COMMISSION REGULATION (EC) No 703/97

of 18 April 1997

introducing for a trial period from 1 July 1997 to 30 June 1998 a cumulative recovery system for determining certain import duties on rice and amending Regulation (EC) No 1503/96

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice (1), and in particular Articles 11 (4) and 21 thereof,

Whereas Article 11 (2) (a) of Regulation (EC) No 3072/95 establishes the method for calculating the import duty on husked rice falling within CN code 1006 20 and lays down that the duty is equal to the intervention price valid on importation, increased by 80 % or 88 % depending on the type of rice imported, less the import price; whereas, with a view to the application of that provision, Commission Regulation (EC) No 1503/96 of 29 July 1996 on the detailed rules for the application of Council Regulation (EC) No 3072/95 with regard to import duties on rice (2), as amended by Regulation (EC) No 2131/96 (3), lays down that import duties are to be fixed every two weeks on the basis of reference prices established in accordance with Article 5 of Regulation (EC) No 1503/96;

Whereas, as a result of the negotiations with certain third countries as part of negotiations under Article XXIV:6 of GATT, by Council Decision 95/591/EC (4), the Community concluded an agreement (hereinafter 'the Agreement') in the form of an exchange of letters with the United States of America on cereals and rice; whereas the Agreement provides, *inter alia*, that a cumulative recovery system for husked rice (brown rice) is to be established by the Commission in consultation with the United States Government and introduced for a 12 month trial period; whereas such a system should therefore be established;

Whereas the import regime established by Regulation (EC) No 1503/96 is based on the periodic fixing by the Commission of reference import prices; whereas, in the light of the commitments entered into by the Community in the aforementioned Agreement, the cumulative recovery system (hereinafter referred to as 'CRS') must in particular be designed to enable an assessment of the operation of the aforementioned arrangements to be made following the trial period, in terms of the levying of duties on the basis of the actual import prices for consignments imported during that period; whereas it is also necessary to provide that importers may choose, under the CRS, between the definitive levying of duties in accordance with Regulation (EC) No 1503/96 and their adjustment in accordance with actual import prices; whereas, in view of the foregoing, Regulation (EC) No 1503/96 will continue to apply in full; whereas, in order to achieve the objectives pursued and to ensure that the system is applied both reliably and effectively and is fraudproof, the CRS needs to include a number of special features as regards organization, procedure and verification, and a sufficient margin of discretion needs to be granted to the competent national authorities;

Whereas to that end an administrative system should be set up covering all imports effected during the trial period; whereas, for that system to be fully operational, management of the CRS should be concentrated in one single authority in each Member State (hereinafter referred to as 'CRS authority'), and provision should be made for each importer to be registered with the competent CRS authority prior to the issue of import licences and acceptance of customs declarations, and for importers to be obliged to opt irrevocably, over the entire trial period, for or against the adjustment of their duties determined in accordance with Regulation (EC) No 1503/96;

Whereas verification by the CRS authorities of the declared import prices requires each consignment presented for release for free circulation to be homogeneous, requires the relevant customs declarations to contain the information needed for that purpose, and requires consignments imported by importers who have opted for adjustment of their duties (hereinafter referred to as 'CRS importers') to be subject to routine sampling; whereas where one or more items of information required in the customs declaration is missing, the release for free circulation of the consignment in question must be subject to the lodging of a security, to be forfeit where the missing information is not provided within a given time-limit;

Whereas, in order to ensure that each CRS authority is kept informed of imports falling within its field of responsibility throughout the trial period, provision should be made for all importers to submit a monthly declaration comprising certain essential information; whereas for the purposes of subsequent adjustment of their duties, CRS importers must submit additional information; whereas in this context, the criteria and

(1) OJ No L 329, 30. 12. 1995, p. 18.
(2) OJ No L 189, 30. 7. 1996, p. 71.
(3) OJ No L 285, 7. 11. 1996, p. 6.
(4) OJ No L 334, 30. 12. 1995, p. 25.

elements relating to the quality and/or characteristics of the rice imported should be defined, to serve as a point of reference in ascertaining the truthfulness of import prices exceeding by more than 1 % the reference price laid down in Community regulations; whereas, since the assessment of the results of the CRS and the adjustment of import duties for CRS importers must take place every six months, provision should be made for CRS importers to submit two CRS declarations, in particular to summarize details of the consignments which they have imported in each of the two halves of the trial period;

Whereas verification of the declarations submitted by CRS importers means that each CRS authority must make administrative and on-the-spot checks; whereas, as a result, the extent of and methods for such checks must be laid down;

Whereas it is inherent in the system laid down in Article 11 (2) (a) of Regulation (EC) No 3072/95 that the higher the import price to be taken into account is, the lower the import duty to be levied; whereas, unlike *ad valorem* import duties, that mechanism is such as to encourage CRS importers to declare import prices that are as high as possible; whereas this could not only lead to the imposition of import taxes that are too low and even encourage fraudulent manipulations falsifying conditions on the Community rice market, but could also affect the proper functioning of the CRS in general and, as a result, make it impossible to assess the operation of the reference price system; whereas, in those circumstances, application of the provisions relating to the customs value as set out in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1], as last amended by European Parliament and Council Regulation (EC) No 82/97 [2] is not possible; whereas, to prevent declared import prices from being artificially inflated in particular by means of intermediate commercial transactions, the elements which those prices may comprise must be laid down in detail; whereas, furthermore, it is necessary to adopt special additional rules applicable to 'related persons' within the meaning of Article 143 of Commission Regulation (EC) No 2454/93 [3], as last amended by Regulation (EC) No 89/97 [4];

Whereas, where certain circumstances prevail, the import price should not be determined solely on the basis of information provided by CRS importers; whereas those circumstances should be specified and discretionary power granted to the CRS authorities to determine that price using other available information; whereas, however, if the import price cannot be determined in accordance with the rules laid down to that end, the reference price fixed under Regulation (EC) No 1503/96 should be used;

Whereas the proper functioning of the CRS depends to a large extent on strict compliance with this Regulation, in particular by CRS importers, and on their fair conduct; whereas appropriate and effective measures should therefore be laid down to apply where verification or on-the-spot checks cannot be made for reasons for which the CRS importer in question is responsible; whereas the same applies to prevent the CRS provisions from being circumvented by means of legal or economic entities which are essentially artificial;

Whereas, pursuant to Article 4 (a) (1) of Regulation (EC) No 1503/96, certain types of basmati rice originating in India and Pakistan may benefit from a reduction of ECU 250 per tonne in the import duty fixed under that Regulation; whereas, given that the CRS allows importers to choose between definitive application of that reduced duty and adjustment thereof in accordance with the actual import price, it is appropriate to restrict enjoyment of that reduction to importers who do not opt for such adjustment;

Whereas the Agreement provides that the United States of America is to withdraw its request for the establishment of a WTO dispute settlement panel on the Community's import system for rice and cereals; whereas in the light of that undertaking, the applicability of this Regulation as from 15 May 1997 should be made subject to the United States' having definitively withdrawn its request before 1 May 1997; whereas, for the sake of legal clarity, the Commission should publish a notice relating thereto in the *Official Journal of the European Communities* before 15 May 1997;

Whereas the Management Committee for Cereals has not delivered an opinion within the time-limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. A cumulative recovery system (hereinafter referred to as 'CRS') is hereby introduced for a trial period from 1 July 1997 to 30 June 1998 as regards full import duties as referred to in Article 11 (2) of Regulation (EC) No 3072/95 on husked rice falling within CN code 1006 20.

(1) OJ No L 302, 19. 10. 1992, p. 1.
(2) OJ No L 17, 21. 1. 1997, p. 1.
(3) OJ No L 253, 11. 10. 1993, p. 1.
(4) OJ No L 17, 21. 1. 1997, p. 28.

2. The purpose of the CRS is:

(a) to determine for each importer who has opted for the adjustment of his import duties in accordance with Article 10 (2) (hereinafter referred to as 'CRS importer'):

— the amount of the import duties on consignments imported during the trial period calculated in accordance with this Regulation on the basis of the import price for each consignment imported,

— the positive or negative balance between the amount referred to in the first indent and the amount of the import duties on those imports, determined and collected in accordance with Article 11 (2) of Regulation (EC) No 3072/95 and with Regulation (EC) No 1503/96,

thus enabling the competent authorities and importers to undertake, as appropriate, the adjustment of the amount of underpayments and overpayments, respectively;

(b) to provide the information necessary for the proper application of this Regulation.

3. The application of the CRS shall not affect the charging of import duties at the moment of release for free circulation under Article 11 (2) of Regulation (EC) No 3072/95 and under Regulation (EC) No 1503/96.

The import duties shall be those applicable at the time laid down in Article 67 of Regulation (EEC) No 2913/92 (hereinafter referred to as 'the Customs Code').

4. For the purposes of this Regulation:

(a) 'importer' means a natural or legal person who, as applicant and holder of an import licence, presents a declaration of release for free circulation for the consignment in question;

(b) 'consignment' means a quantity of rice of uniform quality and price, originating in a given third country, falling within a single combined nomenclature code and sold by a given seller, presented under a single declaration of release for free circulation.

Article 2

1. Member States shall designate by 1 June 1997 an authority responsible for the application of the CRS (hereinafter referred to as the 'CRS authority') and shall vest in it all the powers necessary to that end, in particular for carrying out the checks referred to in this Regulation. Member States shall communicate to the Commission before 17 June 1997 the name and address of the CRS authority.

2. For the whole trial period:

(a) import licences for imports which may give rise to the levying of import duties as provided for in Article 11 (2) of Regulation (EC) No 3072/95 may be applied for only in the Member State in which the importer has his registered office;

(b) the following shall be subject to the prior registration of each importer with the CRS authority in the Member State in which he has his registered office:

— the issue of import licences as referred to under (a).

Box 20 of licence applications and licences shall contain the name and address of the CRS authority with which the importer is registered and his CRS registration number. Applications shall be accompanied by official proof of registration,

— the acceptance of any declaration of release for free circulation of a consignment during the trial period;

(c) when registering with the CRS authority, each importer shall irrevocably declare, in respect of the whole of the remaining trial period and all the consignments he is going to import, whether or not be opts for the adjustment of his import duties in accordance with Article 10 (2),

(d) where an import licence is applied for by a CRS importer, applications and licences shall carry in box 20 the entry 'CRS importer';

(e) indirect representation within the meaning of the second indent of Article 5 (2) of the Customs Code shall not be permitted.

3. Immediately upon issue, the issuing authority shall forward to the CRS authority concerned a copy of each import licence as referred to in point (a) of paragraph 2.

4. By way of derogation from Article 9 (1) of Commission Regulation (EEC) No 3719/88 [1], rights arising from import licences issued in accordance with paragraph 2 of this Article shall not be transferable.

Article 3

1. For the purposes of this Regulation, a declaration of release for free circulation shall be presented for each consignment.

2. Without prejudice to the requirements laid down by the Customs Code, Box 44 of the declaration of release for free circulation shall contain the import price for the consignment concerned, broken down into the fob price in the third country of origin and the transport and insurance costs.

3. In the event of importation by a CRS importer, the competent customs authority shall take from the consignment concerned a representative number of samples on which the necessary analyses can be carried out to verify

[1] OJ No L 331, 2. 12. 1988, p. 1.

the quality and characteristics of the rice as specified in point (d) of Article 4 (2). Samples shall be taken in accordance with the Annex to Commission Directive 76/371/EEC [1] and be kept by the competent customs authorities for the nine months following that in which the declaration of release for free circulation was accepted.

4. At the request of the CRS authority of the importer concerned, the competent customs authority shall analyse the samples taken in accordance with ISO standards 7301 and, as regards humidity, in accordance with Annex II to Commission Regulation (EEC) No 1908/84 [2] and send the results to the CRS authority concerned.

Article 4

1. Within the first 10 working days following each month of the trial period, all importers shall submit to the CRS authority with which they are registered a declaration concerning all the consignments which they have imported during the preceding month (hereinafter referred to as the 'monthly declaration'). The monthly declaration shall contain a full list, broken down by customs office of importation, of all the consignments imported during the month. For each consignment imported, the monthly declaration shall be accompanied by originals or photocopies of the following documents:

(a) the accepted declaration of release for free circulation, together with the accompanying documents;

(b) the import licence;

(c) the invoice issued by the seller in the third country of origin, indicating the fob price in the third country of origin for the consignment concerned; and

(d) a specification of the quality of the rice and, where appropriate, the quality certificate issued by the third country of origin for the consignment concerned.

2. In the case of CRS importers, the monthly declaration shall also be accompanied by:

(a) a copy of the purchase agreement concluded with the seller in the third country of origin, indicating the fob price in the third country of origin for the consignment concerned;

(b) a copy of the transport agreement or relevant invoice setting out the actual transport costs and the bill of lading;

(c) a copy of the insurance policy or relevant invoice setting out the insurance costs and, where necessary, giving details of the actual insurance costs for the carriage of the consignment concerned;

(d) evidence substantiating the level of the import price where it is more than 1 % above the relevant reference price expressed in ecus per tonne used to calculate the import duties under Article 11 (2) of Regulation (EC) No 3072/95 and under Regulation (EC) No 1503/96, as published by the Commission.

Where the evidence refers to the quality and/or characteristics of the consignment imported, it:

— shall give reasons for the difference compared with the respective reference quality, namely US long grain 2/4/73 and US long grain parboiled 1/4/88 or US Gulf medium grain, as defined in Annex I to Regulation (EC) No 1503/96,

— may be based solely on the following quality characteristics individually or in combination: aroma (basmati and fragrant rice), milling yield, percentage of broken grains, humidity content, level of impurities, damaged kernels, seeds, chalky grains, red rice,

— must include the results of an analysis confirming the higher quality of the rice as compared with the reference qualities mentioned above;

(e) the certificate of authenticity referred to in Article 4 (a) of Regulation (EC) No 1503/96 for consignments of basmati rice falling within CN codes ex 1006 20 17 and ex 1006 20 98.

3. The CRS importer may supply any other document considered useful to substantiate the declared import price.

The CRS authority concerned may require importers to provide additional information and documents.

Article 5

No later than one month after expiry of each of the first and second halves of the trial period, CRS importers shall present to the CRS authority with which they are registered a monthly declaration concerning all the consignments they have imported during the respective half of the trial period (hereinafter referred to as the 'CRS declaration'). The CRS declaration shall contain:

— a list, broken down by customs office of importation, with references to the respective declarations of the months concerned, of all the consignments imported during the respective half of the trial period together with the relevant import duties calculated in accordance with Regulation (EC) No 1503/96,

— where appropriate, corrections to the declarations presented,

— the sales price on the Community market of consignments or parts of consignments imported, together with agreements, invoices and other commercial documents required to verify those prices.

[1] OJ No L 102, 15. 4. 1976, p. 1.
[2] OJ No L 178, 5. 7. 1984, p. 22.

The CRS authority concerned may ask importers to provide additional information and documents.

Article 6

1. The CRS authority shall carry out, in respect of each CRS importer registered with it, administrative and on-the-spot checks necessary to verify the CRS declarations and the monthly declarations and in particular the authenticity and truthfulness of the import prices declared and the relevant documents submitted. Those checks shall be carried out both during and after the end of the first and the second half of the trial period. Article 78 (2) of the Customs Code shall apply by analogy.

2. The administrative check shall include a thorough examination of all the declarations and documents submitted and, in particular, verification of their plausibility and the accuracy of the underlying calculations together with an examination of the import price declared in the light of any price information available and, in particular, of the information referred to in Article 1 (2) (b) and that available on prices in the third countries concerned. The CRS authority shall, if necessary and within eight months following that of the monthly declaration concerned, ask the competent customs authority to analyse the samples taken in accordance with Article 3 (3).

3. During each half of the trial period, the on-the-spot checks to be carried out by each CRS authority shall cover a sample of not less than 50 % of the CRS importers registered with it. However, Member States may limit the number of checks carried out to CRS importers to a maximum of 10 importers. In any case, the consignments imported by those CRS importers shall represent not less than 50 % of all the consignments imported by the CRS importers.

CRS importers which are to undergo an on-the-spot check shall be selected on the basis of a risk analysis and the representativeness of the consignments imported. The risk analysis shall reflect in particular:

— the amount of the import duties concerned,

— the number of consignments imported,

— the differences between the import duties calculated under Regulation (EC) No 1503/96 and those calculated on the basis of the import prices declared,

— any uncertainty arising from the administrative check,

— other factors to be determined by the CRS authority.

4. Each on-the-spot check shall include an in-depth examination of the commercial documents of the CRS importer concerned. 'Commercial documents' means the documents and data referred to in Article 1 (2) of Council Regulation (EEC) No 4045/89 [1], provided that they are directly related to the imports to which this Regulation applies.

5. Member States shall assist each other for the purposes of carrying out the checks provided for in this Article where the documents and information required for checking are to be found in a Member State other than that of the competent CRS authority.

The Commission shall, where necessary, coordinate joint actions involving mutual assistance between two or more Member States.

Article 7

1. The import price of each consignment imported to be taken into consideration in the context of the CRS shall be the fob price for rice in bulk of the consignment concerned in the third country of origin plus:

— the insurance costs,

— the transport costs including loading and handling,

up to the place of first entry into the customs territory of the Community.

2. Without prejudice to Articles 3 (3), 4 (2) (d) and 4 (3), where the seller of the consignment in the third country of origin and/or the buyer and/or the importer are related persons as specified in Article 143 of Regulation (EEC) No 2454/93, the fob price declared by the CRS importer under Articles 3 (2), and 4 (1) (c) or 4 (2) (a) for the consignment concerned shall be accepted wherever the importer demonstrates, or the CRS authority is satisfied by other means, that such price closely approximates to the fob price of sales occurring at or about the same time, between buyers and sellers who are not related in any particular case, of identical or similar rice for export to the Community.

3. If the purchase contract presented to the CRS authority has not been concluded with the seller in the third country of origin and/or if the invoice presented has not been drawn up by the seller in the third country of origin of the consignment or if the CRS authority is not satisfied that the price declared reflects the fob price for bulk rice in the country of origin or if the declared import price is not accepted in accordance with paragraph 2, the CRS authority shall take the necessary measures to determine the import price on the basis of all information available, including that concerning quality, taking into account, where available, the import price of identical or similar rice sold for export to the Community or to other third countries and exported at or about the same time as the consignment in question.

[1] OJ No L 388, 30. 12. 1989, p. 18.

4. If the CRS authority is not satisfied that the transport and/or insurance costs correspond to the costs actually incurred, it shall take the measures required to determine those costs, in particular by taking into account the normal costs for similar imports.

5. Without prejudice to Article 9, where the import price for a consignment cannot be calculated in accordance with paragraphs 1, 2 and 3, the import price to be taken into consideration for that consignment in the context of the CRS shall be that determined in accordance with Regulation (EC) No 1503/96 and applicable on the day the declaration of release for free circulation was accepted.

Article 8

Save in cases of *force majeure,* where the declaration of release for free circulation presented by the importer for a consignment is not accompanied by all the information laid down in this Regulation, the declaration may be accepted in accordance with Article 63 of the Customs Code provided that the importer provides a security of ECU 0,5/tonne. The security shall be released if the missing information is provided within four weeks of acceptance of the declaration. Where this is not done, the security shall be forfeit.

Article 9

1. Where, for one or more consignments, the import price declared by a CRS importer cannot be verified on account of the absence in the monthly declarations and/or CRS declarations of information, documents or other evidence provided for in this Regulation, the import price to be taken into consideration for the consignment concerned in the context of the CRS shall be that determined in accordance with Regulation (EC) No 1503/96 and applicable on the day when the declaration of release for free circulation was accepted.

In addition, except in cases of *force majeure,* an amount of ECU 50 per tonne shall be charged to the CRS importers concerned.

2. Where, in the case of a CRS importer, an on-the-spot check cannot be carried out by virtue of an act or omission attributable to the importer, the latter shall lose the right to the adjustment of import duties for all the consignments declared or to be declared during the relevant half of the trial period. Where this occurs during the first half of the trial period, the importer shall also lose this right for the second half of the trial period.

3. Where a consignment is imported by an importer who did not opt for the adjustment of import duties as provided for under point (c) of Article 2 (2) and:

— the importer concerned has not imported the products referred to in Article 1 (1) into the Community during the 12 months prior to 6 March 1997, or has become a person related to a CRS importer after that date,

and

— it has been established that consignments have been imported by the importer in question with the intention of circumventing the assessment of the import price of the consignment concerned using the rules applied to a CRS importer, and the taking into account of this price in the case of a CRS importer at the moment of determining the positive or negative balance referred to in point (d) of Article 10 (1),

the CRS importer concerned shall lose the right to the adjustment of import duties for all the consignments declared or to be declared during the relevant half of the trial period. Where this occurs during the first half of the trial period, the importer shall also lose this right for the second half of the trial period.

Article 10

1. On the basis of the results of the checks carried out in accordance with Article 6, the CRS authority shall determine in respect of all CRS importers registered with it and for the first and second half of the trial period:

(a) the import prices for each consignment imported during the trial period and the resulting import duties;

(b) the amount of the import duties referred to in (a);

(c) the amount of the import duties for the consignments referred to in (a), determined and collected under Article 11 (2) of Regulation (EC) No 3072/95 and Regulation (EC) No 1503/96; and

(d) the positive or negative balance between the amount referred to in (b) and that referred to in (c).

2. Upon the expiry of the first and the second half of the trial period, each CRS authority shall, in so far as imports of each CRS importer and the imports referred to in Article 9 (3) are concerned, communicate the amounts of the import duties as determined in accordance with point (a) of paragraph 1 to the importers concerned and to the customs authorities of the Member States in which the respective consignments were released for free circulation.

The customs authorities of those Members States shall subsequently determine the definitive customs debt arising from the entry into free circulation of those consignments, using the relevant communications from the CRS authorities, and shall take the necessary measures for adjusting the import duties collected under Article 11 (2) of Regulation (EC) No 3072/95 and Regulation (EEC) No 1503/96.

3. Each CRS authority shall send to the Commission, for the preceding month and on a provisional basis, the table in the Annex, duly completed.

Within two months of the expiry of the first and the second half of the trial period, each CRS authority shall send to the Commission, for the respective period and on a definitive basis, the table in the Annex, duly completed.

4. After the trial period, the Commission shall make an evaluation of the CRS system, based on the results obtained.

Article 11

In Article 4 (a) (1) of Regulation (EC) No 1503/96, the following subparagraph is added:

'However, the first and second subparagraphs shall not apply to rice imported by CRS importers during the trial period in the framework, of the cumulative recovery system provided for in Commission Regulation (EC) No 703/97 (*).

(*) OJ No L 104, 22. 4. 1997, p. 12'

Article 12

The prices and amounts referred to in this Regulation shall be expressed in ecus.

Prices and amounts established in national currencies shall be converted into ecus using the conversion rate published in the 'C' series of the *Official Journal of the European Communities* on the last working day before the date of entry into force of the import duty fixed in accordance with Regulation (EC) No 1503/96 and applied on the date of acceptance of the declaration of release for free circulation of the consignment concerned.

Article 13

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

It shall apply from 15 May 1997 provided that, before 1 May 1997, the United States of America has withdrawn its request of 13 February 1997 for the establishment of a WTO dispute settlement panel on the Community's import system for rice and cereals. The Commission shall publish a notice relating thereto in the *Official Journal of the European Communities* before 15 May 1997.

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

Done at Brussels, 18 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

Regulation (EC) No 703/97, Article 10 (3)

CRS authority of (name of Member State):

Date:

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Name and address of the CRS importer (Article 2 (2))	Place and date of release for free circulation	Imported product CN code	Quantity tonnes	Declared import price in ecus/t	Duty valid on the day of release for free circulation in ecus/t	Duty calculated on the basis of the accepted import price in ecus/t	Difference (f) – (g) in ecus/t	Justification of difference
						Balance:		

(a)	(b)	(c)	(d)	(e)	(f)	(g)
Name and address of the non-CRS importer	Place and date of release for free circulation	Imported product CN code	Quantity tonnes	Declared import price in ecus/t	Duty valid on the day of release for free circulation in ecus/t	Observations (aromatic rice, etc.)