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I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2012/11/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 April 2012

amending Directive 2004/40/EC on minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (18th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) Following the entry into force of Directive 2004/40/EC of the European Parliament and of the Council ⁽³⁾, stakeholders, in particular those in the medical community, expressed serious concerns about the impact that implementing that Directive could have on the use of medical procedures based on medical imaging, as well as its impact on certain industrial activities.

(2) The Commission examined the arguments put forward by stakeholders and decided to reconsider some provisions of Directive 2004/40/EC, on the basis of new scientific evidence.

(3) The deadline for transposition of Directive 2004/40/EC was postponed, by Directive 2008/46/EC of the European Parliament and of the Council ⁽⁴⁾, until 30 April 2012, in order to allow a new Directive based on the most recent evidence to be adopted by that date.

(4) On 14 June 2011, the Commission adopted a proposal for a new Directive to replace Directive 2004/40/EC. The aim of the new Directive is to ensure both a high level of health and safety protection for workers and the continuation and development of medical and other industrial activities using electromagnetic fields. Consequently, anticipating the adoption of the new Directive by 30 April 2012, the majority of Member States have not transposed Directive 2004/40/EC.

(5) However, given the technical complexity of the subject matter, it is unlikely that the new Directive will be adopted by 30 April 2012.

(6) Consequently, the deadline of 30 April 2012 should be extended. It is therefore necessary for this Directive to enter into force on the day of its publication,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

In Article 13(1) of Directive 2004/40/EC, the date '30 April 2012' is replaced by '31 October 2013'.

Article 2

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

⁽¹⁾ Opinion of 22 February 2012 (not yet published in the Official Journal).

⁽²⁾ Position of the European Parliament of 29 March 2012 (not yet published in the Official Journal) and decision of the Council of 11 April 2012.

⁽³⁾ OJ L 159, 30.4.2004, p. 1.

⁽⁴⁾ OJ L 114, 26.4.2008, p. 88.

Article 3

This Directive is addressed to the Member States.

Done at Strasbourg, 19 April 2012.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

M. BØDSKOV

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 349/2012

of 16 April 2012

imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China 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 Article 9(4) and Article 11(2), 11(5) and 11(6) thereof,

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

Whereas:

(2) On 22 February 2008, following a review initiated on the basis of Article 11(3) of the basic Regulation, the Council, by Regulation (EC) No 150/2008 ⁽³⁾, amended the scope of the abovementioned measures.

(3) On 16 April 2012, following a review of the existing measures on Hangzhou Bioking initiated on the basis of Article 2(3) of Regulation (EC) No 1515/2001, in light of the WTO Appellate Body report entitled 'Mexico — Definitive Anti-Dumping Measures on Beef and Rice' ⁽⁴⁾, which found, in paragraphs 305 and 306, that an exporting producer not found to be dumping in an original investigation has to be excluded from the scope of the definitive measure imposed as a result of such investigation and cannot be made subject to administrative and changed circumstances review, the Council, by Regulation (EU) No 332/2012 ⁽⁵⁾, amended the measures regarding Hangzhou Bioking.

(4) The investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

A. PROCEDURE

1. Previous investigations and measures in force

(1) By Regulation (EC) No 130/2006 ⁽²⁾ (the original Regulation), the Council imposed a definitive anti-dumping duty, ranging from 0 % to 34,9 %, on imports of tartaric acid (TA) originating in the People's Republic of China ('China'). It is recalled that the rate of the definitive anti-dumping duty imposed on TA produced by the Chinese exporting producer Hangzhou Bioking Biochemical Engineering Co. Ltd ('Hangzhou Bioking') was 0 % while it ranged between 4,7 % and 34,9 % for other Chinese exporting producers.

2. Request for an expiry review

(5) Following the publication of a notice of impending expiry ⁽⁶⁾ of the anti-dumping measures in force, the Commission received on 27 October 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 the following producers ('the applicants'): Distillerie Bonollo SpA, Industria Chimica Valenzana SpA, Distillerie Mazzari SpA, Caviro Distillerie SRL and Comercial Química Sarasa SL representing a major proportion, in this case more than 50 %, of the total Union production of TA.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 23, 27.1.2006, p. 1.

⁽³⁾ OJ L 48, 22.2.2008, p. 1.

⁽⁴⁾ WT/DS295/AB/R, 29 November 2005.

⁽⁵⁾ OJ L 108, 20.4.2012, p. 1.

⁽⁶⁾ OJ C 211, 4.8.2010, p. 11.

- (6) The request was based on the grounds that the expiry of the measures imposed on imports of TA originating in China would be likely to result in a continuation of dumping and injury to the Union industry.

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 26 January 2011 the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, by a notice published in the *Official Journal of the European Union* ⁽¹⁾ ('notice of initiation').

4. Parallel cases

- (8) The Commission also announced on 29 July 2011 the initiation of an anti-dumping proceeding ⁽²⁾ pursuant to Article 5 on imports of TA originating in China, limited to one Chinese exporting producer, Hangzhou Bioking.
- (9) On the same day, the Commission announced the initiation of a partial interim review ⁽³⁾ pursuant to Article 11(3) of the basic Regulation of the anti-dumping measures applicable to imports of TA originating in China limited to the examination of dumping as far as two Chinese exporting producers are concerned, namely Changmao Biochemical Engineering Co. Ltd, Changzhou City, and Ninghai Organic Chemical Factory, Ninghai.

5. Investigation

5.1. Review investigation period and the period considered

- (10) The investigation of continuation of dumping covered the period from 1 January 2010 to 31 December 2010 ('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 2007 to the end of the review investigation period ('the period considered').

5.2. Parties concerned by the investigation

- (11) The Commission officially advised the applicants, other known Union producers, exporting producers, importers, users in the Union known to be concerned and their

associations, and the representatives of the exporting country concerned of the initiation of the expiry review.

- (12) 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.

- (13) In view of the apparent large number of exporting producers from China, unrelated importers in the Union and Union producers involved in the investigation, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation. 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 publication of the notice of initiation and to provide the Commission with the information requested in the notice of initiation.

- (14) In view of the replies received it was decided to apply sampling in respect of Union producers. No unrelated importers in the Union cooperated in the investigation. As regards exporting producers from China, only two exporting producers manifested their willingness to cooperate in the investigation. It was therefore decided that sampling was not necessary as regards exporting producers.

- (15) Six Union producers provided the information requested in the notice of initiation and agreed to be included in the sample. On the basis of the information received from these Union producers, the Commission selected a sample of four Union producers which were found to be representative of the Union industry in terms of sales volumes of the like product in the Union. Their combined sales volume represented 61 % of the sales volume in the Union market.

- (16) Questionnaire replies were received from the four sampled Union producers, two users in the Union, and two exporting producers in China. In addition, two cooperating Union producers provided the requested general data for the injury analysis.

- (17) Exports made by Hangzhou Bioking, whose individual dumping margin in the original investigation was zero, have been excluded from both dumping and injury analysis, including the likelihood of continuation of dumping and risk of recurrence of injury resulting from dumped imports. The analysis in the present review was therefore based on exports of product concerned from China to the Union during the RIP excluding the exports made by the producer Hangzhou Bioking and is also referred to as 'exports subject to measures' in this Regulation.

⁽¹⁾ OJ C 24, 26.1.2011, p. 14.

⁽²⁾ OJ C 223, 29.7.2011, p. 11.

⁽³⁾ OJ C 223, 29.7.2011, p. 16.

- (18) 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 for the determination of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) Union producers:

- Comercial Química Sarasa SL,
- Alcohola Vinícola Europea SA,
- Distillerie Mazzari SpA,
- Distillerie Bonollo SpA;

(b) exporting producers in China:

- Changmao Biochemical Engineering Co. Ltd,
- Ninghai Organical Chemical Factory;

(c) users:

- Danisco A/S,
- Kerry (NL) BV;

(d) producer in the analogue country:

- Tarcol SA, Argentina.

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (19) The product concerned by this review is the same as the one defined in Regulation (EC) No 150/2008, which amended the scope of the measures established by the original Regulation as explained above. Namely, the product concerned is tartaric acid, excluding D-(-)-tartaric acid with a negative optical rotation of at least 12,0 degrees, measured in a water solution according to the method described in the European Pharmacopoeia, originating in China, currently falling within CN code ex 2918 12 00 (TARIC code 2918 12 00 90) ('the product concerned').
- (20) The review investigation confirmed that, as in the original investigation, the product concerned imported into the Union market and the products manufactured and sold by the exporting producers on the domestic markets, as well as those manufactured and sold in the

Union by the Union Industry ('the like product'), have the same basic physical and chemical characteristics and uses. Therefore, these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OF DUMPING

1. Preliminary remarks

- (21) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would likely lead to a continuation or recurrence of dumping.
- (22) As mentioned in recital 13, in view of the potentially large number of exporting producers involved in this review, sampling was foreseen in the notice of initiation. From the 20 known exporting producers, only the two companies, both benefiting from market economy treatment, came forward and agreed to cooperate. These two companies cover most of the imports of product concerned from China to the Union during the RIP excluding the exports made by the company Hangzhou Bioking, whose individual dumping margin in the original investigation was zero.

2. Dumping of imports during the RIP

2.1. Analogue country

- (23) Since China is an economy in transition and in accordance with the provisions of Article 2(7)(a) of the basic Regulation, normal value for exporting producers not granted market economy treatment (MET) has to be determined on the basis of the price or constructed value in an appropriate market economy third country ('analogue country').
- (24) As in the original investigation, Argentina was proposed as analogue country in the notice of initiation for the purpose of establishing normal value. Interested parties were given the opportunity to comment on the appropriateness of this choice.
- (25) One industrial consumer of tartaric acid highlighted some constraints linked to the choice of Argentina as analogue market arguing that it should not be the sole benchmark for the purpose of determining normal value. The party concerned addressed in particular alleged differences in the production processes between China and Argentina, the limited amount of annual production as compared to world production and currency exchange rates fluctuation. However, none of these arguments were substantiated by any documentary evidence.

- (26) In any event, the different production processes in Argentina and China and the resulting impact on the costing and the valuation of the product concerned were already carefully considered in the original investigation and it was concluded that it did not alter the comparability of the products that were found to be similar. As the allegation of the industrial consumer did not bring any new element and its claims were not substantiated, the argument is rejected. The findings of the current expiry review, therefore confirm the findings of the original investigation, i.e. that the differences in production processes did not have an impact on the comparability of the products.
- (27) The limited size of the annual production in Argentina as compared to the world market of TA is not a relevant argument when assessing whether a specific market is suitable to establish normal value in an analogue market. Indeed, the investigation confirmed that Argentina is an open and competitive market with at least two operators. On these grounds, the argument is rejected.
- (28) The argument of significant currency exchange fluctuation between regions was not substantiated. In addition, the on spot investigation did not gather any element pointing to any distortion of currency rates between regions. On these grounds, the argument is also rejected.
- (29) Therefore, as in the original investigation, it was concluded that Argentina was an appropriate analogue country from which normal value will be determined.
- (30) Two known Argentinean companies were contacted but only one of them agreed to cooperate, to reply to the questionnaire and to accept a verification visit. Its figures have been used for the determination of the normal value.

2.2. Normal value

- (31) For the two companies granted MET in the original investigation, normal value has been established based on their respective data. In accordance with Article 2 of the basic Regulation, the Commission examined whether the domestic sales of tartaric acid to independent customers were representative during the RIP, i.e. if the sales volume of the product intended for domestic consumption represents 5 % or more of their exports of the product concerned to the Union.
- (32) For one company granted MET, normal value had to be constructed since its domestic sales were not sufficient to be considered representative as explained in recital 31.
- Therefore, the established normal value was calculated using the company's cost of manufacturing and adding selling, general and administrative costs (SG&A) and profit achieved on the domestic sale made in the ordinary course of trade.
- (33) For the other company granted MET, since the domestic sales were representative and made in the ordinary course of trade, normal value was established on the prices paid by independent customers in the exporting country.
- (34) As far as the companies not granted MET in the original investigation are concerned, pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of information collected from the cooperating producer in the analogue country.
- (35) Therefore, the domestic sales to independent customers in the analogue country were also assessed in accordance with the criterion defined in Article 2 of the basic Regulation. The Commission could verify that these sales were made in sufficient quantities and in the ordinary course of trade and could thus be used to determine normal value for the companies not granted MET.

2.3. Export price

- (36) All export sales to the Union of the cooperating exporting producers were made directly to independent customers established in the Union. In accordance with Article 2(8) of the basic Regulation, the export price was established on the basis of the prices actually paid or payable.
- (37) For the export price of all other producers established in China, information was taken from imports statistics made available in the Article 14(6) database.

2.4. Comparison

- (38) The comparison between normal value and export price was made on an ex-works basis.
- (39) For the purpose of ensuring a fair comparison between the normal value and the export price of the cooperating exporting producers, and in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made with regard to certain differences in transport, insurance, taxes and credit costs which affected prices and price comparability.
- (40) In order to fairly compare the ex-works normal value from the analogue country and the export price as mentioned in recital 37, the CIF export prices were adjusted to ex-works using data collected during the verification visits.

2.5. Dumping margin

- (41) As provided for under Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price.
- (42) For the cooperating exporting producers, granted MET in the original investigation this comparison showed that these companies continued dumping although at a slightly lower level.
- (43) The residual duty calculated showed a significant level of dumping even higher than in the original investigation.

3. Likelihood of continuation of dumping

- (44) Further to the analysis of the existence of dumping during the RIP, the likelihood of continuation of dumping was also investigated.
- (45) In this respect, the following elements were analysed: the volume and prices of dumped imports from China, the production capacity and the spare capacity in China, the attractiveness of the Union market and other third markets.

3.1. Volume and prices of dumped imports from China

- (46) After imposition of definitive measures in January 2006, dumped imports from China continued to increase, raising from 3 034 metric tonnes (MT) in 2007 to 3 649 MT in the RIP, i.e. an increase of around 20 %. In parallel, market share of dumped imports from China gained 1,0 percentage points in the period considered from 12,6 % in 2007 to 13,5 % in the RIP.
- (47) In the same period, prices of dumped imports from China remained relatively stable with an increase of 12,6 % between 2007 and 2008 followed by a continued reduction in 2009 and the RIP, to reach in the latter period the level achieved in 2007.

3.2. Production capacity and spare capacity in China

- (48) As far as the total production capacity of TA in China is concerned, different sources of information publicly available⁽¹⁾ point to a production capacity that is largely in excess of demand on the Chinese domestic market.
- (49) Total production capacity in China has been assessed at around 25 000 MT, taking into account information gathered on spot during the investigation and following

market researches⁽²⁾. The Chinese market is small when compared to the available capacity in China with an estimated consumption of 5 000 MT.

- (50) In addition, there are strong indications that capacity in China is even higher than 25 000 MT. Indeed, total capacity of the two cooperating Chinese exporters went up by more than 200 % comparing data for the original IP to the current RIP. The corresponding spare capacity was of around 20 % of total capacity in the RIP.
- (51) Furthermore, information collected from extracts of the reports mentioned above in recital 48 and publicly available information show that at least two new producers of tartaric acid were set up in 2007.

- (52) On these grounds, it is clear that capacity in China is disproportionate as compared to domestic consumption, which confirms a clear need for the Chinese producers to increase their position on export markets.

3.3. Attractiveness of the Union market and other third markets

- (53) From the information gathered at the Chinese cooperating companies, the level of prices to third countries is in line with the level of prices that they could obtain in the Union market. As mentioned above, there is an important production overcapacity on the Chinese domestic market suggesting a strong and natural need to find alternative markets to absorb this excess in production capacity.
- (54) The Union market is by far the biggest in the world reaching around 40 % of the world consumption of tartaric acid and is still growing as mentioned in recital 60. It is also clear, based on information collected during the investigation that Chinese companies have shown a big interest in developing their presence on the biggest market in the world and maintaining a significant market share on the Union market.

4. Conclusion of the likelihood of continuation of dumping

- (55) In view of the findings described above, it can be concluded that significant volumes of imports from China are still being dumped and that there is a strong likelihood of continuation of dumping. Given the potential spare capacity in China including the new producers that appeared on the Chinese market and the fact that the Union market is the biggest market in the world with attractive level of prices, it can be concluded that the Chinese exporters are likely to further increase their exports to the Union at dumped prices should the anti-dumping measures be allowed to lapse.

⁽¹⁾ Like the *Chemical Economic Handbook* (CEH), or reports from CCM International Ltd.

⁽²⁾ Like the *Chemical Economic Handbook* (CEH), or reports from CCM International Ltd.

D. DEFINITION OF THE UNION INDUSTRY

(56) During the RIP, the like product was produced by nine producers in the Union. Of these nine producers, six producers fully cooperated with the investigation, submitted sampling forms and requested to be included in the sample. These six producers were found to account for a major proportion, in this case more than 73 %, of the total Union production of the like product. As mentioned in recital 57 below, nine producers having provided the data in the review request, are hereafter referred to as the 'Union industry' within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(57) For the purpose of the injury analysis, the injury indicators have been established at the following two levels:

- the macroeconomic elements (production, capacity, capacity utilisation, productivity, sales volume, market share, growth, employment, and magnitude of dumping margins and recovery from the effects of past dumping) were assessed at the level of the whole Union production, on the basis of the information collected from the producers that came forward in the context of the sampling exercise and on an estimation based on the data from the review request for the other three Union producers,
- the analysis of microeconomic elements (average unit prices stocks, wages, profitability, return on investments, cash flow, ability to raise capital and investments) was carried out on the basis of information provided by the sampled Union producers.

(58) It is noted that the Union market for TA is characterised by a relatively small number of producers, mostly small and medium enterprises located in Italy and Spain. With the exception of one producer established in Spain, which only produces TA, all other producers are vertically integrated, with the main activity being producing alcohol from wine lees, a process for which TA is a by-product.

E. SITUATION ON THE UNION MARKET

1. Consumption in the Union market

(59) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, the Chinese export database and the imports volumes data for the Union market obtained from Eurostat and, concerning the other Union producers, from estimation based on the review request.

(60) Union consumption of TA increased between 2007 and the RIP by 11 %. In details, the apparent demand went down from 2007 to 2009 by 15 %. However, during the RIP the Union consumption reached 29 964 tonnes, representing a significant increase of 26 percentage points as compared to the previous year. This increase is explained by the high price elasticity of the TA. Indeed, when prices are low, as was the case during the RIP, TA can be used in additional applications as a substitute for other raw material chemical products such as citric acid and malic, hence an increase of the total Union consumption.

Table 1

	2007	2008	2009	RIP
Total EU consumption (tonnes)	26 931	25 333	22 983	29 964
<i>Index</i>	100	94	85	111

Source: Questionnaire replies, Chinese export database, Eurostat.

2. Volume, market share and prices of imports from China

2.1. Volume and market share

(61) The volume of all imports of the product concerned from China into the Union increased by 45 % during the period considered. It reached 8 495 tonnes in the RIP corresponding to a market share of 28,4 %.

(62) The volume of imports of TA from Chinese exporters being subject to anti-dumping measures into the Union increased by 20 % and reached 3 649 tonnes in the RIP corresponding to a market share of 12,2 %, up from 11,3 % at the beginning of the period considered. The remaining imports, 4 846 tonnes, were made by a Chinese exporter subject to a 0 % and which also increased its share in total Chinese exports to the Union during the period considered (+ 9 percentage points).

Table 2

	2007	2008	2009	RIP
Volume of imports subject to measures from China (tonnes)	3 035	3 042	2 945	3 649
<i>Index = 100</i>	100	100	97	120
Market share of imports subject to measures from China	11,3 %	12,0 %	12,8 %	12,2 %
<i>Index = 100</i>	100	106	113	107

2.2. Prices and undercutting

- (63) The following table shows the development of average CIF EU frontier prices of imports under measures from China and the relevant average sales prices of the Union industry.

Table 3

	2007	2008	2009	RIP
Price of Chinese imports (EUR/tonne) subject to measures	1 834	2 060	1 966	1 819
<i>Index = 100</i>	100	112	107	99

Source: Questionnaire replies, Article 14(6) database.

- (64) Average unit selling prices of Chinese exports subject to measures at CIF level in the RIP reached 1 819 EUR/MT, corresponding, over the period considered, to an increase of 20 %.
- (65) Concerning the selling price on the Union market of the TA during the RIP, a comparison was made between the prices of TA produced and sold by the Union industry and those of the imports subject to measures from China. The relevant sales prices of the Union industry were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Union and after deduction of discounts and rebates. These prices were compared with the sales prices charged by the aforementioned Chinese exporting producers net of discounts and adjusted where necessary to CIF EU frontier with an appropriate adjustment for the customs clearance costs and post importation costs. The Union weighted average selling price during the RIP was 2 496 EUR/MT.
- (66) The comparison on a type by type basis showed that, during the RIP, imports subject to measures from China of the product concerned were sold in the Union at prices which significantly undercut the Union industry's prices, when expressed as a percentage of the latter, by 32,6 %.

3. Imports from other third countries

- (67) The following table shows the development of imports from other third countries during the period considered in terms of volume and market share, as well as the average price of these imports.

Table 4

	2007	2008	2009	RIP
Volume of imports from other countries (tonne)	590	135	156	845
<i>Index = 100</i>	100	23	26	143

	2007	2008	2009	RIP
Market share of imports from other third countries	2,2 %	0,5 %	0,7 %	2,8 %
<i>Index = 100</i>	100	24	31	129
Price of imports (EUR/tonne)	2 503	2 874	2 300	2 413

Source: Eurostat, Article 14(6) database.

- (68) The volume of imports from other third countries of the TA into the EU increased in the period considered, by 43 % and reached 845 tonnes in the RIP. Prices of these imports are relatively high and significantly above the respective prices from China and only slightly below the average level of prices of the Union industry. However, it can be considered that exports from other third countries were marginal since during the RIP they represented only a market share of 2,8 % despite their steep increase in percentage terms at the end of the period considered.

4. Economic situation of the Union industry

- (69) Pursuant to Article 3(5) of the basic Regulation, all relevant economic factors and indices having a bearing on the state of the Union industry during the period considered have been examined.

4.1. Preliminary remarks

- (70) In view of the fact that sampling was used with regard to the Union industry, for the purpose of the injury analysis, the injury indicators have been established at two levels as mentioned in recital 57 above.

4.2. Macroeconomic elements

(a) Production

- (71) The Union production increased by 5 % between 2007 and the RIP. More specifically, it increased by 19 percentage points between 2009 and RIP to around 30,5 thousand MT, following a sharp decrease between 2007 and 2009 of 14 %. Increased production levels have allowed the Union industry to contain the increase of production costs and had a positive impact on the overall Union industry profitability.

Table 5

	2007	2008	2009	RIP
Production in volume (tonne)	29 000	27 500	25 000	30 588
<i>Index = 100</i>	100	95	86	105

Source: Questionnaire replies, review request.

(b) Production capacity and capacity utilisation

- (72) The production capacity of the Union producers decreased by 2 % throughout the period considered.
- (73) Capacity utilisation was 63 % in 2007 and dropped to 56 % in 2009, to reach 68 % in the RIP. The lower utilisation rate in 2009 reflected the negative effects of the crisis. Total capacity utilisation increased by 8 % over the period considered, which contributed to a further dilution of fixed costs.

Table 6

	2007	2008	2009	RIP
Production capacity (tonne)	46 000	46 000	45 000	45 000
<i>Index = 100</i>	100	100	98	98
Capacity utilisation	63 %	60 %	56 %	68 %
<i>Index = 100</i>	100	95	88	108

Source: Questionnaire replies, review request.

(c) Sales volume

- (74) The sales volume of the Union producers to unrelated customers on the Union market modestly increased in RIP by 1 %. First they decreased by 11 % between 2007 and 2008, followed by a further decrease by 9 % in 2009, to reach almost the same level at the end of the period considered as the beginning of the period considered, thus showing wide variations mainly due to the economic crisis of 2008 and 2009.

Table 7

	2007	2008	2009	RIP
Sales to unrelated parties in the Union (tonne)	20 489	18 165	16 709	20 623
<i>Index = 100</i>	100	89	82	101

Source: Questionnaire replies, review request.

(d) Market share

- (75) During the period considered, the Union producers lost 7,3 percentage points in market share, which decreased from 76,1 % in 2007 to 68,8 % in the RIP. This loss of market share reflects the fact that, despite an increase in consumption, the Union industry's sales were not able to progress at the same pace in the period considered but remained somewhat stable.

Table 8

	2007	2008	2009	RIP
Market share of the Union producers	76,1 %	71,7 %	72,7 %	68,8 %
<i>Index = 100</i>	100	94	95	90

Source: Questionnaire replies, review request and Eurostat.

(e) Growth

- (76) Between 2007 and the RIP, whilst the Union consumption increased by 11 %, the volume of sales by the Union industry on the Union market remained stable and the Union industry market share decreased by 10 %. It is thus concluded that the Union producers could not benefit from any growth of the market.

(f) Employment

- (77) The employment level of the Union industry shows a decrease of 28 % between 2007 and the RIP. More specifically, the number of persons employed decreased significantly from 320 in 2007 and 2008 to 280 in 2009 and 230 in the RIP. The drop in 2009 is a reflection of the restructuring efforts by a number of Union producers.

Table 9

	2007	2008	2009	RIP
Employment (persons)	320	320	280	230
<i>Index = 100</i>	100	100	88	72

Source: Questionnaire replies, review request.

(g) Productivity

- (78) Productivity of the Union industry workforce, measured as output (tonnes) per person employed per year, increased by 47 % in the period considered. This reflects that production increased by 5 %, whilst employment levels decreased by 28 % and is an indication of the increased efficiency by the Union industry. This is particularly obvious in the RIP, when production increased while the employment level continued to decrease and productivity was 48 percentage points higher than in 2009.

Table 10

	2007	2008	2009	RIP
Productivity (tonnes per employee)	90	85	89	132
<i>Index = 100</i>	100	94	99	147

Source: Questionnaire replies and review request.

4.3. Data relating to the sampled Union producers

(h) Factors affecting sales prices

- (79) The annual average sales prices of the sampled producers on the Union market to unrelated customers increased by 8 % between 2007 and 2009, however, they decreased by 6 % during the period considered as in the RIP the annual average sale price reached 2 496 EUR/tonne from 2 667 EUR/tonne in 2007. The availability of calcium tartrate, which is produced out of wine lees and represents 66 % of total costs of manufacturing of TA, varies according to the quality of the grape wine harvest. Therefore, favourable or poor climatic conditions have an effect on the overall supply of calcium tartrate, which in turn has an impact on the annual averages sales prices. It should be noted that 2007 and 2008 have not been two favourable years as far as the grape wine harvest is concerned, which subsequently led to an increase of the costs of raw materials and sales prices after the production period (as it is a seasonal product, effects materialise only several months following the harvest period). Conversely, as 2009 has been a good wine harvesting year hence, the annual average sale prices in the RIP was 14 % lower compared to the previous year.

Table 11

	2007	2008	2009	RIP
Unit price EU market (EUR/tonne)	2 667	2 946	2 881	2 496
<i>Index = 100</i>	100	110	108	94

Source: Questionnaire replies, review request.

(i) Magnitude of dumping margin and recovery from past dumping

- (80) Given the level of dumping found in this investigation, no full recovery from the past dumping could be established and it was considered that the Union industry remains vulnerable to the injurious effect of any dumped imports in the Union market. It is recalled that in the original investigation dumping margins of 4,7 % and 10,1 % were found for the respective two cooperating Chinese producers being granted MET. The dumping margin for all other companies is 34,9 %. Furthermore, as mentioned in recital 7 above, an anti-dumping proceeding limited to one Chinese exporting producer, Hangzhou Bioking, which is not subject to measures was initiated and it cannot be excluded that this exporting producer could be found to practise dumping. In addition, as stated in recitals 48 to 54 above, a likelihood of continuation of dumping was established mainly based on available excess production capacity in China and the rather small size of the Chinese domestic market. As regards recovery from past dumped imports from China, it is important to recall that after the imposition of definitive measures in January 2006, imports from China subject to measures continue to

increase, as mentioned in recital 46 above. Thus, no actual recovery from the past dumping could be established and it is considered that the Union industry remains vulnerable to the injurious effects of any dumped imports in the Union market.

(j) Stocks

- (81) Volume of stock remained stable during the period considered with a modest increase of 2 %. More specifically, it sharply increased by 65 % in 2008 as a direct consequence of the evolution of sales as mentioned in recital 74 above. Between 2008 and the RIP volume of stock decreased as sales to unrelated parties increased during the same period.

Table 12

	2007	2008	2009	RIP
Closing stock (tonne)	863	1 428	933	879
<i>Index = 100</i>	100	165	108	102

Source: Questionnaire replies.

(k) Wages

- (82) The average labour cost increased by 19 % during the period considered despite the labour cost reducing efforts of the sampled producers in particular with regard to unskilled workers, as reflected in the reduction of the overall workforce mentioned in recital 77 above.

Table 13

	2007	2008	2009	RIP
Average wage (EUR)	28 686	31 871	31 574	34 245
<i>Index = 100</i>	100	111	110	119

Source: Questionnaire replies.

(l) Profitability and return on investments

- (83) During the period considered, the profitability of the sampled producers' sales of the like product on the Union market to unrelated customers, expressed as a percentage of net sales, increased by more than 6 percentage points. More specifically, the situation with regard to profitability of the sampled producers dropped by 3,7 percentage points between 2007 and 2008 to a level of 7,7 %, which was considered to be below the target profit and increased in 2009 and the RIP to reach 17,6 %.

- (84) The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the profitability trend. It decreased from a level of 36,4 % in 2007 to 21,9 % in 2008. It increased to 44,4 % in 2009 and increased again in the RIP to 142,9 %. Overall, the return on investments remained very positive over the period considered.

Table 14

	2007	2008	2009	RIP
Profitability of EU (% of net sales)	11,4 %	7,7 %	12,5 %	17,6 %
<i>Index = 100</i>	100	67	109	153
ROI (profit in % of net book value of investments)	36,4 %	21,9 %	44,4 %	142,9 %

	2007	2008	2009	RIP
<i>Index = 100</i>	100	60	122	393

Source: Questionnaire replies.

(m) Cash flow and ability to raise capital

- (85) The net cash flow from operating activities was positive at EUR 4,6 million in 2007. It dropped to EUR 1,8 million in 2008 and improved significantly until the end of the period considered to reach a level of EUR 6,8 million in the RIP. Overall, cash flow has been constantly positive in the period considered.
- (86) There were no indications that the Union industry encountered difficulties in raising capital, mainly due to the fact that, as mentioned in recital 58 above, most of the sampled producers are integrated companies.

Table 15

	2007	2008	2009	RIP
Cash flow (EUR)	4 691 458	1 841 705	4 706 092	6 802 164
<i>Index = 100</i>	100	39	100	145

Source: Questionnaire replies.

(n) Investments

- (87) The sampled producers' annual investments in the production of the like product decreased by 23 % between 2007 and the RIP. More specifically, it increased by 5 % between 2007 and 2008 and then it further increased by 32 percentage points in 2009. The sharp drop in investments observed between 2009 and the RIP (– 60 percentage points) can be partially explained by the fact that investigated companies had already during the period considered achieved their necessary scheduled main investments.

Table 16

	2007	2008	2009	RIP
Net investments (EUR)	2 518 189	2 632 013	3 461 990	1 943 290
<i>Index = 100</i>	100	105	137	77

Source: Questionnaire replies.

5. Conclusion on the situation of the Union industry

- (88) The analysis of the macroeconomic data shows that the Union industry increased its production and sales during the period considered. However, the observed increase which was not significant as such, should be seen in the context of increased demand between 2007 and the RIP, which resulted in the Union producers' market share dropping by 7,3 percentage points to 68,8 %.
- (89) At the same time the relevant microeconomic indicators show an improvement regarding the economic situation of the Union industry. The profitability and return on investment remained positive and the cash flow also remained positive in the RIP.

(90) In the light of the foregoing, it is concluded that the Union industry has not suffered material injury within the meaning of Article 3(5) of the basic Regulation. However, the overall absence of material injury during the RIP should be considered in the light of other important injury indicators, which developed negatively during the period considered, in particular sales prices, loss of market share and employment. Therefore, the situation of the Union industry is considered to be still vulnerable and in some aspects, far from the levels that could be expected had it recovered fully from the injury found in the original investigation.

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. Impact of the projected volume of imports and price effects in case of repeal of measures

(91) As concluded in recitals 48 to 52 above, the exporting producers in China have considerable spare capacities and a clear potential to increase their export volumes to the Union market significantly including redirecting exports from other markets.

(92) The CIF export prices to the Union of TA practised by the Chinese exporters currently subject to measures were significantly lower than the prices of the Union industry in the RIP and on a type by type basis undercut it by 32,6 %.

(93) An analysis of Chinese exports ⁽¹⁾ of TA to the rest of the world after the RIP shows that their volume was decreasing significantly, from 10 862 MT in the RIP to 8 118 MT at the end of July 2011 (– 25 %). This decrease in Chinese exports volume of 2 744 tonnes to other markets could create an additional flow of Chinese exports towards the Union market.

(94) Considering existing spare capacities for TA in China, combined with the attractiveness of the Union market as mentioned above, exporters in China would in all likelihood try to increase their market shares in the Union thereby materially injuring the Union industry. Consequently, in the absence of anti-dumping duties on imports of TA originating in China, any increased volumes of dumped imports from China would exercise an even stronger price pressure on the Union industry and cause material injury.

(95) As mentioned in recital 79 climatic/harvest-related conditions partly play a role in the overall financial situation of the Union industry. It is recalled that the TA, used also by wine producers, can be obtained either from the by-products of winemaking or, as is the case of Chinese exporters, via chemical synthesis, from petrochemical or coal-related compounds such as benzene.

(96) Consequently, it should be further noted that there are no significant constraints in production volumes for Chinese production given their synthetic production methods, unlike the Union industry producers using natural raw materials — wine lees.

(97) Given that the profitability of the Union industry is in part dependent on climatic conditions, it appears that the good profitability achieved in the RIP cannot be considered as lasting. Indeed, even during the period considered, the Union industry was not always able to achieve its target profit of 8 %. Moreover, in the six-month period following the end of the RIP, the Union industry's profitability already fell significantly to around 3 % with the industry again finding itself in a vulnerable position.

2. Conclusion on the likelihood of recurrence of injury

(98) On this basis, it is concluded that the repeal of the measures would in all likelihood result in an increase of dumped exports originating in China resulting in a downwards pressure on Union industry prices and a worsening of the economic situation of the Union industry. It is therefore concluded that the repeal of measures against China would in all likelihood result in the recurrence of injury to the Union industry.

G. UNION INTEREST

1. Introduction

(99) In compliance with Article 21 of the basic Regulation, it was examined whether maintenance of the existing anti-dumping measures against China would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved. All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

(100) 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.

(101) On this basis, it was examined whether, despite the conclusions on the likelihood of recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures against imports originating in China.

⁽¹⁾ Source: Chinese exports' database.

2. Interest of the Union industry and other Union producers

- (102) The Union industry has proven to be in general a viable industry. This was confirmed by the positive development of its economic situation observed during the period considered partly due to its restructuring efforts and the measures in place. In particular, the Union industry improved its cost structure and profit situation and production volume along the period considered.
- (103) It can reasonably be expected that the Union industry will continue to benefit from the measures to be maintained. Should the measures against imports originating in China not be maintained, it is likely that the Union industry will again suffer material injury from substantial volumes of dumped imports from China, causing a serious deterioration of its financial situation. Indeed, there is a clear likelihood of injurious dumping in substantial volumes which the Union industry could not withstand. The Union industry would therefore continue to benefit from the maintenance of the current anti-dumping measures.
- (104) Accordingly, it is concluded that the maintenance of anti-dumping measures against China would clearly be in the interest of the Union industry.

3. Interest of importers

- (105) It is recalled that in the previous investigations it was found that the impact of the imposition of measures would not be significant. No traders/importers cooperated in the current investigation. Bearing in mind that there is no evidence suggesting that the measures in force considerably affected importers, it is concluded that the continuation of measures will not affect the Union importers to any significant extent.

4. Interest of users

- (106) TA is mainly used in the wine and food industry as a food and beverage additive, and in the construction industry as a retardant in the production of gypsum.
- (107) All known users have been contacted in this investigation.
- (108) There was no cooperation from users from the construction industry. As established in the original investigation, TA represents less than 2 % of the costs of the gypsum products where it is used. Therefore it was concluded that the continuation of the measures would have a negligible influence on the costs and the competitive position of the construction industry.

- (109) Two major importers/users from the food sector cooperated fully in the proceeding. It could be determined that both companies were profitable, including their product lines using the product concerned as one of the raw materials. Besides sales of products manufactured using the product concerned represented only a minor percentage of their total turnover. Thus it can be concluded that the continuation of the measures would not unduly affect the users of the food industry. Moreover for these users the existence of diverse supply sources for the product concerned was quite important.

5. Conclusion on Union interest

- (110) Taking into account all of the factors outlined above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

H. ANTI-DUMPING MEASURES

- (111) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained on imports of the product concerned originating in China. They were also granted a period to make representations subsequent to this disclosure.
- (112) A user from the construction sector claimed that the extension of the measures in force would cause a shortage of the product concerned, might increase their production costs and thus result in increased prices of their finished products. No evidence was submitted to support these claims. Therefore, due to the lack of justification of the claims along with the lack of cooperation from users from the construction sector, it was not possible to verify these claims.
- (113) The two users from the food sector that cooperated in the investigation claimed that the impact of the continuation of the measures on the food industry had not been sufficiently considered, and one of them requested a hearing with the Hearing Officer.
- (114) During the hearing, this user did not disagree with the conclusion that the continuation of the measures would overall not negatively affect the profitability of the company as a whole but claimed that the impact on the profitability of the specific production line using the product concerned, which represents only a minor percentage of the total turnover, would be in their view significant. It also claimed that domestic prices for tartaric acid had considerably increased after the review investigation period and that these price levels would again significantly reduce their product profitability. Nevertheless this user did not deny that the price increase was a result of a lack of raw material supply

on the Union market whose level fluctuates regularly depending on the wine harvest and cannot therefore be considered as lasting nor being caused by the anti-dumping measures in force.

- (115) The other cooperating user, during a hearing with the investigation team, argued against the extension of the measures with arguments of similar nature. Therefore, these arguments were similarly rejected (see the previous recital).
- (116) A cooperating Chinese exporting producer argued that the Union industry could not be considered as still being vulnerable, that the essential cause influencing the Union industry situation was closely associated with climatic conditions and that, in consequence, it was against the continuation of the measures. These claims were not supported by evidence and hence could not be accepted. Furthermore, they were not of a nature as to change the findings as to the situation of the Union industry.
- (117) Finally the Union industry, in consideration of its profitability figures during the period considered, justified that the closure in mid-2008 of the sole French producer had, in the short run, diminished the quantity of product concerned available in the domestic market, thus temporarily increasing sales prices and, accordingly, increasing their profitability. The Union industry argued that given these circumstances, these changes could not in any case be considered as been of a lasting nature. Thus, the findings as regard the situation of the Union industry remain unchanged.
- (118) In summary, after having considered all the comments submitted following disclosure to interested parties of the conclusions of the investigation, it was considered that none of them was of such a nature as to change the conclusions reached during the investigation.
- (119) 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 tartaric acid originating in China should be maintained for an additional period of five years,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of tartaric acid, excluding D-(-)-tartaric acid with a negative optical rotation of at least 12,0 degrees, measured in a water solution according to the method described in the European Pharmacopoeia, currently falling within CN code ex 2918 12 00 (TARIC code 2918 12 00 90) and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable, to the net free-at-Union-frontier price, before duty, for the products manufactured by the companies listed below shall be as follows:

Company	Anti-dumping duty	TARIC additional code
Changmao Biochemical Engineering Co. Ltd, Changzhou City, People's Republic of China	10,1 %	A688
Ninghai Organic Chemical Factory, Ninghai, People's Republic of China	4,7 %	A689
All other companies (except Hangzhou Bioking Biochemical Engineering Co. Ltd, Hangzhou City, People's Republic of China — TARIC additional code A687)	34,9 %	A999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

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

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

Done at Brussels, 16 April 2012.

For the Council
The President
N. WAMMEN

ANNEX

- (1) A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3): The name and function of the official of the entity which has issued the commercial invoice.
- (2) The following declaration: 'I, the undersigned, certify that the (volume) of tartaric acid sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'

Date and signature

COUNCIL IMPLEMENTING REGULATION (EU) No 350/2012
of 23 April 2012
implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran ⁽¹⁾, and in particular Article 46(2) thereof,

Whereas:

(1) On 23 March 2012, the Council adopted Regulation (EU) No 267/2012.

(2) The Council considers that there are no longer grounds for keeping one person and two entities on the list of

natural and legal persons, entities and bodies subject to restrictive measures set out in Annex IX to Regulation (EU) No 267/2012.

(3) The list set out in Annex IX to Regulation (EU) No 267/2012 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The person and entities listed in the Annex to this Regulation shall be deleted from the list set out in Annex IX to Regulation (EU) No 267/2012.

Article 2

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

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

Done at Luxembourg, 23 April 2012.

For the Council
The President
C. ASHTON

⁽¹⁾ OJ L 88, 24.3.2012, p. 1.

ANNEX

PERSON AND ENTITIES REFERRED TO IN ARTICLE 1

A Sedghi
Walship SA
Morison Menon Chartered Accountant

COMMISSION REGULATION (EU) No 351/2012**of 23 April 2012****implementing Regulation (EC) No 661/2009 of the European Parliament and of the Council as regards type-approval requirements for the installation of lane departure warning systems in motor vehicles**

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS REGULATION:

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

Having regard to Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor ⁽¹⁾, and in particular Article 14(1)(a) and Article 14(3)(a) thereof,

Whereas:

- (1) Regulation (EC) No 661/2009 lays down basic requirements for the type-approval of motor vehicles of categories M₂, M₃, N₂ and N₃ with regard to the installation of lane departure warning systems. It is necessary to set out the specific procedures, tests and requirements for such type-approval.
- (2) Regulation (EC) No 661/2009 provides that the Commission may adopt measures exempting certain vehicles or classes of vehicles of categories M₂, M₃, N₂ and N₃ from the obligation to install lane departure warning systems, where following a cost/benefit analysis and taking into account all relevant safety aspects, the application of those systems proves not to be appropriate to the vehicle or class of vehicles concerned.
- (3) The cost/benefit analysis has proven that the application of lane departure warning systems to semi-trailer towing vehicles of category N₂ with a maximum mass exceeding 3,5 tonnes but not exceeding 8 tonnes is not appropriate as it would generate more costs than benefits. In addition, it is considered that due to their typical use in specific traffic conditions, the installation of lane departure warning systems would generate only limited safety benefits for category M₂ and M₃ vehicles of Class A, Class I and Class II, and for articulated buses of category M₃ of Class A, Class I and Class II, as well as for certain special purpose vehicles, off-road vehicles and vehicles with more than three axles. Those vehicles should therefore be exempted from the obligation to install those systems.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Technical Committee – Motor Vehicles,

*Article 1***Scope**

This Regulation applies to vehicles of categories M₂, N₂, M₃ and N₃, as defined in Annex II to Directive 2007/46/EC of the European Parliament and of the Council ⁽²⁾, with the exception of the following:

- (1) semi-trailer towing vehicles of category N₂ with a maximum mass exceeding 3,5 tonnes but not exceeding 8 tonnes;
- (2) categories M₂ and M₃ vehicles of Class A, Class I and Class II;
- (3) category M₃ articulated buses of Class A, Class I and Class II;
- (4) off-road vehicles of categories M₂, M₃, N₂ and N₃ as referred to in points 4.2 and 4.3 of Part A of Annex II to Directive 2007/46/EC;
- (5) special purpose vehicles of categories M₂, M₃, N₂ and N₃ as referred to in point 5 of Part A of Annex II to Directive 2007/46/EC;
- (6) vehicles of categories M₂, M₃, N₂ and N₃ with more than three axles.

*Article 2***Definitions**

For the purposes of this Regulation, the following definitions shall apply in addition to the definitions set out in Regulation (EC) No 661/2009:

- (1) 'vehicle type with regard to its Lane Departure Warning System' means a category of vehicles which do not differ in such essential respects as:
 - (a) the manufacturer's trade name or mark;
 - (b) vehicle features which significantly influence the performances of the Lane Departure Warning System;
 - (c) the type and design of the Lane Departure Warning System;
- (2) 'lane' means one of the longitudinal strips into which a roadway is divided (as shown in the Appendix to Annex II);

⁽¹⁾ OJ L 200, 31.7.2009, p. 1.

⁽²⁾ OJ L 263, 9.10.2007, p. 1.

- (3) 'visible lane marking' means delineators intentionally placed on the borderline of the lane that are directly visible by the driver while driving;
- (4) 'rate of departure' means the subject vehicle's approach velocity at a right angle to the visible lane marking at the warning issue point;
- (5) 'common space' means an area on which two or more information functions may be displayed, but not simultaneously.

Article 3

EC type-approval of a type of vehicle with regard to LDWS

- 1. The manufacturer or his representative shall submit to the type-approval authority the application for EC type-approval of a vehicle with regard to lane departure warning systems.

- 2. The application shall be drawn up in accordance with the model of the information document set out in Part 1 of Annex I.

- 3. If the relevant requirements set out in Annex II to this Regulation are met, the approval authority shall grant an EC type-approval and issue a type-approval number in accordance with the numbering system set out in Annex VII to Directive 2007/46/EC.

A Member State may not assign the same number to another vehicle type.

- 4. For the purposes of paragraph 3, the type-approval authority shall issue an EC type-approval certificate established in accordance with the model set out in Part 2 of Annex I.

Article 4

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

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

Done at Brussels, 23 April 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX I

Standard models for the information document and the EC type-approval certificate

PART 1

Information document**MODEL**

Information document No ... relating to the EC type-approval of a vehicle with regard to lane departure warning systems.

The following information shall be supplied in triplicate and include a list of contents. Any drawings shall be supplied in appropriate scale and in sufficient detail on size A4 or on a folder of A4 format. Photographs, if any, shall show sufficient detail.

If the systems, components or separate technical units referred to in this Annex have electronic controls, information concerning their performance shall be supplied.

0. GENERAL

0.1. Make (trade name of manufacturer):

0.2. Type:

0.2.0.1. Chassis:

0.2.0.2. Bodywork/complete vehicle:

0.2.1. Commercial name(s) (if available):

0.3. Means of identification of type, if marked on the vehicle ^(b):

0.3.0.1. Chassis:

0.3.0.2. Bodywork/complete vehicle:

0.3.1. Location of that marking:

0.3.1.1. Chassis:

0.3.1.2. Bodywork/complete vehicle:

0.4. Category of vehicle ^(c):

0.5. Name and address of manufacturer:

0.6. Location and method of attachment of statutory plates and location of vehicle identification number:
.....

0.6.1. On the chassis:

0.6.2. On the bodywork:

0.9. Name and address of the manufacturer's representative (if any):

1. GENERAL CONSTRUCTION CHARACTERISTICS OF THE VEHICLE

1.1. Photographs and/or drawings of a representative vehicle:

1.2. Dimensional drawing of the whole vehicle:

1.3. Number of axles and wheels:

1.3.1. Number and position of axles with twin wheels:

1.3.2. Number and position of steered axles:

1.3.3. Powered axles (number, position, interconnection):

1.8. Hand of drive: left/right ⁽¹⁾.2. MASSES AND DIMENSIONS ^(f) ^(g)

(in kg and mm) (Refer to drawing where applicable)

2.1. Wheelbase(s) (fully loaded) ^(g1)

2.1.1. Two axle vehicles:

2.1.1.1. Vehicles with three or more axles

2.3. Axle track(s) and width(s)

2.3.1. Track of each steered axle ^(g4):2.3.2. Track of all other axles ^(g4):

- 2.3.3. Width of the widest rear axle:
- 2.3.4. Width of the foremost axle (measured at the outermost part of the tyres excluding the bulging of the tyres close to the ground):
- 2.4. Range of vehicle dimensions (overall)
- 2.4.1. For chassis without bodywork
- 2.4.1.1. Length ^(g5):
- 2.4.1.1.1. Maximum permissible length:
- 2.4.1.1.2. Minimum permissible length:
- 2.4.1.2. Width ^(g7):
- 2.4.1.2.1. Maximum permissible width:
- 2.4.1.2.2. Minimum permissible width:
- 2.4.2. For chassis with bodywork
- 2.4.2.1. Length ^(g5):
- 2.4.2.1.1. Length of the loading area:
- 2.4.2.2. Width ^(g7):
- 2.4.3. For bodywork approved without chassis (vehicles M₂ and M₃)
- 2.4.3.1. Length ^(g5):
- 2.4.3.2. Width ^(g7):
- 2.6. Mass in running order
- Mass of the vehicle with bodywork and, in the case of a towing vehicle of category other than M₁, with coupling device, if fitted by the manufacturer, in running order, or mass of the chassis or chassis with cab, without bodywork and/or coupling device if the manufacturer does not fit the bodywork and/or coupling device (including liquids, tools, spare wheel, if fitted, and driver and, for buses and coaches, a crew member if there is a crew seat in the vehicle) ^(h) (maximum and minimum for each variant):
- 4.7. Maximum vehicle design speed (in km/h) ^(g):
13. SPECIAL PROVISIONS FOR BUSES AND COACHES
- 13.1. Class of vehicle: Class III/Class B ⁽ⁱ⁾

Explanatory notes

- ^(l) Delete where not applicable (there are cases where nothing needs to be deleted when more than one entry is applicable).
- ^(h) If the means of identification of type contains characters not relevant to describe the vehicle, component or separate technical unit types covered by this information document, such characters shall be represented in the documentation by the symbol '?' (e.g. ABC??123??).
- ^(c) Classified according to the definitions set out in Part A of Annex II to Directive 2007/46/EC.
- ^(f) Where there is one version with a normal cab and another with a sleeper cab, both sets of masses and dimensions are to be stated
- ^(g) Standard ISO 612: 1978 – Road vehicles – Dimensions of motor vehicles and towed vehicles – terms and definitions.
- ^(g1) — The vehicle wheelbase shall be determined in accordance with:
- item No 6.4.1. of Standard ISO 612:1978 for motor vehicle and drawbar trailer;
- item No 6.4.2. of Standard ISO 612:1978 for semi-trailer and centre-axle trailer
- Note:
- In the case of a centre-axle trailer, the axis of the coupling shall be considered as the foremost axle.
- ^(g4) — The track of axles shall be determined in accordance with item No 6.5. of Standard ISO 612:1978
- ^(g5) — vehicle length shall be determined in accordance with:
- item No 6.1. of Standard ISO 612:1978 for vehicles of category M₁;
- point 2.4.1. of Annex I to Directive 97/27/EC of the European Parliament and of the Council ⁽ⁱ⁾ for vehicles other than those of category M₁
- In the case of trailers, the lengths shall be determined in accordance with item No 6.1.2. of Standard ISO 612:1978.

⁽ⁱ⁾ OJ L 233, 25.8.1997, p. 1.

- (^{g7}) — The width of vehicles of category M₁ shall be determined in accordance with item No 6.2. of Standard ISO 612:1978. For vehicles other than those of category M₁ the width shall be determined in accordance with point 2.4.2. of Annex I to Directive 97/27/EC.
- (^b) The mass of the driver and, if applicable, of the crew member is assessed at 75 kg (subdivided into 68 kg occupant mass and 7 kg luggage mass according to ISO Standard 2416 - 1992), the fuel tank is filled to 90 % and the other liquid containing systems (except those for used water) to 100 % of the capacity specified by the manufacturer.
- (^q) With respect to trailers, maximum speed permitted by the manufacturer.

PART 2

MODEL

(maximum format: A4 (210 × 297 mm))

EC TYPE-APPROVAL CERTIFICATE

Stamp of type-approval authority

Communication concerning:

- EC type-approval (¹)
- Extension of EC type-approval (¹)
- Refusal of EC type-approval (¹)
- Withdrawal of EC type-approval (¹)

of a type of vehicle with regard to lane departure warning systems
with regard to Commission Regulation (EU) No 351/2012 as amended.

EC type-approval Number: _____

Reason for extension:

SECTION I

- 0.1. Make (trade name of manufacturer):
- 0.2. Type:
 - 0.2.1. Commercial name(s) (if available):
- 0.3. Means of identification of type if marked on the vehicle (²):
 - 0.3.1. Location of that marking:
- 0.4. Category of vehicle (³):
- 0.5. Name and address of manufacturer:
- 0.8. Names and address(es) of assembly plant(s):
- 0.9. Representative of the manufacturer:

SECTION II

1. Additional information (where applicable): see Addendum
2. Technical service responsible for carrying out the tests:
3. Date of test report:
4. Number of test report:
5. Remarks (if any): see Addendum
6. Place:
7. Date:
8. Signature:

Attachments: Information package.

Test report.

(¹) Delete where not applicable.

(²) If the means of identification of type contains characters not relevant to describe the vehicle, component or separate technical unit types covered by this information, such characters shall be represented in the documentation by the symbol '?' (e.g. ABC??123??).

(³) As defined in Section A of Annex II to Directive 2007/46/EC.

Addendum
to EC type-approval certificate No ...

1. Additional information
 - 1.1. Brief description of lane departure warning system fitted to the vehicle:
 4. Annex II test results
 - 4.1. Visible lane markings used for the testing
 - 4.2. Documentation demonstrating compliance with all other lane markings identified in the Appendix to Annex II to Commission Regulation (EU) No 351/2012
 - 4.3. Description of the variants of the lane departure warning system with regional specific adjustments that fulfil the requirements
 - 4.4. Mass and condition of load of the vehicle when tested
 - 4.5. Warning threshold setting (only in case where the lane departure warning system is equipped with a user-adjustable warning threshold)
 - 4.6. Result of optical warning signal verification test
 - 4.7. Results of the lane departure warning test
 - 4.8. Results of the failure detection test
 - 4.9. Results of the deactivation test (only if the vehicle is equipped with means to deactivate the lane departure warning system)
 5. Remarks (if any):
-

ANNEX II

Requirements and tests for the type-approval of motor vehicles with regard to lane departure warnings systems**1. Requirements****1.1. General requirements**

- 1.1.1. The effectiveness of the lane departure warning system (LDWS) shall not be adversely affected by magnetic or electrical fields. This shall be demonstrated by compliance with UNECE Regulation No 10 ⁽¹⁾.

1.2. Performance requirements

- 1.2.1. Whenever the system is active, as specified in point 1.2.3., the LDWS shall warn the driver if the vehicle crosses over a visible lane marking for the lane in which it is running, on a road with a directional form that varies between straight and a curve having an inner lane marking with a minimum radius of 250 m, when there has been no purposeful demand to do so.

Specifically:

- 1.2.1.1. it shall provide the driver with the warning specified in point 1.4.1., when tested in accordance with the provisions of point 2.5. (departure warning test) and with lane markings as specified in point 2.2.3.;

- 1.2.1.2. the warning mentioned in point 1.2.1. may be suppressed when there is a driver action which indicates an intention to depart from the lane.

- 1.2.2. The system shall also provide the driver with the warning specified in point 1.4.2., when tested in accordance with the provisions of point 2.6. (failure detection test). The signal shall be constant.

- 1.2.3. The LDWS shall be active at least at vehicle speeds above 60 km/h, unless manually deactivated in accordance with point 1.3.

- 1.3. If a vehicle is equipped with a means to deactivate the LDWS function, the following conditions shall apply as appropriate:

- 1.3.1. The LDWS function shall be automatically reinstated at the initiation of each new ignition 'on' (run) cycle.

- 1.3.2. A constant optical warning signal shall inform the driver that the LDWS function has been deactivated. The yellow warning signal specified in point 1.4.2. may be used for this purpose.

1.4. Warning indication

- 1.4.1. The warning referred to in point 1.2.1. shall be noticeable by the driver and be provided by either of the following:

- (a) at least two warning means, to be chosen between optical, acoustic and haptic;
- (b) one warning means, to be chosen between haptic and acoustic, with spatial indication about the direction of unintended drift of the vehicle.

- 1.4.1.1. Where an optical signal is used for the lane departure warning, it may use the failure warning signal as specified in point 1.2.2. in a flashing mode.

- 1.4.2. The failure warning referred to in point 1.2.2. shall be a yellow optical warning signal.

- 1.4.3. The LDWS optical warning signals shall be activated either when the ignition (start) switch is turned to the 'on' (run) position or when the ignition (start) switch is in a position between the 'on' (run) and 'start' that is designated by the manufacturer as a check position (initial system (power-on)). This requirement does not apply to warning signals shown in a common space.

- 1.4.4. The optical warning signals shall be visible even by daylight; the satisfactory condition of the signals must be easily verifiable by the driver from the driver's seat.

- 1.4.5. When the driver is provided with an optical warning signal to indicate that the LDWS is temporarily not available, for example due to inclement weather conditions, the signal shall be constant. The failure warning signal specified in point 1.4.2. may be used for this purpose.

1.5. Provisions for the periodic technical inspection

- 1.5.1. At a periodic technical inspection it shall be possible to confirm the correct operational status of the LDWS by a visible observation of the failure warning signal status, following a 'power-ON' (off – system OK, on – system fault present).

⁽¹⁾ OJ L 116, 8.5.2010, p. 1.

In the case of the failure warning signal being in a common space, the common space must be observed to be functional prior to the failure warning signal status check.

- 1.5.2. At the time of type-approval, the means to protect against simple unauthorised modification of the operation of the failure warning signal chosen by the manufacturer shall be confidentially outlined.

Alternatively, this protection requirement is fulfilled when a secondary means of checking the correct operational status of the LDWS is available.

2. Test procedures

- 2.1. The manufacturer shall provide a brief documentation package which gives access to the basic design of the system and, if applicable, the means by which it is linked to other vehicle systems. The function of the system shall be explained and the documentation shall describe how the operational status of the system is checked, whether there is an influence on other vehicle systems, and the method(s) used in establishing the situations which will result in a failure warning signal being displayed.

2.2. Test conditions

- 2.2.1. The test shall be performed on a flat, dry asphalt or concrete surface.

- 2.2.2. The ambient temperature shall be between 0 °C and 45 °C.

2.2.3. Visible lane markings

- 2.2.3.1. The visible lane markings used in the lane departure warning tests of point 2.6. shall be one of those identified in the Appendix to this Annex, with the markings being in good condition and of a material conforming to the standard for visible lane markings applied in the Member State concerned. The visible lane marking layout used for the testing shall be recorded.

- 2.2.3.2. The vehicle manufacturer shall demonstrate, through the use of documentation, compliance with all the other lane markings identified in the Appendix to this Annex. Any such documentation shall be appended to the test report.

- 2.2.3.3. Where the vehicle type can be equipped with different variants of the LDWS with regional specific adjustments, the manufacturer shall demonstrate through documentation that the requirements of this Regulation are fulfilled in all variants.

- 2.2.4. The test shall be performed under visibility conditions that allow safe driving at the required test speed.

2.3. Vehicle conditions

2.3.1. Test weight

The vehicle may be tested at any condition of load, the distribution of the mass among the axles being that stated by the vehicle manufacturer without exceeding any of the maximum permissible mass for each axle. No alteration shall be made once the test procedure has begun. The vehicle manufacturer shall demonstrate through the use of documentation that the system works at all conditions of load.

- 2.3.2. The vehicle shall be tested at the tyre pressures recommended by the vehicle manufacturer.

- 2.3.3. Where the LDWS is equipped with a user-adjustable warning threshold, the test as specified in point 2.5. shall be performed with the warning threshold set at its maximum lane departure setting. No alteration shall be made once the test procedure has begun.

2.4. Optical warning signal verification test

With the vehicle stationary check that the optical warning signal(s) comply with the requirements of point 1.4.3.

2.5. Lane departure warning test

- 2.5.1. Drive the vehicle at a speed of 65 km/h +/- 3 km/h into the centre of the test lane in a smooth manner so that the attitude of the vehicle is stable.

Maintaining the prescribed speed, gently drift the vehicle, either to the left or the right, at a rate of departure of between 0,1 and 0,8 m/s so that the vehicle crosses the lane marking. Repeat the test at a different rate of departure within the range 0,1 and 0,8 m/s.

Repeat the above tests drifting in the opposite direction.

- 2.5.2. The LDWS shall provide the lane departure warning indication mentioned in point 1.4.1. at the latest when the outside of the tyre of the vehicle's front wheel closest to the lane markings crosses a line 0,3 m beyond the outside edge of the visible lane marking to which the vehicle is being drifted.
- 2.6. *Failure detection test*
- 2.6.1. Simulate a LDWS failure, for example by disconnecting the power source to any LDWS component or disconnecting any electrical connection between LDWS components. The electrical connections for the failure warning signal of point 1.4.2. and the LDWS disable control of point 1.3. shall not be disconnected when simulating a LDWS failure.
- 2.6.2. The failure warning signal mentioned in point 1.4.2. shall be activated and remain activated while the vehicle is being driven and be reactivated after a subsequent ignition 'off' ignition 'on' cycle as long as the simulated failure exists.
- 2.7. *Deactivation Test*
- 2.7.1. If the vehicle is equipped with means to deactivate the LDWS, turn the ignition (start) switch to the 'on' (run) position and deactivate the LDWS. The warning signal mentioned in point 1.3.2. shall be activated. Turn the ignition (start) switch to the 'off' position. Again, turn the ignition (start) switch to the 'on' (run) position and verify that the previously activated warning signal is not reactivated, thereby indicating that the LDWS has been reinstated as specified in point 1.3.1. If the ignition system is activated by means of a 'key', the above requirement shall be fulfilled without removing the key.
-

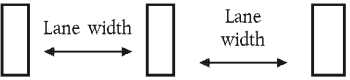
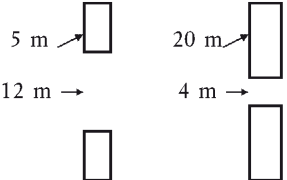
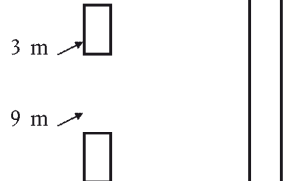
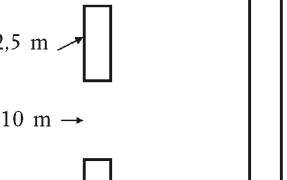
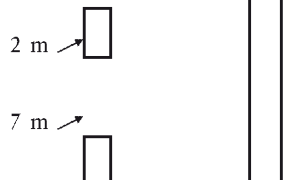
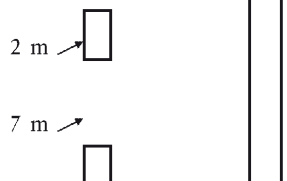
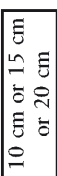
Appendix

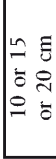
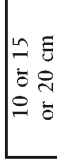
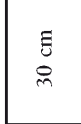
Visible lane marking identification

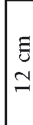
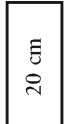
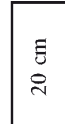
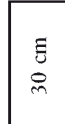
1. For the purpose of the test procedures referred to in points 2.2. and 2.5. of Annex II, the test lane width shall be greater than 3,5 m.
2. The visible lane markings identified in Table 1 are assumed to be white, unless otherwise indicated in this Appendix.
3. Table 1 shall be used for approval in accordance with points 2.2. and 2.5. of Annex II to this Regulation.

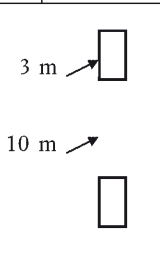
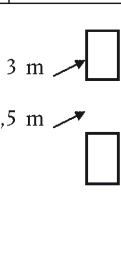
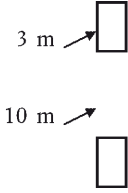
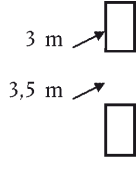
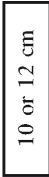
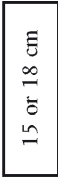
Table 1

Identified visible lane markings

PATTERN			COUNTRY	WIDTH		
Left edge lane marking	Centre line	Right edge lane marking		Left edge lane marking	Centre line	Right edge lane marking
			Definition of lane width for the purpose of this Regulation			
			SPAIN			
			SWEDEN			
			BELGIUM			
			UNITED KINGDOM Motorway (*)			
			UNITED KINGDOM Dual Carriageway			

PATTERN			COUNTRY	WIDTH		
Left edge lane marking	Centre line	Right edge lane marking		Left edge lane marking	Centre line	Right edge lane marking
	3 m  6 m 		UNITED KINGDOM Single Carriageway (speed limit > 40 mph)			
	5 m  10 m 		DENMARK			
	3 m  9 m 		NETHERLANDS			
	3 m  4,5 m 		ITALY Secondary and Local			
	4,5 m  7,5 m 		ITALY Motorway			
	3 m  4,5 m 		ITALY Main			
	4 m  8 m 		IRELAND			

PATTERN			COUNTRY	WIDTH		
Left edge lane marking	Centre line	Right edge lane marking		Left edge lane marking	Centre line	Right edge lane marking
	3 m  9 m 		GREECE	  		
	4 m  10 m 		PORTUGAL	  		
	3 m  9 m 		FINLAND	  		
	4 m  8 m 		GERMANY secondary	  		
	6 m  12 m 		GERMANY Motorway	  		
	3 m  39 m  10 m  13 m 		FRANCE Motorway (*)	  		

PATTERN			COUNTRY	WIDTH		
Left edge lane marking	Centre line	Right edge lane marking		Left edge lane marking	Centre line	Right edge lane marking
			FRANCE Highways (4 lanes or 2 × 2 lanes)			
			FRANCE (other roads)			

(*) Excepted certain zones (e.g. slip road, lane for slow vehicles, etc.).

COMMISSION IMPLEMENTING REGULATION (EU) No 352/2012**of 23 April 2012****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 Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multi-lateral 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 XVI, Part A thereto.

- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 23 April 2012.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, 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	MA	49,0
	TN	124,7
	TR	110,1
	ZZ	94,6
0707 00 05	JO	216,8
	TR	129,5
	ZZ	173,2
0709 93 10	TR	102,8
	ZZ	102,8
0805 10 20	EG	55,3
	IL	73,9
	MA	51,3
	TN	54,8
	TR	50,5
	ZZ	57,2
0805 50 10	TR	45,9
	ZZ	45,9
0808 10 80	AR	82,1
	BR	81,6
	CA	117,0
	CL	93,7
	CN	111,9
	MK	31,8
	NZ	123,3
	US	157,3
	UY	72,9
	ZA	87,4
	ZZ	95,9
0808 30 90	AR	112,5
	CL	112,9
	CN	65,6
	US	107,0
	ZA	126,1
	ZZ	104,8

⁽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 IMPLEMENTING REGULATION (EU) No 353/2012**of 23 April 2012****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Implementing Regulation (EU) No 971/2011 for the 2011/12 marketing year**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

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

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups for the 2011/12 marketing year are fixed by Commission Implementing Regulation (EU) No 971/2011 ⁽³⁾. Those prices and duties were last amended by Commission Implementing Regulation (EU) No 345/2012 ⁽⁴⁾.

- (2) The data currently available to the Commission indicate that those amounts should be amended in accordance with Article 36 of Regulation (EC) No 951/2006.

- (3) Given the need to ensure that this measure applies as soon as possible after the updated data have been made available, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Implementing Regulation (EU) No 971/2011 for the 2011/12 marketing year, are hereby amended as set out in the Annex hereto.

Article 2

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

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

Done at Brussels, 23 April 2012.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 254, 30.9.2011, p. 12.

⁽⁴⁾ OJ L 108, 20.4.2012, p. 32.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 24 April 2012

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 12 10 ⁽¹⁾	39,53	0,00
1701 12 90 ⁽¹⁾	39,53	2,75
1701 13 10 ⁽¹⁾	39,53	0,00
1701 13 90 ⁽¹⁾	39,53	3,05
1701 14 10 ⁽¹⁾	39,53	0,00
1701 14 90 ⁽¹⁾	39,53	3,05
1701 91 00 ⁽²⁾	43,62	4,38
1701 99 10 ⁽²⁾	43,62	1,25
1701 99 90 ⁽²⁾	43,62	1,25
1702 90 95 ⁽³⁾	0,44	0,25

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

DECISIONS

COUNCIL DECISION 2012/205/CFSP

of 23 April 2012

amending Decision 2010/413/CFSP concerning restrictive measures against Iran

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

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

Article 1

Having regard to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran ⁽¹⁾, and in particular Article 23(2) thereof,

The person and entities listed in the Annex to this Decision shall be deleted from the list set out in Annex II to Decision 2010/413/CFSP.

Whereas:

Article 2

This Decision shall enter into force on the day of its adoption.

(1) On 26 July 2010, the Council adopted Decision 2010/413/CFSP.

(2) The Council considers that there are no longer grounds for keeping one person and two entities on the list of persons and entities subject to restrictive measures set out in Annex II to Decision 2010/413/CFSP.

Done at Luxembourg, 23 April 2012.

(3) The list set out in Annex II to Decision 2010/413/CFSP should therefore be amended accordingly,

For the Council
The President
C. ASHTON

⁽¹⁾ OJ L 195, 27.7.2010, p. 39.

ANNEX

Person and entities referred to in Article 1

A Sedghi
Walship SA
Morison Menon Chartered Accountant

COUNCIL DECISION 2012/206/CFSP**of 23 April 2012****amending Decision 2011/782/CFSP concerning restrictive measures against Syria**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Whereas:

- (1) On 1 December 2011, the Council adopted Decision 2011/782/CFSP ⁽¹⁾.
- (2) In view of the gravity of the situation in Syria, the Council considers it necessary to impose additional restrictive measures against the Syrian regime.
- (3) In this context, the sale, supply, transfer or export of further goods and technology which might be used for internal repression should be prohibited or subject to an authorisation.
- (4) In addition, the sale, supply, transfer or export of luxury goods to Syria should be prohibited.
- (5) Decision 2011/782/CFSP should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2011/782/CFSP is hereby amended as follows:

- (1) Article 1 is replaced by the following:

"Article 1

1. The sale, supply, transfer or export of arms and related matériel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, as well as equipment which might be used for internal repression, to Syria by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft, shall be prohibited, whether originating or not in their territories.

2. The sale, supply, transfer or export of certain other equipment, goods and technology which might be used for internal repression or for the manufacture and maintenance of products which could be used for internal repression, to Syria by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft, shall be prohibited, whether originating or not in their territories.

The Union shall take the necessary measures in order to determine the relevant items to be covered by this paragraph.

3. It shall be prohibited to:

- (a) provide, directly or indirectly, technical assistance, brokering services or other services related to the items referred to in paragraphs 1 and 2 or related to the provision, manufacture, maintenance and use of such items, to any natural or legal person, entity or body in, or for use in, Syria;
- (b) provide, directly or indirectly, financing or financial assistance related to the items referred to in paragraphs 1 and 2, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for the provision of related technical assistance, brokering services or other services to any natural or legal person, entity or body in, or for use in, Syria.";

- (2) the following Article is inserted:

"Article 1a

1. The sale, supply, transfer or export of certain equipment, goods or technology other than those referred to in Article 1(2) which might be used for internal repression or for the manufacture and maintenance of products which could be used for internal repression, to Syria by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft, shall be subject to authorisation on a case-by-case basis by the competent authorities of the exporting Member State.

The Union shall take the necessary measures in order to determine the relevant items to be covered by this paragraph.

2. The provision of:

- (a) technical assistance, brokering services or other services related to the items referred to in paragraph 1 or related to the provision, manufacture, maintenance and use of such items, to any natural or legal person, entity or body in, or for use in, Syria;
- (b) financing or financial assistance related to the items referred to in paragraph 1, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for the provision of related technical assistance, brokering services or other services to any natural or legal person, entity or body in, or for use in, Syria.

⁽¹⁾ OJ L 319, 2.12.2011, p. 56.

shall also be subject to an authorisation of the competent authority of the exporting Member State.";

Article 2

This Decision shall enter into force on the date of its adoption.

(3) the following Article is inserted:

"Article 8b

The sale, supply, transfer or export of luxury goods to Syria by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft, shall be prohibited, whether originating or not in their territories.

The Union shall take the necessary measures in order to determine the relevant items to be covered by this Article."

Done at Luxembourg, 23 April 2012.

For the Council

The President

C. ASHTON

COMMISSION DELEGATED DECISION

of 8 February 2012

amending Annex III to Decision No 1080/2011/EU of the European Parliament and of the Council granting an EU guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Union and repealing Decision No 633/2009/EC, as regards Syria

(2012/207/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Decision No 1080/2011/EU of the European Parliament and of the Council of 25 October 2011 granting an EU guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Union and repealing Decision No 633/2009/EC ⁽¹⁾, and in particular Article 4(2) thereof,

Whereas:

- (1) Council conclusions on Syria of 23 May 2011 ⁽²⁾ invite the European Investment Bank (EIB) not to approve new EIB financing operations in Syria for the time being.
- (2) European Parliament Resolution of 7 July 2011 on the situation in Syria, Yemen and Bahrain in the context of the situation in the Arab world and North Africa welcomes the Council conclusions to impose restrictive measures on Syria and notably to invite the EIB not to approve new financing operations in Syria for the time being.
- (3) The political and economic situation in Syria has further deteriorated since the adoption of Decision No 1080/2011/EU.
- (4) Council conclusions on Syria of 14 November 2011 ⁽³⁾ decided to place new restrictive measures against the Syrian regime by suspending the disbursement or other payments under or in connection with existing EIB loan agreements with Syria.
- (5) In this context, the Council has adopted a series of restrictive measures, including the prohibition of

disbursements by the EIB in connection with existing loan agreements between Syria and the EIB, which are now consolidated into Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP ⁽⁴⁾ and Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 ⁽⁵⁾.

- (6) The Commission, with the involvement of the European External Action Service, has assessed that the overall economic and political situation requires removing Syria from Annex III to Decision No 1080/2011/EU, which sets out the list of countries eligible for EIB financing under EU guarantee,

HAS ADOPTED THIS DECISION:

Article 1

In point B(1) of Annex III to Decision No 1080/2011/EU, the word 'Syria' is deleted.

Article 2

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

Done at Brussels, 8 February 2012.

*For the Commission**The President*

José Manuel BARROSO

⁽¹⁾ OJ L 280, 27.10.2011, p. 1.

⁽²⁾ 3091st Foreign Affairs Council meeting.

⁽³⁾ 3124th Foreign Affairs Council meeting.

⁽⁴⁾ OJ L 319, 2.12.2011, p. 56.

⁽⁵⁾ OJ L 16, 19.1.2012, p. 1.

COMMISSION IMPLEMENTING DECISION

of 20 April 2012

amending Implementing Decision 2011/861/EU on a temporary derogation from rules of origin laid down in Annex II to Council Regulation (EC) No 1528/2007 to take account of the special situation of Kenya with regard to tuna loins

(notified under document C(2012) 2463)

(2012/208/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements ⁽¹⁾, and in particular Article 36(4) of Annex II thereof,

Whereas:

- (1) On 19 December 2011 the Commission adopted Implementing Decision 2011/861/EU ⁽²⁾, granting a temporary derogation from the rules of origin laid down in Annex II to Regulation (EC) No 1528/2007 to take account of the special situation of Kenya with regard to tuna loins.
- (2) On 1 December 2011, in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007, Kenya requested a new derogation from the rules of origin set out in that Annex. On 16 January 2012 Kenya submitted additional information to its request. According to the information provided by Kenya, catches of raw originating tuna are unusually low even compared to the normal seasonal variations which has led to a decrease in production of tuna loins. Kenya has pointed out the risk involved due to piracy during the supply of raw tuna. This abnormal situation still makes it impossible for Kenya to comply with the rules of origin laid down in Annex II to Regulation (EC) No 1528/2007 during a certain period. A new derogation should be granted with effect from 1 January 2012.
- (3) Implementing Decision 2011/861/EU applied until 31 December 2011. It is necessary to ensure continuity of importations from the ACP countries to the Union as well as a smooth transition to the Interim Economic Partnership Agreement between the East African Community on the one part and the European Community and its Member States on the other part ('EAC-EU Interim Economic Partnership Agreement'). Implementing Decision 2011/861/EU should therefore be extended from 1 January 2012 to 31 December 2013.
- (4) It would be inappropriate to grant derogations in accordance with Article 36 of Annex II to Regulation

(EC) No 1528/2007 which exceed the annual quota granted to the territory of the East African Community under the EAC-EU Interim Economic Partnership Agreement. The quota amounts for 2012 and 2013 should therefore be set at 2 000 tonnes of tuna loins yearly.

- (5) In the interest of clarity, it is appropriate to set out explicitly that the only non-originating materials to be used for the manufacture of tuna loins of CN code 1604 14 16 should be tuna of HS Headings 0302 or 0303, in order for the tuna loins to benefit from the derogation.
- (6) Implementing Decision 2011/861/EU should therefore be amended accordingly.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2011/861/EU is amended as follows:

- (1) Article 1 is replaced by the following:

'Article 1

By way of derogation from Annex II to Regulation (EC) No 1528/2007 and in accordance with Article 36(1)(a) of that Annex, tuna loins of CN code 1604 14 16 manufactured from non-originating tuna of HS Headings 0302 or 0303 shall be regarded as originating in Kenya in accordance with the terms set out in Articles 2 to 5 of this Decision.'

- (2) Article 2 is replaced by the following:

'Article 2

The derogation provided for in Article 1 shall apply to the products and the quantities set out in the Annex which are declared for release for free circulation in the Union from Kenya during the period from 1 January 2012 until 31 December 2013.'

- (3) Article 6 is replaced by the following:

'Article 6

This Decision shall apply from 1 January 2012 until 31 December 2013.'

⁽¹⁾ OJ L 348, 31.12.2007, p. 1.

⁽²⁾ OJ L 338, 21.12.2011, p. 61.

(4) The Annex is replaced by the text set out in the Annex to this Decision.

Article 2

This Decision shall apply from 1 January 2012.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 20 April 2012.

For the Commission
Algirdas ŠEMETA
Member of the Commission

ANNEX

‘ANNEX

Order No	CN code	Description of goods	Periods	Quantities
09.1667	1604 14 16	Tuna loins	1.1.2011 to 31.12.2011 1.1.2012 to 31.12.2012 1.1.2013 to 31.12.2013	2 000 tonnes 2 000 tonnes 2 000 tonnes’

COMMISSION IMPLEMENTING DECISION

of 20 April 2012

concerning the application of the control and movement provisions of Council Directive 2008/118/EC to certain additives, in accordance with Article 20(2) of Council Directive 2003/96/EC

(notified under document C(2012) 2484)

(2012/209/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ⁽¹⁾, and in particular Article 20(2) thereof,

Whereas:

(1) Following a request made by the Authorities of the Netherlands under Article 20(2) of Directive 2003/96/EC, the Commission has adopted Commission Implementing Decision 2011/545/EU of 16 September 2011 concerning the application of the control and movement provisions of Council Directive 2008/118/EC to products falling within CN code 3811, in accordance with Article 20(2) of Council Directive 2003/96/EC ⁽²⁾. That Implementing Decision submits all products falling within CN code 3811 to the control and movement provisions of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC ⁽³⁾.

(2) In line with the request made by the Authorities of the Netherlands, the intention of Implementing Decision 2011/545/EU is to prevent tax evasion, avoidance and abuse, by submitting to the control and movement provisions of Directive 2008/118/EC certain products intended to be used as additives for motor fuels and which, in this case, are subject to taxation in accordance with Directive 2003/96/EC.

(3) Following the adoption of Implementing Decision 2011/545/EU, the Commission's attention has been drawn to the particular position of products falling within CN codes 3811 21 00 and 3811 29 00. Those products are neither intended to be used as heating fuels or motor fuels, nor as additives thereto and do not give rise to a risk of tax evasion, avoidance or abuse. They should thus not be made subject to the

control and movement provisions of Directive 2008/118/EC. Only products falling within CN codes 3811 11 10, 3811 11 90, 3811 19 00 and 3811 90 00 should thus be made subject to those control and movement provisions.

(4) Implementing Decision 2011/545/EU should therefore be replaced by an analogous Decision, which should however be limited to CN codes 3811 11 10, 3811 11 90, 3811 19 00 and 3811 90 00.

(5) The measures provided for in this Decision are in accordance with the opinion of the Committee on Excise Duty,

HAS ADOPTED THIS DECISION:

Article 1

As from 1 January 2013, products falling within CN codes 3811 11 10, 3811 11 90, 3811 19 00 and 3811 90 00 of Annex I to Council Regulation (EEC) No 2658/87 ⁽⁴⁾ as amended by Commission Regulation (EC) No 2031/2001 ⁽⁵⁾ shall be subject to the control and movement provisions of Directive 2008/118/EC, in accordance with Article 20(2) of Directive 2003/96/EC.

Article 2

Implementing Decision 2011/545/EU is repealed.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 20 April 2012.

For the Commission

Algirdas ŠEMETA

Member of the Commission

⁽¹⁾ OJ L 283, 31.10.2003, p. 51.

⁽²⁾ OJ L 241, 17.9.2011, p. 33.

⁽³⁾ OJ L 9, 14.1.2009, p. 12.

⁽⁴⁾ OJ L 256, 7.9.1987, p. 1.

⁽⁵⁾ OJ L 279, 23.10.2001, p. 1.

COMMISSION IMPLEMENTING DECISION

of 23 April 2012

on recognition of the 'Ensus voluntary scheme under RED for Ensus bioethanol production' for demonstrating compliance with the sustainability criteria under Directives 2009/28/EC and 98/70/EC of the European Parliament and of the Council

(2012/210/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC ⁽¹⁾, and in particular Article 18(6) thereof,

Having regard to Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels ⁽²⁾, as amended by Directive 2009/30/EC ⁽³⁾, and in particular Article 7c(6) thereof,

After consulting the Advisory Committee established by Article 25, paragraph 2 of Directive 2009/28/EC,

Whereas:

- (1) Directives 2009/28/EC and 2009/30/EC both lay down sustainability criteria for biofuels. When reference is made to the provisions of Articles 17, 18 and Annex V to Directive 2009/28/EC this should be construed as the reference also to the similar provisions of Articles 7b, 7c and Annex IV to Directive 98/70/EC.
- (2) Where biofuels and bioliquids are to be taken into account for the purposes referred to in Article 17(1), points (a), (b) and (c), Member States shall require economic operators to show the compliance of biofuels and bioliquids with the sustainability criteria set out in Article 17(2) to (5) by Directive 2009/28/EC.
- (3) Recital 76 of Directive 2009/28/EC states that the imposition of an unreasonable burden on industry should be avoided and voluntary schemes can help create efficient solutions for proving compliance with these sustainability criteria.
- (4) The Commission may decide that a voluntary national or international scheme demonstrates that consignments of biofuel comply with the sustainability criteria set out in Article 17(3) to (5) of Directive 2009/28/EC or that a voluntary national or international scheme to measure greenhouse gas emission savings contains accurate data for the purposes of Article 17(2) of this Directive.
- (5) The Commission may recognise such a voluntary scheme for a period of five years.
- (6) When an economic operator provides proof or data obtained in accordance with a scheme that has been recognised by the Commission, to the extent covered by that recognition decision, a Member State shall not require the supplier to provide further evidence of compliance with the sustainability criteria.
- (7) The 'Ensus voluntary scheme under RED for Ensus bioethanol production' (hereafter 'Ensus scheme') was submitted on 21 November 2011 to the Commission with the request for recognition. This scheme covers bioethanol from EU feed wheat produced by the Ensus One plant. The recognised scheme will be made available at the transparency platform established under Directive 2009/28/EC. The Commission will take into account considerations of commercial sensitivity and may decide to only partially publish the scheme.
- (8) Assessment of the Ensus scheme found it to adequately cover the sustainability criteria of Directive 2009/28/EC, as well as applying a mass balance methodology in line with the requirements of Article 18(1) of Directive 2009/28/EC.
- (9) The evaluation of the Ensus scheme found that it meets adequate standards of reliability, transparency and independent auditing and also complies with the methodological requirements in Annex V to Directive 2009/28/EC.

HAS ADOPTED THIS DECISION:

Article 1

The voluntary scheme 'Ensus voluntary scheme under RED for Ensus bioethanol production' for which the request for recognition was submitted to the Commission on 21 November 2011 demonstrates that consignments of biofuels comply with the sustainability criteria as laid down in Article 17(3), 17(4) and 17(5) of Directive 2009/28/EC and Article 7b(3), 7b(4) and 7b(5) of Directive 98/70/EC. The scheme also contains accurate data for purposes of Article 17(2) of Directive 2009/28/EC and Article 7b(2) of Directive 98/70/EC.

Furthermore, it may be used for demonstrating compliance with Article 18(1) of Directive 2009/28/EC and of Article 7c(1) of Directive 98/70/EC.

⁽¹⁾ OJ L 140, 5.6.2009, p. 16.

⁽²⁾ OJ L 350, 28.12.1998, p. 58.

⁽³⁾ OJ L 140, 5.6.2009, p. 88.

Article 2

1. The Decision is valid for a period of five years after it enters into force. If the scheme, after adoption of the Commission decision, undergoes changes to its contents in a way that might affect the basis of this Decision, such changes shall be notified to the Commission without delay. The Commission will assess the notified changes with a view to establish whether the scheme is still adequately covering the sustainability criteria for which it is recognised.

2. If it has been clearly demonstrated that the scheme has not implemented elements considered to be decisive for this Decision and if a severe and structural breach of those elements has taken place, the Commission may revoke its Decision.

Article 3

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

Done at Brussels, 23 April 2012.

For the Commission
The President

José Manuel BARROSO

CORRIGENDA**Corrigendum to Commission Decision 2011/383/EU of 28 June 2011 establishing the ecological criteria for the award of the EU Ecolabel to all-purpose cleaners and sanitary cleaners***(Official Journal of the European Union L 169 of 29 June 2011)*

On page 60, Annex, 'Criterion 7 — Packaging requirements', point (d):

for: '(d) Products packaged in trigger sprays must be sold as a part of a refillable system.'

read: '(d) All-purpose cleaners packaged in trigger sprays must be sold as a part of a refillable system.'

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