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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 25 June 2012

on the position to be taken by the European Union in the EEA Joint Committee concerning an amendment to Annex XIII (Transport) to the EEA Agreement

(2012/341/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ⁽¹⁾, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Annex XIII to the Agreement on the European Economic Area ⁽²⁾ (the 'EEA Agreement') was amended by Decision of the EEA Joint Committee No 90/2011 of 19 July 2011 ⁽³⁾, by virtue of which Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community ⁽⁴⁾ was incorporated into the EEA Agreement.
- (2) Through the inclusion of Regulation (EC) No 1008/2008 into the Air Transport Agreement between the European Community and the Swiss Confederation, the same regime has been established between the Union and Switzerland for Swiss and Community air carriers ⁽⁵⁾.
- (3) Through the inclusion of Regulation (EC) No 1008/2008 into the Convention establishing the European Free Trade

Association (Vaduz Convention) ⁽⁶⁾, the same regime has also been established between Switzerland and the EEA EFTA States for Swiss and EEA EFTA air carriers.

- (4) Annex XIII to the EEA Agreement should therefore be amended to grant Swiss air carriers the right to operate air services from a Member State of the Union to an EEA EFTA State and vice versa.
- (5) The position of the Union in the EEA Joint Committee should be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union within the EEA Joint Committee on the proposed amendment to Annex XIII (Transport) to the EEA Agreement shall be based on the draft Decision of the EEA Joint Committee attached to this Decision.

Article 2

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

Done at Brussels, 25 June 2012.

For the Council
The President
C. ASHTON

⁽¹⁾ OJ L 305, 30.11.1994, p. 6.

⁽²⁾ OJ L 1, 3.1.1994, p. 3.

⁽³⁾ OJ L 262, 6.10.2011, p. 62.

⁽⁴⁾ OJ L 293, 31.10.2008, p. 3.

⁽⁵⁾ Decision No 1/2010 of the Joint Community/Switzerland Air Transport Committee of 7 April 2010 (OJ L 106, 28.4.2010, p. 20).

⁽⁶⁾ Decision of the EFTA Council No 1/2012 of 22 March 2012.

DRAFT

DECISION No .../2012 OF THE EEA JOINT COMMITTEE
of
amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

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

Whereas:

- (1) Annex XIII to the EEA Agreement was amended by Decision of the EEA Joint Committee No ... of ... ⁽¹⁾.
- (2) Annex XIII to the EEA Agreement was amended by Decision of the EEA Joint Committee No 90/2011 of 19 July 2011 ⁽²⁾, which incorporates into the EEA Agreement Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community ⁽³⁾.
- (3) The Contracting Parties aim at ensuring that EEA EFTA air carriers are entitled to operate air services from Member States of the Union to Switzerland and vice versa.
- (4) The Contracting Parties also aim at ensuring that Community air carriers are entitled to operate air services from an EEA EFTA State to Switzerland and vice versa.
- (5) To this end, the EEA Joint Committee is to grant, subject to the condition of reciprocity, Swiss air carriers the right to operate from Member States of the Union to an EEA EFTA State and vice versa.
- (6) Annex XIII to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Point 64a (Regulation (EC) No 1008/2008 of the European Parliament and of the Council) of Annex XIII to the EEA Agreement shall be amended as follows:

1. The current adaptation (b) shall be renumbered as adaptation (c).
2. The following adaptation shall be inserted after adaptation (a):
 - '(b) The following paragraph shall be added in Article 15:

"6. Under the same conditions as Community and EEA EFTA air carriers, Swiss air carriers shall be

entitled to operate air services from Member States of the European Union to EEA EFTA States and vice versa. This shall be subject to the condition that, on the one hand, the Community and Switzerland grant EEA EFTA air carriers the right to operate air services from Member States of the European Union to Switzerland and vice versa, and, on the other hand, that Switzerland and the EEA EFTA States grant Community air carriers the right to operate air services from Switzerland to EEA EFTA States and vice versa.

Any restrictions on this arrangement arising from existing bilateral or multilateral agreements binding the Community, on the one hand, and the EEA EFTA States, on the other hand, are hereby superseded.".

Article 2

This Decision shall enter into force on ..., provided that all the notifications under Article 103(1) of the EEA Agreement have been made to the EEA Joint Committee (*), or on the date of entry into force of the agreement between the European Union and Switzerland granting EEA EFTA air carriers the right to operate air services from Member States of the European Union to Switzerland and vice versa, on the one hand, or of the agreement between the EEA EFTA States and Switzerland granting Community air carriers the right to operate air services from Switzerland to EEA EFTA States and vice versa, on the other hand, whichever is the latest.

Article 3

The President of the EEA Joint Committee shall notify Switzerland of the adoption of this Decision and of the last notification to the EEA Joint Committee under Article 103(1) of the EEA Agreement, if any.

Article 4

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

Done at Brussels,

For the EEA Joint Committee

The President
*The Secretaries
to the EEA Joint Committee*

⁽¹⁾ OJ L ...

⁽²⁾ OJ L 262, 6.10.2011, p. 62.

⁽³⁾ OJ L 293, 31.10.2008, p. 3.

(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 558/2012

of 26 June 2012

amending Implementing Regulation (EU) No 102/2012 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, inter alia, in the People's Republic of China as extended to imports of steel ropes and cables consigned from, inter alia, the Republic of Korea, whether declared as originating in the Republic of Korea or not

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the 'basic Regulation'), and in particular Articles 9(4) and 13(4) thereof,

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

Whereas:

A. EXISTING MEASURES

- (1) By Regulation (EC) No 1858/2005⁽²⁾, the Council imposed anti-dumping measures on steel ropes and cables including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm ('certain steel ropes and cables' or 'the product concerned'), currently falling within CN codes ex 7312 10 81, ex 7312 10 83, ex 7312 10 85, ex 7312 10 89 and ex 7312 10 98 and originating, inter alia, in the People's Republic of China ('the original measures'). The measures with regard to these imports consisted of a duty rate applicable to the CIF net, free-at-Union frontier price, before duty, of 60,4 %.
- (2) On 12 August 2009 and following a request lodged by the Liaison Committee of the EU Wire Rope Industries, the Commission initiated an investigation pursuant to Article 13 of the basic Regulation. That investigation was concluded by Implementing Regulation (EU) No 400/2010⁽³⁾, through which the Council extended the definitive anti-dumping duty against certain steel ropes and cables originating in the People's Republic in China (PRC) to imports of the same product consigned from the Republic of Korea ('the extended measures'). By the same Regulation, imports of the product concerned consigned by certain specifically mentioned Korean companies were excluded from these measures as the companies concerned were not found to be circum-

venting the measures. Moreover, even though some of the Korean companies concerned were related to PRC companies that are subject to the original measures, there was no evidence that such relationship was established or used to circumvent the measures in place on imports originating in the PRC⁽⁴⁾.

- (3) By Implementing Regulation (EU) No 102/2012⁽⁵⁾ and following an expiry review pursuant to Article 11(2) of the basic Regulation, the Council maintained these measures.

B. INITIATION OF A REVIEW

- (4) By Regulation (EU) No 969/2011⁽⁶⁾, the Commission opened a review of Implementing Regulation (EU) No 400/2010 for the purpose of determining the possibility of granting an exemption from those measures to one Korean exporter, Seil Wire & Cable ('the applicant'), repealed the anti-dumping duty with regard to imports from the applicant and made imports from it subject to registration.
- (5) The review was opened as the Commission considered that there was sufficient prima facie evidence for the applicant's allegations that it was a new exporting producer according to Article 11(4) of the basic Regulation and that it could meet the criteria for being granted an exemption to the extension of the measures as per Article 13(4) of the basic Regulation.
- (6) An examination has therefore been carried out to determine whether the applicant fulfils the criteria for being granted an exemption to the extended measures as set out in recitals 5 to 7 of Regulation (EU) No 969/2011, by verifying that:
 - (i) it did not export the product concerned to the European Union during the investigation period used in the investigation that led to the extended measures, i.e. 1 July 2008 to 30 June 2009;

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 299, 16.11.2005, p. 1.

⁽³⁾ OJ L 117, 11.5.2010, p. 1.

⁽⁴⁾ See recital 80 of Implementing Regulation (EU) No 400/2010.

⁽⁵⁾ OJ L 36, 9.2.2012, p. 1.

⁽⁶⁾ OJ L 254, 30.9.2011, p. 7.

- (ii) it has not circumvented the measures applicable to certain steel ropes and cables of PRC origin; and
- (iii) it began exporting the product concerned to the European Union after the end of the investigation period used in the investigation that led to the extended measures.
- (7) The Commission sought and verified all information it deemed necessary for the purpose of the determination of the fulfilment of the above criteria. This process included an on-spot verification at the premises of the applicant.

C. FINDINGS

- (8) The applicant provided sufficient evidence to prove that it meets all the three criteria mentioned at recital 6 above. Indeed, it could prove that: (i) it did not export to the Union the product concerned during the period 1 July 2008 to 30 June 2009; (ii) it has not circumvented the measures applicable to certain steel ropes and cables of PRC origin; and (iii) it began exporting the product concerned to the European Union after 30 June 2009. Therefore, an exemption should be granted to the company concerned.

D. MODIFICATION OF THE LIST OF COMPANIES BENEFITING FROM AN EXEMPTION TO THE EXTENDED MEASURES

- (9) In consideration of the findings of the investigation as indicated in recital 8 above, it is concluded that the

company Seil Wire & Cable should be added to the list of companies which are exempted from the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 102/2012 on imports of certain steel ropes and cables originating in the People's Republic of China as extended to imports of certain steel ropes and cables consigned from the Republic of Korea. Therefore, Seil Wire & Cable should be added to the list of individually mentioned companies under Article 1(4) of Implementing Regulation (EU) No 102/2012. As stipulated in Article 1(2) of Implementing Regulation (EU) No 400/2010, the application of the exemption 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 to that Regulation. If no such invoice is presented, the anti-dumping duty should continue to apply.

- (10) The applicant and the Union Industry have been informed of the findings of the investigation and have had the opportunity to submit their comments. Their comments were taken into account where appropriate,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(4) of Implementing Regulation (EU) No 102/2012 shall be replaced by the following table:

'Country	Company	TARIC additional code
The Republic of Korea	Bosung Wire Rope Co., Ltd, 568,Yongdeok-ri, Hallim-myeon, Gimae-si, Gyeongsangnam-do, 621-872	A969
	Chung Woo Rope Co., Ltd, 1682-4, Songjung-Dong, Gangseo-Gu, Busan	A969
	CS Co., Ltd, 287-6 Soju-Dong Yangsan-City, Kyungnam	A969
	Cosmo Wire Ltd, 4-10, Koyeon-Ri, Woong Chon-Myon Ulju-Kun, Ulsan	A969
	Dae Heung Industrial Co., Ltd, 185 Pyunglim — Ri, Daesan-Myun, Haman — Gun, Gyungnam	A969
	DSR Wire Corp., 291, Seonpyong-Ri, Seo-Myon, Suncheon-City, Jeonnam	A969
	Kiswire Ltd, 20th Fl. Jangkyo Bldg, 1, Jangkyo-Dong, Chung-Ku, Seoul	A969
	Manho Rope & Wire Ltd, Dongho Bldg, 85-2 4 Street Joongang-Dong, Jong-gu, Busan	A969
	Seil Wire and Cable, 47-4, Soju-Dong, Yangsan-Si, Kyung-sangnamdo	A994
	Shin Han Rope Co., Ltd, 715-8, Gojan-Dong, Namdong-gu, Incheon	A969

Country	Company	TARIC additional code
	Ssang YONG Cable Mfg. Co., Ltd, 1559-4 Song-Jeong Dong, Gang-Seo Gu, Busan	A969
	Young Heung Iron & Steel Co., Ltd, 71-1 Sin-Chon Dong, Changwon City, Gyungnam	A969'

Article 2

Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 3 of Regulation (EU) No 969/2011. No anti-dumping duty shall be collected on the imports thus registered.

Article 3

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 Luxembourg, 26 June 2012.

For the Council

The President

N. WAMMEN

COUNCIL IMPLEMENTING REGULATION (EU) No 559/2012**of 26 June 2012****terminating the partial interim review concerning the countervailing measures on imports of certain polyethylene terephthalate (PET) originating in, inter alia, India**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Articles 19 and 24 thereof,

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

Whereas:

1. PROCEDURE**1.1. Previous investigation and existing countervailing measures**

- (1) By Regulation (EC) No 2603/2000 ⁽²⁾, the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) originating, inter alia, in India. The definitive findings and conclusions of an accelerated review pursuant to Article 20 of the basic Regulation are set out in Council Regulation (EC) No 1645/2005 ⁽³⁾. Following an expiry review, the Council, by Regulation (EC) No 193/2007 ⁽⁴⁾, imposed a definitive countervailing duty for a further period of five years. The countervailing measures were amended by Council Regulation (EC) No 1286/2008 ⁽⁵⁾ following a partial interim review ('the last review investigation'). The countervailing measures consist of a specific duty. The rate of the duty is between EUR 0 and EUR 106,5 per tonne for individually named Indian producers with a residual duty rate of EUR 69,4 per tonne imposed on imports from all other producers.
- (2) Following a name change of one Indian company, South Asian Petrochem Ltd, by Notice 2010/C 335/07 ⁽⁶⁾, the Commission concluded that the anti-subsidy findings in respect of South Asian Petrochem Ltd should apply to Dhunseri Petrochem & Tea Limited.

1.2. Existing anti-dumping measures

- (3) By Regulation (EC) No 2604/2000 ⁽⁷⁾, the Council imposed a definitive anti-dumping duty on imports of PET originating, inter alia, in India. A review pursuant to Article 11(4) of Council Regulation (EC) No 1225/2009 ⁽⁸⁾ ('the basic anti-dumping Regulation') concerning South Asian Petrochem Ltd was subsequently conducted and its definitive findings and conclusions are set out in Council Regulation (EC) No 1646/2005 ⁽⁹⁾. Following an expiry review, the Council, by Regulation (EC) No 192/2007 ⁽¹⁰⁾, imposed a definitive anti-dumping duty for a further period of five years. The anti-dumping measures were amended by Regulation (EC) No 1286/2008 following a partial interim review investigation. The measures were set at the level of the injury elimination and consisted of specific anti-dumping duties. The rate of the duty is between EUR 87,5 and EUR 200,9 per tonne for individually named Indian producers with a residual duty rate of EUR 153,6 per tonne imposed on imports from all other producers ('the current anti-dumping measures').
- (4) Following a name change of one Indian company, South Asian Petrochem Ltd, by Notice 2010/C 335/06 ⁽¹¹⁾, the Commission concluded that the anti-dumping findings in respect of South Asian Petrochem Ltd should apply to Dhunseri Petrochem & Tea Limited.
- (5) By Decision 2005/697/EC ⁽¹²⁾, the Commission accepted undertakings offered by South Asian Petrochem Ltd setting a minimum import price ('the undertaking'). Following a name change, the Commission concluded by Notice 2010/C 335/05 ⁽¹³⁾ that the undertaking offered by South Asian Petrochem Ltd should apply to Dhunseri Petrochem & Tea Limited.

1.3. Initiation of a partial interim review

- (6) A request for a partial interim review pursuant to Article 19 of the basic Regulation was lodged by Dhunseri Petrochem & Tea Limited, an Indian exporting producer of PET ('the applicant'). The request was limited in scope to subsidisation and to the applicant. The applicant at the same time also requested the review of the current anti-dumping measures. The residual anti-dumping and countervailing duties are applicable to imports of products produced by the applicant and sales of the applicant to the Union are covered by the undertaking.

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ OJ L 301, 30.11.2000, p. 1.

⁽³⁾ OJ L 266, 11.10.2005, p. 1.

⁽⁴⁾ OJ L 59, 27.2.2007, p. 34.

⁽⁵⁾ OJ L 340, 19.12.2008, p. 1.

⁽⁶⁾ OJ C 335, 11.12.2010, p. 7.

⁽⁷⁾ OJ L 301, 30.11.2000, p. 21.

⁽⁸⁾ OJ L 343, 22.12.2009, p. 51.

⁽⁹⁾ OJ L 266, 11.10.2005, p. 10.

⁽¹⁰⁾ OJ L 59, 27.2.2007, p. 1.

⁽¹¹⁾ OJ C 335, 11.12.2010, p. 6.

⁽¹²⁾ OJ L 266, 11.10.2005, p. 62.

⁽¹³⁾ OJ C 335, 11.12.2010, p. 5.

(7) The applicant provided prima facie evidence that the continued application of the measure at its current level was no longer necessary to offset the counter-vailable subsidisation. In particular, the applicant provided prima facie evidence showing that its subsidy amount has decreased well below the duty rate currently applicable to it. This reduction in the overall subsidy level would mainly be due to the termination of its export oriented unit (EOU) status. With a magnitude of 13,5 %, the EOU scheme accounted for the vast majority of the 13,9 % subsidies established during the accelerated review.

(8) Having determined, after consulting the Advisory Committee, that the request contained sufficient prima facie evidence, the Commission announced on 2 April 2011 the initiation of a partial interim review ('the present review') pursuant to Article 19 of the basic Regulation by Notice 2011/C 102/08 ⁽¹⁾. The review was limited in scope to the examination of subsidisation in respect of the applicant.

1.4. Parties concerned by the investigation

(9) The Commission officially informed the applicant, the representatives of the exporting country and the association of Union producers about the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(10) One interested party requested and was granted a hearing.

(11) In order to obtain the information deemed necessary for its investigation, the Commission sent a questionnaire to the applicant and the Government of India (GOI) and received replies within the deadline set for that purpose.

(12) The Commission sought and verified all information deemed necessary for the determination of subsidisation. The Commission carried out verification visits at the premises of the applicant in Kolkata, India and at the premises of the GOI in New Delhi (Directorate-General of Foreign Trade and Ministry of Commerce) and Kolkata (Commerce & Industries Department, Government of West Bengal).

1.5. Review investigation period

(13) The investigation of subsidisation covered the period from 1 April 2010 to 31 March 2011 ('the review investigation period' or 'RIP').

1.6. Parallel anti-dumping investigation

(14) On 2 April 2011 by Notice 2011/C 102/09 ⁽²⁾ the Commission announced the initiation of a partial

interim review of the current anti-dumping measures pursuant to Article 11(3) of the basic anti-dumping Regulation, limited in scope to the examination of dumping in respect of the applicant.

(15) In the parallel anti-dumping investigation it was found that the changes are not of a lasting nature. As a consequence, the review investigation was terminated without amending the measures in force.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(16) The product under review is PET having a viscosity of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in India ('the product concerned').

2.2. Like product

(17) The investigation revealed that the product concerned produced in India and sold to the Union is identical in terms of physical and chemical characteristics and uses to the product produced and sold on the domestic market in India. It is therefore concluded that products sold on the domestic and export markets are like products within the meaning of Article 2(c) of the basic Regulation.

3. RESULTS OF THE INVESTIGATION

3.1. Subsidisation

(18) On the basis of the information submitted by the GOI and the applicant and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

Nationwide schemes:

- (a) Duty Entitlement Passbook Scheme (DEPBS);
- (b) Export oriented units (EOU)/export processing zones (EPZ)/special economic zones (SEZ);
- (c) Export Promotion Capital Goods Scheme (EPCGS);
- (d) Focus Market Scheme (FMS);
- (e) Export Credit Scheme (ECS);
- (f) Income Tax Exemption Scheme (ITES).

⁽¹⁾ OJ C 102, 2.4.2011, p. 15.

⁽²⁾ OJ C 102, 2.4.2011, p. 18.

Regional schemes:

(g) West Bengal Incentive Scheme (WBIS).

(19) The schemes (a) to (d) specified in recital 18 are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in Foreign Trade Policy (FTP) documents, which are issued by the Ministry of Commerce every five years and updated regularly. Two FTP documents are relevant to the RIP of this case, i.e. FTP 04-09 and FTP 09-14. The latter entered into force in August 2009. In addition, the GOI also sets out the procedures governing FTP 04-09 and FTP 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 04-09' and 'HOP I 09-14' respectively). The Handbook of Procedures is also updated on a regular basis.

(20) Scheme (e) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allows the Reserve Bank of India (RBI) to direct commercial banks in the field of export credits.

(21) Scheme (f) is based on the Income Tax Act of 1961, which is amended by the yearly Finance Act.

(22) Scheme (g) is administered by the Government of West Bengal and set out in Government of West Bengal Commerce & Industries Department notification No 580-CI/H of 22 June 1999, replaced by notification No 134-CI/O/Incentive/17/03/I of 24 March 2004.

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

(23) The detailed description of the DEPBS is contained in paragraphs 4.3 of FTP 04-09 and FTP 09-14 as well as in chapter 4 of HOP I 04-09 and HOP I 09-14.

(b) Eligibility

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

(c) Practical implementation of the DEPBS

(25) An eligible exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined regardless of whether import duties have actually been paid or not. The DEPBS rate for the product concerned

during the RIP of the current investigation was 8 % of fob value, subject to a value cap of INR 58/kg. As a result, the maximum benefit is INR 4,64/kg.

(26) To be eligible for benefits under this scheme, a company must export. At the time of the export transaction, a declaration must be made by the exporter to the authorities in India indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue, during the dispatch procedure, an export shipping bill. This document shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction. At the time of issuing the export shipping bill, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration was made. Therefore, there is no possibility for a retroactive amendment to the level of the benefit.

(27) It was found that, in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 24 months from the date of issue.

(28) Applications for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. De facto, no strict deadlines to apply for DEPBS credits exist. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the deadline submission periods mentioned in paragraph 4.47 of HOP I 04-09 and of HOP I 09-14. Furthermore, as clearly provided in paragraph 9.3 of the HOP I 04-09 and of HOP I 09-14, applications received after the expiry of submission deadlines can always be considered with the imposition of a minor penalty fee (i.e. 10 % of the entitlement).

(29) It was found that the applicant used this scheme during the RIP.

(d) Conclusions on DEPBS

(30) The DEPBS provides subsidies within the meaning of point (1)(a)(ii) of Article 3 and point (2) of Article 3 of the basic Regulation. A DEPBS credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the DEPBS credit confers a benefit upon the exporter, because it improves its liquidity.

(31) Furthermore, the DEPBS is contingent in law upon export performance, and is therefore deemed to be specific and countervailable under point (a) of the first subparagraph of Article 4(4) of the basic Regulation.

(32) This scheme cannot be considered as permissible duty drawback system or substitution drawback system within the meaning of point (1)(a)(ii) of Article 3 of the basic Regulation as claimed by the applicant. It does not conform to the strict rules laid down in point (i) of Annex I, in Annex II (definition and rules for drawback) and in Annex III (definition and rules for substitution drawback) to the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III to the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS.

(e) Abolishment of the DEPBS

(33) By means of Public Notice No 54 (RE-2010)/2009-2014 of 17 June 2011, the DEPBS received a final extension of three months until 30 September 2011. As no further extension was published subsequently, the DEPBS has effectively been withdrawn from 30 September 2011 onwards. Consequently, this scheme will not confer any benefits on the applicant after 30 September 2011. It has therefore to be verified whether, in accordance with Article 15(1) of the basic Regulation, measures should be imposed on this scheme.

(34) In this respect, it was established that the applicant received similar benefits pursuant to the parallel 'duty drawback' scheme. The duty drawback rate for PET was 5,5 % of fob value, subject to a maximum amount of INR 5,50/kg. However, since the 'duty drawback' scheme was not used during the RIP, it is not possible to calculate a subsidy amount for this scheme.

(35) The applicant claimed that the Duty Drawback Scheme conforms with the 'guidelines on consumption of inputs in the production process' in Annex II to the basic Regulation, specifically paragraph I of the said Annex. However, similar to the DEPBS, it was established that the duty drawback rate is determined regardless of whether import duties have actually been paid or not.

(f) Calculation of the subsidy amount

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

(37) In light of the above, it is considered appropriate to assess the benefit under the DEPBS as being the sum of the credits earned on all export transactions made under this scheme during the RIP.

(38) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amounts as numerator, pursuant to point (a) of the second subparagraph of Article 7(1) of the basic Regulation.

(39) In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(40) Based on the above, the subsidy rate established in respect of this scheme for the applicant during the RIP amounts to 6,7 %.

3.3. Export oriented units (EOU)/export processing zones (EPZ)/special economic zones (SEZ)

(41) In the course of the investigation it was found that the applicant did not obtain any benefits under EOU/EPZ/SEZ during the RIP. It was therefore not necessary to further analyse these schemes in this investigation.

3.4. Export Promotion Capital Goods Scheme (EPCGS)

(a) Legal basis

(42) The detailed description of EPCGS is contained in chapter 5 of FTP 04-09 and of FTP 09-14 as well as in chapter 5 of HOP I 04-09 and of HOP I 09-14.

(b) Eligibility

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

(c) *Practical implementation*

- (44) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate of 5 % applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period. Under FTP 09-14 the capital goods can be imported with a 0 % duty rate under the EPCGS, but in such case the time period for fulfilment of the export obligation is shorter.
- (45) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail himself of the benefit for duty-free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS licence holder.
- (46) It was found that the applicant used this scheme during the RIP.

(d) *Conclusion on EPCGS*

- (47) The EPCGS provides subsidies within the meaning of point (1)(a)(iii) of Article 3 and point (2) of Article 3 of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI, since this concession decreases the GOI's duty revenue which would be otherwise due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve the company's liquidity.
- (48) Furthermore, EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore it is deemed to be specific and countervailable under point (a) of the first subparagraph of Article 4(4) of the basic Regulation. It has been claimed by the applicant that EPCGS subsidies with regard to the purchase of capital goods where the export obligation was already fulfilled before the RIP should not anymore be treated as contingent upon export performance. Therefore they should not be treated as specific subsidies and should not be countervailed. However, this claim has to be rejected. It has to be underlined that the subsidy itself was contingent upon export performance i.e. it would not have been granted had the company not accepted a certain export obligation.
- (49) EPCGS cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of point (1)(a)(ii) of Article 3 of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in

point (i) of Annex I to the basic Regulation, because they are not consumed in the production of the exported products.

(e) *Calculation of the subsidy amount*

- (50) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned, i.e. 18,93 years. Interests were added to this amount in order to reflect the full value of the benefit over time. The commercial interest rate for local currency loans during the review investigation period in India was considered appropriate for this purpose.
- (51) In accordance with Articles 7(2) and 7(3) of the basic Regulation this subsidy amount has been allocated over the export turnover during the RIP as appropriate denominator, because the subsidy is contingent upon export performance.
- (52) The subsidy rate established in respect of this scheme for the applicant during the RIP amounts to 0,6 %.

3.5. Focus Market Scheme (FMS)(a) *Legal basis*

- (53) The detailed description of FMS is contained in paragraphs 3.9.1 to 3.9.2.2 of FTP 04-09 and paragraphs 3.14.1 to 3.14.3 of FTP 09-14 and in paragraphs 3.20 to 3.20.3 of HOP I 04-09 and paragraphs 3.8 to 3.8.2 of HOP I 09-14.

(b) *Eligibility*

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

(c) *Practical implementation*

- (55) Under this scheme exports of all products to countries notified under Appendix 37(C) of HOP I 04-09 and HOP I 09-14 are entitled to duty credit equivalent to 2,5 % of the fob value of products exported under this scheme. Certain type of export activities are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units. Also excluded from the scheme are certain types of products, e.g. diamonds, precious metals, ores, cereals, sugar and petroleum products.
- (56) The duty credits under FMS are freely transferable and valid for a period of 24 months from the date of issue of the relevant credit entitlement certificate. They can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods.

(57) The credit entitlement certificate is issued from the port from which the exports have been made and after realisation of exports or shipment of goods. As long as the applicant provides to the authorities copies of all relevant export documentation (e.g. export order, invoices, shipping bills, bank realisation certificates), the GOI has no discretion over the granting of the duty credits.

(58) It was found that the applicant used this scheme during the RIP.

(d) *Conclusion on FMS*

(59) The FMS provides subsidies within the meaning of point (1)(a)(ii) of Article 3 and point (2) of Article 3 of the basic Regulation. A FMS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the FMS duty credit confers a benefit upon the exporter, because it improves its liquidity.

(60) Furthermore, FMS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under point (a) of the first subparagraph of Article 4(4) of the basic Regulation.

(61) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of point (1)(a)(ii) of Article 3 of the basic Regulation. It does not conform to the strict rules laid down in point (i) of Annex I, Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. There is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III to the basic Regulation. An exporter is eligible for FMS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from FMS. Moreover, an exporter can use FMS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in point (i) of Annex I to the basic Regulation, because they are not consumed in the production of the exported products.

(e) *Calculation of the subsidy amount*

(62) The amount of countervailable subsidies was calculated on the basis of the benefit conferred on the recipient,

which is found to exist during the RIP as booked by the applicant on an accrual basis as income at the stage of export transaction. In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount (nominator) has been allocated over the export turnover during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(63) The subsidy rate established with regard to this scheme during the RIP for the applicant amounts to less than 0,1 %.

3.6. Export Credit Scheme (ECS)

(64) It was established that the applicant received the benefit of preferential interest rates for its export financing during the RIP until 30 June 2011. The legal basis for this preferential interest rate is set out in Master Circular on Rupee/Foreign Currency Export Credit & Customer Services to Exporters DBOD No DIR. (Exp). BC 07/04.02.02/2009-10 of the RBI, which is addressed to all commercial banks in India.

(65) On 1 July 2011, the terms and conditions of the ECS were revised by Master Circular on Rupee/Foreign Currency Export Credit & Customer Services to Exporters DBOD No DIR. (Exp). BC 04/04.02.002/2011-12 of the RBI. The revised conditions did not confer any benefits on the applicant. In accordance with Article 15(1) of the basic Regulation, this scheme should therefore not be countervailed.

3.7. Income Tax Exemption Scheme (ITES)

(66) In the course of the investigation it was found that the applicant did not obtain any benefits under ITES during the RIP. It was therefore not necessary to further analyse this scheme in this investigation.

3.8. West Bengal Incentive Scheme 1999 (WBIS 1999)

(67) The State of West Bengal grants to eligible industrial enterprises incentives in the form of a number of benefits, including a remission of sales tax and central sales tax on sales of finished goods, in order to encourage the industrial development of economically backward areas within this State.

(a) *Legal basis*

(68) The detailed description of this scheme as applied by the Government of West Bengal (GOWB) is set out in Notification No 580-CI/H of 22 June 1999 of the GOWB Commerce & Industries Department.

(b) Eligibility

- (69) Companies setting up a new industrial establishment or making a large-scale expansion of an existing industrial establishment in backward areas are eligible to avail benefits under this scheme. Nevertheless, an exhaustive list of ineligible industries (negative list of industries) exists preventing companies in certain fields of operations from benefiting from the incentives.

(c) Practical implementation

- (70) Under this scheme, companies must invest in backward areas. These areas, which represent certain territorial units in West Bengal are classified according to their economic development into different categories while at the same time there are developed areas excluded from the application of the incentive schemes. The main criteria to establish the amount of the incentives are the size of the investment and the area in which the enterprise is or will be located.

(d) Conclusion

- (71) This scheme provides subsidies within the meaning of point (1)(a)(ii) of Article 3 and point (2) of Article 3 of the basic Regulation. It constitutes a financial contribution by the GOWB, since the incentives granted, in the present case sales tax and central sales tax remissions on sales of finished goods, decrease tax revenue which would be otherwise due. In addition, these incentives confer a benefit upon a company, because they improve its financial situation since taxes otherwise due are not paid.
- (72) Furthermore, this scheme is regionally specific in the meaning of point (a) of the first subparagraph of Article 4(2) and Article 4(3) of the basic Regulation since it is only available to certain companies having invested within certain designated geographical areas within the jurisdiction of the State concerned. It is not available to companies located outside these areas and, in addition, the level of benefit is differentiated according to the area concerned.
- (73) The WBIS 1999 is therefore countervailable.

(e) Calculation of the subsidy amount

- (74) The subsidy amount was calculated on the basis of the amount of the sales tax and central sales tax on sales of finished goods normally due during the review investigation period but which remained unpaid under this scheme. In accordance with Article 7(2) of the basic Regulation, the amount of subsidy (numerator) has then been allocated over total sales during the review investigation period as appropriate denominator, because the subsidy is not export contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy rate obtained amounted to 1,4 %.

3.9. Amount of countervailable subsidies

- (75) The amount of countervailable subsidies determined in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the applicant amounts to 8,7 %. This amount of subsidisation exceeds the *de minimis* threshold mentioned under Article 14(5) of the basic Regulation.
- (76) The levels of subsidisation established in the current procedure for the applicant is as follows:

Schemes	DEPBS	EPCGS	FMS	WBIS	Total
Dhunseri Petrochem & Tea Ltd	6,7 %	0,6 %	< 0,1 %	1,4 %	8,7 %

- (77) It is therefore considered that, pursuant to Article 19 of the basic Regulation, subsidisation continued during the RIP.

3.10. Lasting nature of changed circumstances with regard to subsidisation

- (78) In accordance with Article 19(4) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.
- (79) It was established that, during the RIP, the applicant continued to benefit from countervailable subsidisation by the GOI. Further, the subsidy rate found during the present review is lower than that established during the last review investigation. It was equally established that the changes claimed by the applicant in recital 7 did indeed take place. Indeed, the applicant did no longer benefit from the EOU scheme during the RIP as indicated in recital 41.
- (80) However, it was also established that the most important scheme used by the applicant during the RIP (i.e. DEBPS) was discontinued on 30 September 2011, and another scheme not used during the RIP (i.e. duty drawback) is currently used by the applicant. It is therefore evident that the situation prevailing during the RIP is not of a lasting nature, as it has already significantly changed in the meantime.
- (81) It is therefore concluded that the partial interim review investigation should be terminated without amending the countervailing measures in force. The applicant, as well as the other parties concerned, were informed of the facts and considerations on the basis of which it was intended to propose the termination of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the countervailing measures applicable to imports of polyethylene terephthalate currently falling within CN code 3907 60 20 and originating, inter alia, in India is hereby terminated without amending the measures in force.

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 Luxembourg, 26 June 2012.

For the Council

The President

N. WAMMEN

COUNCIL IMPLEMENTING REGULATION (EU) No 560/2012**of 26 June 2012****terminating the partial interim review concerning the anti-dumping measures on imports of certain polyethylene terephthalate (PET) originating in India**

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 11(3) thereof,

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

Whereas:

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

- (1) By Regulation (EC) No 2604/2000⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) originating, inter alia, in India. A review pursuant to Article 11(4) of the basic Regulation concerning South Asian Petrochem Ltd was subsequently conducted and its definitive findings and conclusions are set out in Council Regulation (EC) No 1646/2005⁽³⁾. Following an expiry review, the Council, by Regulation (EC) No 192/2007⁽⁴⁾, imposed a definitive anti-dumping duty for a further period of five years. The anti-dumping measures were amended by Council Regulation (EC) No 1286/2008⁽⁵⁾ following a partial interim review ('the last review investigation'). The measures consist of specific anti-dumping duties. The rate of the duty is between EUR 87,5 and EUR 200,9 per tonne for individually named Indian producers with a residual duty rate of EUR 153,6 per tonne imposed on imports from other producers ('the current duties').
- (2) Following a name change of one Indian company, South Asian Petrochem Ltd, by Notice 2010/C 335/06⁽⁶⁾ the Commission concluded that the anti-dumping findings in respect of South Asian Petrochem Ltd should apply to Dhunseri Petrochem & Tea Limited.

- (3) By Regulation (EC) No 2603/2000⁽⁷⁾, the Council imposed a definitive countervailing duty on imports of PET originating, inter alia, in India. Following an accelerated review pursuant to Article 20 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community⁽⁸⁾ ('the basic AS Regulation'), the definitive measures were amended as set out in Council Regulation (EC) No 1645/2005⁽⁹⁾. Following an expiry review, the Council, by Regulation (EC) No 193/2007⁽¹⁰⁾ imposed a definitive countervailing duty for a further period of five years. The countervailing measures were amended by Regulation (EC) No 1286/2008 following the last review investigation. The countervailing measures consist of a specific duty. The rate of the duty is between EUR 0 and EUR 106,5 per tonne for individually named Indian producers with a residual duty rate of EUR 69,4 per tonne imposed on imports from other producers ('the current countervailing measures').

- (4) Following a name change of one Indian company, South Asian Petrochem Ltd, by Notice 2010/C 335/07⁽¹¹⁾, the Commission concluded that the anti-subsidy findings in respect of South Asian Petrochem Ltd should apply to Dhunseri Petrochem & Tea Limited.

- (5) By Decision 2005/697/EC⁽¹²⁾, the Commission accepted undertakings offered by South Asian Petrochem Ltd setting a minimum import price ('the undertaking'). Following a name change, the Commission concluded by Notice 2010/C 335/05⁽¹³⁾ that the undertaking offered by South Asian Petrochem Ltd should apply to Dhunseri Petrochem & Tea Limited.

1.2. Request for a review

- (6) A request for a partial interim review pursuant to Article 11(3) of the basic Regulation was lodged by Dhunseri Petrochem & Tea Ltd, an Indian exporting producer of PET ('the applicant'). The request was limited in scope to dumping and to the applicant. The applicant at the same time also requested the review of the current countervailing measures. The anti-dumping and countervailing duties are applicable to imports of products produced by the applicant and sales of the applicant to the Union are covered by the undertaking.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 301, 30.11.2000, p. 21.

⁽³⁾ OJ L 266, 11.10.2005, p. 10.

⁽⁴⁾ OJ L 59, 27.2.2007, p. 1.

⁽⁵⁾ OJ L 340, 19.12.2008, p. 1.

⁽⁶⁾ OJ C 335, 11.12.2010, p. 6.

⁽⁷⁾ OJ L 301, 30.11.2000, p. 1.

⁽⁸⁾ OJ L 188, 18.7.2009, p. 93.

⁽⁹⁾ OJ L 266, 11.10.2005, p. 1.

⁽¹⁰⁾ OJ L 59, 27.2.2007, p. 34.

⁽¹¹⁾ OJ C 335, 11.12.2010, p. 7.

⁽¹²⁾ OJ L 226, 11.10.2005, p. 62.

⁽¹³⁾ OJ C 335, 11.12.2010, p. 5.

- (7) The applicant provided prima facie evidence that the continued application of the current duty at its current level was no longer necessary to offset dumping. In particular, the applicant claimed that there had been significant changes in the production costs of the company and that these changes have led to a substantially lower dumping margin since the imposition of the current duties. A comparison made by the applicant of its domestic prices and its export prices to the Union suggested that the dumping margin was substantially lower than the level of current duties.

1.3. Initiation of a partial interim review

- (8) Having determined, after consulting the Advisory Committee, that the request contained sufficient prima facie evidence to justify the initiation of the partial interim review, the Commission announced on 2 April 2011, by Notice 2011/C 102/09 ⁽¹⁾, the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation limited to the examination of dumping as far as the applicant is concerned ('the Notice of initiation').

1.4. Parallel partial interim review of the countervailing measures

- (9) On 2 April 2011, by Notice 2011/C 102/08 ⁽²⁾, the Commission announced the initiation of a partial interim review pursuant to Article 19 of the basic AS Regulation, limited in scope to subsidisation and to the applicant.
- (10) In the partial interim review of the countervailing measures it was found that the changes are not of a lasting nature. As a consequence, the review investigation was terminated without amending the measures in force.

1.5. Parties concerned

- (11) The Commission officially informed the applicant, the representatives of the exporting country and the association of Union producers about the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of initiation.
- (12) All interested parties were informed of the possibility to request a hearing. One hearing was requested and granted.
- (13) In order to obtain the information deemed necessary for its investigation, the Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose.

- (14) The Commission sought and verified all information deemed necessary for the determination of dumping. The Commission carried out verification visits at the premises of the applicant in Kolkata, India and in Haldia, India.

2. WITHDRAWAL OF THE REQUEST AND TERMINATION OF THE PROCEEDING

- (15) By letter to the Commission dated 18 April 2012, the applicant formally withdrew its request for the partial interim review of the anti-dumping measures applicable to imports of PET originating in India. The withdrawal is supported mainly with the further expansion of the applicant's production capacity which demonstrates that the changes in respect of dumping are not of a lasting nature due to an imminent further decrease in production costs. The applicant claimed that it is the continuous process of change which calls into question the lasting nature of the changes established during the investigation. It was established that, although some of the changes established during the investigation were of a lasting nature, the company is indeed in a continuous process of change.
- (16) In view of the withdrawal, it was considered whether it would be warranted to continue the review investigation *ex officio*. The Commission services found no compelling reasons that termination would not be in the Union interest. On this basis, the review investigation should be terminated.
- (17) Interested parties were informed of the intention to terminate the review investigation and were given the opportunity to comment.
- (18) It is therefore concluded that the review concerning imports of PET originating in India should be terminated without amending the anti-dumping measures in force,

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-dumping measures applicable to imports of certain polyethylene terephthalate originating in India initiated pursuant to Article 11(3) of Regulation (EC) No 1225/2009 is hereby terminated without amending the anti-dumping measures in force.

Article 2

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

⁽¹⁾ OJ C 102, 2.4.2011, p. 18.

⁽²⁾ OJ C 102, 2.4.2011, p. 15.

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

Done at Luxembourg, 26 June 2012.

For the Council

The President

N. WAMMEN

COMMISSION IMPLEMENTING REGULATION (EU) No 561/2012

of 27 June 2012

amending Implementing Regulation (EU) No 284/2012 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ⁽¹⁾, and in particular Article 53(1)(b)(ii) thereof,

Whereas:

- (1) Article 53 of Regulation (EC) No 178/2002 provides for the possibility to adopt appropriate Union emergency measures for food and feed imported from a third country in order to protect public health, animal health or the environment, where the risk cannot be contained satisfactorily by means of measures taken by the Member States individually.
- (2) Following the accident at the Fukushima nuclear power station on 11 March 2011, the Commission was informed that radionuclide levels in certain food products originating in Japan exceeded the action levels in food applicable in Japan. Such contamination may constitute a threat to public and animal health in the Union and therefore Commission Implementing Regulation (EU) No 297/2011 of 25 March 2011 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station ⁽²⁾ was adopted. That Regulation was replaced by Commission Implementing Regulation (EU) No 961/2011 ⁽³⁾ which was later replaced by Commission Implementing Regulation (EU) No 284/2012 ⁽⁴⁾.
- (3) The Japanese authorities have recently reported frequent non-compliance of log-grown shiitake originating in the prefecture of Iwate. The levels of the sum of caesium-134 and caesium-137 found in log-grown shiitake were exceeding the stricter maximum level of 100 Becquerel/kg, in application in Japan since 1 April 2012. Also in a significant number of samples, the levels found were higher than the maximum level applicable before 1 April 2012 (500 Becquerel/kg). In addition, non compliance was reported on a few samples of fern and fish originating in Iwate. The prefecture of Iwate is not among the prefectures of the affected zone, where a testing of all

feed and food originating from those prefectures is required before export to the Union. Given these recent findings it is appropriate to add Iwate prefecture to the affected zone.

- (4) Implementing Regulation (EU) No 284/2012 should therefore be amended accordingly.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 284/2012 is amended as follows:

- (1) In Article 5, paragraph 3 is replaced by the following:

"3. The declaration referred to in paragraph 1 shall furthermore certify that:

 - (a) the products have been harvested and/or processed before 11 March 2011; or
 - (b) the products originate in and are consigned from a prefecture other than Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamanashi, Saitama, Tokyo, Chiba, Kanagawa, Shizuoka and Iwate; or
 - (c) the products are consigned from Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamanashi, Saitama, Tokyo, Chiba, Kanagawa, Shizuoka and Iwate prefectures, but do not originate in one of those prefectures and have not been exposed to radioactivity during transiting; or
 - (d) where the products originate in Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamanashi, Saitama, Tokyo, Chiba, Kanagawa, Shizuoka and Iwate prefectures, the products are accompanied by an analytical report containing the results of sampling and analysis."
- (2) Annex I is replaced by the text set out in the Annex to this Regulation.

Article 2

Transitional measure

By way of derogation from Article 6(1) of Implementing Regulation (EU) No 284/2012, products referred to in Article 1 of that Regulation may be imported into the Union if they are accompanied by a declaration according to the previous model of declaration set out in Annex I to that Regulation where:

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

⁽²⁾ OJ L 80, 26.3.2011, p. 5.

⁽³⁾ OJ L 252, 28.9.2011, p. 10.

⁽⁴⁾ OJ L 92, 30.3.2012, p. 16.

- (a) the products left Japan before the entry into force of this Regulation; or
- (b) the declaration was issued before the date of entry into force of this Regulation and the products have left Japan not more than 10 working days after the entry into force of this Regulation.

Article 3

Entry into force

This Regulation shall enter into force on the third 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, 27 June 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX

ANNEX I

Declaration for the import into the Union of

..... (Product and country of origin)

Batch identification Code Declaration Number

According to the provisions of the Commission Implementing Regulation (EU) No 284/2012 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station the

..... (authorised representative referred to in Article 6(2) and (3))

DECLARES that the

..... (products referred to in Article 1)

of this consignment composed of:

..... (description of consignment, product, number and type of packages, gross or net weight)

embarked at (embarkation place)

on (date of embarkation)

by (identification of transporter)

going to (place and country of destination)

which comes from the establishment

..... (name and address of establishment)

is compliant with the legislation in force in Japan as regards the maximum levels for the sum of caesium-134 and caesium-137.

DECLARES that the consignment concerns feed or food

☐ **not falling under the transitional measures** provided in the Japanese legislation (see Annex III to Implementing Regulation (EU) No 284/2012) as regards the maximum level for the sum of caesium-134 and caesium-137

☐ **falling under the transitional measures** provided in the Japanese legislation (see Annex III to Implementing Regulation (EU) No 284/2012) as regards the maximum level for the sum of caesium-134 and caesium-137

DECLARES that the consignment concerns feed or food that

☐ has been harvested and/or processed before 11 March 2011.

☐ is originating in and consigned from a prefecture other than Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamanashi, Saitama, Tokyo, Chiba, Kanagawa, Shizuoka and Iwate.

☐ is consigned from the prefectures Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamanashi, Saitama, Tokyo, Chiba, Kanagawa, Shizuoka and Iwate, but not originating in one of these prefectures and has not been exposed to radio-activity during transiting.

☐ is originating in the prefectures Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamanashi, Saitama, Tokyo, Chiba, Kanagawa, Shizuoka and Iwate and has been sampled on (date), subjected to laboratory analysis on (date) in the (name of laboratory), to determine the level of the radionuclides, caesium-134 and caesium-137. The analytical report is attached.

Done at on

Stamp and signature of
authorised representative referred to in Article 6(2) and (3)

Part to be completed by the competent authority at the border inspection post (BIP) or designated point of entry (DPE)

- ☐ The consignment has been accepted to be presented to the custom authorities for release for free circulation in the Union
- ☐ The consignment has NOT been accepted to be presented to the custom authorities for release for free circulation in the Union

.....
(Competent authority, Member State)

.....
Date

.....
Stamp

.....
Signature'

COMMISSION IMPLEMENTING REGULATION (EU) No 562/2012**of 27 June 2012****amending Commission Regulation (EU) No 234/2011 with regard to specific data required for risk assessment of food enzymes****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings ⁽¹⁾, and in particular Article 9(1) thereof,

After consulting the European Food Safety Authority,

Whereas:

- (1) Pursuant to Article 5(2) of Commission Regulation (EU) No 234/2011 of 10 March 2011 implementing Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings ⁽²⁾, the application dossier shall include all the available data relevant for the purpose of the risk assessment.
- (2) Pursuant to Article 8(1) of Regulation (EU) No 234/2011 concerning specific data required for risk assessment of food enzymes, information shall be provided on the biological and toxicological data.
- (3) A number of food enzymes currently placed on the Union market have been evaluated and authorised under national provisions in France and Denmark in accordance with the guidelines for the presentation of data on food enzymes of the Scientific Committee on Food ("the SCF") set out in opinion expressed on 11 April 1991 (published in 1992) ⁽³⁾. A few food enzymes (e.g. chymosin, invertase and urease) have also been evaluated by the SCF ⁽⁴⁾.
- (4) With regard to the toxicological properties of enzyme preparations, the SCF guidelines indicated that food enzymes which are derived from edible parts of (non genetically modified) plants and animals are generally considered as posing no health problems. According to the guidelines no special documentation for safety needs

to be supplied provided that the potential consumption under normal use does not lead to an intake of any components which is larger than can be expected from normal consumption of the source as such, and provided that satisfactory chemical and microbiological specifications can be established.

- (5) The European Food Safety Authority ("the Authority") has also indicated in its guidance on data requirements for the evaluation of food enzyme applications ⁽⁵⁾ that the justification for not supplying toxicological data for food enzymes from edible parts of animals and non genetically modified plants may include a documented history on the safety of the source of the food enzymes, the composition and the properties of the food enzyme as well as its use in food which demonstrates no adverse effects on human health when consumed in a comparable way, supported by any existing toxicological studies. Therefore, the enzyme application for food enzymes from such edible sources should not be required to include toxicological data.
- (6) The concept of Qualified Presumption of Safety (hereinafter referred to as "QPS") ⁽⁶⁾ was established by the Authority as a tool for the assessment of the safety of micro-organisms that are introduced into the food chain either directly or as a source of additives or food enzymes. This concept means that, where a strain of micro-organism is assigned to a QPS group and satisfies the qualifications specified, the Authority does not need to carry out any further safety assessment of the production strain. Therefore, if the micro-organism used in the production of a food enzyme has a status of QPS according to the most recent list of QPS recommended biological agents adopted by the Authority, the enzyme application should not be required to include toxicological data. However, if residues, impurities, degradation products linked to the total enzyme production process (production, recovery and purification) could give rise for concern the Authority, pursuant to Article 6(1) of Regulation (EC) No 1331/2008, may request additional data for risk assessment, including toxicological data.
- (7) Pursuant to Article 6(a) of Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes ⁽⁷⁾ a food enzyme may be included in the Union list only if it does not, on the basis of the scientific evidence available, pose a safety concern to the health of the consumer at the level of use proposed. The reduction

⁽¹⁾ OJ 354, 31.12.2008, p. 1.

⁽²⁾ OJ L 64, 11.3.2011, p. 15.

⁽³⁾ http://ec.europa.eu/food/fs/sc/scf/reports/scf_reports_27.pdf

⁽⁴⁾ http://ec.europa.eu/food/fs/sc/scf/reports_en.html

⁽⁵⁾ <http://www.efsa.europa.eu/en/efsajournal/pub/1305.htm>

⁽⁶⁾ <http://www.efsa.europa.eu/en/efsajournal/doc/587.pdf>

⁽⁷⁾ OJ L 354, 31.12.2008, p. 7.

of data required for risk assessment in relation to food enzymes obtained from edible parts of non genetically modified animals and plants, and from micro-organisms that have a status of QPS does not have a negative impact on the quality of the risk assessment based on the SCF and the Authority's guidance.

- (8) With regard to grouping of specified food enzymes in one application, the Authority has already indicated in its guidance on data requirements for the evaluation of food enzyme applications that specified food enzymes with the same catalytic activity, produced by the same micro-organism strain and by the substantially same manufacturing process may be grouped in one application, even if as a rule each individual food enzyme must be assessed.
- (9) It is appropriate that food enzymes obtained from edible parts of plants or animals which have the same catalytic activity and which are processed from the same source (e.g. at species level) and with a substantially same production process may be grouped under one application.
- (10) It is also appropriate that food enzymes obtained from micro-organisms which have a status of QPS or from micro-organisms which have been used in the production of food enzymes that have been evaluated and authorised by the competent authorities in France or Denmark in accordance with the SCF guidelines of 1992 may be grouped under one application under the same conditions.
- (11) Pursuant to Article 6(1) of Regulation (EC) No 1331/2008, during the risk assessment the Authority may request additional information in duly justified cases.
- (12) The establishment of the Union list of food enzymes should take place smoothly and should not disturb the existing food enzyme market. The derogation from submitting toxicological data and the possibility of grouping dossiers will reduce the burden on applicants and in particular on small and medium size enterprises.
- (13) The derogation from submitting toxicological data and the possibility of grouping dossiers should not apply to food enzymes which are produced from genetically modified plants or animals as defined in point 5 of Article 2 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed⁽¹⁾ nor to food enzymes which are produced from or produced with genetically modified micro-organisms as defined in Article 2(b) of Directive 2009/41/EC of the European Parliament and of the Council of 6 May 2009 on the

contained use of genetically modified micro-organisms⁽²⁾. However, as regards food enzymes obtained from genetically modified micro-organisms through the use of techniques listed in Annex II, Part A, point 4 of Directive 2009/41/EC, the derogation from submitting toxicological data should apply if the parent strains of the micro-organisms have a status of QPS⁽³⁾.

- (14) Regulation (EU) No 234/2011 should therefore be amended accordingly.

- (15) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 234/2011 is amended as follows:

- (1) The following Article 1a is inserted:

"Article 1a

Definitions

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

- (a) "Status of Qualified Presumption of Safety" means the safety status assigned by the Authority to selected groups of micro-organisms on the basis of an assessment showing no safety concerns.
- (b) "SCF guidelines of 1992" means the guidelines for the presentation of data on food enzymes set out in the opinion expressed by the Scientific Committee for Food on 11 April 1991⁽¹⁾.

⁽¹⁾ http://ec.europa.eu/food/fs/sc/scf/reports/scf_reports_27.pdf.

- (2) In Article 8 the following paragraphs 3, 4, 5 and 6 are added:

"3. By way of derogation from point (l) of paragraph 1 the dossier submitted in support of an application for the safety evaluation of a food enzyme does not need to include toxicological data if the food enzyme in question is obtained from:

- (a) edible parts of plants or animals intended to be or reasonably expected to be ingested by humans; or
- (b) micro-organisms having the status of Qualified Presumption of Safety.

⁽¹⁾ OJ L 268, 18.10.2003, p. 1

⁽²⁾ OJ L 125, 21.5.2009, p. 75.

⁽³⁾ <http://www.efsa.europa.eu/en/efsajournal/doc/587.pdf>. See page 13

4. Paragraph 3 shall not apply where the plants or animals concerned are genetically modified organisms as defined in point 5 of Article 2 of Regulation (EC) No 1829/2003 or where the micro-organism concerned is a genetically modified micro-organism as defined in Article 2 (b) of Directive 2009/41/EC ⁽¹⁾. However, paragraph 3, point (b) shall apply to micro-organisms where genetic modification is obtained through the use of the techniques/methods listed in Annex II, Part A, point 4 of Directive 2009/41/EC.

5. Food enzymes may be grouped under one application provided that they have the same catalytic activity, are processed from the same source material (e.g. at species level) and with a substantially same production process, and have been obtained from:

- (a) edible parts of plants or animals intended to be or reasonably expected to be ingested by humans; or
- (b) micro-organisms having the status of Qualified Presumption of Safety; or

(c) micro-organisms which have been used in the production of food enzymes that have been evaluated and authorised by the competent authorities in either France or Denmark in accordance with the SCF guidelines of 1992.

6. Paragraph 5 shall not apply where the plants or animals concerned are genetically modified organisms as defined in point 5 of Article 2 of Regulation (EC) No 1829/2003 or where the micro-organism concerned is a genetically modified micro-organism as defined in Article 2 (b) of Directive 2009/41/EC.

⁽¹⁾ OJ L 125, 21.5.2009, p. 75".

Article 2

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, 27 June 2012.

For the Commission

The President

José Manuel BARROSO

COMMISSION REGULATION (EU) No 563/2012**of 27 June 2012****amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the list of EU reference laboratories****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

was launched. RIKILT – Institute of Food Safety was selected as fulfilling all the required criteria and should be designated as such.

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

Having regard to Regulation (EC) 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽¹⁾, and in particular Article 32(5) thereof,

- (5) Due to the importance of the substances in the Groups A (1) to A (4) in Annex I to Directive 96/23/EC and the fact that RIKILT – Institute of Food Safety was selected as fulfilling all the required criteria, it should be designated as the competent EU reference laboratory for residues of veterinary medicines and contaminants in food of animal origin, for residues listed in Annex I, Group A (1), (2), (3), (4), Group B (2)(d) and Group B (3)(d) to Directive 96/23/EC as of 1 January 2012. This Regulation should apply with retroactive effect from 1 January 2012.

Whereas:

- (1) Regulation (EC) No 882/2004 lays down the general tasks, duties and requirements for European Union (EU) reference laboratories for food and feed and for animal health and live animals. EU reference laboratories for food and feed are listed in Part I of Annex VII to that Regulation.
- (2) Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC ⁽²⁾ lays down measures to monitor the substances and groups of residues listed in Annex I to that Directive.
- (3) Following a reorganisation of laboratory activities in the Netherlands, all functions, including all infrastructure and staff, of the Rijksinstituut voor Volksgezondheid en Milieu (RIVM), currently listed as the EU reference laboratory for residues of veterinary medicines and contaminants in food of animal origin, for residues listed in Annex I, Group A (1), (2), (3), (4), Group B (2)(d) and Group B (3)(d) to Directive 96/23/EC, were transferred to RIKILT – Institute of Food Safety. The tasks performed by RIVM were assigned to RIKILT under a framework contract which ended on 31 December 2011.
- (4) Since the contract of RIVM was coming to an end a call for selection for an EU reference laboratory to replace it
- (6) Part I of Annex VII to Regulation (EC) No 882/2004 should therefore be amended accordingly.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

In Part I of Annex VII to Regulation (EC) No 882/2004, point 12(a) is replaced by the following:

- '(a) For the residues listed in Annex I, Group A (1), (2), (3) and (4), Group B (2)(d) and Group B (3)(d) to Directive 96/23/EC

RIKILT – Institute for Food Safety, part of Wageningen UR
Wageningen
The Netherlands'

Article 2

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

It shall apply from 1 January 2012.

⁽¹⁾ OJ L 165, 30.4.2004, p. 1.

⁽²⁾ OJ L 125, 23.5.1996, p. 10.

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

Done at Brussels, 27 June 2012.

For the Commission
The President
José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 564/2012**of 27 June 2012****establishing budgetary ceilings for 2012 applicable to certain direct support schemes provided for in Council Regulation (EC) No 73/2009**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation No 1782/2003⁽¹⁾, and in particular the first subparagraph of Article 51(2), the first subparagraph of Article 69(3), the first subparagraph of Article 123(1), the second subparagraph of Article 128(2), and the first subparagraph of Article 131(4) thereof,

Whereas:

- (1) For the Member States implementing, in 2012, the single payment scheme provided for under Title III of Regulation (EC) No 73/2009, the budgetary ceilings for each of the payments referred to in Articles 52, 53 and 54 of that Regulation should be established for 2012.
- (2) For the Member States making use, in 2012, of the options provided for in Articles 69(1) or 131(1) of Regulation (EC) No 73/2009, the budgetary ceilings for the specific support referred to in Chapter 5 of Title II of Regulation (EC) No 73/2009 should be established for 2012.
- (3) Article 69(4) of Regulation (EC) No 73/2009 limits the resources that can be used for any coupled measure provided for in points (i), (ii), (iii) and (iv) of Article 68(1)(a) and in Article 68(1)(b) and (e) to 3.5% of the national ceiling referred to in Article 40 of the same Regulation. For the sake of clarity, the Commission should publish the ceiling resulting from the amounts notified by the Member States for the measures concerned.
- (4) Pursuant to Article 69(6)(a) of Regulation (EC) No 73/2009, the amounts calculated in accordance with Article 69(7) of that Regulation have been laid down in Annex III of Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation

(EC) No 73/2009⁽²⁾. For the sake of clarity, the Commission should publish the amounts notified by Member States which they intend to use in accordance with Article 69(6)(a) of Regulation (EC) No 73/2009.

- (5) For the sake of clarity, the 2012 budgetary ceilings for the single payment scheme, resulting from deduction of the ceilings established for the payments referred to in Articles 52, 53, 54 and 68 of Regulation (EC) No 73/2009 from the ceilings given in Annex VIII to the same Regulation, should be published. The amount to be deducted from the said Annex VIII in order to finance the specific support provided for in Article 68 of Regulation (EC) No 73/2009 corresponds to the difference between the total amount for the specific support notified by the Member States and the amounts notified to finance the specific support in accordance with article 69(6)(a) of the same Regulation. Where a Member State implementing the single payment scheme decides to grant the support referred to in point (c) of Article 68(1), the amount notified to the Commission is to be included in the single payment scheme ceiling, as this support takes the form of an increase in the unit value and/or the number of the farmer's payment entitlements.
- (6) For Member States implementing, in 2012, the single area payment scheme provided for in Chapter 2 of Title V of Regulation (EC) No 73/2009, the annual financial envelopes should be established in accordance with Article 123(1) of that Regulation.
- (7) For the sake of clarity, the maximum amount of funds available to Member States applying the single area payment scheme for granting separate sugar payments in 2012 under Article 126 of Regulation (EC) No 73/2009, established on the basis of their notification, should be published.
- (8) For the sake of clarity, the maximum amount of funds available to Member States applying the single area payment scheme for granting separate fruit and vegetables payments in 2012 pursuant to Article 127 of Regulation (EC) No 73/2009, established on the basis of their notification, should be published.
- (9) For Member States applying the single area payment scheme, the 2012 budgetary ceilings applicable to transitional payments for fruit and vegetables payments in 2012 in accordance with Article 128(2) of Regulation (EC) No 73/2009, should be published on the basis of their notification.

⁽¹⁾ OJ L 30, 31.1.2009, p. 16.

⁽²⁾ OJ L 316, 2.12.2009, p.1

- (10) For the sake of clarity, the maximum amount of funds available to Member States applying the single area payment scheme for granting separate soft fruit payments in 2012 pursuant to Article 129 of Regulation (EC) No 73/2009, established on the basis of their notification, should be published
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

Article 1

1. The budgetary ceilings for 2012 referred to in Article 51(2) of Regulation (EC) No 73/2009 are set out in Annex I to this Regulation.
2. The budgetary ceilings for 2012 referred to in Article 69(3) and 131(4) of Regulation (EC) No 73/2009 are set out in Annex II to this Regulation.
3. The budgetary ceilings for 2012 for the support provided for in points (i), (ii), (iii) and (iv) of Article 68(1)(a) and in Article 68(1)(b) and (e) of Regulation (EC) No 73/2009 are set out in Annex III to this Regulation.
4. The amounts that can be used by the Member States in accordance with Article 69(6)(a) of Regulation (EC) No 73/2009 to cover the specific support provided in Article 68(1) of the same Regulation are set out in Annex IV to this Regulation.

5. The budgetary ceilings for 2012 for the single payment scheme referred to in Title III of Regulation (EC) No 73/2009 are set out in Annex V to this Regulation.

6. The annual financial envelopes for 2012 referred to in Article 123(1) of Regulation (EC) No 73/2009 are set out in Annex VI to this Regulation.

7. The maximum amounts of funding available to the Czech Republic, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia for granting the separate sugar payment in 2012, as referred to in Article 126 of Regulation (EC) No 73/2009, are set out in Annex VII to this Regulation.

8. The maximum amounts of funding available to the Czech Republic, Hungary, Poland and Slovakia for granting the separate fruit and vegetables payment in 2012, as referred to in Article 127 of Regulation (EC) No 73/2009, are set out in Annex VIII to this Regulation.

9. The budgetary ceilings for 2012 referred to in the second subparagraph of Article 128(2) of Regulation (EC) No 73/2009 are set out in Annex IX to this Regulation.

10. The maximum amounts of funding available to Bulgaria, Hungary and Poland for granting the separate soft fruit payment in 2012, as referred to in Article 129 of Regulation (EC) No 73/2009, are set out in Annex X to this Regulation.

Article 2

This Regulation shall enter into force on the seventh 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, 27 June 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX I

BUDGETARY CEILINGS FOR DIRECT PAYMENTS TO BE GRANTED IN ACCORDANCE WITH ARTICLES 52, 53 AND 54 OF REGULATION (EC) No 73/2009

2012 calendar year

(thousand EUR)

	BE	DK	ES	FR	IT	AT	PT	SI	FI	SE
Sheep and goat premium							21 892		600	
Sheep and goat supplementary premium							7 184		200	
Suckler cow premium	77 565		261 153	525 622		70 578	78 695			
Additional suckler cow premium	19 389		26 000			99	9 462			
Fruit and vegetables, other than tomatoes Article 54 (2)				33 025	850					

ANNEX II

BUDGETARY CEILINGS FOR THE SPECIFIC SUPPORT PROVIDED FOR IN ARTICLE 68(1) OF REGULATION (EC) No 73/2009**2012 Calendar year**

Member State	(thousands EUR)
Belgium	8 600
Bulgaria	28 500
Czech Republic	31 826
Denmark	36 325
Estonia	1 253
Ireland	25 000
Greece	108 000
Spain	248 065
France	466 600
Italy	321 950
Latvia	5 130
Lithuania	13 304
Hungary	130 898
Netherlands	37 900
Austria	13 900
Poland	106 558
Portugal	34 111
Romania	37 545
Slovenia	13 154
Slovakia	12 000
Finland	52 483
Sweden	3 469
United Kingdom	29 800

Amounts notified by the Member States to grant the support referred to in point (c) of Article 68(1) which are included in the Single payment scheme ceiling.

Greece: 30 000 thousand EUR

Slovenia: 5 400 thousand EUR

ANNEX III

**BUDGETARY CEILINGS FOR THE SUPPORT PROVIDED FOR IN POINTS (i), (ii), (iii) AND (iv) OF
ARTICLE 68(1)(a) AND ARTICLE 68(1)(b) AND (e) OF REGULATION (EC) No 73/2009****2012 Calendar year**

Member State	(thousands EUR)
Belgium	4 461
Bulgaria	28 500
Czech Republic	31 826
Denmark	18 285
Estonia	1 253
Ireland	25 000
Greece	78 000
Spain	184 965
France	297 600
Italy	152 950
Latvia	5 130
Lithuania	13 304
Hungary	46 164
Netherlands	30 100
Austria	13 900
Poland	106 558
Portugal	21 210
Romania	37 545
Slovenia	7 754
Slovakia	12 000
Finland	52 483
Sweden	3 469
United Kingdom	29 800

ANNEX IV

**AMOUNTS TO BE USED BY THE MEMBER STATES IN ACCORDANCE WITH ARTICLE 69(6)(a) OF
REGULATION (EC) No 73/2009 TO COVER THE SPECIFIC SUPPORT PROVIDED IN ARTICLE 68(1) OF
THAT REGULATION****2012 Calendar year**

Member State	(thousands EUR)
Belgium	8 600
Denmark	23 250
Ireland	23 900
Greece	70 000
Spain	144 400
France	84 000
Italy	144 900
Netherlands	31 700
Austria	11 900
Portugal	21 700
Slovenia	5 400
Finland	6 190

ANNEX V

BUDGETARY CEILINGS FOR THE SINGLE PAYMENT SCHEME

2012 Calendar year

Member State	(thousands EUR)
Belgium	517 901
Denmark	1 035 927
Germany	5 852 938
Ireland	1 339 769
Greece	2 225 227
Spain	4 913 824
France	7 586 247
Italy	4 202 085
Luxembourg	37 671
Malta	5 137
Netherlands	891 551
Austria	679 111
Portugal	476 907
Slovenia	129 221
Finland	523 455
Sweden	767 437
United Kingdom	3 958 242

ANNEX VI

ANNUAL FINANCIAL ENVELOPES FOR THE SINGLE AREA PAYMENT SCHEME

2012 Calendar year

Member State	(thousands EUR)
Bulgaria	472 216
Czech Republic	755 659
Estonia	90 789
Cyprus	45 787
Latvia	125 540
Lithuania	323 394
Hungary	1 033 364
Poland	2 504 542
Romania	1 043 001
Slovakia	328 485

ANNEX VII

MAXIMUM AMOUNTS OF FUNDING AVAILABLE TO MEMBER STATES FOR GRANTING THE SEPARATE SUGAR PAYMENTS REFERRED TO IN ARTICLE 126 OF REGULATION (EC) No 73/2009

2012 Calendar year

Member State	(thousands EUR)
Czech Republic	44 245
Latvia	3 308
Lithuania	10 260
Hungary	41 010
Poland	159 392
Romania	6 062
Slovakia	19 289

ANNEX VIII

MAXIMUM AMOUNTS OF FUNDING AVAILABLE TO MEMBER STATES FOR GRANTING THE SEPARATE FRUIT AND VEGETABLES PAYMENTS REFERRED TO IN ARTICLE 127 OF REGULATION (EC) No 73/2009**2012 Calendar year**

Member State	(thousands EUR)
Czech Republic	414
Hungary	4 756
Poland	6 715
Slovakia	690

ANNEX IX

BUDGETARY CEILINGS FOR THE TRANSITIONAL PAYMENTS IN THE FRUIT AND VEGETABLE SECTOR REFERRED TO IN ARTICLE 128 OF REGULATION (EC) No 73/2009**2012 Calendar year**

(EUR thousand)	
Member State	Cyprus
Fruit and vegetables other than tomatoes - Article 128(2)	3 359

ANNEX X

MAXIMUM AMOUNTS OF FUNDING AVAILABLE TO MEMBER STATES FOR GRANTING THE SEPARATE SOFT FRUIT PAYMENTS REFERRED TO IN ARTICLE 129 OF REGULATION (EC) No 73/2009**2012 Calendar year**

Member State	(thousands EUR)
Bulgaria	226
Hungary	391
Poland	11 040

COMMISSION IMPLEMENTING REGULATION (EU) No 565/2012**of 27 June 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, 27 June 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	TR	47,7
	ZZ	47,7
0707 00 05	TR	95,4
	ZZ	95,4
0709 93 10	TR	103,5
	ZZ	103,5
0805 50 10	AR	75,4
	UY	89,3
	ZA	102,4
	ZZ	89,0
0808 10 80	AR	123,6
	BR	88,1
	CL	108,8
	NZ	134,3
	US	121,2
	UY	57,1
	ZA	107,2
	ZZ	105,8
0809 10 00	TR	200,9
	ZZ	200,9
0809 29 00	TR	379,6
	ZZ	379,6

⁽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'.

DECISIONS

COUNCIL DECISION

of 22 June 2012

appointing a German alternate member of the Committee of the Regions

(2012/342/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the German Government,

Whereas:

(1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU ⁽¹⁾ and 2010/29/EU ⁽²⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

(2) An alternate member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Manfred RICHTER,

Article 1

The following is hereby appointed as alternate member to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2015:

— Ms Barbara HACKENSCHMIDT, Mitglied des Landtags Brandenburg.

Article 2

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

Done at Luxembourg, 22 June 2012.

For the Council

The President

M. VESTAGER

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

COMMISSION DECISION

of 27 June 2012

terminating the anti-dumping proceeding concerning imports of certain concentrated soy protein products originating in the People's Republic of China

(2012/343/EU)

THE EUROPEAN COMMISSION,

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

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

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE**1. INITIATION**

(1) On 19 April 2011, the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽²⁾ ('notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports of certain concentrated soy protein products originating in the People's Republic of China ('PRC' or 'the country concerned').

(2) The proceeding was initiated as a result of a complaint lodged on 7 March 2011 by Solae Europe S.A. ('the complainant') representing a major proportion, in this case more than 25 %, of the total Union production of certain concentrated soy protein products ⁽³⁾. The complaint contained evidence of dumping of the said product and of material injury resulting there from, which was considered sufficient to justify the initiation of a proceeding.

2. PARTIES CONCERNED BY THE PROCEEDING

(3) The Commission officially advised the complainant, the other known Union producer, the exporting producers and the representatives of the PRC, importers, suppliers and users known to be concerned, as well as their associations, of the initiation of the proceeding. Interested

parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

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

(5) All oral and written comments submitted by the interested parties were considered and taken into account where appropriate.

(6) In view of the apparent high number of exporting producers and unrelated Union importers, sampling was envisaged in the notice of initiation, in accordance with Article 17 of Regulation (EC) No 1225/2009. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers and unrelated Union importers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period from 1 January 2010 to 31 December 2010 ('the investigation period' or 'the IP'). The authorities of the PRC were also consulted on the sampling of exporting producers.

2.1. SAMPLING OF EXPORTING PRODUCERS

(7) Twenty exporting producers provided the information requested in the sampling exercise and offered cooperation within the deadlines. The EU sales volumes reported by these (groups of) exporting producers represented around 90 % of the imports concerned during the investigation period. Therefore, the cooperation was considered high.

(8) Given the high number of (groups of) exporting producers which indicated their willingness to cooperate, it was decided that sampling was necessary with regard to exporting producers.

(9) The Commission selected, in accordance with Article 17 of the basic Regulation, a sample based on the largest representative volume of exports which could reasonably be investigated within the time available. The sample thus selected initially consisted of two groups of related companies, representing, inter alia, five individual

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 121, 19.4.2011, p. 71.

⁽³⁾ In spite of its relation with a Chinese group of exporting producers, the complainant is considered to constitute a Union producer, especially since available evidence indicates that exports by that related group to the EU are very limited.

producers and accounting for 40 % to 50 % of the export volume of the product concerned from the PRC to the EU during the investigation period. After indications had been received that these two groups would possibly need to be treated as a single entity for the purpose of imposing an anti-dumping duty (see recital 41), the sample was expanded by including a third group of exporting producers, thus accounting for 45 % to 60 % of Chinese imports. In accordance with Article 17(2) of the basic Regulation, the parties concerned and the Chinese authorities were consulted on the initial selection as well as the later expansion of the sample. Two related exporting producers objected to the expansion of the sample as they argued that, if the sample had to be expanded, they would qualify better as a third group of exporting producers to be included in the sample. It should be underlined that, in accordance with the provisions of Article 17(1) of the basic Regulation, the proposed new sample consisted of the three groups of exporting producers with the largest EU sales volumes of the product concerned during the IP. Moreover, the EU sales volumes of the product concerned during the IP by the two related producers which claimed that they should have been selected as a third group were very small, representing less than 10 % of such volumes of the selected third group. Therefore it was confirmed that the representativity of the expanded sample was best served by the proposed three groups. No further objections were raised.

2.2. SAMPLING OF IMPORTERS

- (10) After examination of the information submitted, and given the high number of importers which indicated their willingness to cooperate, it was decided that sampling was necessary with regard to unrelated importers.
- (11) Seven unrelated importers, accounting for 20 % of the total imports of the product concerned into the Union, agreed to be included in the sample. Three importers, accounting for around 17 % of the total imports from the PRC and almost 90 % of imports of the cooperating importers, were selected for the sample. In accordance with Article 17(2) of the basic Regulation, the parties concerned were given the opportunity to comment on the selection of the sample. No objections were raised. One of the sampled importers stopped its cooperation and did not provide a questionnaire reply.

2.3. QUESTIONNAIRE REPLIES AND VERIFICATIONS

- (12) In order to allow the sampled groups of exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent them MET/IT claim forms. In this respect, two sampled groups of companies requested MET pursuant to Article 2(7) of the basic Regulation, whereas the remaining sampled group of companies requested IT pursuant to Article 9(5) of the basic Regulation.

- (13) MET/IT claim forms were also sent to non-sampled (groups of) exporting producers which had stated their intention to request individual examination as per Article 17(3) of the basic Regulation.
- (14) The Commission sent questionnaires to the sampled exporting producers as well as to the non-sampled exporting producers which had stated their intention to request individual examination, to the complainant and the other known Union producer, to the sampled importers, and to all known users.
- (15) After having requested information from producers in the possible analogue countries Brazil, Israel and the United States of America ('the USA'), questionnaires were also sent to the producers that had offered cooperation in Brazil and Israel for the purpose of establishing normal value for companies to which MET could not be granted (see recitals 60 to 64 below).
- (16) Full questionnaire replies were received from the three sampled groups of exporting producers in the PRC, one Brazilian producer, one Israeli producer, one Union producer (with one production facility in Belgium and another one in Denmark), two (out of three) sampled importers and four users in the EU. Another Brazilian producer submitted an incomplete reply.
- (17) In addition, claims for individual examination (IE) as per Article 17(3) of the basic Regulation were received from one non-sampled exporting producer ('applicant A') and one group of related non-sampled exporting producers (jointly 'applicant B')⁽¹⁾. After having analysed the information submitted by the sampled parties, as well as these requests including duly completed questionnaires, it was considered that the number of (groups of) exporting producers to be investigated in the sample alone was so large that additional IEs would be unduly burdensome and would prevent completion of the investigation in good time. Therefore, the applicants were informed that their request for an individual examination was rejected.
- (18) Applicant B contested this determination not to consider its request for IE. It submitted that this refusal would be contrary to Article 17(3) of the basic Regulation and Article 6.10 of the Anti-Dumping Agreement (ADA), as interpreted recently by the WTO Dispute Settlement Body in the Fasteners case⁽²⁾. Secondly, such refusal would be contrary to the fundamental principle of proportionality.

⁽¹⁾ For information, it is noted that applicant B is related to the complainant.

⁽²⁾ WTO Report of the Appellate Body of 15 July 2011, WT/DS397/AB/R, *European Communities — definitive anti-dumping measures on certain iron or steel fasteners from China*.

(19) As concerns the first argument, Article 17(3) of the basic Regulation as well as Article 6.10 of the ADA explicitly allow the investigating authority not to consider requests for IE if the number of exporters and/or producers involved is so large as to make such a determination impracticable. The WTO Appellate Body Report in the Fasteners case clarified that timely requests for IE should 'as a rule' be accepted unless this would be 'unduly burdensome' ⁽¹⁾. In this case, the verification of the questionnaire replies and the replies to the MET claim forms of the applicants for IE would entail on-the-spot investigations at one company (applicant A) and two other companies (those forming part of applicant B). During these on-the-spot investigations, compliance with the provisions of Article 2(7)(c) would need to be verified as well as all these entities' reported structure, costs (including production costs and purchases), sales and profitability. In view of the large number of entities already investigated within the sample, to add an additional applicant would indeed have been unduly burdensome and would have seriously jeopardised the completion of the investigation in good time. Therefore, the decision not to accept these requests for individual examination is justified by the law and not in breach with the principle of proportionality.

(20) After being informed that an IE would be too burdensome, applicant B later proposed to withdraw its MET claim if it would be agreed to examine it for IT. Because it alleged to have made only one small export transaction during the IP and would no longer claim MET, it argued that the Commission would not need to conduct an on-the-spot verification in the PRC to make a dumping determination and that it would be enough to verify that single export transaction while verifying the questionnaire reply of the complainant in the EU. On this basis, the exporter argued that granting individual examination would not be burdensome.

(21) However, if IE were granted, an on-the-spot verification of applicant B would be necessary, since without on-the-spot verification in the PRC of both producers in the group, the existence of other sales to the EU during the IP could not be excluded. Such verification would have been unduly burdensome given the size of the sample with three big groups of companies. The request was therefore rejected.

(22) The decision not to accept the requests for individual treatment has been maintained. In view of the grounds cited above, it has been definitively decided that requests for individual examination could not be granted as they would render the investigation unduly burdensome and would prevent the completion of the investigation in good time.

(23) The Commission sought and verified all the information deemed necessary for a determination of dumping,

resulting injury or threat of injury and Union interest. Verification visits were carried out at the premises of the following companies:

(a) Exporting producers in the PRC:

— Gushen Biological Technology Group Co. Ltd and its related companies, Dezhou,

— Shandong Crown Soya Protein Co. Ltd and its related companies, Shexian, Qingdao, Yucheng,

— Shandong Sinoglory Health Food Co. Ltd and its related companies, Liaocheng, Qingdao;

(b) Union producer:

— Solae Europe, with production facilities in:

— Belgium, Ieper (Solae Belgium), and

— Denmark, Aarhus (Solae Denmark);

(c) Producers in the analogue country:

— Bremil Industria De Produtos Alimenticios Ltda., Arroio do Meio,

— Solae do Brasil Ind. Com. Alimentos Ltda., Esteio, Sao Paulo.

3. INVESTIGATION PERIOD

(24) The investigation of dumping and injury covered the period from 1 January 2010 to 31 December 2010 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 2007 to the end of the investigation period ('period considered').

4. FINDINGS AT THE INTERIM STAGE

(25) At the interim stage it was considered that the imposition of provisional measures would not be appropriate in particular in view of the need to further analyse the causal link between the dumped imports of certain concentrated soy protein products from the PRC and the injury suffered by the Union industry.

⁽¹⁾ See aforementioned Report of the Appellate Body of 15 July 2011, recital 319.

5. SUBSEQUENT PROCEDURE

- (26) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided not to impose provisional measures ('interim disclosure'), several interested parties made written submissions making known their views on the interim findings. The parties who so requested were granted the opportunity to be heard.
- (27) The Commission continued to seek information it deemed necessary for its final findings. In addition to the verifications mentioned in recital 23 above, a further verification was carried out at the premises of Kerry in Bristol, UK, one of the importers and users of soy proteins which cooperated in the investigation.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. PRODUCT CONCERNED

- (28) The product concerned was defined in the notice of initiation as concentrated soy protein products, containing by weight 65 % or more of proteins ($N \times 6,25$) calculated on the dry matter by excluding added vitamins, minerals, amino acids and food additives, originating in the PRC ('the product concerned' or 'CCSPP') and currently falling within CN codes ex 2106 10 20, ex 2106 90 92, ex 2309 90 10, ex 2309 90 99 (ex 2309 90 96 as from 1 January 2012) and ex 3504 00 90.
- (29) Within the above product scope, two main product groups can be distinguished: (i) soy protein concentrates ('SPCs' or 'concentrates' including simple/basic concentrates and further processed concentrates), which have a protein content of more than 65 % but less than 90 %; and (ii) isolated soy proteins ('ISPs' or 'isolates'), which have a protein content of 90 % or more.
- (30) It was also established that whereas the simple concentrate is a fairly basic product with low value added, isolates and further processed concentrates require substantially more processing and are consequently higher value added products.
- (31) The product scope as described above includes also simple (not further processed) concentrates for animal feed. These were produced in the period considered in the EU by one plant of the complainant located in France and by another company, ADM, based in the Netherlands.
- (32) Following the interim disclosure the complainant requested a change of the product scope by eliminating concentrates used for animal feed. The complainant opposed the approach proposed in the interim

document and argued that exclusion of data from the French plant that closed in 2009 (i.e. in the middle of the period considered) resulted in an inconsistency in the remaining data (with ADM data still included). Consequently, the sales and market share of EU producers of the product under investigation were artificially inflated.

- (33) The complainant argued that given relatively stable demand, some of the supply provided by the Solae French plant until it closed in 2009 was taken over by their competitor in the EU, ADM. Consequently, disregarding the data from the French plant led to a misleading comparison of year 2008 data, when ADM had only a smaller share of the market for animal concentrates, with the IP data, when ADM had a much bigger share of that market.
- (34) In particular, the complainant provided information on technical and chemical differences between the concentrates for animal feed on the one hand and other concentrates and isolates on the other hand. Also, different distribution channels are used for these subgroups. In addition, concentrates for animal feed fall within a different CN code than other concentrates (for food) and isolates.
- (35) Following the submission of the complainant, one exporter disagreed with the request to limit the product scope. However, this exporter misunderstood the request and had considered that the request was to exclude all the soy protein concentrates, while in fact it refers only to simple SPC for animal feed. In addition, the exporter provided no factual reasoning as to why the request would be unfounded.
- (36) It is also noted that, based on the information collected during the investigation, imports of soy protein concentrates for animal feed account for less than 1 % of the total Chinese imports in the Union of the product under investigation (as originally defined).
- (37) Given the above, and in particular the clear technical, chemical and market related differences, it is considered appropriate to limit the product scope by excluding simple soy protein concentrates of a kind used in animal feeding. Consequently, the product concerned is concentrated soy protein products, excluding such products of a kind used in animal feeding, and containing by weight 65 % or more of proteins ($N \times 6,25$) calculated on the dry matter by excluding added vitamins, minerals, amino acids and food additives, originating in the PRC ('the product concerned' or 'CCSPP') and currently falling within CN codes ex 2106 10 20, ex 2106 90 92 and ex 3504 00 90.

- (38) The product concerned is mainly used in the food industry in meat applications and meat substitutes. Other food applications include salad dressings, soups, beverage powders, energy bars, non-dairy creamers, frozen desserts, whipped toppings, infant formulas, breads, breakfast cereals, pastas etc. Due to its functionalities, the product concerned also has some specific applications including adhesives, asphalts, resins, cleaning materials, cosmetics, inks, leather, paints, paper coatings, pesticides/fungicides, plastics, polyesters and textile fibres.
- (39) Despite some differences in possible final applications, the different types of the product concerned, concentrates and isolates, all share the same basic physical and chemical characteristics. They are therefore considered to constitute one single product.

2. LIKE PRODUCT

- (40) The product concerned and certain concentrated soy protein products produced and sold on the domestic market of the PRC, and on the domestic market of Brazil, which served as an analogue country, as well as certain concentrated soy protein products produced and sold in the Union by the Union industry were found to have the same basic physical, chemical and technical characteristics and uses. Therefore, these products are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. RELATIONSHIP BETWEEN SINOGLORY GROUP AND GUSHEN GROUP

- (41) The sampled exporting producers consisted of Shandong Crown Soya Protein Co. Ltd and its related companies ('Crown Group'), Gushen Biological Technology Group Co. Ltd and its related companies ('Gushen Group') and Sinoglory Health Food Co. Ltd and its related companies ('Sinoglory Group'). At an early stage of the investigation it was considered that Gushen Group and Sinoglory Group might have to be treated as related exporters. However, following the explanations provided by the exporters concerned, it was finally decided to consider Gushen Group and Sinoglory Group as separate entities for the purpose of this investigation.

2. MARKET ECONOMY TREATMENT (MET)

- (42) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (43) Briefly, and for ease of reference only, these criteria are set out in summarised form below:

1. Business decisions and costs are made in response to market conditions and without significant State interference;
2. Accounting records are independently audited, in line with international accounting standards and applied for all purposes;
3. There are no significant distortions carried over from the former non-market economy system;
4. Legal certainty and stability is provided by bankruptcy and property laws; and
5. Currency exchanges are carried out at the market rate.

- (44) MET was claimed by the Crown Group and the Sinoglory Group.

- (45) For both the Crown and the Sinoglory Groups, the Commission sought all information deemed necessary and verified the information submitted in the MET claim forms and all other information deemed necessary, at the premises of the companies in question.

- (46) The investigation established that both groups did not meet the requirements of the criteria set forth in Article 2(7)(c) of the basic Regulation to be granted MET.

- (47) In particular, the companies from both groups failed to meet criteria 1, 2, and 3.

FIRST GROUP

- (48) In the case of one group, one producer in the group did not meet criterion 1 because of the existence of an obligation to sell all its products on the international market. Even though the company claimed that this provision was not binding, the company actually has never sold on the domestic market (with the exception of a minor sale in 2007). As for criterion 2, several accounting problems were found for both producers in the group. Moreover, one of the companies in the group did not submit any MET claim form. Furthermore, one company in the group let out part of its land without any record of the rental receipts in its accounts since no invoices or proofs of payment for these payments were issued. When it moved to a new production site and part of its equipment became idle, no test for impairment was made. Finally, when one of the companies in the group bought a new piece of land, it received a government transfer to be used as compensation for the villagers who had to move. However, this payment was not used for that purpose but to reduce the cost of the land use right. Regarding criterion 3, the two producers in the group swap raw material from a common supplier without any proper documentation or records, on the basis of very

informal arrangements without any adjustments for price differences or fees: this constitutes a form of barter trade. Furthermore, one producer could use the land belonging to its majority shareholder without any payments for several years. According to that company, this was possible because the related land use rights had been acquired for a very low price by the parent company in the context of its privatisation.

- (49) Following disclosure of the detailed MET findings and the interim disclosure, the group reiterated earlier claims that one of the two producers should not be considered as legally related to the rest of the group. However, concerning this claim, it was found that the two producers were pursuing a coordinated commercial and industrial strategy together with the rest of the group, including the barter trade practices mentioned at recital 48 above. The claim is therefore rejected.
- (50) The group also claimed that the sales restriction for one of its producers was only mentioned in its Articles of Association, and not in the business license or certificate of approval. According to the company, the restriction was therefore not binding. Moreover, it was claimed that the company which had not submitted a MET claim form was not a producing or trading company but rather a payment agent and that the group had applied its best efforts to provide all information available.
- (51) However, as mentioned above, the producer in question clearly complied with the sales restriction. Moreover, the Articles of Association are part of the documents that are submitted for approval to the authorities when the company is set up and therefore it is clear that the content of these documents forms the basis for the actual operations of the company. Finally, concerning the company which did not submit a MET claim form, this company was actually found to be involved in certain aspects relating to the export sales of the product in question and should have therefore submitted a MET claim form. Therefore, both claims are rejected.

SECOND GROUP

- (52) In the case of the other group, one of the exporting producers was also subject to a limitation of its sales, whereby 70 % of its production should be sold for export, and therefore did not comply with criterion 1. As for criterion 2, a number of problems concerning depreciation of assets and changes in accounting policies were found. As for criterion 3, the value attributed to two plots of land in one of the companies' accounts varies significantly, and it is considered that by acquiring a plot of land at a price clearly below market value, the company received a hidden subsidy. Moreover, another company in the group benefited from free rental of a piece of land for one year and has acquired land use rights at a price lower than the market value. Finally a number of intra-group guarantees were not disclosed in the notes to the accounts, in violation of IAS 24.

- (53) Following disclosure of the detailed MET findings and the interim disclosure, the group claimed that *de facto* sales of the two producers were not subject to any sales restriction. According to the companies, the fact that their respective export volumes were in line with the restrictions in their Articles of Association was only due to the supply-demand balance on the soy protein market. They underlined that these restrictive provisions had been removed from these texts soon after the IP. Moreover, regarding criterion 2, the group claimed that apart from minor accounting mistakes, it had fully complied with Chinese GAAP which they are required to implement rather than IAS. With respect to the land use rights, the group claimed that the different value of the two plots of land was due to the levelling costs of one of the two plots. Finally, it was stressed that the free rental of another plot of land was due to some administrative delays before the land use right could actually be acquired and that, anyhow, the value of the exemption was only minor if compared to the company's operational income.
- (54) Regarding criterion 1, the Articles of Association are part of the documents that are submitted to the authorities and approved when the company is set up. The fact that the company complied with the sales restrictions is considered to be due to a requirement to do so and it is clear that the content of these documents forms the basis for the actual operations of the company. Moreover it is underlined that the removal of the restrictions from the Article of Association took place after the IP and is therefore irrelevant for this investigation. Regarding criterion 2, it was clear that the accuracy and reliability of the records could not be confirmed. In addition, the company's accounting records should be audited in line with international accounting standards which could not be confirmed during the verification. With respect to criterion 3, no evidence could be submitted during the on-the-spot verification in order to substantiate the levelling costs for the plot of land in question. Finally, independently of the explanations brought forward, the fact remains that one of the companies rented its land for free during a certain period of time and therefore benefited from a subsidy. The comments were therefore not of a nature to change the MET findings. Those findings are hereby confirmed.

3. INDIVIDUAL TREATMENT (IT)

- (55) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation. Briefly, and for ease of reference only, these criteria are set out below:
- in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits,
 - export prices and quantities, and conditions and terms of sale are freely determined,

- the majority of the shares belong to private persons. State officials appearing on the Boards of Directors or holding key management positions shall either be in minority or it must be demonstrated that the company is none the less sufficiently independent from State interference,
- exchange rate conversions are carried out at the market rate, and
- State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

- (56) The Gushen Group only claimed IT. This claim was examined and no element was found to indicate that the company did not comply with the abovementioned criteria. It was therefore concluded that Gushen Group could be granted IT.
- (57) Assessment was also made for the Crown Group and Sinoglory Group, since MET was not granted to these companies. In both cases, no element was found to indicate that the companies did not comply with the abovementioned criteria. It is therefore concluded that both company groups could be granted IT.
- (58) Following the final disclosure, the complainant expressed its disagreement with the granting of IT to the sampled exporter groups. However, in view of the non-imposition of measures it has not been necessary to examine this further.

4. NORMAL VALUE

- (59) As explained in recital 46, MET was not granted to the two sampled groups that had requested it. The third sampled group had not applied for MET. Therefore, in accordance with Article 2(7) of the basic Regulation, normal value for all groups was established on the basis of the prices or constructed value in an analogue country.

(a) *Analogue country*

- (60) In the notice of initiation, the Commission indicated its intention to use the USA as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited interested parties to comment on this.
- (61) A number of comments were received and other countries were proposed as an alternative, in particular Brazil and Israel. The main argument submitted against the USA as an analogue country was that in the USA the product concerned would be made from genetically modified soy beans, whereas this would not be the case in the PRC. The use of genetically modified (GM) soy beans would potentially result in the product being used by different users and/or processing industries. It

was also mentioned by an exporting producer that the US subsidiary of the complainant would have a dominant position on the US market, resulting in inflated domestic sales prices.

- (62) In view of these comments received, the Commission sought cooperation from all known CCSPP producers in Brazil, Israel and the USA by asking them a number of key questions on their production, sales and local markets and asking them whether they would be willing to provide more detailed information on their costs and prices, if their country would be selected as an analogue country. Only one US producer and two Brazilian producers replied by providing the requested information and offering further cooperation. At a later stage, an Israeli producer also submitted a full questionnaire response. The Commission also endeavoured to obtain information on the aforementioned and other potential markets by other means.

- (63) The information thus collected was carefully analysed. It was confirmed that the US product was predominantly made from GM soy beans, as opposed to CCSPP from the PRC, Brazil or Israel. However, no conclusion could be drawn with regard to the impact of that difference in main raw materials on product characteristics, uses, cost or price. Furthermore, although the Brazilian market had an import duty of 14 %, there were significant volumes of imported CCSPP in Brazil competing with the locally produced product. In fact, the two Brazilian producers, which both offered cooperation, were accounting, roughly, for three quarters of the consumption in Brazil, whereas the US market appeared to be clearly dominated by two very large domestic producers, of which only one had offered cooperation. Therefore, although the total size of the US market was bigger, there appeared to be stronger conditions of competition in Brazil, with two large domestic producers and significant imports. Moreover, overall, the domestic sales volumes of the cooperating Brazilian producers appeared to be of the same order of magnitude as the volume of sales to the EU by the sampled Chinese producers, and the product ranges comparable. Finally, it was found that the Brazilian domestic market was significantly bigger than the Israeli one.

- (64) On the basis of the above, Brazil was selected as an analogue country. This selection is confirmed.

(b) *Determination of normal value*

- (65) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers was established on the basis of the verified information received from the producers in the analogue country. Where product types in the domestic market of the analogue country were not made in the ordinary course of trade or where no resembling types were sold, the normal value was constructed pursuant to Article 2(3) and 2(6) of the basic Regulation.

- (66) Following the interim disclosure the calculations were further refined to also take into account comments submitted by the parties.

5. EXPORT PRICE

- (67) The exporting producers made export sales to the Union either directly to independent customers or through related trading companies located in the PRC. The export price was therefore in all cases established pursuant to Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

- (68) Following the interim disclosure the calculations were further refined to also take into account comments submitted by the parties.

6. COMPARISON

- (69) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments for discounts, transport, insurance, handling, loading and ancillary costs, packing, credit costs, and indirect taxation were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

7. DUMPING MARGINS

- (70) The definitive dumping margins were expressed as a percentage of the CIF Union frontier price, duty unpaid.
- (71) For each of the three cooperating groups of exporting producers in the sample, a dumping margin was established on the basis of a comparison of the weighted average normal value in the analogue country with the weighted average export price, in accordance with Article 2(11) and (12) of the basic Regulation.
- (72) For the cooperating non-sampled companies the dumping margin was calculated as an average of the three sampled groups of companies.
- (73) Given the high level of cooperation in the investigation, with cooperating companies representing around 90 % of all imports from the PRC during the IP, for any non-cooperating companies, the country-wide margin was established using the highest of the margins found for the sampled groups of companies.

- (74) On this basis, the definitive levels of dumping established are as follows:

Company	Dumping margin
Crown Group	59,4 %
Gushen Group	55,8 %
Sinoglory Group	67,0 %
Cooperating non-sampled companies	61,3 %
Other companies	67,0 %

D. INJURY

1. INTRODUCTORY REMARKS

- (75) Following the revision of the product scope (exclusion of concentrates for animal feed), one company — ADM in the Netherlands, whose production is limited to concentrates for animal feed — is no longer considered to form part of the Union industry. Consequently, only the complainant (Solae) manufactured the like product in the Union during the investigation period. Solae has currently two manufacturing sites in the EU — one in Belgium producing soy protein isolates and another in Denmark producing soy protein concentrates (the basic SPC and further processed high value concentrates for which the basic SPC serves as an intermediate product). Another manufacturing site of Solae in Boudreaux, France, that manufactured and marketed only simple concentrates for animal feed closed down at the beginning of 2009.
- (76) As far as the production in the EU is concerned, the investigation revealed that Solae's manufacturing process is based exclusively on a tolling agreement with its Swiss mother company, Solae Europe. Under this agreement Solae Belgium and Solae Denmark process the raw material provided by Solae Europe against a service fee. Throughout the process, Solae Europe remains the only proprietor of the raw materials, any intermediate products and the finished goods.
- (77) Given that the ownership of the raw material and finished goods remains with the principal, the tolling arrangements are legally different from other possible production arrangements. However, in the current case, the value added by those companies in the EU amounts to over 50 % of the cost of manufacturing. This share of value added reflects, also, the technological and capital investments based in the Union. The net value of such investments in the EU is significant and the industry employs an important number of persons in the Union.
- (78) It should also be noted that the tolling operations in the EU would constitute 'the last substantial transformation' and, as such, confer EU origin to the products.

- (79) Due to the foregoing, it was therefore concluded that an economic activity like that performed by Solae Belgium and Solae Denmark in the EU could be potentially threatened by dumping practices and could thus warrant protection irrespective of the legal nature of such activity (tolling or a different production arrangement). In the light of the above, it was concluded to consider Solae Belgium and Solae Denmark as Union producers that form part of the Union industry within the meaning of Article 4(1) and Article 5(4) the basic Regulation.
- (80) Following the interim disclosure, one exporter commented that tolling companies do not qualify as Union producers and have no standing in anti-dumping investigations. The exporter argued that given that the ownership of the raw material and finished goods remained with Solae Europe registered in Switzerland (i.e. outside of the EU), Solae Belgium and Solae Denmark could not be considered Union producers and did not warrant protection from the dumping practices.
- (81) The exporter pointed out that in previous cases, such as one concerning imports of plastic sacks and bags originating in the PRC ⁽¹⁾, the institutions decided to exclude two Chinese companies from a sample of exporting producers because they had not themselves produced a large amount of declared exported products, but had in fact processed them for other exporting producers.
- (82) It is noted that the situation in the case relied upon by the exporter is not comparable to the one in the present case. First, the Chinese companies in the plastic sacks and bags case mentioned above had their own (non-tolled) output (but the sales of own produced products were too small for the companies to be included in the sample), while in the present situation Solae Belgium and Solae Denmark work exclusively with the tolling arrangement.
- (83) In addition, while Solae Belgium and Solae Denmark are fully owned by Solae Europe, the investigation of the Chinese companies excluded from the sample did not establish any ownership relation with other exporting producers for which they processed the products.
- (84) The exporter in its submission also referred to another past investigation, namely that concerning imports of glycine originating in the PRC ⁽²⁾, where the Commission treated some Chinese companies as traders rather than producers, as the activity they carried out was found not to qualify as production.
- (85) It is noted in this regard that the glycine case does not support the exporter's argument either, as in that case the exporting Chinese companies simply conducted some processing operations which did not change the chemical composition or the physical characteristics of the product under consideration. This is a completely different situation from the one at hand where the operations conducted by the EU companies convert soy beans or soy flakes into soy proteins and not only change the chemical composition or the physical characteristics of the material but also add significant value to the final product.
- (86) The exporter also argued that the centre of the decision making process for the entire tolling production in the Union is exclusively within a non-EU company and that the entire fate of the tolling companies is completely and exclusively dependant on their Swiss mother company. The exporter added that in a different case, concerning imports of vinyl acetate originating in the USA ⁽³⁾, the Commission excluded an EU producer from the definition of the Union industry due to its relationship with a company in a targeted country.
- (87) Another party also suggested that in analysing the issue of tolling arrangement and its qualification as production, issues like placement of headquarters, centre of interest and commitment to the EU market should be analysed in a manner similar to the analysis of related companies while defining the Union industry.
- (88) Indeed, Solae as a group has structural links with its Swiss mother company and further corporate links with US companies. It is not a novelty in anti-dumping proceedings that companies with strong EU presence have such structural, capital or corporate links outside the EU. However, such structural and corporate links outside the EU cannot undermine the conclusion that complainants qualify as EU producers.
- (89) It is noted that such arguments would be relevant for the purposes of Article 4(1)a of the basic Regulation and the definition of the Union industry only in case Solae Europe would be a company in a targeted country, i.e. the PRC in this case. This is clearly not the case, and consequently the exporter's argument is irrelevant.
- (90) In addition, it is reiterated that the ownership of the material used and/or of the finished product is not the decisive criterion in order to define a Union producer. While tolling is legally different from other production arrangements, toll-producing companies may be considered Union producers.
- (91) This approach is consistent with earlier practice of the institutions, like for example in the expiry review concerning imports of furfuryl alcohol originating in the PRC ⁽⁴⁾.

⁽¹⁾ OJ L 270, 29.9.2006, p. 4.

⁽²⁾ OJ L 118, 19.5.2000, p. 6.

⁽³⁾ OJ L 209, 17.8.2011, p. 24.

⁽⁴⁾ OJ L 323, 10.12.2009, p. 48.

(92) It is reiterated that in the current case the value added by the companies in the EU amounts to over 50 % of the cost of manufacturing. This share of value added reflects the technological and capital investments based in the Union. The net value of such investments in the EU is significant and the industry employs an important number of persons in the Union.

(93) In conclusion, Solae Belgium and Solae Denmark are considered Union producers that form part of the Union industry within the meaning of Article 4(1) and Article 5(4) the basic Regulation and will be thereafter referred to as the 'Union industry'.

(94) The total Union production within the meaning of Article 4(1) of the basic Regulation was established on the basis of the questionnaire reply of the complainant.

(95) Given that the Union industry comprises only one producer, the data below is presented in an indexed format in order to preserve confidentiality, pursuant to Article 19 of the basic Regulation.

2. UNION CONSUMPTION

(96) The Union consumption was established on the basis of the sales volumes of the Union industry's tolled output destined for the Union market, the import volumes on the Union market obtained from Eurostat, and estimates by the complainant.

(97) The CN codes covering certain concentrated soy protein products cover a broader range of products, and not only the product under investigation. Based on an extensive research and market knowledge, the complainant made estimates of the value and volume of the imports of the product under investigation to the Union. These estimates were examined in the course of the investigation and are considered to be reliable. The Commission services received no comments with an alternative proposal which could call into question the use of these estimates for the purpose of this investigation.

(98) One party claimed that the methodology of calculating imports has not been sufficiently explained. Those criticisms, however, have not been further substantiated. The party was critical of the Commission's approach without however suggesting a more suitable or reliable alternative. The criticism related mainly to the fact that the party was not able to comment. It is recalled that the non-confidential version of the complaint, setting out the exclusion methodology, was available in the non-confidential file as from the initiation of the proceeding.

(99) It is recalled that the Commission services cross checked the data provided in the complaint and could not establish anything that would undermine the reasonableness of the method chosen. Further, in view of the

fact that parties did not propose an alternative method of exclusion, their comments were considered as unsubstantiated.

(100) Throughout the period considered the demand on the Union market decreased by 8 %. More specifically, the Union consumption remained stable between 2007 and 2008, decreased by 8 % in 2009 and remained stable in the IP.

Table 1

Union consumption	2007	2008	2009	IP
Volume (in tonnes)	Business confidential data			
Index (2007 = 100)	100	100	92	92

Source: Questionnaire replies from the Union industry and complainant's estimates based on Eurostat data.

3. IMPORTS FROM THE COUNTRY CONCERNED

(a) Volume

(101) The volume of imports of the product concerned increased by 15 % over the period considered and reached 20 117 tonnes in the IP. More specifically, imports from the PRC remained stable between 2007 and 2008, before increasing by 26 percentage points in 2009, when they reached their peak. It is noted that the imports from the PRC dropped by some 9 percentage points in the IP.

Table 2

	2007	2008	2009	IP
Volume of dumped imports from the country concerned (tonnes)	17 495	17 557	22 017	20 117
Index (2007 = 100)	100	100	126	115
Market share of dumped imports from the country concerned — indexed	100	100	136	125

Source: Complainant's estimates based on Eurostat data.

(b) Market share of the imports concerned

(102) The index reflecting the evolution of market share held by the dumped imports from the PRC increased by 25 % throughout the period considered. It remained stable between 2007 and 2008, but increased by 36 % in 2009. In the IP it decreased by 11 percentage points.

(c) **Prices**(i) **Price evolution**

- (103) The average import price increased overall by 37 % in the period considered. More specifically, it increased initially by as much as 48 % between 2007 and 2008, then dropped in 2009 by 11 percentage points and remained at that level in the IP. The average price of imports from the PRC in the IP was EUR 1 569 per tonne.

Table 3

	2007	2008	2009	IP
CIF price of imports from the PRC (EUR/tonne)	1 149	1 704	1 570	1 569
Index (2007 = 100)	100	148	137	137

Source: Complainant's estimates based on Eurostat data.

(ii) **Price undercutting**

- (104) For the purpose of analysing price undercutting, the weighted average sales prices of the Union producer to unrelated customers on the Union market, adjusted, in particular for credit costs, delivery costs, packaging and commissions, to an ex-works level, were compared with the corresponding weighted average CIF prices of the cooperating exporters from the PRC to the first independent customer on the Union market, adjusted to cover all costs related to customs clearance, i.e. customs tariff, and post-importation costs (landed price).

- (105) The comparison showed that during the IP, the imports of the product concerned undercut the Union industry's prices by around 12 %.

Company	Undercutting
Crown Group	11,1 %
Gushen Group	9,6 %
Sinoglory Group	15,0 %

- (106) One party commented that of course the level of price undercutting has only been calculated for the IP and that previous levels of undercutting are not known. However, the party suggested, given that between 2007 and the IP, Chinese import prices have increased by significantly more than Union industry prices, it might be inferred that price undercutting has been falling.

- (107) Indeed, it is recognised that while between 2007 and the IP, Chinese import prices have increased by 37 %, the Union industry prices have increased by only 15 % (see recital 119 below). Consequently, it is clear that with regard to average prices, the gap between Chinese and EU prices has been narrowed between 2007 and the IP.

4. **SITUATION OF THE UNION INDUSTRY**

- (108) Pursuant to Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic factors and indices having a bearing on the state of the Union industry during the period considered.

- (109) For the purpose of the injury analysis, the injury indicators have been established on the basis of the information collected from the duly verified full questionnaire reply by the complainant.

(a) **Production**

- (110) The Union production decreased by 14 % between 2007 and the IP. More specifically, it decreased by 8 % in 2008 before even further decreasing by another 15 percentage points in 2009. However, there was a clear improvement between 2009 and the IP, when the production increased by 9 percentage points.

Table 4

	2007	2008	2009	IP
Production (tonnes)	Business confidential data			
Index (2007 = 100)	100	92	77	86

Source: Questionnaire replies.

(b) **Production capacity and capacity utilisation**

- (111) The production capacity of the Union producer remained stable throughout the period considered.

Table 5

	2007	2008	2009	IP
Production capacity (tonnes)	Business confidential data			
Index (2007 = 100)	100	100	100	100
Capacity utilisation	Business confidential data			
Index (2007 = 100)	100	92	77	86

Source: Questionnaire replies.

- (112) The index reflecting evolution of the capacity utilisation decreased by 14 % in the period considered. Between 2007 and 2008 it decreased by 8 % and by another 15 percentage points in 2009. It then increased by 9 percentage points in the IP. The trend for the utilisation rate reflects the development of the production over the period considered, given that the production capacity remained stable.

- (113) It is noted that despite an overall decrease, capacity utilisation remained relatively high and in the IP was above 80 %.

(c) **Sales volume**

- (114) The sales volume of the Union industry to unrelated customers on the EU market decreased in the period considered by 8 %. The sales decreased by 9 % between 2007 and 2008 and by a further 5 percentage points in 2009. However, there was a clear improvement between 2009 and the IP, when the sales increased by some 6 percentage points.

Table 6

	2007	2008	2009	IP
EU sales (tonnes)	Business confidential data			
Index (2007 = 100)	100	91	86	92

Source: Questionnaire replies.

(d) **Market share**

- (115) Overall, during the period considered, the Union industry maintained its market share. More specifically, the index decreased by as much as 9 % between 2007 and 2008, but already in 2009 it rebounded by 1 percentage point and increased by another 7 percentage points in the IP.

Table 7

	2007	2008	2009	IP
Market share of the Union industry	Business confidential data			
Index (2007 = 100)	100	91	92	99

Source: Questionnaire replies from the Union industry and complainant's estimates based on Eurostat data.

(e) **Growth**

- (116) Between 2007 and the IP, whilst the Union consumption decreased by 8 %, the volume of sales also decreased by 8 %, and the Union industry's market share remained stable.

(f) **Employment**

- (117) Employment decreased by 7 % between 2007 and the IP. It increased modestly between 2007 and 2008 before a sharp 10 percentage point decline in 2009. However, employment increased again by 2 percentage points in the IP.

Table 8

	2007	2008	2009	IP
Employment (persons)	Business confidential data			
Index (2007 = 100)	100	101	91	93

Source: Questionnaire replies.

(g) **Productivity**

- (118) Productivity, measured as output (tonnes) per employee per year, decreased by 7 % in the period considered. This drop reflects the fact that production decreased at a faster pace than the employment. Still, it is noted that between 2009 and the IP the productivity increased by 8 percentage points reflecting the increase in the production at an even higher pace than the increase in the employment.

Table 9

	2007	2008	2009	IP
Productivity (tonnes per employee)	Business confidential data			
Index (2007 = 100)	100	91	85	93

Source: Questionnaire replies.

(h) **Factors affecting sales prices**

- (119) The average sales prices of the Union producers increased by some 15 % in the period considered. The average price increased in 2008 and 2009 (by 8 % and 10 percentage points respectively), before decreasing slightly in the IP by 3 percentage points. In general, the prices of CCSPP are heavily dependent on the costs of major raw materials (i.e. soy beans or soy bean flakes) and energy. Together they account for a major proportion of the manufacturing cost. It is noted that the market for soy bean is volatile and characterised by significant annual or even monthly fluctuations.
- (120) Given the significant variations of the selling prices between the different types of the product under investigation, the evolution of the average sales prices should be looked at with caution as any change in the average price is heavily influenced by any change in the product mix.

Table 10

	2007	2008	2009	IP
Unit price EU market (EUR/tonne)	Business confidential data			
Index (2007 = 100)	100	108	118	115

Source: Questionnaire reply.

(i) Magnitude of the dumping margin

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

(j) Stocks

- (122) The level of closing stocks remained overall stable between 2007 and the IP. It is noted that stocks represent a rather small portion of the annual production and therefore the relevance of this indicator in the injury analysis is limited.

Table 11

	2007	2008	2009	IP
Closing stock (tonnes)	Business confidential data			
Index (2007 = 100)	100	90	110	99

Source: Questionnaire reply.

(k) Wages

- (123) The annual labour cost increased by 7 % between 2007 and IP. It increased by 5 % between 2007 and 2008 before decreasing by 2 percentage points in 2009 and later increasing by 4 percentage points in the IP.

Table 12

	2007	2008	2009	IP
Annual labour cost (EUR)	Business confidential data			
Index (2007 = 100)	100	105	103	107

Source: Questionnaire reply.

(l) Profitability and return on investments

- (124) During the period considered, the profitability of the sales of the like product on the EU market to unrelated customers, expressed as a percentage of net sales, was fluctuating considerably. While in 2007 and 2009 the Union industry achieved profits, it suffered losses in 2008 and in the IP. The oscillating profitability may be a reflection of the fluctuations on the soy bean market.

Table 13

	2007	2008	2009	IP
Profitability of EU (% of net sales)	Business confidential data			
Index (2007 = 100)	100	- 89	10	- 45

	2007	2008	2009	IP
ROI (profit in % of net book value of investments)	Business confidential data			
Index (2007 = 100)	100	- 160	- 9	- 109

Source: Questionnaire reply.

- (125) The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the profitability trend.

(m) Cash flow and ability to raise capital

- (126) The net cash flow from operating activities fluctuated significantly in the period considered. Starting from a positive figure in 2007, it deteriorated in 2008 when it became negative, but improved again in 2009 only to become negative once more in the IP. Overall, cash flow broadly followed the profitability trend.

- (127) There were no indications that the Union industry encountered difficulties in raising capital, mainly due to the fact that it is incorporated in a larger group.

Table 14

	2007	2008	2009	IP
Cash flow (EUR)	Business confidential data			
Index (2007 = 100)	100	- 93	24	- 7

Source: Questionnaire reply.

(n) Investments

- (128) The annual investments in the production of the like product increased by 4 % between 2007 and 2008 before increasing further by 29 percentage points in 2009. It decreased slightly by 5 percentage point in the IP. Overall, investments increased by 28 % in the period considered.

Table 15

	2007	2008	2009	IP
Net investments (EUR)	Business confidential data			
Index (2007 = 100)	100	104	133	128

Source: Questionnaire reply.

5. CONCLUSION ON INJURY

- (129) The analysis of the data shows that overall the Union industry decreased its production, capacity utilisation, sales, employment and productivity during the period considered. Also, wage cost increased.

- (130) At the same time this negative picture is mitigated by the fact that most of these indicators have experienced positive development between 2009 and the IP (2010). In particular between 2009 and 2010 (IP) production and capacity utilisation increased by 9 percentage points; EU sales and market share increased by 6 and 7 percentage points respectively; employment increased by 2 percentage points, while productivity increased by as much as 8 percentage points.
- (131) Also, the market share of the Union industry overall remained stable in the period considered. While it dropped in 2008 it increased already in 2009. In 2010 it reached a level very close to that of 2007.
- (132) Profitability, as well as return on investment and cash flow (both closely related to the profitability), all show a mixed picture of the economic situation of the Union industry. While overall (between 2007 and the IP) they decrease, they also oscillate significantly and show the volatile character of the market.
- (133) Net investment was clearly increasing between 2007 and 2009 (by 33 %) and experienced only a small decrease (by 5 percentage points) in 2010 (IP).
- (134) Also, the actual level of losses suffered by the Union industry in the IP is relatively moderate.
- (135) In the light of the foregoing, it is concluded that the Union industry has suffered some injury. However, given the relatively insignificant level of actual losses suffered by the Union industry in the IP, and signs of recovery towards the end of the period considered, that injury cannot be characterised as material within the meaning of Article 3(5) of the basic Regulation.
- (136) Following the disclosure of the final findings, the complainant argued that the injury in this case should be considered as material because in some other cases with allegedly similar circumstances (i.e. positive trends observed towards the end of the period considered) ⁽¹⁾ the findings were different. The complainant also argued that looking at the later part of the period considered and drawing conclusions from signs of recovery in that period is incompatible with WTO law ⁽²⁾.
- (137) It is noted in this regard that each case has to be judged on its own merits. In this particular case, the investigation not only established clear signs of recovery of the Union industry towards the end of the period considered, but also the magnitude of the negative trends was relatively limited. For example the market share of the Union industry remained stable and relatively high overall, capacity utilisation fell slightly but remained at a level above 80 %, and investments increased. By contrast, in *Oxalic acid* ⁽³⁾ there was, for instance, a loss of Union industry market share of 9 % in the IP compared with the first year of the injury investigation period ⁽⁴⁾. In *Citric acid* ⁽⁵⁾ there was a similar loss of market share and there was a decrease of investments ⁽⁶⁾.
- (138) With regard to WTO obligations, the panel report quoted refers to a completely different situation in which the investigating authority analysed only partial data from only 6 months of each of three consecutive years and based its findings on this incomplete analysis. The situation in the case at hand is obviously different as the injury analysis covers full year data from four consecutive years and additionally there is some emphasis on the fact that by the end of that four-year period there was a positive development in many of the trends analysed compared to the year before the IP.
- (139) Given the above, it is definitively concluded that any injury suffered by the Union industry is not characterised as material within the meaning of Article 3(5) of the basic Regulation.

E. CAUSATION

1. INTRODUCTION

- (140) Without prejudice to the determination with regard to the lack of material injury and under the hypothesis that the injury suffered by the Union industry could have been characterised as material, the Commission examined the potential causal link.
- (141) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission examined whether any injury suffered by the Union industry has been caused by the dumped imports from the country concerned. Furthermore, known factors other than the dumped imports, which might have injured the Union industry, were examined to ensure that any injury caused by those other factors was not attributed to the dumped imports.

⁽¹⁾ The complainant quotes in particular *Oxalic acid from India and China* (OJ L 275, 20.10.2011, p. 1) and *Citric acid from China* (OJ L 143, 3.6.2008, p. 13).

⁽²⁾ The complainant refers to the Final Report of the Panel in dispute WT/DS331/R Mexico — Anti-dumping duties on steel pipes and tubes from Guatemala.

⁽³⁾ OJ L 106, 18.4.2012, p. 1.

⁽⁴⁾ See Commission Regulation (EU) No 1043/2011 imposing provisional duties (OJ L 275, 20.10.2011, p. 1), recital 77.

⁽⁵⁾ OJ L 323, 3.12.2008, p. 1.

⁽⁶⁾ See Commission Regulation (EC) No 488/2008 imposing provisional duties (OJ L 143, 3.6.2008, p. 13), at respectively recitals 68 and 72.

2. EFFECTS OF THE DUMPED IMPORTS

- (142) The imports of the product concerned increased overall by 15 % between 2007 and the IP and their corresponding market share increased by 25 % despite the contracting demand on the Union market. Those developments generally coincided with the weakened economic situation of the Union industry. While the Union industry managed to keep its market share, the Chinese imports gained over 5 percentage points.
- (143) On that basis it would appear, at first sight, that there is a causal link between imports from the PRC and any injury suffered by the Union industry.
- (144) However, a more detailed analysis of the effects of dumped imports on the situation of the Union industry does not appear to show a clear correlation. For example, while the imports from the PRC hardly increased between 2007 and 2008 (recital 101) and their CIF import price went up by 48 percentage points (recital 103), the Union industry in 2008 nevertheless suffered significant losses and lost some market share. By contrast, while the Chinese imports increased by 26 % between 2008 and 2009, and their CIF import price went down by 11 percentage points, the Union industry kept its market share and recovered from the 2008 losses. Also between 2009 and the IP while imports from the PRC maintained their presence on the Union market, the situation of the Union industry clearly improved as discussed above in the injury analysis.
- (145) This lack of correlation between imports from the PRC and the trends of the injury indicators suggests strongly that other factors contributed and possibly caused any injury suffered by the Union industry. This question will be further explored below.

3. EFFECTS OF OTHER FACTORS

- (146) The other factors which were examined in the context of causation are: (i) the contraction in Union demand, probably partly related to the financial and economic crisis in the years 2008/2009; and (ii) the volatility of the soy bean market.

(i) Contraction in Union demand, probably partly related to the financial and economic crisis of 2008/2009

- (147) A drop in Union consumption could be observed in the period considered, namely by 8 % if one compares 2007 with 2010 (the IP). Many of the injury factors developed largely in line with that factor. For instance, the sales volume of the EU industry also dropped by 8 % if one compares the aforementioned two periods. Other examples are employment — 7 % less in 2010 than in 2007 — and productivity — also 7 % less in 2010 than in 2007. It is therefore clear that the contraction in

demand, whatever its underlying cause, was a major factor in the developments of the state of the Union industry.

- (148) Although the reason for the contraction in demand is not directly relevant for causation analysis, it may well be that it was caused, at least in part, by the financial and economic crisis. In this context, it is noted that demand dropped in particular between 2008 and 2009. Because of its coincidence in time, the 8 percentage points' decrease between 2008 and 2009 was in all likelihood linked to the economic crisis. Consequently, it could be argued that the injury suffered by the Union industry was caused by the economic crisis and the resulting decline in demand.
- (149) It is also noted that Solae Belgium recognises in its annual report from 2009 that lower income from financial assets caused by the financial crisis have had a negative impact on the company's financial situation.
- (150) It is also reiterated that the Union industry improved its economic situation between 2009 and the IP. This improvement clearly coincides with the general economic recovery.
- (151) Given the above, it is considered that the contraction in demand, probably partly caused by the economic crisis, was a major cause of any injury suffered by the Union industry.
- (152) Following the final disclosure, the complainant claimed that the financial and economic crises did not cause the injury, but did not provide any convincing argument in this regard and simply referred to a number of other cases ⁽¹⁾ where the findings were different.

- (153) In this regard, it is reiterated that each case has to be judged on its own merits. In this particular case the fact remains that while there is a lack of clear correlation between dumped imports and the situation of the Union industry, the contraction in demand, probably partly caused by the economic crisis, did contribute to the poor situation of the Union industry. In fact, at least to some extent, as explained above, this was explicitly recognised in the annual report of Solae Belgium of 2009.

- (154) Nevertheless, important differences can be noted between the cases referred to by the complainant and the present case. A number of those differences are listed in the following recitals.

⁽¹⁾ *Open mesh fabrics of glass fibres from the PRC* (OJ L 43, 17.2.2011, p. 9); *Oxalic acid from India and the PRC* (OJ L 275, 20.10.2011, p. 1); *Glass fibre from the PRC* (OJ L 67, 15.3.2011, p. 1) and *Ceramic tiles from the PRC* (OJ L 70, 17.3.2011, p. 5).

(155) In the Oxalic acid case⁽¹⁾, although some indicators indeed marked a positive development between 2009 and the IP, the market share of the Union industry decreased, whereas in the present case it increased almost to the level of 2007⁽²⁾. Furthermore, the Oxalic acid case does not show a year-on-year absence of correlation between dumped imports from the countries concerned and the trends of the injury indicators, which is characteristic of the present case. The profitability trends are also different. Notably, in the present case the profitability fluctuates considerably. Finally, in the present case the market is highly volatile.

(156) In the Open mesh fabrics of glass fibres case⁽³⁾, the market share of the Union industry decreased every year, and overall by 12 percentage points⁽⁴⁾. At the same time the market share of Chinese imports consistently grew year on year, and overall by 12,4 percentage points⁽⁵⁾. In the present case, the market share of Chinese imports increased up to 2009 in order to then decrease between 2009 and the IP. At the same time, the Union industry's market share decreased already in 2008 in order to then bounce back almost to the 2007 level.

(157) In the Glass fibres case⁽⁶⁾ the market share of dumped imports consistently grew year on year, and overall by 6,3 percentage points⁽⁷⁾.

(158) In the Ceramic tiles case⁽⁸⁾, the market share of the dumped imports was increasing steadily⁽⁹⁾. Furthermore, the evolution of stocks was very different. In the Ceramic tiles case the increase in stocks was a telling injury factor⁽¹⁰⁾. Finally, the investigation in the Ceramic tiles case showed that despite recovery in the construction sector, the indicators of the Union industry continued to show a downward trend⁽¹¹⁾.

(159) Finally, in the Fatty alcohol case⁽¹²⁾, the development of the injury indicators between 2009 and the IP differed from the present case (e.g. employment decreased)⁽¹³⁾, and the volume and market share of dumped imports increased between 2009 and the IP⁽¹⁴⁾.

(160) Consequently, the claim of the complainant must be rejected.

(ii) Volatility of the soy bean market

(161) It has been shown above that the Union industry's profitability oscillates significantly and indicates a volatile character of the market.

(162) That volatility is closely linked with the fluctuations on the raw materials market. The spot market for the main raw material — soy beans — is traditionally characterised by significant monthly and annual fluctuations⁽¹⁵⁾, while prices for the final product — CCSPP — tend to be rather stable (as they are based on longer term contracts). Consequently, the level of profitability for the product under investigation is heavily dependent on the prevailing situation on the soy bean market.

(163) In this context it is noted that indeed there was a significant soy bean price hike in 2008 that had an important impact on the profitability and the overall situation of the Union industry. The complainant itself recognised that the soy bean price hike did contribute to its poor situation in 2008.

(164) Given the above, it is clear that the volatility of soy bean market also was a major cause of any injury suffered by the Union industry.

(165) Following the final disclosure, the complainant claimed that the volatility of soy bean prices could not break the causal link either and was only relevant for the 2008 losses. However, no substantiated evidence was presented in this respect.

(166) It is noted that soy bean price hikes coincide with the poor financial performance of the Union industry and, given that high soy bean prices were considered to be the main cause of 2008 losses, there is no particular reason why the 2010 losses coinciding with another hike of the soy bean prices should be treated differently.

(167) Consequently, the claim of the complainant must be rejected.

4. CONCLUSION ON CAUSATION

(168) Other factors, and in particular the contraction in demand (probably partly caused by the economic crisis of 2008/2009) and the volatile character of the main raw material market were important causes of any injury to the Union industry.

⁽¹⁾ OJ L 275, 20.10.2011, p. 1.

⁽²⁾ Ibid, recital 75.

⁽³⁾ OJ L 43, 17.2.2011, p. 9.

⁽⁴⁾ Ibid, recital 75.

⁽⁵⁾ Ibid, recital 66.

⁽⁶⁾ OJ L 67, 15.3.2011, p. 1.

⁽⁷⁾ Ibid, recital 64.

⁽⁸⁾ OJ L 70, 17.3.2011, p. 5.

⁽⁹⁾ Ibid, recital 73.

⁽¹⁰⁾ Ibid, recitals 93-95 and 125.

⁽¹¹⁾ Ibid, recital 124.

⁽¹²⁾ OJ L 122, 11.5.2011, p. 47.

⁽¹³⁾ Ibid, recital 85.

⁽¹⁴⁾ Ibid, recital 70.

⁽¹⁵⁾ Publicly available data (see, for example, <http://www.indexmundi.com>) show that monthly price variations for soy beans can be as high as +/- 15 %.

- (169) Therefore, even under the hypothesis that the Union industry suffered material injury, since those other factors break the causal link, it cannot be concluded that any injury was caused by the dumped imports from the PRC.

given an opportunity to comment. Their comments were considered but they have not altered the conclusions reached above,

HAS ADOPTED THIS DECISION:

F. UNION INTEREST

- (170) Since it was found above that the Union industry is not suffering injury that can be qualified as material, and that in any case other factors break the causal link between the dumped imports and that injury, it is not necessary to examine the Union interest.

Article 1

The anti-dumping proceeding concerning imports of certain concentrated soy protein products originating in the People's Republic of China is hereby terminated.

Article 2

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

G. TERMINATION OF THE PROCEEDING

- (171) In view of the conclusions reached with regard to lack of material injury suffered by the Union industry and with regard to the absence of causal link, in accordance with Article 9 of the basic Regulation, the proceeding should be terminated without the imposition of measures.

Done at Brussels, 27 June 2012.

- (172) All parties concerned were informed of the final findings and the intention to terminate the proceeding and were

For the Commission

The President

José Manuel BARROSO

CORRIGENDA**Corrigendum to Council Regulation (EU) No 377/2012 of 3 May 2012 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau**

(Official Journal of the European Union L 119 of 4 May 2012)

On page 3, Article 8(1):

for: '1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, the natural and legal persons, entities and bodies listed in Annex I shall:

(a) supply ...',

read: '1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:

(a) supply ...'.

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