COMMISSION REGULATION (EC) No 538/2003

of 26 March 2003

redistributing unused portions of the 2002 quantitative quotas for certain products originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 520/94 of 7 March 1994 establishing a Community procedure for administering quantitative quotas [1], as last amended by Regulation (EC) No 138/96 [2], and in particular Articles 2(5) and Articles 14 and 24 thereof,

Whereas:

(1) Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) No 1765/82, (EEC) No 1766/82 and (EEC) No 3420/83 [3], as last amended by Regulation (EC) No 427/2003 [4], introduced annual quantitative quotas for certain products originating in the People's Republic of China listed in Annex II to that Regulation. The provisions of Regulation (EC) No 520/94 are applicable to those quotas.

(2) The Commission accordingly adopted Regulation (EC) No 738/94 [5], as last amended by Regulation (EC) No 983/96 [6], laying down general rules for the implementation of Regulation (EC) No 520/94. These provisions apply to the administration of the above quotas subject to the provisions of this Regulation.

(3) In accordance with Article 20 of Regulation (EC) No 520/94, the competent authorities of the Member States notified the Commission of the quantities of quotas assigned in 2002 and not used.

(4) The unused quantities could not be redistributed in time to be used before the end of the 2002 quota year.

(5) Examination of the data received for each of the products in question indicates that the quantities not used in the 2002 quota year should be redistributed in 2003, up to a limit of the amounts set out in Annex I to this Regulation.

(6) The different administrative methods provided for by Regulation (EC) No 520/94 have been analysed and it is considered that the method based on traditional trade flows should be adopted. Under this method quota tranches are divided into two portions, one of which is reserved for traditional importers and the other for other applicants.

(7) This has proved to be the best way of ensuring the continuity of business for the Community importers concerned and avoiding any disturbance of trade flows.

(8) Quantities redistributed under this Regulation should be divided using the same criteria as for the allocation of the 2002 quotas except as regards the overall proportion reserved for traditional importers (75 %).

(9) It is necessary to simplify the formalities to be fulfilled by traditional importers who already hold import licences issued when the 2003 Community quotas were allocated. The competent administrative authorities already possess the requisite evidence of either 1998 or 1999 imports for all traditional importers. The latter need therefore only enclose a copy of their previous licences with their new licence applications.

(10) Measures should be taken to provide the best conditions for the allocation of that portion of the quota reserved for non-traditional importers with a view to optimum use of quotas. To this end, it is appropriate to provide for that portion to be allocated in proportion to the quantities requested, on the basis of a simultaneous examination of import licence applications actually lodged, and grant access only to importers who can prove that they obtained and made use of at least 80 % of an import licence for the product in question during the 2002 quota year. The amount that any non-traditional importer may request should also be restricted to a set volume or value.

(11) For the purposes of quota allocation, a time limit must be set for the submission of licence applications by importers.

(12) With a view to optimum use of quotas, licence applications for imports of footwear under quotas which refer to several CN codes must specify the quantities required for each code.

(13) The Member States must inform the Commission of the import licence applications received, in accordance with the procedure laid down in Article 8 of Regulation (EC) No 520/94. The information about traditional importers' previous imports must be expressed in the same units as the quota in question.

[1] OJ L 66, 10.3.1994, p. 1.
[2] OJ L 21, 27.1.1996, p. 6.
[3] OJ L 67, 10.3.1994, p. 89.
[4] OJ L 65, 8.3.2003, p. 1.
[5] OJ L 87, 31.3.1994, p. 47.
[6] OJ L 131, 1.6.1996, p. 47.

(14) In the light of the experience gained in the management of the quotas, in order to facilitate import administration formalities to economic operators and in view of the fact that unused quantities may not be carried over to the following year more than once, thus limiting the risk of excessive accumulation of imports, it is deemed appropriate, without prejudice to the results of a further analysis which may appear to be warranted in this respect in the future, to set the expiry date of the redistribution import licences on 31 December 2003.

(15) These measures are in accordance with the opinion of the Committee for the administration of quotas set up under Article 22 of Regulation (EC) No 520/94,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down specific provisions for the redistribution in 2003 of portions of the quantitative quotas referred to in Annex II to Council Regulation (EC) No 519/94 which were not used in the 2002 quota year.

The quantities not used in the 2002 quota year shall be redistributed up to the limit of the volumes or values set out in Annex I to this Regulation.

Regulation (EC) No 738/94 shall apply subject to the specific provisions of this Regulation.

Article 2

1. The quantitative quotas referred to in Article 1 shall be allocated using the method based on traditional trade flows, referred to in Article 2(2)(a) of Regulation (EC) No 520/94.

2. The portions of each quantitative quota set aside for traditional importers and non-traditional importers are set out in Annex II to this Regulation.

3. (a) The portion set aside for non-traditional importers shall be apportioned using the method based on allocation in proportion to quantities requested; the volume requested by a single importer may not exceed that shown in Annex III. Only importers who can prove that they imported at least 80 % of the volume of the product for which they were granted an import licence pursuant to Commission Regulation (EC) 1995/2001 [1] shall be entitled to apply for import licences.

(b) Operators that are deemed to be related persons as defined by Article 143 of Regulation (EEC) No 2454/93 may only submit single licence application for the portion of the quota set aside for non-traditional importers regarding the goods described in the application. In addition to the statement required by Article 3(2)(g) of Regulation (EC) No 738/94, the licence application for the non-traditional quota shall state that the applicant is not related to any other operator applying for the non-traditional quota line in question.

Article 3

Applications for import licences shall be lodged with the competent authorities listed in Annex IV to this Regulation from the day following the day of publication of this Regulation in the *Official Journal of the European Union* until 15.00, Brussels time, on 9 May 2003.

Article 4

1. For the purposes of allocating the portion of each quota set aside for traditional importers, 'traditional' importers shall mean importers who can show that they have imported goods in either the calendar year 1998 or 1999.

2. The evidence referred to in Article 7 of Regulation (EC) No 520/94 shall relate to the release into free circulation during either calendar year 1998 or 1999, as indicated by the importer, of products originating in the People's Republic of China which are covered by the quota in respect of which the application is made.

3. Instead of the evidence referred to in the first indent of Article 7 of Regulation (EC) No 520/94:

— applicants may enclose with their licence applications documents drawn up and certified by the competent national authorities on the basis of available customs information as evidence of the imports of the product in question during calendar year 1998 or 1999 carried out by themselves or, where applicable, by the operator whose activities they have taken over,

— applicants already holding import licences issued for 2003 under Commission Regulation (EC) No 2077/2002 [2], for products covered by the licence application may enclose a copy of their previous licences with their licence applications. In that case they shall indicate in their licence application the aggregate quantity of imports of the product in question during the chosen reference period.

Article 5

Member States shall inform the Commission no later than 30 May 2003 at 10.00, Brussels time, of the number and aggregate quantity of import licence applications and, in the case of applications from traditional importers, of the volume of previous imports carried out by traditional importers during the chosen reference period referred to in Article 4(1) of this Regulation.

[1] OJ L 271, 12.10.2001, p. 18.

[2] OJ L 319, 23.11.2002, p. 12.

Article 6

No later than 30 days after having received all the information required under Article 5, the Commission shall adopt the quantitative criteria to be used by the competent national authorities for the purpose of meeting importers' applications.

Article 7

Import licences shall be valid up to 31 December 2003. The validity shall not be extendable.

Article 8

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, 26 March 2003.

For the Commission

Pascal LAMY

Member of the Commission

ANNEX I

QUANTITIES TO BE REDISTRIBUTED

Product description	HS/CN code	Quantities redistributed
Footwear falling within HS/CN codes	ex 6402 99 (1)	6 725 081 pairs
	6403 51 6403 59	1 373 390 pairs
	ex 6403 91 (1) ex 6403 99 (1)	2 047 481 pairs
	ex 6404 11 (2)	2 942 477 pairs
	6404 19 10	7 066 315 pairs
Tableware, kitchenware of porcelain or china falling within HS/CN code	6911 10	8 166 tonnes
Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china falling within HS/CN code	6912 00	9 277 tonnes

(1) Excluding footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

(2) Excluding:

(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bars or the like, with a non-injected sole;

(b) footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.