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Contents

II *Non-legislative acts*

REGULATIONS

- ★ **Council Implementing Regulation (EU) No 1185/2010 of 13 December 2010 imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009** 1
- ★ **Council Implementing Regulation (EU) No 1186/2010 of 13 December 2010 imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009** 17
- ★ **Council Implementing Regulation (EU) No 1187/2010 of 13 December 2010 terminating the anti-dumping proceeding on imports of glyphosate originating in the People's Republic of China** 31
- Commission Regulation (EU) No 1188/2010 of 15 December 2010 establishing the standard import values for determining the entry price of certain fruit and vegetables 33
- Commission Regulation (EU) No 1189/2010 of 15 December 2010 fixing the import duties in the cereals sector applicable from 16 December 2010 35

Price: EUR 4

(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.

DECISIONS

2010/776/EU:

- ★ **Commission Decision of 15 December 2010 amending Decision 2004/211/EC as regards the entries for Brazil, Kuwait and Syria in the list of third countries and parts thereof from which the introduction into the European Union of live equidae and semen, ova and embryos of the equine species are authorised** (notified under document C(2010) 8950) ⁽¹⁾ 38

2010/777/EU:

- ★ **Commission Decision of 15 December 2010 amending Council Directive 2008/90/EC to extend the derogation relating to import conditions for fruit plant propagating material and fruit plants intended for fruit production from third countries** (notified under document C(2010) 8992) 40

2010/778/EU:

- ★ **Commission Decision of 15 December 2010 amending Decision 2006/944/EC determining the respective emission levels allocated to the Community and each of its Member States under the Kyoto Protocol pursuant to Council Decision 2002/358/EC** (notified under document C(2010) 9009) 41

III Other acts

EUROPEAN ECONOMIC AREA

- ★ **EFTA Surveillance Authority Decision No 159/10/COL of 21 April 2010 concerning additional guarantees for Norway relating to infectious bovine rhinotracheitis** 43
- ★ **EFTA Surveillance Authority Decision No 160/10/COL of 21 April 2010 concerning additional guarantees for Norway relating to Aujeszky's disease** 45
- ★ **Decision of the EEA Joint Committee No 97/2010 of 1 October 2010 amending Annex I (Veterinary and phytosanitary matters) to the EEA Agreement** 47
- ★ **Decision of the EEA Joint Committee No 98/2010 of 1 October 2010 amending Annex I (Veterinary and phytosanitary matters) to the EEA Agreement** 48
- ★ **Decision of the EEA Joint Committee No 99/2010 of 1 October 2010 amending Annex I (Veterinary and phytosanitary matters) to the EEA Agreement** 49
- ★ **Decision of the EEA Joint Committee No 100/2010 of 1 October 2010 amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement** 50



⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 1185/2010

of 13 December 2010

imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009

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 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 15(1), Article 18 and Article 22(1), (2) and (3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) The Council, following an anti-subsidy investigation ('the original investigation'), by Regulation (EC) No 1628/2004 ⁽²⁾, imposed a definitive countervailing duty on imports of certain graphite electrodes currently falling within CN code ex 8545 11 00 and nipples used for such electrodes currently falling within CN code ex 8545 90 90 originating in India ('the definitive countervailing measures'). The measures took the form of an *ad valorem* duty of 15,7 %, with the exception of one company for which the duty rate was 7 %.
- (2) The Council, by Regulation (EC) No 1629/2004 ⁽³⁾, imposed definitive anti-dumping duties on imports of

certain graphite electrodes currently falling within CN codes ex 8545 11 00 and nipples used for such electrodes currently falling within CN code ex 8545 90 90 originating in India ('the definitive anti-dumping measures'). The measures took the form of an *ad valorem* duty of 0 %.

- (3) Following an *ex officio* partial interim review of the countervailing measures, the Council by Regulation (EC) No 1354/2008 ⁽⁴⁾ amended Regulations (EC) No 1628/2004 and (EC) No 1629/2004. The definitive countervailing duties were amended to 6,3 % and 7,0 % for imports from individually named exporters with a residual duty rate of 7,2 %. The definitive anti-dumping duties were amended to 9,4 % and 0 % for imports from individually named exporters with a residual duty rate of 8,5 %.

2. Request for an expiry review

- (4) Following the publication of a notice of impending expiry ⁽⁵⁾ of the definitive countervailing measures in force, the Commission, on 18 June 2009, received a request for the initiation of an expiry review of these measures, pursuant to Article 18 of the basic Regulation. The request was lodged by three Union producers of the like product: Graftech International, SGL Carbon GmbH, and Tokai ERFTCARBON GmbH ('the applicants') representing a major proportion, in this case more than 90 % of the total Union production of certain graphite electrode systems.
- (5) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of subsidisation and injury to the Union industry.

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ OJ L 295, 18.9.2004, p. 4.

⁽³⁾ OJ L 295, 18.9.2004, p. 10.

⁽⁴⁾ OJ L 350, 30.12.2008, p. 24.

⁽⁵⁾ OJ C 34, 11.2.2009, p. 11.

- (6) Prior to the initiation of the expiry review, and in accordance with Articles 22(1) and 10(7) of the basic Regulation, the Commission notified the Government of India ('the GOI') that it had received a properly documented review request and invited the GOI for consultations with the aim of clarifying the situation as regards the contents of the review request and arriving at a mutually agreed solution. The GOI accepted the offer of consultations and consultations were subsequently held on 16 September 2009. During the consultations, no mutually agreed solution could be reached. However, due note was taken of the comments submitted by the authorities of the GOI.

3. Initiation of an expiry review

- (7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 17 September 2009, by a notice published in the *Official Journal of the European Union* ⁽¹⁾ ('the notice of initiation'), the initiation of an expiry review pursuant to Article 18 of the basic Regulation.

4. Parallel investigations

- (8) By a notice of initiation published in the *Official Journal of the European Union* on 17 September 2009 ⁽²⁾, the Commission also announced the initiation of an expiry review investigation pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽³⁾ of the definitive anti-dumping measures.

5. Investigation

5.1. Investigation period

- (9) The investigation of continuation or recurrence of subsidisation covered the period from 1 July 2008 to 30 June 2009 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2006 to the end of the review investigation period ('the period considered').

5.2. Parties concerned by the investigation

- (10) The Commission officially advised the applicants, other known Union producers, exporting producers, importers, users known to be concerned, and the GOI of the

initiation of the expiry review. 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 of initiation.

- (11) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

- (12) In view of the apparent large number of unrelated importers, it was considered appropriate, in accordance with Article 27 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 27 of the basic Regulation, to make themselves known within 15 days of the initiation of the reviews and to provide the Commission with the information requested in the Notice of initiation. However, no unrelated importers came forward to cooperate. Sampling was therefore not necessary.

- (13) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the notice of initiation. Replies were received from 3 groups of Union producers (i.e. the applicants), 1 exporting producer and 17 users, and the GOI. None of the importers came forward during the sampling exercise and no other importers supplied the Commission with any information or made themselves known in the course of the investigation.

- (14) Only one of the two known exporting producers in India, namely HEG Limited ('HEG'), fully cooperated in the review by submitting a response to the questionnaire. It should be noted in this regard that in the original investigation the full, official name of that company was Hindustan Electro Graphite Limited. Subsequently, the company changed its name into HEG Limited. The second exporting producer cooperating in the original investigation, namely Graphite India Limited ('GIL'), decided not to submit a questionnaire reply in the present review.

- (15) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of subsidisation and resulting injury of the Union interest. Verification visits were carried out at the premises of the following interested parties:

⁽¹⁾ OJ C 224, 17.9.2009, p. 24.

⁽²⁾ OJ C 224, 17.9.2009, p. 20.

⁽³⁾ OJ L 343, 22.12.2009, p. 51.

(a) Union producers:

- SGL Carbon GmbH, Wiesbaden and Meitingen, Germany,
- Graftech Switzerland SA, Bussigny, Switzerland,
- Graftech Iberica S.L., Ororbia, Spain,
- Tokai ERFTCARBON GmbH, Grevenbroich, Germany,

(b) Exporting producer in India:

- HEG Limited, Bhopal,

(c) Government of India ('GOI').

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (16) The product concerned by this review is the same as the one in the original investigation, namely graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 µΩ.m or less, currently falling within CN code ex 8545 11 00, and nipples used for such electrodes, currently falling within CN code ex 8545 90 90, whether imported together or separately originating in India ('the product concerned').
- (17) The investigation confirmed that, as in the original investigation, the product concerned and the products manufactured and sold by the exporting producer on the domestic market in India, as well as those manufactured and sold in the Union by the Union producers, have the same basic physical and technical characteristics as well as the same uses and are, therefore, considered to be like products within the meaning of Article 2(c) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION**1. Introduction**

- (18) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

Nationwide schemes

(a) Advance Authorisation Scheme ('AAS');

(b) Duty Entitlement Passbook Scheme ('DEPBS');

(c) Export Promotion Capital Goods Scheme ('EPCGS');

Regional Scheme

(d) Electricity Duty Exemption Scheme ('EDES').

- (19) The schemes specified in points (a) to (c) above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every 5 years and updated regularly. Two Foreign Trade Policy documents are relevant to the RIP of this case, i.e. FT-policy 04-09 and FT-policy 09-14. The latter entered into force in April 2009. In addition, the GOI also sets out the procedures governing the FT-policy 04-09 and FT-policy 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 04-09' and 'HOP I 09-14' respectively). The Handbook of Procedures is also updated on a regular basis.

- (20) The scheme specified in point (d) above is managed by the authorities of the State of Madhya Pradesh.

2. Advance Authorisation Scheme ('AAS')

- (21) In the course of the investigation it was found that the cooperating Indian producer did not obtain any benefits under the AAS scheme during the RIP. It was therefore not necessary to further analyse this scheme in this investigation.

3. Duty Entitlement Passbook Scheme ('DEPBS')(a) *Legal Basis*

- (22) The detailed description of the DEPBS is contained in paragraph 4.3 of the FT-policy 04-09 and FT-policy 09-14 as well as in Chapter 4 of the HOP I 04-09 and of the HOP I 09-14.

(b) *Eligibility*

- (23) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) *Practical implementation of the DEPBS*

- (24) An eligible exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been

established by the Indian authorities for most products, including the product concerned. They are determined on the basis of Standard Input Output Norm ("SION"), which is a norm taking into account a presumed import content of inputs in the exported product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not.

- (25) To be eligible for benefits under this scheme, a company must export. At the point in time of the export transaction, a declaration must be made by the exporter to the authorities in India indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue, during the dispatch procedure, an export shipping bill. This document shows, *inter alia*, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration was made. Therefore, there is no possibility for a retroactive amendment to the level of the benefit.
- (26) It was found that in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 12 months from the date of issue.
- (27) Applications for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. *De facto*, no strict deadlines to apply for DEPBS credits exist. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the deadline submission periods mentioned in Chapter 4.47 of the HOP I 04-09 and 09-14. Furthermore, as clearly provided in Chapter 9.3 of the HOP I 04-09 and 09-14, applications received after the expiry of submission deadlines can always be considered with the imposition of a minor penalty fee (i.e. 10 % of the entitlement).
- (28) It was found that the cooperating Indian exporting producer used this scheme during the RIP.

(d) *Conclusions on the DEPBS*

- (29) The DEPBS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A DEPBS credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the DEPBS credit confers a benefit upon the exporter, because it improves its liquidity.
- (30) Furthermore, the DEPBS is contingent in law upon export performance, and is therefore deemed to be specific and countervailable pursuant to Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (31) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation as claimed by the cooperating Indian exporting producer. It does not conform to the strict rules laid down in Annexes I (item (i)), II (definition and rules for drawback) and III (definition and rules for substitution drawback) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I, and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS.

(e) *Calculation of the subsidy amount*

- (32) In accordance with Article 3(2) and Article 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the review investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At this moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation.

- (33) In light of the above, it is considered appropriate to assess the benefit under the DEPBS as being the sum of the credits earned on all export transactions made under this scheme during the RIP.
- (34) The cooperating Indian exporting producer claimed that in their case all the DEPBS credits obtained had been used to import materials used solely in the production of the product concerned, despite being in principle allowed to sell them or use them for the import of other materials. The company claimed that therefore DEPBS was a normal duty drawback system, and only the excess remission should be countervailed. This claim has to be rejected, however, since, as explained above in recital 31, DEPBS is not considered a permissible duty drawback system or substitution drawback system, which has been also admitted by the GOI. It is therefore not relevant what the exporter actually does with the licences obtained under this scheme. It is at the moment of the export transactions made under this scheme that an exporter obtains an irrevocable conferral of a benefit, not at the moment of subsequent usage of the licence.
- (35) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amounts as numerator, pursuant to Article 7(1)(a) of the basic Regulation.
- (36) In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (37) Based on the above, the subsidy rate established in respect of this scheme for the cooperating exporting producer during the RIP amounts to 5,7 %.

4. Export Promotion Capital Goods scheme ('EPCGS')

(a) Legal basis

- (38) The detailed description of the EPCGS is contained in Chapter 5 of the FT-policy 04-09 and of the FT-policy 09-14 as well as in Chapter 5 of the HOP I 04-09 and of the HOP I 09-14.

(b) Eligibility

- (39) Manufacturer-exporters, merchant-exporters 'tied to' supporting manufacturers and service providers are eligible for this scheme.

(c) Practical implementation

- (40) Under the condition of an export obligation, a company is allowed to import capital goods (new and – since April 2003 – second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. Since April 2000, the scheme provides for a reduced import duty rate of 5 % applicable to all capital goods imported under the scheme. Until 31 March 2000, an effective duty rate of 11 % (including a 10 % surcharge) and, in case of high value imports, a zero duty rate, was applicable. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period. Under a new FT-policy 09-14, the capital goods can be imported with 0 % duty rate under the EPCGS but in such case the time period for fulfilment of the export obligation is shorter.
- (41) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail himself of the benefit for duty free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS licence holder.
- (42) It was found that the cooperating exporting producer used this scheme during the RIP.

(d) Conclusion on EPCGS

- (43) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI, since this concession decreases the GOI's duty revenue which would be otherwise due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve the company's liquidity.
- (44) Furthermore, the EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore it is deemed to be specific and countervailable pursuant to Article 4(4), first subparagraph, point (a) of the basic Regulation. It has been claimed by the cooperating exporting producer that EPCGS subsidies with regard to the purchase of capital goods where the export obligation was already fulfilled before the RIP, should no longer be treated as contingent upon export performance. Therefore, they should not be treated as specific subsidies and should not be countervailed. However, this claim has to be rejected. It has to be underlined that the subsidy itself was contingent upon export performance, i.e. it would not have been granted had the company not accepted a certain export obligation.

- (45) The EPCGS cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I, item (i), of the basic Regulation, because they are not consumed in the production of the exported products.

(e) *Calculation of the subsidy amount*

- (46) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. Interests were added to this amount in order to reflect the full value of the benefit over time. The commercial interest rate during the review investigation period in India was considered appropriate for this purpose.
- (47) In accordance with Article 7(2) and (3) of the basic Regulation, this subsidy amount has been allocated over the export turnover during the RIP as appropriate denominator, because the subsidy is contingent upon export performance.
- (48) The subsidy rate established in respect of this scheme for the cooperating exporting producer during the RIP amounts to 0,9 %.

5. Electricity Duty Exemption Scheme (EDES) – regional scheme of the State of Madhya Pradesh

- (49) Under the Industrial Promotion Policy of 2004, the State of Madhya Pradesh (MP) offers exemption of electricity duty to industrial companies investing in electricity generation for captive consumption.

(a) *Legal basis*

- (50) The detailed description of the EDES is contained in the Government of Madhya Pradesh Notification No 29 of 21 July 2006 and Order No 4238-XIII-2006 Annexure C of 12 July 2006.

(b) *Eligibility*

- (51) Every manufacturer which invests a certain amount of capital in the set-up of a power plant within the State of Madhya Pradesh is eligible for this scheme.

(c) *Practical implementation*

- (52) The EDES provides for exemption from the payment of the electricity duty – local sales tax normally due in Madhya Pradesh – for companies which invested a certain amount of capital in the building of a power plant. The exemption is granted for a certain period depending on the value of investment. The aim of the scheme is to develop infrastructure as the state-owned

power plants cannot provide companies in the area with sufficient electricity. The duty exemption is granted only for the captive use of energy.

- (53) It was found that the cooperating exporting producer used this scheme during the RIP.

(d) *Conclusion on EDES*

- (54) The EDES provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty exemption constitutes a financial contribution by the State Government of Madhya Pradesh, since this concession decreases the State Government's duty revenue which would otherwise be due. In addition, the tax reduction confers a benefit upon the exporter, because the duty saved upon purchases of electricity improve its liquidity.
- (55) The EDES is not contingent in law upon export performance. In addition, it is not limited in law to certain geographical areas within the State of Madhya Pradesh or to only some companies or branches of industry. Therefore, it was claimed by the cooperating exporting producer that this scheme should not be considered specific and therefore should not be counter-vailed, as its eligibility is based on objective and neutral economic criteria.
- (56) However, due to the lack of cooperation of the State Government of Madhya Pradesh, the Commission was unable to make a firm conclusion on this scheme as regards the specificity and practical application of this law and the level of discretion the granting authority enjoys when deciding on the applications. Indeed, it cannot be determined with certainty whether Article 4(2), first subparagraph, point (b) is fulfilled, given that it could not be established that the State Government of Madhya Pradesh applied objective criteria or conditions for granting the subsidy. Therefore, even if the scheme was shown not to be specific in law, it is still not clear that it is not specific *de facto*. As a result it is deemed to be specific and countervailable pursuant to Article 4(2), first subparagraph, point (c) and Article 4(2), fourth subparagraph of the basic Regulation.
- (e) *Calculation of the subsidy amount*
- (57) The subsidy amount was calculated, in accordance with Article 7(2) of the basic Regulation, on the basis of the unpaid sales duty on electricity purchased in the RIP (the numerator) and the total sales turnover of the company (the denominator) as EDES is neither contingent upon export performance nor was the use of electricity limited only to the production of the product concerned.
- (58) The subsidy rate established in respect of this scheme for the cooperating exporting producer during the RIP amounts to 0,5 %.

6. Amount of countervailable subsidies

- (59) The amount of countervailable subsidies determined in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producer amounts to 7,1 %. These amounts of subsidisation exceed the *de minimis* threshold mentioned pursuant to Article 14(5) of the basic Regulation.
- (60) The level of the subsidisation established in the current procedure corresponds to the level of subsidisation of 7,2 % found for the same exporting producer during the most recent interim review.
- (61) It is therefore considered that, pursuant to Article 18 of the basic Regulation, subsidisation continued during the RIP.

SCHEMES	AAS	DEPBS	EPCGS	EDES	Total
HEG Ltd	Nil	5,7 %	0,9 %	0,5 %	7,1 %

7. Conclusions on the likelihood of continuation or recurrence of subsidisation

- (62) In accordance with Article 18(2) of the basic Regulation, it was examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of subsidisation.
- (63) In this respect it is recalled that only one of the two known exporting producers of the product concerned cooperated. It was established that during the RIP, the cooperating exporting producer continued to benefit from countervailable subsidisation by the Indian authorities. The subsidy schemes analysed above give recurring benefits and there are no indications that these programmes would be phased out or modified in the foreseeable future or that the cooperating exporting producer would stop obtaining benefits under these schemes. The schemes in question are still maintained in the FT-policy 09-14.
- (64) As regards the other known exporting producer in India, according to the review request, it continued to benefit from the subsidy schemes analysed above. There is no information available which would indicate that this was not the case. It is therefore concluded that the subsidisation at country-wide level continued.
- (65) In view of the findings described above, it is concluded that subsidisation continued during the RIP and would be likely to continue in the future.

- (66) Since it has been demonstrated that subsidisation continued during the RIP and that it is likely to continue in the future, the issue of likelihood of recurrence of subsidisation is irrelevant.

D. DEFINITION OF THE UNION INDUSTRY

1. Union production

- (67) Within the Union, the like product is manufactured by five companies or groups of companies whose output constitutes the total Union production of the like product within the meaning of Article 9(1) of the basic Regulation.

2. Union industry

- (68) Two of the five groups of companies did not come forward to support the request and did not cooperate in the review investigation by submitting a response to the questionnaire. The following three groups of producers lodged the request and agreed to cooperate: Graftech International, SGL Carbon GmbH, and Tokai ERFTCARBON GmbH.
- (69) These three groups of producers account for a major proportion of the total Union production of the like product, since they represent over 90 % of the total Union production of certain graphite electrode systems, as indicated at recital 4 above. They are therefore deemed to constitute the Union industry within the meaning of Articles 9(1) and 10(8) of the basic Regulation and will hereinafter be referred to as the 'Union industry'.

E. SITUATION ON THE UNION MARKET

1. Preliminary remark

- (70) Given that only one Indian exporting producer of the product concerned cooperated in this investigation, data relating to imports of the product concerned into the Union originating in India are not presented in precise figures in order to preserve confidentiality pursuant to Article 29 of the basic Regulation.
- (71) The situation of the graphite electrode industry is closely linked to that of the steel sector since graphite electrodes are primarily used in the electrical steel industry. In this context, it should be noted that in 2007, and up to the first three quarters of 2008, very positive market conditions prevailed within the steel sector, and as a consequence, also for the graphite electrode industry.

- (72) It should be noted that sales volumes of graphite electrodes move more or less in line with the volume of steel production. However, supply contracts for graphite electrodes, covering prices and quantities, are usually negotiated for 6-12 month periods. There is, therefore, generally a time lag between developments in sales volume resulting from changes in demand and any consequential effect on prices.

2. Consumption in the Union market

- (73) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, an estimation of the sales volumes of the other Union producers on the Union market, import data from Eurostat, and data collected in accordance with Article 24(6) of the basic Regulation. As had been done in the original investigation ⁽¹⁾, some imports were disregarded because, on the basis of the information available, they appeared not to be the product under investigation.
- (74) Between 2006 and the RIP, Union consumption decreased by almost 25 %, with the main decrease occurring between 2008 and the RIP. It should be noted that, due to very positive market conditions at the beginning of the period considered, Union consumption was at very high levels and had increased by 30 % between the investigation period of the original investigation and 2006.

Table 1

	2006	2007	2008	RIP
Total Union consumption (tonnes)	170 035	171 371	169 744	128 437
<i>Index (2006 = 100)</i>	100	101	100	76

3. Volume, market share and prices of imports from India

- (75) The volume of imports originating in India ('the country concerned') has increased steadily by 143 percentage points over the period considered and reached a level of 5 000 to 7 000 tonnes during the RIP. The market share of imports from the country concerned more than tripled between 2006 and the RIP, when it reached the level of around 5 %. Market share was still growing during the RIP, notwithstanding the significant decrease in demand. The prices of imports from the country concerned increased by 52 % over the period considered, following a similar trend to that for the Union industry's prices, but remained consistently lower than those of the Union industry. The data in Table 2 are not given in precise figures for reasons of confidentiality, since there are only two known exporting producers in India.

Table 2

	2006	2007	2008	RIP
Volume of imports from the country concerned (tonnes)	2 000 to 3 000	3 000 to 4 000	7 000 to 9 000	5 000 to 7 000
<i>Index (2006 = 100)</i>	100	123	318	243
Market share of imports from the country concerned	Around 1,5 %	Around 2 %	Around 5 %	Around 5 %
Price of imports from the country concerned (EUR/tonne)	Around 2 000	Around 2 600	Around 3 000	Around 3 200
<i>Index (2006 = 100)</i>	100	133	145	152

4. Economic situation of the Union industry

- (76) Pursuant to Article 8(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry.

⁽¹⁾ See recital 132 of Commission Regulation (EC) No 1008/2004 of 19 May 2004 imposing a provisional anti-subsidy duty on imports of certain graphite electrode systems originating in India (OJ L 183, 20.5.2004, p. 35).

4.1. Production

- (77) In the RIP, production decreased by 29 % compared to 2006. The Union industry's production first increased by 2 % in 2007 compared to 2006, before declining sharply, particularly during the RIP.

Table 3

	2006	2007	2008	RIP
Production (tonnes)	272 468	278 701	261 690	192 714
Index (2006 = 100)	100	102	96	71

4.2. Capacity and capacity utilisation rates

- (78) Production capacity decreased marginally (by 2 % overall) between 2006 and the RIP. As production also decreased in 2008, and in particular during the RIP, the resulting capacity utilisation showed an overall decrease of 25 percentage points between 2006 and the RIP.

Table 4

	2006	2007	2008	RIP
Production capacity (tonnes)	298 500	292 250	291 500	293 500
Index (2006 = 100)	100	98	98	98
Capacity utilisation	91 %	95 %	90 %	66 %
Index (2006 = 100)	100	104	98	72

4.3. Stocks

- (79) The level of closing stocks of the Union industry remained stable in 2007 compared to 2006 and then decreased by 10 % in 2008. In the RIP, the level of stocks increased somewhat, but was 5 % lower than in 2006.

Table 5

	2006	2007	2008	RIP
Closing stock (tonnes)	21 407	21 436	19 236	20 328
Index (2006 = 100)	100	100	90	95

4.4. Sales volume

- (80) The sales by the Union industry on the Union market to unrelated customers decreased by 39 % over the period considered. They were very high at the beginning of the period considered, having increased by nearly 70 % compared to the investigation period of the original investigation. Sales volumes decreased slightly in 2007 and 2008 but remained at a relatively high level (in 2008 they were still 47 % above the level of the investigation period of the original investigation). However, sales volumes dropped significantly between 2008 and the RIP (by almost one-third).

Table 6

	2006	2007	2008	RIP
Union Sales volume to unrelated customers (tonnes)	143 832	139 491	124 463	88 224
Index (2006 = 100)	100	97	87	61

4.5. Market share

- (81) The market share held by the Union industry declined progressively by almost 16 percentage points between 2006 and the RIP (from 84,6 % to 68,7 %).

Table 7

	2006	2007	2008	RIP
Market share of the Union industry	84,6 %	81,4 %	73,3 %	68,7 %
Index (2006 = 100)	100	96	87	81

4.6. Growth

- (82) Between 2006 and the RIP, the Union consumption decreased by almost 25 %. The Union industry lost almost 16 percentage points of market share, whilst the imports concerned gained 3,4 percentage points of market share.

4.7. Employment

- (83) The level of employment of the Union industry declined by 7 % between 2006 and the RIP.

Table 8

	2006	2007	2008	RIP
Employment product concerned (persons)	1 942	1 848	1 799	1 804
Index (2006 = 100)	100	95	93	93

4.8. Productivity

- (84) Productivity of the Union industry's workforce, measured as output per person employed per year, decreased by 24 % between 2006 and the RIP. It increased slightly during 2007 and 2008, before decreasing by almost 25 % during the RIP.

Table 9

	2006	2007	2008	RIP
Productivity (tonnes per employee)	140	151	146	107
Index (2006 = 100)	100	107	104	76

4.9. Sales prices and factors affecting domestic prices

- (85) Unit sales prices of the Union industry show a positive trend, having increased by 40 % during the period considered. This is due to: (i) the general level of prices

in the market; (ii) the need to recover increases in costs of production; and (iii) the way supply contract prices are established.

- (86) In 2007 and 2008 the Union industry was able to increase its prices in the context of generally increasing market prices, which was due to continued strong demand for graphite electrodes. This demand was a result of the very positive market conditions prevailing within the steel sector up until the first three quarters of 2008, as described in recital 71.

- (87) Prices also increased in 2007 and 2008, in part, in order to cover increasing costs of production and in particular those of raw materials. Between 2006 and 2008 costs increased by 23 %. However, the Union industry was able to cover this by increasing its prices considerably (+ 33 %).

- (88) Prices still increased, although to a lesser extent (+ 5 %), in the RIP. The fact that prices did not fall during a period when demand dropped is explained by the way supply contracts are established in the market and the fact that most supply contracts for 2009 were concluded in 2008. As indicated in recital 72, sales volumes of graphite electrodes move more or less in line with steel production. However, the negotiation of supply contracts for graphite electrodes for periods of 6 to 12 months can lead to a delay in the effect of any change (increase or decrease) in demand on prices. Contracts are negotiated on the basis of anticipated sales volumes, which may be different from the actual sales level achieved, with the result that the price trend in a particular period may not necessarily follow the trend in sales volumes for the same period. This was the case in the RIP when sales volumes decreased but prices remained high because most supply contracts for 2009 were concluded in 2008 and some deliveries foreseen for 2008 were deferred until 2009. The 5 % increase in prices during the RIP was, nevertheless, not sufficient to cover cost increases (+ 13 %), as had been possible during the previous periods. Prices were renegotiated at lower levels from after the RIP.

- (89) As explained in recital 75, the prices of imports from the country concerned followed a trend similar to that of the Union industry, but were consistently lower than the prices of the Union industry.

Table 10

	2006	2007	2008	RIP
Unit price Union market (EUR/tonne)	2 569	3 103	3 428	3 585
Index (2006 = 100)	100	121	133	140

4.10. Wages

- (90) Between 2006 and the RIP, the average wage per employee increased by 15 %.

Table 11

	2006	2007	2008	RIP
Annual labour cost per employee (thousand EUR)	52	56	61	60
<i>Index (2006 = 100)</i>	100	108	118	115

4.11. Investments

- (91) Between 2006 and the RIP, the annual flow of investments in the product concerned made by the Union industry increased by 37 %. However, during the RIP investments decreased by 14 % compared to 2008.

Table 12

	2006	2007	2008	RIP
Net investments (EUR)	30 111 801	45 383 433	47 980 973	41 152 458
<i>Index (2006 = 100)</i>	100	151	159	137

4.12. Profitability and return on investments

- (92) With an increase in costs of 40 % occurring over the period considered, the Union industry still managed, between 2006 and 2007, to increase its prices by more than its increase in costs. This led to a profit increase from the level of 19 % in 2006 to 26 % in 2007. From 2007 to 2008 prices and costs increased in the same proportion so that the Union industry's margin remained stable at the level of 2007. Profits then decreased again to 19 % in the RIP due to the effect on costs of lower production capacity utilisation and higher raw material prices. Profits decreased further in 2009, since the Union industry had to adjust its prices downwards in order to reflect the general decrease of selling prices in the graphite electrode market, due to the shrinking demand within the steel sector.
- (93) The return on investments ('ROI') increased from a level of 71 % in 2006 to 103 % in 2007. In 2008 it increased to 119 % before decreasing to 77 % during the RIP. Overall, the return on investments only increased by 6 percentage points between 2006 and the RIP.

Table 13

	2006	2007	2008	RIP
Net Profit of Union sales to unrelated customers (% of net sales)	19 %	26 %	25 %	19 %
ROI (net profit in % of net book value of investments)	71 %	103 %	119 %	77 %

4.13. Cash flow and ability to raise capital

- (94) The net cash-flow from operating activities increased between 2006 and 2007. This increase continued in 2008 before decreasing during the RIP. Overall, cash flow was 28 % higher in the RIP than at the start of the period considered.
- (95) There were no indications that the Union industry encountered difficulties in raising capital, mainly due to the fact that some of the producers are incorporated in larger groups.

Table 14

	2006	2007	2008	RIP
Cash flow (EUR)	109 819 535	159 244 026	196 792 707	140 840 498
<i>Index (2006 = 100)</i>	100	145	179	128

4.14. Magnitude of subsidisation

- (96) Given the volume, market share and prices of the imports from India, the impact on the Union industry of the actual subsidy margins cannot be considered to be negligible.

4.15. Recovery from the effects of past subsidisation and of past dumping

- (97) The indicators examined above show some improvement in the economic and financial situation of the Union industry following the imposition of definitive countervailing and anti-dumping measures in 2004. In particular, between 2006 and 2008, the Union industry benefited from increased prices and profits. This was due to very positive market conditions, which allowed a high level of prices and profitability to be maintained, even though, as explained in recital 81, the market share of the Union industry was declining. However, over the same period, and despite the measures, the market share of Indian imports has increased and Indian products have been imported at prices lower than those of the Union industry. During the RIP, profits already started to decrease for the Union industry and decreased further in 2009 due to increased costs and limited price increases.

5. Impact of subsidised imports and other factors

5.1. Impact of the subsidised imports

- (98) Despite a decrease in consumption in the Union over the period considered, the volume of imports from the country concerned more than doubled and the market share of those imports more than tripled (see recital 75). If the anti-dumping and countervailing duties are not taken into consideration, the imports from the country concerned undercut the prices of the Union industry, although by less than 2 %, during the RIP.

5.2. Impact of the economic crisis

- (99) Due to the very positive economic conditions prevailing in the steel and related industries, including graphite electrodes, in 2007 and in the first three quarters of 2008, the Union industry was in a relatively good economic condition when the economic crisis started at the end of 2008. The fact that supply contracts for graphite electrodes are usually negotiated for 6-12 months means that there is a delay in the effect of any change (increase or decrease) in demand on prices. Since contracts for the RIP were negotiated at a stage when the effects of the economic crisis could not be foreseen, the impact of the economic crisis during the RIP was mainly in terms of volumes, since, in terms of prices, any impact would be felt by the Union industry with a delay. In that context it has to be noted that the situation of the Union industry has deteriorated in some respect, even during the period of positive economic conditions, by losing market share

to imports from the country concerned. The fact that this deterioration did not lead to more significant negative effects was partly due to the high level of demand in 2007-08 which had allowed the Union industry to maintain high volumes of production and sales and partly due to the fact that when these volumes decreased in the RIP, the prices could still be maintained due to the time-lag described above.

5.3. Imports from other countries

- (100) Due to the inclusion of products other than the product under investigation in the import data available at CN code level from Eurostat, the following analysis has been made on the basis of import data at Taric code level, supplemented by information from data collected in accordance with Article 24(6) of the basic Regulation. Some imports were disregarded because, on the basis of the information available, they appeared not to be the product under investigation.
- (101) It is estimated that the volume of imports from other third countries increased by 63 % from around 11 000 tonnes in 2006 to around 18 500 tonnes in the RIP. The market share of imports from other countries increased from 6,6 % in 2006 to 14,4 % in the RIP. The average price of imports from other third countries increased by 42 % between 2006 and the RIP. The main imports appear to be from the People's Republic of China ('PRC'), Russia, Japan, and Mexico, which were the only countries with individual market shares higher than 1 % during the RIP. Imports from these countries are further examined in the following recitals. Imports from nine other countries account for a total market share of only around 2 % and are not examined further.
- (102) The market share of Chinese imports increased by 2,4 percentage points over the period considered (from 0,2 % to 2,6 %). The available information indicates that these imports were made at prices which were lower than those of the Union industry and also lower than those of the imports originating in India.
- (103) The market share of imports from Russia increased by 4,2 percentage points over the period considered (from 1,9 % to 6,1 %). The available information indicates that these imports were made at prices which were slightly lower than those of the Union industry, but higher than those of the imports originating in India.
- (104) The market share of imports from Japan decreased by 0,4 percentage points over the period considered (from 2,0 % to 1,6 %). The available information indicates that these imports were made at prices which were similar to, or above, those of the Union industry and also higher than those of the imports originating in India.

- (105) The market share of imports from Mexico increased by 1,0 percentage points over the period considered (from 0,9 % to 1,9 %). The available information indicates that these imports were made at prices which were higher than those of the Union industry and also higher than those of the imports originating in India.
- (106) In conclusion, it cannot be excluded that the development of imports from the PRC and from Russia could have contributed to some extent to the deterioration in the market share of the Union industry. However, given the general nature of the data available from the import statistics, which does not allow a price comparison by product type, as was possible for India on the basis of the detailed information provided by the exporting producer, the impact of the imports from the PRC and Russia cannot be established with certainty.

Table 15

	2006	2007	2008	RIP
Volume of imports from other countries (tonnes)	11 289	11 243	19 158	18 443
<i>Index (2006 = 100)</i>	100	100	170	163
Market share of imports from the other countries	6,6 %	6,6 %	11,3 %	14,4 %
Price of imports from the other countries (EUR/tonne)	2 467	3 020	3 403	3 508
<i>Index (2006 = 100)</i>	100	122	138	142
	2006	2007	2008	RIP
Volume of imports from the PRC (tonnes)	421	659	2 828	3 380
<i>Index (2006 = 100)</i>	100	157	672	804
Market share of imports from the PRC	0,2 %	0,4 %	1,7 %	2,6 %
Price of imports from the PRC (EUR/tonne)	1 983	2 272	2 818	2 969
<i>Index (2006 = 100)</i>	100	115	142	150
	2006	2007	2008	RIP
Volume of imports from Russia (tonnes)	3 196	2 887	8 441	7 821
<i>Index (2006 = 100)</i>	100	90	264	245
Market share of imports from Russia	1,9 %	1,7 %	5,0 %	6,1 %
Price of imports from Russia (EUR/tonne)	2 379	2 969	3 323	3 447
<i>Index (2006 = 100)</i>	100	125	140	145
	2006	2007	2008	RIP
Volume of imports from Japan (tonnes)	3 391	2 223	3 731	2 090
<i>Index (2006 = 100)</i>	100	66	110	62
Market share of imports from Japan	2,0 %	1,3 %	2,2 %	1,6 %
Price of imports from Japan (EUR/tonne)	2 566	3 131	3 474	3 590
<i>Index (2006 = 100)</i>	100	122	135	140
	2006	2007	2008	RIP
Volume of imports from Mexico (tonnes)	1 478	2 187	2 115	2 465
<i>Index (2006 = 100)</i>	100	148	143	167
Market share of imports from Mexico	0,9 %	1,3 %	1,2 %	1,9 %
Price of imports from Mexico (EUR/tonne)	2 634	3 629	4 510	4 554
<i>Index (2006 = 100)</i>	100	138	171	173

6. Conclusion

- (107) As indicated in recital 75 the volume of imports from the country concerned has more than doubled between 2006 and the RIP. Given that consumption declined by almost 25 % over the same period, this resulted in a sharp rise in the market share held by Indian exporters from around 1,5 % in 2006 to around 5 % during the RIP. While Indian export prices to the Union increased considerably during the period considered as an effect of generally high market prices, they were still undercutting the prices of the Union industry.
- (108) Between 2006 and the RIP, and notwithstanding the existence of the anti-dumping and countervailing measures, a number of important indicators developed negatively: production and sales volumes decreased by 29 % and 39 % respectively, capacity utilisation went down by 28 % and was followed by a decrease in employment and productivity levels. Although a part of these negative developments may be explained by the strong decrease in consumption, which declined by almost 25 % over the period considered, the Union industry's strong decrease in market share (down by 15,9 percentage points between 2006 and the RIP) must also be interpreted in the light of the constant increase in market share of imports from India.
- (109) As for the relatively high level of profits during the RIP, this was mainly due to the continued high level of prices, for the reasons explained in recital 88. It is concluded that the Union industry's situation deteriorated overall during the period considered and that the Union industry was in a fragile situation at the end of the RIP, despite a relatively high level of profit at that stage, when its efforts to maintain sales volumes and a sufficient level of prices, in a situation of weakened demand, were hampered by the increased presence of the Indian subsidised imports.

F. LIKELIHOOD OF CONTINUATION AND RECURRENCE OF INJURY

1. Preliminary remarks

- (110) As already seen, the imposition of countervailing measures has allowed the Union industry to recover only to some extent from the injury suffered. However, when the high levels of Union consumption experienced during most of the period considered disappeared during the RIP, the Union industry appeared in a fragile and vulnerable situation and still exposed to the injurious effect of the subsidised imports from India. In particular, the ability of the Union industry to recover increased costs was weak at the end of the RIP.

2. Relationship between export volumes and prices to third countries and export volumes and prices to the Union

- (111) It was found that the average export price of Indian sales to non-EU countries was below the average export price to the Union and also below the prices on the domestic market. The Indian exporter's sales to non-EU countries were made in significant quantities, accounting for the majority of its total export sales. Therefore, it was considered that, should measures lapse, Indian exporters would have an incentive to shift significant quantities of exports from other third countries to the more attractive Union market, at price levels, which, even if they were higher than the prices to third countries, would likely still be below the current export price levels to the Union.

3. Unused capacity and stocks in the Indian market

- (112) The cooperating Indian producer had significant spare capacities and planned to increase its capacity in 2010/2011. Therefore, the capacity to significantly increase export quantities to the Union exists, in particular because there are no indications that third country markets or the domestic market could absorb any additional production.
- (113) In its comments to the disclosure, the cooperating Indian producer alleged that its spare capacity was mainly due to the economic crisis and the related decrease in demand. However, a significant part of the company's spare capacity can be explained by the fact that the company substantially increased its capacity between 2006 and the RIP. Furthermore, it should be noted that the company has planned additional increased capacity. Moreover, it should also be pointed out that there is another Indian producer which did not cooperate, that has similar capacity and utilisation and has also announced recently an even more substantial increase in capacity.

4. Conclusion

- (114) The producers in the country concerned have the potential to raise and/or redirect their export volumes to the Union market. Moreover, the prices of Indian exports to third countries are lower than those to the Union. The investigation showed that, on the basis of comparable product types, the cooperating exporting producer sold the product concerned at prices lower than those of the Union industry. These low prices would most likely decrease in line with the lower prices charged to the rest of the world. Such price behaviour, coupled with the ability of the exporters in the country concerned to deliver significant quantities of the product concerned to the Union market, would, in all likelihood, have a negative impact on the economic situation of the Union industry.

- (115) As shown above, the situation of the Union industry remains vulnerable and fragile. If the Union industry were to be exposed to increased volumes of imports from the country concerned at subsidised prices, this would be likely to result in a deterioration of its sales, market share, sales prices, as well as a consequent deterioration of its financial situation to the levels found in the original investigation. On this basis, it is therefore concluded that the repeal of the measures would in all likelihood result in a worsening of the already fragile situation, and a recurrence of material injury to the Union industry.

G. UNION INTEREST

1. Introduction

- (116) In accordance with Article 31 of the basic Regulation, it was examined whether the maintenance of the existing countervailing measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, of importers, and of users.
- (117) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which countervailing measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current countervailing measures.
- (118) On this basis it was examined whether, despite the conclusions on the likelihood of a continuation or recurrence of injurious subsidisation, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

2. Interest of the Union industry

- (119) The Union industry has proven to be a structurally viable industry. This was confirmed by the positive development of its economic situation observed after the imposition of the countervailing measures in 2004. In particular, the fact that the Union industry increased its profitability in the few years before the RIP contrasts sharply with the situation preceding the imposition of the measures. However, the Union industry has consistently lost market share while imports from the country considered have substantially increased in market share over the period considered. Without the existence of the measures, the Union industry would likely be in an even worse situation.

3. Interest of importers/users

- (120) None of the nine unrelated importers that were contacted came forward to cooperate.
- (121) 17 users came forward and submitted questionnaire replies. While most users have not sourced graphite electrodes from India for several years, and therefore remained neutral with respect to a possible continuation of the measures, six users have, at least to some extent, used Indian electrodes. Four users claimed that a continuation of measures would have a negative impact on competition. One association (Eurofer) strongly opposed a continuation of the measures and claimed that the measures resulted in Indian exporters largely withdrawing from the EU market. The association alleges that the continuation of measures would hamper steel producers in developing alternative sources of supply and would allow the Union industry to continue having a dominant, near duopoly position. However, it is clear from the development of the Indian imports after the imposition of the measures, that such a large withdrawal has not taken place; instead imports from India have increased significantly during the period considered. In addition, the investigation has shown that the graphite electrodes are increasingly entering the Union market from a number of other third countries. As for the strength of the position of the Union industry in the market, it is recalled that its market share has decreased by almost 16 percentage points over the period considered (see recital 81 above). Finally, this association also admitted that graphite electrodes represent only a relatively small component of the total costs of steel manufacturers.
- (122) It is further recalled that, in the original investigation, it was found that the impact of the imposition of measures would not be significant for the users⁽¹⁾. Despite the existence of measures for 5 years, importers/users in the Union continued to source their supply, inter alia, from India. No indications were brought forward either that there have been difficulties in finding other sources. Moreover, it is recalled that, as regards the effect of the imposition of measures on users, it was concluded in the original investigation that, given the negligible incidence of the cost of graphite electrodes on user industries, any cost increase was unlikely to have a significant effect on the user industry. No indications of the contrary were found after the imposition of measures. It is therefore concluded that the maintenance of the countervailing measures is not likely to have a serious effect on importers/users in the Union.

4. Conclusion

- (123) Given the above, it is concluded that there are no compelling reasons against the maintenance of the current countervailing measures.

⁽¹⁾ See recital 150 of Commission Regulation (EC) No 1008/2004 (OJ L 183, 20.5.2004, p. 35) and recital 30 of Council Regulation (EC) No 1628/2004 (OJ L 295, 18.9.2004, p. 4).

H. COUNTERVAILING MEASURES

- (124) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to this disclosure. The submissions and comments were taken duly into consideration where warranted.
- (125) It follows from the above that, as provided for by Article 18(2) of the basic Regulation, the countervailing measures applicable to imports of certain graphite electrodes originating in India should be maintained. It is recalled that these measures consist of *ad valorem* duties.
- (126) The individual company countervailing duty rates specified in this Regulation are solely applicable to imports of the product concerned produced by these companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (127) Any claim requesting the application of these individual countervailing duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 µΩ.m or less, currently falling within CN code ex 8545 11 00 (TARIC code 8545 11 00 10), and nipples used for such electrodes, currently falling within CN code ex 8545 90 90 (TARIC code 8545 90 90 10), whether imported together or separately originating in India.

2. The rate of duty applicable to the net free-at-Union-frontier price, before duty, for the products described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Definitive Duty (%)	TARIC Additional Code
Graphite India Limited (GIL), 31 Chowringhee Road, Kolkatta – 700016, West Bengal	6,3	A530
HEG Limited, Bhilwara Towers, A-12, Sector-1, Noida – 201301, Uttar Pradesh	7,0	A531
All other companies	7,2	A999

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 December 2010.

For the Council
The President
K. PEETERS

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, B-1049 Brussels, Belgium.

COUNCIL IMPLEMENTING REGULATION (EU) No 1186/2010**of 13 December 2010****imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009**

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 Articles 9(4) and 11(2), (5) and (6) thereof,

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

Whereas:

A. PROCEDURE**1. Measures in force**

- (1) The Council, following an anti-dumping investigation (the original investigation), by Regulation (EC) No 1629/2004⁽²⁾, imposed a definitive anti-dumping duty on imports of certain graphite electrodes currently falling within CN code ex 8545 11 00 and nipples used for such electrodes currently falling within CN code ex 8545 90 90 originating in India (the definitive anti-dumping measures). The measures took the form of an *ad valorem* duty of 0 %.
- (2) The Council, following an anti-subsidy investigation, by Regulation (EC) No 1628/2004⁽³⁾, imposed a definitive countervailing duty on imports of certain graphite electrodes currently falling within CN code ex 8545 11 00 and nipples used for such electrodes currently falling within CN code ex 8545 90 90 originating in India (the definitive countervailing measures). The measures took the form of an *ad valorem* duty of 15,7 %, with the exception of one company for which the duty rate was 7 %.
- (3) Following an *ex officio* partial interim review of the countervailing measures, the Council, by Regulation (EC) No 1354/2008⁽⁴⁾, amended Regulations (EC) No

1628/2004 and (EC) No 1629/2004. The definitive countervailing duties were amended to 6,3 % and 7,0 % for imports from individually named exporters, with a residual duty rate of 7,2 %. The definitive anti-dumping duties were amended to 9,4 % and 0 % for imports from individually named exporters, with a residual duty rate of 8,5 %.

2. Request for an expiry review

- (4) Following the publication of a notice of impending expiry⁽⁵⁾ of the definitive anti-dumping measures in force, the Commission received on 18 June 2009 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by three Union producers: Graftech International, SGL Carbon GmbH, and Tokai Erftcarbon GmbH (the applicants) representing a major proportion, in this case more than 90 %, of the total Union production of certain graphite electrode systems.
- (5) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

3. Initiation of an expiry review

- (6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 17 September 2009, by a notice published in the *Official Journal of the European Union*⁽⁶⁾ (the notice of initiation), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. Parallel investigations

- (7) By a notice of initiation published in the *Official Journal of the European Union* on 17 September 2009⁽⁷⁾, the Commission also announced the initiation of an expiry review investigation pursuant to Article 18 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community⁽⁸⁾ of the definitive countervailing measures.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 295, 18.9.2004, p. 10.

⁽³⁾ OJ L 295, 18.9.2004, p. 4.

⁽⁴⁾ OJ L 350, 30.12.2008, p. 24.

⁽⁵⁾ OJ C 34, 11.2.2009, p. 11.

⁽⁶⁾ OJ C 224, 17.9.2009, p. 20.

⁽⁷⁾ OJ C 224, 17.9.2009, p. 24.

⁽⁸⁾ OJ L 188, 18.7.2009, p. 93.

5. Investigation

5.1. Investigation period

- (8) The investigation of continuation or recurrence of dumping covered the period from 1 July 2008 to 30 June 2009 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2006 to the end of the review investigation period (the period considered).

5.2. Parties concerned by the investigation

- (9) The Commission officially advised the applicants, other known Union producers, exporting producers, importers, users known to be concerned, and the representatives of the exporting country of the initiation of the expiry review. 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 of initiation.
- (10) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (11) In view of the apparent large number of unrelated importers, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the initiation of the reviews and to provide the Commission with the information requested in the notice of initiation. However, no unrelated importers came forward to cooperate. Sampling was therefore not necessary.
- (12) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the notice of initiation. Replies were received from three groups of Union producers (i.e. the applicants), one exporting producer and 17 users. None of the importers came forward during the sampling exercise and no other importers supplied the Commission with any information or made themselves known in the course of the investigation.
- (13) Only one of the two known exporting producers in India, namely HEG Limited (HEG) fully cooperated in the review by submitting a response to the questionnaire. It should be noted in this regard that in the original

investigation the full, official name of that company was Hindustan Electro Graphite Limited. Subsequently the company changed its name into HEG Limited. The second exporting producer cooperating in the original investigation, namely Graphite India Limited (GIL) decided not to submit a questionnaire reply in the present review.

- (14) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:

(a) Union producers

- SGL Carbon GmbH, Wiesbaden and Meitingen, Germany,
- Graftech Switzerland SA, Bussigny, Switzerland,
- Graftech Iberica S.L., Ororbia, Spain,
- Tokai Erftcarbon GmbH, Grevenbroich, Germany.

(b) Exporting producer in India

- HEG Limited, Bhopal.

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (15) The product concerned by this review is the same as the one in the original investigation, namely graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 µΩ.m or less, currently falling within CN code ex 8545 11 00 and nipples used for such electrodes, currently falling within CN code ex 8545 90 90 whether imported together or separately originating in India (the product concerned).
- (16) The investigation confirmed that, as in the original investigation, the product concerned and the products manufactured and sold by the exporting producer on the domestic market in India, as well as those manufactured and sold in the Union by the Union producers, have the same basic physical and technical characteristics as well as the same uses and are, therefore, considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

- (17) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

1. General

- (18) Cooperation was obtained from one exporting producer in India. The second known exporting producer did not cooperate in the investigation.
- (19) The comparison of the export volume of the cooperating exporting producer with the total volume of exports to the Union from India showed that the cooperating exporting producer accounted for the vast majority of all Union imports from India during the RIP. The level of cooperation was therefore considered to be high.

2. Dumping of imports during the RIP

2.1. Normal value

- (20) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the cooperating Indian exporting producer's domestic sales of the like product to independent customers were representative, i.e. whether the total volume of such sales was equal to at least 5 % of the total volume of the corresponding export sales to the Union.
- (21) The Commission subsequently identified those types of the like product sold domestically by the company that were identical or directly comparable to the types sold for export to the Union. The elements taken into account in defining the product types of graphite electrode systems were (i) whether they were sold with a nipple or not, (ii) their diameter and (iii) their length.
- (22) The cooperating exporting producer claimed that the fact that graphite electrode systems are produced from different grades of coke (basic raw material) should also be taken into account when establishing identical or directly comparable types of graphite electrode systems. Indeed it was confirmed that in the production process the company used two different types of coke: imported needle coke which is of a superior quality and regular coke sourced on the Indian market. It was also confirmed that the type of coke used determines the cost of production and the price of the end product.
- (23) Therefore, in order to ensure a fair comparison, the Commission split each of the product types into low-grade and high-grade products for the purpose of the dumping calculation.

- (24) It was further examined whether the domestic sales of the cooperating exporting producer were representative for each product type, i.e. whether domestic sales of each product type constituted at least 5 % of the sales volume of the same product type to the Union. For the product types sold in representative quantities, it was then examined whether such sales were made in the ordinary course of trade, in accordance with Article 2(4) of the basic Regulation.

- (25) The examination as to whether the domestic sales of each product type, sold domestically in representative quantities, could be regarded as having been made in the ordinary course of trade was made by establishing the proportion of the profitable sales to independent customers of the type in question. In all cases where the domestic sales of the particular product type were made in sufficient quantities and in the ordinary course of trade, normal value was based on the actual domestic price, calculated as a weighted average of all the domestic sales of that type made during the RIP.

- (26) For the remaining product types where domestic sales were not representative or not sold in the ordinary course of trade, normal value was constructed in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses and a reasonable margin for profit, on the basis of actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.

2.2. Export price

- (27) Since all export sales of the cooperating Indian exporting producer to the Union were made directly to independent customers, the export price was established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

2.3. Comparison

- (28) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade. In order to ensure a fair comparison between normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were demonstrated to affect prices and price comparability. For this purpose, due allowance in the form of adjustments was made for differences in transport, insurance, handling, loading and ancillary costs, financial costs, bank charges and anti-dumping duties paid by the applicant where applicable and justified.

- (29) The cooperating Indian exporting producer claimed that in its case, the Duty Entitlement Passbook Scheme (DEPBS) is effectively a duty drawback scheme, since the DEPBS licenses are only used to pay the import duties for the raw-materials used for the production of graphite electrode systems. Therefore the cost of import duties paid for raw-materials is refunded when the product is exported, resulting in a lower export price. The company claimed therefore that an adjustment should be made on the domestic prices since they are not affected by the reimbursement of import duties. The investigation showed that, contrary to what has been claimed, the company uses the duty-free imported raw materials both in the production of graphite electrode systems destined for the export market as well as in the production destined for the domestic market. Therefore, the DEPBS has no influence on the price difference between domestically sold and exported products and the adjustment cannot be granted.

2.4. Dumping margin

- (30) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. Based on the above methodology, the dumping margin established for the cooperating exporting producer amounts to 11-12 %.
- (31) In its comments to disclosure of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained (final disclosure), the company in question claimed that the calculation of the dumping margin on the basis of 4 of the 12 months of the RIP was a deviation from the methodology used in the original investigation where all 12 months of the investigation period were taken into account. It claimed therefore that the calculation method used inflated the dumping margin.
- (32) It is recalled that basing the dumping calculation on 4 months of the RIP is a methodology normally used by the Commission in expiry reviews, where it should be determined whether there is continuation of dumping or a likelihood that dumping will recur. The investigation on spot ensured that the 4 months were representative of the full 12-month period. This was achieved by comparing costs and prices of the 4 months data with the remaining 8 months. In addition, the 4 months selected were the last months of each quarter and therefore evenly spread over the 12-month period. The Commission does not therefore agree that the method applied alters the final conclusion with regard to the existence of dumping in the RIP nor that it inflates the dumping margin.
- (33) In view of the lack of cooperation from the second known Indian exporting producer, no dumping margin

could be calculated for this producer. However, according to the review request, exports by this company to the Union were also made at dumped prices. As the majority of exports from India relate to the cooperating Indian producer which was found to be dumping and the average price of the product concerned imported from India according to Eurostat is lower than the average export price of the cooperating company, the existence of dumping at the countrywide level is confirmed.

3. Development of imports should measures be repealed

- (34) Further to the analysis of the existence of dumping during the RIP, the likelihood of the recurrence of dumping was investigated. Given the fact that only one exporting producer in India cooperated in this investigation, the conclusions below rely on the data from the sole cooperating company as well as on facts available in accordance with Article 18 of the basic Regulation, namely Eurostat data and the review request.
- (35) In this respect the following elements were analysed: the spare capacity of the exporting Indian producers; the attractiveness of the Union market for the Indian producers and the export prices to third countries.

3.1. Spare capacity of the exporters

- (36) As regards the cooperating Indian exporting producer, the investigation showed that it has available spare capacity. Furthermore the company has publicly stated that it plans to increase its existing capacity. It should also be underlined that the company is export-oriented with a majority of turnover in the RIP generated by export sales and that the Union is still an important export destination despite the measures in force.
- (37) Regarding the second Indian producer, according to the review request, the company has already substantially increased its capacity since the imposition of the measures and plans to increase it further. Therefore it cannot be excluded that at least part of this increased capacity could be diverted to the Union market in the absence of measures.

3.2. Attractiveness of the Union market

- (38) The attractiveness of the Union market can be illustrated by the fact that the imposition of the anti-dumping and countervailing duties did not stop the expansion of the Indian exports. On the contrary, over the last 3 years, the Indian exporters more than doubled their exports and their market share in the Union more than tripled. It should also be stressed that within this period, the level of prices on the Union market increased by 40 %.

3.3. *Export prices to third countries*

- (39) With regard to exports to third countries, the investigation showed that in the RIP the level of the cooperating company's ex-works export prices were lower than the export prices to the Union which were found to be dumped. It can therefore be expected that in the absence of measures, the cooperating exporting producer would shift at least part of its exports to the Union, in view of the attractiveness of the market.

3.4. *Conclusion of the likelihood of continuation or recurrence of dumping*

- (40) In view of the findings described above, it can be concluded that the exports from India are still being dumped and that there is a likelihood of continuation of dumping on the Union market in case the current anti-dumping measures are removed. Indeed, taking into account the existing spare capacity in India and the attractiveness of the Union market, there appears to be an incentive for Indian exporting producers to increase their exports to the Union market at dumped prices, at least as far as the cooperating exporting producer is concerned.

D. DEFINITION OF THE UNION INDUSTRY

1. **Union production**

- (41) Within the Union, the like product is manufactured by five companies or groups of companies whose output constitutes the total Union production of the like product within the meaning of Article 4(1) of the basic Regulation.

2. **Union industry**

- (42) Two of the five groups of companies did not come forward to support the request and did not cooperate in the review investigation by submitting a response to the questionnaire. The following three groups of producers lodged the request and agreed to cooperate: Graftech International, SGL Carbon GmbH, and Tokai Erftcarbon GmbH.
- (43) These three groups of producers account for a major proportion of the total Union production of the like product, since they represent over 90 % of the total Union production of certain graphite electrode systems, as indicated at recital 4 above. They are therefore deemed to constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Union industry'.

E. SITUATION ON THE UNION MARKET

1. **Preliminary remark**

- (44) Given that only one Indian exporting producer of the product concerned cooperated in this investigation, data relating to imports of the product concerned into the European Union originating in India are not presented in precise figures in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.

- (45) The situation of the graphite electrode industry is closely linked to that of the steel sector since graphite electrodes are primarily used in the electrical steel industry. In this context, it should be noted that in 2007, and up to the first three quarters of 2008, very positive market conditions prevailed within the steel sector, and as a consequence, also for the graphite electrode industry.

- (46) It should be noted that sales volumes of graphite electrodes move more or less in line with the volume of steel production. However, supply contracts for graphite electrodes, covering prices and quantities, are usually negotiated for 6-12 month periods. There is, therefore, generally a time lag between developments in sales volume resulting from changes in demand and any consequential effect on prices.

2. **Consumption in the Union market**

- (47) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, an estimation of the sales volumes of the other Union producers on the Union market, import data from Eurostat, and data collected in accordance with Article 14(6) of the basic Regulation. As had been done in the original investigation⁽¹⁾, some imports were disregarded because, on the basis of the information available, they appeared not to be the product under investigation.
- (48) Between 2006 and the RIP, Union consumption decreased by almost 25 %, with the main decrease occurring between 2008 and the RIP. It should be noted that, due to very positive market conditions at the beginning of the period considered, Union consumption was at very high levels and had increased by 30 % between the investigation period of the original investigation and 2006.

⁽¹⁾ See recital 88 of Commission Regulation (EC) No 1009/2004 of 19 May 2004 imposing a provisional anti-dumping duty on imports of certain graphite electrode systems originating in India (OJ L 183, 20.5.2004, p. 61).

Table 1

	2006	2007	2008	RIP
Total Union consumption (tonnes)	170 035	171 371	169 744	128 437
<i>Index (2006 = 100)</i>	100	101	100	76

3. Volume, market share and prices of imports from India

- (49) The volume of imports originating in India (the country concerned) has increased steadily by 143 percentage points over the period considered and reached a level of 5 000 to 7 000 tonnes during the RIP. The market share of imports from the country concerned more than tripled between 2006 and the RIP, when it reached the level of around 5 %. Market share was still growing during the RIP, notwithstanding the significant decrease in demand. The prices of imports from the country concerned increased by 52 % over the period considered, following a similar trend to that for the Union industry's prices, but remained consistently lower than those of the Union industry. The data in Table 2 is not given in precise figures for reasons of confidentiality, since there are only two known exporting producers in India.

Table 2

	2006	2007	2008	RIP
Volume of imports from the country concerned (tonnes)	2 000 to 3 000	3 000 to 4 000	7 000 to 9 000	5 000 to 7 000
<i>Index (2006 = 100)</i>	100	123	318	243
Market share of imports from the country concerned	Around 1,5 %	Around 2 %	Around 5 %	Around 5 %
Price of imports from the country concerned (EUR/tonne)	Around 2 000	Around 2 600	Around 3 000	Around 3 200
<i>Index (2006 = 100)</i>	100	133	145	152

4. Economic situation of the Union industry

- (50) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry.

4.1. Production

- (51) In the RIP, production decreased by 29 % compared to 2006. The Union industry's production first increased by 2 % in 2007 compared to 2006, before declining sharply, particularly during the RIP.

Table 3

	2006	2007	2008	RIP
Production (tonnes)	272 468	278 701	261 690	192 714
<i>Index (2006 = 100)</i>	100	102	96	71

4.2. Capacity and capacity utilisation rates

- (52) Production capacity decreased marginally (by 2 % overall) between 2006 and the RIP. As production also decreased in 2008 and in particular during the RIP, the resulting capacity utilisation showed an overall decrease of 25 percentage points between 2006 and the RIP.

Table 4

	2006	2007	2008	RIP
Production capacity (tonnes)	298 500	292 250	291 500	293 500
<i>Index (2006 = 100)</i>	100	98	98	98
Capacity utilisation	91 %	95 %	90 %	66 %
<i>Index (2006 = 100)</i>	100	104	98	72

4.3. Stocks

- (53) The level of closing stocks of the Union industry remained stable in 2007 compared to 2006 and then decreased by 10 % in 2008. In the RIP, the level of stocks increased somewhat, but was 5 % lower than in 2006.

Table 5

	2006	2007	2008	RIP
Closing stock (tonnes)	21 407	21 436	19 236	20 328
<i>Index (2006 = 100)</i>	100	100	90	95

4.4. Sales volume

- (54) The sales by the Union industry on the Union market to unrelated customers decreased by 39 % over the period considered. They were very high at the beginning of the period considered having increased by nearly 70 % compared to the investigation period of the original investigation. Sales volumes decreased slightly in 2007 and 2008 but remained at a relatively high level (in 2008 they were still 47 % above the level of the investigation period of the original investigation). However, sales volumes dropped significantly between 2008 and the RIP (by almost one-third).

Table 6

	2006	2007	2008	RIP
Union Sales volume to unrelated customers (tonnes)	143 832	139 491	124 463	88 224
<i>Index (2006 = 100)</i>	100	97	87	61

4.5. Market share

- (55) The market share held by the Union industry declined progressively by almost 16 percentage points between 2006 and the RIP (from 84,6 % to 68,7 %).

Table 7

	2006	2007	2008	RIP
Market share of the Union industry	84,6 %	81,4 %	73,3 %	68,7 %
<i>Index (2006 = 100)</i>	100	96	87	81

4.6. Growth

- (56) Between 2006 and the RIP, the Union consumption decreased by almost 25 %. The Union industry lost almost 16 percentage points of market share, whilst the imports concerned gained 3,4 percentage points of market share.

4.7. Employment

- (57) The level of employment of the Union industry declined by 7 % between 2006 and the RIP.

Table 8

	2006	2007	2008	RIP
Employment product concerned (persons)	1 942	1 848	1 799	1 804
Index (2006 = 100)	100	95	93	93

4.8. Productivity

- (58) Productivity of the Union industry's workforce, measured as output per person employed per year, decreased by 24 % between 2006 and the RIP. It increased slightly during 2007 and 2008, before decreasing by almost 25 % during the RIP.

Table 9

	2006	2007	2008	RIP
Productivity (tonnes per employee)	140	151	146	107
Index (2006 = 100)	100	107	104	76

4.9. Sales prices and factors affecting domestic prices

- (59) Unit sales prices of the Union industry show a positive trend, having increased by 40 % during the period considered. This is due to: (i) the general level of prices in the market, (ii) the need to recover increases in costs of production, and (iii) the way supply contract prices are established.
- (60) In 2007 and 2008 the Union industry was able to increase its prices in the context of generally increasing market prices, which was due to continued strong demand for graphite electrodes. This demand was a result of the very positive market conditions prevailing within the steel sector up until the first three quarters of 2008, as described in recital 45.
- (61) Prices also increased in 2007 and 2008, in part, in order to cover increasing costs of production and in particular those of raw materials. Between 2006 and 2008 costs increased by 23 %. However, the Union industry was able to cover this by increasing its prices considerably (+ 33 %).
- (62) Prices still increased, although to a lesser extent (+ 5 %), in the RIP. The fact that prices did not fall during a

period when demand dropped is explained by the way supply contracts are established in the market and the fact that most supply contracts for 2009 were concluded in 2008. As indicated in recital 46, sales volumes of graphite electrodes move more or less in line with steel production. However, the negotiation of supply contracts for graphite electrodes for periods of 6 to 12 months can lead to a delay in the effect of any change (increase or decrease) in demand on prices. Contracts are negotiated on the basis of anticipated sales volumes, which may be different from the actual sales level achieved, with the result that the price trend in a particular period may not necessarily follow the trend in sales volumes for the same period. This was the case in the RIP when sales volumes decreased but prices remained high because most supply contracts for 2009 were concluded in 2008 and some deliveries foreseen for 2008 were deferred until 2009. The 5 % increase in prices during the RIP was, nevertheless, not sufficient to cover cost increases (+ 13 %), as had been possible during the previous periods. Prices were renegotiated at lower levels from after the RIP.

- (63) As explained in recital 49, the prices of imports from the country concerned followed a trend similar to that of the Union industry, but were consistently lower than the prices of the Union industry.

Table 10

	2006	2007	2008	RIP
Unit price Union market (EUR/tonne)	2 569	3 103	3 428	3 585
Index (2006 = 100)	100	121	133	140

4.10. Wages

- (64) Between 2006 and the RIP, the average wage per employee increased by 15 %.

Table 11

	2006	2007	2008	RIP
Annual labour cost per employee ('000 EUR)	52	56	61	60
Index (2006 = 100)	100	108	118	115

4.11. Investments

- (65) Between 2006 and the RIP, the annual flow of investments in the product concerned made by the Union industry increased by 37 %. However, during the RIP, investments decreased by 14 % compared to 2008.

Table 12

	2006	2007	2008	RIP
Net investments (EUR)	30 111 801	45 383 433	47 980 973	41 152 458
<i>Index (2006 = 100)</i>	100	151	159	137

4.12. Profitability and return on investments

- (66) With an increase in costs of 40 % occurring over the period considered, the Union industry still managed, between 2006 and 2007, to increase its prices by more than its increase in costs. This led to a profit increase from the level of 19 % in 2006 to 26 % in 2007. From 2007 to 2008 prices and costs increased in the same proportion so that the Union industry's margin remained stable at the level of 2007. Profits then decreased again to 19 % in the RIP due to the effect on costs of lower production capacity utilisation and higher raw material prices. Profits decreased further in 2009, since the Union industry had to adjust its prices downwards in order to reflect the general decrease of selling prices in the graphite electrode market, due to the shrinking demand within the steel sector.
- (67) The return on investments (ROI) increased from a level of 71 % in 2006 to 103 % in 2007. In 2008 it increased to 119 % before decreasing to 77 % during the RIP. Overall, the return on investments only increased by 6 percentage points between 2006 and the RIP.

Table 13

	2006	2007	2008	RIP
Net Profit of Unionsales to unrelated customers (% of net sales)	19 %	26 %	25 %	19 %
ROI (net profit in % of net book value of investments)	71 %	103 %	119 %	77 %

4.13. Cash flow and ability to raise capital

- (68) The net cash-flow from operating activities increased between 2006 and 2007. This increase continued in 2008 before decreasing during the RIP. Overall, cash flow was 28 % higher in the RIP than at the start of the period considered.
- (69) There were no indications that the Union industry encountered difficulties in raising capital, mainly due to the fact that some of the producers are incorporated in larger groups.

Table 14

	2006	2007	2008	RIP
Cash flow (EUR)	109 819 535	159 244 026	196 792 707	140 840 498
<i>Index (2006 = 100)</i>	100	145	179	128

4.14. Magnitude of dumping margin

- (70) Given the volume, market share and prices of the imports from India, the impact on the Union industry of the actual margins of dumping cannot be considered to be negligible.

4.15. *Recovery from the effects of past subsidisation and of past dumping*

- (71) The indicators examined above show some improvement in the economic and financial situation of the Union industry following the imposition of definitive countervailing and anti-dumping measures in 2004. In particular, between 2006 and 2008, the Union industry benefited from increased prices and profits. This was due to very positive market conditions, which allowed a high level of prices and profitability to be maintained, even though, as explained in recital 55, the market share of the Union industry was declining. However, over the same period, and despite the measures, the market share of Indian imports has increased and Indian products have been imported at prices lower than those of the Union industry. During the RIP, profits already started to decrease for the Union industry and decreased further in 2009 due to increased costs and limited price increases.

5. **Impact of dumped imports and other factors**

5.1. *Impact of the dumped imports*

- (72) Despite a decrease in consumption in the Union over the period considered, the volume of imports from the country concerned more than doubled and the market share of those imports more than tripled (see recital 49). If the anti-dumping and countervailing duties are not taken into consideration, the imports from the country concerned undercut the prices of the Union industry, although by less than 2 %, during the RIP.

5.2. *Impact of the economic crisis*

- (73) Due to the very positive economic conditions prevailing in the steel and related industries, including graphite electrodes, in 2007 and in the first three quarters of 2008, the Union industry was in a relatively good economic condition when the economic crisis started at the end of 2008. The fact that supply contracts for graphite electrodes are usually negotiated for 6-12 months means that there is a delay in the effect of any change (increase or decrease) in demand on prices. Since contracts for the RIP were negotiated at a stage when the effects of the economic crisis could not be foreseen, the impact of the economic crisis during the RIP was mainly in terms of volumes, since, in terms of prices, any impact would be felt by the Union industry with a delay. In that context it has to be noted that the situation of the Union industry has deteriorated in some respect, even during the period of positive economic conditions, by losing market share to imports from the country concerned. The fact that this deterioration did not lead to more significant negative effects was partly due to the high level of demand in 2007-2008 which had allowed the Union industry to maintain high volumes of production and sales and partly due to the fact that when these volumes decreased in the RIP, the prices could still be maintained due to the time-lag described above.

5.3. *Imports from other countries*

- (74) Due to the inclusion of products other than the product under investigation in the import data available at CN code level from Eurostat, the following analysis has been made on the basis of import data at Taric code level, supplemented by information from data collected in accordance with Article 14(6) of the basic Regulation. Some imports were disregarded because, on the basis of the information available, they appeared not to be the product under investigation.
- (75) It is estimated that the volume of imports from other third countries increased by 63 % from around 11 000 tonnes in 2006 to around 18 500 tonnes in the RIP. The market share of imports from other countries increased from 6,6 % in 2006 to 14,4 % in the RIP. The average price of imports from other third countries increased by 42 % between 2006 and the RIP. The main imports appear to be from the People's Republic of China (PRC), Russia, Japan, and Mexico, which were the only countries with individual market shares higher than 1 % during the RIP. Imports from these countries are further examined in the following recitals. Imports from nine other countries account for a total market share of only around 2 % and are not examined further.
- (76) The market share of Chinese imports increased by 2,4 percentage points over the period considered (from 0,2 % to 2,6 %). The available information indicates that these imports were made at prices which were lower than those of the Union industry and also lower than those of the imports originating in India.
- (77) The market share of imports from Russia increased by 4,2 percentage points over the period considered (from 1,9 % to 6,1 %). The available information indicates that these imports were made at prices which were slightly lower than those of the Union industry, but higher than those of the imports originating in India.
- (78) The market share of imports from Japan decreased by 0,4 percentage points over the period considered (from 2,0 % to 1,6 %). The available information indicates that these imports were made at prices which were similar to, or above, those of the Union industry and also higher than those of the imports originating in India.
- (79) The market share of imports from Mexico increased by 1,0 percentage points over the period considered (from 0,9 % to 1,9 %). The available information indicates that these imports were made at prices which were higher than those of the Union industry and also higher than those of the imports originating in India.

- (80) In conclusion, it cannot be excluded that the development of imports from the PRC and from Russia could have contributed to some extent to the deterioration in the market share of the Union industry. However, given the general nature of the data available from the import statistics, which does not allow a price comparison by product type, as was possible for India on the basis of the detailed information provided by the exporting producer, the impact of the imports from the PRC and Russia cannot be established with certainty.

Table 15

	2006	2007	2008	RIP
Volume of imports from other countries (tonnes)	11 289	11 243	19 158	18 443
<i>Index (2006 = 100)</i>	100	100	170	163
Market share of imports from the other countries	6,6 %	6,6 %	11,3 %	14,4 %
Price of imports from the other countries (EUR/tonne)	2 467	3 020	3 403	3 508
<i>Index (2006 = 100)</i>	100	122	138	142
	2006	2007	2008	RIP
Volume of imports from the PRC (tonnes)	421	659	2 828	3 380
<i>Index (2006 = 100)</i>	100	157	672	804
Market share of imports from the PRC	0,2 %	0,4 %	1,7 %	2,6 %
Price of imports from the PRC (EUR/tonne)	1 983	2 272	2 818	2 969
<i>Index (2006 = 100)</i>	100	115	142	150
	2006	2007	2008	RIP
Volume of imports from Russia (tonnes)	3 196	2 887	8 441	7 821
<i>Index (2006 = 100)</i>	100	90	264	245
Market share of imports from Russia	1,9 %	1,7 %	5,0 %	6,1 %
Price of imports from Russia (EUR/tonne)	2 379	2 969	3 323	3 447
<i>Index (2006 = 100)</i>	100	125	140	145
	2006	2007	2008	RIP
Volume of imports from Japan (tonnes)	3 391	2 223	3 731	2 090
<i>Index (2006 = 100)</i>	100	66	110	62
Market share of imports from Japan	2,0 %	1,3 %	2,2 %	1,6 %
Price of imports from Japan (EUR/tonne)	2 566	3 131	3 474	3 590
<i>Index (2006 = 100)</i>	100	122	135	140
	2006	2007	2008	RIP
Volume of imports from Mexico (tonnes)	1 478	2 187	2 115	2 465
<i>Index (2006 = 100)</i>	100	148	143	167
Market share of imports from Mexico	0,9 %	1,3 %	1,2 %	1,9 %
Price of imports from Mexico (EUR/tonne)	2 634	3 629	4 510	4 554
<i>Index (2006 = 100)</i>	100	138	171	173

6. Conclusion

- (81) As indicated in recital 49 the volume of imports from the country concerned has more than doubled between 2006 and the RIP. Given that consumption declined by almost 25 % over the same period, this resulted in a sharp rise in the market share held by Indian exporters from around 1,5 % in 2006 to around 5 % during the RIP. While Indian export prices to the Union increased considerably during the period considered as an effect of generally high market prices, they were still undercutting the prices of the Union industry.
- (82) Between 2006 and the RIP, and notwithstanding the existence of the anti-dumping and countervailing measures, a number of important indicators developed negatively: production and sales volumes decreased by 29 % and 39 % respectively, capacity utilisation went down by 28 % and was followed by a decrease in employment and productivity levels. Although a part of these negative developments may be explained by the strong decrease in consumption, which declined by almost 25 % over the period considered, the Union industry's strong decrease in market share (down by 15,9 percentage points between 2006 and the RIP) must also be interpreted in the light of the constant increase in market share of imports from India.
- (83) As for the relatively high level of profits during the RIP, this was mainly due to the continued high level of prices, for the reasons explained in recital 62. It is concluded that the Union industry's situation deteriorated overall during the period considered and that the Union industry was in a fragile situation at the end of the RIP, despite a relatively high level of profit at that stage, when its efforts to maintain sales volumes and a sufficient level of prices, in a situation of weakened demand, were hampered by the increased presence of the Indian dumped imports.

F. LIKELIHOOD OF CONTINUATION AND RECURRENCE OF INJURY

1. Preliminary remarks

- (84) As already seen, the imposition of anti-dumping measures has allowed the Union industry to recover only to some extent from the injury suffered. However, when the high levels of Union consumption experienced during most of the period considered disappeared during the RIP, the Union industry appeared in a fragile and vulnerable situation and still exposed to the injurious effect of the dumped imports from India. In particular, the ability of the Union industry to recover increased costs was weak at the end of the RIP.

2. Relationship between export volumes and prices to third countries and export volumes and prices to the Union

- (85) It was found that the average export price of Indian sales to non-EU countries was below the average export price to the Union and also below the prices on the domestic market. The Indian exporter's sales to non-EU countries were made in significant quantities, accounting for the majority of its total export sales. Therefore, it was considered that, should measures lapse, Indian exporters would have an incentive to shift significant quantities of exports from other third countries to the more attractive Union market, at price levels, which, even if they were higher than the prices to third countries, would likely still be below the current export price levels to the Union.

3. Unused capacity and stocks in the Indian market

- (86) The cooperating Indian producer had significant spare capacities and planned to increase its capacity in 2010/2011. Therefore, the capacity to significantly increase export quantities to the Union exists, in particular because there are no indications that third country markets or the domestic market could absorb any additional production.
- (87) In its comments to the disclosure, the cooperating Indian producer alleged that its spare capacity was mainly due to the economic crisis and the related decrease in demand. However, a significant part of the company's spare capacity can be explained by the fact that the company substantially increased its capacity between 2006 and the RIP. Furthermore, it should be noted that the company has planned additional increased capacity. Moreover, it should also be pointed out that there is another Indian producer which did not cooperate, that has similar capacity and utilisation and has also announced recently an even more substantial increase in capacity.

4. Conclusion

- (88) The producers in the country concerned have the potential to raise and/or redirect their export volumes to the Union market. Moreover, the prices of Indian exports to third countries are lower than those to the Union. The investigation showed that, on the basis of comparable product types, the cooperating exporting producer sold the product concerned at prices lower than those of the Union industry. These low prices would most likely decrease in line with the lower prices charged to the rest of the world. Such price behaviour, coupled with the ability of the exporters in the country concerned to deliver significant quantities of the product concerned to the Union market, would, in all likelihood, have a negative impact on the economic situation of the Union industry.

- (89) As shown above, the situation of the Union industry remains vulnerable and fragile. If the Union industry were to be exposed to increased volumes of imports from the country concerned at dumped prices, this would be likely to result in a deterioration of its sales, market share, sales prices, as well as a consequent deterioration of its financial situation to the levels found in the original investigation. On this basis, it is therefore concluded that the repeal of the measures would in all likelihood result in a worsening of the already fragile situation, and a recurrence of material injury to the Union industry.

G. UNION INTEREST

1. Introduction

- (90) In accordance with Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, of importers, and of users.
- (91) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (92) On this basis it was examined whether, despite the conclusions on the likelihood of a continuation or recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

2. Interest of the Union industry

- (93) The Union industry has proven to be a structurally viable industry. This was confirmed by the positive development of its economic situation observed after the imposition of the anti-dumping measures in 2004. In particular, the fact that the Union industry increased its profitability in the few years before the RIP contrasts sharply with the situation preceding the imposition of the measures. However, the Union industry has consistently lost market share while imports from the country considered have substantially increased in market share over the period considered. Without the existence of the measures, the Union industry would likely be in an even worse situation.

3. Interest of importers/users

- (94) None of the nine unrelated importers that were contacted came forward to cooperate.
- (95) Seventeen users came forward and submitted questionnaire replies. While most users have not sourced graphite electrodes from India for several years, and therefore remained neutral with respect to a possible continuation of the measures, six users have, at least to some extent, used Indian electrodes. Four users claimed that a continuation of measures would have a negative impact on competition. One association (Eurofer) strongly opposed a continuation of the measures and claimed that the measures resulted in Indian exporters largely withdrawing from the Union market. The association alleges that the continuation of measures would hamper steel producers in developing alternative sources of supply and would allow the Union industry to continue having a dominant, near duopoly position. However, it is clear from the development of the Indian imports after the imposition of the measures, that such a large withdrawal has not taken place; instead imports from India have increased significantly during the period considered. In addition, the investigation has shown that the graphite electrodes are increasingly entering the Union market from a number of other third countries. As for the strength of the position in the market of the Union industry, it is recalled that its market share has decreased by almost 16 percentage points over the period considered (see recital 55 above). Finally, this association also admitted that graphite electrodes represent only a relatively small component of the total costs of steel manufacturers.
- (96) It is further recalled that, in the original investigation, it was found that the impact of the imposition of measures would not be significant for the users⁽¹⁾. Despite the existence of measures for 5 years, importers/users in the Union continued to source their supply, inter alia, from India. No indications were brought forward either that there have been difficulties in finding other sources. Moreover, it is recalled that, as regards the effect of the imposition of measures on users, it was concluded in the original investigation that, given the negligible incidence of the cost of graphite electrodes on user industries, any cost increase was unlikely to have a significant effect on the user industry. No indications of the contrary were found after the imposition of measures. It is therefore concluded that the maintenance of the anti-dumping measures is not likely to have a serious effect on importers/users in the Union.

4. Conclusion

- (97) Given the above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

⁽¹⁾ See recital 106 of Commission Regulation (EC) No 1009/2004 (OJ L 183, 20.5.2004, p. 61) and recital 22 of Council Regulation (EC) No 1629/2004.

H. ANTI-DUMPING MEASURES

- (98) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.
- (99) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain graphite electrodes originating in India should be maintained. It is recalled that these measures consist of *ad valorem* duties.
- (100) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product concerned produced by these companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (101) Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm³ or more and an electrical resistance of 6,0 µΩ.m or less, currently falling within CN code ex 8545 11 00 (TARIC code 8545 11 00 10) and nipples used for such electrodes currently falling within CN code ex 8545 90 90 (TARIC code 8545 90 90 10) whether imported together or separately originating in India.

2. The rate of duty applicable to the net free-at-Union-frontier price, before duty, for the products described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Definitive Duty (%)	TARIC Additional Code
Graphite India Limited (GIL), 31 Chowringhee Road, Kolkatta – 700016, West Bengal	9,4	A530
HEG Limited, Bhilwara Towers, A-12, Sector-1, Noida – 201301, Uttar Pradesh	0	A531
All other companies	8,5	A999

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 December 2010.

For the Council
The President
K. PEETERS

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

COUNCIL IMPLEMENTING REGULATION (EU) No 1187/2010**of 13 December 2010****terminating the anti-dumping proceeding on imports of glyphosate originating in the People's Republic of China**

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(1) and Article 11(2), (5) and (6) thereof,

Having regard to the proposal submitted by the European Commission ('the Commission') after having consulted the Advisory Committee,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) Following a review investigation carried out pursuant to Article 11(2) of the basic Regulation, the Council, by Regulation (EC) No 1683/2004⁽²⁾, imposed a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China currently falling within CN codes ex 2931 00 99 and ex 3808 93 27 (the 'product concerned'). This duty had been extended to imports of glyphosate consigned from Malaysia (whether declared as originating in Malaysia or not) with the exception of those produced by Crop Protection (M) Sdn. Bhd. and to imports of glyphosate consigned from Taiwan (whether declared as originating in Taiwan or not) with the exception of those produced by Sinon Corporation. The rate of the anti-dumping duty is 29,9 %.
- (2) By Decision 2009/383/EC⁽³⁾, the Commission suspended the definitive anti-dumping duties for a period of 9 months, with effect from 16 May 2009. Subsequently, by Implementing Regulation (EU) No 126/2010⁽⁴⁾, the Council extended the suspension for a period of 1 year, with effect from 14 February 2010.

1.2. Request for review

- (3) Following the publication of a notice of impending expiry⁽⁵⁾ of the anti-dumping measures in force on imports of glyphosate originating in the People's Republic of China, the Commission has received on 29 June 2009 a request for review pursuant to Article 11(2) of the basic Regulation.

- (4) The request was lodged by the European Glyphosate Association ('the applicant') on behalf of producers representing the entire Union production of glyphosate.

- (5) The request contained prima facie evidence showing that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

1.3. Initiation

- (6) Accordingly, the Commission, after consultation of the Advisory Committee, initiated, by a notice published in the *Official Journal of the European Union*⁽⁶⁾, an anti-dumping proceeding concerning imports into the European Union of glyphosate currently falling within CN codes ex 2931 00 99 and ex 3808 93 27 and originating in the People's Republic of China.

- (7) The Commission officially advised the exporting producers, importers concerned, the representatives of the People's Republic of China, the representative users and the Union producers of the initiation of the review investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

2. WITHDRAWAL OF THE REQUEST

- (8) By a letter dated 21 September 2010 to the Commission, the applicant formally withdrew its request.
- (9) In accordance with Article 9(1) and Article 11(2) of the basic Regulation, a proceeding may be terminated where the request for review is withdrawn unless such a termination would not be in the Union interest.
- (10) It was considered that the present proceeding should be terminated since the investigation had not brought to light any considerations showing that such termination would not be in the Union interest. Interested parties were informed accordingly and were given the opportunity to comment. However, no comments were received which could alter this consideration.
- (11) It was therefore concluded that the anti-dumping expiry review proceeding concerning imports into the Union of glyphosate originating in the People's Republic of China should be terminated and the existing measures should be repealed,

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 303, 30.9.2004, p. 1.

⁽³⁾ OJ L 120, 15.5.2009, p. 20.

⁽⁴⁾ OJ L 40, 13.2.2010, p. 1.

⁽⁵⁾ OJ C 115, 20.5.2009, p. 19.

⁽⁶⁾ OJ C 234, 29.9.2009, p. 9.

HAS ADOPTED THIS REGULATION:

China, are hereby repealed and the proceeding concerning these imports is terminated.

Article 1

Article 2

The anti-dumping measures concerning imports of glyphosate currently falling within CN codes ex 2931 00 99 and ex 3808 93 27 and originating in the People's Republic of

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 December 2010.

For the Council

The President

K. PEETERS

COMMISSION REGULATION (EU) No 1188/2010**of 15 December 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 16 December 2010.

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

Done at Brussels, 15 December 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	AL	64,0
	EG	88,4
	MA	57,2
	TR	121,5
	ZZ	82,8
0707 00 05	EG	140,2
	TR	73,5
	ZZ	106,9
0709 90 70	MA	81,9
	TR	116,1
	ZZ	99,0
0805 10 20	AR	43,0
	BR	46,6
	CL	87,1
	MA	61,2
	PE	58,9
	SZ	46,6
	TR	53,7
	UY	48,0
	ZA	44,2
0805 20 10	MA	63,0
	TR	57,6
	ZZ	60,3
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	72,6
	TR	77,6
	ZZ	75,1
0805 50 10	AR	49,2
	TR	58,3
	ZZ	53,8
0808 10 80	AR	74,9
	AU	205,3
	CA	87,8
	CL	84,2
	CN	82,0
	MK	29,3
	NZ	73,7
	US	94,3
	ZA	124,7
0808 20 50	ZZ	95,1
	CN	78,1
	US	112,9
	ZA	141,4
	ZZ	110,8

⁽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 1189/2010**of 15 December 2010****fixing the import duties in the cereals sector applicable from 16 December 2010**

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 (EU) No 642/2010 of 20 July 2010 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

(1) Article 136(1) of Regulation (EC) No 1234/2007 states that the import duty on products falling within CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002, ex 1005 other than hybrid seed, and ex 1007 other than hybrids for sowing, is to be equal to the intervention price valid for such products on importation increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

(2) Article 136(2) of Regulation (EC) No 1234/2007 lays down that, for the purposes of calculating the import duty referred to in paragraph 1 of that Article, representative cif import prices are to be established on a regular basis for the products in question.

(3) Under Article 2(2) of Regulation (EU) No 642/2010, the price to be used for the calculation of the import duty on products of CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002 00, 1005 10 90, 1005 90 00 and 1007 00 90 is the daily cif representative import price determined as specified in Article 5 of that Regulation.

(4) Import duties should be fixed for the period from 16 December 2010 and should apply until new import duties are fixed and enter into force,

HAS ADOPTED THIS REGULATION:

Article 1

From 16 December 2010, the import duties in the cereals sector referred to in Article 136(1) of Regulation (EC) No 1234/2007 shall be those fixed in Annex I to this Regulation on the basis of the information contained in Annex II.

Article 2

This Regulation shall enter into force on 16 December 2010.

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

Done at Brussels, 15 December 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 187, 21.7.2010, p. 5.

ANNEX I

Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 16 December 2010

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	0,00
1005 10 90	Maize seed other than hybrid	0,00
1005 90 00	Maize, other than seed ⁽²⁾	0,00
1007 00 90	Grain sorghum other than hybrids for sowing	0,00

⁽¹⁾ For goods arriving in the Union via the Atlantic Ocean or via the Suez Canal the importer may benefit, under Article 2(4) of Regulation (EU) No 642/2010, from a reduction in the duty of:

- 3 EUR/t, where the port of unloading is on the Mediterranean Sea, or on the Black Sea,
- 2 EUR/t, where the port of unloading is in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom or the Atlantic coast of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 3 of Regulation (EU) No 642/2010 are met.

ANNEX II

Factors for calculating the duties laid down in Annex I

1.12.2010-14.12.2010

1. Averages over the reference period referred to in Article 2(2) of Regulation (EU) No 642/2010:

(EUR/t)

	Common wheat ⁽¹⁾	Maize	Durum wheat, high quality	Durum wheat, medium quality ⁽²⁾	Durum wheat, low quality ⁽³⁾	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	248,84	170,04	—	—	—	—
Fob price USA	—	—	227,25	217,25	197,27	122,28
Gulf of Mexico premium	—	14,47	—	—	—	—
Great Lakes premium	24,33	—	—	—	—	—

⁽¹⁾ Premium of 14 EUR/t incorporated (Article 5(3) of Regulation (EU) No 642/2010).⁽²⁾ Discount of 10 EUR/t (Article 5(3) of Regulation (EU) No 642/2010).⁽³⁾ Discount of 30 EUR/t (Article 5(3) of Regulation (EU) No 642/2010).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EU) No 642/2010:

Freight costs: Gulf of Mexico–Rotterdam: 19,66 EUR/t

Freight costs: Great Lakes–Rotterdam: 48,62 EUR/t

DECISIONS

COMMISSION DECISION

of 15 December 2010

amending Decision 2004/211/EC as regards the entries for Brazil, Kuwait and Syria in the list of third countries and parts thereof from which the introduction into the European Union of live equidae and semen, ova and embryos of the equine species are authorised

(notified under document C(2010) 8950)

(Text with EEA relevance)

(2010/776/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 90/426/EEC of 26 June 1990 on animal health conditions governing the movement and import from third countries of equidae⁽¹⁾, and in particular Article 12(1) and (4), the introductory phrase of Article 19, and Article 19(i) and (ii) thereof,

Having regard to Council Directive 92/65/EEC of 13 July 1992, laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(I) to Directive 90/425/EEC⁽²⁾, and in particular Article 17(3)(a) thereof,

Whereas:

- (1) Directive 90/426/EEC lays down animal health conditions for the importation into the Union of live equidae. It provides that imports of equidae into the Union are only authorised from third countries or parts of the territory thereof in which glanders is a notifiable disease and which have been free from glanders for a period of at least 6 months.
- (2) Commission Decision 2004/211/EC of 6 January 2004 establishing the list of third countries and parts of territory thereof from which Member States authorise imports of live equidae and semen, ova and embryos of the equine species, and amending Decisions 93/195/EEC and 94/63/EC⁽³⁾ establishes a list of third countries, or parts thereof where regionalisation applies, from which Member States authorise the importation of equidae and semen, ova and embryos thereof, and indicates the other conditions applicable to such imports. That list is set out in Annex I to that Decision. Brazil, Kuwait and Syria are currently listed in that Annex.

- (3) In April 2010, Brazil notified the World Organisation for Animal Health (OIE) of the confirmation of a case of glanders (*Burkholderia mallei*) in a horse in Distrito Federal. Therefore, Decision 2004/211/EC was amended by Commission Decision 2010/333/EU⁽⁴⁾ in order to indicate that the introduction into the Union of equidae and of semen, ova and embryos of animals of the equine species are no longer authorised from Distrito Federal in Brazil.

- (4) On 1 November, 2010 Brazil informed the OIE that this single case of glanders in Distrito Federal has been resolved. In particular, the authorities informed that no new outbreaks have been reported for at least 6 months, that restrictions on the movement of equidae from infected into free areas are in place and that surveillance carried out on about 5 000 equidae has not identified further cases.

- (5) It is therefore appropriate to reinsert Distrito Federal in the list of approved areas for imports into the Union of equidae and semen, ova and embryos of animals of the equine species, set out in Annex I to Decision 2004/211/EC.

- (6) In October 2010, the OIE informed about the occurrence of glanders in Kuwait.

- (7) Syria has declared to the OIE that its glanders status is unknown since glanders is no longer a notifiable disease in that country. Horses from Syria were identified as the origin of glanders in countries of that region and a recent OIE inspection mission has not ruled out the presence of this disease in Syria.

- (8) The introduction into the Union of any equidae and of semen, ova and embryos of animals of the equine species should therefore no longer be authorised from Kuwait and Syria. Therefore, those third countries should be deleted from Annex I to Decision 2004/211/EC.

⁽¹⁾ OJ L 224, 18.8.1990, p. 42.

⁽²⁾ OJ L 268, 14.9.1992, p. 54.

⁽³⁾ OJ L 73, 11.3.2004, p. 1.

⁽⁴⁾ OJ L 150, 16.6.2010, p. 53.

- (9) Decision 2004/211/EC should therefore be amended accordingly.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee of the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Decision 2004/211/EC is amended as follows:

1. The entry for Brazil is replaced by the following:

'BR	Brazil	BR-0	Whole country		—	—	—	—	—	—	—	—	—	—
		BR-1	The States of: Rio Grande do Sul, Santa Catarina, Paraná, São Paulo, Mato Grosso do Sul, Goiás, Minas Gerais, Rio de Janeiro, Espírito Santo, Rondônia, Mato Grosso, and Distrito Federal.	D	X	X	X	X	X	X	X	X	X	X

2. The entry for Kuwait is replaced by the following:

'KW	Kuwait	KW-0	Whole country	E	—	—	—	—	—	—	—	—	—	—
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3. The entry for Syria is replaced by the following:

'SY	Syria	SY-0	Whole country	E	—	—	—	—	—	—	—	—	—	—
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Article 2

This Decision is addressed to the Member States.

Done at Brussels, 15 December 2010.

For the Commission

John DALLI

Member of the Commission

COMMISSION DECISION

of 15 December 2010

amending Council Directive 2008/90/EC to extend the derogation relating to import conditions for fruit plant propagating material and fruit plants intended for fruit production from third countries

(notified under document C(2010) 8992)

(2010/777/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production ⁽¹⁾, and in particular the second subparagraph of Article 12(2) thereof,

Whereas:

- (1) The Commission is required pursuant to Article 12(1) of Directive 2008/90/EC to decide whether fruit plant propagating material and fruit plants produced in a third country and affording the same guarantees as regards obligations on the supplier, identity, characteristics, plant health, growing medium, packaging, inspection arrangements, marking and sealing are equivalent in all these respects to fruit plant propagating material and fruit plants produced in Union and complying with the requirements and conditions of that Directive.
- (2) However, the information presently available on the conditions applying in third countries is still not sufficient to enable the Commission to adopt any such decision in respect of any third country at this stage.
- (3) In order to prevent trade patterns from being disrupted, Member States importing fruit plant propagating material and fruit plants from third countries should continue to be allowed to apply conditions equivalent to those applicable to similar Union products in accordance with Article 12(2) of Directive 2008/90/EC.

- (4) It is appropriate to allow the application of such conditions for a period that is consistent with the transitional period referred to in Article 21 of Directive 2008/90/EC.
- (5) The period of application of the derogation provided for in Directive 2008/90/EC for such imports should consequently be extended until 31 December 2018.
- (6) Directive 2008/90/EC should therefore be amended accordingly.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Propagating Material and Plants of Fruit Genera and Species,

HAS ADOPTED THIS DECISION:

Article 1

In the first subparagraph of Article 12(2) of Directive 2008/90/EC, the date '31 December 2010' is replaced by '31 December 2018'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 15 December 2010.

For the Commission

John DALLI

Member of the Commission

⁽¹⁾ OJ L 267, 8.10.2008, p. 8.

COMMISSION DECISION

of 15 December 2010

amending Decision 2006/944/EC determining the respective emission levels allocated to the Community and each of its Member States under the Kyoto Protocol pursuant to Council Decision 2002/358/EC

(notified under document C(2010) 9009)

(2010/778/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder⁽¹⁾, and in particular Article 3 thereof,

Whereas:

- (1) Commission Decision 2006/944/EC⁽²⁾ determines emission levels for the Union and its Member States for the 5-year period of the first commitment period under the Kyoto Protocol.
- (2) The emission levels set out in Decision 2006/944/EC were based on provisional data, as the definitive base-year emission figures were not established by 31 December 2006.
- (3) Following the completion of the reviews conducted pursuant to Article 8 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, the final respective emission levels allocated to the Union and to each Member State should now be established pursuant to the methodology set out in Decision 2006/944/EC.
- (4) Denmark has consistently expressed concerns regarding its base-year emissions as a result of the exceptionally low base-year emissions provided in its report submitted pursuant to Article 23 of Commission Decision 2005/166/EC⁽³⁾. In order to fully account for Denmark's special and unique situation, which was recognised by the Council in 2002 in the process leading to the adoption of Decision 2002/358/EC, resulting from its unusually low base-year emissions and its having one of the highest quantified emission reduction obligations pursuant to Annex II to that Decision, the Union should transfer five million assigned amount units to Denmark for the sole purpose of compliance with the commitments in the first commitment period under the Kyoto Protocol to the United Nations Framework Convention on Climate

Change. The Commission has taken due consideration of Denmark's commitment to cancel any allowances remaining from this transfer at the end of the first commitment period.

- (5) Decision 2006/944/EC should therefore be amended accordingly.
- (6) The measures provided for in this Decision are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2006/944/EC is amended as follows:

1. Article 2 is replaced by the following:

'Article 2

The difference of 19 357 532 tonnes of carbon dioxide equivalent between the emission levels of the Union and the sum of the emission levels of the Member States listed in Annex II to Decision 2002/358/EC shall be issued as assigned amount units by the Union.'

2. The Annex is replaced by the Annex to this Decision.

Article 2

The Central Administrator of the Union registry shall transfer five million (5 000 000) of these assigned amount units to the Party to the Kyoto Protocol holding account in the registry of Denmark.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 15 December 2010.

For the Commission
Connie HEDEGAARD
Member of the Commission

⁽¹⁾ OJ L 130, 15.5.2002, p. 1.

⁽²⁾ OJ L 358, 16.12.2006, p. 87.

⁽³⁾ OJ L 55, 1.3.2005, p. 57.

ANNEX

Respective emission levels allocated to the Union and Member States in terms of tonnes of carbon dioxide equivalent for the first quantified emission limitation and reduction commitment period under the Kyoto Protocol

European Union (*)	19 621 381 509
Belgium	673 995 528
Denmark	273 827 177
Germany	4 868 096 694
Ireland	314 184 272
Greece	668 669 806
Spain	1 666 195 929
France	2 819 626 640
Italy	2 416 277 898
Luxembourg	47 402 996
Netherlands	1 001 262 141
Austria	343 866 009
Portugal	381 937 527
Finland	355 017 545
Sweden	375 188 561
United Kingdom	3 396 475 254
Bulgaria	610 045 827
Czech Republic	893 541 801
Estonia	196 062 637
Cyprus	Not applicable
Latvia	119 182 130
Lithuania	227 306 177
Hungary	542 366 600
Malta	Not applicable
Poland	2 648 181 038
Romania	1 279 835 099
Slovenia	93 628 593
Slovakia	331 433 516

(*) For the purpose of the joint fulfilment of the commitments pursuant to Article 3(1) of the Kyoto Protocol in accordance with the provisions of Article 4 thereof, pursuant to Decision 2002/358/EC and applying to the Member States listed in Annex II to that Decision.

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 159/10/COL

of 21 April 2010

concerning additional guarantees for Norway relating to infectious bovine rhinotracheitis

THE EFTA SURVEILLANCE AUTHORITY,

Whereas:

Having regard to the Agreement on the European Economic Area, in particular Article 17 and Protocol 1 to the Agreement, in particular Article (4)(d) thereof,

- (1) By Decision No 74/94/COL, Norway was granted additional guarantees relating to infectious bovine rhinotracheitis for bovines.

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 5(2)(d) and Protocol 1 to the Agreement, in particular Article 1(c) thereof,

- (2) Since the adoption of Decision No 74/94/COL, the European Union's legislation on additional guarantees for infectious bovine rhinotracheitis has been amended to ensure consistency with the international rules on this disease and better control within the Union.

Having regard to the Act referred to at point 4.1.1 of Chapter I of Annex I to the EEA Agreement, Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine ⁽¹⁾, as amended, and adapted to the EEA Agreement by Protocol 1 thereto, in particular Article 10(1) thereof,

- (3) By Decision of the EEA Joint Committee No 48/2005 ⁽⁵⁾, Decision 2004/558/EC, as amended, was incorporated into the EEA Agreement as point 4.2.80 of Chapter I of Annex I to that Agreement.

Having regard to the Act referred to at point 4.2.80 of Chapter I of Annex I to the EEA Agreement, Commission Decision 2004/558/EC of 15 July 2004 implementing Council Directive 64/432/EEC as regards additional guarantees for intra-Community trade in bovine animals relating to infectious bovine rhinotracheitis and the approval of the eradication programmes presented by certain Member States ⁽²⁾, as amended,

- (4) The Norwegian Government considers that its territory is free from infectious bovine rhinotracheitis' disease in accordance with Article 10(1) of Directive 64/432/EEC. Norway has submitted supporting documentation to the EFTA Surveillance Authority substantiating that monitoring of the situation is continued and, hence, that adequate surveillance is in place to make sure that the Norwegian territory is free from infectious bovine rhinotracheitis.

Having regard to the EFTA Surveillance Authority Decision No 74/94/COL of 27 June 1994 concerning additional guarantees relating to infectious bovine rhinotracheitis for bovines destined for Norway ⁽³⁾ amending the EFTA Surveillance Authority Decision No 31/94/COL ⁽⁴⁾, granting Norway certain additional guarantees to protect its disease free status of infectious bovine rhinotracheitis (IBR),

- (5) Norway has requested the EFTA Surveillance Authority to update Decision No 74/94/COL in order to take account of the new legislative changes in the field of additional guarantees for intra-Union trade in bovines relating to infectious bovine rhinotracheitis' disease.

⁽¹⁾ OJ L 121, 29.7.1964, p. 1977/64.

⁽²⁾ OJ L 249, 23.7.2004, p. 20 and EEA Supplement No 22, 24.4.2008, p. 170.

⁽³⁾ OJ L 247, 22.9.1994, p. 50.

⁽⁴⁾ OJ L 138, 2.6.1994, p. 43.

⁽⁵⁾ OJ L 239, 15.9.2005, p. 15.

(6) It is therefore appropriate, for the sake of clarity and legal consistency, to repeal Decision No 74/94/COL in accordance with the latest legislative changes in the field of additional guarantees for intra-Union trade in bovines relating to infectious bovine rhinotracheitis' disease.

(7) The new Decision will maintain the same guarantees previously granted to Norway as well as it will align them with the new criteria set out in relevant EEA legislation, in particular Decision 2004/558/EC, as amended.

(8) The measures provided for in this Decision are in accordance with the opinion of the EFTA Veterinary Committee assisting the EFTA Surveillance Authority,

HAS ADOPTED THIS DECISION:

Article 1

All regions in Norway are free of the infectious bovine rhinotracheitis' disease.

Article 2

Norway is granted the additional guarantees relating to infectious bovine rhinotracheitis' disease laid down in Decision 2004/558/EC, as amended, when trading bovines within the European Economic Area.

Article 3

Norway has the same status as those EU Member States listed in Annex II to Decision 2004/558/EC, as amended.

Article 4

Decision No 74/94/COL is hereby repealed.

Article 5

This Decision shall enter into force on 21 April 2010.

Article 6

This Decision is addressed to the Kingdom of Norway.

Article 7

Only the English text is authentic.

Done at Brussels, 21 April 2010.

For the EFTA Surveillance Authority

Per SANDERUD
President

Sverrir Haukur GUNNLAUGSSON
College Member

EFTA SURVEILLANCE AUTHORITY DECISION

No 160/10/COL

of 21 April 2010

concerning additional guarantees for Norway relating to Aujeszky's disease

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area, in particular Article 17 and Protocol 1 to the Agreement, in particular Article (4)(d) thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 5 (2)(d) and Protocol 1 to the Agreement, in particular Article 1(c) thereof,

Having regard to the Act referred to in point 4.1.1 of Chapter I in Annex I to the Agreement on European Economic Area concerning animal health problems affecting intra-Community trade in bovine animals and swine, Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine⁽¹⁾, as amended, and adapted to the EEA Agreement by Protocol 1 thereto, in particular Articles 8 and 10(1) thereof,

Having regard to the Act referred to at point 4.2.84 of Chapter I of Annex I to the EEA Agreement, Commission Decision 2008/185/EC of 21 February 2008 in intra-Community trade of pigs relating to Aujeszky's disease and criteria to provide information on this disease⁽²⁾, as amended,

Having regard to the EFTA Surveillance Authority Decision No 226/96/COL of 4 December 1996 replacing Decision No 31/94/COL concerning additional guarantees relating to Aujeszky's disease for pigs destined to EFTA States or regions free of the disease, as amended by Decision No 75/94/COL, in so far as these Decisions concern Norway⁽³⁾,

Whereas:

- (1) By Decision No 226/96/COL Norway was granted additional guarantees relating to Aujeszky's disease.
- (2) Since the adoption of Decision No 226/96/COL the European Union's legislation on additional guarantees for Aujeszky's disease has been amended to ensure consistency with the international rules on this disease and better control over it within the Union.
- (3) By Decision of the EEA Joint Committee No 55/2009⁽⁴⁾, Decision 2008/185/EC, as amended, was incorporated

into the EEA Agreement as point 4.2.84 of Chapter I of Annex I to that Agreement.

- (4) The Norwegian Government considers that its territory is free from Aujeszky's disease in accordance with Article 10(1) of Directive 64/432/EEC. Norway has submitted supporting documentation to the EFTA Surveillance Authority, in particular, substantiating that monitoring of the situation is continued and, hence, that adequate surveillance is in place to make sure that the Norwegian territory is free from Aujeszky's disease.
- (5) Norway has requested the EFTA Surveillance Authority to update Decision No 226/96/COL in order to take account of the new legislative changes in the field of additional guarantees for intra-Union trade in pigs relating to Aujeszky's disease.
- (6) It is therefore appropriate to repeal Decision No 226/96/COL in accordance to the latest legislative changes in the field of additional guarantees for intra-Union trade in pigs relating to Aujeszky's disease.
- (7) The new Decision will maintain the same guarantees previously granted to Norway as well as aligning them with the new criteria set out in relevant EEA legislation, in particular Decision 2008/185/EC, as amended.
- (8) The measures provided for in this Decision are in accordance with the opinion of the EFTA Veterinary Committee assisting the EFTA Surveillance Authority,

HAS ADOPTED THIS DECISION:

Article 1

All regions in Norway are free of the Aujeszky's disease and vaccination is prohibited.

Article 2

Norway is granted the additional guarantees relating to Aujeszky's disease laid down in Decision 2008/185/EC, as amended, when trading pigs within the European Economic Area (EEA).

⁽¹⁾ OJ L 21, 29.7.1964, p. 1977/64.

⁽²⁾ OJ L 59, 4.3.2008, p. 19.

⁽³⁾ OJ L 78, 20.3.1997, p. 46.

⁽⁴⁾ OJ L 232, 3.9.2009, p. 1.

Article 3

Norway has the same status as those EU Member States listed in Annex I to Decision 2008/185/EC.

Article 4

The institution referred to in paragraph 1 of Annex III to Decision 2008/185/EC is the Veterinærinstituttet, Oslo, Norway.

Article 5

Decision No 226/96/COL is hereby repealed.

Article 6

This Decision shall enter into force on 21 April 2010.

Article 7

This Decision is addressed to Norway.

Article 8

Only the English version is authentic.

Done at Brussels, 21 April 2010.

For the EFTA Surveillance Authority

Per SANDERUD
President

Sverrir Haukur GUNNLAUGSSON
College Member

DECISION OF THE EEA JOINT COMMITTEE

No 97/2010

of 1 October 2010

amending Annex I (Veterinary and phytosanitary matters) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex I to the Agreement was amended by Decision of the EEA Joint Committee No 43/2010 of 30 April 2010 ⁽¹⁾.
- (2) Commission Directive 2009/97/EC of 3 August 2009 amending Directives 2003/90/EC and 2003/91/EC setting out implementing measures for the purposes of Article 7 of Council Directives 2002/53/EC and 2002/55/EC respectively, as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species and vegetable species ⁽²⁾ is to be incorporated into the Agreement.
- (3) Commission Directive 2009/145/EC of 26 November 2009 providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties ⁽³⁾ is to be incorporated into the Agreement.
- (4) This Decision is not to apply to Liechtenstein,

HAS DECIDED AS FOLLOWS:

Article 1

Chapter III of Annex I to the Agreement shall be amended as follows:

1. the following indent shall be added in points 14 (Commission Directive 2003/90/EC), and 15 (Commission Directive 2003/91/EC) in Part 1:

— **32009 L 0097:** Commission Directive 2009/97/EC of 3 August 2009 (OJ L 202, 4.8.2009, p. 29).;

2. the following point shall be inserted after point 54 (Commission Decision 2009/109/EC) in Part 2:

'55. **32009 L 0145:** Commission Directive 2009/145/EC of 26 November 2009 providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties (OJ L 312, 27.11.2009, p. 44).'

Article 2

The texts of Directives 2009/97/EC and 2009/145/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 181, 15.7.2010, p. 11.

⁽²⁾ OJ L 202, 4.8.2009, p. 29.

⁽³⁾ OJ L 312, 27.11.2009, p. 44.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 98/2010

of 1 October 2010

amending Annex I (Veterinary and phytosanitary matters) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex I to the Agreement was amended by Decision of the EEA Joint Committee No 43/2010 of 30 April 2010 ⁽¹⁾.
- (2) Commission Regulation (EC) No 637/2009 of 22 July 2009 establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species (Codified version) ⁽²⁾ is to be incorporated into the Agreement.
- (3) Regulation (EC) No 637/2009 repeals Commission Regulation (EC) No 930/2000 ⁽³⁾ which is incorporated into the Agreement and is therefore to be repealed under the Agreement.
- (4) This Decision is not to apply to Liechtenstein,

HAS DECIDED AS FOLLOWS:

Article 1

The text of point 18 (Commission Regulation (EC) No 930/2000) of Part 2 of Chapter III of Annex I to the Agreement shall be replaced by the following:

'32009 R 0637: Commission Regulation (EC) No 637/2009 of 22 July 2009 establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species (Codified version) (OJ L 191, 23.7.2009, p. 10).

The provisions of the Regulation shall, for the purposes of the present Agreement, be read with the following adaptation:

References to other acts in the Regulation shall be considered relevant to the extent and in the form that those acts are incorporated into the Agreement.'

Article 2

The text of Regulation (EC) No 637/2009 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 181, 15.7.2010, p. 11.

⁽²⁾ OJ L 191, 23.7.2009, p. 10.

⁽³⁾ OJ L 108, 5.5.2000, p. 3.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 99/2010

of 1 October 2010

amending Annex I (Veterinary and phytosanitary matters) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

(1) Annex I to the Agreement was amended by Decision of the EEA Joint Committee No 43/2010 of 30 April 2010 ⁽¹⁾.

(2) Commission Decision 2010/198/EU of 6 April 2010 releasing Latvia from certain obligations to apply Council Directives 66/402/EEC and 2002/57/EC in respect of *Avena strigosa* Schreb., *Brassica nigra* (L.) Koch and *Helianthus annuus* L. ⁽²⁾ is to be incorporated into the Agreement.

(3) This Decision is not to apply to Liechtenstein,

HAS DECIDED AS FOLLOWS:

Article 1

The following point shall be inserted after point 79 (Commission Decision 2009/786/EC) under the heading 'ACTS OF WHICH THE EFTA STATES AND THE EFTA SURVEILLANCE AUTHORITY SHALL TAKE DUE ACCOUNT' in Chapter III of Annex I to the Agreement:

'80. **32010 D 0198:** Commission Decision 2010/198/EU of 6 April 2010 releasing Latvia from certain obligations to apply Council Directives 66/402/EEC and 2002/57/EC in respect of *Avena strigosa* Schreb., *Brassica nigra* (L.) Koch and *Helianthus annuus* L. (OJ L 87, 7.4.2010, p. 34).'

Article 2

The text of Decision 2010/198/EU in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 181, 15.7.2010, p. 11.

⁽²⁾ OJ L 87, 7.4.2010, p. 34.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 100/2010

of 1 October 2010

amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement

THE EEA JOINT COMMITTEE,

‘, as amended by:

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as ‘the Agreement’, and in particular Article 98 thereof,

— **32010 R 0178**: Commission Regulation (EU) No 178/2010 of 2 March 2010 (OJ L 52, 3.3.2010, p. 32).’.

Article 2

Whereas:

The text of Regulation (EU) No 178/2010 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

(1) Annex II to the Agreement was amended by Decision of the EEA Joint Committee No 83/2010 of 2 July 2010 ⁽¹⁾.

This Decision shall enter into force on 1 November 2010, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

(2) Commission Regulation (EU) No 178/2010 of 2 March 2010 amending Regulation (EC) No 401/2006 as regards groundnuts (peanuts), other oilseeds, tree nuts, apricot kernels, liquorice and vegetable oil ⁽²⁾ is to be incorporated into the Agreement.

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

(3) This Decision is not to apply to Liechtenstein,

HAS DECIDED AS FOLLOWS:

Done at Brussels, 1 October 2010.

Article 1

The following shall be added in point 54zzzl (Commission Regulation (EC) No 401/2006) of Chapter XII of Annex II to the Agreement:

*For the EEA Joint Committee**The President*

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 37.

⁽²⁾ OJ L 52, 3.3.2010, p. 32.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 101/2010

of 1 October 2010

amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex II to the Agreement was amended by Decision of the EEA Joint Committee No 84/2010 of 2 July 2010 ⁽¹⁾.
- (2) Commission Directive 2009/159/EU of 16 December 2009 amending, for the purpose of adaptation to technical progress, Annex III to Council Directive 76/768/EEC concerning cosmetic products ⁽²⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following indent shall be added in point 1 (Council Directive 76/768/EEC) of Chapter XVI of Annex II to the Agreement:

‘— **32009 L 0159:** Commission Directive 2009/159/EU of 16 December 2009 (OJ L 336, 18.12.2009, p. 29).’

Article 2

The text of Directive 2009/159/EU in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

*For the EEA Joint Committee**The President*

Stefán Haukur JÓHANNESSEN

⁽¹⁾ OJ L 277, 21.10.2010, p. 38.

⁽²⁾ OJ L 336, 18.12.2009, p. 29.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 102/2010

of 1 October 2010

amending Annex X (Services in general) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex X to the Agreement was amended by Decision of the EEA Joint Committee No 86/2010 of 2 July 2010 ⁽¹⁾.
- (2) Commission Decision 2009/767/EC of 16 October 2009 setting out measures facilitating the use of procedures by electronic means through the 'points of single contact' under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market ⁽²⁾, as corrected by OJ L 299, 14.11.2009, p. 18, is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following point shall be inserted after point 1a (Commission Decision 2009/739/EC) of Annex X to the Agreement:

- '1b. **32009 D 0767**: Commission Decision 2009/767/EC of 16 October 2009 setting out measures facilitating the

use of procedures by electronic means through the "points of single contact" under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (OJ L 274, 20.10.2009, p. 36), as corrected by OJ L 299, 14.11.2009, p. 18.'

Article 2

The text of Decision 2009/767/EC, as corrected by OJ L 299, 14.11.2009, p. 18, in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 40.

⁽²⁾ OJ L 274, 20.10.2009, p. 36.

(*) Constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 103/2010

of 1 October 2010

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 90/2010 of 2 July 2010 ⁽¹⁾.
- (2) Directive 2009/40/EC of the European Parliament and of the Council of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers ⁽²⁾ is to be incorporated into the Agreement.
- (3) Directive 2009/40/EC repeals Council Directive 96/96/EC ⁽³⁾, which is incorporated into the Agreement and which is consequently to be repealed under the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The text of point 16a (Council Directive 96/96/EC) of Annex XIII to the Agreement shall be replaced by the following:

'32009 L 0040: Directive 2009/40/EC of the European Parliament and of the Council of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers (OJ L 141, 6.6.2009, p. 12).'

Article 2

The text of Directive 2009/40/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 43.

⁽²⁾ OJ L 141, 6.6.2009, p. 12.

⁽³⁾ OJ L 46, 17.2.1997, p. 1.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE
No 104/2010
of 1 October 2010
amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 90/2010 of 2 July 2010 ⁽¹⁾.
- (2) Commission Decision 2009/810/EC of 22 September 2008 drawing up the standard reporting form referred to in Article 17 of Regulation (EC) No 561/2006 of the European Parliament and of the Council ⁽²⁾ is to be incorporated into the Agreement.
- (3) Decision 2009/810/EC repeals Commission Decision 93/173/EEC ⁽³⁾, which is incorporated into the Agreement and which is consequently to be repealed under the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

Annex XIII to the Agreement shall be amended as follows:

1. the following point shall be inserted after point 24e (Regulation (EC) No 561/2006 of the European Parliament and of the Council):

'24ea. **32009 D 0810:** Commission Decision 2009/810/EC of 22 September 2008 drawing up the standard reporting form referred to in Article 17 of Regulation (EC) No 561/2006 of the European Parliament and of the Council (OJ L 289, 5.11.2009, p. 9).';

2. the text of point 20a (Commission Decision 93/173/EEC) shall be deleted.

Article 2

The text of Decision 2009/810/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

For the EEA Joint Committee
The President
Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 43.

⁽²⁾ OJ L 289, 5.11.2009, p. 9.

⁽³⁾ OJ L 72, 25.3.1993, p. 33.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 105/2010

of 1 October 2010

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 90/2010 of 2 July 2010 ⁽¹⁾.
- (2) Commission Regulation (EU) No 164/2010 of 25 January 2010 on the technical specifications for electronic ship reporting in inland navigation referred to in Article 5 of Directive 2005/44/EC of the European Parliament and of the Council on harmonised river information services (RIS) on inland waterways in the Community ⁽²⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following point shall be inserted after point 49ac (Commission Regulation (EC) No 416/2007) of Annex XIII to the Agreement:

'49ad. **32010 R 0164**: Commission Regulation (EU) No 164/2010 of 25 January 2010 on the technical

specifications for electronic ship reporting in inland navigation referred to in Article 5 of Directive 2005/44/EC of the European Parliament and of the Council on harmonised river information services (RIS) on inland waterways in the Community (OJ L 57, 6.3.2010, p. 1).'

Article 2

The text of Regulation (EU) No 164/2010 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 43.

⁽²⁾ OJ L 57, 6.3.2010, p. 1.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE
No 106/2010
of 1 October 2010
amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

‘— **32009 R 1163**: Regulation (EC) No 1163/2009 of 30 November 2009 (OJ L 314, 1.12.2009, p. 13).’

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as ‘the Agreement’, and in particular Article 98 thereof,

2. The following point shall be inserted after point 55b (Council Directive 94/57/EC):

Whereas:

‘55ba. **32009 D 0491**: Commission Decision 2009/491/EC of 16 June 2009 on criteria to be followed in order to decide when the performance of an organisation acting on behalf of a flag State can be considered an unacceptable threat to safety and the environment (OJ L 162, 25.6.2009, p. 6).’

(1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 90/2010 of 2 July 2010 ⁽¹⁾.

Article 2

(2) Commission Regulation (EC) No 1163/2009 of 30 November 2009 amending Regulation (EC) No 417/2002 of the European Parliament and of the Council on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers ⁽²⁾ is to be incorporated into the Agreement.

The texts of Regulation (EC) No 1163/2009 and Decision 2009/491/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

(3) Commission Decision 2009/491/EC of 16 June 2009 on criteria to be followed in order to decide when the performance of an organisation acting on behalf of a flag State can be considered an unacceptable threat to safety and the environment ⁽³⁾ is to be incorporated into the Agreement,

This Decision shall enter into force on 1 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

HAS DECIDED AS FOLLOWS:

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Article 1

Annex XIII to the Agreement shall be amended as follows:

Done at Brussels, 1 October 2010.

1. The following indent shall be added in point 56m (Regulation (EC) No 417/2002 of the European Parliament and of the Council):

For the EEA Joint Committee
The President
Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 43.

⁽²⁾ OJ L 314, 1.12.2009, p. 13.

⁽³⁾ OJ L 162, 25.6.2009, p. 6.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 107/2010

of 1 October 2010

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

security and to adopt alternative security measures
(OJ L 338, 19.12.2009, p. 17).

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptation:

Whereas:

This Regulation shall apply as from the date on which the last of the Decisions of the EEA Joint Committee incorporating into the Agreement the measures necessary for the applicability of Regulation (EC) No 300/2008 enters into force.'

(1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 90/2010 of 2 July 2010 ⁽¹⁾.

(2) Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 ⁽²⁾ was incorporated into the Agreement by Decision of the EEA Joint Committee No 69/2009 of 29 May 2009 ⁽³⁾, with country specific adaptations.

Article 2

The text of Regulation (EU) No 1254/2009 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

(3) Commission Regulation (EU) No 1254/2009 of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures ⁽⁴⁾ is to be incorporated into the Agreement,

Article 3

This Decision shall enter into force on 2 October 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

HAS DECIDED AS FOLLOWS:

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Article 1

The following point shall be inserted after point 66hc (Commission Regulation (EU) No 72/2010) of Annex XIII to the Agreement:

Done at Brussels, 1 October 2010.

'66hd. **32009 R 1254**: Commission Regulation (EU) No 1254/2009 of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation

For the EEA Joint Committee
The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 43.

⁽²⁾ OJ L 97, 9.4.2008, p. 72.

⁽³⁾ OJ L 232, 3.9.2009, p. 25.

⁽⁴⁾ OJ L 338, 19.12.2009, p. 17.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE
No 108/2010
of 1 October 2010
amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 90/2010 of 2 July 2010 ⁽¹⁾.
- (2) Commission Regulation (EU) No 273/2010 of 30 March 2010 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community ⁽²⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following indent shall be added in point 66zab (Commission Regulation (EC) No 474/2006) of Annex XIII to the Agreement:

‘— **32010 R 0273**: Commission Regulation (EU) No 273/2010 of 30 March 2010 (OJ L 84, 31.3.2010, p. 25).’.

Article 2

The text of Regulation (EU) No 273/2010 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 2 October 2010, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

For the EEA Joint Committee
The President
Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 43.

⁽²⁾ OJ L 84, 31.3.2010, p. 25.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 109/2010

of 1 October 2010

amending Annex XVIII (Health and safety at work, labour law, and equal treatment for men and women) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XVIII to the Agreement was amended by Decision of the EEA Joint Committee No 92/2010 of 2 July 2010 ⁽¹⁾.
- (2) Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC ⁽²⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

Annex XVIII to the Agreement shall be amended as follows:

1. the following shall be added in point 32b (Council Directive 1999/63/EC):

‘, as amended by:

— **32009 L 0013**: Council Directive 2009/13/EC of 16 February 2009 (OJ L 124, 20.5.2009, p. 30).’;

2. the following point shall be inserted after point 32i (Council Directive 2005/47/EC):

‘32j. **32009 L 0013**: Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (OJ L 124, 20.5.2009, p. 30).’;

3. the first indent (Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments of the Treaties on which the European Union is founded) of point 24 (Directive 2008/94/EC of the European Parliament and of the Council) shall be deleted.

Article 2

The text of Directive 2009/13/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 46.

⁽²⁾ OJ L 124, 20.5.2009, p. 30.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE
No 110/2010
of 1 October 2010
amending Annex XXI (Statistics) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XXI to the Agreement was amended by Decision of the EEA Joint Committee No 36/2010 of 12 March 2010 ⁽¹⁾.
- (2) Commission Regulation (EU) No 275/2010 of 30 March 2010 implementing Regulation (EC) No 295/2008 of the European Parliament and of the Council, as regards the criteria for the evaluation of the quality of structural business statistics ⁽²⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following point shall be inserted after point 11 (Commission Regulation (EC) No 251/2009) of Annex XXI to the Agreement:

'1m. **32010 R 0275**: Commission Regulation (EU) No 275/2010 of 30 March 2010 implementing Regulation (EC) No 295/2008 of the European Parliament and of

the Council, as regards the criteria for the evaluation of the quality of structural business statistics (OJ L 86, 1.4.2010, p. 1).'

Article 2

The text of Regulation (EU) No 275/2010 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

For the EEA Joint Committee
The President
Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 143, 10.6.2010, p. 31.

⁽²⁾ OJ L 86, 1.4.2010, p. 1.

^(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 111/2010

of 1 October 2010

amending Annex XXI (Statistics) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XXI to the Agreement was amended by Decision of the EEA Joint Committee No 36/2010 of 12 March 2010 ⁽¹⁾.
- (2) Commission Regulation (EU) No 220/2010 of 16 March 2010 adopting the programme of ad-hoc modules, covering the years 2013 to 2015, for the labour force sample survey provided for by Council Regulation (EC) No 577/98 ⁽²⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following point shall be inserted after point 18ao (Commission Regulation (EC) No 20/2009) of Annex XXI to the Agreement:

'18ap. **32010 R 0220**: Commission Regulation (EU) No 220/2010 of 16 March 2010 adopting the

programme of ad-hoc modules, covering the years 2013 to 2015, for the labour force sample survey provided for by Council Regulation (EC) No 577/98 (OJ L 67, 17.3.2010, p. 1).'

Article 2

The text of Regulation (EU) No 220/2010 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 143, 10.6.2010, p. 31.

⁽²⁾ OJ L 67, 17.3.2010, p. 1.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE
No 112/2010
of 1 October 2010
amending Annex XXI (Statistics) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XXI to the Agreement was amended by Decision of the EEA Joint Committee No 36/2010 of 12 March 2010 ⁽¹⁾.
- (2) Commission Regulation (EU) No 351/2010 of 23 April 2010 implementing Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistics on migration and international protection as regards the definitions of the categories of the groups of country of birth, groups of country of previous usual residence, groups of country of next usual residence and groups of citizenship ⁽²⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following point shall be inserted after point 18ap (Commission Regulation (EU) No 220/2010) of Annex XXI to the Agreement:

'18aq. **32010 R 0351**: Commission Regulation (EU) No 351/2010 of 23 April 2010 implementing Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistics on

migration and international protection as regards the definitions of the categories of the groups of country of birth, groups of country of previous usual residence, groups of country of next usual residence and groups of citizenship (OJ L 104, 24.4.2010, p. 37).'

Article 2

The text of Regulation (EU) No 351/2010 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

For the EEA Joint Committee
The President
Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 143, 10.6.2010, p. 31.

⁽²⁾ OJ L 104, 24.4.2010, p. 37.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 113/2010

of 1 October 2010

amending Annex XXII (Company law) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XXII to the Agreement was amended by Decision of the EEA Joint Committee No 95/2010 of 2 July 2010 ⁽¹⁾.
- (2) Commission Regulation (EU) No 243/2010 of 23 March 2010 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards Improvements to International Financial Reporting Standards (IFRSs) ⁽²⁾ is to be incorporated into the Agreement.
- (3) Commission Regulation (EU) No 244/2010 of 23 March 2010 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard (IFRS) 2 ⁽³⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following indents shall be added in point 10ba (Commission Regulation (EC) No 1126/2008) of Annex XXII to the Agreement:

— **32010 R 0243:** Commission Regulation (EU) No 243/2010 of 23 March 2010 (OJ L 77, 24.3.2010, p. 33),

— **32010 R 0244:** Commission Regulation (EU) No 244/2010 of 23 March 2010 (OJ L 77, 24.3.2010, p. 42).'

Article 2

The texts of Regulations (EU) No 243/2010 and (EU) No 244/2010 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 1 November 2010, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 1 October 2010.

*For the EEA Joint Committee**The President*

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 52.

⁽²⁾ OJ L 77, 24.3.2010, p. 33.

⁽³⁾ OJ L 77, 24.3.2010, p. 42.

(*) No constitutional requirements indicated.

★ Decision of the EEA Joint Committee No 101/2010 of 1 October 2010 amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement	51
★ Decision of the EEA Joint Committee No 102/2010 of 1 October 2010 amending Annex X (Services in general) to the EEA Agreement	52
★ Decision of the EEA Joint Committee No 103/2010 of 1 October 2010 amending Annex XIII (Transport) to the EEA Agreement	53
★ Decision of the EEA Joint Committee No 104/2010 of 1 October 2010 amending Annex XIII (Transport) to the EEA Agreement	54
★ Decision of the EEA Joint Committee No 105/2010 of 1 October 2010 amending Annex XIII (Transport) to the EEA Agreement	55
★ Decision of the EEA Joint Committee No 106/2010 of 1 October 2010 amending Annex XIII (Transport) to the EEA Agreement	56
★ Decision of the EEA Joint Committee No 107/2010 of 1 October 2010 amending Annex XIII (Transport) to the EEA Agreement	57
★ Decision of the EEA Joint Committee No 108/2010 of 1 October 2010 amending Annex XIII (Transport) to the EEA Agreement	58
★ Decision of the EEA Joint Committee No 109/2010 of 1 October 2010 amending Annex XVIII (Health and safety at work, labour law, and equal treatment for men and women) to the EEA Agreement	59
★ Decision of the EEA Joint Committee No 110/2010 of 1 October 2010 amending Annex XXI (Statistics) to the EEA Agreement	60
★ Decision of the EEA Joint Committee No 111/2010 of 1 October 2010 amending Annex XXI (Statistics) to the EEA Agreement	61
★ Decision of the EEA Joint Committee No 112/2010 of 1 October 2010 amending Annex XXI (Statistics) to the EEA Agreement	62
★ Decision of the EEA Joint Committee No 113/2010 of 1 October 2010 amending Annex XXII (Company law) to the EEA Agreement	63

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