision and for the purpose of ensuring that the cattle farmers concerned may continue to benefit from derogation, it is appropriate that the present Decision shall apply from 2 August 2004.
- (14) The measures provided for in this Decision are in accordance with the opinion of the Nitrates Committee set up pursuant to Article 9 of Directive 91/676/EEC,

HAS ADOPTED THIS DECISION:

Article 1

Denmark's request submitted by letter of 8 January 2004 asking the Commission to allow derogation under point 2(b) of Annex III to Directive 91/676/EEC is approved, subject to the conditions laid down hereunder.

Article 2

Definitions

For the purpose of this decision, the following definitions shall apply:

- (a) 'Cattle farms' means holdings with more than three livestock units, where at least two-thirds of livestock are cattle,
- (b) 'grass' means permanent or temporary grassland (generally temporary lies less than four years),
- (c) 'crops being undersown by grass': silage cereals, silage maize and/or spring barley, to be undersown before (maize) or after harvest, by grass which will act as a catch crop, for biological retention of nitrogen residual during winter,
- (d) 'beets' means forage beets.

Article 3

Scope

This derogation applies on an individual basis and under the conditions prescribed in Articles 4 to 6 to cattle farms where

the crop rotation includes more than 70 % of particularly nitrogen consuming crops, with a long growing season.

Article 4

Annual authorisation and commitment

1. Cattle farmers shall submit an application for derogation to the competent authorities annually.
2. Together with that annual application, they shall undertake in writing to fulfil the conditions provided for in Articles 5 and 6.

Article 5

Application of manure and other fertilisers

The amount of livestock manure applied to the land each year on cattle farms, including by the animals themselves, shall not exceed the amount of manure containing 230 kg of nitrogen, under the following conditions:

- (a) the total nitrogen inputs must comply with the nutrient demand of the considered crop and the supply from the soil, the fertilisation rate being fixed 10 % under optimal economic level;
- (b) a fertilisation plan and account must be kept for each farm. A plan describing the crop rotation and covering the period 1 August to 31 March the following year must be available to the authorities by 1 September at the latest. By 21 April such plans covering the whole of the period must be completed with information on expected application of manure and nitrogen fertilisers and must be available to the authorities. Crop rotation plans must specify grass, grass catch crops or beet and other crops being undersown by grass. Fertilisation plans must include the estimated need for nitrogen and phosphorous application, and nitrogen application shall be fixed 10 % below the economic optimum. It also must specify the nature of fertiliser to be used (e.g. livestock manure, waste products, chemical fertiliser) and contain a sketch map indicating location of individual fields. Plans must be revised no later than seven days following any changes in agricultural practices to ensure consistency between plans and actual agricultural practices. A fertilisation account must be annually submitted to the competent authority. These regulations must be encompassed in statutory orders;
- (c) each cattle farm must submit, together with its annual application, the fertilisation account and accept that they can be subject to random control;

- (d) periodic nitrogen and phosphorous analysis in soil will be done by each cattle farmer who is granted derogation for accurate fertilisation (at least every three years per 5 ha of land);
- (e) no manure will be spread in the autumn before a grass cultivation, and the ploughing will be followed by a high nitrogen demanding crop.

Article 6

Land cover

1. 70 % or more of the acreage available for manure application on the cattle holding in question shall be cultivated with grass, grass catch crops or beets and other crops being undersown by grass with low nitrate leaching potential.
2. Grass catch crops shall not be ploughed before 1 March in order to ensure permanent vegetal cover of arable area for recovering subsoil autumn losses of nitrates and limit winter losses.
3. Temporary grasslands shall be ploughed in spring.
4. Crop rotation shall not include leguminous or other plants fixing atmospheric nitrogen. This will however not apply to clover in grassland with less than 50 % clover and to barley/pea undersown with grass.

Article 7

Monitoring

1. Two maps, showing the percentage of cattle farms and percentage of agricultural land encompassed by the derogation in each municipality of Denmark, shall be updated every year, and transmitted to the Commission. The first submission will take place in the last quarter of 2005.
2. Survey and continuous nutrient analysis shall be carried out in the agricultural catchment national monitoring programme covering approximately 4 500 ha. The reference sites shall be chosen on sandy and clay soils.
3. Survey and continuous nutrient analysis shall provide data on local land use, crop rotations and practices on cattle farms. These data can be used for model-based calculations of the magnitude of nitrate leaching from fields where up to 230 kg

of nitrogen per hectare per year in livestock manure is applied based on scientific principles.

4. In order to prove that the derogation will not jeopardise the objective of the national action programme and the Directive, a network of sampling of soil water, streams and of shallow groundwater established as agricultural catchment monitoring sites under the national monitoring programme shall be maintained to provide data on state of nitrate content in water leaving the root zone and entering the groundwater system.

Article 8

Reporting

1. The results of the monitoring shall be transmitted every year to the Commission, with a concise report on evaluation practice (controls at cattle farm level) and water quality evolution (based on root zone leaching monitoring, surface/-ground water quality and model-based calculations). Based on initial assessment, first results shall be transmitted by October 2005, a second report by October 2006 and a third report by June 2008.

2. The results thus obtained will be taken into consideration by the Commission with regard to an eventual new request for derogation by the Danish authorities, to be assessed in the framework of the procedure of Article 9 of Directive 91/676/EEC.

Article 9

Validity

This derogation shall apply from 2 August 2004. It shall expire on 31 July 2008.

Article 10

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 5 April 2005.

For the Commission

Stavros DIMAS

Member of the Commission

STATEMENT BY THE COMMISSION**concerning Article 2 of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights**

(2005/295/EC)

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights⁽¹⁾ states in Article 2(1) that the Directive applies to any infringement of intellectual property rights as provided for by Community law and/or by the national law of the Member State concerned.

The Commission considers that at least the following intellectual property rights are covered by the scope of the Directive:

- copyright,
- rights related to copyright,
- *sui generis* right of a database maker,
- rights of the creator of the topographies of a semiconductor product,
- trademark rights,
- design rights,
- patent rights, including rights derived from supplementary protection certificates,
- geographical indications,
- utility model rights,
- plant variety rights,
- trade names, in so far as these are protected as exclusive property rights in the national law concerned.

⁽¹⁾ OJ L 157, 30.4.2004, p. 45. Directive as corrected and republished in OJ L 195, 2.6.2004, p. 16.

(Acts adopted under Title V of the Treaty on European Union)

COUNCIL DECISION 2005/296/CFSP, JHA
of 24 January 2005
concerning the conclusion of the Agreement between the European Union and the former Yugoslav Republic of Macedonia on the security procedures for the exchange of classified information

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Article 1

Having regard to the Treaty on European Union, and in particular Articles 24 and 38 thereof,

The Agreement between the European Union and the former Yugoslav Republic of Macedonia on the security procedures for the exchange of classified information is hereby approved on behalf of the European Union.

Having regard to the recommendation from the Presidency,

The text of the Agreement is attached to this Decision.

Whereas:

Article 2

(1) At its meeting on 27 and 28 November 2003, the Council decided to authorise the Presidency, assisted by the Secretary-General/High Representative (SG/HR), to open negotiations in accordance with Articles 24 and 38 of the Treaty on European Union with certain third states, in order for the European Union to conclude with each of them an Agreement on the security procedures for the exchange of classified information.

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the European Union.

Article 3

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

Article 4

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

(2) Following this authorisation to open negotiations, the Presidency, assisted by the SG/HR, negotiated an Agreement with the former Yugoslav Republic of Macedonia on the security procedures for the exchange of classified information.

Done at Brussels, 24 January 2005.

(3) The Agreement should be approved,

For the Council
The President
F. BODEN

AGREEMENT**between the former Yugoslav Republic of Macedonia and the European Union on the security procedures for the exchange of classified information**

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA,

represented by its Government,

of the one part,

and

THE EUROPEAN UNION, hereinafter referred to as 'the EU',

represented by the Presidency of the Council of the European Union,

of the other part,

Hereinafter referred to as 'the Parties',

MINDFUL OF the shared commitment to the stabilisation and association process that will remain the framework for the European course of the former Yugoslav Republic of Macedonia all the way to its future accession to the EU;

CONSIDERING THAT the Parties share the objectives to strengthen their own security in all ways and to provide their citizens with a high level of safety within an area of security;

CONSIDERING THAT the Parties agree that consultations and cooperation should be developed between them on questions of common interest relating to security;

CONSIDERING THAT, in this context, a permanent need therefore exists to exchange classified information between the Parties;

RECOGNISING THAT full and effective consultation and cooperation may require access to either Party, classified information and material, as well as the exchange of classified information and related material between the Parties;

CONSCIOUS THAT such access to and exchange of classified information and related material requires appropriate security measures;

HAVE AGREED AS FOLLOWS:

Article 1

In order to fulfil the objectives of strengthening the security of each of the Parties in all ways, this Agreement shall apply to classified information or material in any form either provided or exchanged between the Parties.

Article 2

For the purposes of this Agreement, classified information shall mean any information (namely, knowledge that can be communicated in any form) or material determined to require

protection against unauthorised disclosure and which has been so designated by a security classification (hereinafter referred to as classified information).

Article 3

For the purposes of this Agreement, 'EU' shall mean the Council of the European Union (hereinafter referred to as the Council), the Secretary-General/High Representative and the General Secretariat of the Council, and the Commission of the European Communities (hereinafter referred to as the European Commission).

Article 4

Each Party shall:

- (a) protect and safeguard classified information subject to this Agreement provided or exchanged by the other Party;
- (b) ensure that classified information subject to this Agreement provided or exchanged keeps the security classification given to it by the providing Party. The receiving Party shall protect and safeguard the classified information according to the provisions set out in its own security regulations for information or material holding an equivalent security classification, as specified in the security arrangements to be established pursuant to Articles 11 and 12;
- (c) not use such classified information subject to this Agreement for purposes other than those established by the originator and those for which the information is provided or exchanged;
- (d) not disclose such classified information subject to this Agreement to third parties, or to any EU institution or entity not mentioned in Article 3, without the prior consent of the originator.

Article 5

1. Classified information may be disclosed or released, in accordance with the principle of originator control, by one Party, 'the providing Party', to the other Party, 'the receiving Party'.
2. For release to recipients other than the Parties to the present Agreement, a decision on disclosure or release of classified information shall be made by the receiving Party following the consent of the providing Party, in accordance with the principle of originator control as defined in its security regulations.
3. In implementing paragraphs 1 and 2, no generic release shall be possible unless procedures are established and agreed between the Parties regarding certain categories of information, relevant to their operational requirements.

Article 6

Each of the Parties, and entities thereof as defined in Article 3, shall have a security organisation and security programmes, based upon such basic principles and minimum standards of security which shall be implemented in the security systems of the Parties to be established pursuant to Articles 11 and 12, to ensure that an equivalent level of protection is applied to classified information subject to this Agreement.

Article 7

1. The Parties shall ensure that all persons who, in the conduct of their official duties require access, or whose duties or functions may afford access, to classified information provided or exchanged under this Agreement are appropriately security cleared before they are granted access to such information.
2. The security clearance procedures shall be designed to determine whether an individual can, taking into account his or her loyalty, trustworthiness and reliability, have access to classified information.

Article 8

The Parties shall provide mutual assistance with regard to security of classified information subject to this Agreement and matters of common security interest. Reciprocal security consultations and inspections shall be conducted by the authorities as defined in Article 11 to assess the effectiveness of the Security Arrangements within their respective responsibility to be established pursuant to Articles 11 and 12.

Article 9

1. For the purpose of this Agreement

- (a) as regards the EU:

all correspondence shall be sent to the Council at the following address:

Council of the European Union
Chief Registry Officer
Rue de la Loi/Wetstraat, 175
B-1048 Brussels.

All correspondence shall be forwarded by the Chief Registry Officer of the Council to the Member States and to the European Commission subject to paragraph 2.

- (b) as regards the former Yugoslav Republic of Macedonia:

all correspondence shall be addressed to the Central Registry Officer of the Directorate for Security of Classified Information and forwarded where appropriate, via the Mission of that State to the European Communities, at the following address:

Registry Officer
Avenue Louise 209A
B-1050 Brussels.

2. Exceptionally, correspondence from one Party which is only accessible to specific competent officials, organs or services of that Party may, for operational reasons, be addressed and only be accessible to specific competent officials, organs or services of the other Party specifically designated as recipients, taking into account their competencies and according to the need to know principle. As far as the EU is concerned, this correspondence shall be transmitted through the Chief Registry Officer of the Council.

Article 10

As regards the former Yugoslav Republic of Macedonia, the Director of the Directorate for Security of Classified Information, and the Secretaries-General of the Council and of the European Commission shall oversee the implementation of this Agreement.

Article 11

In order to implement this Agreement:

1. as regards the Former Yugoslav Republic of Macedonia, the Directorate for Security of Classified Information, acting in the name of its government and under its authority, shall be responsible for developing Security Arrangements for the protection and safeguarding of classified information provided to it;
2. the General Secretariat of the Council Security Office (hereinafter referred to as 'the GSC Security Office'), under the direction and on behalf of the Secretary General of the Council, acting in the name of the Council and under its authority shall be responsible for developing Security Arrangements for the protection and safeguarding of classified information provided to the EU under this Agreement;
3. the European Commission Security Directorate, acting in the name of the European Commission and under its authority, shall be responsible for developing Security Arrangements for the protection of classified information provided or exchanged under this Agreement within the European Commission and its premises.

Article 12

The Security Arrangements to be established pursuant to Article 11 in agreement between the three Offices concerned shall lay down the standards of the reciprocal security protection for classified information subject to this Agreement. For the EU, these standards shall be subject to approval by the Council Security Committee. For the former Yugoslav Republic of Macedonia, these standards shall be subject to approval by the Director of the Directorate for Security of Classified Information.

Article 13

The Authorities defined in Article 11 shall establish procedures to be followed in the case of proven or suspected compromise of classified information subject to this Agreement.

Article 14

Prior to the provision of classified information subject to this Agreement between the Parties, the responsible security authorities defined in Article 11 must agree that the receiving Party is able to protect and safeguard the information subject to this Agreement in a way consistent with the arrangements to be established pursuant to Articles 11 and 12.

Article 15

This Agreement in no way prevents the Parties from concluding other Agreements relating to the provision or exchange of classified information subject to this Agreement provided that they do not conflict with the provisions of this Agreement.

Article 16

All differences between the EU and the former Yugoslav Republic of Macedonia arising out of the interpretation or application of this Agreement shall be dealt with by negotiation between the Parties.

Article 17

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal procedures necessary for this purpose.
2. This Agreement may be reviewed for consideration of possible amendments at the request of either Party.
3. Any amendment to this Agreement shall only be made in writing and by common agreement of the Parties. It shall enter into force upon mutual notification as provided under paragraph 1.

Article 18

This Agreement may be denounced by one Party by written notice of denunciation given to the other Party. Such denunciation shall take effect six months after receipt of notification by the other Party, but shall not affect obligations already contracted under the provisions of this Agreement. In particular, all classified information provided or exchanged pursuant to this Agreement shall continue to be protected in accordance with the provisions set forth herein.

A. Letter from the European Union

Skopje, 25 March 2005

The Government of the former Yugoslav Republic of Macedonia

Sir,

I have the honour to propose that, if it is acceptable to your Government, this letter and your confirmation shall together take the place of signature of the Agreement between the European Union and the former Yugoslav Republic of Macedonia on the security procedures for the exchange of classified information.

The text of the aforementioned Agreement, herewith annexed, has been approved by Decision of the Council of the European Union on 24 January 2005.

This letter also constitutes the notification, on behalf of the European Union, in accordance with Article 17(1) of the Agreement.

Please accept, Sir, the assurance of my highest consideration.

For the European Union

Michael SAHLIN

EU Special Representative

A handwritten signature in black ink, appearing to read 'Michael Sahlin', written in a cursive style.

B. Letter from the former Yugoslav Republic of Macedonia

(courtesy translation)

Skopje, 25 March 2005

Sir,

On behalf of the Government of the Republic of Macedonia I have the honour to acknowledge receipt of your letter of today's date regarding the signature of the Agreement between the Republic of Macedonia and the European Union on the security procedures for the exchange of classified information, together with the attached text of the Agreement.

I consider this Exchange of Letters as equivalent of signature.

However, I declare that the Republic of Macedonia does not accept the denomination used for my country in the abovementioned Agreement, having in mind that the constitutional name of my country is the Republic of Macedonia.

Please accept, Sir, the assurances of my highest consideration.

Dr Stojan SLAVESKI

Director

A handwritten signature in black ink, appearing to read 'Stojan Slaveski', written in a cursive style.

C. Letter from the European Union

Skopje, 25 March 2005

Sir,

I have the honour to acknowledge receipt of your letter of today's date.

The European Union notes that the Exchange of Letters between the European Union and the former Yugoslav Republic of Macedonia, which takes the place of signature of the Agreement between the European Union and the former Yugoslav Republic of Macedonia on the security procedures for the exchange of classified information, has been accomplished and that this cannot be interpreted as acceptance or recognition by the European Union in whatever form or content of a denomination other than the 'former Yugoslav Republic of Macedonia'.

Please accept, Sir, the assurance of my highest consideration.

For the European Union

Michael SAHLIN

EU Special Representative
