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COMMISSION REGULATION (EC) No 1864/2004

of 26 October 2004

opening and providing for the administration of tariff quotas for preserved mushrooms imported from third countries

(OJ L 325, 28.10.2004, p. 30)

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►**M2**	Commission Regulation (EC) No 1995/2005 of 7 December 2005	L 320	34	8.12.2005

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COMMISSION REGULATION (EC) No 1864/2004

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opening and providing for the administration of tariff quotas for preserved mushrooms imported from third countries

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia,

Having regard to the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular the first paragraph of Article 41 thereof,

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organization of the markets in processed fruit and vegetable products [1], and in particular Article 15(1) thereof,

Whereas:

(1) Following the Agreement on Agriculture [2] concluded during the Uruguay Round of multilateral trade negotiations, the Community undertook to open from 1 July 1995, under certain conditions, Community tariff quotas for preserved mushrooms of the genus *Agaricus* spp. falling within CN codes 0711 90 40, 2003 10 20 and 2003 10 30.

(2) The conditions for the administration of these quotas have been established by Commission Regulation (EC) No 2125/95 of 6 September 1995 opening and providing for the administration of tariff quotas for preserved mushrooms [3]. In the light of the experience gained from the application of that Regulation it appears necessary to amend some of the current conditions in order to simplify and clarify the system. For the sake of clarity, it is necessary to repeal Regulation (EC) No 2125/95 and replace it by a new Regulation applicable from 1 January 2005.

(3) It should be ensured that the transition between the two systems is as smooth as possible. For this purpose, certain of the detailed rules of application of Commission Regulation (EC) No 2125/95 should be carried over and the traditional import calendars should be maintained.

(4) Commission Regulation (EC) No 2031/2001 of 6 August 2001 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariffs [4] amended the Combined Nomenclature for certain fruits and vegetables and products processed from fruit and vegetables, notably for certain preserved mushrooms of the genus *Agaricus*.

(5) The Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part, to take account of the outcome of negotiations between the Parties on new mutual agricultural concessions, approved by Council Decision 2003/18/EC [5], establishes arrangements for import into the Community of certain preserved mushrooms of the genus *Agaricus* originating in Romania.

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[1] OJ L 297, 21.11.1996, p. 29. Regulation as last amended by Commission Regulation (EC) No 386/2004 (OJ L 64, 2.3.2004, p. 25).
[2] OJ L 336, 23.12.1994, p. 22.
[3] OJ L 212, 7.9.1995, p. 16. Regulation as last amended by Regulation (EC) No 498/2004 (OJ L 80, 18.3.2004, p. 20).
[4] OJ L 279, 23.10.2001, p. 1.
[5] OJ L 8, 14.1.2003, p. 18.

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(6) The Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, to take account of the outcome of negotiations between the Parties on new mutual agricultural concessions, approved by Council Decision 2003/286/EC [1], establishes arrangements for import into the Community of certain preserved mushrooms of the genus *Agaricus* originating in Bulgaria.

(7) Without prejudice to the outcome of the negotiations pursuant to Article XXIV.6 of the GATT (1994), and in order to preserve the traditional trade flows whilst ensuring that the Community market remains open to new supplying third countries, the quantity of preserved mushrooms of the genus *Agaricus* to be imported into the Community under the tariff quotas system should take account of preferences provided for in the Europe Agreements with Bulgaria and Romania. To this purpose, the quantities allocated to third countries other than Bulgaria and Romania should be clearly differentiated from quantities allocated to Bulgaria and Romania. Taking account of the utilisation of the reserve provided for in Regulation (EC) No 2125/95 during recent years, it should be incorporated to the quantity allocated to China so as to avoid any interruption in trade with this particular supplier country.

(8) Provisions should be made so as to enable an efficient allocation of the Community tariff quotas for preserved mushrooms in any particular year. In order to avoid any interruption in the Community's trade with third countries, such provisions should be based on the data available after the first six months of a given year.

(9) Detailed arrangements should be laid down to ensure that the quantities in excess of the tariff quotas are subjected to the levying of the full duty provided for in the Common Customs Tariff. Those arrangements should involve the issuing of licences at the end of a period in which the quantities are checked and the necessary notifications are made by the Member States. These provisions are either supplementary to or derogate from the provisions of Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [2].

(10) There should continue to be an adequate supply of the products concerned on the Community market at stable prices whilst avoiding unnecessary market disruptions in the form of severe price fluctuations and negative effects on the Community producers. To this end, competition amongst importers should be encouraged to an increasing degree and administrative burdens on importers reduced.

(11) In the interest of existing importers, who normally import substantial quantities of the products concerned, and also in the interest of new importers who join the market and should also have a fair opportunity to apply for licences for a quantity of preserved mushrooms under tariff quotas, a distinction should be drawn between traditional importers and new importers. A clear definition of these two categories of importers should be provided, and certain criteria relating to the status of the applicants and the use of the licences allocated should be laid down.

(12) It is appropriate to establish an allocation between each category of importers on the basis of the quantities effectively imported

[1] OJ L 102, 24.4.2003, p. 60.
[2] OJ L 152, 24.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 636/2004 (OJ L 100, 6.4.2004, p. 25).

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rather than on the basis of the licences issued. However, several years' experience of implementing the current system demonstrates the uselessness of maintaining an allocation of quotas between traditional and new importers in the case of Bulgaria and Romania, because the Community demand for preserved mushrooms from these countries remains well below the quota quantities.

(13) Licence applications to import preserved mushrooms from third countries other than Bulgaria and Romania presented by each category of importers should be subject to certain restrictions. Such restrictions are necessary to ensure not only that competition between importers is preserved, but also that each importer with a genuine commercial activity in the fruit and vegetable market is given the opportunity to defend its legitimate trading positions vis-à-vis other importers and that no single importer is able to control the market.

(14) In order to improve and simplify the administration of tariff quotas for preserved mushrooms, clear provisions should be made as regards the dates and procedures for lodging the licence applications and the issuing of the licences by the competent authorities of the Member States.

(15) With a view to reducing the importers' administrative burden, licence applications should be presented only in the Member State where the importer is entered in a register.

(16) Measures are also needed to keep to a minimum speculative applications for licences which may result in the tariff quotas not being fully utilised. Because of the nature and the value of the product concerned, a security should be lodged in respect of each tonne (drained net weight) of the product concerned for which an application for a licence to import is made, as referred to in Article 15(2) of Regulation (EC) No 1291/2000. The security should be at a level sufficiently high to discourage speculative applications, but not so high as to discourage those engaged in genuine commercial activity in relation to processed fruit and vegetable products. The most appropriate objective criteria for setting the level of the security is a limit of 2 % of the average additional duty applicable to imports into the Community of preserved mushrooms of the genus *Agaricus* spp. currently falling within CN codes 0711 51 00, 2003 10 20 and 2003 10 30.

(17) In order to allow importers to keep pace with demand on the market in preserved mushrooms and react swiftly to evolving market conditions, importers should be given the possibility to request to the competent authorities of the Member States the withdrawal of the licence application they have lodged if the quantity for which the licence is issued is less than the quantity initially requested.

(18) To ensure the correct use of the quotas, Member States should regularly notify the quantities for which licences issued by the competent authorities of the Member States have not been used by importers. The quantities for which licences have been issued should take account of withdrawals of licence applications requested by importers.

(19) For the purposes of administering the tariff quotas for preserved mushrooms, importers lodging applications for licences should attach to their applications to the competent authorities of the Member State a declaration stating that they acknowledge and comply with the restrictions laid down in this Regulation. To prevent any abuse of the system, Member States should be given a margin of discretion to impose penalties on importers that present false, misleading or inaccurate applications and/or declarations to their competent authorities.

(20) Transitional measures should be laid down in order to allow importers from the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia

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(hereinafter the new Member States) to benefit from this Regulation.

(21) Arrangements should be laid down for the years 2005 and 2006 to ensure that a distinction is made between, on the one hand, traditional importers and new importers within the Community as constituted on 30 April 2004 and, on the other hand, traditional importers and new importers from the new Member States.

(22) Regulation (EC) No 359/2004 of 27 February 2004 laying down transitional measures applicable to Regulation (EC) No 2125/95 by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia [1] provides for certain transitional measures and arrangements applicable for the year 2004. Those transitional measures will become obsolete after 31 December 2004. That Regulation should therefore be repealed as from 1 January 2005.

(23) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Products Processed from Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

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Article 1

1. A system of tariff quotas is opened in relation to imports into the Community of preserved mushrooms of the genus *Agaricus* classifiable within CN codes 0711 51 00, 2003 10 20 and 2003 10 30 (hereinafter referred to as preserved mushrooms), subject to the conditions laid down in this Regulation. The volume of each of the tariff quotas, their order number and the period for which they apply, are specified in Annex I.

2. The rate of duty applicable shall be 12 % *ad valorem* in the case of products falling within CN code 0711 51 00 and 23 % in the case of products falling within CN codes 2003 10 20 and 2003 10 30.

However, no duty shall apply in respect of products originating in Romania and Bulgaria.

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Article 2

Definitions

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

1. ‘the new Member States’ shall mean the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia;

2. ‘other countries’ shall mean third countries other than China, Bulgaria and Romania;

3. ‘competent authorities’ shall mean the body or bodies designated by the Member State for the implementation of this Regulation;

4. ‘reference quantity’ shall mean the maximum quantity (drained net weight) of preserved mushrooms originating in China and/or other countries imported per calendar year by a traditional importer during one of the last three calendar years. Imports of preserved mushrooms originating in the new Member States or the Community as constituted on 30 April 2004 shall not be taken into account for the calculation of the reference quantity.

[1] OJ L 63, 28.2.2004, p. 11.

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Article 3

Categories of importers

1. ‘Traditional importers’ shall mean importers who can prove that:

(a) they have obtained licences pursuant to Regulation (EC) No 2125/95 or this Regulation in each of the previous three calendar years;

(b) they have imported into the Community preserved mushrooms in at least two of the previous three calendar years;

(c) they have imported into the Community and/or exported outside the Community at least 100 tonnes of processed fruit and vegetable products, as referred to in Article 1(2) of Regulation (EC) No 2201/96, during the year preceding their application.

2. ‘New importers’ shall mean importers other than those referred to in paragraph 1, whether natural or legal persons, individuals or groups, that have imported into the Community and/or exported outside the Community at least 50 tonnes of processed fruit and vegetable products, as referred to in Article 1(2) of Regulation (EC) No 2201/96, in each of the two previous calendar years. Compliance with this condition shall be certified by registration in a trade register held by the Member State or by any other proof accepted by the Member State and by proof of import and/or export.

Article 4

Presentation of import licences

All imports into the Community under the tariff quotas referred to in Article 1 shall be subject to the presentation of an import licence, hereinafter referred to as ‘licence’, issued in accordance with this Regulation.

Article 5

Licence applications and licences

1. Regulation (EC) No 1291/2000 shall apply to licences, except otherwise provided for by this Regulation.

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2. Licences shall be valid from their effective date of issue within the meaning of Article 23(2) of Regulation (EC) No 1291/2000 until 31 December of the year concerned.

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3. The amount of the security referred to in Article 15(2) of Regulation (EC) No 1291/2000 shall be EUR 40 per tonne (drained net weight).

4. The country of origin shall be entered in box 8 of the licence application and the licence, and the word ‘yes’ shall be marked with a cross. The licence shall be valid only for imports originating in the country indicated.

5. Licences shall show in box 24 one of the entries listed in Annex II.

6. By way of derogation from Article 9(1) of Regulation (EC) No 1291/2000, the rights arising from import licences shall not be transferable.

7. Article 35(6) of Regulation (EC) No 1291/2000 shall apply.

8. By way of derogation from Article 8(4) of Regulation (EC) No 1291/2000, the quantity released into free circulation may not exceed that indicated in sections 17 and 18 of the import licence. The figure ‘0’ shall be entered to that effect in section 19 of the licence.

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Article 6

Allocation of total quantities among traditional and new importers

1. The total quantity allocated to China and other countries, pursuant to Annex I, shall be distributed as follows:

(a) 95 % to traditional importers;

(b) 5 % to new importers.

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2. For imports originating in China and other countries, if the quantity allocated is not fully exhausted by one category of importers, the remainder shall be allocated to the other category.

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3. The total quantity allocated to Bulgaria and the total quantity allocated to Romania, pursuant to Annex I, shall be distributed without distinction between traditional and new importers.

4. For imports originating in China and other countries, box 20 of licence applications shall indicate 'traditional importer' or 'new importer' as appropriate.

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Article 7

Restrictions applicable to applications presented by different importers

1. The total amount (drained net weight) of the licence applications to import into the Community preserved mushrooms originating in China and/or other countries submitted by a traditional importer may not relate to a quantity exceeding 150 % of the reference quantity.

2. The total amount (drained net weight) of the licence applications to import into the Community preserved mushrooms originating in China and/or other countries submitted by a new importer may not relate to a quantity exceeding 1 % of the sum of tariff quotas allocated to China and other countries pursuant to Annex I.

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Article 8

Lodging of licence applications by importers

1. Licence applications may be lodged only by importers.

Application for licences shall be lodged only with the competent authorities of the Member State in which the applicant is registered.

To support their licence applications, importers, and in particular traditional importers, shall provide the necessary information so as to enable the competent authorities of the Member States concerned to verify to their satisfaction the fulfilment of and compliance with the conditions set out in Article 3.

When new importers have obtained licences pursuant to Regulation (EC) No 2125/95 or this Regulation in the previous calendar year, they shall also produce proof that at least 50 % of the quantity allocated to them has actually been released into free circulation in the Community.

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2. Importers shall submit their applications for licences during the first five working days of January.

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3. Importers shall attach to their applications for licences a declaration stating that they acknowledge and conform to the provisions laid down in Article 7.

Declarations shall be signed by the importer, who shall certify their accuracy by doing so.

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Article 9

Notifications of licences applications

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Member States shall notify the Commission, no later than on the tenth working day of January, of the quantities for which licence applications have been lodged.

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Notifications shall be broken down by product, according to the combined nomenclature, and origin. For imports originating in China and/or other countries, notifications shall also give separate figures for the quantities of each product applied for by traditional and new importers, respectively.

Notifications shall be effected by electronic means and shall follow the model communicated for that purpose by the Commission to the Member States.

Article 10

Issuing of licences

1. Licences shall be issued by the competent authorities of the Member States on the seventh working day following the notification provided for in Article 9, subject to paragraph 2.

2. ►M2 If it is found that the quantities applied for exceed the quantity available, the Commission shall decide, by means of a Regulation, to set an allocation coefficient to be applied to the licence applications in question. ◄

In that case, licences shall be issued by the competent authorities of the Member States on the third working day following the entry in force of the Regulation referred to in the first subparagraph.

Article 11

Withdrawal of licence applications

Where pursuant to Article 10(2), the quantity for which a licence is issued is less than the quantity for which the licence application has been lodged, the importer concerned may request the competent authorities to withdraw the licence application within three working days following the entry in force of the Regulation adopted pursuant to Article 10(2). In the event of such a withdrawal, the whole amount of the security shall be released immediately.

Article 12

Information on the extent of utilisation of quotas

The Commission shall keep the Member States regularly informed, at the appropriate time and manner, of the extent of utilization of the quotas.

Article 13

Notification of unused licences

Member States shall notify the Commission of the quantities for which licences have been issued by their competent authorities but not used by importers, as soon as the information is available to them. The quantities for which licences have been issued shall take account of withdrawals of licence applications pursuant to Article 11.

Notifications referred to in the first paragraph shall be effected by electronic means and shall follow the model communicated for that purpose by the Commission to the Member States.

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Article 14

Applicable international commitments

1. Preserved mushrooms originating in Bulgaria and Romania shall be released for free circulation into the Community in accordance with the Protocols adjusting the respective trade aspects of the Europe Agreement with Bulgaria and Romania.

2. The entry and release into free circulation in the Community of preserved mushrooms originating in China shall be subject to Articles 55 to 65 of Commission Regulation (EEC) No 2454/93 [1].

3. The authorities competent to issue the certificate of origin for preserved mushrooms originating in China are listed in Annex III.

Article 15

Modification of licences

1. The holder of a licence may apply to have the CN code for which the licence was issued changed, provided that:

(a) the new CN code applied for is listed in Article 1(1);

(b) the application is submitted to the competent authorities that issued the original licence and is accompanied by the original and any extract issued.

2. In the cases referred to in paragraph 1, the competent authorities that issued the original licence shall keep it and any extract and shall issue a replacement licence and, where appropriate, one or more extracts from the replacement licence.

3. The replacement licence and, where appropriate, the extracts shall:

(a) be issued for a quantity up to the maximum quantity available according to the licence or extract replaced;

(b) indicate in box 20 the number and date of the licence or extract replaced;

(c) indicate in boxes 13, 14 and 15 the information relating to the new product in question,

(d) indicate in box 16 the new CN code;

(e) indicate in the other boxes the same information as shown on the replaced licence or extract, and in particular the same expiry date.

4. Member States shall immediately inform the Commission, by electronic means, of any replacement licences they have issued.

Article 16

Penalties applicable to importers

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1. If it is found that applications and/or declarations presented by an importer to the competent authorities of a Member State are false, misleading or inaccurate, unless they are clearly due to a genuine error, the competent authorities of the Member States concerned shall exclude the importer in question from the licence applications system for the next application period as referred to in Article 8(2).

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2. The Member States may adopt additional national provisions covering the submission of applications for licences to their competent authorities, and provide for penalties commensurate with the seriousness of any irregularity to be imposed on importers registered for VAT purposes in their national territory.

[1] OJ L 253, 11.10.1993, p. 1.

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Article 17

Administrative cooperation between Member States

The Member States shall take the measures required to ensure reciprocal administrative cooperation with a view to ensuring that this Regulation is properly applied.

Article 18

Transitional measures for the years 2005 and 2006

By way of derogation from Article 3, for the years 2005 and 2006, and only in the new Member States, the following definitions shall apply:

1. 'traditional importers' shall mean importers who can prove that:

   (a) they have imported preserved mushrooms, from origins other than the new Member States or the Community as constituted on 30 April 2004, in at least two of the three preceding calendar years;

   (b) they have also imported and/or exported during the preceding calendar year at least 100 tonnes of processed fruit and vegetable products, as referred to in Article 1(2) of Regulation (EC) No 2201/96;

   (c) the imports referred to in points (a) and (b) have taken place in the new Member State where the importer concerned has its head office;

   (d) the exports referred to in point (b) have been sent to destinations other than the new Member States or the Community as constituted on 30 April 2004;

2. 'new importers' shall mean importers other than traditional importers within the meaning of point 1 who are traders, natural or legal persons, individuals or groups, who can prove that:

   (a) they have imported, from origins other than the new Member States or the Community as constituted on 30 April 2004, and/or exported at least 50 tonnes of processed fruit and vegetable products, as referred to in Article 1(2) of Regulation (EC) No 2201/96, in each of the two preceding calendar years;

   (b) the imports referred to in point (a) have taken place in the new Member State where the importer concerned has its head office;

   (c) the exports referred to in point (a) have been sent to destinations other than the new Member States or the Community as constituted on 30 April 2004.

Article 19

Repeal

Regulations (EC) No 2125/95 and (EC) No 359/2004 are repealed with effect from 1 January 2005.

References to the repealed Regulations shall be construed as references to this Regulation.

Article 20

Entry in force

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

It shall apply from 1 January 2005.

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

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ANNEX I

Volume, order number and period of application of tariff quotas referred to in Article 1(1) in tonnes (drained net weight)

Country of origin	Order No	1 January to 31 December of each year
Bulgaria	09.4725	2 887,5 (*)
Romania	09.4726	500
China	09.4157	23 750
Other countries	09.4158	3 290

(*) As from 1 January 2006, the allocation for Bulgaria shall be increased by 275 tonnes each year.

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ANNEX II

Entries referred to in Article 5(5)

— *in Spanish*: Derecho de aduana … % — Reglamento (CE) nº 1864/2004,
— *in Czech*: Celní sazba … % – nařízení (ES) č. 1864/2004,
— *in Danish*: Toldsats … % — forordning (EF) nr. 1864/2004,
— *in German*: Zollsatz … % — Verordnung (EG) Nr. 1864/2004,
— *in Estonian*: Tollimaks … % – määrus (EÜ) nr 1864/2004,
— *in Greek*: Δασμός … % — Κανονισμός (ΕΚ) αριθ. 1864/2004,
— *in English*: Customs duty … % — Regulation (EC) No 1864/2004,
— *in French*: Droit de douane: … % — Règlement (CE) nº 1864/2004,
— *in Italian*: Dazio: … % — Regolamento (CE) n. 1864/2004,
— *in Latvian*: Muitas nodoklis … % – Regula (EK) Nr. 1864/2004,
— *in Lithuanian*: Muito mokestis … % – Reglamentas (EB) Nr. 1864/2004,
— *in Hungarian*: Vám: … % – 1864/2004/EK rendelet,
— *in Maltese*: Dazju Doganali … % – Regolament (KE) Nru 1864/2004,
— *in Dutch*: Douanerecht: … % — Verordening (EG) nr. 1864/2004,
— *in Polish*: Cło … % – Rozporządzenie (WE) nr 1864/2004,
— *in Portuguese*: Direito aduaneiro: … % — Regulamento (CE) n.º 1864/2004,
— *in Slovak*: Clo … % – nariadenie (ES) č. 1864/2004,
— *in Slovenian*: Carina: … % – Uredba (ES) št. 1864/2004,
— *in Finnish*: Tulli … prosenttia – Asetus (EY) N:o 1864/2004,
— *in Swedish*: Tull … % – Förordning (EG) nr 1864/2004.

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ANNEX III

List of competent Chinese authorities for issuing the certificates of origin referred to in Article 14(3):

— General Administration of Quality Supervision

— Entry-exit Inspection and Quarantine Bureau of the People's Republic of China in:

Beijing	Jiangxi	Shenzhen
Shanxi	Zhuhai	Ningxia
Inner Mongolia	Sichuan	Tianjin
Hebei	Chongqing	Shanghai
Liaoning	Yunnan	Ningbo
Jilin	Guizhou	Jiangsu
Shandong	Shaanxi	Guangxi
Zhejiang	Gansu	Heilongjiang
Anhui	Qinghai	Hainan
Hubei	Tibet	Henan
Guangdong	Fujian	Xinjiang
Xiamen		Hunan