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⁽¹⁾ Text with EEA relevance

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 906/2008

of 15 September 2008

terminating the new exporter review of Regulation (EC) No 1659/2005 imposing a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation), and in particular Article 9(4) and Article 11(4) thereof,

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

Whereas:

1. PROCEDURE

1.1. Existing measures

- (1) The Council, by Regulation (EC) No 1659/2005 ⁽²⁾ (the original Regulation), imposed a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China (the PRC). The measures consist of an *ad valorem* duty rate of 39,9 %, with the exception of six companies expressly mentioned in the original Regulation which are subject to individual duty rates.

1.2. Request for a review

- (2) Subsequent to the imposition of definitive measures, the Commission received an application to initiate a new exporter review of Regulation (EC) No 1659/2005, pursuant to Article 11(4) of the basic Regulation, from a Chinese exporting producer, Yingkou Dalmond Refractories Co. Ltd (the applicant). The applicant claimed that it was not related to any of the exporting producers in the PRC subject to the anti-dumping measures in force with regard to magnesia bricks. Furthermore, it claimed that it had not exported magnesia bricks during the

original period of investigation (from 1 April 2003 to 31 March 2004), but had exported them to the Community after that period.

1.3. Initiation of a new exporter review

- (3) The Commission examined the *prima facie* evidence submitted by the applicant and considered it sufficient to justify the initiation of a review in accordance with Article 11(4) of the basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 1536/2007 ⁽³⁾, a review of Regulation (EC) No 1659/2005 with regard to the applicant.

- (4) Pursuant to Commission Regulation (EC) No 1536/2007, the anti-dumping duty of 39,9 % imposed by Regulation (EC) No 1659/2005 was repealed with regard to imports of magnesia bricks produced and sold for exports to the Community by the applicant. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register such imports.

1.4. Product concerned and like product

- (5) The product concerned is the same as that described in the original Regulation, i.e. chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, originating in the PRC, currently classifiable within CN codes ex 6815 91 00, ex 6815 99 10 and ex 6815 99 90 (TARIC codes 6815 91 00 10, 6815 99 10 20 and 6815 99 90 20).
- (6) The like product is also the same as that defined in the original Regulation.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 267, 12.10.2005, p. 1.

⁽³⁾ OJ L 337, 21.12.2007, p. 42.

1.5. Parties concerned

- (7) The Commission officially advised the Community industry, the applicant and the representatives of the exporting country of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.

- (8) The Commission sent a market economy treatment (MET) claim form and a questionnaire to the applicant and received a reply within the deadline set for that purpose. The Commission sought to verify all the information it deemed necessary for the determination of dumping, and verification visits were carried out at the premises of the applicant and the following cooperating related companies in the PRC:

— Yingkou Dalmond Refractories Co. Ltd (the applicant),

— Liaoning Qunyi Group Refractories Co. Ltd (the mother company),

— Yingkou Guangshan Refractories Co. Ltd (related producer),

— Dalian Dalmond Trading Co. Ltd (related exporter).

1.6. Investigation period

- (9) The investigation of dumping covered the period from 1 April 2006 to 30 September 2007 ('investigation period' or 'IP').

2. RESULTS OF THE INVESTIGATION

2.1. New exporter qualification

- (10) The Community industry argued that the applicant was exporting the product concerned to the Community as early as 2004 and backed this assertion by various website pages and catalogues of the applicant mentioning sales in the Community. However, these documents did not mention specifically the product concerned or the date of the export, and the examination of the sales ledger of the applicant and its related companies showed no evidence of such exports. The investigation confirmed that the applicant had not exported the product concerned during the original investigation period and that it had begun exporting to the Community after that period.
- (11) Furthermore, the applicant was able to satisfactorily demonstrate that it did not have any links, direct or indirect, with any of the Chinese exporting producers

subject to the anti-dumping measures in force with regard to the product concerned.

- (12) Accordingly, it was confirmed that the company should be considered a 'new exporter' in accordance with Article 11(4) of the basic Regulation.

2.2. Market economy treatment (MET)

- (13) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports from the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2 of the basic Regulation for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. These criteria are set out in a summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of basic accounting records which are independently audited in line with international accounting standards (IAS) and applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty,

— currency exchanges are carried out at market rates.

- (14) The applicant requested MET pursuant to Article 2(7)(b) of the basic Regulation and was invited to complete a MET claim form.

- (15) In the course of the investigation the applicant submitted a number of MET claims for its related companies. After analysis of the claims, the Commission identified four MET claims for verification of companies involved in the production and sale of the product concerned. These companies are listed in recital 8 of this Regulation. However, at a late stage of the investigation, it was found that the applicant was related to another producer and another exporter of the product concerned located in the PRC. These companies did not fill a separate MET claim form and thus it was not possible to assess the situation of the whole group within which the applicant is operating.

- (16) It is the Commission's consistent practice to examine whether a group of related companies, as a whole, fulfils the conditions for MET. This is deemed to be necessary to avoid sales of a group of companies being channelled via one of the related companies in the group, should a preferential individual duty rate be granted to that company. Therefore, in cases where a subsidiary or any other related company is a producer and/or a seller of the product concerned, all such related companies have to provide a MET claim form to enable an examination of whether the criteria in Article 2(7)(c) of the basic Regulation are met. The failure of the applicant to disclose the existence of these companies alone is sufficient to conclude that it cannot be established whether the group as a whole fulfils all the conditions for MET.
- (17) Nevertheless, it should be noted that the investigation revealed that out of the four companies of the group that submitted MET claim forms, only one company fulfilled all the conditions for granting MET. The remaining three companies did not fulfil the first three criteria mentioned in recital 13 above.
- (18) As regards the mother company, this company did not demonstrate that it was free from State interference. Firstly, the source of the capital of the company incorporated in 2001 could not be established and the accounts demonstrating the capital import could not be reconciled (criterion one). Secondly, this company did not substantiate that it had one clear set of basic accounting records prepared and audited in compliance with IAS. In particular, the company did not have individual audited accounts. It only had audited consolidated financial statements, specifically prepared upon request of a creditor. Furthermore, the unaudited individual accounts also showed several breaches of the IAS, concerning fixed assets and depreciation, booking of certain assets and the revaluation of assets (criterion two).
- (19) As regards the applicant, it did not demonstrate that it was free from State interference. In particular, its articles of association (AoA), which were communicated to the State authorities in order to obtain a business licence, contained restrictions for sales on the domestic market. In addition, the company was unable to provide a contract for the supply of energy (criterion one). Secondly, the company did not substantiate that it had one clear set of basic accounting records, which were prepared and audited in compliance with IAS (criterion two). Finally, the applicant did not demonstrate that it was free from significant distortions carried over from the former non-market economy system, in particular because not all its initial assets were independently evaluated, and because it benefited from significant tax rebates (criterion three).
- (20) As regards the third company, it did not demonstrate that business decisions were made in response to market signals, without significant State interference, and that its costs reflect market values (criterion one). Secondly, this company did not demonstrate that it had one clear set of basic accounting records, which were prepared and audited in compliance with IAS: several breaches of IAS were noted such as the late booking of revenues, or incorrect depreciation of fixed assets (criterion two). Finally, the company did not demonstrate that it was free from significant distortions carried over from the former non-market economy system, in particular because the initial assets of the company could not be considered as independently evaluated (criterion three).
- (21) Based on the above facts and considerations, the applicant and the group as a whole, in which it operates, could not be granted MET.
- (22) The Community industry, the applicant and the authorities of the exporting country were given an opportunity to comment on the findings concerning MET. Only the applicant submitted such comments.
- (23) The applicant first argued that the two companies discovered at a late stage of the investigation as mentioned in recital 15 above did not have to submit MET claims. According to the applicant, MET claims should be submitted by producers and traders of the product concerned during the IP. The two companies in question were not involved in the production or sale of the product concerned during the IP and beyond because the related exporter was liquidated at the beginning of 2008, and the related producer was not fully operational during the IP since it has not obtained a production licence.
- (24) In this regard it is recalled that the applicant was given an opportunity to and provided MET claims for most of its related companies. However, it failed to disclose the existence of these two companies within the deadlines set for this purpose, as explained in the following recitals 25 and 26.
- (25) The existence of the alleged liquidated exporter was discovered by the Commission and confirmed by the applicant just before the verification visit in the PRC. The company did not file an MET claim and, in addition, the applicant, despite a request from the Commission, did not provide any accounting records and other relevant information to clarify the exact activities of this company during the IP. Therefore, the Commission was unable to establish that this company was not involved in the sale of the product concerned during the IP.

- (26) As regards the related producer, its existence was communicated to the Commission during the verification visit in the PRC and thus, since this producer was located in another province, the Commission was unable to verify on the spot the exact nature of its operations and whether in fact the company had not started production of the product concerned. It was found that although the company has not yet obtained a production licence, its business licence granted in 2007, namely during the IP, covers the manufacturing of the product concerned. This related producer should therefore have submitted an MET claim.
- (27) The failure to disclose the existence of these two companies and submit MET claims deprived the Commission of the possibility to verify the subsequently submitted information on their activities and to assess whether the group of companies satisfied the conditions for granting MET.
- (28) The applicant also claimed that the parent company should not have been included in the scope of the MET investigation given that it is neither a producer nor an exporter of the product concerned.
- (29) The parent company exercises control over its related companies, including their activities with regard to the product concerned. Thus any finding showing that the parent company is not following market economy principles has a direct impact on the whole group. The investigation demonstrated that strong links existed between the mother company and its subsidiaries, in particular with the applicant and another cooperating company of the group involved in the product concerned. There were many transactions between the said companies. In addition, the assets and overhead expenses were not clearly separated. Moreover, the parent company indicated during the verification visit its intention to produce magnesia bricks in the future, and there was nothing in its business licence to prevent this company from doing so. On this basis this claim had also to be rejected.
- (30) The applicant acknowledged that the company mentioned in recital 20 above does not fulfil all MET criteria, but claimed that it should no longer be considered as a producer since it was currently renting its production facilities to a related producer.
- (31) In this respect it was found that this company has the capability to resume production on its own right at any time in the future. Therefore, this claim had to be rejected.
- (32) The applicant made further claims and brought new elements allegedly demonstrating that the company mentioned in recital 19 above meets all the MET criteria. These claims are described and discussed below.
- (33) As regards criterion one, the applicant further argued that any restriction in the AoA is purely a private agreement between shareholders in which the State did not interfere. The applicant also claimed that the Chinese Contract Law did not impose any obligation to sign a written contract for energy supply.
- (34) In this regard, it is noted that the Chinese Company Law provides that the AoA of companies are binding on the company, shareholders, directors, supervisors and senior management. Moreover, the AoA and any changes thereof are required to be registered with the State authorities. Contrary to the claim of the applicant, it was also found that the Chinese Contract Law makes clear reference to contracts for supply and use of energy and contains clear provisions on the content of such contracts. On this basis, the claims concerning criterion one were rejected.
- (35) As regards criterion two, the applicant provided documents alleging that shortcomings found in the accounts, in particular for a transaction between related companies, were corrected later in April 2008, and argued that criterion two was thus fulfilled.
- (36) In this respect, it is noted that any alleged remedy applied in 2008 cannot remedy the fact that the accounts of the applicant which were provided in the claim form were not reliable as indicated in recital 19 above. On this basis, this claim had to be rejected.
- (37) As regards criterion three, the applicant claimed that the capital verification report provided in its MET claim should be sufficient in itself to certify the evaluation of its assets. The applicant also claimed that the tax rebates should not have been taken into account in the framework of the present anti-dumping investigation as this issue is relevant only for anti-subsidy investigations.
- (38) It is noted that the investigation found that the capital verification report was found to be erroneous and thus cannot be considered as a reliable independent basis for the evaluation of the assets. Concerning the tax rebates obtained by the applicant, it is considered that it distorts significantly the financial situation of the company and indeed has an impact on the third MET criterion. Therefore, these claims concerning criterion three had to be rejected.

- (39) On the basis of the above, the Commission maintained its findings and conclusions concerning the criteria one to three. It is thus confirmed that the applicant and the group in which it operates cannot be granted MET.

2.3. Individual treatment (IT)

- (40) Further to Article 2(7) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria for individual treatment (IT) set out in Article 9(5) of the basic Regulation. These criteria are set out in a summarised form below:

- in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits,
- export prices and quantities, and conditions and terms of sale are freely determined,
- the majority of the shares belong to private persons, and it must be demonstrated that the company is sufficiently independent from State interference,
- exchange rate conversions are carried out at the market rate,
- State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

- (41) The applicant, as well as requesting MET, also claimed IT in the event of not being granted MET.

- (42) As explained in recital 16 above, it is the Commission's consistent practice to examine whether a group of related companies, as a whole, fulfils the conditions for IT. As indicated in recital 15, there was one additional producer and one exporter related to the applicant during the IP which did not cooperate with the present investigation. Thus, no conclusion could be made on whether these two companies fulfilled the criteria for IT.

- (43) It is therefore concluded that neither MET nor IT should be granted to the applicant.

- (44) The applicant, the authorities of the exporting country and the interested parties were given an opportunity to

comment on the above findings. Only the applicant submitted the comments below.

- (45) The applicant first reiterated its claim that the investigation on both MET and IT should focus only on producers and traders of the product concerned during the IP, and alleged that the two companies which did not cooperate were not involved in the production or sale of the product concerned. Then it further argued that the Commission officials received all necessary information to assess IT for the two non-cooperating companies while they were on the spot.

- (46) On the first claim, it is noted that the exact activity of these two companies during the IP could not be checked during the verification visit precisely because of non-cooperation, as mentioned in particular in recital 15 above. Therefore, the applicant did not demonstrate that the two non-cooperating companies had not produced or were not involved in the sale of the product concerned during the IP. It is also noted that, whatever the activity of the producer during the IP, it should be included in the assessment of the group for the reasons explained in particular in recital 16 above. It is thus maintained that these two companies should have cooperated in the investigation.

- (47) As mentioned in recital 24 to 27 above, the information provided during the on-the-spot visit was insufficient to make an assessment concerning IT for the two non-cooperating companies. In addition, this information was not provided within the time limit set for the submission of the IT claim and was provided so late that it did not allow its verification by the Commission. Therefore this claim had to be rejected.

- (48) The applicant further submitted that the Commission's current practice to examine IT criteria is an infringement of Article 2.3 of the WTO Anti Dumping Agreement, since this agreement should be considered as an integral part of the EC legal order.

- (49) However, given the non-cooperation from two related companies, IT criteria were not further examined in the present investigation, and the issue of their compatibility with WTO rules was thus irrelevant in the present case. Therefore this claim could not be further considered.

- (50) Based on the above facts and considerations, it is thus confirmed that the applicant and the group in which it operates cannot be granted IT.

3. CONCLUSION

- (51) The purpose of the present review was to determine the individual margin of dumping of the applicant, which was allegedly different from the current residual margin applicable to imports of the product concerned from the PRC. The request was mainly based on the allegation that the applicant fulfilled the criteria for MET.
- (52) As the investigation concluded in particular that, in the absence of cooperation from its related producer and exporter, the applicant was granted neither MET nor IT, the Commission could not establish that the applicant's individual dumping margin was indeed different from the residual dumping margin established in the original investigation. Therefore, the request made by the applicant should be rejected and the new exporter review terminated. The residual anti-dumping duty found during the original investigation, i.e. 39,9 %, should consequently be maintained as far as the applicant is concerned.

4. RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

- (53) As the review has resulted in a determination of dumping in respect of the company, the anti-dumping duty applicable to the company should be levied retroactively on imports of the product concerned which have been made subject to registration pursuant to Article 3 of Regulation (EC) No 1536/2007.

5. DISCLOSURE AND DURATION OF THE MEASURES

- (54) The applicant was informed of the essential facts and considerations on the basis of which it was intended to impose a definitive anti-dumping duty on its imports into the Community and was given the opportunity to comment.
- (55) This review does not affect the date on which Regulation (EC) No 1659/2005 will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The new exporter review initiated by Regulation (EC) No 1536/2007 is hereby terminated and the anti-dumping duty applicable according to Article 1 of Regulation (EC) No 1659/2005 to 'all other companies' in the People's Republic of China is hereby imposed on imports identified in Article 1 of Regulation (EC) No 1536/2007.

2. The anti-dumping duty applicable according to Article 1 of Regulation (EC) No 1659/2005 to 'all other companies' in the People's Republic of China is hereby levied with effect from 22 December 2007 on imports of certain magnesia bricks which have been registered pursuant to Article 3 of Regulation (EC) No 1536/2007.

3. The customs authorities are hereby directed to cease the registration of imports carried out pursuant to Article 3 of Regulation (EC) No 1536/2007.

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

Article 2

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

Article 1(2) shall apply with effect from 22 December 2007.

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

Done at Brussels, 15 September 2008.

For the Council
The President
B. KOUCHNER

COMMISSION REGULATION (EC) No 907/2008**of 18 September 2008****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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 September 2008.

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

Done at Brussels, 18 September 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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	MK	31,3
	TR	68,0
	ZZ	49,7
0707 00 05	EG	162,5
	MK	43,3
	TR	83,8
	ZZ	96,5
0709 90 70	TR	96,4
	ZZ	96,4
0805 50 10	AR	77,2
	UY	70,6
	ZA	87,3
	ZZ	78,4
0806 10 10	IL	248,7
	TR	137,4
	US	196,0
	ZZ	194,0
0808 10 80	AR	92,1
	AU	195,4
	BR	74,2
	CL	83,3
	CN	83,2
	NZ	109,8
	US	91,3
	ZA	82,4
	ZZ	101,5
0808 20 50	AR	68,7
	CN	75,1
	TR	137,8
	ZA	81,2
	ZZ	90,7
0809 30	TR	136,0
	US	150,7
	ZZ	143,4
0809 40 05	IL	131,4
	TR	78,6
	XS	58,0
	ZZ	89,3

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 908/2008**of 17 September 2008****establishing a prohibition of fishing for cod in Norwegian waters south of 62° N by vessels flying the flag of Sweden**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ⁽¹⁾, and in particular Article 26(4) thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to common fisheries policy ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 40/2008 of 16 January 2008 fixing for 2008 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2008.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2008.

- (3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2008 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. It shall be prohibited to retain on board, tranship or land such stock caught by those vessels after that date.

*Article 3***Entry into force**

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

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

Done at Brussels, 17 September 2008.

For the Commission

Fokion FOTIADIS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1.

⁽³⁾ OJ L 19, 23.1.2008, p. 1.

ANNEX

No	37/T&Q
Member State	SWE
Stock	COD/04-N.
Species	Cod (<i>Gadus morhua</i>)
Area	Norwegian waters south of 62° N
Date	22.8.2008

COMMISSION REGULATION (EC) No 909/2008**of 17 September 2008****establishing a prohibition of fishing for hake in VI and VII; EC waters of Vb; international waters of XII and XIV by vessels flying the flag of the Netherlands**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ⁽¹⁾, and in particular Article 26(4) thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to common fisheries policy ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 40/2008 of 16 January 2008 fixing for 2008 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2008.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2008.

- (3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2008 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. It shall be prohibited to retain on board, tranship or land such stock caught by those vessels after that date.

*Article 3***Entry into force**

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

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

Done at Brussels, 17 September 2008.

For the Commission

Fokion FOTIADIS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1.

⁽³⁾ OJ L 19, 23.1.2008, p. 1.

ANNEX

No	38/T&Q
Member State	NLD
Stock	HKE/571214
Species	Hake (<i>Merluccius merluccius</i>)
Area	VI and VII; EC waters of Vb; international waters of XII and XIV
Date	19.8.2008

COMMISSION REGULATION (EC) No 910/2008**of 18 September 2008****amending Regulation (EC) No 951/2006 in respect of laying down detailed rules for out-of-quota exports in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector ⁽¹⁾, and in particular Article 40(1) thereof,

Whereas:

(1) According to Article 12(d) of Regulation (EC) No 318/2006 the sugar or isoglucose produced during a marketing year in excess of the quota referred to in Article 7 of that Regulation may be exported only within the quantitative limit to be fixed. To this end it should be considered an export quota within the meaning of Article 1(2)(b)(iii) of Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products ⁽²⁾.

(2) In respect of the sugar sector, Commission Regulation (EC) No 951/2006 ⁽³⁾ lays down detailed rules for the implementation of Regulation (EC) No 318/2006 as regards trade with third countries.

(3) Commission Regulation (EC) No 952/2006 ⁽⁴⁾ as amended by Regulation (EC) No 707/2008 ⁽⁵⁾ simplified the use of methods for the determination of sugar content of syrups. It is therefore appropriate to harmonise the methods used in the case of export refunds with those laid down in Regulation (EC) No 952/2006.

(4) With a view to ensuring orderly management, preventing speculation and providing for effective controls, detailed

rules should be laid down for submitting licence applications for out-of-quota exports of sugar and isoglucose. Such rules should make use of the procedures laid down by existing legislation, with suitable adaptations to reflect the specific needs of this sector.

(5) Further implementing provisions should be established for the administration of the quantitative limit to be fixed by another Act, in particular regarding the conditions for applying for export licences.

(6) In order to reduce the risks of possible frauds linked to the reintroduction on the Community market of out-of-quota sugar and/or isoglucose it may be decided to exclude certain destinations from the eligible destinations. For such cases it is necessary to define those documents that would prove that the products in question have been imported into a country not excluded from the eligible destinations.

(7) Article 1 of Commission Regulation (EC) No 1541/2007 of 20 December 2007 on proof of completion of customs formalities for the import of sugar into third countries as provided for in Article 16 of Regulation (EC) No 800/1999 ⁽⁶⁾ defines those documents that provide sufficient proofs of importation in case of differentiated export refunds. The same documents should also be accepted as proof for out-of-quota exports.

(8) Experience acquired has shown that the application for export licences concerning the specific (EX/IM) refining operations is very limited. Therefore, the relevant provisions of Regulation (EC) No 951/2006, namely Articles 13 to 16 thereof, should be deleted. Transitional rules should nevertheless be laid down in respect of pending applications.

(9) According to Article 3 of Council Regulation (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements ⁽⁷⁾ all import duties shall be eliminated on imports of molasses into the Community originating in the ACP countries. Therefore Article 41 of Regulation (EC) No 951/2006 should be deleted.

⁽¹⁾ OJ L 58, 28.2.2006, p. 1.

⁽²⁾ OJ L 114, 26.4.2008, p. 3.

⁽³⁾ OJ L 178, 1.7.2006, p. 24.

⁽⁴⁾ OJ L 178, 1.7.2006, p. 39.

⁽⁵⁾ OJ L 197, 25.7.2008, p. 4.

⁽⁶⁾ OJ L 337, 21.12.2007, p. 54.

⁽⁷⁾ OJ L 348, 31.12.2007, p. 1.

- (10) Part A of the Annex to Regulation (EC) No 951/2006 should be amended, as no reference to a specific Regulation should be mentioned therein beforehand. In accordance with Article 6(2) of Regulation (EC) No 951/2006, when the export refund is fixed pursuant to an invitation to tender, section 20 of the licence application and of the licence should contain a reference to the Regulation that opens a standing invitation to tender in a given marketing year.
- (11) Regulation (EC) No 951/2006 should therefore be amended accordingly.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 951/2006 is amended as follows:

1. In Article 3, paragraphs 2 and 3 are replaced by the following:

‘2. Without prejudice to paragraphs 3 and 4, the sucrose content plus, where applicable, the content of other sugars expressed as sucrose shall be calculated in accordance with points (d) and (e) of Article 3(3) of Commission Regulation (EC) No 952/2006 (*).

3. In the case of syrups of a purity of not less than 85 % but less than 94,5 %, the sucrose content plus, where applicable, the content of other sugars expressed as sucrose shall be fixed at a flat rate of 73 % by weight in the dry state.

(*) OJ L 178, 1.7.2006, p. 39.’

2. The following Chapter IIa is inserted:

‘CHAPTER IIa

OUT-OF-QUOTA EXPORTS

Article 4c

Proofs of arrival at destination

Where certain destinations are excluded for exports of out-of-quota sugar and/or isoglucose, products shall be deemed to have been imported into a third country on presentation of the following three documents:

- (a) a copy of the transport document;
- (b) a declaration that the product has been unloaded, drawn up by an official authority of the third country in question, by the official authorities of a Member State established in the country of destination, or by an international supervisory agency approved under Articles 16a to 16f of Regulation (EC) No 800/1999, certifying that the product has left the unloading site or at least that, to the knowledge of the authority or agency issuing the declaration, the product has not subsequently been reloaded with a view to being re-exported;
- (c) a bank document issued by approved intermediaries established in the Community certifying that payment corresponding to the export in question has been credited to the account of the exporter opened with them, or proof of payment.’

3. Article 7 is replaced by the following:

‘Article 7

Export licence for sugar or isoglucose without refund

Where sugar or isoglucose in free circulation in the Community market and not considered as “out-of-quota” is to be exported without refund, section 20 of the licence application and of the licence shall contain one of the entries listed in Part C of the Annex, according to the product in question as the case may be.’

4. The following Articles 7a to 7e are inserted:

‘Article 7a

Export licences for out-of-quota exports

By way of derogation from the provisions of Article 5, exports of out-of-quota isoglucose within the quantitative limit referred to in Article 12(d) of Regulation (EC) No 318/2006 shall be subject to the presentation of an export licence.

Article 7b

Application for out-of-quota export licences

1. Applications for export licences in respect of the quantitative limit to be fixed pursuant to Article 12(d) of Regulation (EC) No 318/2006 may be submitted only by producers of beet and cane sugar or producers of isoglucose which are approved in accordance with Article 17 of Regulation (EC) No 318/2006 and to which a sugar or isoglucose quota has been allocated in respect of the marketing year concerned in accordance with Article 7 of that Regulation, account being taken of, as the case may be, of Articles 8, 9 and 11 of that Regulation.

2. Applications for export licences shall be submitted to the competent authorities of the Member State in which the applicant has been allocated a sugar or an isoglucose quota.

3. Applications for export licences shall be submitted each week, from Monday to Friday, starting on the date of entry into force of the Regulation fixing the quantitative limit pursuant to Article 12(d) of Regulation (EC) No 318/2006 and until the issue of licences is discounted in accordance with Article 7e.

4. Applicants may submit one application for export licence per week. The quantity applied for in respect of each export licence shall not exceed 20 000 tonnes in the case of sugar and 5 000 tonnes in the case of isoglucose.

5. The application for export licence shall be accompanied by proof that the security referred to in Article 12a(1) has been lodged.

6. Box 20 of the application for an export licence and the licence, as well as box 44 of the export declaration shall contain one of the following entries as the case may be:

(a) "out-of-quota sugar for export without refund"; or

(b) "out-of-quota isoglucose for export without refund".

Article 7c

Communication on out-of-quota exports

1. Member States shall notify the Commission, between Friday 1 p.m. (Brussels time) and the following Monday, of the quantities of sugar and/or isoglucose, for which applications for export licence have been submitted during the preceding week.

The quantities applied for shall be broken down by eight-digit CN code. The Member States shall also inform the Commission if no applications for export licences have been submitted.

This paragraph shall only apply to Member States for which a sugar and/or an isoglucose quota was fixed by Annex III and/or Point II of Annex IV to Regulation (EC) No 318/2006.

2. The Commission shall draw up weekly records of the quantities for which export licence applications have been submitted.

Article 7d

Issue of licences

1. Every week from Friday and until the end of the following week at the latest Member States shall issue licences for the applications submitted the preceding week and notified as provided for in Article 7c(1), as the case may be taking account of the allocation coefficient fixed by the Commission in accordance with Article 7e.

Export licences shall not be issued for quantities that had not been communicated.

2. Member States shall communicate, on the first working day of each week, to the Commission, the quantities of sugar and/or isoglucose for which export licences have been issued during the preceding week.

3. Member States shall keep a record of the quantities of sugar and/or isoglucose actually exported under the export licences.

4. Member States shall communicate to the Commission before the end of each month, the quantities of sugar and/or isoglucose actually exported under the export licences during the preceding month.

5. Paragraphs 2, 3 and 4 of this Article shall only apply to Member States for which a sugar and/or an isoglucose quota was fixed by Annex III and/or Point II of Annex IV to Regulation (EC) No 318/2006.

Article 7e

Suspension of issuing export licences for out-of-quota exports

Where the quantities applied for export licences exceed the quantitative limit fixed pursuant to Article 12(d) of Regulation (EC) No 318/2006 for the period concerned, the provisions laid down in Article 9 of this Regulation shall apply *mutatis mutandis*.

5. The following Article 8a is inserted:

'Article 8a

Validity of export licences for out-of-quota exports

By way of derogation from the provisions of Article 5 of this Regulation export licences issued in respect of the quantitative limit fixed pursuant to Article 12(d) of Regulation (EC) No 318/2006 shall be valid from the actual day of issue until 30 September of the marketing year in respect of which the export licence was issued.'

6. In Section 1 of Chapter V, the following Article is added:

'Article 12a

Security for licences for out-of-quota exports

1. The applicant shall lodge a security of EUR 42 per tonne net dry matter in the case of out-of-quota isoglucose to be exported within the fixed quantitative limit.

2. The security referred to in paragraph 1 may be lodged at the applicant's choice, either in cash or in the form of a guarantee given by an establishment complying with criteria laid down by the Member State in which the application for the licence is submitted.

3. The security referred to in paragraph 1 shall be released in accordance with Article 34 of Regulation (EC) No 376/2008 for the quantity for which the applicant has fulfilled, within the meaning of Articles 30(b) and 31(b)(i) of Regulation (EC) No 376/2008, the export obligation resulting from the licences issued in accordance with Article 7c of this Regulation.

4. Where certain destinations are excluded for exports of out-of-quota sugar and/or isoglucose within the quantitative limit fixed the security referred to in paragraph 1 shall be released only if, besides account being taken of paragraph 3, the three documents referred to in Article 4c are presented.'

7. Articles 13 to 16 are deleted. However, they shall continue to apply in respect of licences for which an application has been submitted before the entry into force of this Regulation.

8. In Article 17, point (a) is amended as follows:

(a) the first indent is replaced by the following:

— sugar products falling within CN codes 1701 91 00, 1701 99 10 and 1701 99 90;;

(b) the third indent is replaced by the following:

— sucrose syrups, expressed as white sugar, falling within CN codes 1702 90 71, 1702 90 95 and 2106 90 59;;

(c) the fifth indent is deleted.

9. Article 21 is replaced by the following:

'Article 21

Methods of communication

The communication of Member States provided for in this Chapter shall be transmitted electronically in accordance with methods made available to the Member States by the Commission.'

10. Article 41 is deleted.

11. Part A of the Annex is replaced by the text in the Annex to this Regulation.

Article 2

Entry into force

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

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

Done at Brussels, 18 September 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

ANNEX

‘A. Entries referred to in Article 6(2):

- in Bulgarian: „Регламент (EO) № ... (OB L ..., ... г., стр. ...), срок за подаване на заявления за участие в търг: ...“
- in Spanish: “Reglamento (CE) nº ... (DO L ... de ..., p. ...), plazo para la presentación de ofertas: ...”
- in Czech: „Nařízení (ES) č. ... (Úř. věst. L ..., ..., s. ...), lhůta pro předkládání nabídek: ...“
- in Danish: »Forordning (EF) nr. ... (EUT L ... af ..., s. ...), tidsfrist for afgivelse af bud: ...«
- in German: „Verordnung (EG) Nr. ... (ABl. L ... vom ..., S. ...), Frist für die Angebotsabgabe: ...“
- in Estonian: „Määrus (EÜ) nr ... (ELT L ..., ..., lk ...), pakumiste esitamise tähtaeg: ...”
- in Greek: “Κανονισμός (ΕΚ) αριθ. ... (ΕΕ L ... της ..., σ. ...), προθεσμία για την υποβολή προσφορών ...”
- in English: “Regulation (EC) No ... (OJ L ..., ..., p. ...), time limit for submission of tenders: ...”
- in French: “Règlement (CE) n° ... (JO L ... du ..., p. ...), délai de présentation des offres: ...”
- in Italian: “Regolamento (CE) n. ... (GU L ... del ..., pag. ...), termine ultimo per la presentazione delle offerte: ...”
- in Latvian: “Regula (EK) Nr. ... (OV L ..., ..., lpp.), piedāvājumu iesniegšanas termiņš: ...”
- in Lithuanian: „Reglamentas (EB) Nr. ... (OL L ..., ..., p. ...), pasiūlymų pateikimo terminas – ...“
- in Hungarian: ».../.../EK rendelet (HL L ..., ..., ...o.), a pályázatok benyújtásának határideje: ...«
- in Dutch: „Verordening (EG) nr. ... (PB L ... van ..., blz. ...), termijn voor het indienen van de aanbiedingen: ...”
- in Polish: »Rozporządzenie (WE) nr ... (Dz.U. L ... z ..., s. ...), termin składania ofert: ...«
- in Portuguese: “Regulamento (CE) n.º ... (JO L ... de ..., p. ...), prazo para apresentação de propostas: ...”
- in Romanian: «Regulamentul (CE) nr. ... (JO L ..., ..., p. ...), termen limită pentru depunerea ofertelor: ...»
- in Slovak: „Nariadenie (ES) č. ... (Ú. v. EÚ L ..., ..., s. ...), lehota na predkladanie ponúk: ...“
- in Slovenian: „Uredba (ES) št. ... (UL L ..., ..., str. ...), rok za predložitev ponudb: ...“
- in Finnish: ’Asetus (EY) N:o ... (EUVL L ..., ..., s. ...), tarjousten tekemiselle asetettu määräaika päättyy: ...’
- in Swedish: ’Förordning (EG) nr ... (EUT L ..., ..., s. ...), tidsfrist för inlämnande av anbud: ...’.

COMMISSION REGULATION (EC) No 911/2008**of 18 September 2008****on the issue of licences for importing rice under the tariff quotas opened for the September 2008 subperiod by Regulation (EC) No 1529/2007**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1529/2007 of 21 December 2007 opening and providing for the administration in 2008 and 2009 of import quotas for rice originating in the ACP States which are part of the Cariforum region and the overseas countries and territories (OCTs) ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 1529/2007 opens and provides for the administration of an annual import tariff quota for 2008 of 187 000 tonnes of rice, in husked-rice equivalent, originating in States that are part of the Cariforum region (order number 09.4219), an import tariff quota of 25 000 tonnes of rice, in husked-rice equivalent, originating in the Netherlands Antilles and Aruba (order number 09.4189) and an import tariff quota of 10 000 tonnes of rice, in husked-rice equivalent, originating in the least-developed OCTs (order number 09.4190).

- (2) September is the third subperiod for the quota laid down in Article 1(1) and (2) of Regulation (EC) No 1529/2007.

- (3) The notification sent in accordance with Article 6(a) of Regulation (EC) No 1529/2007 shows that, for the quotas with order numbers 09.4219 — 09.4189 — 09.4190, the applications lodged in the first seven days of September 2008 under Article 2(1) of the Regulation cover a quantity, in husked-rice equivalent, less than that available.

- (4) The total quantities available for the following subperiod should therefore be fixed for the quotas with order numbers 09.4189 — 09.4190, in accordance with Article 4(1) of Regulation (EC) No 1529/2007,

HAS ADOPTED THIS REGULATION:

Article 1

The total quantities available for the following subperiod under the quotas with order numbers 09.4189 and 09.4190 as referred to in Regulation (EC) No 1529/2007 are set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day 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, 18 September 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 348, 31.12.2007, p. 155.

ANNEX

Quantities to be allocated for the September 2008 subperiod and quantities available for the following subperiod under Regulation (EC) No 1529/2007

Origin/product	Order number	Allocation coefficient for the September 2008 subperiod	Quantities available for the October 2008 subperiod (kg)
States that are part of the Cariforum region (Article 1(1)(a) of Regulation (EC) No 1529/2007)	09.4219	— ⁽²⁾	
— Codes under CN 1006, except CN code 1006 10 10			
OCTs (Article 1(2)(a) and (b) of Regulation (EC) No 1529/2007)			
— CN code 1006			
(a) Netherlands Antilles and Aruba:	09.4189	— ⁽²⁾	20 960 871
(b) Least-developed OCTs:	09.4190	— ⁽¹⁾	10 000 000

⁽¹⁾ No allocation coefficient applied for this subperiod: no licence applications were sent to the Commission.

⁽²⁾ Applications cover quantities less than or equal to the quantities available: all applications are therefore acceptable.

COMMISSION REGULATION (EC) No 912/2008**of 18 September 2008****laying down the allocation coefficient to be applied to applications for import licences lodged under the import tariff quota opened by Council Regulation (EC) No 964/2007 for rice originating in least-developed countries**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 964/2007 ⁽³⁾ opened for the marketing year 2008/09 an annual import tariff quota of 6 694 tonnes of rice in husked rice equivalent falling within CN code 1006, originating in least-developed countries (order number 09.4178).

- (2) The notification made in accordance with Article 4(a) of Regulation (EC) No 964/2007 shows that the applications lodged during the first seven days of September 2008 in accordance with Article 2(4) of that Regulation exceed the quantities available. The extent to which import licences may be issued should therefore be determined and the allocation coefficient to be applied to the quantities applied for should be laid down,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for import licences for rice originating in the least-developed countries listed in Annex I to Council Regulation (EC) No 980/2005 ⁽⁴⁾, under the quota for the 2008/2009 marketing year referred to in Regulation (EC) No 964/2007, lodged during the first seven days of September 2008 shall be accepted for the quantities applied for multiplied by an allocation coefficient of 70,583119 %.

Article 2

This Regulation shall enter into force on the day 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, 18 September 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 213, 15.5.2007, p. 26.

⁽⁴⁾ OJ L 169, 30.6.2005, p. 1.

COMMISSION REGULATION (EC) No 913/2008
of 18 September 2008
fixing the export refunds on eggs

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ⁽¹⁾, and in particular Article 164(2), last subparagraph, and Article 170 thereof,

Whereas:

- (1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products referred to in Part XIX of Annex I to that Regulation and prices in the Community for those products may be covered by an export refund.
- (2) In view of the current situation on the market in eggs, export refunds should be fixed in accordance with the rules and certain criteria provided for in Articles 162 to 164, 167, 169 and 170 of Regulation (EC) No 1234/2007.
- (3) Article 164(1) of Regulation (EC) No 1234/2007 provides that refunds may vary according to destination, especially where the world market situation, the specific requirements of certain markets, or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.
- (4) Refunds should be granted only on products which are authorised to move freely within the Community and

comply with requirements under Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs ⁽²⁾ and of Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽³⁾, as well as marking requirements under Council Regulation (EEC) No 1907/90 of 26 June 1990 on certain marketing standards for eggs ⁽⁴⁾.

- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

1. The products on which the export refunds provided for in Article 164 of Regulation (EC) No 1234/2007 may be paid, subject to the conditions laid down in paragraph 2 of this Article, and the amounts of those refunds are specified in the Annex to this Regulation.

2. The products on which a refund may be paid under paragraph 1 shall meet the requirements under Regulations (EC) Nos 852/2004 and 853/2004 and, in particular, shall be prepared in an approved establishment and comply with the marking conditions laid down in Section I of Annex II to Regulation (EC) No 853/2004 and those defined in Regulation (EEC) No 1907/90.

Article 2

This Regulation shall enter into force on 19 September 2008.

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

Done at Brussels, 18 September 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 139, 30.4.2004, p. 1. Corrected version in OJ L 226, 25.6.2004, p. 3.

⁽³⁾ OJ L 139, 30.4.2004, p. 55. Corrected version in OJ L 226, 25.6.2004, p. 22.

⁽⁴⁾ OJ L 173, 6.7.1990, p. 5.

ANNEX

Export refunds on eggs applicable from 19 September 2008

Product code	Destination	Unit of measurement	Amount of refund
0407 00 11 9000	A02	EUR/100 pcs	1,16
0407 00 19 9000	A02	EUR/100 pcs	0,58
0407 00 30 9000	E09	EUR/100 kg	0,00
	E10	EUR/100 kg	16,00
	E19	EUR/100 kg	0,00
0408 11 80 9100	A03	EUR/100 kg	25,00
0408 19 81 9100	A03	EUR/100 kg	12,50
0408 19 89 9100	A03	EUR/100 kg	12,50
0408 91 80 9100	A03	EUR/100 kg	15,80
0408 99 80 9100	A03	EUR/100 kg	4,00

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

The other destinations are defined as follows:

E09 Kuwait, Bahrain, Oman, Qatar, the United Arab Emirates, Yemen, Hong Kong SAR, Russia and Turkey.

E10 South Korea, Japan, Malaysia, Thailand, Taiwan and the Philippines.

E19 all destinations except Switzerland and those of E09 and E10.

COMMISSION REGULATION (EC) No 914/2008
of 18 September 2008
fixing the export refunds on poultrymeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ⁽¹⁾, and in particular Article 164(2), last subparagraph, and Article 170 thereof,

Whereas:

- (1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products referred to in Part XX of Annex I to that Regulation and prices in the Community for those products may be covered by an export refund.
- (2) In view of the current situation on the market in poultrymeat, export refunds should be fixed in accordance with the rules and criteria provided for in Articles 162 to 164, 167, 169 and 170 of Regulation (EC) No 1234/2007.
- (3) Article 164(1) of Regulation (EC) No 1234/2007 provides that refunds may vary according to destination, especially where the world market situation, the specific requirements of certain markets, or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.

- (4) Refunds should be granted only on products which are authorised to move freely in the Community and bear the identification mark provided for in Article 5(1)(b) of Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽²⁾. Those products should also comply with the requirements of Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs ⁽³⁾.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

1. The products on which the export refunds provided for in Article 164 of Regulation (EC) No 1234/2007 may be paid, subject to the conditions laid down in paragraph 2 of this Article, and the amounts of those refunds are specified in the Annex to this Regulation.

2. The products on which a refund may be paid under paragraph 1 shall meet the requirements under Regulations (EC) Nos 852/2004 and 853/2004 and, in particular, shall be prepared in an approved establishment and comply with the identification marking conditions laid down in Section I of Annex II to Regulation (EC) No 853/2004.

Article 2

This Regulation shall enter into force on 19 September 2008.

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

Done at Brussels, 18 September 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 139, 30.4.2004, p. 55.

⁽³⁾ OJ L 139, 30.4.2004, p. 1. Corrected version in OJ L 226, 25.6.2004, p. 3.

ANNEX

Export refunds on poultrymeat applicable from 19 September 2008

Product code	Destination	Unit of measurement	Amount of refund
0105 11 11 9000	A02	EUR/100 pcs	0,7
0105 11 19 9000	A02	EUR/100 pcs	0,7
0105 11 91 9000	A02	EUR/100 pcs	0,7
0105 11 99 9000	A02	EUR/100 pcs	0,7
0105 12 00 9000	A02	EUR/100 pcs	1,4
0105 19 20 9000	A02	EUR/100 pcs	1,4
0207 12 10 9900	V03	EUR/100 kg	45,0
0207 12 90 9190	V03	EUR/100 kg	45,0
0207 12 90 9990	V03	EUR/100 kg	45,0

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

The other destinations are defined as follows:

V03 A24, Angola, Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, United Arab Emirates, Jordan, Yemen, Lebanon, Iraq and Iran.

COMMISSION REGULATION (EC) No 915/2008**of 18 September 2008****on the issue of import licences for applications lodged during the first seven days of September 2008 under the tariff quota opened by Regulation (EC) No 536/2007 for poultrymeat and allocated to the United States of America**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 536/2007 of 15 May 2007 opening and providing for the administration of a tariff quota for poultrymeat allocated to the United States of America ⁽²⁾, and in particular Article 5(5) thereof,

Whereas:

- (1) Regulation (EC) No 536/2007 opened a tariff quota for imports of poultrymeat products.

- (2) The applications for import licences lodged during the first seven days of [...] for the subperiod from 1 October to 31 December 2008 do not cover the quantities available. The quantities for which applications have not been lodged should therefore be determined, and these should be added to the quantity fixed for the following quota subperiod,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications pursuant to Regulation (EC) No 536/2007 under the quota with order number 09.4169 have not been lodged, to be added to the subperiod from 1 January to 31 March 2009, shall be 8 332 500 kg.

Article 2

This Regulation shall enter into force on 19 September 2008.

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

Done at Brussels, 18 September 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 128, 16.5.2007, p. 6.

COMMISSION REGULATION (EC) No 916/2008**of 18 September 2008****on the issuing of import licences for applications lodged during the first seven days of September 2008 under the tariff quota opened by Regulation (EC) No 812/2007 for pigmeat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 812/2007 of 11 July 2007 opening and providing for the administration of a tariff quota for pigmeat allocated to the United States of America ⁽²⁾, and in particular Article 5(5) thereof,

Whereas:

- (1) Regulation (EC) No 812/2007 opened tariff quotas for imports of pigmeat products.

- (2) The applications for import licences lodged during the first seven days of September 2008 for the subperiod from 1 October to 31 December 2008 do not cover the quantities available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications covered by the quota bearing order number 09.4170 have not been lodged under Regulation (EC) No 812/2007, to be added to the subperiod from 1 January to 31 March 2009, amount to 1 431 000 kg.

Article 2

This Regulation shall enter into force on 19 September 2008.

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

Done at Brussels, 18 September 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 182, 12.7.2007, p. 7.

COMMISSION REGULATION (EC) No 917/2008**of 18 September 2008****on the issuing of import licences for applications lodged during the first seven days of September 2008 under the tariff quota opened by Regulation (EC) No 979/2007 for pigmeat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 979/2007 of 21 August 2007 opening and providing for the administration of an import tariff quota for pigmeat originating in Canada ⁽²⁾, and in particular Article 5(5) thereof,

Whereas:

- (1) Regulation (EC) No 979/2007 opened a tariff quota for imports of pigmeat products.

- (2) The applications for import licences lodged during the first seven days of September 2008 for the subperiod from 1 October to 31 December 2008 do not cover the quantities available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications covered by the quota bearing order number 09.4204 have not been lodged under Regulation (EC) No 979/2007, to be added to the subperiod from 1 January to 31 March 2009, amount to 2 312 000 kg.

Article 2

This Regulation shall enter into force on 19 September 2008.

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

Done at Brussels, 18 September 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 217, 22.8.2007, p. 12.

COMMISSION REGULATION (EC) No 918/2008**of 18 September 2008****on the issuing of import licences for applications lodged during the first seven days of September 2008 under tariff quotas opened by Regulation (EC) No 806/2007 for pigmeat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Having regard to Commission Regulation (EC) No 806/2007 of 10 July 2007 opening and providing for the administration of tariff quotas in the pigmeat sector ⁽³⁾, and in particular Article 5(6) thereof,

Whereas:

(1) Regulation (EC) No 806/2007 opened tariff quotas for imports of pigmeat products.

(2) The applications for import licences lodged during the first seven days of September 2008 for the subperiod from 1 October to 31 December 2008 do not, for some quotas, cover the quantities available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications have been lodged under Regulation (EC) No 806/2007 for the subperiod from 1 January to 31 March 2009 shall be multiplied by the allocation coefficients set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 September 2008.

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

Done at Brussels, 18 September 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 181, 11.7.2007, p. 3.

ANNEX

Group No	Order No	Allocation coefficient for import licence applications lodged for the subperiod from 1.10.2008-31.12.2008 (%)	Quantities not applied for, to be added to the subperiod from 1.1.2009-31.3.2009 (kg)
G2	09.4038	(²)	2 187 653
G3	09.4039	(²)	1 548 000
G4	09.4071	(¹)	1 501 000
G5	09.4072	(¹)	3 080 500
G6	09.4073	(¹)	7 533 500
G7	09.4074	(¹)	2 503 500

(¹) Not applicable: no licence application has been sent to the Commission.

(²) Not applicable: the applications do not cover the quantities available.

COMMISSION REGULATION (EC) No 919/2008**of 18 September 2008****granting no export refund for butter in the framework of the standing invitation to tender provided for in Regulation (EC) No 619/2008**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 164(2), in conjunction with Article 4, thereof,

Whereas:

(1) Commission Regulation (EC) No 619/2008 of 27 June 2008 opening a standing invitation to tender for export refunds concerning certain milk products ⁽²⁾ provides for a permanent tender.

(2) Pursuant to Article 6 of Commission Regulation (EC) No 1454/2007 of 10 December 2007 laying down common rules for establishing a tender procedure for fixing export refunds for certain agricultural products ⁽³⁾ and following

an examination of the tenders submitted in response to the invitation to tender, it is appropriate not to grant any refund for the tendering period ending on 16 September 2008.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

For the standing invitation to tender opened by Regulation (EC) No 619/2008, for the tendering period ending on 16 September 2008 no export refund shall be granted for the products and destinations referred to in Article 1(1) of that Regulation.

Article 2

This Regulation shall enter into force on 19 September 2008.

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

Done at Brussels, 18 September 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 168, 28.6.2008, p. 20.

⁽³⁾ OJ L 325, 11.12.2007, p. 69.

COMMISSION REGULATION (EC) No 920/2008**of 18 September 2008****fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 143 thereof,

Having regard to Regulation (EEC) No 2783/75 of the Council of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin, and in particular Article 3(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽²⁾ lays down detailed rules for implementing the system of additional import duties and fixes representative prices for poultrymeat and egg products and for egg albumin.
- (2) Regular monitoring of the data used to determine representative prices for poultrymeat and egg products and

for egg albumin shows that the representative import prices for certain products should be amended to take account of variations in price according to origin. The representative prices should therefore be published.

- (3) In view of the situation on the market, this amendment should be applied as soon as possible.

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day 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, 18 September 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 145, 29.6.1995, p. 47.

ANNEX

to the Commission Regulation of 18 September 2008 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

‘ANNEX I

CN code	Description of goods	Representative price (EUR/100 kg)	Security under Article 3(3) (EUR/100 kg)	Origin ⁽¹⁾
0207 12 10	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “70 % chickens”, frozen	111,1	0	BR
		110,9	0	AR
0207 12 90	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “65 % chickens”, frozen	128,2	0	BR
		120,2	0	AR
0207 14 10	Fowls of the species <i>Gallus domesticus</i> , boneless cuts, frozen	217,2	25	BR
		249,8	15	AR
		312,5	0	CL
0207 14 50	Fowls of the species <i>Gallus domesticus</i> , breasts, frozen	198,5	4	AR
0207 14 60	Fowl of the species <i>Gallus domesticus</i> , legs, frozen	109,6	10	BR
0207 14 70	Fowls of the species <i>Gallus domesticus</i> , other	102,7	77	BR
0207 25 10	Turkeys, not cut in pieces, presented as “80 % turkeys”, frozen	192,2	0	BR
0207 27 10	Turkeys, boneless cuts, frozen	294,4	1	BR
		195,7	31	CL
0408 11 80	Egg yolks	473,4	0	AR
0408 91 80	Eggs, not in shell, dried	461,0	0	AR
1602 32 11	Preparations of fowls of the species <i>Gallus domesticus</i> , uncooked	186,0	31	BR
3502 11 90	Egg albumin, dried	622,3	0	AR

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). The code “ZZ” represents “other origins”.

COMMISSION REGULATION (EC) No 921/2008**of 18 September 2008****fixing the rates of the refunds applicable to eggs and egg yolks exported in the form of goods not covered by Annex I to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural market and on specific provisions for certain agricultural products (single CMO Regulation) ⁽¹⁾, and in particular Article 164(2) thereof,

Whereas:

(1) Article 162(1) b of Regulation (EC) No 1234/2007 provides that the difference between prices in international trade for the products referred to in Article 1(1) (s) and listed in Part XIX of Annex I to of that Regulation and prices within the Community may be covered by an export refund where these goods are exported in the form of goods listed Part X of the Annex XX to that Regulation.

(2) Commission Regulation (EC) No 1043/2005 of 30 June 2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ⁽²⁾, specifies the products for which a rate of refund is to be fixed, to be applied where these products are exported in the form of goods listed in Part V of Annex XX to Regulation (EC) No 1234/2007.

(3) In accordance with paragraph 2 (b) of Article 14 of Regulation (EC) No 1043/2005, the rate of the refund per 100 kilograms for each of the basic products in question is to be fixed for a period of the same duration as that for which refunds are fixed for the same products exported unprocessed.

(4) Article 11 of the Agreement on Agriculture concluded under the Uruguay Round lays down that the export refund for a product contained in a good may not exceed the refund applicable to that product when exported without further processing.

(5) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products listed in Annex I to Regulation (EC) No 1043/2005 and in Article 1(1) of Regulation (EEC) No 2771/75, and exported in the form of goods listed in Part XIX of Annex XX to Regulation (EEC) No 1234/2007, shall be fixed as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 19 September 2008.

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

Done at Brussels, 18 September 2008.

For the Commission

Heinz ZOUREK

Director-General Enterprise and Industry

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 172, 5.7.2005, p. 24.

ANNEX

Rates of the refunds applicable from 19 September 2008 to eggs and egg yolks exported in the form of goods not covered by Annex I to the Treaty

(EUR/100 kg)			
CN code	Description	Destination ⁽¹⁾	Rate of refund
0407 00	Birds' eggs, in shell, fresh, preserved or cooked:		
	– Of poultry:		
0407 00 30	– – Other:		
	(a) On exportation of ovalbumin of CN codes 3502 11 90 and 3502 19 90	02	0,00
		03	16,00
		04	0,00
	(b) On exportation of other goods	01	0,00
0408	Birds' eggs, not in shell and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter:		
	– Egg yolks:		
0408 11	– – Dried:		
ex 0408 11 80	– – – Suitable for human consumption:		
	not sweetened	01	25,00
0408 19	– – Other:		
	– – – Suitable for human consumption:		
ex 0408 19 81	– – – – Liquid:		
	not sweetened	01	12,50
ex 0408 19 89	– – – – Frozen:		
	not sweetened	01	12,50
	– Other:		
0408 91	– – Dried:		
ex 0408 91 80	– – – Suitable for human consumption:		
	not sweetened	01	15,80
0408 99	– – Other:		
ex 0408 99 80	– – – Suitable for human consumption:		
	not sweetened	01	4,00

⁽¹⁾ The destinations are as follows:

- 01 Third countries. For Switzerland and Liechtenstein these rates are not applicable to the goods listed in Tables I and II to Protocol No 2 to the Agreement between the European Community and the Swiss Confederation of 22 July 1972,
- 02 Kuwait, Bahrain, Oman, Qatar, United Arab Emirates, Yemen, Turkey, Hong Kong SAR and Russia,
- 03 South Korea, Japan, Malaysia, Thailand, Taiwan and the Philippines,
- 04 all destinations except Switzerland and those of 02 and 03.

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 11 September 2008

establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors is not applicable to the production and wholesale of electricity in Poland

(notified under document number C(2008) 4805)

(Only the Polish text is authentic)

(Text with EEA relevance)

(2008/741/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ⁽¹⁾, and in particular Article 30(4) and (6) thereof,

Having regard to the request submitted by the Republic of Poland by a letter received on 19 May 2008,

After consulting the Advisory Committee for Public Contracts,

Whereas:

I. FACTS

- (1) On 19 May 2008, the Commission received a Polish request pursuant to Article 30(4) of Directive 2004/17/EC, transmitted to the Commission by letter. The Commission requested additional information by e-mail of 11 July 2008, which was transmitted by the Polish authorities by e-mail of 28 July 2008, after the end of the deadline set for answering.
- (2) The request submitted by the Republic of Poland concerns production and wholesale of electricity.

- (3) The request is introduced, and thus endorsed, by the independent national authority, (Urzędu Regulacji Energetyki, the Polish energy regulatory office).

II. LEGAL FRAMEWORK

- (4) Article 30 of Directive 2004/17/EC provides that contracts intended to enable the performance of one of the activities to which the Directive applies shall not be subject to the Directive if, in the Member State in which it is carried out, the activity is directly exposed to competition on markets to which access is not restricted. Direct exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. Access is deemed to be unrestricted if the Member State has implemented and applied the relevant Community legislation opening a given sector or a part of it. This legislation is listed in Annex XI of Directive 2004/17/EC, which, for the electricity sector, refers to Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity ⁽²⁾. Directive 96/92/EC has been superseded by Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC ⁽³⁾, which requires an even higher degree of market opening.

⁽¹⁾ OJ L 134, 30.4.2004, p. 1.

⁽²⁾ OJ L 27, 30.1.1997, p. 20.

⁽³⁾ OJ L 176, 15.7.2003, p. 37.

- (5) Poland has implemented and applied not only Directive 96/92/EC but also Directive 2003/54/EC, opting for legal and organisational unbundling for transmission and distribution networks except for the smallest distribution companies, which, while continuing to be subject to accounting unbundling, are exempted from the requirements of legal and organisational unbundling having less than 100 000 customers or serving electricity systems with consumption lower than 3 TWh in 1996. It is, however, foreseen that Distribution System Operators (DSOs) will function within publicly owned vertically integrated groups at least for 2008. Consequently, and in accordance with the first subparagraph of Article 30(3), access to the market should be deemed not to be restricted.
- (6) Direct exposure to competition should be evaluated on the basis of various indicators, none of which are, *per se*, decisive. In respect of the markets concerned by this decision, the market share of the main players on a given market constitutes one criterion which should be taken into account. Another criterion is the degree of concentration on those markets. Given the characteristics of the markets concerned, further criteria should also be taken into account such as the functioning of the balancing market, price competition and the degree of customer switching.
- (7) This Decision is without prejudice to the application of the rules on competition.

III. ASSESSMENT

- (8) The request submitted by Poland concerns production and wholesale of electricity in Poland.
- (9) The Polish request considers that the relevant geographical market is limited to the national territory. The market presents a unified character with no obstacles for electricity generated in one region of the country to be purchased by a recipient from a different region (the majority of electrical energy capacity is installed in the south of Poland, but energy from this region is sold throughout Poland). Furthermore, according to the 2007 Activity Report ⁽¹⁾, in '2006 system congestion of structural character ... was existent at the borders with Germany, the Czech Republic and Slovakia. ...' In 2006 9,74 % of the total generation of electricity was exported from Poland, whereas imports to Poland in the same year amounted to 2,94 % of total generation (net exports thus accounted for 6,8 % of total generation in 2006). The 2007 Activity Report concludes that the 'most important

issue related to electricity exchange is limited transfer capacity of the Polish grid resulting in congestion on interconnectors. It is mainly caused by a high market pressure resulting from significant price differences of electricity in Poland and Germany, the Czech Republic and Sweden.' Consequently, the territory of the Republic of Poland should be considered to constitute the relevant market for the purposes of evaluating the conditions laid down in Article 30(1) of Directive 2004/17/EC.

- (10) The Communication from the Commission to the Council and the European Parliament: Report on progress in creating the internal gas and electricity market ⁽²⁾, hereafter referred to as the '2005 Report' states that 'many national markets display a high degree of concentration of the industry, impeding the development of effective competition' ⁽³⁾. Consequently, it is considered that, in respect of electricity generation, 'one indicator for the degree of competition on national markets is the total market share of the biggest three producers' ⁽⁴⁾. For 2006, the Polish authorities have indicated a share of the three largest generators of 44,2 % of the attainable power and 52,3 % of the gross production ⁽⁵⁾. In 2007, according to the reply of the Polish authorities received on 28 July, the shares rose to 51,7 % of the attainable power and 58,0 % of the gross production ⁽⁶⁾. According to the Polish authorities, the market shares of the three largest operators on the wholesale market amounted to 48,1 % in 2006 and rose to 55,4 % in 2007 ⁽⁷⁾. It has to be highlighted, that the figures provided by the Polish authorities show a clear growth, between 2006 and 2007, of the market shares of the three largest operators in each field. These levels of concentration are higher than the corresponding percentage, 39, to which Commission Decisions 2006/211/EC ⁽⁸⁾ and 2007/141/EC ⁽⁹⁾ refer to for the UK. They are similar to (or somewhat higher than) the level (52,2 %) referred to in Commission Decision 2008/585/EC ⁽¹⁰⁾ in respect of Austria and the Polish levels of concentration are finally lower than the corresponding levels referred to in Commission Decisions 2006/422/EC ⁽¹¹⁾ and 2007/706/EC ⁽¹²⁾ concerning, respectively Finland (73,6 %) and Sweden (86,7 %). In all three cases, however, these levels of concentration are 'offset' by the 'competitive pressure on the ... market deriving from the potential to import electricity from outside ...' ⁽¹³⁾. As described under recital 9 above, there are system congestions and limited transfer capacities so that imports amount to less than 3 % of the

⁽¹⁾ English Language version of the 2007 Activity Report, issued by the President of the Energy Regulatory Office in Poland, dated 31 October 2007 and published 24.4.2008 on http://www.ure.gov.pl/portal/en/1/17/Activity_Report_2007.html

⁽²⁾ COM(2005) 568 final of 15.11.2005.

⁽³⁾ The 2005 Report, p. 2.

⁽⁴⁾ Cf. the 2005 Report, p. 7.

⁽⁵⁾ Cf. point 5.1 of the request.

⁽⁶⁾ Cf. page 1 of the reply.

⁽⁷⁾ Cf. Point 5.1 of the request and page 2 of the reply.

⁽⁸⁾ OJ L 76, 15.3.2006, p. 6.

⁽⁹⁾ OJ L 62, 1.3.2007, p. 23.

⁽¹⁰⁾ OJ L 188, 16.7.2008, p. 28.

⁽¹¹⁾ OJ L 168, 21.6.2006, p. 33.

⁽¹²⁾ OJ L 287, 1.11.2007, p. 18.

⁽¹³⁾ See, e.g. Recital 12 of Decision 2007/706/EC. Indeed, in the Swedish and Finnish cases, the existence of a regional market has been left open, which, if taken as reference, brought the levels of concentration to 40 %.

total Polish generation as compared, e. g., to the Austrian case where 'imported electricity accounted for approximately a quarter ⁽¹⁾ of its total needs ⁽²⁾, in particular for base load power' ⁽³⁾. In addition, according to a document issued by the President of the Polish Energy Regulatory Office ⁽⁴⁾ 'the current structure and the concentration degree of the power industry activity have resulted first from the horizontal and then from vertical consolidation of state-owned power industry companies. The consolidation process, which has negatively affected the competition conditions on the domestic market, will carry on to substantially affect competition development on the wholesale market.' This level of concentration therefore cannot be taken as an indicator of direct exposure to competition of the generation and wholesale markets.

and the selling price, the Polish balancing market and its main characteristics – in particular the lack of an intra-day market or access to other market platforms that may function as a substitute as well as certain aspects of balancing costs – are such that the 'current structure of tariffs for transmission services, under which all customers are charged with the balancing and congestion management costs, does not send appropriate economical signals for the market participants' ⁽⁷⁾. The functioning of the Polish balancing market can therefore not be taken as an additional indicator that electricity production and wholesale are directly exposed to competition.

- (11) Furthermore, even though they represent a small part of the total amount of electricity produced and/or consumed in a Member State, the functioning of the balancing markets should also be considered as an additional indicator. In fact, 'any market participant who cannot easily match its generation portfolio to the characteristics of its customers may find itself exposed to the difference between the price at which the transmission system operator [hereinafter TSO] will sell imbalance energy, and the price at which it will buy back excess production. These prices may either be directly imposed by the regulator on the TSO; or alternatively a market based mechanism will be used in which the price is determined by bids from other producers to regulate their production upwards or downwards [...]. A key difficulty for small market participants arises where there is the risk of a large spread between the buying price from the TSO and the selling price. This occurs in a number of Member States and is likely to be detrimental to the development of competition. A high spread may be indicative of an insufficient level of competition in the balancing market which may be dominated by only one or two main generators' ⁽⁵⁾. Despite having a relatively low spread ⁽⁶⁾ between the buying price from the TSO

- (12) Given the characteristics of the product concerned (electricity) and the scarcity or unavailability of suitable substitutable products or services, price competition and price formation assume greater importance when assessing the competitive state of the electricity markets. In respect of large industrial (end)users, who are most liable to procure their electricity directly from suppliers which are at the same time generators, the number of customers switching supplier may serve as an indicator of price competition and, thus, indirectly, 'a natural indicator of the effectiveness of competition. If few customers are switching, there is likely to be a problem with the functioning of the market, even if the benefits from the possibility of renegotiating with the historical supplier should not be ignored' ⁽⁸⁾. Furthermore, 'the existence of regulated end-user prices is clearly a key determinant of customer behaviour [...]. Although the retaining of controls may be justified in a period of transition, these will increasingly cause distortions as the need for investment approaches' ⁽⁹⁾.

⁽¹⁾ 23,5 % according to information given by the Austrian authorities.

⁽²⁾ i.e. the quantity of electricity needed for internal consumption and exports.

⁽³⁾ See Recital 10 of Decision 2008/585/EC.

⁽⁴⁾ The English language version of 'Roadmap of prices liberalisation for all electricity consumers – Towards the customers rights and effective competition in the power industry sector', dated February 2008, and published on 30.5.2008 on http://www.ure.gov.pl/porta-l/en/1/18/Roadmap_of_prices_liberalisation_for_all_electricity_consumers.html, p. 10. In the following, this document will be referred to as 'Roadmap'.

⁽⁵⁾ Commission Staff Working Document, Technical Annex to the 2005 Report, SEC(2005)1448, hereinafter referred to as 'Technical Annex', p. 67–68.

⁽⁶⁾ According to the Final Report, paragraph 993, table 52, the Polish balancing market operates with a spread of 13, which places it in the lower half as spread in balancing markets in the EU ranges between 0 and 79. This analysis looks at the effects on electricity generation of the workings of the balancing market and not at the degree of competition within the balancing market itself. For this purpose it is therefore unimportant whether a low spread is caused by competition or a price cap imposed by the regulator, just as the elevated concentration on the balancing market is without pertinence in this analysis.

- (13) According to the latest available information, switching rates amount to 15,84 % for large and very large industrial customers in Poland ⁽¹⁰⁾, representing about 7,6 % of total supplies ⁽¹¹⁾. This must be seen against the background of the situation as set out in the previous Decisions concerning the electricity sector in which switching rates for large and very large industrial users ranged from more than 75 % (Decision 2006/422/EC concerning Finland) to 41,5 % (Decision 2008/585/EC concerning Austria). Furthermore,

⁽⁷⁾ See Roadmap, p. 11.

⁽⁸⁾ 2005 Report, p. 9.

⁽⁹⁾ Technical Annex, p. 17.

⁽¹⁰⁾ See 'Table 2: Annual Switching Rate Electricity 2006 (by volume)', p. 5 et seq. of 'Commission Staff Working Document: Accompanying document to the Report on Progress in Creating the Internal Gas and Electricity Market', COM(2008)192 final of 15.4.2008.

⁽¹¹⁾ See 2007 Activity Report, p. 72.

there are still end-user price controls for household customers, where operators have to provide the regulator with the tariffs they wish to apply. The situation in Poland is therefore not satisfactory as far as the level of switching of large and very large industrial (end)users ⁽¹⁾ and end-user price control are concerned and can not be taken as an indicator of direct exposure to competition.

- (14) In respect of production and wholesale of electricity in Poland, the situation can thus be summarised as follows: market shares of the three biggest generators and wholesalers are relatively high without this being counterbalanced by readily available imported electricity; as set out in recital 11 the functioning of the balancing markets is not sufficient to be taken as an indicator of direct exposure to competition, the degree of switching is low and end-user price controls subsist for some groups of customers.

- (15) Finally, the overall context of the energy sector in Poland can not be disregarded. Thus, the Commission's 'Recommendation for a Council Recommendation on the 2008 up-date of the broad guidelines for the economic policies of the Member States and the Community and on the implementation of Member States employment policies' ⁽²⁾ recommends that Poland 'improve the framework for competition in network industries, including through a review of the role of regulators, and vigorously continue the process of the liberalisation of energy markets' ⁽³⁾, another indication that electricity production and wholesale are not (yet) fully exposed to competition in Poland.

IV. CONCLUSIONS

- (16) In view of the factors examined in recitals 9 to 15, it should be concluded that production and wholesale of electricity are currently not directly exposed to competition in Poland. Therefore Article 30(1) of Directive 2004/17/EC is not applicable to contracts intended to enable the pursuit of those activities in Poland. Conse-

quently, Directive 2004/17/EC continues to apply when contracting entities award contracts intended to enable generation and wholesale of electricity to be carried out in Poland or when they organise design contests for the pursuit of such activities in Poland.

- (17) This Decision is based on the legal and factual situation as of May to July 2008 as it appears from the information submitted by the Republic of Poland or published on websites administered by the Polish authorities, the 2005 Report and the Technical Annex thereto, the 2007 Communication and the 2007 Staff Document as well as the Final Report. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 30(1) of Directive 2004/17/EC are met,

HAS ADOPTED THIS DECISION:

Article 1

Article 30(1) of Directive 2004/17/EC is not applicable to production and wholesale of electricity in Poland. Consequently, Directive 2004/17/EC shall continue to apply to contracts awarded by contracting entities and intended to enable them to carry out such activities in Poland.

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels, 11 September 2008.

For the Commission

Charlie McCREEVY

Member of the Commission

⁽¹⁾ See 2007 Activity Report, p. 71: 'The number of companies executing TPA rights' – i.e. switching – 'has been steadily growing since 2001 but the overall figures are far from satisfactory'.

⁽²⁾ Part IV of the Commission's Communication from the Commission to the Spring European Council: Strategic report on the renewed Lisbon strategy for growth and jobs: launching the new cycle (2008 to 2010), COM(2007) 803 final of 11.12.2007. Published at http://ec.europa.eu/growthandjobs/pdf/european-dimension-200712-annual-progress-report/200712-countries-specific-recommendations_en.pdf

⁽³⁾ P. 31, point 5. This is also consistent with some statements of the 2007 Activity Report: 'In Poland the energy market has not yet fully developed.' (p. 2-3); 'Still the structure of the Polish energy market could hardly be described as fully competitive' (p. 12).

COMMISSION DECISION

of 18 September 2008

concerning the non-inclusion of propachlor in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance

(notified under document number C(2008) 5064)

(Text with EEA relevance)

(2008/742/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular the fourth subparagraph of Article 8(2) thereof,

Whereas:

- (1) Article 8(2) of Directive 91/414/EEC provides that a Member State may, during a period of 12 years following the notification of that Directive, authorise the placing on the market of plant protection products containing active substances not listed in Annex I to that Directive that are already on the market two years after the date of notification, while those substances are gradually being examined within the framework of a programme of work.
- (2) Commission Regulations (EC) No 451/2000 ⁽²⁾ and (EC) No 1490/2002 ⁽³⁾ lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list includes propachlor.
- (3) For propachlor the effects on human health and the environment have been assessed in accordance with the provisions laid down in Regulations (EC) No 451/2000 and (EC) No 1490/2002 for a range of uses proposed by the notifier. Moreover, those Regulations designate the *rapporteur* Member States which have to submit the relevant assessment reports and recommendations to the European Food Safety Authority (EFSA) in accordance with Article 8(1) of Regulation (EC) No 451/2000. For propachlor the *rapporteur* Member State was the Netherlands and all relevant information was submitted on 23 May 2007.

- (4) The Commission examined propachlor in accordance with Article 11a of Regulation (EC) No 1490/2002. A draft review report for that substance was reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 20 May 2008 in the format of the Commission review report.
- (5) During the examination of this active substance by the Committee, taking into account comments received from Member States, it was concluded that there are clear indications that it may be expected that it has harmful effects on groundwater and in particular the leaching to groundwater is above 0,1 µg/l in all modeled scenarios for three relevant metabolites. Moreover, other concerns which were identified by the *rapporteur* Member States in its assessment report are included in the review report for the substance.
- (6) The Commission invited the notifier to submit its comments on the results of the examination of propachlor and on its intention or not to further support the substance. The notifier submitted its comments which have been carefully examined. However, despite the arguments put forwards by the notifier, the concerns identified could not be eliminated, and assessments made on the basis of the information submitted have not demonstrated that it may be expected that, under the proposed conditions of use, plant protection products containing propachlor satisfy in general the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC.
- (7) Propachlor should therefore not be included in Annex I to Directive 91/414/EEC.
- (8) Measures should be taken to ensure that authorisations granted for plant protection products containing propachlor are withdrawn within a fixed period of time and are not renewed and that no new authorisations for such products are granted.

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 55, 29.2.2000, p. 25.

⁽³⁾ OJ L 224, 21.8.2002, p. 23.

- (9) Any period of grace granted by a Member State for the disposal, storage, placing on the market and use of existing stocks of plant protection products containing propachlor should be limited to 12 months in order to allow existing stocks to be used in one further growing season, which ensures that plant protection products containing propachlor remain available for 18 months from the adoption of this Decision.
- (10) This Decision does not prejudice the submission of an application for propachlor in accordance with Article 6(2) of Directive 91/414/EEC and Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I⁽¹⁾, in view of a possible inclusion in its Annex I.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Propachlor shall not be included as an active substance in Annex I to Directive 91/414/EEC.

Article 2

Member States shall ensure that:

- (a) authorisations for plant protection products containing propachlor are withdrawn by 18 March 2009;
- (b) no authorisations for plant protection products containing propachlor are granted or renewed from the date of publication of this Decision.

Article 3

Any period of grace granted by Member States in accordance with the provisions of Article 4(6) of Directive 91/414/EEC, shall be as short as possible and shall expire on 18 March 2010 at the latest.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 18 September 2008.

For the Commission

Androulla VASSILIOU

Member of the Commission

⁽¹⁾ OJ L 15, 18.1.2008, p. 5.

COMMISSION DECISION

of 18 September 2008

concerning the non-inclusion of diniconazole-M in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance

*(notified under document number C(2008) 5068)***(Text with EEA relevance)**

(2008/743/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular the fourth subparagraph of Article 8(2) thereof,

Whereas:

- (1) Article 8(2) of Directive 91/414/EEC provides that a Member State may, during a period of 12 years following the notification of that Directive, authorise the placing on the market of plant protection products containing active substances not listed in Annex I to that Directive that are already on the market two years after the date of notification, while those substances are gradually being examined within the framework of a programme of work.
- (2) Commission Regulations (EC) No 451/2000 ⁽²⁾ and (EC) No 1490/2002 ⁽³⁾ lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list includes diniconazole-M.
- (3) For diniconazole-M the effects on human health and the environment have been assessed in accordance with the provisions laid down in Regulations (EC) No 451/2000 and (EC) No 1490/2002 for a range of uses proposed by the notifier. Moreover, those Regulations designate the *rapporteur* Member States which have to submit the relevant assessment reports and recommendations to the European Food Safety Authority (EFSA) in accordance with Article 8(1) of Regulation (EC) No 451/2000. For diniconazole-M the *rapporteur* Member State was France and all relevant information was submitted on 31 May 2007.

- (4) The Commission examined diniconazole-M in accordance with Article 11a of Regulation (EC) No 1490/2002. A draft review report for that substance was reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 20 May 2008 in the format of the Commission review report.
- (5) During the examination of this active substance by the Committee, taking into account comments received from Member States, it was concluded that there are clear indications that it may be expected that it has harmful effects on human health and in particular on operators, because the exposure is greater than 100 % of the AOEL. Moreover, other concerns which were identified by the *rapporteur* Member State in its assessment report are included in the review report for the substance.
- (6) The Commission invited the notifier to submit its comments on the results of the examination of diniconazole-M and on its intention or not to further support the substance. The notifier submitted its comments which have been carefully examined. However, despite the arguments put forwards by the notifier, the concerns identified could not be eliminated, and assessments made on the basis of the information submitted have not demonstrated that it may be expected that, under the proposed conditions of use, plant protection products containing diniconazole-M satisfy in general the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC.
- (7) Diniconazole-M should therefore not be included in Annex I to Directive 91/414/EEC.
- (8) Measures should be taken to ensure that authorisations granted for plant protection products containing diniconazole-M are withdrawn within a fixed period of time and are not renewed and that no new authorisations for such products are granted.

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 55, 29.2.2000, p. 25.

⁽³⁾ OJ L 224, 21.8.2002, p. 23.

- (9) Any period of grace granted by a Member State for the disposal, storage, placing on the market and use of existing stocks of plant protection products containing diniconazole-M should be limited to 12 months in order to allow existing stocks to be used in one further growing season, which ensures that plant protection products containing diniconazole-M remain available for 18 months from the adoption of this Decision.
- (10) This Decision does not prejudice the submission of an application for diniconazole-M in accordance with Article 6(2) of Directive 91/414/EEC and Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I ⁽¹⁾, in view of a possible inclusion in its Annex I.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Diniconazole-M shall not be included as an active substance in Annex I to Directive 91/414/EEC.

Article 2

Member States shall ensure that:

- (a) authorisations for plant protection products containing diniconazole-M are withdrawn by 18 March 2009;
- (b) no authorisations for plant protection products containing diniconazole-M are granted or renewed from the date of publication of this Decision.

Article 3

Any period of grace granted by Member States in accordance with the provisions of Article 4(6) of Directive 91/414/EEC, shall be as short as possible and shall expire on 18 March 2010 at the latest.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 18 September 2008.

For the Commission

Androulla VASSILIOU

Member of the Commission

⁽¹⁾ OJ L 15, 18.1.2008, p. 5.

COMMISSION DECISION

of 18 September 2008

concerning the non-inclusion of dicloran in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance

(notified under document number C(2008) 5086)

(Text with EEA relevance)

(2008/744/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular the fourth subparagraph of Article 8(2) thereof,

Whereas:

- (1) Article 8(2) of Directive 91/414/EEC provides that a Member State may, during a period of 12 years following the notification of that Directive, authorise the placing on the market of plant protection products containing active substances not listed in Annex I to that Directive that are already on the market two years after the date of notification, while those substances are gradually being examined within the framework of a programme of work.
- (2) Commission Regulations (EC) No 451/2000 ⁽²⁾ and (EC) No 1490/2002 ⁽³⁾ lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list includes dicloran.
- (3) For dicloran the effects on human health and the environment have been assessed in accordance with the provisions laid down in Regulations (EC) No 451/2000 and (EC) No 1490/2002 for a range of uses proposed by the notifier. Moreover, those Regulations designate the *rapporteur* Member States which have to submit the relevant assessment reports and recommendations to the European Food Safety Authority (EFSA) in accordance with Article 8(1) of Regulation (EC) No 451/2000. For dicloran the *rapporteur* Member State was Spain and all relevant information was submitted on 22 July 2005.

- (4) The Commission examined dicloran in accordance with Article 11a of Regulation (EC) No 1490/2002. A draft review report for that substance was reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 20 May 2008 in the format of the Commission review report.
- (5) During the examination of this active substance by the Committee, it was concluded, taking into account comments received from Member States, that there are clear indications that it may be expected that it has harmful effects on human health and in particular on workers, because the exposure is greater than 100 % of the AOEL. Moreover, other concerns which were identified by the *rapporteur* Member States in its assessment report are included in the review report for the substance.
- (6) The Commission invited the notifier to submit its comments on the results of the examination of dicloran and on its intention or not to further support the substance. The notifier submitted its comments which have been carefully examined. However, despite the arguments put forwards by the notifier, the concerns identified could not be eliminated, and assessments made on the basis of the information submitted have not demonstrated that it may be expected that, under the proposed conditions of use, plant protection products containing dicloran satisfy in general the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC.
- (7) Dicloran should therefore not be included in Annex I to Directive 91/414/EEC.
- (8) Measures should be taken to ensure that authorisations granted for plant protection products containing dicloran are withdrawn within a fixed period of time and are not renewed and that no new authorisations for such products are granted.

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 55, 29.2.2000, p. 25.

⁽³⁾ OJ L 224, 21.8.2002, p. 23.

- (9) Any period of grace granted by a Member State for the disposal, storage, placing on the market and use of existing stocks of plant protection products containing dicloran should be limited to 12 months in order to allow existing stocks to be used in one further growing season, which ensures that plant protection products containing dicloran remain available for 18 months from the adoption of this Decision.
- (10) This Decision does not prejudice the submission of an application for dicloran in accordance with Article 6(2) of Directive 91/414/EEC and Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I⁽¹⁾, in view of a possible inclusion in its Annex I.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Dicloran shall not be included as an active substance in Annex I to Directive 91/414/EEC.

Article 2

Member States shall ensure that:

- (a) authorisations for plant protection products containing dicloran are withdrawn by 18 March 2009;
- (b) no authorisations for plant protection products containing dicloran are granted or renewed from the date of publication of this Decision.

Article 3

Any period of grace granted by Member States in accordance with the provisions of Article 4(6) of Directive 91/414/EEC, shall be as short as possible and shall expire on 18 March 2010 at the latest.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 18 September 2008.

For the Commission

Androulla VASSILIOU

Member of the Commission

⁽¹⁾ OJ L 15, 18.1.2008, p. 5.

COMMISSION DECISION

of 18 September 2008

concerning the non-inclusion of cyanamide in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance

(notified under document number C(2008) 5087)

(Text with EEA relevance)

(2008/745/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

cyanamide the *rapporteur* Member State was Germany and all relevant information was submitted on 3 January 2006.

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular the fourth subparagraph of Article 8(2) thereof,

Whereas:

(1) Article 8(2) of Directive 91/414/EEC provides that a Member State may, during a period of 12 years following the notification of that Directive, authorise the placing on the market of plant protection products containing active substances not listed in Annex I to that Directive that are already on the market two years after the date of notification, while those substances are gradually being examined within the framework of a programme of work.

(2) Commission Regulations (EC) No 451/2000 ⁽²⁾ and (EC) No 1490/2002 ⁽³⁾ lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list includes cyanamide.

(3) For cyanamide the effects on human health and the environment have been assessed in accordance with the provisions laid down in Regulations (EC) No 451/2000 and (EC) No 1490/2002 for a range of uses proposed by the notifier. Moreover, those Regulations designate the *rapporteur* Member States which have to submit the relevant assessment reports and recommendations to the European Food Safety Authority (EFSA) in accordance with Article 8(1) of Regulation (EC) No 451/2000. For

(4) The Commission examined cyanamide in accordance with Article 11a of Regulation (EC) No 1490/2002. A draft review report for that substance was reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 20 May 2008 in the format of the Commission review report.

(5) During the examination of this active substance by the Committee, it was concluded, taking into account comments received from Member States, that there are clear indications that it may be expected that it has harmful effects on human health and in particular on operators, because the exposure is greater than 100 % of the AOEL. Moreover, other concerns which were identified by the *rapporteur* Member States in its assessment report are included in the review report for the substance.

(6) The Commission invited the notifier to submit its comments on the results of the examination of cyanamide and on its intention or not to further support the substance. The notifier submitted its comments which have been carefully examined. However, despite the arguments put forwards by the notifier, the concerns identified could not be eliminated, and assessments made on the basis of the information submitted have not demonstrated that it may be expected that, under the proposed conditions of use, plant protection products containing cyanamide satisfy in general the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC.

(7) Cyanamide should therefore not be included in Annex I to Directive 91/414/EEC.

(8) Measures should be taken to ensure that authorisations granted for plant protection products containing cyanamide are withdrawn within a fixed period of time and are not renewed and that no new authorisations for such products are granted.

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 55, 29.2.2000, p. 25.

⁽³⁾ OJ L 224, 21.8.2002, p. 23.

- (9) Any period of grace granted by a Member State for the disposal, storage, placing on the market and use of existing stocks of plant protection products containing cyanamide should be limited to 12 months in order to allow existing stocks to be used in one further growing season, which ensures that plant protection products containing cyanamide remain available for 18 months from the adoption of this Decision.
- (10) This Decision does not prejudice the submission of an application for cyanamide in accordance with Article 6(2) of Directive 91/414/EEC and Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I⁽¹⁾, in view of a possible inclusion in its Annex I.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Cyanamide shall not be included as an active substance in Annex I to Directive 91/414/EEC.

Article 2

Member States shall ensure that:

- (a) authorisations for plant protection products containing cyanamide are withdrawn by 18 March 2009;
- (b) no authorisations for plant protection products containing cyanamide are granted or renewed from the date of publication of this Decision.

Article 3

Any period of grace granted by Member States in accordance with the provisions of Article 4(6) of Directive 91/414/EEC, shall be as short as possible and shall expire on 18 March 2010 at the latest.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 18 September 2008.

For the Commission

Androulla VASSILIOU
Member of the Commission

⁽¹⁾ OJ L 15, 18.1.2008, p. 5.

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.