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Contents

II *Non-legislative acts*

REGULATIONS

- ★ **Council Implementing Regulation (EU) No 805/2010 of 13 September 2010 re-imposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China, manufactured by Foshan Shunde Yongjian Housewares and Hardware Co. Ltd, Foshan** 1
- ★ **Council Implementing Regulation (EU) No 806/2010 of 13 September 2010 amending Regulations (EC) No 1292/2007 and (EC) No 367/2006 as regards the granting of an exemption from the measures imposed under those Regulations to one Israeli exporter of polyethylene terephthalate (PET) film originating in India and terminating the registration of imports from that exporter** 6
- ★ **Commission Regulation (EU) No 807/2010 of 14 September 2010 laying down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Union** 9
- Commission Regulation (EU) No 808/2010 of 14 September 2010 establishing the standard import values for determining the entry price of certain fruit and vegetables 21
- Commission Regulation (EU) No 809/2010 of 14 September 2010 amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 877/2009 for the 2009/10 marketing year 23

Price: EUR 3

(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

IV Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty

2010/487/Euratom:

- ★ Council Decision of 9 October 2009 on the conclusion, by the Commission, of the Agreement for cooperation between the European Atomic Energy Community and the Government of the Republic of India in the field of fusion energy research 25

Agreement for cooperation between the European Atomic Energy Community and the Government of the Republic of India in the field of fusion energy research 26

2010/488/Euratom:

- ★ Council Decision of 16 November 2009 approving the conclusion, by the Commission, of the Agreement for cooperation between the European Atomic Energy Community and the Government of the Federative Republic of Brazil in the field of fusion energy research 33

Agreement for cooperation between the European Atomic Energy Community and the Government of the Federative Republic of Brazil in the field of fusion energy research 34

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 805/2010

of 13 September 2010

re-imposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China, manufactured by Foshan Shunde Yongjian Housewares and Hardware Co. Ltd, Foshan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the 'basic Regulation') and in particular Article 9 thereof,

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

Whereas:

A. PROCEDURE

- (1) By Regulation (EC) No 452/2007⁽²⁾ (the 'contested Regulation'), the Council imposed definitive anti-dumping duties ranging from 9,9 % to 38,1 % on imports of ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest originating in the People's Republic of China ('PRC') and Ukraine.
- (2) On 12 June 2007, one cooperating Chinese exporting producer, namely Foshan Shunde Yongjian Housewares and Hardware Co. Ltd ('Foshan Shunde'), lodged an application at the General Court ('the Court of First Instance' before the entry into force of the Lisbon Treaty) seeking the annulment of Regulation (EC) No 452/2007 in so far as it applies to the appellant⁽³⁾.
- (3) On 29 January 2008, the General Court rejected the application of Foshan Shunde.

- (4) On 3 April 2008, Foshan Shunde lodged an appeal at the Court of Justice asking it to set aside the judgment of the General Court and seeking the annulment of Regulation (EC) No 452/2007 in so far as it concerns the appellant.

- (5) On 1 October 2009, the Court of Justice in its judgment in case C-141/08 P ('the Court of Justice judgment') set aside the previous judgment of the General Court of 29 January 2008. By its judgment the Court of Justice found that Foshan Shunde's rights of defence were adversely affected by the infringement of Article 20(5) of the basic Regulation. Therefore, the Court of Justice annulled the contested Regulation in so far as it imposes an anti-dumping duty on imports of ironing boards manufactured by Foshan Shunde.

- (6) The General Court in case T-2/95⁽⁴⁾ (the 'IPS case') has recognised that, in cases where a proceeding consists of several administrative steps, the annulment of one of those steps does not annul the complete proceeding. The anti-dumping proceeding is an example of such a multi-step proceeding. Consequently, the annulment of the contested Regulation in relation to one party does not imply the annulment of the entire procedure prior to the adoption of that Regulation. Moreover, according to Article 266 of the Treaty on the Functioning of the European Union, the Union institutions are obliged to comply with the Court of Justice judgment of 1 October 2009. This also implies the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the uncontested parts which are not affected by the Court of Justice judgment – as was held in case C-458/98 P⁽⁵⁾ (the 'IPS appeal case'). It should be noted that apart from the finding of an infringement of Article 20(5) of the basic Regulation, all other findings made in the contested Regulation remain automatically valid to the extent that the Court of Justice rejected all claims made in this respect.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 109, 26.4.2007, p. 12.

⁽³⁾ Case T-206/07 Foshan Shunde Yongjian Housewares and Hardware v Council.

⁽⁴⁾ Case T-2/95 Industrie des poudres sphériques (IPS) v Council [1998] ECR II-3939.

⁽⁵⁾ Case C-458/98 P Industrie des poudres sphériques (IPS) v Council [2000] ECR I-08147.

- (7) Following the Court of Justice judgment of 1 October 2009, a notice⁽¹⁾ was published concerning the partial reopening of the anti-dumping investigation concerning imports of ironing boards originating, inter alia, in PRC. The reopening was limited in scope to the implementation of the Court of Justice judgment in so far as Foshan Shunde is concerned.
- (8) The Commission officially advised the exporting producers, importers and users known to be concerned, the representatives of the exporting country and the Union industry of the partial reopening of the investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the notice.
- (9) All parties who so requested within the above time-limit and who demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.
- (10) Representations were received from two exporting producers in the PRC (one being the party directly concerned, i.e. Foshan Shunde), the Union industry and two unrelated importers.
- (11) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties on Foshan Shunde. They were granted a period within which to make representations subsequent to disclosure. The comments of the parties were considered and, where appropriate, the findings have been modified accordingly.

B. IMPLEMENTATION OF THE COURT OF JUSTICE JUDGMENT

1. Preliminary remark

- (12) It is recalled that the reason for the annulment of the contested Regulation was that the Commission sent its proposal to impose a definitive anti-dumping duty to the Council before the end of the 10-day mandatory deadline as set out by Article 20(5) of the basic Regulation for receiving comments following the sending to interested parties of a definitive disclosure document.

2. Comments of interested parties

- (13) Foshan Shunde argued that the Court of Justice judgment requires no implementing measures. According to the company the re-opening is illegal because there is no specific provision in the basic Regulation allowing for

such an approach and because such re-opening would be in conflict with the 15-month statutory deadline for the completion of an investigation as set by Article 6(9) of the basic Regulation and the 18-month deadline as set out by Article 5.10 of the WTO anti-dumping agreement. Foshan Shunde submitted that the IPS case could not serve as a precedent because it was based on Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽²⁾ ('the old basic Regulation'), under which mandatory deadlines did not apply yet. Foshan Shunde also argued that if the Commission decided to proceed with the implementation of the Court of Justice judgment, this should be done on the basis of the Commission's definitive disclosure document dated 20 February 2007, where the party was attributed Market Economy Treatment ('MET') and no dumping was found for this company and not on the basis of the revised definitive disclosure document of 23 March 2007, where the Commission confirmed its provisional findings for Foshan Shunde of no MET and a 18,1 % dumping margin.

- (14) The other Chinese exporting producer – Zhejiang Harmonic Hardware Products Co. Ltd ('Zhejiang Harmonic') submitted a number of arguments that were essentially identical with those made by Foshan Shunde, i.e. that there is no legal basis for the re-opening of the proceeding, and that no re-imposition of anti-dumping duties is by law possible beyond the time-limits set by the basic Regulation and WTO anti-dumping agreement. It also argued that reissuing a revised disclosure and granting a period to reply in line with Article 20(5) of the basic Regulation cannot correct the violation of Zhejiang Harmonic's rights of defence and the unlawful imposition of duties. It finally pointed out that the Commission could not re-impose anti-dumping measures based on information relating to 2005, a period that is more than four years prior to the initiation of the partial re-opening of the investigation as this would not be in line with Article 6(1) of the basic Regulation. Furthermore, Zhejiang Harmonic argued that the Commission could not reopen the case because it has lost its objectivity and impartiality since the contested Regulation proposed by the Commission was partially annulled by the Court of Justice.
- (15) The two unrelated Union importers/producers did not submit any information and data as to the legal merits of the re-investigation but rather emphasised their role as players in the Union's ironing boards market. One of them also pointed out the repercussions of the Court of Justice's annulment and the subsequent partial reopening of the investigation on their business.
- (16) The Union industry argued that Union producers pay the price for the irregularity identified by the Court of Justice as they are left without protection against imports that

⁽¹⁾ OJ C 308, 18.12.2009, p. 44.

⁽²⁾ OJ L 209, 2.8.1988, p. 1.

were found to be dumped and causing injury. The Union industry proposed that the procedure be resumed at the stage where the Commission's irregularity occurred i.e. at the time when the Chinese company had to submit its comments on the Commission's revised definitive disclosure document of 23 March 2007, the party's comments be decided upon and the new proposal limited to the situation of Foshan Shunde be sent to the Council, with the aim of reinstating the anti-dumping duty on imports of ironing boards produced by Foshan Shunde. The Union industry also submitted that a similar approach was followed in the past (i.e. in the judgments in the IPS case, the IPS appeal case, and in Council Regulation (EC) No 235/2004⁽¹⁾ adopted following the judgment of the Court of Justice in case C-76/00 P *Petrotub and Republica v Council*). Moreover, according to this party the 15-month time-limit of the basic Regulation does not apply to the amendment of a Regulation imposing anti-dumping duties in order to implement a judgment of the Court of Justice of the European Union.

3. Analysis of comments

- (17) It is recalled that the Court of Justice has rejected all the substantive arguments of Foshan Shunde referring to the merits of the case. Thus, the Union institutions' obligation is focused on correcting the part of the administrative procedure where the irregularity occurred in the initial investigation.
- (18) The claim that the introduction of deadlines, 15 months and 18 months respectively, to conclude anti-dumping investigations prevents the Commission from following the approach underlying the IPS case was found to be unwarranted. It is considered that this deadline is not relevant for the implementation of a judgment of the Court of Justice of the European Union. Indeed, such deadline only governs the completion of the original investigation from the date of initiation to the date of definitive action, and does not concern any subsequent action that might have to be taken for instance as a result of judicial review. Furthermore, it is noted that any other interpretation would mean that a successful legal action brought by the Union industry would be without any practical effect for that party if it is accepted that the expiry of the time-limit to conclude the original investigation would not allow for the implementation of a judgment of the Court of Justice of the European Union. This would be at odds with the principle that all parties should have the possibility of effective judicial review.
- (19) It is also recalled that the General Court in its judgment in joint cases T-163/94 and T-165/94⁽²⁾ has held that even the soft deadline applicable under the old basic Regulation could not be stretched beyond reasonable limits and found that an investigation lasting for more than three years was too long. This contrasts with the IPS

case where the implementation of the Court of Justice judgment occurred seven years after the initiation of the original investigation and the Court of Justice judgment contains no indication that deadlines were an issue.

- (20) Therefore, it is concluded that Article 6(9) of the basic Regulation applies to the initiation of proceedings and the conclusion of the investigation initiated pursuant to Article 5(9) of the basic Regulation only and not to a partial reopening of an investigation with a view to implementing a judgment of the Court of Justice of the European Union.
- (21) This conclusion is in line with the approach taken for the implementation of WTO panels and Appellate Body reports where it is accepted that institutions could amend deficiencies of a regulation imposing anti-dumping duties in order to comply with dispute settlement body reports, including in cases concerning the Union⁽³⁾. In such cases it was felt necessary to adopt special procedures to implement WTO panel and Appellate Body reports because of the lack of direct applicability of such reports in the Union legal order, by contrast with the judgments of the Court of Justice which are directly applicable.
- (22) With respect to the arguments submitted on the application of Article 6(1) of the basic Regulation it is noted that no infringement of Article 6(1) of the basic Regulation could be established since the Commission has not opened a new proceeding but reopened the original investigation to implement the Court of Justice judgment.
- (23) With respect to the argument that Foshan Shunde should receive the disclosure document of 20 February 2007 and not the revised disclosure document of 23 March 2007 it is noted that in line with the Court of Justice judgment the Commission should correct the procedural irregularity. This administrative irregularity only happened when Foshan Shunde received less than 10 days to comment on the revised disclosure document. Hence, the validity of the preceding steps of the original investigation were not affected by the Court of Justice judgment and does therefore not require to be reviewed in the context of the current partial reopening.

⁽¹⁾ OJ L 40, 12.2.2004, p. 11.

⁽²⁾ Joined cases T-163/94 and 165/94 *NTN Corporation and Koyo Seiko Co. Ltd v Council* [1995] ECR II-01381.

⁽³⁾ *European Communities-Antidumping Duties on Imports of Cotton-Tyle Bed Linen from India: Recourse to Article 21.5 of the DSU by India* WT/DS141/AB/RW (8 April 2003), paragraphs 82-86; Council Regulation (EC) No 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters (OJ L 201, 26.7.2001, p. 10); Council Regulation (EC) No 436/2004 of 8 March 2004 amending Regulation (EC) No 1784/2000 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand (OJ L 72, 11.3.2004, p. 15) following Reports adopted by the Dispute Settlement Body of the WTO.

4. Conclusion

- (24) Account taken of the comments made by the parties and the analysis thereof it was concluded that the implementation of the Court of Justice judgment should take the form of re-disclosure to Foshan Shunde and all other interested parties of the revised definitive disclosure document of 23 March 2007 on the basis of which it was proposed to re-impose an anti-dumping duty on imports of ironing boards manufactured by Foshan Shunde by the contested Regulation.
- (25) On the basis of the above it was also concluded that the Commission should give Foshan Shunde and all other interested parties enough time to provide comments on the revised definitive disclosure document of 23 March 2007 and then evaluate such comments in order to determine whether to make a proposal to the Council to re-impose the anti-dumping duty on imports of ironing boards manufactured by Foshan Shunde on the basis of the facts relating to the original investigation period.

C. DISCLOSURE

- (26) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to implement the Court of Justice judgment.
- (27) All interested parties were given an opportunity to comment, applying the 10-day period prescribed in Article 20(5) of the basic Regulation. Their comments were considered and taken into account, where appropriate, but they were not of a nature as to change the above conclusions.
- (28) Foshan Shunde and all other interested parties received the revised definitive disclosure document dated 23 March 2007 on the basis of which it was proposed to re-impose the anti-dumping duty on imports of ironing boards from Foshan Shunde on the basis of the facts relating to the original investigation period.
- (29) Foshan Shunde and all other interested parties were given an opportunity to comment on this revised disclosure document. The oral and written arguments submitted were considered and, where appropriate, were taken into account. In the light of the comments made, the following can be observed. The course of action taken in this Regulation is based on the fact that, in the Court of Justice judgment, it is emphasised that Article 2(7)(c) of the basic Regulation cannot be interpreted in such a manner as to oblige the Commission to propose to the Council definitive measures which would perpetuate an error of assessment made in the original assessment of the substantive criteria of that provision⁽¹⁾. Although the Court of Justice made this comment in relation to an error to the detriment of the applicant in that case, it

is clear that this interpretation should be applied in an even-handed manner, meaning that also an error to the detriment of the Union industry can not be perpetuated. As stated in the revised final disclosure document of 23 March 2007 and in the revised specific disclosure document of the same date, and in earlier letters by the Commission to the applicant on which those documents are based, Foshan Shunde should be refused MET because its accounting practices had various serious deficiencies and were therefore not in line with International Accounting Standards. This violation of the second criterion in Article 2(7) can not be remedied by the statistics referred to in the last sentence of paragraph 12 of the Court of Justice judgment. The approach which was originally considered in the final disclosure document of 20 February 2007 should therefore be qualified as an error, which should be corrected. In the interest of protecting the Union industry against dumping, the resulting anti-dumping duty on the applicant should be re-imposed as soon as possible.

- (30) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the re-imposition of definitive anti-dumping measures, one Chinese exporting producer proposed a price undertaking in accordance with Article 8(1) of the basic Regulation. However, this undertaking offer failed to provide any remedies with respect to the problems already highlighted in recital 68 of the contested Regulation, notably the need to establish meaningful minimum import prices for each of the numerous product types which could be properly monitored by the Commission without serious risk of circumvention. Moreover, the price undertaking offer either suggested one average minimum price covering only one product type exported to the Union, or several minimum import prices based again on weighted average prices for combinations of some products. Furthermore, all the proposed combinations for minimum import price were significantly lower than the highest established export prices. On the basis of the above, it was concluded that such undertaking was impractical and therefore it cannot be accepted. The party was informed accordingly and given an opportunity to comment. However, its comments have not altered the above conclusion.

D. DURATION OF MEASURES

- (31) This procedure does not affect the date on which the measures imposed by the contested Regulation will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby re-imposed on imports of ironing boards, whether or not free-standing, with or

⁽¹⁾ Paragraph 111 of the Court of Justice judgment.

without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest originating in the People's Republic of China, currently falling within CN codes ex 3924 90 00, ex 4421 90 98, ex 7323 93 90, ex 7323 99 91, ex 7323 99 99, ex 8516 79 70 and ex 8516 90 00 (TARIC codes 3924 90 00 10, 4421 90 98 10, 7323 93 90 10, 7323 99 91 10, 7323 99 99 10, 8516 79 70 10 and 8516 90 00 51) and manufactured by Foshan Shunde Yongjian Housewares and Hardware Co. Ltd, Foshan (TARIC additional code A785).

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, shall be 18,1 %.

3. 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*.

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

Done at Brussels, 13 September 2010.

For the Council
The President
S. VANACKERE

COUNCIL IMPLEMENTING REGULATION (EU) No 806/2010**of 13 September 2010**

amending Regulations (EC) No 1292/2007 and (EC) No 367/2006 as regards the granting of an exemption from the measures imposed under those Regulations to one Israeli exporter of polyethylene terephthalate (PET) film originating in India and terminating the registration of imports from that exporter

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic anti-dumping Regulation) and in particular Articles 11(4) and 13(4) thereof,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ⁽²⁾ (the basic anti-subsidy Regulation) and in particular Articles 20, 23(5) and (6) thereof,

Having regard to the proposal from the European Commission after consulting the Advisory Committee,

Whereas:

A. MEASURES IN FORCE

- (1) The Council, by Regulations (EC) No 1676/2001 ⁽³⁾ and (EC) No 2597/1999 ⁽⁴⁾ imposed anti-dumping and countervailing measures respectively on PET film originating, inter alia, in India (the original measures). By Regulations (EC) No 1975/2004 ⁽⁵⁾ and (EC) No 1976/2004 ⁽⁶⁾, the Council extended these measures to PET film consigned from Israel and from Brazil (the extended measures) with the exception of imports produced by one Brazilian company, Terphane Ltd, and one Israeli company, Jolybar Ltd, specifically mentioned in each of those Regulations.
- (2) By Regulation (EC) No 101/2006 ⁽⁷⁾ the Council amended Regulations (EC) No 1975/2004 and (EC) No 1976/2004 in order to exempt one other Israeli company, Hanita Coatings Rural Cooperative Association Ltd, from the extended measures.
- (3) Following an expiry review of the anti-dumping measures, the Council, by Regulation (EC) No 1292/2007 ⁽⁸⁾, imposed an anti-dumping duty on

imports of polyethylene terephthalate (PET) film originating in India and maintained the extension of that duty to imports of the same product consigned from Brazil and from Israel, whether or not declared as originating in Brazil or Israel, with the exception of certain producers specified in Articles 2(4) of that Regulation (the anti-dumping measures in force).

- (4) Following an expiry review of the countervailing measures, the Council, by Regulation (EC) No 367/2006 ⁽⁹⁾ imposed a countervailing duty on imports of polyethylene terephthalate (PET) film originating in India and maintained the extension of that duty to imports of the same product consigned from Brazil and from Israel, whether or not declared as originating in Brazil or Israel, with the exception of certain producers specified in Article 1(3) of that Regulation (the countervailing measures in force). The anti-dumping measures in force and the countervailing measures in force shall hereinafter together be referred to as 'the anti-dumping and countervailing measures in force'.
- (5) Regulations (EC) No 1292/2007 and (EC) No 367/2006 were last amended by Council Regulation (EC) No 15/2009 ⁽¹⁰⁾.

B. CURRENT INVESTIGATION**1. Request for a review**

- (6) The Commission subsequently received a request for an exemption from the extended measures pursuant to Articles 11(4) and 13(4) of the basic anti-dumping Regulation and Articles 20, 23(5) and 23(6) of the basic anti-subsidy Regulation. The application was lodged by S.Z.P. Plastic Packaging Products Ltd (SZP), a producer in Israel (the country concerned).

2. Initiation of a review

- (7) The Commission examined the evidence submitted by SZP and considered it sufficient to justify the initiation of an investigation pursuant to Articles 11(4) and 13(4) of the basic anti-dumping Regulation and Articles 20, 23(5) and 23(6) of the basic anti-subsidy Regulation for the purposes of determining the possibility of granting SZP an exemption from the extended measures. After consultation of the Advisory Committee,

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 188, 18.7.2009, p. 93.

⁽³⁾ OJ L 227, 23.8.2001, p. 1.

⁽⁴⁾ OJ L 316, 10.12.1999, p. 1.

⁽⁵⁾ OJ L 342, 18.11.2004, p. 1.

⁽⁶⁾ OJ L 342, 18.11.2004, p. 8.

⁽⁷⁾ OJ L 17, 21.1.2006, p. 1.

⁽⁸⁾ Council Regulation (EC) No 1292/2007 of 30 October 2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and terminating a partial interim review of such imports pursuant to Article 11(3) of Regulation (EC) No 384/96 (OJ L 288, 6.11.2007, p. 1).

⁽⁹⁾ Council Regulation (EC) No 367/2006 of 27 February 2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97 (OJ L 68, 8.3.2006, p. 15).

⁽¹⁰⁾ OJ L 6, 10.1.2009, p. 1.

and after the Union industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EU) No 6/2010⁽¹⁾ (the initiating Regulation), a review of Regulations (EC) No 1292/2007 and (EC) No 367/2006 with regard to SZP.

- (8) The Regulation initiating the review repealed the anti-dumping duty imposed by Regulation (EC) No 1292/2007 with regard to imports of the product under investigation consigned from Israel by SZP. Simultaneously, pursuant to Article 14(5) of the basic anti-dumping Regulation, customs authorities were directed to take appropriate steps to register such imports.

3. Product concerned

- (9) The product concerned is the same as that defined in the regulations imposing the original measures, being polyethylene terephthalate (PET) film originating in India, currently falling within CN codes ex 3920 62 19 and ex 3920 62 90 (the product concerned).
- (10) It is considered that the PET film consigned from Israel to the Union under CN codes ex 3920 62 19 and ex 3920 62 90 (the product under review) has the same basic technical, physical and chemical characteristics and the same uses as the product concerned. Therefore, it is considered to be a like product within the meaning of Article 1(4) of the basic anti-dumping Regulation and Article 2(c) of the basic anti-subsidy Regulation.

4. Investigation

- (11) The Commission officially advised SZP and the representatives of the country concerned of the initiation of the review. Interested parties were invited to make their views known and informed of the possibility to request a hearing. No such request was, however, received.
- (12) The Commission also sent a questionnaire to SZP and received a reply within the relevant deadline. The Commission sought and verified all the information deemed necessary for the purposes of the review. A verification visit was carried out at the premises of SZP.

5. Investigation period

- (13) The investigation covered the period from 1 January 2009 to 31 December 2009 (the IP). Data was collected from 2006 up to the end of the IP to investigate any change in the pattern of trade.

C. RESULTS OF THE INVESTIGATION

- (14) The investigation confirmed that SZP did not export the product under review to the European Union during the period of the investigation that led to the extended measures, i.e. 1 January to 31 December 2003. SZP's

first exports of the product under review occurred subsequent to the extension of measures to, inter alia, Israel.

- (15) Furthermore, according to documentary evidence submitted, SZP was able to satisfactorily demonstrate that it did not have any direct or indirect links with any of the Indian exporting producers or Israeli companies subject to the anti-dumping and countervailing measures in force.
- (16) As already mentioned in recital 14, SZP did not export the product concerned to the Union until after the period of investigation that led to the extended measures. SZP manufactures PET film and either sells this film or uses it itself to produce a range of packaging products.
- (17) Raw material of Indian origin, amongst others, is used by SZP to manufacture PET film exported to the Union but this was not considered to be a process involving circumvention. The Indian raw material constituted only a small proportion of the raw material bought at arms-length by SZP and was mixed with other raw materials which were mainly purchased domestically. The Indian producer of the raw material is a long-standing supplier to SZP.
- (18) In addition no evidence was found that SZP was purchasing finished PET film from India to resell or tranship to the European Union.

D. AMENDMENT OF THE MEASURES BEING REVIEWED

- (19) In accordance with the above findings that SZP has not engaged in circumvention practices, the company should be exempted from the anti-dumping and countervailing measures in force.
- (20) The registration of imports of PET film consigned from Israel by SZP, as imposed by the initiating Regulation, should cease. In accordance with Article 14(5) of the basic anti-dumping Regulation, which provides that measures shall be applied against registered imports from the date of registration, and in view of the exemption of the company from measures, no anti-dumping duty should be collected on imports of PET film consigned from Israel by SZP which entered the Union under registration imposed by the initiating Regulation.
- (21) In relation to the countervailing measures, as SZP has been found not to be circumventing the measures in force, the exemption should take effect from the date of entry into force of Regulation (EU) No 6/2010 in accordance with Article 23(6) of the basic anti-subsidy Regulation. Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.

⁽¹⁾ OJ L 2, 6.1.2010, p. 5.

- (22) The exemption from the extended measures granted to PET film produced by SZP shall, in accordance with Article 13(4) of the basic anti-dumping Regulation and Article 23(6) of the basic anti-subsidy Regulation, remain valid on condition that the facts as finally ascertained justify the exemption and that it is, for instance, not established that the exemption was granted on the basis of false or misleading information submitted by the company concerned. Should prima facie evidence indicate otherwise, an investigation may be initiated by the Commission to establish if withdrawal of the exemption is warranted.
- (23) The exemption from the extended measures of imports of PET film from SZP was established on the basis of the findings of the present review. This exemption is thus exclusively applicable to imports of PET film consigned from Israel and produced by that specific legal entity. Imported PET film produced or consigned by any company not specifically mentioned in Article 2(4) of Regulation (EC) No 1292/2007 and Article 1(3) of Regulation (EC) No 367/2006 with its name and address, including entities related to those specifically mentioned, cannot benefit from the exemption and should be subject to the residual duty rate as imposed by those Regulations.

E. PROCEDURE

- (24) SZP and all other interested parties were informed of the facts and considerations on the basis of which it was intended to grant an exemption to SZP from the extended measures. No comments were received,

HAS ADOPTED THIS REGULATION:

Article 1

1. Regulation (EC) No 1292/2007 is hereby amended as follows:

in Article 2(4), the following company is added to the list of companies that produce polyethylene terephthalate film in

Brazil and Israel and whose imports of polyethylene terephthalate film are exempted from the application of the extended definitive residual anti-dumping duty:

‘S.Z.P. Plastic Packaging Products Ltd, PO Box 53, Shavei Zion, 22086 Israel (TARIC additional code A964)’.

2. Regulation (EC) No 367/2006 is hereby amended as follows:

in Article 1(3), the following company is added to the list of companies that produce polyethylene terephthalate film in Brazil and Israel and whose imports of polyethylene terephthalate film are exempted from the application of the extended definitive countervailing duty:

‘S.Z.P. Plastic Packaging Products Ltd, PO Box 53, Shavei Zion, 22086 Israel (TARIC additional code A964)’.

Article 2

Countervailing duties which have been levied after 7 January 2010 under Article 1(1) of Regulation (EC) No 367/2006 on imports from S.Z.P. Plastic Packaging Products Ltd shall be reimbursed to the importer or importers concerned. Repayment or remission shall be requested from national customs authorities in accordance with applicable customs legislation.

Article 3

The customs authorities are hereby directed to cease the registration of imports carried out pursuant to Article 3 of Regulation (EU) No 6/2010. No anti-dumping duty shall be collected on the imports thus registered.

Article 4

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 from 7 January 2010.

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

Done at Brussels, 13 September 2010.

For the Council
The President
S. VANACKERE

COMMISSION REGULATION (EU) No 807/2010**of 14 September 2010****laying down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Union****(codification)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 Articles 43 (g) and (h), in conjunction with Article 4 thereof,

Whereas:

- (1) Commission Regulation (EEC) No 3149/92 of 29 October 1992 on laying down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community ⁽²⁾ has been substantially amended several times ⁽³⁾. In the interests of clarity and rationality the said Regulation should be codified.
- (2) The procedure and rules for establishing the annual distribution plan for products from intervention stocks drawn up by the Commission on the basis of information provided by the Member States should be simple and the timetable should be adapted taking into account the requirements of distribution to the recipients and the need for financial management of public intervention stocks.
- (3) In order to ensure more standardised implementation in the Member States participating in this scheme, the concepts of 'beneficiaries' and 'final recipients' of the measure need to be clarified. In order to facilitate the management and control of the implementation of the annual plan, the charitable organisations designated by the competent national authorities can be deemed final recipients if they are actually engaged in the local distribution of the foodstuffs (in various forms) where the most deprived persons live.
- (4) The supply of agricultural products and foodstuffs to the most deprived persons in the Union normally involves products processed or packaged from products withdrawn from Union intervention stores. However, the objective may also be achieved by the supply of agricultural products and foodstuffs belonging to the same category of products placed on the Union

market. In such cases supply is reimbursed in the form of a withdrawal and transfer of products from the intervention stores.

- (5) In order to deal with situations in which certain basic products are temporarily unavailable in intervention stocks at the time of adoption of an annual plan or during its implementation, Article 27 of Regulation (EC) No 1234/2007 provides that the products concerned may be mobilized on the Union market, although only under conditions which do not conflict with the principle of supply from intervention stocks. The rules for such mobilization must be fixed.
- (6) In order to comply with the principle that priority should be given to intervention stocks when mobilizing products to supply to the most deprived persons in the Union, optimum distribution of existing public stocks among the Member States participating in the scheme should be ensured when the plan is adopted and intra-Union transfer operations made necessary by the non-availability of the products requested in one or more Member States should be coordinated. For the purposes of applying Article 27 of Regulation (EC) No 1234/2007, a minimum quantity threshold should also be set beneath which, for reasons of good economic management, intra-Union transfers should not be implemented.
- (7) In order to allow judicious management of the scheme and to organize the implementation of the annual Union plan, it is appropriate, firstly, to determine, when that plan is being adopted, for which products temporary non-availability justifies mobilization on the market of the same product or a product in the same category, and secondly to set the financial allocation to be made available to the Member State for this purpose. To meet the abovementioned objectives, that allocation should be made on the basis of the applications submitted by the Member State for the annual plan, the quantities of the products unavailable in the intervention stocks and the allocations made during previous financial years and their effective use.
- (8) With the same objective of giving priority to the use of intervention stocks, it should be laid down that supplies using products to be withdrawn from those stocks must be allocated before operations to mobilize products of the same category on the Union market are undertaken.
- (9) The best conditions should be obtained for carrying out the different types of supply and it should be specified that invitations to tender must be published to ensure that all operators established in the Union have equal access.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 313, 30.10.1992, p. 50.

⁽³⁾ See Annex III.

- (10) It should be explicitly stated that these invitations must include all the necessary provisions on the delivery of the supplies and provision should be made to adjust payment for them based on compliance or otherwise with the requirements laid down.
- (11) The products to be withdrawn from intervention stocks under the annual plan may be supplied unprocessed or processed for the manufacture of food, or withdrawn in payment for the supply or manufacture of food mobilised on the Union market. In the latter case, the products in intervention stocks which may be withdrawn in payment for the manufacture of cereal, rice and milk products should be specified.
- (12) To respond more effectively to the needs of charitable organisations and expand the range of food products supplied, it should be laid down that products from intervention stocks may, under certain conditions, be incorporated into other products for the purposes of manufacturing food.
- (13) The terms for reimbursing charitable organisations for costs incurred by the transport of products and also, if appropriate, administrative costs should be determined, within the limits of available funds. The rules for entering in the accounts the value of products withdrawn from intervention stores for the purposes of the European Agricultural Guarantee Fund EAGF expenditure should also be laid down, along with the rules to be applied in the event that stocks are transferred from one Member State to another.
- (14) The transport costs must be reimbursed on the basis of the duly justified real costs established on the basis of an invitation to tender procedure. It should be specified, however, that reimbursement of the transport costs between the storage depots of the charitable organisation and the place of final distribution is effected on the basis of supporting evidence.
- (15) In order to ensure improved utilization of the available resources, it should be specified that in no circumstance may product carriage costs give rise to payments in the form of products.
- (16) The most appropriate types of check of the implementation of the annual plan should be specified and in particular the rate of checks to be made by the competent authorities. The annual reports of plan implementation should include information allowing both the outcome of the checks and the plan's implementation to be assessed.
- (17) 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. Member States wishing to apply the measures laid down in Article 27 of Regulation (EC) No 1234/2007 on behalf of the most deprived persons in the Union shall inform the Commission each year no later than 1 February preceding the period of implementation of the annual plan referred to in Article 2 of this Regulation.

2. By 31 May at the latest, the Member States concerned shall notify the Commission of:

- (a) the quantities of each type of product (expressed in tonnes) required to implement the plan on their territory for the year in question;
- (b) the form in which the products are to be distributed to the recipients;
- (c) the eligibility criteria to be met by recipients;
- (d) the rate of charges, if any, which may be imposed on the recipients pursuant to Article 27(1)(b) of Regulation (EC) No 1234/2007.

3. For the purposes of this Regulation, 'the most deprived persons' means physical persons, whether individuals, families or groups composed of such persons, whose social and financial dependence is recorded or recognised on the basis of eligibility criteria adopted by the competent authorities, or is judged to be so on the basis of the criteria used by charitable organisations and which are approved by the competent authorities.

Article 2

1. Before 1 October each year the Commission shall adopt an annual plan for the distribution of food for the benefit of the most deprived persons, broken down by Member State concerned, hereinafter the 'plan'. For the purposes of allocating the resources among Member States, the Commission shall take account of the best estimates of the number of most deprived persons in the Member States concerned. It shall also take account of how operations were carried out and the uses to which resources were put in previous financial years, on the basis in particular of the reports provided for in Article 11.

2. Before drawing up the plan, the Commission shall consult the major organisations familiar with the problems of the most deprived persons in the Union.

3. The plan shall include in particular:

(a) For each of the Member States applying the measure, the following:

- (i) the maximum financial resources available to carry out its part of the plan;
- (ii) the quantity of each type of product to be withdrawn from the stocks held by the paying agencies or intervention agencies, hereinafter collectively referred to as 'intervention agencies';
- (iii) the grant made available for each product for purchase on the Union market where the product concerned is found to be temporarily unavailable among the stocks held by the intervention agencies when the plan is adopted.

This grant shall be determined for each product taking account firstly of the quantity indicated in the Member State notification referred to in Article 1(2), secondly of the quantities not available in intervention stocks and thirdly of the products applied for and allocated during previous financial years and the actual use made of them.

This grant shall be expressed in euro using the accounting value of the products not available among intervention stocks determined in accordance with Article 5(1);

- (iv) where appropriate, a grant for purchase on the Union market of one or more products, not available from the Member State where they are required, where the intra-Union transfer necessary to carry out the plan in that Member State would be in respect of a quantity of 60 tonnes or less of each product not available.

This grant shall be expressed in euro using the accounting value of the products concerned determined in accordance with Article 5(1).

(b) The appropriations needed to cover the intra-Union transfer costs of the intervention products held by an intervention agency in a Member State other than that where the product is required.

4. The Commission shall publish the plan as quickly as possible.

Article 3

1. The plan implementation period shall begin on 1 October and finish on 31 December of the following year.

2. Withdrawal of the products from intervention stocks shall take place from 1 October to 31 August of the following year on a regular basis and in accordance with the requirements for implementing the plan.

70 % of the quantities referred to in Article 2(3)(a)(ii) must be withdrawn from stock before 1 July in the year of plan implementation. However, this requirement shall not apply to allocations of 500 tonnes or less. Any quantities that have not been withdrawn from intervention stocks by 30 September in the year of plan implementation shall no longer be allocated to the Member State to which they were assigned under the plan in question.

However, in the case of butter and skimmed-milk powder, 70 % of the products must be withdrawn from intervention storage before 1 February in the year of implementation. This requirement shall not, however, apply to allocations of 500 tonnes or less.

If the time limits provided for in the first, second and third subparagraphs are exceeded, the costs of storing the intervention products shall no longer be covered by the Union. This provision shall not apply to products which have not been withdrawn from intervention stocks on 30 September of the year of implementation of the plan.

The products to be withdrawn must be removed from intervention stocks within sixty days of the date on which the successful tenderer to whom the supply is assigned signs the contract or, in the case of transfers, within sixty days from the notification by the Member State of destination to the competent authority of the supplier Member State.

3. Payment operations for products to be supplied by the operator must, in the case of products to be mobilised on the market under Article 2(3)(a)(iii) and (iv), be closed before 1 September of the year of implementation of the plan.

4. During the implementation period the Member States shall notify to the Commission any changes that they make to the implementation of the plan on their territory within the strict limits of the financing available to them. The notification shall be accompanied by all appropriate information. Where substantiated changes concern 5 % or more of the quantities or values entered per product in the Union plan, the plan shall be revised.

5. The Member States shall inform the Commission immediately of foreseeable reductions in expenditure on applying the plan. The Commission may allocate the available resources to other Member States on the basis of their applications and their actual use of products made available and allocations made during previous financial years.

Article 4

1. Implementation of the plan shall comprise:

- (a) the supply of products withdrawn from intervention stocks;
- (b) the supply of products mobilised on the Union market under Article 2(3)(a)(iii) and (iv);

(c) the supply of processed agricultural products or foodstuffs available or obtainable on the market by supplying for payment products from intervention stocks.

2. Those products referred to in paragraph 1(b) which are mobilised on the market must belong to the same product group as the product temporarily unavailable in the intervention stocks.

However, where no rice is available in the intervention stocks, the Commission may authorise the removal of cereals from intervention stocks as payment for the supply of rice or rice products mobilised on the market.

Similarly, where no cereals are available in the intervention stocks, the Commission may authorise the removal of rice from intervention stocks as payment for the supply of cereals or cereal products mobilised on the market.

A given product may be mobilised on the market only if all the quantities of product in the same group to be withdrawn from intervention stocks for supply purposes in application of Article 2(3)(a)(ii), including quantities to be transferred in application of Article 8, have already been allocated. The competent national authority shall inform the Commission of the opening of mobilisation procedures on the market.

3. Where the supply concerns products withdrawn from intervention stocks, the competent national authority shall issue or arrange to have issued an invitation to tender to determine the most advantageous conditions of supply. The invitation to tender shall specify precisely the nature and characteristics of the product to be supplied. The product to be supplied shall be either the product withdrawn from intervention stocks in unprocessed form or after packaging and/or processing, or a product mobilised on the market by withdrawing a product from intervention stocks in payment for the supply.

The invitation to tender shall concern:

- (a) the charges for processing and/or packaging of the products coming from intervention stocks;
- (b) or the quantity of processed or, where appropriate, packaged agricultural products or of foodstuffs which may be obtained by the use of products from intervention stocks supplied in payment for such products;
- (c) or the quantity of processed agricultural products or foodstuffs available or obtainable on the market by supplying for payment products from intervention stocks; these foodstuffs must contain an ingredient belonging to the same group of products as the intervention product supplied as payment.

In the case referred to in point (c) of the second subparagraph, where supply involves cereals or cereal products, the invitation

to tender shall specify that the product to be withdrawn is a specific cereal held by an intervention agency. Where the supply involves milk products, the invitation to tender shall specify which product, butter or milk powder, must be withdrawn from the stocks held by an intervention agency depending on the stocks held by that agency.

In the case referred to in point (c) of the second subparagraph, where supply involves rice or rice products in exchange for cereals withdrawn from intervention stocks, the invitation to tender shall specify that the product to be withdrawn is a specific cereal held by an intervention agency. Similarly, where supply involves cereals or cereal products in exchange for rice withdrawn from intervention stocks, the invitation to tender shall specify that the product to be withdrawn is a specific rice held by an intervention agency.

Where the supply involves the processing and/or packaging of the product, the invitation to tender shall refer to the obligation of the successful bidder to lodge a security, before taking over the products, for the intervention agency in accordance with Title III of Commission Regulation (EEC) No 2220/85 ⁽¹⁾, for an amount equal to the intervention price applicable on the day fixed for taking over the product plus 10 % of that price. For the purposes of Title V of that Regulation, the primary requirement shall be to supply the product at the stipulated destination. In the event of delivery after the end of the implementation period of the plan specified in Article 3(1) of this Regulation, the security forfeited shall be 15 % of the secured amount. The remainder of the security shall also be forfeited at an additional 2 % per day of delay. This subparagraph shall not apply where the product withdrawn from the intervention stocks is made available to the supply contractor as payment for supply already carried out.

4. Where the supply concerns agricultural products or foodstuffs to be mobilized on the Union market, the competent national authority shall issue an invitation to tender to determine the most advantageous conditions of supply. The invitation to tender shall specify precisely the nature and characteristics of the product or foodstuff to be mobilized, specifications concerning packaging and marking and other obligations associated with the supply. The supply contract is awarded to the selected tenderer subject to the latter depositing a security equivalent to 110 % of the amount of his tender and established in the name of the intervention agency, in accordance with Title III of Regulation (EEC) No 2220/85.

The invitation to tender shall concern all the supply charges and shall call for the submission of tenders concerning, according to case:

- (a) the maximum quantity of the agricultural product or foodstuff to be mobilized on the market for a monetary amount fixed in the notice;

⁽¹⁾ OJ L 205, 3.8.1985, p. 5.

(b) or the monetary amount needed to mobilize on the market a quantity fixed in the notice.

5. Products from intervention or mobilised on the market under Article 2(3)(a)(iii) and (iv) or point c of the first subparagraph of paragraph 1 of this Article may be incorporated into or added to other products mobilised on the market for the manufacture of food to be supplied for the purposes of implementing the plan.

6. The transport costs shall be determined by an invitation to tender.

Member States may specify that supply must also include the transport of products to the depots of the charitable organisation. In such cases transport shall be the subject of a specific provision in the invitation to tender and shall constitute a particular item in the tender submitted.

Tenders concerning transport shall be submitted in monetary values.

The payment of transport costs may in no case be made in products.

7. Invitations to tender shall guarantee equal access to all operators established in the Union. To this end they shall be the subject of notices published in official administrative publications as well as being made available in complete form on request from interested operators.

8. The invitations to tender shall include the necessary provisions on the supply operation, especially as regards the products' quality, packaging and marking. They shall also include a provision to the effect that if the quality, packaging or marking of the products noted at the time fixed for their supply does not correspond exactly to what was stipulated, but does not prevent the goods from being accepted for their intended use, the competent authorities can apply reductions when calculating the amount payable.

Article 5

1. For the European Agricultural Guarantee Fund (EAGF) accounting purposes, and notwithstanding Annex VIII to Commission Regulation (EC) No 884/2006 ⁽¹⁾, the accounting value of the products made available from intervention under this Regulation shall be the intervention price applicable on 1 October of each year.

For the Member States which have not adopted the euro, the accounting value of intervention products shall be converted into national currency at the exchange rate applicable on 1 October.

2. Where intervention products are transferred from one Member State to another, the supplier Member State shall record the product delivered as a zero entry in the accounts and the Member State of destination shall record it as a receipt in the month of dispatch, using the price calculated in accordance with paragraph 1.

⁽¹⁾ OJ L 171, 23.6.2006, p. 35.

Article 6

With a view to distributing foodstuffs to the most deprived persons and to performing checks, the charitable organisations directly looking after the beneficiaries shall be deemed to be the final recipients of this distribution if they are the ones actually distributing the foodstuffs. Foodstuffs which, without any other intervention, are locally delivered direct to the beneficiaries as food packages or appropriate meals, depending on the circumstances, either daily or weekly, shall be deemed to have been distributed.

Article 7

1. On duly substantiated application to the competent authority in each Member State, the charitable organisations designated to distribute the products shall be reimbursed for transport costs on the territory of the Member State between the storage depots of the charitable organisations and the points of distribution to the beneficiaries.

2. Administrative costs generated by the supplies provided for in this Regulation shall, on duly substantiated application to the competent authority in each Member State, be reimbursed to the charitable organisations subject to a limit of 1 % of the value of the products made available to them, calculated in accordance with Article 5(1).

3. The costs referred to in paragraphs 1 and 2 shall be reimbursed to the Member States within the limits of the financial resources available to implement the plan in each Member State.

The costs referred to in paragraphs 1 and 2 may not be the subject of a payment in the form of products.

Article 8

1. When products included in the plan are not available from intervention in the Member State where such products are required, the Commission shall authorise, in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, the transfer of the product in question from a Member State in which it is present in intervention stocks to the Member State where it will be used to implement the plan.

The Member State receiving the products shall publish or have published an invitation to tender to establish the most favourable conditions of supply. The costs of intra-Union transport shall be the subject of a tender submitted in monetary value and may not be paid for in products. Article 4(7) of this Regulation shall apply in the context of this invitation to tender.

2. The intra-Union transport costs shall be borne by the Union and repaid to the Member State. The application for reimbursement shall include all necessary supporting documents, particularly those concerning the transport. The expenditure shall be set off against the appropriations referred to in Article 2(3)(b). Where the appropriations have been fully allocated, any additional Union financing to cover intra-Union transport costs shall be provided in accordance with Article 7(3).

3. The call for tenders shall mention the option whereby an operator may submit a bid for placement on the Union market of the agricultural products or foodstuffs to be supplied and for takeover of the products from the supplying intervention agency, without transfer to the applicant Member State. In these circumstances, no intra- Union transport costs shall be paid to the person awarded the supply contract.

The applicant Member State shall provide the supplier Member State with the name of the person contracted to supply the products.

4. Before the goods are removed, the contractor undertaking the supply operation shall lodge a security equal to the intervention buying-in price applicable on the day fixed for taking over the products, plus 10 %.

The security shall be lodged in accordance with Title III of Regulation (EEC) No 2220/85.

For the purposes of Title V of that Regulation, the primary requirement shall be completion of the supply operation in the Member State of destination.

Presentation of a takeover document issued by the intervention agency of destination shall constitute proof of supply of the products.

5. In the case of transfer, the Member State of destination shall provide the supplier Member State with the name of the person contracted to carry out the operation.

The intervention agency of the Member State supplying the products shall make them available to the person contracted to carry out the supply or his/her duly authorised agent, on presentation of a removal order issued by the intervention agency of the Member State of destination.

The competent authority shall ensure that the goods have been insured appropriately.

Dispatch declarations issued by the intervention agency of the supplier Member State shall include one of the entries given in Annex I.

The intervention agency of the supplier Member State shall, as soon as possible, notify the competent authority of the Member State of destination of the date on which the withdrawal operation is to end.

Intra- Union transport costs shall be paid by the Member State of destination of the products concerned for the quantities actually taken over.

6. The calculation of any losses shall be entered in the accounts in accordance with Annex X (c) of Regulation (EC) No 884/2006.

Article 9

Requests for payment shall be submitted to the competent authorities of each Member State within a period of four months following the completion of the operation in question. A 20 % reduction shall be made in the case of requests submitted beyond the time limit, except in the case

of force majeure. Requests made more than ten months after the completion of the operation shall not be accepted.

The competent authorities shall make the payment within a period of two months following receipt of the payment request.

However, in the event of serious flaws in the supporting documents, the time limit provided for in the second paragraph may be suspended by notification in writing to the operator or the organisation designated to distribute products. The time limit shall continue to run from the date of receipt of the documents requested, which must be forwarded within 30 calendar days. If these documents are not sent within this period, the reduction specified in the first paragraph shall apply.

Except in cases of force majeure and taking account of the option of suspension provided for in the third paragraph, failure to comply with the time limit of two months stipulated in the second paragraph shall result in a reduction in the amount to be reimbursed to the Member State in accordance with Article 9 of Commission Regulation (EC) No 883/2006 ⁽¹⁾.

Article 10

1. The Member States shall take all necessary measures to ensure that:

- (a) the intervention products and, where appropriate, grants for mobilising foodstuffs on the market, are put to the use and serve the purposes laid down in Article 27(1) and (2) of Regulation (EC) No 1234/2007;
- (b) the words 'EU aid', accompanied by the European Union flag following the instructions given in Annex II, shall be clearly visible on the packaging of goods which are not delivered in bulk to the beneficiaries;
- (c) the designated charitable organisations for implementing the measures maintain appropriate accounts and supporting documents and allow the competent authorities access to them to carry out whatever checks they deem necessary;
- (d) the invitations to tender are in accordance with Articles 3 and 4 and the supplies are implemented in accordance with this Regulation; in particular, the Member States shall establish the applicable penalties if the products have not been withdrawn in the period laid down in Article 3(2).

2. Checks by the competent authorities shall be carried out when the products are taken over on their release from intervention storage or, where appropriate, as from the mobilisation of the products on the market under Article 2(3)(a)(iii) and (iv) or Article 4(1)(c) at all stages of implementation of the plan and at all levels of the distribution chain. The checks shall be performed throughout the plan implementation period, at all stages including the local level.

The checks shall cover at least 5 % of the quantity of each type of product referred to in Article 2(3)(a)(ii). This checking rate shall apply to each implementation stage, except for the stage of actual distribution to the most deprived, with account being taken of the risk criteria.

⁽¹⁾ OJ L 171, 23.6.2006, p. 1.

The purpose of the check is to verify the entry and exit of the products and their transfer to successive actors. Checks shall include a comparison of the stocks as shown in the accounts and the actual stocks of products chosen for inspection.

3. The Member States shall take all the measures needed to ensure that the plan is properly implemented and to anticipate and penalise irregularities. To this end they may, in particular, suspend the participation of operators in the competitive tendering procedure or organisations designated for distribution in the plans, depending on the nature and seriousness of the shortcomings or irregularities found.

Article 11

No later than 30 June each year, the Member States shall send the Commission a report on the implementation of the plan on their territory during the previous year. The progress report shall include:

- (a) the amounts of the various products withdrawn from intervention stocks;
- (b) the type, quantity and value of goods distributed to the recipients, specifying separately unprocessed goods, processed goods and goods obtained by substitution together with the processing coefficients;
- (c) the transport and transfer costs;

(d) administrative costs;

(e) the number of recipients over the course of the year.

The report shall specify the verification measures that have been applied to ensure that the goods have achieved their intended objective and have reached the final recipients. This report shall mention in particular the type and the number of checks carried out, the results obtained and any cases where the penalties referred to in Article 10(3) are imposed. The report shall be taken into account as a decisive factor when drawing up subsequent plans.

Article 12

This Regulation shall apply without prejudice to Commission Regulation (EC) No 1130/2009 ⁽¹⁾.

Article 13

Regulation (EEC) No 3149/92 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex IV.

Article 14

This Regulation shall enter into force on the 20th 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, 14 September 2010.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 310, 25.11.2009, p. 5.

ANNEX I

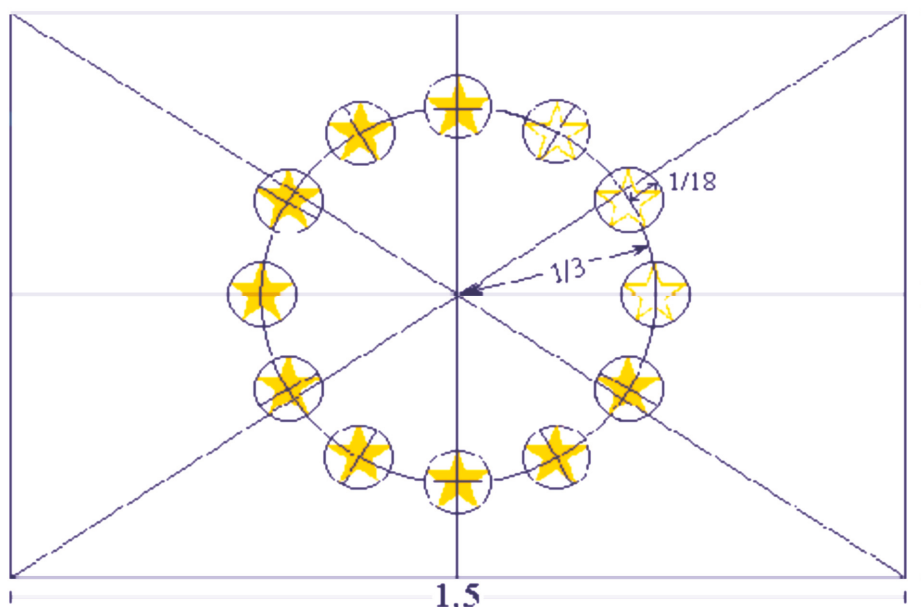
Entries referred to in the fourth subparagraph of Article 8(5)

- In Bulgarian:* Прехвърляне на интервенционни продукти — прилагане на член 8, параграф 5 от Регламент (ЕС) № 807/2010.
- In Spanish:* Transferencia de productos de intervención — aplicación del artículo 8, apartado 5, del Reglamento (UE) nº 807/2010.
- In Czech:* Přeprava intervenčních produktů – Použití čl. 8 odst. 5 nařízení (EU) č. 807/2010.
- In Danish:* Overførsel af interventionsprodukter — Anvendelse af artikel 8, stk. 5, i forordning (EU) nr. 807/2010.
- In German:* Transfer von Interventionserzeugnissen — Anwendung von Artikel 8 Absatz 5 der Verordnung (EU) Nr. 807/2010.
- In Estonian:* Sekkumistoodete üleandmine – määruse (EL) nr 807/2010 artikli 8 lõike 5 rakendamine.
- In Greek:* Μεταφορά προϊόντων παρέμβασης — Εφαρμογή του άρθρου 8 παράγραφος 5 του κανονισμού (ΕΕ) αριθ. 807/2010.
- In English:* Transfer of intervention products — Application of Article 8(5) of Regulation (EU) No 807/2010.
- In French:* Transfert de produits d'intervention — Application de l'article 8, paragraphe 5, du règlement (UE) nº 807/2010.
- In Italian:* Trasferimento di prodotti d'intervento — Applicazione dell'articolo 8, paragrafo 5, del regolamento (UE) n. 807/2010.
- In Latvian:* Intervences produktu transportēšana – Piemērojot Regulas (ES) Nr. 807/2010 8. panta 5. punktu.
- In Lithuanian:* Intervencinių produktų vežimas – taikant Reglamento (ES) Nr. 807/2010 8 straipsnio 5 dalį.
- In Hungarian:* Intervenciók termékek átszállítása – A 807/2010/EU rendelet 8. cikke (5) bekezdésének alkalmazása.
- In Maltese:* Trasferiment ta' prodotti ta' l-intervent – Applikazzjoni ta' l-Artikolu 8 (5) tar-Regolament (UE) Nru 807/2010.
- In Dutch:* Overdracht van interventieproducten — Toepassing van artikel 8, lid 5, van Verordening (EU) nr. 807/2010.
- In Polish:* Przekazanie produktów objętych interwencją – stosuje się art. 8 ust. 5 rozporządzenia (UE) nr 807/2010.
- In Portuguese:* Transferência de produtos de intervenção — aplicação do n.º 5 do artigo 8.º do Regulamento (UE) n.º 807/2010.
- In Romanian:* Transfer de produse de intervenție — Aplicare a articolului 8 alineatul (5) din Regulamentul (UE) nr. 807/2010.
- In Slovak:* Premiestnenie intervenčných výrobkov – uplatnenie článku 8 ods 5 nariadenia (EÚ) č.807/2010.
- In Slovene:* Prenos intervencijskih proizvodov – Uporaba člena 8(5) Uredbe (EU) št. 807/2010.
- In Finnish:* Interventiotuotteiden siirtäminen – Asetuksen (EU) N:o 807/2010 8 artiklan 5 kohdan soveltaminen.
- In Swedish:* Överföring av interventionsprodukter – Tillämpning av artikel 8.5 i förordning (EU) nr 807/2010.
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ANNEX II

Instructions for creating the emblem and a definition of the standard colours**1. Heraldic description**

On an azure field a circle of 12 golden mullets, their points not touching.

2. Geometric description

The emblem is in the form of a blue rectangular flag of which the fly is one and a half times the length of the hoist. Twelve golden stars situated at equal intervals form an invisible circle whose centre is the point of intersection of the diagonals of the rectangle. The radius of the circle is equal to one-third of the height of the hoist. Each of the stars has five points which are situated on the circumference of an invisible circle whose radius is equal to one-eighteenth of the height of the hoist. All the stars are upright — that is to say, with the one point vertical and two points in a straight line at right angles to the mast. The circle is arranged so that the stars appear in the position of the hours on the face of a clock. Their number is invariable.

3. Regulation colours

The emblem is in the following colours: PANTONE REFLEX BLUE for the surface of the rectangle; PANTONE YELLOW for the stars. The international PANTONE range is very widely available and easily accessible even for non-professionals.

Four-colour reproduction process: If the four-colour process is used, it is not possible to use the two standard colours. It is therefore necessary to recreate them by using the four colours of the four-colour process. PANTONE YELLOW is obtained by using 100 % 'Process Yellow'. By mixing 100 % 'Process Cyan' and 80 % 'Process Magenta' one can get a colour very similar to PANTONE REFLEX BLUE.

Monochrome reproduction process: If only black is available, outline the rectangle in black and print the stars in black and white. In the event that blue is the only colour available (it must be Reflex Blue, of course), use it 100 % with the stars reproduced in negative white and the field 100 % blue.

Reproduction on coloured background: It is preferable for the emblem to be reproduced on a white background. Avoid a background of varied colours, and in any case one which does not go with blue. If there should be no alternative to a coloured background, put a white border around the rectangle, with the width of this being equal to one twenty-fifth of the height of the rectangle.

ANNEX III

Repealed Regulation with a list of its successive amendments

Commission Regulation (EEC) No 3149/92	(OJ L 313, 30.10.1992, p. 50).
Commission Regulation (EEC) No 3550/92	(OJ L 361, 10.12.1992, p. 19).
Commission Regulation (EEC) No 2826/93	(OJ L 258, 16.10.1993, p. 11).
Commission Regulation (EC) No 267/96	(OJ L 36, 14.2.1996, p. 2).
Commission Regulation (EC) No 2760/1999	(OJ L 331, 23.12.1999, p. 55).
Commission Regulation (EC) No 1098/2001	(OJ L 150, 6.6.2001, p. 37).
Commission Regulation (EC) No 1921/2002	(OJ L 293, 29.10.2002, p. 9).
Commission Regulation (EC) No 2339/2003	(OJ L 346, 31.12.2003, p. 29).
Commission Regulation (EC) No 1903/2004	(OJ L 328, 30.10.2004, p. 77).
Commission Regulation (EC) No 537/2005	(OJ L 89, 8.4.2005, p. 3).
Commission Regulation (EC) No 1608/2005	(OJ L 256, 1.10.2005, p. 13).
Commission Regulation (EC) No 133/2006	(OJ L 23, 27.1.2006, p. 11).
Commission Regulation (EC) No 208/2007	(OJ L 61, 28.2.2007, p. 19).
Commission Regulation (EC) No 209/2007	(OJ L 61, 28.2.2007, p. 21).
Commission Regulation (EC) No 724/2007	(OJ L 165, 27.6.2007, p. 2).
Commission Regulation (EC) No 725/2007	(OJ L 165, 27.6.2007, p. 4).
Commission Regulation (EC) No 758/2007	(OJ L 172, 30.6.2007, p. 47).
Commission Regulation (EC) No 1127/2007	(OJ L 255, 29.9.2007, p. 18).

ANNEX IV

Correlation Table

Regulation (EEC) No 3149/92	This Regulation
Article 1	Article 1
Article 2(1)	Article 2(1)
Article 2(2)	Article 2(2)
Article 2(3) introductory words	Article 2(3) introductory words
Article 2(3)(1) introductory sentence	Article 2(3)(a) introductory sentence
Article 2(3)(1)(a)	Article 2(3)(a)(i)
Article 2(3)(1)(b)	Article 2(3)(a)(ii)
Article 2(3)(1)(c)	Article 2(3)(a)(iii)
Article 2(3)(1)(d)	Article 2(3)(a)(iv)
Article 2(3)(2)	Article 2(3)(b)
Article 2(4)	Article 2(4)
Article 3(1)	Article 3(1)
Article 3(2)	Article 3(2)
Article 3(2a)	Article 3(3)
Article 3(3)	Article 3(4)
Article 3(4)	Article 3(5)
Article 4(1)	Article 4(1)
Article 4(1a)	Article 4(2)
Article 4(2)(a) first subparagraph	Article 4(3) first subparagraph
Article 4(2)(a) second subparagraph introductory words	Article 4(3) second subparagraph introductory words
Article 4(2)(a) second subparagraph first indent	Article 4(3) second subparagraph (a)
Article 4(2)(a) second subparagraph second indent	Article 4(3) second subparagraph (b)
Article 4(2)(a) second subparagraph third indent	Article 4(3) second subparagraph (c)
Article 4(2)(a) third subparagraph	Article 4(3) third subparagraph
Article 4(2)(a) fourth subparagraph	Article 4(3) fourth subparagraph
Article 4(2)(a) fifth subparagraph	Article 4(3) fifth subparagraph
Article 4(2)(b) first subparagraph	Article 4(4) first subparagraph
Article 4(2)(b) second subparagraph introductory sentence	Article 4(4) second subparagraph introductory sentence
Article 4(2)(b) second subparagraph first indent	Article 4(4), second subparagraph (a)

Regulation (EEC) No 3149/92	This Regulation
Article 4(2)(b) second subparagraph second indent	Article 4(4) second subparagraph (b)
Article 4(2a)	Article 4(5)
Article 4(3)	Article 4(6)
Article 4(4)	Article 4(7)
Article 4(5)	Article 4(8)
Article 5	Article 5
Article 5a	Article 6
Article 6(1)	Article 7(1)
Article 6(3)	Article 7(2)
Article 6(4)	Article 7(3)
Article 7	Article 8
Article 8a	Article 9
Article 9	Article 10
Article 10 first paragraph introductory part	Article 11 first paragraph introductory part
Article 10 first paragraph first indent	Article 11 first paragraph (a)
Article 10 first paragraph second indent	Article 11 first paragraph (b)
Article 10 first paragraph third indent	Article 11 first paragraph (c)
Article 10 first paragraph fourth indent	Article 11 first paragraph (d)
Article 10 first paragraph fifth indent	Article 11 first paragraph (e)
Article 10 second paragraph	Article 11 second paragraph
Article 10a	Article 12
Article 11	—
—	Article 13
Article 12 first paragraph	Article 14
Article 12 second paragraph	—
Annex I	Annex I
Annex II	Annex II
—	Annex III
—	Annex IV

COMMISSION REGULATION (EU) No 808/2010**of 14 September 2010****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 15 September 2010.

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

Done at Brussels, 14 September 2010.

*For the Commission,
On behalf of the President,*

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	70,0
	XS	45,6
	ZZ	57,8
0707 00 05	MK	57,0
	TR	142,5
	ZZ	99,8
0709 90 70	TR	112,1
	ZZ	112,1
0805 50 10	AR	139,0
	BR	122,7
	CL	129,2
	IL	141,4
	TR	144,0
	UY	131,5
	ZA	132,5
	ZZ	134,3
0806 10 10	EG	148,1
	IL	122,3
	TR	112,6
	ZA	92,1
	ZZ	118,8
0808 10 80	AR	60,8
	BR	70,5
	CL	96,7
	CN	64,4
	NZ	97,9
	US	87,4
	ZA	83,5
0808 20 50	ZZ	80,2
	AR	80,1
	CL	150,5
	CN	69,9
	ZA	83,2
0809 30	ZZ	95,9
	TR	156,2
0809 40 05	ZZ	156,2
	BA	57,0
	IL	165,3
	XS	52,3
	ZZ	91,5

⁽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 (EU) No 809/2010**of 14 September 2010****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 877/2009 for the 2009/10 marketing year**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ⁽²⁾, and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2009/10 marketing year are fixed by Commission Regulation (EC) No 877/2009 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EU) No 804/2010 ⁽⁴⁾.

- (2) The data currently available to the Commission indicate that those amounts should be amended in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 877/2009 for the 2009/10, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 September 2010.

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

Done at Brussels, 14 September 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 253, 25.9.2009, p. 3.

⁽⁴⁾ OJ L 241, 14.9.2010, p. 10.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 15 September 2010

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 ⁽¹⁾	55,39	0,00
1701 11 90 ⁽¹⁾	55,39	0,00
1701 12 10 ⁽¹⁾	55,39	0,00
1701 12 90 ⁽¹⁾	55,39	0,00
1701 91 00 ⁽²⁾	48,18	3,02
1701 99 10 ⁽²⁾	48,18	0,00
1701 99 90 ⁽²⁾	48,18	0,00
1702 90 95 ⁽³⁾	0,48	0,23

⁽¹⁾ For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.⁽²⁾ For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.⁽³⁾ Per 1 % sucrose content.

IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

COUNCIL DECISION**of 9 October 2009**

on the conclusion, by the Commission, of the Agreement for cooperation between the European Atomic Energy Community and the Government of the Republic of India in the field of fusion energy research

(2010/487/Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 101, second paragraph thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Commission has, in accordance with the Council directives of 22 July 2008, conducted negotiations on an Agreement for cooperation between the European Atomic Energy Community and the Government of the Republic of India in the field of fusion energy research.
- (2) The conclusion, by the Commission, of the Agreement should be approved,

Sole Article

The conclusion, by the Commission, for and on behalf of the European Atomic Energy Community, of the Agreement for cooperation between the European Atomic Energy Community and the Government of the Republic of India in the field of fusion energy research, is hereby approved.

The text of the Agreement is attached to this Decision.

Done at Brussels, 9 October 2009.

For the Council
The President

Å. TORSTENSSON

AGREEMENT**for cooperation between the European Atomic Energy Community and the Government of the Republic of India in the field of fusion energy research**

THE EUROPEAN ATOMIC ENERGY COMMUNITY (Euratom),

and

THE GOVERNMENT OF THE REPUBLIC OF INDIA,

(hereinafter referred to collectively as 'the Parties'),

WHEREAS in the Cooperation Agreement between the European Community and the Republic of India on partnership and development concluded on 20 December 1993 the Parties undertake to promote cooperation in the field of energy and the protection of the environment;

DESIRING TO continue to promote the development of fusion energy as a potentially environmentally acceptable, economically competitive, and virtually limitless source of energy,

HAVE AGREED AS FOLLOWS:

*Article I***Objective**

The objective of this Agreement is to intensify cooperation between the Parties in the areas covered by their respective fusion programmes, on the basis of mutual benefit and overall reciprocity, in order to develop the scientific understanding and technological capability underlying a fusion energy system.

*Article II***Areas of Cooperation**

The areas of cooperation under this Agreement may include the following:

- (a) tokamaks, including the large projects of the present generation and activities relating to those of the next generation;
- (b) alternatives to tokamaks;
- (c) magnetic fusion energy technology;
- (d) plasma theory and applied plasma physics;
- (e) programme policies and plans; and
- (f) other areas as mutually agreed upon in writing by the Parties insofar as they are covered by their respective programmes.

*Article III***Forms of Cooperation**

1. The forms of cooperation under this Agreement may include, but are not limited to, the following:
 - (a) exchange and provision of information and data on scientific and technical activities, developments, practices and results, and on programme policies and plans, including the exchange of undisclosed information under the terms and conditions set out in Articles VI and VII;
 - (b) exchange of scientists, engineers and other specialists for agreed periods of time in order to participate in experiments, analysis, design and other research and development activities in accordance with Article VIII;
 - (c) organisation of seminars and other meetings to discuss and exchange information on agreed topics in the areas listed in Article II, and to identify cooperative activities which may be usefully undertaken in accordance with Article V;
 - (d) exchange and provision of samples, materials, equipment (instruments and components) for experiments, testing and evaluation in accordance with Articles IX and X;
 - (e) execution of joint studies, projects or experiments including their joint design, construction and operation;
 - (f) establishment of data links such as, but not limited to, remote data analysis tools; and
 - (g) other specific forms of cooperation as mutually agreed by the Parties in writing.

2. The Parties shall coordinate the activities, as appropriate, under this Agreement, with other international fusion research and development activities, in order to minimise duplication of effort. Nothing in this Agreement shall be construed to prejudice existing or future arrangements for cooperation between the Parties.

Article IV

Coordinating Committee and Executive Secretaries

1. The Parties shall establish a Coordinating Committee to coordinate and supervise the conduct of activities under this Agreement. Each Party shall appoint an equal number of members to the Coordinating Committee and nominate one of its appointed members as the Head of its Delegation. The Coordinating Committee shall meet annually, alternately in the Republic of India and in the European Union, or at other agreed times and places. The Head of the Delegation of the receiving Party shall chair the meeting.

2. The Coordinating Committee shall draw up a plan of cooperative activity and approve and review the progress of ongoing cooperative activities under this Agreement. It shall also coordinate, propose, and approve future cooperative activities that are within the scope of this Agreement with regard to their technical merit and level of effort to ensure mutual benefit and overall reciprocity within the Agreement.

3. All decisions of the Coordinating Committee shall be taken by consensus.

4. Each Party shall nominate an Executive Secretary to act on its behalf during periods between meetings of the Coordinating Committee in all matters concerning cooperation under this Agreement. The Executive Secretaries shall be responsible for the day-to-day management of that cooperation.

Article V

Implementation

1. Each Party shall designate appropriate entities for the implementation of activities under this Agreement.

2. When the Coordinating Committee approves a cooperative activity, it shall approve, where necessary, a Project Plan under this Agreement and subject to its terms.

3. Each Project Plan shall list the entities designated to implement the project, and include detailed provisions for the implementation of the cooperative activity, including but not limited to its technical scope and management, the applicable decontamination responsibilities, exchange of undisclosed information, exchange of equipment, treatment of intellectual

property, total costs, cost-sharing and its schedule, as appropriate.

Article VI

Availability and Dissemination of Information

1. Subject to its applicable laws and regulations and to the provisions of this Agreement, each Party and its designees shall undertake to make freely available to the other Party and its designees any information at its disposal which is required for the execution of collaborative activities under this Agreement.

2. The Parties shall support the widest possible dissemination of information which they have the right to disclose, and which is either developed jointly or intended to be provided or exchanged pursuant to this Agreement, subject to the need to protect undisclosed information and the need to protect intellectual property created or furnished under this Agreement.

3. Information transmitted by one Party to the other Party under this Agreement shall be accurate to the best knowledge and belief of the transmitting Party, but the transmitting Party does not warrant the suitability of the information transmitted for any particular use or application by the receiving Party or by any third party. Information developed jointly by the Parties shall be accurate to the best knowledge and belief of both Parties. Neither Party warrants the accuracy of the jointly developed information or its suitability for any particular purpose, use or application by either Party or by any third party.

Article VII

Intellectual Property

The protection and allocation of intellectual property created or furnished in the course of cooperative activities under this Agreement shall be governed by the provisions in Annex A, which shall form an integral part of this Agreement and shall apply to all activities conducted under this Agreement.

Article VIII

Exchanges of Personnel

The following provisions shall apply concerning exchanges of personnel between the Parties or their designees under this Agreement:

(a) each Party shall ensure the selection of qualified personnel with the skills and competence necessary to conduct the activities planned under this Agreement. Every such exchange of personnel shall be mutually agreed in advance by an Exchange of Letters between the Parties, referencing this Agreement and its pertinent intellectual property provisions as well as the cooperative activity concerned;

- (b) each Party shall be responsible for the salaries, insurance, and allowances to be paid to its exchanged personnel;
 - (c) the sending Party shall pay for the travel and living expenses of its exchanged personnel staying at the host establishment, unless otherwise agreed;
 - (d) the receiving Party shall arrange for adequate accommodations for the other Party's exchanged personnel (and their families forming part of their household) on a mutually agreeable, reciprocal basis;
 - (e) the receiving Party shall provide all necessary assistance under its relevant laws and regulations to the exchanged personnel of the other Party regarding administrative formalities (e.g. acquiring visas);
 - (f) each Party shall ensure that the exchanged personnel abide by the general rules regarding work and safety regulations in force at the host establishment; and
 - (g) each Party may, at its own expense, observe specific test activities and analytical work of the other Party in the areas of cooperation defined in Article II. Such observation may be carried out by visits of personnel, subject to the prior agreement of the receiving Party on each occasion.
- (c) the equipment, etc. shall be brought into operation at the host establishment only by mutual agreement between the Parties; and
 - (d) the receiving Party shall provide the necessary premises for the equipment, etc. and shall provide for electrical power, water, gas, etc., in accordance with technical requirements, which shall be mutually agreed by the Parties.

Article X

General Provisions

1. Each Party shall conduct the activities provided for in this Agreement subject to its applicable laws and regulations, and shall provide resources subject to the availability of appropriated funds.
2. Unless otherwise specifically agreed in writing by the Parties, all costs resulting from cooperation under this Agreement shall be borne by the Party that incurs them.
3. All questions of interpretation or implementation relating to this Agreement arising during its term shall be resolved by agreement of the Parties.
4. This Agreement shall apply, in so far as Euratom is concerned, to the territories to which the Treaty establishing Euratom applies and to the territories of the countries participating in the Euratom fusion program as fully associated third States.

Article IX

Exchanges of Equipment, Samples, etc.

In the event that equipment, instruments, samples, materials or necessary spare parts (hereinafter referred to as 'the equipment, etc.') are to be exchanged, loaned or supplied by one Party or its designees to the other or its designees, the following provisions shall apply covering the shipment and use of the equipment, etc.:

- (a) the sending Party shall supply as soon as possible a detailed list of the equipment, etc., to be provided, with the relevant specifications and technical and informational documentation;
- (b) the equipment, etc. supplied by the sending Party shall remain its property and shall be returned to the sending Party on a date to be determined by the Coordinating Committee unless otherwise agreed in the Project Plan referred to in Article V;

Article XI

Duration, Amendment and Termination

1. This Agreement shall enter into force on the date on which the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed, and shall remain in force for five (5) years. Unless one Party notifies the other Party in writing of its intention to terminate this Agreement at least six (6) months before its expiration, this Agreement shall be extended automatically for additional periods of five (5) years.
2. This Agreement may be amended by written agreement of the Parties.
3. All joint efforts and experiments not completed at the termination or expiration of this Agreement may be continued until their completion under the terms of this Agreement.

4. This Agreement and any Project Plan hereunder may be terminated at any time at the discretion of either Party upon six (6) months' advance notification in writing by the Party seeking to terminate this Agreement or Project Plan. Such termination shall be without prejudice to the rights that may have accrued under this Agreement or Project Plan to either Party up to the date of the termination.

5. This Agreement is drawn up in duplicates in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Lithuanian, Latvian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

Done at New Delhi this sixth day of November in the year two thousand and nine.

*For the European Atomic
Energy Community*

BENITA FERRERO-WALDNER

*For the Government of the
Republic of India*

ANIL KAKODKAR

ANNEX A

INTELLECTUAL PROPERTY RIGHTS

Rights to intellectual property created or furnished under this Agreement shall be allocated as follows:

I. Application

This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed.

II. Ownership, Allocation and Exercise of Rights

- A. For purposes of this Agreement 'Intellectual Property' shall have the meaning found in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, 14 July 1967.
- B. This Annex addresses the allocation of rights, interests and royalties between the Parties. Each Party shall ensure that the other Party may obtain the rights to intellectual property allocated to it in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation of such rights, interests and royalties between a Party and its nationals, which shall be determined by that Party's laws and practices.
- C. The termination or expiry of this Agreement shall not affect the rights or obligations arising under this Annex.
- D. (1) In the case of cooperative activities between the Parties, intellectual property arising from joint research, i.e. research supported by both Parties, shall be treated in a Technology Management Plan (TMP) according to the following principles:
 - (a) the Parties shall notify each other within a reasonable time of any intellectual property rights arising under this Agreement or relevant implementing arrangements;
 - (b) unless otherwise agreed, rights and interests in intellectual property created during joint research shall be exploitable by either Party without territorial restriction;
 - (c) each Party shall seek protection for the intellectual property to which it obtains rights and interests under the TMP in a timely fashion;
 - (d) each Party shall have a non-exclusive, irrevocable, royalty-free license to use any intellectual property arising under this Agreement for research purposes only; and
 - (e) visiting researchers having participated in the creation of intellectual property shall receive intellectual property rights and royalty shares earned by the host institutions from licensing of such intellectual property rights under the policies of the host institutions. Each Party shall accord to the visiting researchers no less favourable treatment than that it accords to its own nationals with regard to the grant of the aforementioned intellectual property rights and royalty shares. In addition, each visiting researcher named as an inventor shall be entitled to treatment as a national of the host Party with regard to awards, bonuses, benefits, or any other rewards, in accordance with the policy of the host institution and the respective laws of the Parties applicable thereto.
- (2) In the case of cooperative activities other than joint research which falls within the provisions of paragraph II.D.(1), to the extent required by its laws and regulations, each Party shall require all its participants to enter into specific agreements concerning the implementation of joint research activities and the respective rights and obligations of the participants. With respect to intellectual property, the agreements will normally address, among other things, ownership, protection, user rights for research purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The agreements may also address other issues such as access to foreground and background information, licensing and deliverables.

- E. While maintaining the conditions of competition in areas affected by this Agreement, each Party shall endeavour to ensure that rights acquired pursuant to this Agreement and arrangements made under it are exercised in such a way as to encourage, in particular, (i) the use of information created, or otherwise made available, under this Agreement and its dissemination insofar as this is in accordance both with the conditions set out in this Agreement, the provisions of Section IV hereof and any rules which may be in force under the applicable laws of the Parties governing the treatment of sensitive or confidential information in the nuclear field, and (ii) the adoption and implementation of international standards.

III. Copyright Works

In accordance with the terms of this Agreement, copyright belonging to the Parties shall be accorded treatment consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights administered by the World Trade Organisation.

IV. Scientific Literary Works

Subject to the treatment provided for undisclosed information in Section V, the following procedures shall apply:

- A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce and publicly distribute information contained in scientific and technical journals, articles, reports, books, or other media, directly arising from joint research pursuant to this Agreement by or on behalf of the Parties.
- B. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named. They shall also bear a clearly visible acknowledgment of the cooperative support of the Parties.

V. Undisclosed Information

A. Documentary Undisclosed Information

- (1) Each Party shall identify at the earliest possible moment the information that they wish to remain undisclosed in relation to this Agreement, taking account, inter alia, of the following criteria:
- (a) the information is secret in the sense that it is not, as a body or in the precise configuration or assembly of its components, generally known or readily accessible by lawful means;
 - (b) the information has actual or potential commercial value by virtue of its secrecy; and
 - (c) the information has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy. The Parties may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research pursuant to this Agreement may not be disclosed.
- (2) Each Party shall ensure that undisclosed information under this Agreement and its ensuing privileged nature is readily recognisable as such by the other Party, for example, by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part. A Party or participant receiving undisclosed information pursuant to this agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner without restriction.
- (3) Undisclosed information communicated under this Agreement may be disseminated by the receiving Party to persons employed by the receiving Party, including its contractors and other concerned departments of the Party authorised for the specific purposes of the joint research underway, on a need-to-know basis and provided that any undisclosed information so disseminated shall be protected in accordance with this Annex and to the extent provided by each Party's laws and regulations, and shall be readily recognisable as such, as set out above.

B. Non-Documentary Undisclosed Information

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under this Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their designees according to the principles specified for documentary information in this Agreement, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware in writing of the confidential character of the information communicated not later than the time such a communication is made.

C. Control

Each Party shall endeavour to ensure that undisclosed information received by it under this Agreement shall be controlled as provided herein. If one of the Parties becomes aware that it will be, or may be reasonably expected to become, unable to meet the non-dissemination provisions of paragraphs A and B above, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

VI. Dispute Settlement and New Types and Unforeseen Intellectual Property

- A. Disputes between the Parties concerning intellectual property shall be resolved in accordance with Article X, 3 of the Agreement. However, upon mutual agreement between the Parties, such a dispute may be submitted to an international arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless otherwise agreed, the arbitration rules of United Nations Commission on International Trade Law (UNCITRAL) shall govern.
 - B. In the event either Party concludes that a new type of intellectual property not covered in a TMP or agreement between designated entities may result from a cooperative activity undertaken pursuant to this Agreement, or if other unforeseen difficulties arise, the Parties shall enter into immediate discussions with the object of assuring that the protection, exploitation and dissemination of the intellectual property in question are adequately provided for in their respective territories.
-

COUNCIL DECISION**of 16 November 2009****approving the conclusion, by the Commission, of the Agreement for cooperation between the European Atomic Energy Community and the Government of the Federative Republic of Brazil in the field of fusion energy research**

(2010/488/Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 101, second paragraph thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Commission has, in accordance with the Council Directives of 22 July 2008, conducted negotiations on an Agreement for cooperation between the European Atomic Energy Community and the Government of the Federative Republic of Brazil in the field of fusion energy research.

(2) The conclusion, by the Commission, of the Agreement should be approved,

Sole Article

The conclusion, by the Commission, for and on behalf of the European Atomic Energy Community, of the Agreement for cooperation between the European Atomic Energy Community and the Government of the Federative Republic of Brazil in the field of fusion energy research, is hereby approved.

The text of the Agreement is attached to this Decision.

Done at Brussels, 16 November 2009.

*For the Council**The President*

C. MALMSTRÖM

AGREEMENT

for cooperation between the European Atomic Energy Community and the Government of the Federative Republic of Brazil in the field of fusion energy research

THE EUROPEAN ATOMIC ENERGY COMMUNITY (Euratom),

and

THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL,

(hereinafter referred to as 'the Parties'),

CONSIDERING that in the Agreement for Scientific and Technological cooperation between the European Community and the Government of the Federative Republic of Brazil, signed on 19 January 2004, the Parties undertake to promote cooperation in the field of research and of technological development activities,

DESIRING to continue to promote the development of fusion energy as a potentially environmentally acceptable, economically competitive, and virtually limitless source of energy,

HAVE AGREED AS FOLLOWS:

Article 1

Objective

The objective of this Agreement is to intensify cooperation between the Parties in the areas covered by their respective fusion programs, on the basis of mutual benefit and overall reciprocity, in order to develop the scientific understanding and technological capability underlying a fusion energy system.

Article 2

Areas of Cooperation

The areas of cooperation under this Agreement may include the following:

- (a) tokamaks, including the large projects of the present generation and activities relating to those of the next generation;
- (b) alternatives to tokamaks;
- (c) magnetic fusion energy technology;
- (d) plasma theory and applied plasma physics;
- (e) programme policies and plans; and
- (f) other areas as mutually agreed upon in writing by the Parties insofar as they are covered by their respective programmes.

Article 3

Forms of Cooperation

1. The forms of cooperation under this Agreement may include, but are not limited to, the following:

- (a) exchange and provision of information and data on scientific and technical activities, events, practices and results, and on programme policies and plans, including the exchange of undisclosed information under the terms and conditions set out in Articles 6 and 7;

- (b) exchange of scientists, engineers and other specialists for agreed periods of time in order to participate in experiments, analysis, design and other research and development activities in accordance with Article 8;

- (c) organization of seminars and other meetings to discuss and exchange information on agreed topics in the areas listed in Article 2, and to identify cooperative activities which may be usefully undertaken in accordance with Article 5;

- (d) exchange and provision of samples, materials, equipment (instruments and components) for experiments, testing and evaluation in accordance with Articles 9 and 10;

- (e) execution of joint studies, projects or experiments including their joint design, construction and operation;

- (f) establishment of data links such as, but not limited to, remote data analysis tools; and

- (g) other specific forms of cooperation as mutually agreed by the Parties in writing.

2. As appropriate, the Parties shall coordinate the activities under this Agreement with other international activities of fusion energy research and development, in order to minimize duplication of effort. Nothing in this Agreement shall be construed to prejudice existing or future arrangements for cooperation between the Parties.

*Article 4***Coordinating Committee and Executive Secretaries**

1. The Parties shall establish a Coordinating Committee to coordinate and supervise the conduct of activities under this Agreement. Each Party shall appoint an equal number of members to the Coordinating Committee and nominate one of its appointed members as the Head of its Delegation. The Coordinating Committee shall meet annually, alternately in the Federative Republic of Brazil and in the European Union, or at other agreed times and places. The Head of the Delegation of the receiving Party shall chair the meeting.

2. The Coordinating Committee shall review the progress and plans of activities under this Agreement, and propose, coordinate and approve future cooperative activities that are within the scope of this Agreement, with regard to their technical merit and level of effort to ensure mutual benefit and overall reciprocity within the Agreement.

3. All decisions of the Coordinating Committee shall be taken by consensus.

4. Each Party shall nominate an Executive Secretary to act on its behalf during periods between meetings of the Coordinating Committee in all matters concerning cooperation that are within the scope of this Agreement. The Executive Secretaries shall be responsible for the routine management of the cooperation.

*Article 5***Implementation**

1. Each Party shall designate appropriate agencies for the implementation of activities under this Agreement.

2. When the Coordinating Committee approves a cooperative activity, it shall also approve, when necessary, a Project Plan under this Agreement.

3. Each Project Plan shall list the agencies designated to implement the project, and include detailed provisions for the implementation of the cooperative activity, including its technical scope and management, the applicable decontamination responsibilities, exchange of undisclosed information, exchange of equipment, treatment of intellectual property, total costs, cost-sharing and its schedule, as appropriate.

*Article 6***Availability and Dissemination of Information**

1. Subject to the applicable laws and regulations and to the provisions of this Agreement, each Party and its designees shall undertake to make freely available to the other Party and its designees any information at its disposal which is required for the execution of cooperative activities under this Agreement.

2. The Parties and their designees shall support the widest possible dissemination of information which they have the right to disclose, be it developed jointly or be it provided or exchanged pursuant to this Agreement, subject to the need to protect undisclosed information and the need to protect intellectual property created or provided under this Agreement.

3. Information transmitted by one Party to the other Party under this Agreement shall be accurate to the best knowledge and belief of the transmitting Party, but the transmitting Party does not warrant the suitability of the information transmitted for any particular use or application by the receiving Party or by any third party. Information developed jointly by the Parties shall be accurate to the best knowledge and belief of both Parties. Neither Party warrants its suitability for any particular purpose, use or application by either Party or by any third party.

*Article 7***Intellectual Property**

The protection and allocation of intellectual property created or provided in the course of cooperative activities under this Agreement shall be governed by the provisions in the Annex, which shall form an integral part of this Agreement and shall apply to all activities conducted under this Agreement.

*Article 8***Exchange of Personnel**

The following provisions shall apply to the exchange of personnel between the Parties or their designees under this Agreement:

(a) each Party shall ensure the selection of qualified personnel with the skills and competence necessary to conduct the activities planned under this Agreement. The exchange of personnel shall be mutually agreed in advance by an Exchange of Letters between the Parties, referencing this Agreement and its pertinent intellectual property provisions as well as the cooperative activity concerned;

(b) each Party shall be responsible for the salaries, insurance, and allowances to be paid to its exchanged personnel;

(c) the sending Party shall pay for the travel and living expenses of its exchanged personnel staying at the host establishment of the receiving Party, unless otherwise agreed;

(d) the receiving Party shall arrange for adequate accommodations for the exchanged personnel (and their families forming part of their household) of the other Party on a mutually agreeable, reciprocal basis;

- (e) the receiving Party shall provide all necessary assistance to the exchanged personnel of the other Party regarding administrative formalities (e.g. acquiring visas), pursuant to its laws and regulations;
- (f) each Party shall ensure that the exchanged personnel shall comply with the general rules regarding work and with safety regulations in force at the host establishment;
- (g) each Party may, at its own expense, observe specific test activities and analytical work of the other Party in the areas of cooperation defined in Article 2. Such observation may be carried out by visits of personnel, subject to the prior agreement of the receiving Party on each occasion.

Article 9

Exchanges of Equipment, Samples, Materials and Spare Parts

In the event equipment, instruments, samples, materials or necessary spare parts among others (hereinafter referred to as 'the equipment') are to be exchanged, loaned or supplied by one Party or its designees to the other or its designees, the following provisions shall apply to the shipment and use of the equipment:

- (a) the sending Party shall supply as soon as possible a detailed list of the equipment to be provided, with the relevant specifications and technical and informational documentation;
- (b) the equipment supplied by the sending Party shall remain its property and shall be returned to the sending Party on a date to be determined by the Coordinating Committee unless otherwise agreed in the Project Plan referred to in Article 5;
- (c) the equipment shall be brought into operation at the host establishment only by mutual agreement between the Parties; and
- (d) the receiving Party shall provide the necessary premises for the equipment and shall provide for electrical power, water, gas, and other necessary resources, in accordance with technical requirements, which shall be mutually agreed by the Parties.

Article 10

General Provisions

1. Each Party shall conduct the activities provided for in this Agreement subject to its applicable laws and regulations, and shall provide resources subject to the availability of appropriated funds.
2. Unless otherwise agreed in writing by the Parties, all costs resulting from cooperation under this Agreement shall be borne by the Party that incurs them.
3. All questions of interpretation or implementation relating to this Agreement arising during its term shall be resolved by agreement of the Parties.
4. This Agreement shall apply, in so far as Euratom is concerned, to the territories to which the Treaty establishing Euratom applies and to the territories of the countries participating in the Euratom fusion program as fully associated third States.

Article 11

Duration, Amendment and Termination

1. This Agreement shall enter into force on the date of the last written notification in which the Parties inform each other that their respective internal procedures necessary for its entry into force have been completed, and shall remain in force for five years, being automatically renewed for additional periods of five years, unless one Party notifies the other Party in writing of its intention to terminate this Agreement.
2. This Agreement may be amended by written agreement of the Parties. The amendments shall come into force on the date of the last written notification in which the Parties inform each other that their respective internal procedures necessary for the entry into force of an amendment have been completed.
3. All joint efforts and experiments not completed at the termination of this Agreement may be continued until their completion under the terms of this Agreement.
4. Either Party may terminate this Agreement and any Project Plan at any time, upon a notification in writing to the other Party. The termination shall be effective six months after the date of receipt of the notification, without prejudice to the rights that may have accrued under this Agreement or Project Plan to either Party up to the date of the termination.

Signed at Brasilia on 27 of November 2009, in duplicate, in Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Lithuanian, Latvian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

*For the European Atomic
Energy Community*

JOÃO JOSÉ SOARES PACHECO

*For the Government of the Federative
Republic of Brazil*

MARCOS NOGUEIRA MARTINS

ANNEX

INTELLECTUAL PROPERTY RIGHTS

Rights to intellectual property created or provided under this Agreement shall be allocated as follows:

I. Application

This Annex is applicable to all cooperative activities undertaken under this Agreement, except as otherwise specifically agreed.

II. Ownership, Allocation and Exercise of Rights

A. For purposes of this Agreement 'Intellectual Property' shall have the meaning found in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, 14 July 1967.

B. This Annex addresses the allocation of rights, interests and royalties between the Parties or their implementing agencies designated under the terms of Article 5. Each Party shall ensure that the other Party may obtain the rights to intellectual property allocated to it or to the implementing agencies designated under the terms of Article 5 in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation of such rights, interests and royalties between a Party and its nationals, which shall be determined by that Party's laws and practices.

C. The termination or expiry of this Agreement shall not affect the rights or obligations arising under this Annex.

D. (1) In the case of cooperative activities between the Parties or between implementing agencies designated under the terms of Article 5, intellectual property arising from joint research, i.e., research supported by both Parties, shall be treated in a Technology Management Plan (TMP) according to the following principles:

- (a) the Parties or their implementing agencies designated under the terms of Article 5 shall notify each other within a reasonable time of any intellectual property rights arising under this Agreement;
- (b) unless otherwise agreed, rights, royalties and interests in intellectual property created during joint research shall be exploitable by either Party or by their implementing agencies designated under the terms of Article 5 without territorial restriction;
- (c) each Party or implementing agency designated under the terms of Article 5 shall seek protection for the intellectual property to which it obtains rights and interests under the TMP in a timely fashion;
- (d) each Party or implementing agency designated under the terms of Article 5 shall have a non-exclusive, irrevocable, royalty-free license to use any intellectual property arising under this Agreement for research purposes only, in accordance with the respective applicable laws of the Parties;
- (e) visiting researchers having participated in the creation of intellectual property shall receive intellectual property rights and royalty shares earned by the host institutions from licensing of such intellectual property rights under the policies of the host institutions. Each Party shall accord to the visiting researchers no less favorable treatment than that it accords to its own nationals with regard to the grant of the aforementioned intellectual property rights and royalty shares. In addition, each visiting researcher named as an inventor shall be entitled to treatment as a national of the host Party with regard to awards, bonuses, benefits, or any other rewards, in accordance with the policy of the host institution and the respective laws of the Parties applicable thereto.

(2) In the case of cooperative activities other than joint research which falls within the provisions of paragraph II.D.(1), to the extent required by its laws and regulations, each Party shall require all its participants to enter into specific agreements concerning the implementation of joint research activities and the respective rights and obligations of the participants. With respect to intellectual property, the agreements will normally address, among other things, ownership, protection, user rights for research purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The agreements may also address other issues such as access to foreground and background information, licensing and deliverables.

- E. While maintaining the conditions of competition in areas affected by this Agreement, each Party shall endeavour to ensure that rights acquired pursuant to this Agreement and arrangements made under it are exercised in such a way as to encourage, in particular, (i) the use of information created, or otherwise made available, under this Agreement and its dissemination insofar as this is in accordance both with the conditions set out in this Agreement, the provisions of Section IV hereof and any rules which may be in force under the applicable laws of the Parties governing the treatment of sensitive or confidential information in the nuclear field, and (ii) the adoption and implementation of international standards.

III. Copyright Works

In accordance with the terms of this Agreement, copyright belonging to the Parties or to the implementing agencies designated under the terms of Article 5 shall be accorded treatment consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights administered by the World Trade Organisation.

IV. Scientific Literary Works

Subject to the treatment provided for undisclosed information in Section V, the following procedures shall apply:

- A. Each Party or implementing agency designated under the terms of Article 5 shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce and publicly distribute information contained in scientific and technical journals, articles, reports, books, or other media, directly arising from joint research pursuant to this Agreement by or on behalf of the Parties.
- B. All copyrighted work prepared under this provision shall respect the author's moral rights accordingly to Article 6bis of Berne Convention. They shall also bear a clearly visible acknowledgment of the cooperative support of the Parties.

V. Undisclosed Information

A. Documentary Undisclosed Information

- (1) Each Party shall identify at the earliest possible moment the information that they wish to remain undisclosed in relation to this Agreement, taking account, *inter alia*, of the following criteria:
- (a) the information is secret in the sense that it is not, as a body or in the precise configuration or assembly of its components, generally known or readily accessible by lawful means;
 - (b) the information has actual or potential commercial value by virtue of its secrecy; and
 - (c) the information has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy. The Parties may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research pursuant to this Agreement may not be disclosed.
- (2) Each Party shall ensure that undisclosed information under this Agreement and its ensuing privileged nature is readily recognisable as such by the other Party, for example, by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part. A Party or participant receiving undisclosed information pursuant to this agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner without restriction.
- (3) Undisclosed information communicated under this Agreement may be disseminated by the receiving Party to persons employed by the receiving Party, including its contractors, and other concerned departments of the Party authorised for the specific purposes of the joint research underway, on a-need-to-know basis and provided that any undisclosed information so disseminated shall be protected in accordance with this Annex and to the extent provided by each Party's laws and regulations, and shall be readily recognisable as such, as set out above.

B. Non-Documentary Undisclosed Information

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under this Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their designees according to the principles specified for documentary information in this Agreement, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware in writing of the confidential character of the information communicated not later than the time such a communication is made.

C. Control

Each Party shall endeavor to ensure that undisclosed information received by it under this Agreement shall be controlled as provided herein. If one of the Parties becomes aware that it will be, or may be reasonably expected to become, unable to meet the non-dissemination provisions of paragraphs A and B above, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

VI. Dispute Settlement and New or Unforeseen Types of Intellectual Property

- A. Disputes between the Parties concerning intellectual property shall be resolved in accordance with Article 10, paragraph 3 of this Agreement. However, upon mutual agreement of the Parties, such a dispute may be submitted to an international arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless otherwise agreed, the arbitration rules of UNCITRAL shall govern.
 - B. In the event either Party concludes that a new type of intellectual property not covered in a TMP or agreement between designated implementing agencies may result from a cooperative activity undertaken pursuant to this Agreement, or if other unforeseen difficulties arise, the Parties shall enter into immediate discussions in order to assure that the protection, exploitation and dissemination of the intellectual property in question are adequately provided for in their respective territories, in accordance with their national legislation.
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