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Price: EUR 4

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⁽¹⁾ Text with EEA relevance

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 10 May 2012

on the signing, on behalf of the Union, and provisional application, of the Agreement between the European Union and the Government of the Democratic Socialist Republic of Sri Lanka on certain aspects of air services

(2013/100/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(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By its Decision of 5 June 2003, the Council authorised the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with an agreement at Union level.
- (2) On behalf of the Union, the Commission has negotiated an Agreement with the Government of the Democratic Socialist Republic of Sri Lanka on certain aspects of air services ('the Agreement') in accordance with the mechanisms and directives in the Annex to the Council Decision of 5 June 2003.
- (3) The Agreement should be signed and applied on a provisional basis, pending the completion of the procedures for its conclusion,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the European Union and the Government of the Democratic Socialist Republic of Sri

Lanka on certain aspects of air services is hereby authorised on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

Article 3

Pending its entry into force, the Agreement shall be applied on a provisional basis, in accordance with Article 7(2) of the Agreement, as from the date of its signature ⁽¹⁾.

Article 4

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

Done at Brussels, 10 May 2012.

*For the Council**The President*

U. ELBÆK

⁽¹⁾ The date of signature of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT**between the European Union and the Government of the Democratic Socialist Republic of Sri Lanka on certain aspects of air services**

THE EUROPEAN UNION,

(hereinafter referred to as 'the Union')

of the one part, and

THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA,

(hereinafter referred to as 'Sri Lanka'),

of the other part,

(hereinafter referred to as 'the Parties')

NOTING that bilateral air service agreements have been concluded between several Member States of the Union and Sri Lanka,

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the Union and Sri Lanka, which are contrary to the law of the Union, must be brought into conformity with the law of the Union in order to establish a sound legal basis for air services between the Union and Sri Lanka and to preserve the continuity of such air services,

NOTING that the Union has exclusive competence with respect to several aspects that may be included in bilateral air service agreements between Member States of the Union and third countries,

NOTING that under the law of the Union Community air carriers established in a Member State have the right to non-discriminatory access to air routes between the Member States of the Union and third countries,

HAVING REGARD to the agreements between the Union and certain third countries providing for the possibility for the nationals of such third countries (countries listed under Annex 3) to acquire ownership in air carriers licensed in accordance with the law of the Union,

NOTING that under the law of the Union air carriers may not, in principle, conclude agreements which may affect trade between Member States of the Union and which have as their object or effect the prevention, restriction or distortion of competition,

RECOGNISING that provisions in bilateral air service agreements concluded between Member States of the Union and Sri Lanka which (i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition between air carriers on the relevant routes; or (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to air carriers or other private economic operators the responsibility for taking measures that prevent, distort or restrict competition between air carriers on the relevant routes may render ineffective the application of the competition rules applicable to undertakings,

RECOGNISING that where a Member State has designated an air carrier whose regulatory control with regard to safety oversight is exercised and maintained by another Member State, the rights of Sri Lanka under the safety provisions of the agreement between the Member State that has designated the carrier and Sri Lanka should apply equally in relation to that other Member State,

NOTING that the bilateral air services agreements listed in Annex 1 are based on the general principle that the designated airlines of the parties shall have fair and equal opportunities in operating the agreed services on the specified routes,

NOTING that it is not a purpose of this agreement to increase the total volume of air traffic between the Union and Sri Lanka, to affect the balance between Community air carriers and air carriers of Sri Lanka, or to negotiate amendments to the provisions of existing bilateral air service agreements concerning traffic rights,

HAVE AGREED AS FOLLOWS:

Article 1

General provisions

1. For the purposes of this Agreement, 'Member States' shall mean Member States of the European Union, and 'EU Treaties' shall mean the Treaty on European Union and the Treaty on the Functioning of the European Union.
2. References in each of the agreements listed in Annex 1 to nationals of the Member State that is a party to that agreement shall be understood as referring to nationals of the Member States.
3. References in each of the agreements listed in Annex 1 to air carriers or airlines of the Member State that is a party to that agreement shall be understood as referring to air carriers or airlines designated by that Member State.
4. The granting of traffic rights will continue to be carried out through bilateral arrangements.

Article 2

Designation by a Member State

1. The provisions in paragraphs 2 and 3 of this Article shall supersede the corresponding provisions in the articles listed in Annex 2 (a) and (b) respectively, in relation to the designation of an air carrier by the Member State concerned, its authorisations and permissions granted by Sri Lanka, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.
2. On receipt of a designation by a Member State, Sri Lanka shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:
 - (a) the air carrier is established, under the EU Treaties, in the territory of the designating Member State and has a valid Operating Licence in accordance with the law of the Union; and
 - (b) effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operator Certificate and the relevant aeronautical authority is clearly identified in the designation; and
 - (c) the air carrier is owned, directly or through majority ownership, and it is effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex 3 and/or nationals of such other states and shall at all times be effectively controlled by such state and/or such nationals.
3. Sri Lanka may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:
 - (a) the air carrier is not established, under the EU Treaties, in the territory of the designating Member State or does not have a valid Operating Licence in accordance with the law of the Union; or

- (b) effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operator Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or
- (c) the air carrier is not owned, directly or through majority ownership, or it is not effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex 3 and/or nationals of such other states; or
- (d) the air carrier is already authorised to operate under bilateral agreement between Sri Lanka and another Member State and by exercising traffic rights under this Agreement on a route that includes a point in that other Member State, it would be circumventing restrictions on the traffic rights imposed by that other agreement; or
- (e) the air carrier designated holds an Air Operator's Certificate issued by a Member State with which Sri Lanka does not have a bilateral air services agreement and that Member State has denied traffic rights to Sri Lanka.

In exercising its right under this paragraph, Sri Lanka shall not discriminate between Community air carriers on the grounds of nationality.

Article 3

Safety

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the articles listed in Annex 2 (c).
2. Where a Member State has designated an air carrier whose regulatory control is exercised and maintained by another Member State, the rights of Sri Lanka under the safety provisions of the agreement between the Member State that has designated the air carrier and Sri Lanka shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other Member State and in respect of the operating authorisation of that air carrier.

Article 4

Compatibility with competition rules

1. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 1 shall (i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent or distort competition; (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to private economic operators the responsibility for taking measures that prevent, distort or restrict competition.

2. The provisions contained in the agreements listed in Annex 1 that are incompatible with paragraph 1 of this Article shall not be applied.

Article 5

Annexes to the Agreement

The Annexes to this Agreement shall form an integral part thereof.

Article 6

Review, Revision or amendment

The Parties may, at any time, review, revise or amend this Agreement by mutual consent.

Article 7

Entry into force and provisional application

1. This Agreement shall enter into force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.

2. Notwithstanding paragraph 1, the Parties agree to provisionally apply this Agreement from the date of signature until it enters into force.

3. This Agreement shall apply to all agreements and arrangements listed in Annex 1 including those that, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally.

Article 8

Termination

1. In the event that an agreement listed in Annex 1 is terminated, all provisions of this Agreement that relate to the agreement listed in Annex 1 concerned shall terminate at the same time.

2. In the event that all agreements listed in Annex 1 are terminated, this Agreement shall terminate at the same time.

IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Agreement.

Done in duplicate, in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish and Sinhala languages, all texts being equally authentic.

Съставено в Брюксел на двадесет и седми септември две хиляди и дванадесета година.

Hecho en Bruselas, el veintisiete de septiembre de dos mil doce.

V Bruselu dne dvacátého sedmého září dva tisíce dvanáct.

Udfærdiget i Bruxelles den syvogtyvende september to tusind og tolv.

Geschehen zu Brüssel am siebenundzwanzigsten September zweitausendzwoölf.

Kahe tuhande kaheteistkümnenda aasta septembrikuu kahekümne seitsmenda päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις είκοσι εφτά Σεπτεμβρίου δύο χιλιάδες δώδεκα.

Done at Brussels on the twenty-seventh day of September in the year two thousand and twelve.

Fait à Bruxelles, le vingt-sept septembre deux mille douze.

Fatto a Bruxelles, addì ventisette settembre duemiladodici.

Briselē, divi tūkstoši divpadsmitā gada divdesmit septītajā septembrī.

Priimta du tūkstančiai dvyliktą metų rugsėjo dvidešimt septintą dieną Briuselyje.

Kelt Brüsszelben, a kétezer-tizenkettedik év szeptember havának huszonhatedik napján.

Magħmul fi Brussell, fis-sebgha u ghoxrin jum ta' Settembru tas-sena elfejn u tnax.

Gedaan te Brussel, de zevenentwintigste september tweeduizend twaalf.

Sporządzono w Brukseli dnia dwudziestego siódmego września roku dwa tysiące dwunastego.

Feito em Bruxelas, em vinte e sete de setembro de dois mil e doze.

Întocmit la Bruxelles la douăzeci și șapte septembrie două mii doisprezece.

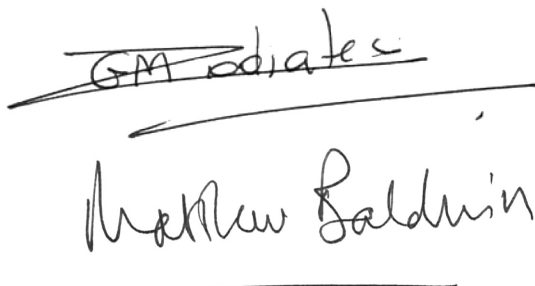
V Bruseli dvadsiateho siedmeho septembra dvetisícđvanásť.

V Bruslju, dne sedemindvajsetega septembra leta dva tisoč dvanajst.

Tehty Brysselissä kahdentenäkymmenentenäseitsemäntenä päivänä syyskuuta vuonna kaksituhattakaksitoista.

Som skedde i Bryssel den tjugosjunde september tjugohundratolv.

За Европейския съюз
 Por la Unión Europea
 За Evropskou unii
 For Den Europæiske Union
 Für die Europäische Union
 Euroopa Liidu nimel
 Για την Ευρωπαϊκή Ένωση
 For the European Union
 Pour l'Union européenne
 Per l'Unione europea
 Eiropas Savienības vārdā –
 Europos Sąjungos vardu
 Az Európai Unió részéről
 Għall-Unjoni Ewropea
 Voor de Europese Unie
 W imieniu Unii Europejskiej
 Pela União Europeia
 Pentru Uniunea Europeană
 Za Európsku úniu
 Za Evropsko unijo
 Euroopan unionin puolesta
 För Europeiska unionen
 ශ්‍රී ලංකා සමාජවාදී ජනරජය වෙනුවෙන්


 Manuel Baldino

За Правителството на Демократична социалистическа република Шри Ланка
 Por el Gobierno de la República Socialista Democrática de Sri Lanka
 Za vládu Srílanské demokratické socialistické republiky
 For Den Demokratiske Socialistiske Republik Sri Lankas regering
 Für die Regierung der Demokratischen Sozialistischen Republik Sri Lanka
 Sri Lanka Demokraatliku Sotsialistliku Vabariigi valitsuse nimel
 Για την Κυβέρνηση της Λαϊκής Σοσιαλιστικής Δημοκρατίας της Σρι Λάνκα
 For the Government of the Democratic Socialist Republic of Sri Lanka
 Pour le Gouvernement de la République Socialiste Démocratique de Sri Lanka
 Per il governo della Repubblica democratica socialista di Sri Lanka
 Šrilankas Demokrātiskās Sociālistiskās Republikas valdības vārdā –
 Šri Lankos Demokratinės Socialistinės Respublikos Vyriausybės vardu
 A Srí Lanka Demokratikus Szocialista Köztársaság kormánya részéről
 Għall-Gvern tar-Repubblika Demokratika Soċjalista tas-Sri Lanka
 Voor de regering van de Democratische Socialistische Republiek Sri Lanka
 W imieniu Rządu Demokratyczno-Socjalistycznej Republiki Sri Lanki
 Pelo Governo da República Democrática Socialista do Sri Lanca
 Pentru Guvernul Republicii Democratice Socialiste Sri Lanka
 Za vládu Srílanskej demokratickej socialistickej republiky
 Za vladu Demokratične socialistične republike Šrilanke
 Sri Lankan demokraattisen sosialistisen tasavallan hallituksen puolesta
 För demokratiska socialistiska republiken Sri Lankas regering
 ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ආණ්ඩුව වෙනුවෙන්



ANNEX 1

LIST OF AGREEMENTS REFERRED TO IN ARTICLE 1 OF THIS AGREEMENT

Air service agreements and other arrangements between Sri Lanka and Member States as modified or amended which, at the date of signature of this Agreement, have been concluded, signed or initialled:

- Air Transport Agreement between the Austrian Federal Government and the Republic of Sri Lanka done in Colombo on 15 February 1978, hereinafter referred to as 'Sri Lanka – Austria Agreement' in Annex 2;
 - Agreement between the Government of the Kingdom of Belgium and the Government of the Democratic Socialist Republic of Sri Lanka on Air Transport done in Brussels on 15 December 1998, hereinafter referred to as 'Sri Lanka – Belgium Agreement' in Annex 2;
 - Agreement between the Government of the People's Republic of Bulgaria and the Government of Ceylon for air services between and beyond their respective territories done at Colombo on 27 November 1970, hereinafter referred to as 'Sri Lanka – Bulgaria Agreement' in Annex 2;
 - Air Transport Agreement between the Government of the Republic of Cyprus and the Government of the Democratic Socialist Republic of Sri Lanka initialled in Colombo on 15 November 2002, hereinafter referred to as 'Sri Lanka – Cyprus Agreement' in Annex 2;
 - Agreement between the Government of the Czech Republic and the Government of the Democratic Socialist Republic of Sri Lanka on Air Services done at Prague on 20 April 2004, hereinafter referred to as 'Sri Lanka – Czech Republic Agreement' in Annex 2;
 - Agreement between the Government of Denmark and the Government of Ceylon relating to Air Services done in Colombo on 29 May 1959, hereinafter referred to as 'Sri Lanka – Denmark Agreement' in Annex 2;
 - Agreement between the Republic of France and Ceylon relating to Air Transport done in Colombo on 18 April 1966, hereinafter referred to as 'Sri Lanka – France Agreement' in Annex 2;
 - Air Transport Agreement between the Federal Republic of Germany and the Republic of Sri Lanka done at Colombo on 24 July 1973, hereinafter referred to as 'Sri Lanka – Germany Agreement' in Annex 2;
 - Air Transport Agreement between the Government of the Hellenic Republic and the Government of the Democratic Socialist Republic of Sri Lanka initialled in Athens on 5 November 2002, hereinafter referred to as 'Sri Lanka – Greece Agreement' in Annex 2;
 - Agreement between the Government of the Italian Republic and the Government of Ceylon relating to Air Services done in Colombo on 1 June 1959, hereinafter referred to as 'Sri Lanka – Italy Agreement' in Annex 2;
 - Agreement between the Government of the Kingdom of the Netherlands and the Government of Ceylon for Air Services between and beyond their respective territories done in Colombo on 14 September 1953, hereinafter referred to as 'Sri Lanka – Netherlands Agreement' in Annex 2;
 - Agreement between the Government of the Polish People's Republic and the Government of the Democratic Socialist Republic of Sri Lanka for air services between and beyond their respective territories done at Colombo on 26 January 1982 hereinafter referred to as 'Sri Lanka – Poland Agreement' in Annex 2;
 - Agreement between the Government of Sweden and the Government of Ceylon relating to Air Services done in Colombo on 29 May 1959, hereinafter referred to as 'Sri Lanka – Sweden Agreement' in Annex 2;
 - Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Democratic Socialist Republic of Sri Lanka concerning Air Services done at Colombo on 22 April 1998, as amended, hereinafter referred to as 'Sri Lanka – United Kingdom Agreement' in Annex 2.
-

ANNEX 2

LIST OF ARTICLES IN THE AGREEMENTS LISTED IN ANNEX 1 AND REFERRED TO IN ARTICLES 2 TO 4 OF THIS AGREEMENT

(a) Designation by a Member State:

- Article 3 of the Sri Lanka — Austria Agreement;
- Article 3 of the Sri Lanka — Belgium Agreement;
- Article 4 of the Sri Lanka — Cyprus Agreement;
- Article 3 of the Sri Lanka — Czech Republic Agreement;
- Article 2 of the Sri Lanka — Denmark Agreement;
- Article 3 of the Sri Lanka — France Agreement;
- Article 3, paragraph 4, of the Sri Lanka — Germany Agreement;
- Article 3 of the Sri Lanka — Greece Agreement;
- Article 4, paragraphs 1 to 3, of the Sri Lanka — Italy Agreement;
- Article 2 of the Sri Lanka — Netherlands Agreement;
- Article 3 of the Sri Lanka — Poland Agreement;
- Article 2 of the Sri Lanka — Sweden Agreement;
- Article 4 of the Sri Lanka — United Kingdom Agreement.

(b) Refusal, revocation, suspension or limitation of authorisations or permissions:

- Article 4 of the Sri Lanka — Austria Agreement;
- Article 5 of the Sri Lanka — Belgium Agreement;
- Article 3, paragraph 4, of the Sri Lanka — Bulgaria Agreement;
- Article 5 of the Sri Lanka — Cyprus Agreement;
- Article 4 of the Sri Lanka — Czech Republic Agreement;
- Article 6 of the Sri Lanka — Denmark Agreement;
- Article 3, paragraph 4 and Article 4, of the Sri Lanka — France Agreement;
- Article 4, paragraph 1, of the Sri Lanka — Germany Agreement;
- Article 4 of the Sri Lanka — Greece Agreement;
- Article 4, paragraphs 4 to 6, of the Sri Lanka — Italy Agreement;
- Article 3 of the Sri Lanka — Netherlands Agreement;
- Article 6 of the Sri Lanka — Sweden Agreement;
- Article 5 of the Sri Lanka — United Kingdom Agreement.

(c) Safety:

- Article 7 of the Sri Lanka — Austria Agreement;
 - Article 7 of the Sri Lanka — Belgium Agreement;
 - Article 10 of the Sri Lanka — Cyprus Agreement;
 - Article 7 of the Sri Lanka — Czech Republic Agreement;
 - Article 4 of the Sri Lanka — Denmark Agreement;
 - Article 7 of the Sri Lanka — Greece Agreement;
 - Article 7 of the Sri Lanka — Poland Agreement;
 - Article 4 of the Sri Lanka — Sweden Agreement.
-

ANNEX 3

LIST OF OTHER STATES REFERRED TO IN ARTICLE 2 OF THIS AGREEMENT

- (a) The Republic of Iceland (under the Agreement on the European Economic Area);
 - (b) The Principality of Liechtenstein (under the Agreement on the European Economic Area);
 - (c) The Kingdom of Norway (under the Agreement on the European Economic Area);
 - (d) The Swiss Confederation (under the Agreement between the European Community and the Swiss Confederation on Air Transport).
-

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 157/2013

of 18 February 2013

imposing a definitive anti-dumping duty on imports of bioethanol originating in the United States of America

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 25 November 2011, the European Commission ('the Commission') announced, by a notice ('NOI') published in the *Official Journal of the European Union* ⁽²⁾, the initiation of an anti-dumping proceeding ('AD proceeding' or 'the proceeding') with regard to imports into the Union of bioethanol originating in the United States of America ('USA' or 'the country concerned').
- (2) On the same day, the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽³⁾, the initiation of an anti-subsidy proceeding with regard to imports into the Union of bioethanol originating in the USA and commenced a separate investigation ('AS proceeding'). This proceeding was terminated on 21 December 2012 without imposition of countervailing measures.
- (3) The AD proceeding was initiated following a complaint lodged on 12 October 2011 by the European Producers Union of Renewable Ethanol Association (ePURE) ('the complainant') on behalf of producers representing more

than 25 %, of the total Union production of bioethanol. The complaint contained *prima facie* evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.

1.2. Parties concerned by the proceeding

- (4) The Commission officially advised the complainant, other known Union producers, the exporters/producers in the USA, importers, and other parties known to be concerned, and the authorities of the USA 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.
 - (5) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- ##### 1.2.1. Sampling of exporters/producers in the USA
- (6) In view of the potentially large number of exporters/producers in the USA, sampling was envisaged in the notice of initiation in accordance with Article 17 of the basic Regulation.
 - (7) In order to enable the Commission to decide whether sampling would be necessary and if so, to select a sample, exporters/producers in the USA were asked to make themselves known within 15 days from the date of the initiation of the investigation and to reply to a sampling form providing, as specified in the notice of initiation, basic information on their activities related to production and sales of bioethanol during the period from 1 October 2010 to 30 September 2011 ('the investigation period' or 'the IP').
 - (8) The relevant US authorities were also consulted for the selection of a representative sample.
 - (9) More than 60 exporters/producers made themselves known and provided the requested information within the 15 days deadline.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 345, 25.11.2011, p. 7.

⁽³⁾ OJ C 345, 25.11.2011, p. 13.

- (10) In accordance with Article 17 of the basic Regulation, the Commission selected a sample based on the largest representative quantity of exports of bioethanol to the Union which could reasonably be investigated within the time available. The sample selected consisted of six US bioethanol producers ('US sample').
- (11) During the investigation it was found that the production of one producer included in the US sample was not exported to the Union in the IP. This company was therefore removed from the sample.
- (12) Despite the fact that the other sampled producers mentioned exports of bioethanol to the Union in their sampling form, the investigation showed that none of them exported bioethanol to the Union market. In fact they were selling domestically to unrelated traders/blenders which then blended it with gasoline and resold it domestically and for export in particular to the Union. During the investigation on-spot, it became clear that in fact, contrary to the impression that had resulted from the information provided by the sampled US producers in their sampling forms, those producers were not systematically aware whether or not their production was intended for the Union market or any other destination including the US market and had no knowledge of the traders/blenders sales prices. In effect, this means that the US producers of bioethanol are not the exporters of the product concerned to the Union. The exporters are in fact the traders/blenders. Hence, the data collected and verified at the level of the US sample at provisional stage did not allow establishing whether or not US bioethanol was exported at dumped prices to the Union during the IP.
- (13) No anti-dumping measures could thus be imposed at that time.
- (14) In order to identify the exports of bioethanol to the Union, the US sample relied mainly on data provided to them by the unrelated blenders/traders which were not investigated at provisional stage. Although at provisional stage one such trader cooperated in the investigation and provided additional data, that data was not sufficient to establish precisely and reliably the necessary data for the purpose of calculating dumping margins.
- (15) In order to complete the dumping investigation, it was thus considered necessary to rather base it on the data of traders and blenders which were actually exporting the product concerned to the Union.
- (16) Dumping questionnaires were thus sent to the eight largest US traders/blenders that were identified during the investigation of the US sample. These traders/blenders represent over 90 % of total exports of bioethanol to the Union. Two agreed to cooperate in the investigation and their exports represent about 51 % of total exports of bioethanol to the Union during the IP.
- 1.2.2. *Sampling of Union producers*
- (17) In view of the potentially large number of Union producers, sampling was envisaged in the notice of initiation in accordance with Article 17 of the basic Regulation.
- (18) In the notice of initiation the Commission announced that it had provisionally selected a sample of Union producers ('EU sample'). This sample consisted of five companies and groups, out of the 19 Union producers that were known prior to the initiation of the investigation. The sample was selected on the basis of the production volume of bioethanol during the investigation period and the location of the known producers. This sample represented 48 % of the total estimated Union production during the IP.
- (19) But the investigation revealed that the groups included in the EU sample consisted of a large number of companies or single entities producing and selling the like product. In this case it would have meant to investigate 13 companies and it was not possible to investigate all of them given the time available for the investigation. It was thus decided to re-examine the data available for the selection of a representative sample. It was considered that the sample should be based on the largest individual producing entities in the Union and in the groups taking also into account a certain geographical spread amongst Union producers.
- (20) Hence, a definitive EU sample of six individual producers was ultimately selected based on representativity in terms of the production and sales volume of bioethanol during the IP and the geographical location of the producer. These producers located in Belgium, the Netherlands, France, UK, Sweden and Germany represent 36 % of the total estimated Union production and 44 % of the total production reported by the companies that submitted data for the selection of a sample. This sample was deemed to be representative for the examination of possible injury to the Union industry.
- (21) Interested parties were given the opportunity to comment on the appropriateness of the choice of the sample.
- (22) Some parties claimed that the EU sample was less representative than the one originally selected which included complete groups of companies. In their view, an objective analysis of the situation of the Union industry could only be made by including all companies which are part of groups in the sample. They alleged in particular that costs and revenues could be allocated to certain companies of a group which are not visited and may thus not be reflected in the injury analysis.

- (23) In this respect it should be noted that the Commission duly considered and examined the data provided by all sampled and non-sampled companies and in particular the companies belonging to groups, in order to ensure that all costs and revenues involved in the production and sale by the companies selected in the sample had been fully and correctly reflected in the injury analysis.
- (24) Some parties contested the inclusion in the EU sample of Union producers which were in a start-up phase. They also claimed that one company with important idle capacity in 2011, located in a Member State that did not implement the Renewable Energies Directive ('RED')⁽¹⁾, should not have been included in the sample. It was also claimed that in case these companies would be finally included in the sample, the Commission should adjust their data in order to account for these extraordinary circumstances.
- (25) It is considered that the fact that companies recently started or resumed operations does not preclude them from being part of the sample. The inclusion of these companies is not in contravention with the criteria for the selection of a sample as laid down in Article 17 of the basic Regulation. With regard to the adjustment of their data, parties did not provide any specific issue or substantiated evidence to support their claim, nor a basis on how to make the claimed adjustment.
- (26) Furthermore, the investigation did not reveal any cost, such as for example accelerated depreciations, which should be adjusted to correct any distortion due to the start-up of activity. Hence, this claim is rejected.
- (27) Some parties also disputed the fact that one company that was provisionally selected in the EU sample and located in a Member State with high consumption and production of bioethanol was no longer part of the EU sample. They claimed that this economic situation of this company was good and suggested that this was the reason for its exclusion from the sample. They further argued that the selection of the sample had been skewed towards finding injury. According to these parties the Commission should have sent so-called mini-questionnaires to all producers to collect the relevant data in order to select a sample.
- (28) With regard to the sending of mini-questionnaires, it should be noted that, prior to the selection of the sample, the Commission requested information from all Union producers known to be concerned in order to collect the relevant data for the purpose of the selection of a sample. As mentioned in point 5.2.1 of the NOI, this information was available as from the date of the initiation of the investigation in the file for inspection by interested parties and was not such as to show the state of the economic situation of the respondents. Hence, the Commission had sufficient relevant information at its disposal to select a representative sample respecting the criteria of Article 17 of the basic Regulation but could not make any result-oriented selection of companies. The above claims were therefore rejected.
- (29) Finally, it was claimed that the sample should have included companies producing bioethanol from sugar beet since production from this raw material can be much more profitable than production from, for example, wheat. Even though this claim was not substantiated, the information available has shown that bioethanol produced from sugar beet represents only a minor part of total Union production, around 12 % in 2011, and that two of the companies included in the sample partially use sugar beet as feedstock to produce bioethanol. Therefore, the claim is rejected.
- (30) Based on the above, it is considered that the sample selected as explained above for the purpose of the injury analysis is representative for the Union industry.
- 1.2.3. Sampling of unrelated importers*
- (31) In view of the potentially large number of importers involved in the proceeding, sampling was envisaged for importers in the notice of initiation in accordance with Article 17 of the basic Regulation.
- (32) Only three importers provided the requested information and agreed to be included in the sample within the deadline set in the notice of initiation. In view of the limited number of cooperating importers, sampling was not deemed to be necessary.
- 1.2.4. Questionnaire replies and verifications*
- (33) The Commission sent questionnaires to all parties known to be concerned. Questionnaires were thus sent to the sampled USA exporters/producers, the sampled Union producers, the three cooperating unrelated importers in the Union and to all users known to be concerned by the investigation.
- (34) Replies were received from the sampled USA exporters/producers, the sampled Union producers, two unrelated importers and four users.
- (35) The Commission sought and verified all the information provided by interested parties and deemed necessary for the purposes of a definitive determination of dumping, resulting injury and Union interest.
- (36) Verification visits were carried out at the premises of the following companies:

⁽¹⁾ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources (OJ L 140, 5.6.2009, p. 16).

Exporters/producers in the USA

- Marquis Energy LLC, Hennepin, Illinois
- Patriot Renewable Fuels LLC, Annawan, Illinois
- Platinum Ethanol LLC, Arthur, Iowa
- Plymouth Energy Company LLC, Merrill, Iowa
- POET LLC, Wichita, Kansas and Sioux Falls, South Dakota

Unrelated trader in the USA

- Bio Urja Trading LLC, Houston, Texas

Related trader in Switzerland

- Cargill International SA, Geneva

Producers in the Union

- Abengoa Energy Netherlands B.V., Rotterdam, the Netherlands
- BioWanze S.A., Wanze, Belgium
- Crop Energies Bioethanol GmbH, Mannheim, Germany
- Ensus, Yarm, United Kingdom
- Lantmännen Energi/Agroetanol, Norrköping, Sweden
- Tereos BENP, Lillebonne, France

Unrelated importers in the Union

- Shell Trading Rotterdam B.V., Rotterdam, the Netherlands
- Greenergy Fuels Limited, London, United Kingdom

Users in the Union

- Shell Nederland Verkoopmaatschappij B.V. Rotterdam, the Netherlands

1.3. Investigation period and period considered

- (37) The investigation of dumping and injury covered the period from 1 October 2010 to 30 September 2011. The examination of trends relevant for the assessment of injury covered the period from January 2008 to the end of the IP ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT**2.1. Product concerned**

- (38) The product concerned is bioethanol, sometimes referred to as 'fuel ethanol', i.e. ethyl alcohol produced from agri-

cultural products (as listed in Annex I to the Treaty on the Functioning of the European Union), denatured or undenatured, excluding products with a water content of more than 0,3 % (m/m) measured according to the standard EN 15376, but including ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union) contained in blends with gasoline with an ethyl alcohol content of more than 10 % (v/v) originating in the USA, currently falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 12 21, ex 2710 12 25, ex 2710 12 31, ex 2710 12 41, ex 2710 12 45, ex 2710 12 49, ex 2710 12 51, ex 2710 12 59, ex 2710 12 70, ex 2710 12 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 90 97.

- (39) Bioethanol can be produced from various agricultural feedstocks, such as sugar cane, sugar beet, potatoes, manioc and corn. In the USA a distinction on the basis of the various feedstocks is made, as described below:

(a) The Conventional Biofuel (mainly produced from corn feedstock and commonly called corn ethanol) which is defined as a renewable fuel derived from corn starch produced from facilities that commenced construction after the date of enactment of the Energy Independence and Security Act in December 2007 ⁽¹⁾ and which must achieve in the future a 20 % reduction in greenhouse gas ('GHG') emissions compared to baseline lifecycle GHG emissions of gasoline and diesel.

(b) The Advanced Biofuel which is defined as a renewable fuel other than ethanol derived from corn starch, which is derived from renewable biomass and has lifecycle GHG emissions, as determined by the Energy Policy Act ('EPA') Administrator, that are at least 50 % less than baseline GHG emissions. This term includes 'cellulosic biofuels' such as bioethanol and 'biomass-based diesel'. The schedule for Advanced Biofuels includes the schedule for Cellulosic Biofuels, Biomass-Based Diesel, and Undifferentiated Advanced Biofuels.

- (40) More specifically, Cellulosic Biofuel ⁽²⁾ is defined as a renewable fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass and that has lifecycle GHG emissions, as determined by the EPA Administrator, that are at least 60 % less than the baseline lifecycle GHG emissions. Cellulosic biofuels include cellulosic bioethanol. There are researches and pilot projects largely supported by the US Federal Government for producing Advanced Biofuels and in particular cellulosic bioethanol, produced in particular out of agricultural and forestry wastes. According to US officials and publicly available data ⁽³⁾, the production of this type of bioethanol will reach around 4 billion

⁽¹⁾ See www.ethanol.org — RFS (Renewable fuels standard) under the Energy Independence and Security Act of 2007.

⁽²⁾ See US Internal Revenue Code (IRC) — sec. 40(b)(4) point E.

⁽³⁾ See www.ethanol.org — RFS (Renewable fuels standard) under the Energy Independence and Security Act of 2007.

litres in 2014 and more than 50 billion litres by 2021. Production of cellulosic bioethanol was negligible in the IP.

large-scale production also allowed US producers to become exporter of bioethanol to other markets, including the Union.

(41) During the investigation period up to now corn has been the main feedstock used in the USA, while the main feedstock used in the Union is wheat.

(42) The investigation showed that bioethanol is generally sold in its pure form to blenders/traders which blend ⁽¹⁾ it with gasoline in particular to produce high-level blends which are exported or sold on the domestic market for further blending and used for fuel consumption. Blending is not a very complex operation and may be accomplished by mixing the products in special tanks adding the desired percentages of bioethanol and gasoline.

(43) To identify the various types of bioethanol, bioethanol blends or mixtures in use around the world, ethanol fuel mixtures have 'E' numbers which describe the percentage of ethanol fuel in the mixture by volume. For example, E85 is 85 % anhydrous ethanol and 15 % gasoline. Low ethanol blends, from E5 to E25, are also known as gasohol, though internationally the most common use of the term gasohol refers to the E10 blend. Blends of E10 or less have been used in more than twenty countries around the world by 2011, led by the USA, where almost all retail gasoline sold in 2010 was blended with 10 % of bioethanol.

(44) The investigation showed that all types of bioethanol are considered to be biofuels under the current National Renewable Fuel Standard program (RFS1) established under the Energy Policy Act of 2005, which amended the Clean Air Act by establishing the first national renewable fuel standard. The U.S. Congress gave the US Environmental Protection Agency (EPA) the responsibility to coordinate with the US Department of Energy, the US Department of Agriculture, and stakeholders to design and implement this program.

(45) As a result of their energy policy the USA became the largest worldwide producer of bioethanol as from 2005 accounting for 57,5 % of global production. In 2009, the requirements under the EPA ensured that at least 11 billion US gallons of renewable fuels were produced, in particular to keep up with the targets established by the Energy Independence and Security Act of 2007. The

(46) Based on official sources, market and publicly available information ⁽²⁾, all types of bioethanol and bioethanol in blends, namely mixtures of bioethanol with mineral gasoline as explained in recital 43 above, which are produced in the USA and sold either in the USA or exported are considered to be bioethanol fuels and are part of a legislative package concerning energy efficiency and renewable energy and alternative fuels in the USA.

(47) It has been found that all types of bioethanol and bioethanol in blends covered by this investigation, despite possible differences in terms of feedstock used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible minor variations in the product concerned do not alter its basic definition, its characteristics or the perception that various parties have of it.

(48) Some parties claimed that the definition of the product concerned was not clear, in particular because it did not allow for distinguishing the bioethanol for fuel applications from that destined for other applications. Hence, they claimed that the investigation should cover ethanol for all uses and ethanol from all sources, including synthetic ethanol that competes with bioethanol for industrial use.

(49) Another party claimed the opposite, namely that the investigation should only cover bioethanol for fuel applications and that bioethanol for industrial use should thus be excluded.

(50) In this context, it is noted that the product concerned should primarily be defined on the basis of its basic physical, technical and chemical characteristics and not its uses or applications. A product which has various applications may indeed have the same or similar basic characteristics notwithstanding its further use and in certain circumstances it may be necessary to deepen the analysis of the product definition and the product scope in the light of the specificity of the industry and the market.

⁽¹⁾ The investigation showed that to avail the alcohol mixture credit, as defined in Sec. 40(b)(3) of the IRC in the USA it sufficed to blend neat bioethanol with as little as 0,1 % of gasoline.

⁽²⁾ For instance: (a) the information published by the American Coalition for Ethanol (ACE) on the web; (b) the Energy Policy Act (EPA) of 2005, in particular P.L. 109-58; (c) the Energy Independence and Security Act of 2007 (P.L. 110-140, H.R.6) which amended and increased the Renewable Fuels Standard (RFS) requiring 9 billion gallons of renewable fuels use in 2008 and 13,9 billion gallons in 2011; (d) fact sheets issued by the US Department of Energy under the Clean cities actions etc.

- (51) In the present case, it was clear that the notice of initiation did not intend to cover synthetic ethanol in the product definition. Synthetic ethanol has different characteristics than bioethanol and does not correspond to the above criteria linked to the definition of the product concerned. There is no producer that focuses on the production of that product which took part in this investigation. Therefore, synthetic ethanol cannot be included in the definition of the product concerned and is outside the scope of the investigation. Contrary to the suggestion made by some parties, this clarification does not lead to a change in the scope of the investigation or the definition of the product concerned and did not have any impact on the quality of the data used.
- (52) Bioethanol for fuel application and bioethanol destined to other applications may have similar characteristics. However, during the investigation dumping was examined at the level of USA operators which produced or blended bioethanol for fuel application, namely bioethanol to be included in a fuel mixture. Similarly, the investigation of Union producers focussed on bioethanol destined to fuel applications and not for other uses. Hence, bioethanol destined to applications other than fuel should not be covered by the scope of this investigation.
- (53) The importers which will not use the imported USA bioethanol for fuel application have the possibility to make a declaration subject to the end use provisions as established by the Implementing provisions embedded in Articles 291 to 300 of the Union Customs Code ⁽¹⁾.

2.2. Like product

- (54) It was found that bioethanol manufactured by the Union industry and sold on the Union market have similar basic physical, chemical and technical characteristics when compared to bioethanol exported to the Union from the USA.
- (55) As described in recital 39 above, bioethanol can be produced from various feedstocks. However, the investigation did not point to the fact that the feedstock used would lead into any differences in the characteristics of the end-product. It was found that the product concerned produced in the USA in particular from corn and exported to the Union is interchangeable with that produced in particular from wheat and sold in the Union by Union producers. In addition, there are no significant differences, if any, in the uses and the perception by operators and users in the market concerning bioethanol.
- (56) It is therefore confirmed that bioethanol produced and sold in the Union and the product concerned exported

from the USA should be considered to be alike within the meaning of Article 1(4) of the basic Regulation.

- (57) Some of the sampled US producers claimed that the bioethanol produced and sold on the USA market is not like the product concerned, since it does not strictly correspond to the wording of the product description as laid out in the notice of initiation. Effectively, the types bioethanol sold on the USA market have a water content above the threshold of 0,3 % and corresponds to the USA standard (ASTM) rather than EN 15376.
- (58) However, the investigation showed that bioethanol produced for sales on the US market largely shares the same basic physical, chemical and technical characteristics as the product concerned. Article 1(4) of the basic Regulation stipulates that a like product should not necessarily be alike in all respects to the product concerned, but it could be a product that although not alike in all respects, has characteristics closely resembling those of the product concerned. This is the case for the bioethanol sold in the US market and the bioethanol exported to the Union. There are precedents where products were considered to be like the product concerned in spite of certain differences ⁽²⁾.
- (59) It was therefore decided to reverse the provisional finding and consider that the ASTM bioethanol sold in the US market is a like product to the product concerned within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Introduction

- (60) As explained in recitals 6 to 16 above, in order to investigate the possible existence of dumping, the investigation covered producers of bioethanol, on the one hand, and traders/blenders which were exporting the product concerned to the Union market, on the other hand.
- (61) Pursuant to Article 9(5) of the basic Regulation, the regulation imposing the duty shall specify the duty for each supplier or if that is impracticable, the duty for the supplying country concerned.
- (62) Certain producers claimed that it was possible to identify and trace their products when sold to US operators for export, in particular to the Union. They referred to the

⁽¹⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

⁽²⁾ For instance, the Council Regulation (EC) No 2961/95 on persulphates holding that the Chinese product was 'like' the EU one in spite of quality differences in purity and iron content (OJ L 308, 21.12.1995, p. 61, recital 10). See also the ruling of the General Court in T-2/95, *Industrie des Poudres Sphériques*, where the Court held that 'the institutions could lawfully reach the conclusion that Chinese and Russian calcium metal were 'like' EU calcium metal, in spite of differences in oxygen content which made the EU product unsuitable for a particular specific application, representing 11 % of EU consumption (T-2/95 paras. 202-221)'. This point was not challenged on appeal (C-458/98 P).

certification process foreseen by the RED but they could not in particular make the link between their sales in the US market and the exports made by other operators to the EU. As mentioned in recital 12 above and 63 below, these producers were also not aware of the level of the export price to the Union.

- (63) In the present case it was found that the structure of the bioethanol industry and the way the product concerned was produced and sold in the US market and exported to the Union, made it impracticable to establish individual dumping margins for US producers. More specifically, the producers in the US sample did not export the product concerned to the Union and the investigated traders/blenders sourced bioethanol from various producers, blended it and sold it in particular for export to the Union, hence, contrary to allegations made by the above parties, it was not possible to trace all purchases individually and compare the normal values with the relevant export prices and it is not possible to identify the producer at the moment of the export to the Union. In other words, each shipment made to the EU contains bioethanol produced by various US producers in the US and not only by the US sample. Moreover, the investigation also showed that the price level at which the US sample charged their US customers in the USA was not in line with the actual price paid or payable for the product concerned when exported to the Union.
- (64) Therefore, it is considered that a countrywide dumping margin should be established.

3.2. Normal value

- (65) For the determination of normal value in accordance with Article 2(2) of the basic Regulation, the Commission first established whether the domestic sales of the product concerned by the two cooperating traders/blenders to independent customers were made in representative volumes, i.e. whether the total volume of such sales represented at least 5 % of the total export sales volume to the Union during the IP.
- (66) Given that the sales of the like product in the domestic market were made in sufficient quantity, normal value was determined on the basis of the price paid or payable to the two aforementioned traders/blenders, in the ordinary course of trade, by independent customers in the USA.

3.3. Export price

- (67) The cooperating traders/blenders provided data which allowed establishing an export price on the basis of their prices that are actually paid or payable in accordance with Article 2(8) of the basic Regulation. For those transactions for which the imports into the

Union were made through a related trading company, the export price was constructed on the basis of the first resale price of the related trader to independent customers in the Union, pursuant to Article 2(9) of the basic Regulation.

- (68) As regard the sales made via the related trader located in Switzerland, selling, general and administrative costs (SG&A) and profit were not deducted from the export price as they were considered not to be costs between importation and resale in the Union. The investigation showed that the principal activity of the related trader consisted of cash management for the 'sugar' business unit to which biofuels belong and the hedging of the risks inherent in the agricultural business by concluding derivative contracts on both over the counter and organised financial markets.
- (69) Some US producers claimed that it is the institutions constant practice to take the exporter's sales price to the first independent customer as the export price to use for dumping calculations. In this case, this price would be the US producers' sales price to US unrelated traders/blenders. However, as mentioned in recitals 62 and 63 above, none of the US producers of bioethanol exported the product concerned to the Union and they were not aware of the level of the export price to the EU. Hence, their domestic price cannot be used as it is not an export price paid or payable for the product concerned in the Union. Their claim cannot therefore be accepted.

3.4. Comparison

- (70) The comparison between the weighted average normal value and the weighted average export price per product type established for the cooperating traders/blenders was made on an ex-works basis, taking into account, in accordance with Article 2(10) of the basic Regulation, differences in factors which were demonstrated to affect prices and price comparability. One trader/blender claims that the data on domestic sales was not representative. As the trader/blenders failed to provide data on all domestic sales, the calculation is based on the ones provided in the questionnaire and during the on-spot visit.
- (71) One trader/blender argues that the calculation of the domestic sales price should be based on spot market data from the NYMEX. The Commission considers that verified data from the two trader/blenders is more reliable.
- (72) For this purpose, due allowance in the form of adjustments was made for differences in transport, insurance, handling, loading and ancillary costs where applicable and justified.

- (73) The product concerned and the like product present the particularity that traders/blenders have received a subsidy mainly in the form of excise tax credits during the IP on their sales of bioethanol blends. The method used to establish normal value and export price is a method where the actual sales prices, domestic and export of the said traders/blenders are fully taken into account. Hence, a comparison of sales made by traders/blenders in the US market and export prices of traders/blenders to the EU, in order to calculate the level of dumping on the product concerned, eliminates any possible impact the subsidy may have had on prices, since the subsidy equally affected both domestic and export sales during the IP. One trader/blender claimed that it had not received a subsidy for its domestic sales. However, it fails to provide proof for this claim; the claim is also difficult to reconcile with information provided by the US authorities on the use of the subsidy.

3.5. Dumping

- (74) As provided for in Article 2(11) of the basic Regulation, the weighted average normal value by product type was compared to the weighted average export price of the corresponding product type of the product concerned. Based on that comparison, the cooperating unrelated traders/blenders were found to have engaged in dumping practices.
- (75) The weighted average dumping margin of 9,5 % was established based on the aggregated data of the cooperating traders/blenders, and represents the countrywide dumping margin for the USA.
- (76) Some of the US producers included in the sample claimed that in the case of imposition of definitive anti-dumping measures, they expected to obtain their individual duty margin. In the light of the contents of recitals 6 to 16 and the reasoning in recitals 60 to 64 above, this claim cannot be accepted as the investigation confirmed that for these operators, in particular because they did not have any exports to the Union during the IP, it was not possible to trace their products when exported to the Union and they had generally no idea of the timing of the export and of the price paid or payable by Union importers, hence an export price and a dumping margin could not be reliably established for these producers.
- (77) Certain producers requested more information on the dumping calculations established for the two cooperating traders/blenders. However, it should be considered on the one hand that the information requested contains business secret information and cannot therefore be disclosed to other parties than the party concerned. On the other, it is constant practice of the institutions to

disclose the general method used to establish dumping to all parties for which no individual data was used in the calculations. This method was described in the general disclosure document sent to all parties.

4. INJURY

4.1. Union production and Union industry

- (78) The Union production was established on the basis of a market report provided by the complainant during the investigation. The total Union production of the like product stated in this report was compared with the information provided by the 17 cooperating Union producers. A small difference of around 5 % was found between the two sets of data. This is explained by the fact that some relatively small non-cooperating Union producers did not submit production information. On this basis, the total Union production was estimated at 3,42 million tonnes during the IP. The Union producers accounting for the total Union production constitute the Union industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation and will therefore be referred to as the 'Union Industry'.

4.2. Union consumption

- (79) Union consumption was established on the basis of the total Union production of the Union industry, adding the volume of imports from third countries established on the basis of the best available statistics, whereas the stock variation and exports of the Union industry as reported by the Union industry were deducted. Some parties claimed that the statistics used to establish consumption were not complete because significant imports of bioethanol from other third countries, especially in the IP, were not taken into consideration. They also considered that the volume of imports from the US was overestimated by the Commission and that figures for consumption and market share were therefore unreliable.
- (80) These claims were analysed and cross-checked with the information available. Regarding the imports from other countries, the parties did not provide any evidence regarding the volumes of imports of the product concerned. Nevertheless, imports from other countries were taken into consideration in the estimation of the imports. For the volume of US imports, a clerical error was found in the estimation of US imports during the IP. Hence, the volume of imports has been reassessed and adjusted where necessary. However, this has no impact on the conclusions reached in the injury and causality assessments.
- (81) Regarding the imports of the product concerned, it should be underlined that there is no specific customs Combined Nomenclature codes for the product concerned. Moreover, the Combined Nomenclature

codes where the product concerned can be declared to the customs authorities include other products in addition to the product concerned.

- (82) For the imports of bioethanol blends, the verified questionnaire responses of the unrelated importers have shown that most of the imports were declared at customs under the TARIC code 3824 90 97 99. However, the volume of imports cannot be obtained directly from Eurostat because this TARIC code includes various chemical products in addition to the product concerned.
- (83) Regarding the imports declared under the Combined Nomenclature codes 2207 10 00 and 2207 20 00, it was not possible to differentiate between the product concerned and other products not concerned by the investigation due to the absence of sufficient information regarding the product imported.
- (84) Therefore, in the absence of complete imports details retrievable from Eurostat, it was decided to use also other sources of information for the purpose of establishing the imports of the product concerned in the Union market.
- (85) In order to get the best estimate of the imports of the product concerned originating in the USA, it was considered that the most reliable basis were the statistics provided by the US International Trade Commission (ITC). The volumes of exports reported correspond to the US tariff codes 2207 10 60 and 2207 20 00.
- (86) A reasonable approach was adopted to estimate these imports and all the quantities reported by the US International Trade Commission were taken into consideration for establishing the US imports into the Union market.
- (87) The estimate concerning the imports in the Union originating from Brazil was based on the following sources of information: reports issued by the United Kingdom Renewable Fuels Agency for the imports in the United Kingdom; extractions of customs import detailed database provided by the Netherlands, Sweden and

Finland and by Eurostat. For the Netherlands, Sweden and Finland, the volume of imports was estimated on the basis of the importer and exporter names and the product description when available. To estimate these imports, a conservative approach was adopted. All the quantities reported were taken into consideration for the calculation of the imports.

- (88) Finally, Eurostat was also used to estimate the residual imports into the Union for the Member States other than those mentioned in recital 87 above. An adjustment to the import volumes was applied on the basis of the percentage of bioethanol used as fuel in the Union. The source of this adjustment can be found in the complaint. This percentage was obtained from the annual ethyl alcohol balance published by the European Commission⁽¹⁾. The percentage of bioethanol used for fuel in the Union was 54 % in 2008, 66 % in 2009, and 68 % in 2010. For the IP, the percentage of 2010 was used for the purpose of estimating the relevant imports made during the IP.
- (89) For the estimation of the imports from other origins, the sources of information used were Eurostat and the extractions of customs import detailed database provided by the Netherlands, Sweden and Finland. The same methodology as that used to establish Brazilian imports was used.
- (90) Regarding the calculation of the CIF average unit price for imports from the USA and from Brazil, the source of information is the extraction of customs import detailed database provided by the Netherlands, Sweden and Finland. And for the USA, also data from the verified unrelated importer questionnaire was used. For the USA, the CIF average prices for 2008 and 2009 were estimated on the basis of the average price reported by the US ITC for these years, expressed in relation with the CIF average price unit obtained for 2010.
- (91) The stock variation was established on the basis of the Union industry information provided by the complainant.
- (92) On this basis Union consumption was found to have developed as follows:

	2008	2009	2010	IP
Total Union production (tonnes) (A)	2 153 118	2 797 948	3 274 665	3 389 503
Total imports from third countries including the country concerned (tonnes) (B)	1 252 705	1 130 703	859 605	1 031 226
Total exports from Union industry to non-EU countries (tonnes) (C)	26 263	41 023	53 085	59 633

⁽¹⁾ OJ C 225, 18.9.2009, p. 13, OJ C 176, 2.7.2010, p. 6, OJ C 236, 12.8.2011, p. 16.

	2008	2009	2010	IP
Stock variation ⁽¹⁾ (tonnes) (C)	0	4 730	- 8 415	- 5 458
Union Consumption (tonnes)	3 379 559	3 882 897	4 089 600	4 366 554
Index: 2008 = 100	100	115	121	129

Source: (A) market report, (B) Eurostat, the US International Trade Commission, the UK Renewable Fuels Agency and customs import database provided by the Netherlands, Sweden and Finland; (C) complaint, questionnaire replies from the sampled Union producers, Union industry information provided in the complaint.

⁽¹⁾ It is assumed that there was no stock variation in 2008.

- (93) During the period considered, the Union consumption increased significantly, by 29 %. This increase was stimulated by the implementation of the Renewable Energies Directive (RED) in the Member States which established growth targets for the consumption of renewable energies.

4.3. Imports into the Union from the country concerned

4.3.1. Volume, market share and price of imports from the country concerned

- (94) In terms of volume, market share and price, imports into the Union from the USA developed as follows during the period considered:

	2008	2009	2010	IP
Volume of imports from the USA (tonnes) (A)	63 406	53 332	348 868	686 185
Index: 2008 = 100	100	84	550	1 082
Market share (%)	1,9	1,4	8,5	15,7
Index: 2008 = 100	100	73	454	837
Average price in EUR/tonne (B)	590,6	552,5	542,5	626,7
Index: 2008 = 100	100	94	92	106

Source: (A) export volume declared by the US International Trade Commission, (B) Customs import database provided by the Netherlands, Sweden Finland and a verified unrelated importers' questionnaire reply.

- (95) Imports from the USA significantly increased, in terms of volume, from 63 406 tonnes to 686 185 tonnes during the period considered. Similarly, the market share held by the US exporters in the Union significantly increased from 1,9 % to 15,7 % over this period.

- (96) Although the average US import prices increased by 6 % over the period considered, prices charged by US

exporters were consistently lower than the average Union producers' prices as explained in recital 117 below. This systematic price undercutting practiced by the US exporters explains the significant increase in market share they achieved over the period considered.

4.3.2. Price undercutting of imports from the country concerned

- (97) For the purpose of assessing any price undercutting during the IP, the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices per product type of the US exporters charged to the first independent customer on the Union market, established on a CIF basis. In order to allow a fair price comparison, the appropriate adjustments for the existing customs duties and post-importation costs were applied to the US price.

- (98) The results of this comparison, when expressed as a percentage of the sampled Union producers' sales prices during the investigation period, showed consistent price undercutting of 5,6 % on average. This price undercutting indicates the price pressure which was exerted by the imports from the country concerned on the Union market, in particular during the IP.

4.4. Economic situation of the Union industry

4.4.1. Preliminary remarks

- (99) In accordance with 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 indicators for an assessment of the state of the Union industry over the period considered.

- (100) The injury analysis with regard to macroeconomic data such as production, production capacity, capacity utilisation, sales volume, market share, growth, inventories, employment, productivity and magnitude of the dumping margin is based on the data of the Union industry as a whole from ePURE.

- (101) The injury analysis with regards to microeconomic data such as prices, profitability, cash flow, investment, return on investment, ability to raise capital, wages and inventories have been established on the basis of data provided by the sampled Union producers through verified questionnaire replies.
- (102) The bioethanol industry is still in a start-up phase in the Union. Companies have recently invested in new production facilities or have expanded existing capacities to meet the growing demand in the Union. The fact that new producers started production during the period considered led to positive developments for indicators such as production, production capacity, sales volume and employment.
- (103) The investigation also showed that this type of industry needs a certain time, between two to three years from the moment of start-up, to reach normal levels of production.

4.4.2. Production, production capacity and capacity utilisation

	2008	2009	2010	IP
Production volume (tonnes)	2 153 118	2 797 948	3 274 665	3 389 503
Index: 2008 = 100	100	130	152	157
Production capacity (tonnes)	3 443 766	3 992 640	4 670 076	4 734 915
Index: 2008 = 100	100	116	136	137
Capacity utilisation (%)	63	70	70	72
Index: 2008 = 100	100	112	112	114

Source: based on data from the Union industry provided by the complainant.

- (104) As a result of the RED, Union production grew significantly in the period considered, by around 57 %. From 2008 to 2010 the Union production increased by 36 % but subsequently, the growth rate slowed down significantly and was only 3,5 % in the IP compared to 2010.
- (105) Production capacity increased by 37 % during the period considered and followed a similar pattern as production.
- (106) Capacity utilisation increased by 14 % during the period considered and this increase was achieved in the beginning of the period considered. Given the start-up phase of certain Union producers in 2009, it was expected that capacity utilisation would have increased further as producers normally need between two to three years from the start-up to reach normal levels of production, as explained in recital 103 above. This has however not been the case.
- (107) The investigation thus confirmed that several companies in the EU started operation in the beginning or during the period considered due to the expected publication of the RED. This led to positive developments in particular for the above injury factors especially in the period up to 2010. But the situation in the Union market changed in coincidence with the surge of US dumped imports in 2010 and the growth in activity expected during the IP did not materialise.

4.4.3. Sales volume and market share

	2008	2009	2010	IP
Sales volume (tonnes)	2 035 367	2 650 526	3 117 410	3 229 326
Index: 2008 = 100	100	130	152	159
Market share (%)	60,2	68,3	76,2	74,0
Index: 2008 = 100	100	113	126	122

Source: based on data from the Union industry provided by the complainant

(108) Sales volume of the Union industry increased by 59 % and 13,8 percentage points of market share were gained during the period considered. Sales volume grew steadily between 2008 and 2010 but between 2010 and the IP the sales volume grew less than consumption which increased by 6,8 % in that period.

(109) Similarly, the Union industry market share increased until 2010 but then decreased during the IP. In the period between 2010 and the IP, whilst the US imports almost doubled their market share, gaining 7,2 percentage points, the Union industry lost 2,2 percentage points.

4.4.4. Growth

(110) Union consumption increased significantly during the period considered, by 29,2 %. Although sales volume and market share also increased during this period, the Union industry did not fully benefit from this growth in consumption, in particular as from 2010. From 2010 up to the IP, growth in sales volume of the Union industry slowed down and market share decreased compared to the previous years.

(111) Some parties claimed that the growth pattern shown by certain indicators during the period considered do not reflect the situation of an injured industry. However, as explained above, the investigation showed that the slowdown of growth of the Union industry in 2010 and in the IP coincided with the surge of low-priced dumped imports from the USA.

4.4.5. Employment and productivity

	2008	2009	2010	IP
Number of employees	2 331	2 419	2 523	2 552
Index: 2008 = 100	100	104	108	109
Productivity (unit/employee)	924	1 157	1 298	1 328
Index: 2008 = 100	100	125	141	144

Source: based on data from the Union industry provided by the complainant

(112) Employment increased by 9 % in the period considered. More specifically, it grew by 8 % from 2008 to 2010 but

increased only marginally by 1 % during the IP. This trend reflects the trend for capacity and production in the Union.

(113) The productivity of the Union industry workforce was measured as the output per person employed in one year. It increased significantly over the period considered by 44 %, reflecting the learning effect and increase in efficiency during and after the start-up phase.

4.4.6. Magnitude of the actual dumping margin

(114) Given the volume, market share and prices of the dumped imports from the country concerned, the impact on the Union industry of the dumping margins established during the IP cannot be considered to be negligible.

4.4.7. Recovering from the effects of past dumping

(115) This issue is not relevant in this case due to the absence of past dumping effects.

4.4.8. Average unit prices of the Union industry

	2008	2009	2010	IP
Unit prices (EUR)	702,59	634,88	657,41	768,59
Index: 2008 = 100	100	90	94	109

Source: questionnaire replies of sampled Union producers.

(116) Prices of the Union industry increased overall by 9 % during the period considered. They decreased in 2009 as compared to 2008 but then steadily increased until the end of the IP. However, the investigation showed that the price increases were not sufficient to allow the Union Industry to cover its costs. The gap between the sale prices and the costs further increased in particular during the IP. This situation coincides with the increased presence of low-priced US dumped imports in the Union market.

(117) The investigation showed that Union industry's prices remained higher (up to 23 %) than those of the dumped imports from the USA over the period considered.

4.4.9. Profitability, cash flow, investments, return on investment and ability to raise capital

	2008	2009	2010	IP
Net profit before tax (EUR)	- 33 305 225	1 343 823	- 33 932 738	- 82 070 168
Index: 2008 = - 100	- 100	4	- 102	- 246

	2008	2009	2010	IP
Profitability of Union sales (% of net sales)	- 11,65	0,33	- 5,72	- 9,74
Index: 2008 = - 100	- 100	3	- 49	- 84
Cash flow (EUR)	- 2 528 061	34 783 260	48 733 697	36 832 646
Index: 2008 = - 100	- 100	1 376	1 928	1 457
Cash flow in % of Union Sales to unrelated parties	- 0,9	8,7	8,2	4,4
Index: 2008 = - 100	- 100	980	930	494
Investments (EUR)	330 441 830	86 279 988	38 710 739	23 018 175
Index: 2008 = 100	100	26	12	7
Return on investment (%)	- 10	2	- 88	- 357
Index: 2008 = - 100	- 100	15	- 870	- 3 538

Source: Questionnaire replies of sampled Union producers

- (118) Profitability of the Union industry was established both in absolute amounts (net profit before tax) and by expressing the pre-tax net profit or loss as a percentage of the turnover of the sales of the like product. The profitability of the Union industry has been negative during the period considered with the exception of 2009, when the companies in the sample managed to break even.
- (119) Return on investments followed a similar pattern, staying well behind the necessary returns to allow the Union industry to survive.
- (120) Cash flow was negative in 2008 and improved in 2009 and 2010. During the IP, however, cash flow started to decrease again, reflecting a worsening in the Union industry's ability to self-finance its activities.
- (121) The evolution of profitability, cash flow and return on investment during the period considered limited the ability of the Union industry to invest in its activities and undermined its development as clearly demonstrated by the 93 % decrease in investments over this period.

4.4.10. Wages

	2008	2009	2010	IP
Wages (EUR)	45 066 253	57 253 228	68 711 959	76 030 008
Average labour costs per employee (EUR)	75 691	81 233	88 638	99 646
Index: 2008 = 100	100	107	117	132

Source: Questionnaire replies of sampled Union producers

- (122) Wages increased by 32 % over the period considered, reflecting the productivity gains of the employees.

4.4.11. Inventories

	2008	2009	2010	IP
Closing stocks (tonnes)	34 585	24 022	38 649	31 408
Index: 2008 = 100	100	69	112	91
Stock in relation to production (%)	8,3	3,5	3,8	2,5

Source: Questionnaire replies of sampled Union producers

- (123) Stock levels slightly decreased during the period considered.

4.5. Conclusion on injury

- (124) The investigation has shown that the surge in low-priced dumped imports in the Union market occurred in 2010 and in particular during the IP. In that period, certain injury indicators pertaining to the economic situation of the Union industry improved, but the growth was not in line with the increase in consumption during the period considered and the improvements were thus not sufficient to allow the Union industry to develop its activities.
- (125) As is normal in a new and growing activity, certain indicators, such as sales volume, production, and capacity utilisation showed a positive trend during the period considered. This is explained by the fact that new Union producers entered the market in that period. Nevertheless, the investigation showed that the situation in the Union market, as from 2010 when the surge of low-priced imports occurred, did not allow Union producers to reach a sufficient activity and price level in order to develop and to sustain the important investments made in the period considered.
- (126) It was found that the low-priced imports constantly undercut the prices of the Union industry. The level of prices did not allow that industry to cover its costs and realise the cash flow and profits, which are necessary to develop the activities.
- (127) Indeed, the injury indicators related to the financial performance of the Union industry, such as profitability, cash flow and return on investment deteriorated or remained far below the normal level. This seriously affected the Union industry's ability to raise capital and to further invest in its activities.
- (128) In the light of the foregoing, it was considered that the Union industry suffered material injury during the IP within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. Introduction

- (129) In accordance with Article 3(5) and (6) of the basic anti-dumping Regulation, it was examined whether the dumped imports of the product concerned originating in the country concerned caused injury to the Union industry; Known factors other than the dumped imports, which could at the same time be injuring the

Union industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

5.2. Effect of the dumped imports

- (130) As mentioned above, Union consumption grew substantially during the period considered, by 29,2 %. However, the dumped imports from the country concerned significantly increased in volume, i.e. from 1,9 % share of the Union market at the beginning of the period considered to 15,7 % during the IP. This clearly exerted pressure on the Union industry, particularly from 2010 until the end of the IP, when these imports more than doubled. From 2010, and in particular during the IP, large volumes of low-priced imports from the USA were present on the Union market and were undercutting the prices of the Union industry. This situation did not allow the industry to develop as expected during the IP.
- (131) Some parties have argued that the situation of the Union industry improved precisely from 2010 to the IP, coinciding with the doubling of imports from the USA. As explained above in recitals 102 and 107, the fact that many Union producers started to enter the market during the period considered led to positive trends in certain injury factors, such as production and sales volume. However, the Union industry lost market share in the IP compared to 2010 while at the same time the Union market experienced the highest increase of US dumped imports. The existence of price undercutting and price pressure led to the deterioration of the general financial situation, in particular the profitability, of the Union industry.
- (132) The low-priced imports thus have played a significant role in the material injury suffered by the Union industry during the IP.

5.3. Effect of other factors

- (133) The following known factors, other than the dumped imports, which might have injured the Union industry, were examined to ensure that any injury caused by those factors was not attributed to the dumped imports: the imports from other countries, the export performance of the Union industry, the impact of the economic crisis and other factors such as the raw material prices fluctuations, development of demand and alleged internal problems of companies in the Union industry.

5.3.1. Imports from other countries (Brazil)

- (134) According to the information available, apart from Brazil, there was no other country exporting the product

concerned to the Union in significant quantities in the period considered. In terms of prices, Brazilian import prices have remained well below those of the Union producers'. However, imports from Brazil, clearly showed a decreasing trend in volume (– 81 %), and market share (– 25,8 %) during the period considered. In consequence, since the import volumes were reduced to such a low level during the IP, they cannot be considered to have broken the causal link between the low-priced imports from the USA and the injury of the Union industry during the IP.

	2008	2009	2010	IP
Volume of imports originating from Brazil (tonnes)	1 022 980	884 020	396 249	195 342
Index: 2008 = 100	100	86	39	19
Market share of imports from Brazil (%)	30,3	22,8	9,7	4,5
CIF average unit price (EUR/tonne of imports)	560,8	496,2	580,8	622,4
Index: 2008 = 100	100	88	104	111

Source: Eurostat, the UK Renewable Fuels Agency, customs import database provided by the Netherlands, Sweden and Finland and the complaint.

(135) Parties claimed that imports from Brazil remained above the *de minimis* level throughout the period considered, and that they were made at dumped prices on the Union market. They further argued that imports from the USA, only replaced the market share left by the Brazilian imports. The imports from the USA can therefore allegedly not be considered to be the cause of the material injury of the Union industry.

(136) As explained above, Brazilian imports decreased significantly in the period considered. Their market share decreased from 30,3 % to 4,5 % at a time when consumption significantly increased. Given the price level practiced by Brazilian exporters in the Union market, it cannot be excluded that the presence of Brazilian bioethanol contributed to some extent to the injury of the Union industry. However, it is considered that these imports were reduced to such a level during the IP that they cannot be regarded as a major cause of that injury. Indeed, in period between 2010 and the IP, whilst imports from Brazil decrease by about 200 000 tonnes, the dumped imports from the USA increased by

over 330 000 tonnes. It is thus considered that the presence of the Brazilian bioethanol in the Union market, in particular during the IP, cannot be such as to break the causal link established between the dumped imports from the USA and the injurious situation of the Union industry in that period.

5.3.2. Export performance of the Union industry

	2008	2009	2010	IP
Sales volume for export (tonnes)	26 263	41 023	53 085	59 633

Source: Complaint and questionnaire replies of sampled Union producers

(137) The investigation showed that small volumes of bioethanol were exported by the Union industry during the IP at prices largely above those practiced on the Union market. This has led to the conclusion that the export performance is not a factor that broke the causal link between the injury suffered by the Union industry and the dumped imports from the country concerned.

5.3.3. The impact of the economic crisis

(138) The economic crisis was not found to have had a negative impact on the Union industry. Consumption of bioethanol in the Union experienced its biggest increase in 2009, the year generally considered to be the worst year of the economic crisis. In the same period, production and sales by Union producers also increased.

(139) Based on the above, it is considered that the economic crisis did not break the causal link between the low-priced imports from the country concerned and the material injury suffered by the Union industry.

5.3.4. Other factors

(140) Parties have also mentioned other factors that could have broken the causal link such as the fluctuation of the raw material prices, the development of demand which was lower than expected, a regulatory framework in the Union that allegedly plays against Union producers and certain alleged internal problems of Union producers.

(141) Regarding the fluctuations in the raw material prices, both prices of corn and wheat were found to be volatile during the period considered. The investigation showed that most producers however hedge this risk through a specific price setting mechanism with their suppliers or through the financial markets. Hence even if prices of feedstock did differ in particular from 2008 until 2010, when the price for corn was lower than

the price of wheat, feedstock prices in the second half of the IP were more or less the same. This indicates that any price difference is reduced to a minimum and is not of a lasting nature.

change at any time, and that this argument therefore cannot put into question the presence of injury during the investigation period.

5.4. Conclusion on causation

- (142) Some parties have claimed that the implementation of the RED in Member States has been too slow and that consumption lagged behind the targets established by the mentioned Directive. But, even if initial targets were not fully met within the period considered the fact that consumption has grown significantly, namely by 29,2 %, in that period is a positive factor that cannot be ignored in the analysis. In any event, the alleged slow implementation of the RED cannot justify the presence of high volumes of low-priced dumped imports in the Union market undercutting the prices of the Union industry and causing injury to that industry. Hence, the claim is rejected.
- (143) Parties have also argued that the Union industry alone could not meet Union demand as a result of regulatory uncertainty and that the system of certification is very slow and thus undermine the benefits for the certified Union producers. Some parties have finally argued that the fact that many Union producers suffered internal problems during the period considered explains any injury they suffered. These claims were however not substantiated and the investigation did not confirm that these claims were founded. Nevertheless, it should be pointed out that the investigation showed that any alleged low level of the Union production was mainly justified by a low level of sales prices in the Union market which was largely affected by the surge of low-priced US dumped imports undercutting the Union producers' prices, in particular during the IP. It appeared that EU producers had no other choice than stopping production as prices did not even allow them to cover the cost of the raw material in particular during the IP. Hence, the above unsubstantiated claims are not such as to break the causal link between the dumped imports and the injurious situation of the Union industry during the IP.
- (144) It is thus concluded that all the above factors could not break the causal link between the injury suffered by the Union industry and the dumped imports from the USA.
- (145) Parties finally mention the fact that during the IP, a considerable number of imports were declared under CN heading 3824, attracting a low customs duty. After the end of the IP, the level of the respective customs duty was raised. They consider that the injury was caused by the low customs duty, and not by dumping. In this regard, it suffices to say that customs duties may
- (146) The above analysis demonstrated that there was a substantial increase in the volume and market share of the low-priced imports originating in the country concerned over the period considered. In addition, it was found that the prices of these imports were below the prices charged by the Union industry on the Union market.
- (147) This increase in volume and market share of the low-priced imports from the country concerned coincided with an overall and continuous increase of consumption in the Union and also with negative results of the Union industry during the period considered. The exporters from the country concerned managed to increase their market share by systematically undercutting Union industry's prices. At the same time, the Union industry was not able to reach sustained positive levels of profitability despite its increase in activity.
- (148) The examination of the other known factors which could have caused injury to the Union industry revealed that these factors do not appear to be such as to break the causal link established between the dumped imports from the country concerned and the injury suffered by the Union industry.
- (149) Based on the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports, it was concluded that the dumped imports from the USA have caused material injury to the Union industry within the meaning of Article 3(5) of the basic Regulation.

6. UNION INTEREST

6.1. Preliminary remark

- (150) In accordance with Article 21 of the basic Regulation, it was examined whether, despite the conclusion on injury caused by the dumped imports from the country concerned, compelling reasons existed for concluding that it was not in the Union interest to adopt anti-dumping measures in this particular case. The analysis of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users of the product concerned.

6.2. Interest of the Union industry

- (151) The investigation has shown that the Union industry suffered material injury caused by the dumped imports from the USA. In the absence of measures to correct the trade distorting effects of these imports, a further deterioration in the Union industry's economic situation appears to be very likely.
- (152) It is expected that the imposition of anti-dumping duties will restore effective trade conditions on the Union market, allowing the Union industry's prices to reflect its cost of production. It can be expected that the imposition of measures would also enable the Union industry to increase sales volume and thus gain the market share lost due to the presence of dumped imports. This in turn will have a further positive impact on its financial situation and profitability.
- (153) It was therefore concluded that the imposition of anti-dumping measures on imports of the product concerned originating in the USA would not be against the interest of the Union industry.

6.3. Interest of importers

- (154) Two companies sent responses to the questionnaire intended for unrelated importers in the Union. Verification visits took place at the premises of these cooperating importers. For both companies visited, the bioethanol business constitutes only a small part of their total turnover (less than 5 %). In addition, they both indicated that they would be able to pass on any price increase to their customers, the users.
- (155) Based on the information available, it was concluded that the imposition of measures would not have a significant negative impact on the importers.

6.4. Interest of users

- (156) Four companies sent responses to the questionnaire intended for users in the Union. Verification visits took place at the premises of one of them.
- (157) For the company visited, the bioethanol business represents a small part of its turnover, less than 5 %. The company has made an impact assessment considering a blend of E5 and calculated that a duty of 100 EUR/m³ would result in a price increase of 0,005 EUR/litre at the pump.
- (158) As concerns the other three users, on the basis of data contained in their questionnaire replies, it is clear that the impact would be limited as well. For one company, the volumes purchased from the country concerned are quite limited and the imposition of an antidumping duty would only lead to a minimal impact on its profitability.
- (159) The other two cooperating users are related and have declared that any imposition of antidumping duties can

be passed on to their customers. They also made clear that they have sufficient choice in the sources of supply and that they do not depend on US imports.

- (160) Parties have claimed that there is not sufficient capacity in the Union to meet total demand and that the Union will need imports to secure its bioethanol needs. The verified capacity figures show that there was idle capacity in the Union given in particular the low level of sale prices. In consequence, the Union producers would be able to increase their production to fulfil the growing demand particularly when trade distortions are removed from the market. Furthermore, it is expected that new plants will be constructed and will come into operation in the near future, reducing any alleged risk of shortage in the Union.
- (161) In view of the above, it was concluded that the effect of anti-dumping measures against imports of the bioethanol from the USA would not have a significant negative impact on the users in the Union.

6.5. Conclusion on Union interest

- (162) In view of the above, it was concluded that overall, based on the information available concerning the Union interest, there are no compelling reasons against the imposition of anti-dumping measures on imports of bioethanol originating in the USA.

7. DEFINITIVE ANTI-DUMPING MEASURES

7.1. Injury elimination level

- (163) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.
- (164) For the purpose of determining the level of these measures, account was taken of the dumping margins and the amount of duty necessary to eliminate the injury sustained by the Union industry, without exceeding the dumping margins found.
- (165) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on sales of the like product in the Union.
- (166) In this case, given the observations made in particular in recitals 102 and 103 above, it is considered that the target profit for the Union industry, should be based on

the profit achieved when the imports from the USA were negligible, i.e. the average pre-tax profit margin of one of the sampled Union producers in 2008 and 2009, a producer which was not in a start-up phase at that time. It is thus considered that a margin of 6,8 % of turnover is reasonable and could be regarded as an appropriate minimum which the Union industry could have expected to obtain under normal trade conditions in the absence of injurious dumping during the IP.

- (167) On this basis, a non-injurious price was calculated for the Union industry for the like product. The non-injurious price was obtained by adjusting the sales prices of the sampled Union producers by the actual profit/loss made during the IP and by adding the above mentioned profit margin.
- (168) The necessary price increase was then determined on the basis of a comparison of the weighted average import price of the cooperating exporting producers in the USA, as established for the price undercutting calculations, with the non-injurious price of the products sold by the Union industry on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the average total CIF import value.

7.2. Form and level of the duties

- (169) In the light of the foregoing, it is considered that, in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on imports of the product concerned at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule. Accordingly, all duty rates should be set at the level of the dumping margins found.
- (170) The proposed definitive anti-dumping duties are the following:

	Dumping margin	Injury margin	Definitive duty
Country-wide dumping margin (%)	9,5	31,1	9,5

- (171) In view of the fact that the anti-dumping duty will also apply to blends containing by volume more than 10 % (v/v) of bioethanol, in proportion to their bioethanol content, it is considered appropriate for the effective implementation of the measure by the customs authorities of the Member States to determine the duty as a fixed amount on the basis of the pure bioethanol content.
- (172) The anti-dumping duty rate specified in this Regulation was established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation. This country-

wide duty applicable to all companies is applicable to imports of the product concerned originating in the USA.

- (173) While it was initially envisaged limiting the duration of measures to 3 years due to the perceived dynamic market developments regarding the product concerned this issue was reassessed following the comments received from interested parties. The complainants in particular claimed that it would be too early to assume at this stage a major change in the market patterns as the shift to new generation bioethanol may very likely take a considerable amount of time and should not be taken into account in the current proposal. Likewise, it would also be premature to assume what the outcome and the impact of some of the regulatory proposals currently discussed would be for all the operators in the market. After examining these arguments it was considered that it was not appropriate to depart from the normal period of validity of measures as provided in Article 11(2) of the basic Regulation. This is without prejudice to the possibility for any interested party to ask for a review should the circumstances so warrant pursuant to Article 11(3).

8. REGISTRATION

- (174) The Commission has received requests from the complainant for registration of imports of bioethanol originating in the USA. According to Article 14(6) of the basic Regulation, the Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the Union industry which contains sufficient evidence to justify such action. The complainant argued that, since registration was imposed in the parallel anti-subsidy proceeding on imports of bioethanol originating in the USA ⁽¹⁾, such conditions were automatically met.

- (175) However, it should be underlined that the registration in the parallel anti-subsidy proceeding has been made in a completely different set of circumstances. As indicated in recital 10 to the Regulation (EU) No 771/2012, despite positive findings of countervailing subsidisation and material injury caused thereby to the Union industry during the investigation period, the Commission decided not to adopt provisional countervailing duties because it was provisionally found that the main subsidy scheme in force during the investigation period had ceased, in the sense that it no longer conferred a benefit at the time provisional measures would have been imposed. However, there was evidence that the USA might reinstate the main subsidy scheme found to be countervailable in the coming months with retroactive effects. In that event, the Commission considered that

⁽¹⁾ Commission Regulation (EU) No 771/2012 (OJ L 229, 24.8.2012, p. 20).

it would have been entitled to adopt (and eventually collect) provisional countervailing duties in the present investigation. Thus, in order to preserve the European Union's rights under these special circumstances, the Commission decided to direct the Custom authorities to register imports. This specific set of circumstances does not apply in the current AD proceeding,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of bioethanol, referred to as 'fuel ethanol', i.e. ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union), denatured or undenatured, excluding products with a water content of more than 0,3 % (m/m) measured according to the standard EN 15376, but including ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union) contained in blends with gasoline with an ethyl alcohol content of more than 10 % (v/v) intended for fuel uses currently falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 12 21, ex 2710 12 25, ex 2710 12 31, ex 2710 12 41, ex 2710 12 45, ex 2710 12 49, ex 2710 12 51, ex 2710 12 59, ex 2710 12 70, ex 2710 12 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 90 97 (TARIC codes 2207 10 00 12, 2207 20 00 12, 2208 90 99 12, 2710 12 21 11, 2710 12 25 92, 2710 12 31 11, 2710 12 41 11, 2710 12 45 11, 2710 12 49 11, 2710 12 51 11, 2710 12 59 11, 2710 12 70 11, 2710 12 90 11, 3814 00 10 11, 3814 00 90 71, 3820 00 00 11 and 3824 90 97 67) and originating in the United States of America.

2. The rate of the definitive anti-dumping duty applicable to the product described in paragraph 1 shall be EUR 62,3 per tonne net. The anti-dumping duty shall be applicable in proportion, by weight, of the total content of pure ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union) (bioethanol content).

3. Products described in paragraph 1 shall be exempted from the definitive anti-dumping duty if they are for other uses than as use for fuel. Exemption shall be subject to the conditions laid down in the relevant provisions of the European Union with a view to customs control of the use of such goods (see Articles 291 to 300 of Commission Regulation (EEC) No 2454/93).

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Regulation (EEC) No 2454/93 the amount of anti-dumping duty, calculated on the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

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

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

Done at Brussels, 18 February 2013.

For the Council
The President
S. SHERLOCK

COUNCIL IMPLEMENTING REGULATION (EU) No 158/2013

of 18 February 2013

reimposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas:

1. PROCEDURE

(1) On 20 October 2007 the European Commission ('the Commission') announced by a notice published in the *Official Journal of the European Union* the initiation of an anti-dumping proceeding concerning imports into the Community of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China ('PRC') ⁽²⁾. On 4 July 2008, the Commission, by Regulation (EC) No 642/2008 ⁽³⁾ ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of certain prepared or preserved citrus fruits originating in the PRC.

(2) The proceeding was initiated as a result of a complaint lodged on 6 September 2007 by the Spanish National Federation of Associations of Processed Fruit and Vegetables ('FENAVAL', previously named 'FNACV') ('the complainant') on behalf of producers representing 100 % of the total Community production of certain prepared or preserved citrus fruits (namely mandarins etc.). The complaint contained evidence of dumping of the product concerned and of material injury resulting there from, which was considered sufficient to justify the initiation of a proceeding.

(3) As set out in recital 12 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 October 2006 to 30 September 2007 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 October 2002 to the end of the investigation period ('period considered').

(4) On 9 November 2007, the Commission made imports of the same product originating in the PRC subject to registration by Regulation (EC) No 1295/2007 of 5 November 2007 making imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China subject to registration ⁽⁴⁾ ('Registration Regulation').

(5) It is recalled that safeguard measures were in force against the same product until 8 November 2007. The Commission imposed provisional safeguard measures against imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) by Regulation (EC) No 1964/2003 ⁽⁵⁾. Definitive safeguard measures followed by Regulation (EC) No 658/2004 ⁽⁶⁾ ('the safeguard Regulation'). Both the provisional and definitive safeguard measures consisted of a tariff rate quota i.e. a duty was only due once the volume of duty free imports had been exhausted.

(6) By Regulation (EC) No 1355/2008 ⁽⁷⁾ ('the original Regulation') the Council imposed a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China.

(7) The range of the definitive anti-dumping duty was between 361,4 and 531,2 EUR/tonne net product weight.

1.1. Xinshiji judgment

(8) By judgment of 17 February 2011 in Case T-122/09 — *Zhejiang Xinshiji Foods Co. Ltd and Hubei Xinshiji Foods Co. Ltd v Council of the European Union supported by European Commission* ⁽⁸⁾ — ('the Xinshiji judgment') the General Court annulled the original Regulation in so far as it concerns the applicants Zhejiang Xinshiji Foods Co., Ltd and Hubei Xinshiji Foods Co. Ltd

(9) The General Court's judgment was based on the grounds that the Commission breached the rights of defence by not providing the information necessary for the applicants to determine whether, in the light of the structure of the market, the adjustment of export price to the ex-works level of the importer was appropriate in that it made it possible to compare the export price and the Union industry price at the same level of trade. The General Court also considered that the Commission

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 246, 20.10.2007, p. 15.

⁽³⁾ OJ L 178, 5.7.2008, p. 19.

⁽⁴⁾ OJ L 288, 6.11.2007, p. 22.

⁽⁵⁾ OJ L 290, 8.11.2003, p. 3.

⁽⁶⁾ OJ L 104, 8.4.2004, p. 67.

⁽⁷⁾ OJ L 350, 30.12.2008, p. 35.

⁽⁸⁾ OJ C 103, 2.4.2011, p. 21.

infringed the duty to state reasons as the reasons for a measure must appear in the actual body of the measure and may not be stated in written or oral explanations given subsequently when the measure is already the subject of proceeding brought before the European Union Courts.

- (10) In April 2011 the Commission lodged an appeal (C-195/11 P) seeking to set aside the Xinshiji judgment. Following the declaration of invalidity of the original Regulation by the Court of Justice of the European Union (‘the Court’) on 22 March 2012 (see recital 16 below), the Commission withdrew its appeal as it became without object.
- (11) On 3 December 2011 the Commission published a notice ⁽¹⁾ partially reopening the anti-dumping investigation (‘the first reopening Notice’) in order to implement the General Court’s Xinshiji judgment. The reopening was limited to determine whether, in the light of the structure of the market, the adjustment of export price to the ex-work level of the importer was appropriate in that it made it possible to compare the export price and the Union industry price at the same level of trade.
- (12) Simultaneously, all interested parties received a disclosure document with its enclosures explaining the reasons behind the adjustment of the post-importation costs which had been taken into account in calculating the price of products originating in the PRC.
- (13) Interested parties were given the opportunity to make their views known in writing and to be heard within the time limit set out in the notice.
- (14) All parties which so requested within the above time limit and which demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.
- (15) The two applicant exporters, eight importers, two associations of importers and one association of producers came forward as interested parties.

1.2. Analogue country judgment

- (16) On 22 March 2012, in Case C-338/10 — *Grünwald Logistik Service GmbH (GLS) v Hauptzollamt Hamburg-Stadt* (‘the analogue country judgment’) — the Court declared the original Regulation invalid ⁽²⁾.
- (17) The Court held that since the Commission and the Council had determined the normal value of the product concerned on the basis of the prices actually paid or payable in the European Union for a like product, without taking all due care to determine that value on the basis of the prices paid for that same

product in a market economy third country, they had infringed the requirements of Article 2(7)(a) of the basic Regulation.

- (18) On 19 June 2012 a notice ⁽³⁾ (‘the second reopening Notice’) was published in the *Official Journal of the European Union*. In the notice parties were informed that, in view of the above-mentioned judgment of the Court, imports into the European Union of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the PRC were no longer subject to the anti-dumping measures imposed by the original Regulation, and that definitive anti-dumping duties paid pursuant to that Regulation for the product concerned should be repaid or remitted.
- (19) The notice also partially reopened the relevant anti-dumping investigation concerning imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the PRC in order to implement the above judgment of the Court.
- (20) The notice set out that the reopening was limited in scope to the selection of an analogue country, if any, and the determination of the normal value pursuant to Article 2(7)(a) of the basic Regulation to be used for the calculation of any margin of dumping.
- (21) Moreover, by the same notice, interested parties were invited to make their views known, submit information and provide supporting evidence regarding the availability of market economy third countries which could be selected to determine normal value pursuant to Article 2(7)(a) of the basic Regulation, including with regard to Israel, Swaziland, Thailand and Turkey.
- (22) The Commission directly informed the Union industry and their association, the exporting producers, suppliers and importers and their associations known to be concerned, and the authorities of the third countries concerned. Interested parties were given the opportunity to make their views known in writing and to be heard within the time limit set out in the notice.
- (23) All parties which so requested within the above time limit and which demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.
- (24) Eight importers and one association of importers came forward as interested parties.

2. PROCEDURE AFTER DISCLOSURE OF PROVISIONAL MEASURES

- (25) Following the imposition of provisional anti-dumping duties on imports of the product concerned originating in the PRC, several interested parties submitted comments in writing. The parties who so requested were also granted the opportunity to be heard.

⁽¹⁾ OJ C 353, 3.12.2011, p. 15.

⁽²⁾ Judgement of the Court (third chamber) of 22 March 2012 in case C-338/10, *GLS v Hauptzollamt Hamburg-Stadt*.

⁽³⁾ OJ C 175, 19.6.2012, p. 19.

(26) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, the Commission completed the investigation with regard to Union ("Community") interest aspects. In this respect, verification visits were carried out at the premises of the following unrelated importers in the Union:

- Wünsche Handelsgesellschaft International (GmbH & Co KG), Hamburg, Germany,
- Hüpeden & Co (GmbH & Co) KG, Hamburg, Germany,
- I. Schroeder KG. (GmbH & Co), Hamburg, Germany,
- Zumdieck GmbH, Paderborn, Germany,
- Gaston spol. s r.o., Zlín, Czech Republic.

(27) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of the product concerned originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period of time within which they could make representations subsequent to this disclosure.

(28) Some importers proposed a joint meeting of all interested parties, pursuant to Article 6(6) of the basic Regulation; however the request was refused by one of them.

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

3. PRODUCT CONCERNED AND LIKE PRODUCT

(30) Subsequent to the imposition of provisional measures, two unrelated Union importers argued that certain types of mandarins should be excluded from the definition of the product concerned either because of their sweetness level or because of their packing when exported. In this respect, it is noted that these claims were not accompanied with any type of verifiable information and data proving that these types have characteristics that differentiate them from the product concerned. It is also noted that differences in packing cannot be considered as a critical element when defining product concerned, especially when formats of packing were already taken into account when defining the product concerned as set out in recital 16 of the provisional Regulation. These arguments are therefore rejected.

(31) The measures were imposed on the product defined in the original Regulation as follows: prepared or preserved mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids, not containing added spirit, whether or not containing added sugar or other sweetening matter, and as defined under CN heading 2008, currently falling within CN

codes 2008 30 55, 2008 30 75 and ex 2008 30 90 (TARIC codes 2008 30 90 61, 2008 30 90 63, 2008 30 90 65, 2008 30 90 67 and 2008 30 90 69) and originating in the PRC.

(32) In this regard, in the analogue country judgement the Court interpreted the statistics communicated by the Commission to the Court on 27 July 2011 as data relative solely to the product concerned. However, the Commission has re-examined the full extent of each CN code included in those statistics and it should be noted that they have a broader scope than the product under measures, since they included full CN codes 2008 30 55, 2008 30 75 and 2008 30 90. The statistical data only covering the product concerned or like product for CN codes 2008 30 55 and 2008 30 75, for the abovementioned countries during the investigation period are as follows:

Country	Volume of imports (tonnes)
PRC	49 791,30
Thailand	666,10
Turkey	151,20
Israel	4,80
Swaziland	0

(33) Under CN code 2008 30 90, the statistics included products other than the product concerned. As a consequence, no conclusions can be drawn on imports of the like product with regard to this CN code. Therefore, it cannot be derived from the statistics that the like product was imported during the investigation period in significant quantities from either Israel or Swaziland.

4. SAMPLING

4.1. Sampling for exporting producers in the PRC

(34) Two unrelated EU importers disputed that the Chinese exporting producers selected for the sample represented 60 % of the total exports to the Union. Nevertheless, they were not able to provide any verifiable information that could undermine the accuracy of the sampling information submitted by the cooperating Chinese exporting producers and largely confirmed in the course of the further investigation. This argument is therefore rejected.

(35) Three Chinese cooperating exporting producers submitted representations claimed that their related companies were exporting producers of the product concerned and should therefore be included in the Annex of cooperating exporting producers. These claims were considered warranted and it was decided to revise the relevant Annex accordingly. One unrelated EU importer argued that exports made to the Union through traders should automatically be allowed to benefit from the measures applicable to the Chinese

exporting producers. In this respect, it is noted that anti-dumping measures are in the present case imposed on products manufactured by exporting producers in the country under investigation that are exported to the Union (irrespective of which company trades them) and not to business entities engaged only in trading activities. The claim was therefore rejected.

5. DUMPING

5.1. Market economy treatment (MET)

- (36) Following the imposition of provisional measures, no comments were submitted by the Chinese cooperating exporting producer with respect to the MET findings. In the absence of any relevant comments, recitals 29 to 33 of the provisional Regulation are hereby confirmed.

5.2. Individual treatment

- (37) In the absence of any relevant comments, recitals 34 to 37 of the provisional Regulation concerning individual treatment are hereby confirmed.

5.3. Normal value

5.3.1. Comments of interested parties following the second reopening notice

- (38) Certain importers argued that Chinese imports would be necessary to cover Union demand, although one importer indicated that Spanish and Turkish production together would be sufficient to cover the Union market needs. One importer remarked that imposition of anti-dumping duties would have resulted in significant increases in the price of the product concerned. Increase in prices were also mentioned by other importers. Different factors were identified as cause for such increase like the decreasing availability of Chinese mandarins in the Union due to internal demand and demand from other markets, crop failures and labour shortage in the PRC. Another factor indicated was the reduced competition in the Union (it is estimated that currently there are only three Union producers, while in 2000 there were eight). One importer complained that anti-dumping measures would favour large trading companies instead of the traditional ones, which have been trading the product concerned with the PRC for decades. This importer defends the existence of a license system based on pre-2001 data.
- (39) A group of importers claimed that the Union institutions should initiate a whole new investigation instead of partially reopening the anti-dumping investigation which had resulted in the imposition of measures which had been in force until the analogue country judgment. This claim was based on the fact that those importers did not see sufficient evidence for dumping or injury in the present situation of the market.
- (40) Other importers submitted that they disagreed with the possible use of the IP data if a new dumping margin would needed to be calculated. According to those

importers most recent data should be used and in particular the periods 2010-11 and 2011-12 were suggested.

- (41) A group of importers considered that the partial reopening of the investigation is in breach of Article 266 of the Treaty on the Functioning of the European Union. According to those importers, the case-law⁽¹⁾ mentioned in the second reopening Notice should be recalled only if measures are annulled or declared invalid due to an erroneous injury determination. In their own words, 'the Community institutions did not blunder at the stage of determining injury, but as early as assessing whether the products concerned were dumped at all'. As in this case the original Regulation was declared invalid due to the determination of normal value, the importers claimed that such case-law does not apply.

- (42) Finally, several importers recommended Turkey to be used as analogue country. At a hearing, one importer suggested contacting the authorities of Japan and Korea, as also in those countries there would also be companies which manufactured the like product during the IP.

5.3.2. Analysis of comments following the second reopening notice

- (43) As regards the many claims summarised under recital 38 above it should be underlined that the Commission decided to reopen the initial investigation in a limited manner, restricted to the possible identification of an analogue country. It did not define a new investigation period, contrary to the approach followed in the case that led to the judgment in *Industrie des poudres sphériques v Council* (Case C-458/98 P [2000] ECR I-8147). This was based on the consideration that given that anti-dumping duties had been in place, any data collected during a new investigation period would have been distorted by the existence of these antidumping duties, in particular with regards to the establishment of injury. The Commission considers that the points raised by the parties on the alleged absence of dumping at the present point in time can be more appropriately discussed in the framework of an interim review pursuant to Article 11(3) of the basic Regulation. Whereas in the initial investigation, the analysis on the existence of injury is carried out *ex post* for the investigation period, the analysis of injury during an interim review is done in a prospective manner, as the injury observed during the investigation period of the review is likely to be influenced by the fact that an antidumping duty is in place.
- (44) The parties concerned are reminded that if an importer or another party wants the measures to be fully reviewed, it has the possibility to request the initiation of an interim review, as prescribed in Article 11(3) of the basic Regulation. The parties concerned have that possibility at any time as the one-year period since the

⁽¹⁾ Case T-2/95 *Industrie des poudres sphériques (IPS) v Council* [1998] ECR II-3939 and Case C-458/98 P *Industrie des poudres sphériques (IPS) v Council* [2000] ECR I-08147.

imposition of definitive measures referred to in Article 11(3) has elapsed. Any party that had lodged a request for review pursuant to Article 11(3) prior to the analogue country judgement will be contacted by the Commission services to determine whether it wishes to pursue its request.

(45) Concerning the alleged illegality of the partial reopening, it should be noted that the mentioned case-law does not imply that a partial reopening might take place only if it concerns determination of the injury suffered by the Union industry. What is clarified in Case T-2/95 and Case C-458/98 P is that 'in the case of an act concluding an administrative proceeding which comprises several stages, its annulment does not necessarily entail the annulment of the entire procedure prior to the adoption of the contested act regardless of the grounds, procedural or substantive, of the judgment pronouncing the annulment' ⁽¹⁾. Therefore it is irrelevant whether the annulment or the declaration of invalidity of a regulation relates to the determination of injury or the determination of the normal value.

(46) In respect of the use of IP data, it should be recalled that the second reopening Notice concerned a partial reopening of the original investigation and not a new investigation. Therefore, only data from the IP could be relevant and should be examined, even more so as the export prices used in the comparison would also be pertaining to that period. The claims for the use of more recent data, therefore, have to be dismissed.

5.3.3. Investigation following the second reopening notice

(47) In the judgement referred to in recital 16 above, the Court specifically referred to four countries from which, according to Eurostat data, there would have been significant imports into the Union under the CN codes 2008 30 55, 2008 30 75 and ex 2008 30 90. These countries are Israel, Swaziland, Thailand and Turkey. In view of this, the Commission contacted the authorities of these countries via their Missions to the European Union. They were all contacted before the partial reopening of the investigation and again at the time of reopening. The Missions concerned, as well as the Delegations of the European Union to those four countries, were requested to identify possible domestic producers of the like product and, if any, to assist in obtaining their cooperation.

(48) Although been contacted twice, no replies were received from the Missions of Swaziland and Thailand to the European Union. Replies were received from the Missions of Israel and Turkey. The Turkish Mission provided addresses of six alleged producers, while the Israeli Mission informed to the Commission services that there had been no production of the like product in Israel during the IP (and that there is currently no such production).

(49) All six Turkish producers were contacted, five of them twice. Three did not reply at all, and the other three informed the investigators that they were not producing the like product during the IP. Therefore, although these companies offered to cooperate, they were not in a position to provide the Commission with the necessary data. This finding was corroborated by a submission received from a German importer with producing interests in Turkey, which stated that during the investigation period there was no production of the like product in Turkey.

(50) Despite the absence of a reply from the Mission of Thailand, two Thai companies, from which updated addresses were obtained via the European Union Delegation in Bangkok, were also contacted, twice each. Those two producers had already been contacted during the original investigation — but at the time, this had not resulted in their cooperation. Also this time, one of the producers did not reply at all to the two requests while the other replied it did not intend to cooperate in the investigation.

(51) Despite the efforts of the Commission via the Mission of Swaziland to the European Union and the Delegation of the European Union in Swaziland, it has not been possible to identify one or several producers in Swaziland.

(52) In view of the suggestion referred to in recital 42 above, cooperation was also requested from the authorities of Japan and the Republic of Korea and in parallel the Delegations of the European Union in those countries were requested to identify local producers of the like product, if any. The Korean authorities did not reply, but the Commission managed, through the Delegation of the European Union to the Republic of Korea, to obtain a name and address of a possible producer of the like product in the Republic of Korea. This producer was contacted once but it did not reply to the request for cooperation.

(53) The Japanese authorities contacted possible Japanese producers, however, according to the Japanese authorities, those companies did not want to cooperate in the proceeding and also did not want their identities to be forwarded to the Commission.

5.3.4. Conclusion on the investigation following the second reopening notice

(54) Account taken of the comments made by the parties, the analysis thereof and, in spite of significant efforts by the Commission services, the lack of cooperation from potential third country producers, it was concluded that a normal value on the basis of the price or constructed value in a market economy third country as prescribed by Article 2(7)(a) of the basic Regulation could not be determined.

⁽¹⁾ Case T-2/95 *Industrie des poudres sphériques (IPS) v Council* [1998] ECR II-3941.

5.3.5. *Comments of interested parties following the imposition of provisional measures*

- (55) It is recalled that the normal value determination was based on the data provided by the Union Industry. This data was verified at the premises of the cooperating Union producers.
- (56) Following the imposition of provisional measures, all three Chinese sampled cooperating exporting producers and two unrelated Union importers questioned the use of Union industry prices for the calculation of normal value. It was submitted that normal value should have been calculated on the basis of the PRC production costs account taken of any appropriate adjustments relating to the differences between the Union and the PRC markets.

5.3.6. *Analysis of comments following the imposition of provisional measures*

- (57) In this respect it is noted that the use of information from a non-market economy country and in particular from companies which have not been granted MET would be contrary to the provisions of Article 2(7)(a) of the basic Regulation. This argument is therefore rejected. It was also argued that data on prices from all other importing countries or relevant published information could have been used as a reasonable solution account taken of the lack of analogue country cooperation. However, such general information, in contrast to the data used by the Commission, could not have been verified and cross checked with regard to their accuracy in line with the provisions of Article 6(8) of the basic Regulation. This argument is therefore rejected. No other argument was submitted that could cast doubt on the fact that the methodology used by the Commission is in line with the provisions of Article 2(7)(a) of the basic Regulation and, in particular, the fact that it constitutes in this particular case the only remaining reasonable basis for calculation of normal value.

5.3.7. *Conclusion on normal value*

- (58) In the absence of any other comments and the fact that despite the significant efforts of the Commission services to identify a cooperating producer in an analogue country, it has not been possible to obtain data from an analogue country producer for the investigation period, recitals 38 to 45 of the provisional Regulation are hereby confirmed.

5.4. **Export price**

- (59) Following the imposition of provisional measures, one Chinese sampled cooperating exporting producer submitted that its export price should be adjusted in order to take into account certain cost elements (in particular ocean freight). In this respect it is noted that this issue was dealt with during the on-the-spot verification both with regard to this company as well with regard to the other companies in the sample. On that occasion, each company submitted information with regard to the costs in question. The amount claimed

now by the company is considerably higher than the amount originally reported. It is noted that this new claim is based simply on a declaration by a freight forwarder and does not reflect data relating to a real transaction. None of the other sampled exporting producers questioned the figures used with respect to ocean freight. Moreover, given the late submission, this claim cannot be verified. In particular, the adjustment requested does not relate to any data already on the file. Following this claim the Commission has nevertheless reviewed the amount of the cost in question account taken of the importance of this particular cost to the EU export transactions reported by the company. As a consequence, the Commission came to the conclusion that it is more appropriate to use the average ocean freight cost verified on-the-spot for all the sampled Chinese companies. Consequently, the company's export price was adjusted accordingly.

- (60) One other Chinese sampled cooperating exporting producer highlighted two computation errors on the calculation of its export price related to its submitted export listings. The claim was considered warranted and the producer's relevant export price was revised accordingly.

- (61) In the absence of any other comments in this respect, recital 46 of the provisional Regulation is hereby confirmed.

5.5. **Comparison**

- (62) In the absence of any comments in this respect, recitals 47 and 48 of the provisional Regulation are hereby confirmed.

5.6. **Dumping margins**

- (63) In light of the above, the definitive dumping margins, expressed as a percentage of the CIF Union frontier price duty unpaid, are the following:

— Yichang Rosen Foods Co., Ltd, Yichang, Zhejiang: 139,4 %,

— Huangyan No 1 Canned Food Factory, Huangyan, Zhejiang: 86,5 %,

— Zhejiang Xinshiji Foods Co., Ltd, Sanmen, Zhejiang and its related producer Hubei Xinshiji Foods Co., Ltd, Dangyang City, Hubei Province: 136,3 %,

— Cooperating exporting producers not included in the sample: 131 %,

All other companies: 139,4 %.

6. IMPLEMENTATION OF THE XINSHIJI JUDGMENT

6.1. Comments of interested parties

6.1.1. Premature reopening

(64) The exporters concerned and a group of importers argued against the partial reopening prior to the delivery of the judgment in Case C-338/10. It was argued that reopening the investigation while the validity of the original Regulation was challenged and, in the opinion of the parties concerned, the act was likely to be declared void, breached the principles of proportionality and of good administration in the light of Article 41 of the Charter of Fundamental Rights of the European Union as it unnecessarily placed an undue burden on the parties concerned to devote significant financial and personal resources to the reopened procedure.

(65) In addition, the same parties also argued that reopening the investigation before the judgment in the appeal Case C-195/11 P was premature and contrary to Articles 266 and 264 TFEU and Article 60(2) of the Statute of the Court of Justice alleging that the Commission was anticipating the success of its own appeal. Such initiation contradicted the relationship between, on the one hand, the Commission and the Council and on the other, the Court and it impaired the right to an effective court remedy. The importers concerned requested that the Commission first await the final decision of the Court before it reopens the anti-dumping proceeding to implement the judgment in question.

(66) The exporters concerned and a group of importers argued that the reopening violated Article 3 of the basic Regulation as it was based on the data collected during the investigation period (i.e. 1 October 2006 to 30 September 2007) and not during a more recent period.

(67) A group of importers challenged the fairness and impartiality of the Commission's conduct pursuant to Article 41(1) of the Charter of Fundamental Rights of the European Union on the grounds that the Commission allegedly rejected an application by the Union importers to launch a full interim review, even though the official Eurostat data already showed an increase on a sustained and lasting basis of the import price.

6.1.2. Retroactivity

(68) The exporters concerned and a group of importers argued that the reopening was destined to fail for the reason that the infringement of the rights of defence and the failure to state reasons in case of a definitive anti-dumping regulation cannot be rectified in isolation and retroactively. In particular, it was argued that the rights of defence of the interested parties were to be protected during the ongoing anti-dumping proceeding, i.e. before adoption of the measure, and the proper statement of reasons for the definitive anti-dumping regulation was to be provided no later than at the adoption of the original Regulation.

(69) It was also argued that a legal act based on an inadequate statement of reason is, and remains, ineffective from the start and the intended measure can only become effective by adopting a new legal act with a proper statement of reasons.

6.1.3. Inadequate disclosure

(70) The exporters concerned and a group of importers claimed that the disclosure was not sufficient to remedy the legal errors identified by the General Court for the reasons set out below.

(71) The exporters concerned together with a group of importers argued that the violation of Union law found by the General Court affected the entirety of the findings and the outcome of the injury margin calculation, which required a new process to be launched taking into account the most recent injury data.

(72) Furthermore, the same parties argued that the Commission failed to recognise correctly the scope and consequences of its infringement. It was argued that, contrary to the Commission's interpretation, the legal infringements established by the General Court did not relate exclusively to the calculation of the 2 % uplift of the import costs of the Chinese products (post-importation costs) and the transport costs of the products produced by Union producers. The importers concerned argued that those infringements related at the very least to the entire determination of the injury margin.

(73) In this context it was argued that the disclosure sent at the reopening failed to address the question of the comparability of the level of trade and how the method chosen by the Commission for the comparison of the import and Union prices was justified against the background of the market environment concerned, i.e. whether the products produced by Union producers and the imported goods are in fact in competition with each other 'in the warehouse of the Hamburg importers'. The exporters concerned and a group of importers argued that the information on the level of trade determination provided at the time of reopening remained far too general to enable the parties to understand why the comparison of the import price and the Union industry price was done at the same level of trade and it largely left unexplained the factors which emerged from the investigation on which that calculation was based. It did not deal with the issue why the 2 % uplift in question, which contained neither the operating and administrative expenses (SG&A) nor a profit margin of the importers, was appropriate to achieve comparability of the selling prices of the Union producers with the import prices of the exporting Chinese producers.

(74) The same parties argued that no findings of any kind were made regarding the assumption that the Union producers sold the goods exclusively via importers. Also, it was argued that the underlying reasoning for the selected level of trade that the Union producers sold exclusively to importers was refuted since according to the disclosed information only 62 % of

the sales of Union producers went to the independent importers. The parties argued that the Commission appeared to ignore the fact that allegedly 38 % of the Union production had not been sold through importers, meaning that in respect of these sales imported products were competing at a different level of trade. For this part of sales, it was argued, the method used by the Commission to determine the injury margin was inappropriate as the importers' prices should have been adjusted by adding post-importation costs, selling, general and administrative expenses and an appropriate profit margin of the independent importer. In the light of these corrections the injury margin would have been reduced for 38 % of the Union goods, which would lead to an overall reduction in the injury margin and a following substantial reduction in the anti-dumping duties.

- (75) As a result, the parties argued that the Commission failed to develop an appropriate method to determine the injury margin for all imports which would have taken account of the actual market conditions. It was argued that there was a need for differentiated consideration of the sales of the products of the Union producers for the determination of the injury margin in view of the different distribution channels of the Union producers.
- (76) The parties called for the Commission to provide a detailed description and analysis of the evidence verified in respect of trade flows and related volumes supporting its findings and to disclose that relevant information, which was not confidential.
- (77) A group of importers also contested the 'stereotype reference' to the confidentiality of the data as a result of which the exporting producers and Union importers were barred from access to relevant sources necessary for them to determine whether, in the light of the structure of the market, the adjustment in dispute was appropriate in that it made it possible to compare the export price and the Union industry price at the same level of trade. The importers concerned argued that this claim was upheld by the General Court in paragraph 86 of the *Xinshiji* judgment.

6.1.4. Transport costs

- (78) The exporters concerned opposed the increase of the Union industry's ex-works selling price to include the costs of delivering to the importer's warehouse on the grounds that it goes against the concept of internal market and that the trade defence measures are not meant to remedy cost disadvantages of the Union industry due to the location of its production facilities.
- (79) The exporters concerned and a group of importers argued that the Commission should have taken into account the fact that the importers had higher trans-shipment costs because the Chinese products were delivered in containers, while the products produced by Union producers were palletised for transportation by

truck and therefore could immediately be re-expedited to customers without any further manipulation, which reduced the handling charges by 50 % or 7 EUR/tonne.

- (80) A group of importers argued that the Commission overlooked, for a percentage of the Union industry products which were in fact distributed via an importer, that the transport costs for the Union industry goods to the importers' warehouse were incurred only if the preserved mandarins had been 'physically' made available in the warehouse of the importer concerned. In fact, however, the bulk of the products sold by the Union producers via importers were delivered directly by the Union producers to the importers' customers. This was claimed to procure a considerable cost advantage for the Union producers compared to imported products and, if it had been properly taken into consideration, a smaller injury margin would have resulted than that determined on the basis of the Commission's calculation method.
- (81) The association of importers and some importers objected to the figure (EUR 90) used as a basis for the calculation of the transport costs. The parties claimed that the transport costs chosen were too high, referring probably to transport by truck. However, according to the information of the parties, the majority of goods was transported by vessels, which is a much cheaper mode of transport.
- (82) The parties asked for an explanation concerning the inclusion of terminal handling charges and the costs for trucking to the importer's premises in the post-importation costs.

6.2. Analysis of comments

- (83) In respect of the argument that the investigation should not have been reopened while the validity of the original Regulation had been challenged in Case C-338/10 (recital 64), the Commission explained that it acted under the presumption of legality.
- (84) In respect of claims concerning the premature reopening subject to the pending appeal Case C-195/11 P (recital 65) the Commission considers the argument without object, given that the reopening was based on the findings of the General Court. Furthermore, the appeal has in the meantime been withdrawn.
- (85) In respect of the claims for a new investigation it has to be underlined that the partial reopening has as its objective to remedy only of the violation of the rights of defence identified by the General Court, not to reopen the entire proceeding. However, the Commission will advise the parties concerned that they have the possibility to request the initiation of an interim review, as prescribed in Article 11(3) of the basic Regulation, if they want the Institutions to verify their claim that on the basis of more recent data, there is no more injury.

- (86) With regards to the claim that the injury analysis should be based on more recent data (recital 66), it is observed that any more recent data will be influenced by the fact that an antidumping duty has been in place. Therefore, the appropriate instrument to analyse more recent data is an interim review as prescribed in Article 11(3) of the basic Regulation, and not a new investigation (see also recital 43 above).
- (87) As regards the doubt concerning the impartiality and fairness of the proceeding (recital 67), this is based on a misunderstanding that the Commission rejected the request for an interim review. The Commission's Services informed the respective parties by letter of 6 September 2011 that on the basis of the information provided to that date no decision could be taken whether or not a review could be initiated. The points which required further clarification or evidence were outlined. The parties were informed about this at the hearing of 29 February 2012 and were invited to continue the discussion with the relevant Commission service. The Commission services will inform them that they can pursue their request as of the date of entry into force of this Regulation. The one-year period provided for in Article 11(3) of the basic Regulation does not apply in the case at hand, as this would run counter its objective, which is that there should be a minimum amount of time between the initial investigation period and an interim review. In the present case, this minimum amount of time has been observed.
- (88) As regards the argument concerning the retroactive remedy of the breach of rights of defence (recital 68) the Commission considers that as a consequence of the judgement of the General Court, the investigation has been reopened at the point where the illegality occurred. The parties have now a possibility to exercise their rights to the extent they were prevented from doing as established by the General Court. Furthermore, the duties will be imposed only for the future. Against this background the Commission considers that there is no issue of retroactive remedy as claimed by the parties and this argument of the parties has to be therefore dismissed.
- (89) As regards the argument concerning the inadequate statement of reasons (recital 69), the very purpose of the reopening is to remedy the lack of reasoning and to base the new legal act on a complete statement of reasons. It is therefore considered that this argument of the parties is addressed.
- (90) In respect of the scope of the judgment (recital 72) the purpose of the reopening is to establish the appropriate level of trade, and in particular to clarify why the post-importation cost adjustment of the CIF export price was necessary to ensure that the comparison of the export price and of the Union industry price was done at the same level of trade. The argument of the parties has to be, therefore, dismissed.
- (91) As regards the claims concerning the deficiency of the disclosure document of 5 December 2011 in respect of the explanation of level of trade applied in this case (in particular, recitals 73 to 76), the parties were provided with additional information and explanation at several occasions, namely in points 4 and 5 of the disclosure document of 5 December 2011 as well as during the hearings of 29 February 2012.
- (92) For the sake of full clarity on this point, the findings concerning the level of trade are summarised as follows: (i) The investigation showed that the canned mandarins are only produced in one Spanish region (Valencia) and are mainly sold in Germany and United Kingdom. The proportion of Union sales to Germany and United Kingdom was established to represent 62 % of the total Union sales. (ii) On the basis of the verified data it was established that during the IP the Union producers and the Chinese exporters sold essentially to the same customers, i.e. to traders or distributors. (iii) For these reasons, the price comparison between the imports from the exporting producers and the sales of the Union producers was made for the exporting producers at frontier level (CIF) and for the Union producers at factory level (ex-works) adjusted to the importers' warehouses. (iv) This methodology required the following adjustments: on the one hand, a post-importation costs adjustment of the Chinese CIF export prices to bring the goods from the port to the importers' warehouses; this adjustment, fixed at 2 %, was based on the collected and verified invoices and the respective calculation was disclosed to the interested parties in the annex to the disclosure document of 5 December 2011. On the other hand, the Union ex-works prices were increased to reflect the cost of freight to bring the goods from the producers (Valencia) to the importers' premises (Germany and United Kingdom). This freight adjustment was calculated based on the established transport costs from Valencia to Hamburg. Given that not all sales of Union producers were delivered to Germany and United Kingdom, this average was lowered in proportion of the share of sales to Germany and United Kingdom (62 %) and in proportion of direct sales.
- (93) As regards the proportion of direct sales of the Union producers, it has been in a range of between 2 % and 12 % during the IP. The precise percentage cannot be disclosed for confidentiality reasons.
- (94) Furthermore, it was argued that a differentiated approach in determination of the appropriate level of trade in respect of the direct sales of the Union producers (recital 72) should have been developed. In this respect it is to be noted that based on the verified findings none of the Chinese imports were sold directly during the IP. Since there were not matching direct sales on the side of the Chinese exports, it was not possible to develop a differentiated approach for establishing a level of trade for the proportion of direct sales of Union producers. Instead, for the purpose of the injury margin calculation, the direct sales of Union producers were adjusted back to

the ex-works level and subjected to the freight adjustment described in recital 92 point (iv) above. Against this background, the respective claim of the parties has to be dismissed.

- (95) As regards the claim of the parties that the adjustment of the CIF export price should have included the SG&A and a reasonable profit margin (recital 73) it is noted that had the Commission adjusted the export CIF price by adding SG&A and profit, it would have brought the sales of imported goods to the retailer level. In such case the comparison between the Chinese export prices and the Union sales prices would have been carried out at different levels of trade. For this reason, the claim of the parties has to be dismissed.
- (96) As regards the argument of the parties that it stems from the disclosure document of 5 December 2011 that 38 % of sales of Union producers in the IP were direct sales (recital 74), it was explained to the parties at the hearings of 29 February 2012 that this conclusion was mistaken. The figure of 62 % of Union industry sales that were made in Germany and United Kingdom relates to the geographical distribution of the sales and has no relevance as regards the identification of the type of customer, and thus as regards the identification of direct sales. It may only be deduced from this fact, and it is confirmed, that the remaining 38 % of the sales of Union producers were made outside Germany and the United Kingdom. Since the parties' assumption on the level of trade of 38 % of sales of Union producers is incorrect, the subsequent claim based on this assumption concerning the need to recalculate the injury margin has to be also dismissed.
- (97) Regarding the claim on detailed disclosure of trade flow and related volumes (recital 76), it is recalled that the facts and figures underlying the choice of methodology to determine the level of trade in this case have been addressed in the points 3 to 7 of the disclosure document of 5 December 2011. The parties are referred to this information as well as the explanation provided at the hearings of 29 February 2012. For sake of clarity, the underlying trade flows are explained in detail in recital 92 above.
- (98) As regards the argument on a 'stereotype reference to confidentiality' (recital 77), the Commission considers that the information that was kept confidential related to the (i) percentage of direct sales; and (ii) the information used for the calculation of the 2 % uplift based on invoices and data gathered during the verification visit. In this respect it is noted that the invoices constitute information confidential by nature. The non-confidential summary of the latter has been provided in the annex to the disclosure document of 5 December 2011. As regards the direct sales the Hearing Officer at the joint hearing of 29 February 2012 confirmed that actual figures about direct sales are confidential

information and offered to examine on request of the interested parties how the actual data in the confidential file was used by the Commission services responsible for the investigation and to inform the parties whether in his view the data were correctly reflected in the findings. The parties did not request it. For these reasons the Commission considers that the requirement to disclose all but confidential information was met. Furthermore, given that the data under assessment is more than five years old, the Commission considers that it can disclose at this stage that the percentage of direct sales is between 2 % and 12 %.

- (99) Concerning the objection of the parties to the freight adjustment of the Union ex-works selling price (recital 78) the Commission considers the adjustment in question was made to bring the goods to the importer's warehouse, i.e. to the same level of trade as the Chinese exports. This adjustment was based on the specific circumstances of the relevant market where the canned mandarins are only produced in one Spanish region (Valencia) and are mainly sold in Germany and United Kingdom. It was made to achieve the fair comparison between export price and the Union price at the same level of trade, not to offset the claimed cost disadvantage of the Union producers due to the location of their production facilities. The argument of the parties is therefore dismissed.
- (100) Concerning the argument that the Commission should have taken into account the higher costs of importers because the Chinese products were delivered in containers while the Union industry products were palletised which resulted in the reduction of handling charges by the Union producers (recital 79), it is noted that the adjustments made covered only the cost of bringing the goods to the importer's warehouse. The subsequent costs incurred in the context of the shipment of the goods to the retailers are to be borne after the defined level of trade and cannot be therefore taken into account. For this reason the argument of the parties is dismissed.
- (101) Concerning the argument that the transport costs of the Union producers should have been reduced to take into account cases where the products were delivered directly to the customers of importers as claimed by the latter (recital 80), it is recalled that the freight adjustment of the Union ex-works sales price was based on the established costs of physical delivery to the warehouse in Hamburg (EUR 90) based on collected invoices, because the warehouse Hamburg is the appropriate level of trade for comparing export price and prices of the Union product. The freight adjustment is not justified on the ground that it includes total transport costs between the Union producer and the retailer (which would be higher than the costs for delivery to the warehouse), but on the ground that in the light of the specificities of the market for the product concerned, the

warehouse in Hamburg is the appropriate level of trade. In this context, the argument raised by the parties appears immaterial.

(102) The parties claimed that the applied freight adjustment was too high because it was based on the transport costs by truck (recital 81). In this context, it is recalled that the freight adjustment was based on the established costs of physical delivery to Hamburg, which included both truck and boat. Therefore, the adjustment requested by the parties had already been included in the calculation of freight cost to Hamburg. It was therefore not necessary to verify the data submitted by the parties during the hearing, as during the original investigation, the costs for delivery to Hamburg had been established on the basis of the verified data of the Union producers.

(103) Regarding the comment made by the applicant concerning the calculation of the post-importation cost (recital 82), it was stated that, as explained in paragraph 9 of the disclosure document sent on 5 December 2011, both terminal handling charges and the costs for trucking to the importer's premises were included in the calculation. No ocean or insurance freights were included in terminal handling charges as these costs were already included in the CIF price gathered and verified during the on-spot verifications at the exporter's premises. Thus, if the Commission had included those costs in the calculation of the post-importation costs this would have implied double-counting.

6.3. Procedure

(104) On 5 December 2011 the Commission submitted a disclosure document with facts and figures relating to the grounds on which the General Court annulled the measures. All interested parties were invited to comment.

(105) On 29 February 2012 the Commission held hearings with all parties that requested so, including a joint hearing with the Hearing Officer of the exporters concerned and a group of importers.

(106) On 26 March 2012 one of the interested parties informed the Commission that in view of the judgment in Case C-338/10 it considered the partial reopening concerning post-importation cost without purpose.

(107) On 17 July 2012 the Commission responded that in the light of the reopening of 19 June 2012 it was considered that both partial reopenings are still pending and none of these investigations had become without purpose.

6.4. Conclusion

(108) The Xinshiji judgment of General Court has been implemented by providing additional reasoning, information and explanation to the parties on the reopened point of the original investigation. The parties were given

opportunity to comment and to be heard. All arguments raised have been addressed and duly taken into account.

(109) Account taken of the comments made by the parties and the analysis thereof it was concluded that the arguments and facts raised by the interested parties did not show a need to modify the contested injury margin calculation.

(110) Therefore, the injury margin determined in the original investigation is hereby confirmed.

(111) On the basis of the above it was concluded that the implementation of the Xinshiji judgment should take the form of reimposing the definitive anti-dumping duty for the applicants in the case in question.

7. INJURY

7.1. Union production and Union industry

(112) In the absence of substantiated comments, the findings set out in recitals 52 to 54 of the provisional Regulation are confirmed.

7.2. Union consumption

(113) One of the exporting parties argued that there is a discrepancy between the level of the consumption set out in the safeguard Regulation and the level set in the provisional Regulation. It is underlined that the difference in the level of consumption was basically due to the different product scope in the current investigation and to the different number of Member States in those two investigations. No further and substantiated information was received in this respect. The findings set out in recitals 55 to 57 of the provisional Regulation are therefore confirmed. As a corollary, the subsequent parts of the analysis which draw on consumption are also confirmed in this respect.

7.3. Imports from the country concerned

7.3.1. Volume and market share of imports of the product concerned

(114) In respect of the market share some interested parties opposed the Commission statement set out in recital 58 of the provisional Regulation that indicated an increase of the market share of the dumped imports. They argued that contrary to the Commission findings the market share of imports from the PRC decreased. The evaluation of imports from the PRC in volume and market share was verified. As set out in said recital there was only one year where the market share of the Chinese imports decreased. For the rest of the period examined the market share of imports from the PRC remained consistently high. Therefore the findings presented at the provisional stage are confirmed.

(115) Some parties argued that post-IP volumes should also be examined to assess whether Chinese imports are

increasing. It is to be noted that trends on imports from the PRC were evaluated for the period 2002/03 to 2006/07 and a clear increase was observed. In accordance with the provisions of the basic Regulation, post-IP events are not taken into account, except in exceptional circumstances. In any event, as stated below in recital 136 the level of imports post-IP was examined and was found to be significant.

7.3.2. Price undercutting

- (116) Three cooperating exporting producers contested the Commission's findings on undercutting. One contested the methodology used to calculate undercutting and requested an adjustment to reflect costs borne by traders for their indirect sales. Where justified, calculations were adapted. The revised comparison showed that, during the IP, imports of the product concerned were sold in the Union at prices which undercut the Union industry's prices by a range of 18,4 % to 35,2 % based on the data submitted by the sampled cooperating exporting producers.

7.4. Situation of the Union industry

- (117) Two importers and the importers' association contested the duration of the packing season indicated in recital 79 of the provisional Regulation. They argued that the packing season in Spain lasts only three months instead of four to five as indicated in the provisional Regulation. However this allegation is linked to the crop (variable by nature) and to the quantity produced and in any case has no impact on the injury factors as analysed by the Commission services.
- (118) In the absence of any other substantiated information or argument concerning the situation of the Union industry, recitals 63 to 86 of the provisional Regulation are hereby confirmed.

7.5. Conclusion on injury

- (119) Following disclosure of the provisional Regulation, some importers and some exporting producers claimed, with reference to recitals 83 to 86 of the provisional Regulation, that data used by the Commission to establish the injury level was neither correct nor objectively evaluated. They argued that almost all injury-related indicators showed positive trends and that therefore no evidence of injury can be found.
- (120) In this regard, it is noted that even if some indicators show small improvements, the situation of the Union industry has to be evaluated as a whole and in consideration of the fact that safeguard measures were in place until the end of the investigation period. This matter was explored at length in recitals 51 to 86 of the provisional Regulation. The deep restructuring process which these measures allowed for, resulting in a large

reduction in production and capacity, would have under normal circumstances led to a significant improvement in the Union producers' overall situation, including production, capacity utilisation, sales, and price/cost differentials. Instead, volume indicators have remained weak, stocks have increased substantially and financial indicators have continued to be in the red — some even worsening.

- (121) On this basis, it is considered that the conclusions regarding the material injury suffered by the Union industry as set out in the provisional Regulation are not altered. In the absence of any other substantiated information or arguments, they are therefore definitively confirmed.

8. CAUSATION

8.1. Effect of the dumped imports

- (122) Some parties argued that the volume of the Chinese imports had been stable since 1982 and that therefore they could not have caused injury as explained in the provisional Regulation (see recital 58). Indeed, as explained above in recital 114, imports from the PRC during the period examined have increased significantly to the detriment of the Union industry market share. Moreover, the argument refers to the trend in imports that exceed well above the period in question therefore the argument is rejected.
- (123) As mentioned in recital 116 above, it is definitively concluded that during the IP, the prices of imports from the sampled Chinese exporting producers undercut the average Union industry prices by percentages ranging from 18,4 % to 35,2 %. The revision of the undercutting margin leaves unaffected the conclusions on the effect of the dumped imports set out in recitals 100 and 101 of the provisional Regulation.

8.2. Exchange rate fluctuations

- (124) After the imposition of the provisional duties some importers further argued the negative influence of the exchange rate on the price level. They argued that the exchange rate level is the main factor that caused injury. Nevertheless, the Commission's assessment refers merely to a difference between price levels with no requirement to analyse the factors affecting the level of those prices. As a consequence a clear causal link between the high dumping level and the injury suffered by the Union industry was found and therefore recital 95 of the provisional Regulation can be confirmed.

8.3. Supply and price of raw materials

- (125) Some interested parties argued that injury is not caused by dumped imports but rather by the scarce supply of fresh fruit i.e. the raw material for canned mandarins.

- (126) However, official data from the Spanish Ministry for Agriculture confirm that the quantity available for the canning industry is more than sufficient to cover all the production capacity of the Spanish producers.
- (127) Producers compete to a certain extent for fresh fruit with the direct fresh produce consumer market. However, this competition does not break the causal link. A clear, significant reason for the Union industry's relatively low production, sales and market share is rather to the pressure of the massive imports from the PRC at very low prices. In this situation, and considering that the market price is dictated by the imports covering more than 70 % of the market, which engage in price undercutting, suppression and depression, it would be uneconomic to produce more without reasonable expectations for selling the product at prices allowing for a normal profit. Therefore the Spanish industry could reasonably provide significantly higher quantities under the condition that the market price would not penalise their economic results.
- (128) Another fact confirming this analysis is the consistent existence of a significant amount of stocks by Union producers, underlining that the Union industry's injurious situation occurred not because of insufficient production, but due to production that cannot be sold due to the pressure of Chinese imports.
- (129) As an agricultural product, the price of the raw material is subject to seasonal fluctuations due to its agricultural nature. Nevertheless, in the five-year period analysed, which included harvests with lower and higher prices, the Commission observes that injury (e.g. in the form of financial losses) occurs irrespective of these fluctuations and therefore the economic results of the Union industry are not directly correlated to such seasonal fluctuations.

8.4. Quality differences

- (130) Some parties claimed that the Chinese product was of a higher quality than the Union production. However, any price differences resulting therefrom were not sufficiently substantiated, and there is no evidence that the alleged consumer preference for Chinese products would be so intense as to be the cause of the deteriorated situation for the Union industry. In any case such alleged price differences would favour the Chinese product, increasing the undercutting/underselling level. In the absence of any further new and substantiated information or argument, recital 99 of the provisional Regulation is hereby confirmed.

8.5. Cost increases

- (131) Some parties argued that extraordinary cost increases by some producers were at the root of the injury. These allegations were not sufficiently substantiated. The Commission analysis did not detect any such events which could reverse the assessment of causation or affect the calculation of the injury elimination level.

- (132) Some parties submitted comments on the increased costs of production and inability of the Union industry to reduce them. Certain cost items (such as energy) have increased, but their impact is not such as to break the causal link in a context where a very significant amount of dumped Chinese exports are depressing sales and production (thereby increasing the Union industry's unit costs) and suppressing and depressing Union industry prices.

8.6. Aid schemes

- (133) It was alleged that the EC aid schemes caused artificial growth of processing in the EC and then encouraged reduced levels of raw material supply for the product concerned. This allegation was of a general nature and was not sufficiently substantiated. In any event, the schemes in question were modified in 1996 when the aid was allowed to the farmers instead than to the processors of the product concerned. The Commission's analysis has not detected any residual effects during the investigation period which could break the causal link. Regarding supply, reference is made to recitals 128 and 129 above.

8.7. Conclusion on causation

- (134) In the absence of any further new and substantiated information or arguments, recitals 87 to 101 of the provisional Regulation are hereby confirmed.
- (135) In the light of the above, the provisional finding of the existence of a causal link between the material injury suffered by the Union industry and the dumped Chinese imports is confirmed.

9. UNION INTEREST

9.1. Developments after the investigation period

- (136) As from 9 November 2007 imports from the PRC were subject to registration pursuant to the Registration Regulation. This was done with a view to the possible retroactive imposition of anti-dumping duties. Consequently and exceptionally, developments after the IP have also been analysed. Eurostat data confirms that imports from the PRC remain significant and this has been corroborated by certain importers. The volume for the last 10 months after the IP reached a level of 74 000 tonnes at stable low prices.

9.2. Ability of Union producers to supply the Union market

- (137) A number of parties commented on the low level of the Spanish production, which they claimed is unable to fully supply the Union market. While it is correct to state that in the present situation the Union industry does not supply the overall Union market, it should be noted that this fact is linked to the effect of injurious imports, as explained above. In any event, the intended effect of the measures is not to close the Union market

to Chinese imports, but to remove the effects of injurious dumping. Given, inter alia, the existence of only two sources of supply of these products, it is considered that in the event definitive measures are imposed, Chinese products would continue to enjoy a significant demand in the Union.

9.3. Interest of the Union industry and suppliers

- (138) One importers' association alleged that any anti-dumping measures without any limitation of quantities would not help protect the Spanish industry but would automatically trigger illegal trading activities. This is an argument which rather points to the need for the institutions to ensure proper monitoring of the enforcement of measures, rather than against the benefit measures could have for Union producers.
- (139) Another importer argued that imposition of anti-dumping measures would not improve the situation of the Spanish producers, due to the existence of large stocks built by the importers in the Union, which would be able to satisfy the market demand in the nearest future. The size of the stocks and the phenomenon of stockpiling were supported by another importer. These comments confirm the Commission analysis in the provisional Regulation and elsewhere in this Regulation. However, it is recalled that measures are intended to provide relief from injurious dumping over a period of five years — not only one.
- (140) In the absence of any other new and substantiated information or argument in this respect, the conclusion made in recitals 103 to 106 and recital 115 of the provisional Regulation regarding the interest of the Union industry are hereby confirmed.

9.4. Interest of unrelated importers/traders in the Union

- (141) Cooperating importers expressed a general interest in maintaining two sources of supply of the product concerned, namely Spain and PRC, in order to maintain the security of supply at competitive prices.
- (142) Nevertheless the majority of the importers, should definitive measures be imposed, would prefer a measure which contains also quantitative elements. This is not considered adequate, as explained below in recital 156.
- (143) Data from the sampled cooperating importers were verified and confirmed that the canned mandarins sector represents less than 6 % of their total turnover and that they achieved, on average, a level of profitability exceeding 10 % during both the investigation period and the period 2004-08.
- (144) The foregoing underlines that, on balance, the potential impact of measures on importers/traders would not be disproportional to the positive effects emanating therefrom.

9.5. Interest of users/retailers

- (145) One user, representing less than 1 % of consumption, submitted generic comments on the reduced availability of mandarins in the EU and on the superior quality of the Chinese product. He was invited to further cooperate providing individual data but declined and did not substantiate his allegations. Another retailer, a member of the main importer's association, generally opposed a price increase. No other submission concerning the interest of users/retailers was received in the course of the investigation. In this situation and in absence of any substantiated comments from users/retailers, the conclusions made in recitals 109 to 112 of the provisional Regulation are hereby confirmed.

9.6. Interest of consumers

- (146) Contrary to what was claimed by one importer, the interest of consumers was taken into consideration at the provisional stage. The Commission's findings were outlined in recitals 113 and 114 of the provisional Regulation. Other parties suggested that the impact on consumers would be significant. However, no information was provided that could cast doubt on the findings in the aforementioned recitals. Even if duties were to lead to an increase in consumer prices, no party has disputed the fact that this product is a very small part of household food expenditure. Therefore in the absence of any comments from consumers and of any further new and substantiated information these recitals are confirmed.

9.7. Conclusion on Union interest

- (147) The additional analysis above concerning the interests at stake has not altered the provisional conclusions in this respect. Data of the sampled cooperating importers were verified and confirmed that the canned mandarins sector represents for them less than 6 % of their total turnover and that they achieved, in average terms a comfortable result during both the investigation period and the period 2004-08 examined, so the impact of the measures on importers will be minimal. It has been also ascertained that the financial impact on the final consumer would be negligible, considering that marginal quantities per capita are bought in the consumer countries. It is considered that the conclusions regarding the Union interest as set out in the provisional Regulation have not changed. In the absence of any other comments, these conclusions set out in the provisional Regulation are therefore definitively confirmed.

10. DEFINITIVE MEASURES

10.1. Injury elimination level

- (148) One importer claimed that the profit margin at the level 6,8 % used as reference at the provisional stage is over-estimated. In this respect it should be noted that the same level was used and accepted for safeguard measures as the actual profit achieved by the Union industry in the period 1998-99 to 2001-02. It refers to

profits of the Union producers in a normal trading situation before the increase in imports which led to injury in the industry. The argument is therefore rejected.

(149) Union producers claimed that provisional duties did not take into account the peculiar situation of the canned mandarins market, where the production is concentrated in only one country and the vast majority of sales and of imports are concentrated in another European country. For that it was requested that final calculations take into account the transport cost from the producer country to the consumer country. The claim was justified and warranted and calculations were adapted accordingly to reflect the concentration of sales in the relevant areas of the Union.

(150) One party made comments on the undercutting and underselling calculation. Where warranted adjustments were made at definitive stage.

(151) The resulting injury margins, taking into account, when warranted, the requests from interested parties, expressed as a percentage of the total cif import value of each sampled Chinese exporter were less than dumping margins found, as follows:

— Yichang Rosen Foods Co., Ltd, Yichang, Zhejiang: 100,1 %,

— Huangyan No 1 Canned Food Factory, Huangyan, Zhejiang: 48,4 %,

— Zhejiang Xinshiji Food Co., Ltd, Sanmen, Zhejiang and related producer Hubei Xinshiji Foods Co., Ltd, Dangyang City, Hubei Province: 92,0 %,

— Cooperating exporting producers not included in the sample: 90,6 %,

All other companies: 100,1 %.

10.2. Retroactivity

(152) As specified in recital 4, on 9 November 2007 the Commission made imports of the product concerned originating in the PRC subject to registration on the basis of a request by the Union industry. This request has been withdrawn and therefore the matter has not been further examined.

10.3. Definitive measures

(153) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the injury found.

(154) On the basis of the above, and in line with corrigendum published in the *Official Journal* L 258 ⁽¹⁾, the definitive duty should amount as follows:

— Yichang Rosen Foods Co., Ltd, Yichang, Zhejiang: 531,2 EUR/tonne,

— Huangyan No 1 Canned Food Factory Huangyan, Zhejiang: 361,4 EUR/tonne,

— Zhejiang Xinshiji Foods Co., Ltd, Sanmen, Zhejiang and its related producer Hubei Xinshiji Foods Co., Ltd, Dangyang City, Hubei Province: 490,7 EUR/tonne,

— Cooperating exporting producers not included in the sample: 499,6 EUR/tonne,

All other companies: 531,2 EUR/tonne.

10.4. Form of the measures

(155) A number of parties requested measures which combined price and quantity elements, whereby for an initial import volume no duty or a reduced duty would be paid. In certain cases, this was linked to a license system.

(156) This option was considered but rejected for, in particular, the following reasons. Anti-dumping duties are imposed because the export price is lower than the normal value. The amounts exported to the Union are relevant for the analysis whether dumped imports cause injury. However, these amounts are, normally, irrelevant for the level of the duty that should be imposed. In other words, if it is found that dumped imports cause injury, the dumping may be offset by a duty which applies as of the first shipment imported after the entry into force of the duty. Finally, to the extent that it would be found that it is in the Union's interest that during a certain period, products may be imported without imposing anti-dumping duties, Article 14(4) of the basic Regulation allows for suspension under certain conditions.

(157) Some parties have alleged that any form of measures without a quantitative limitation will lead to duty avoidance. Parties made reference again to the stockpiling which occurred in the wake of the enlargement of the European Union on 1 May 2004. The Commission services' analysis has confirmed that this was a clear attempt to avoid the duties. Given these statements and the facts described in the provisional Regulation in recitals 123 and 125, the Commission will monitor developments in order to take the necessary actions to ensure proper enforcement of measures.

(158) Other parties have argued that measures should exclude volumes already subject to existing sales contracts. This would in practice amount to an exemption of duties

⁽¹⁾ OJ L 258, 26.9.2008, p. 74.

which would undermine the remedial effect of measures, and is therefore rejected. Reference is also made to recitals 138 and 139 above.

- (159) The provisional Regulation imposed an anti-dumping duty in the form of a specific duty for each company resulting from the application of the injury elimination margin to the export prices used in the calculation of the dumping during the IP. This methodology is confirmed at the level of definitive measures.

10.5. Undertakings

- (160) At a late stage in the investigation several exporting producers in the PRC offered price undertakings. These were not considered to be acceptable given the significant price volatility of this product, the risk of duty avoidance and circumvention for this product (see recitals 124 and 125 of the provisional Regulation), and the fact that no guarantees were contained in the offers on the part of the Chinese authorities to allow for adequate monitoring in a context of companies not having been granted market economy treatment.

11. REGISTRATION

- (161) Imports of the product concerned were made subject to registration by Commission Regulation (EU) No 572/2012⁽¹⁾. That registration should cease. The possibility of collecting retroactive duties will be decided upon at a later stage, when full statistical data will be available.

12. DISCLOSURE

- (162) All parties were informed of the essential facts and considerations on the basis of which it was intended to impose a definitive anti-dumping duty on imports of the product concerned originating in the PRC. The parties were also granted a period within which they could make representations subsequent to the disclosure. The parties who so requested were granted the opportunity to be heard. Two groups of importers requested and were afforded hearings in the presence of the Hearing Officer of the Directorate-General for Trade.
- (163) As regards the Xinshiji judgment, the arguments brought forward had already been analysed and addressed in the general disclosure document. None of these arguments led consequently to the alteration of the essential facts and considerations on the basis of which it was decided to confirm the injury margin determined in the original investigation. With regard to the analogue country judgement, a group of importers repeated comments already made during the investigation regarding the scope of the partial reopening, the use of IP data and the determination of the normal value. Those comments are addressed, respectively, in recitals 43, 46 and 54 above. The same group of importers expressed the view that they were in favour of a system of safeguard

measures with quotas instead of anti-dumping duties. The reason for rejecting a quota system is explained above in recital 156. Furthermore it should be noted that safeguard measures can only be imposed in certain situations with very specific conditions, in compliance with Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports⁽²⁾. It is considered that anti-dumping duties are the most appropriate way of addressing injurious dumping. This group of importers also pointed out that, in relation with the issues raised in recital 44 and 85 above, the Commission did not open an interim review when requested to do so. It is reiterated that, as of the date of the analogue country judgement, it was no longer possible to conduct an interim review, as there was no more duty in force. The Commission should resume the analysis of the pending request for interim review as of the date of entry into force of this Regulation. If the analysis of the request shows that the conditions set out in Article 11(3) of the basic Regulation are respected, an interim review should be initiated as soon as possible.

- (164) In summary, after having considered all the comments after disclosure to interested parties of the findings of the investigation, it was concluded that none of them was of such a nature as to change the conclusions reached during the investigation.

13. DURATION OF MEASURES

- (165) This Regulation implements the Court judgements concerning the original Regulation. Therefore, this Regulation shall expire five years after the entry into force of the original Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby reimposed on imports of prepared or preserved mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids, not containing added spirit, whether or not containing added sugar or other sweetening matter, and as defined under CN heading 2008, currently falling within CN codes 2008 30 55, 2008 30 75 and ex 2008 30 90 (TARIC codes 2008 30 90 61, 2008 30 90 63, 2008 30 90 65, 2008 30 90 67 and 2008 30 90 69) and originating in the People's Republic of China.

2. The amount of the definitive anti-dumping duty applicable for products described in paragraph 1 produced by the companies below shall be as follows:

Company	EUR/tonne net product weight	TARIC additional code
Yichang Rosen Foods Co., Ltd, Yichang, Zhejiang	531,2	A886

⁽¹⁾ Commission Regulation (EU) No 572/2012 of 28 June 2012 making imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China subject to registration (OJ L 169, 29.6.2012, p. 50).

⁽²⁾ OJ L 84, 31.3.2009, p. 1.

Company	EUR/tonne net product weight	TARIC additional code
Huangyan No 1 Canned Food Factory, Huangyan, Zhejiang	361,4	A887
Zhejiang Xinshiji Foods Co., Ltd, Sanmen, Zhejiang and its related producer Hubei Xinshiji Foods Co., Ltd, Dangyang City, Hubei Province	490,7	A888
Cooperating exporting producers not included in the sample as set out in the Annex	499,6	A889
All other companies	531,2	A999

Article 2

1. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92

establishing the Community Customs Code⁽¹⁾ the amount of anti-dumping duty, calculated on the basis of Article 1 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 3

The customs authorities are hereby directed to cease the registration of imports carried out pursuant to Article 1 of Regulation (EU) No 572/2012.

Article 4

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

Article 5

This Regulation shall expire on 31 December 2013.

Article 6

Requests for review shall be admissible as of the entry into force of this Regulation.

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

Done at Brussels, 18 February 2013.

For the Council

The President

S. SHERLOCK

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

ANNEX

**COOPERATING EXPORTING PRODUCERS NOT INCLUDED IN THE SAMPLE
(TARIC additional code A889)**

Hunan Pointer Foods Co., Ltd, Yongzhou, Hunan
Ningbo Pointer Canned Foods Co., Ltd, Xiangshan, Ningbo
Yichang Jiayuan Foodstuffs Co., Ltd, Yichang, Hubei
Ninghai Dongda Foodstuff Co., Ltd, Ningbo, Zhejiang
Huangyan No 2 Canned Food Factory, Huangyan, Zhejiang
Zhejiang Xinchang Best Foods Co., Ltd, Xinchang, Zhejiang
Toyoshima Share Yidu Foods Co., Ltd, Yidu, Hubei
Guangxi Guiguo Food Co., Ltd, Guilin, Guangxi
Zhejiang Juda Industry Co., Ltd, Quzhou, Zhejiang
Zhejiang Iceman Group Co., Ltd, Jinhua, Zhejiang
Ningbo Guosheng Foods Co., Ltd, Ninghai
Yi Chang Yin He Food Co., Ltd, Yidu, Hubei
Yongzhou Quanhui Canned Food Co., Ltd, Yongzhou, Hunan
Ningbo Orient Jiuzhou Food Trade & Industry Co., Ltd, Yinzhou, Ningbo
Guangxi Guilin Huangguan Food Co., Ltd, Guilin, Guangxi
Ningbo Wuzhouxing Group Co., Ltd, Mingzhou, Ningbo

COMMISSION IMPLEMENTING REGULATION (EU) No 159/2013**of 21 February 2013****concerning the authorisation of a preparation of sodium benzoate, propionic acid and sodium propionate as a feed additive for pigs, poultry, bovines, sheep, goats, rabbits and horses and amending Regulations (EC) No 1876/2006 and (EC) No 757/2007****(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 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation. Article 10 of that Regulation provides for the re-evaluation of additives authorised pursuant to Council Directive 70/524/EEC ⁽²⁾.
- (2) A preparation of sodium benzoate, propionic acid and sodium propionate was authorised without a time limit in accordance with Directive 70/524/EEC as a feed additive for use on pigs and dairy cows by Commission Regulation (EC) No 1876/2006 ⁽³⁾ and for cattle for fattening by Commission Regulation (EC) No 757/2007 ⁽⁴⁾. That preparation was subsequently entered in the Register of feed additives as an existing product, in accordance with Article 10(1) of Regulation (EC) No 1831/2003.
- (3) In accordance with Article 10(2) of Regulation (EC) No 1831/2003 in conjunction with Article 7 thereof, an application was submitted for the re-evaluation of that preparation of sodium benzoate, propionic acid and sodium propionate as a feed additive for pigs and dairy cows and cattle for fattening and, in accordance with Article 7 of that Regulation, for a new use for pigs, poultry, bovines, sheep, goats, rabbits and horses, requesting that additive to be classified in the additive category 'technological additives'. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinions of 6 September 2011 ⁽⁵⁾ and 24 April 2012 ⁽⁶⁾ that, under the proposed conditions of use, the preparation of sodium benzoate, propionic acid and sodium propionate does not have an adverse effect

on animal health, human health provided that adequate measures to protect users are taken, or the environment, and that it is efficacious in preserving cereals and complete feedingstuff. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.

- (5) The assessment of the preparation of sodium benzoate, propionic acid and sodium propionate shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.
- (6) As a consequence of the granting of a new authorisation under Regulation (EC) No 1831/2003, Regulations (EC) No 1876/2006 and (EC) No 757/2007 should therefore be amended accordingly.
- (7) Since safety reasons do not require the immediate application of the modifications to the conditions of authorisation, it is appropriate to allow a transitional period for interested parties to prepare themselves to meet the new requirements resulting from the authorisation.
- (8) 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***Authorisation**

The preparation specified in the Annex, belonging to the additive category 'technological additives' and to the functional group 'preservatives', is authorised as an additive in animal nutrition, subject to the conditions laid down in that Annex.

*Article 2***Amendments to Regulation (EC) No 1876/2006**

Article 4 of Regulation (EC) No 1876/2006 and Annex IV thereto are deleted.

*Article 3***Amendments to Regulation (EC) No 757/2007**

Article 1 of Regulation (EC) No 757/2007 and Annex I thereto are deleted.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ OJ L 270, 14.12.1970, p. 1.

⁽³⁾ OJ L 360, 19.12.2006, p. 126.

⁽⁴⁾ OJ L 172, 30.6.2007, p. 43.

⁽⁵⁾ EFSA Journal 2011; 9(9):2357.

⁽⁶⁾ EFSA Journal 2012; 10(5):2681.

*Article 4***Transitional measures**

The preparation specified in the Annex and feed containing that preparation, which are produced and labelled before 14 September 2013 in accordance with the rules applicable before 14 March 2013 may continue to be placed on the market and used until the existing stocks are exhausted.

*Article 5***Entry into force**

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, 21 February 2013.

For the Commission

The President

José Manuel BARROSO

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						mg/kg of complete feedingstuff with a moisture content of 12 %			
Category of technological additives. Functional group: preservatives									
1a700	—	Preparation of sodium benzoate, propionic acid and sodium propionate	<i>Additive composition</i> Preparation of: sodium benzoate: 140 g/kg, propionic acid: 370 g/kg sodium propionate: 110 g/kg Water: 380 g/kg <i>Characterisation of the active substances</i> Sodium benzoate (C ₇ H ₅ O ₂ Na) ≥ 99 % after drying of two hours at 105 °C Propionic acid (C ₃ H ₆ O ₂) ≥ 99,5 % Sodium propionate (C ₃ H ₅ O ₂ Na) ≥ 99 % after drying of four hours at 105 °C <i>Analytical method</i> ⁽¹⁾ Quantification in feed additive: — determination of benzoate: reversed phase chromatography with UV detection (HPLC-UV) — total propionate: ion exclusion High Performance Liquid Chromatography with refractive index (HPLC-RI) — total sodium: atomic absorption spectrometry, AAS (EN ISO 6869)	Pigs Poultry Bovines Sheep Goats Rabbits Horses	—	—	10 000	1. Simultaneous use with other sources of the active substances shall not exceed the authorised maximum content. 2. Minimum content: — cereals with a moisture ≥ 15 % other than maize kernels: 3 000 mg/kg of cereals; — maize kernels with a moisture ≥ 15 %: 13 000 mg/kg of maize kernels; — complete feed with a moisture ≥ 12 %: 5 000 mg/kg of complete feed. 3. Maximum content in all cereals: 22 000 mg/kg of cereals. 4. For safety: it is recommended to use breathing and eyes protections and gloves during handling.	14 March 2023

⁽¹⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: http://irmm.jrc.ec.europa.eu/EURLs/EURL_feed_additives/Pages/index.aspx

COMMISSION IMPLEMENTING REGULATION (EU) No 160/2013**of 21 February 2013****amending Regulations (EC) No 162/2003, (EC) No 971/2008, (EU) No 1118/2010 and (EU) No 169/2011 and Implementing Regulation (EU) No 888/2011 as regards the name of the holder of the authorisation of diclazuril in animal feed****(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 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Janssen Pharmaceutica NV has submitted an application under Article 13(3) of Regulation (EC) No 1831/2003 proposing to change the name of the holder of the authorisation as regards Commission Regulations (EC) No 162/2003 of 30 January 2003 concerning the authorisation of an additive in feedingstuffs⁽²⁾, (EC) No 971/2008 of 3 October 2008 concerning a new use of a coccidiostat as additive in feedingstuffs⁽³⁾, (EU) No 1118/2010 of 2 December 2010 concerning the authorisation of diclazuril as a feed additive for chickens for fattening (holder of authorisation Janssen Pharmaceutica NV) and amending Regulation (EC) No 2430/1999⁽⁴⁾ and (EU) No 169/2011 of 23 February 2011 concerning the authorisation of diclazuril as a feed additive for guinea fowls (holder of authorisation Janssen Pharmaceutica N.V.)⁽⁵⁾ and Commission Implementing Regulation (EU) No 888/2011 of 5 September 2011 concerning the authorisation of diclazuril as a feed additive for turkeys for fattening (holder of authorisation Janssen Pharmaceutica N.V.) and amending Regulation (EC) No 2430/1999⁽⁶⁾.
- (2) The applicant claims that, with effect from 7 July 2011, Janssen Animal Health, a division of Janssen Pharmaceutica NV, was acquired by Eli Lilly and Company Ltd, which now owns the marketing rights for the additive diclazuril. The applicant has submitted relevant data supporting its request.
- (3) The proposed change of the terms of the authorisation is purely administrative in nature and does not entail a fresh assessment of the additive concerned. The European Food Safety Authority was informed of the application.
- (4) To allow Eli Lilly and Company Ltd to exploit its marketing rights it is necessary to change the terms of the authorisations.

- (5) Regulations (EC) No 162/2003, (EC) No 971/2008, (EU) No 1118/2010 and (EU) No 169/2011 and Implementing Regulation (EU) No 888/2011 should therefore be amended accordingly.

- (6) Since safety reasons do not require the immediate application of the amendments made by this Regulation to Regulations (EC) No 162/2003, (EC) No 971/2008, (EU) No 1118/2010 and (EU) No 169/2011 and Implementing Regulation (EU) No 888/2011, it is appropriate to provide for a transitional period during which existing stocks may be used up.

- (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***Amendment to Regulation (EC) No 162/2003**

In column 2 of the Annex to Regulation (EC) No 162/2003 the words 'Janssen Pharmaceutica NV' are replaced by 'Eli Lilly and Company Ltd'.

*Article 2***Amendment to Regulation (EC) No 971/2008**

In column 2 of the Annex to Regulation (EC) No 971/2008 the words 'Janssen Pharmaceutica nv' are replaced by 'Eli Lilly and Company Ltd'.

*Article 3***Amendment to Regulation (EU) No 1118/2010**

In column 2 of the Annex to Regulation (EU) No 1118/2010 the words 'Janssen Pharmaceutica NV' are replaced by 'Eli Lilly and Company Ltd'.

*Article 4***Amendment to Regulation (EU) No 169/2011**

In column 2 of the Annex to Regulation (EU) No 169/2011 the words 'Janssen Pharmaceutica N.V.' are replaced by 'Eli Lilly and Company Ltd'.

*Article 5***Amendment to Implementing Regulation (EU) No 888/2011**

In column 2 of the Annex to Implementing Regulation (EU) No 888/2011 the words 'Janssen Pharmaceutica N.V.' are replaced by 'Eli Lilly and Company Ltd'.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ OJ L 26, 31.1.2003, p. 3.

⁽³⁾ OJ L 265, 4.10.2008, p. 3.

⁽⁴⁾ OJ L 317, 3.12.2010, p. 5.

⁽⁵⁾ OJ L 49, 24.2.2011, p. 6.

⁽⁶⁾ OJ L 229, 6.9.2011, p. 9.

*Article 6***Transitional measure**

Existing stocks of this additive which are in conformity with the provisions applying before the date of entry into force of this Regulation may continue to be placed on the market and used until they are exhausted.

*Article 7***Entry into force**

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, 21 February 2013.

For the Commission

The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 161/2013**of 21 February 2013****concerning the authorisation of a preparation of sodium hydroxide as a feed additive for cats, dogs and ornamental fish****(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 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation. Article 10 of that Regulation provides for the re-evaluation of additives authorised pursuant to Council Directive 70/524/EEC⁽²⁾.
- (2) A preparation of Sodium hydroxide, CAS number 1310-73-2, was authorised without a time limit in accordance with Directive 70/524/EEC as a feed additive for use on cats and dogs by Commission Directive 86/525/EEC⁽³⁾. That preparation was subsequently entered in the Community Register of feed additives as an existing product, in accordance with Article 10(1) of Regulation (EC) No 1831/2003.
- (3) In accordance with Article 10(2) of Regulation (EC) No 1831/2003 in conjunction with Article 7 thereof, an application was submitted for the re-evaluation of sodium hydroxide, CAS number 1310-73-2, as a feed additive for cats and dogs and, in accordance with Article 7 of that Regulation, for a new use for ornamental fish, requesting that additive to be classified in the additive category 'technological additives'. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 11 September 2012⁽⁴⁾ that, taking into account the fact that this additive was already authorised for food use with the same function and under the proposed conditions of use, sodium hydroxide does not have an adverse effect on animal

health, and that its function in feed is essentially the same as in food as acidity regulator and therefore no further demonstration of efficacy is necessary. It concluded that no safety concerns would arise for users provided that appropriate protective measures are taken. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.

- (5) The assessment of sodium hydroxide shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of this preparation should be authorised as specified in the Annex to this Regulation.
- (6) Since safety reasons do not require the immediate application of the modifications to the conditions of authorisation, it is appropriate to allow a transitional period for the disposal of existing stocks of additive, premixtures and compound feed containing it, as authorised by Directive 86/525/EEC.
- (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

The preparation specified in the Annex, belonging to the additive category 'technological additives' and to the functional group 'acidity regulators', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

Article 2

The additive specified in the Annex and premixtures containing it which are produced and labelled before 14 March 2014 in accordance with the rules applicable before 14 March 2013 may continue to be placed on the market and used until the existing stocks are exhausted.

Compound feed containing the additive specified in the Annex which is produced and labelled before 14 March 2015 in accordance with the rules applicable before 14 March 2013 may continue to be placed on the market and used until the existing stocks are exhausted.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ OJ L 270, 14.12.1970, p. 1.

⁽³⁾ OJ L 310, 5.11.1986, p. 19.

⁽⁴⁾ EFSA Journal 2012; 10(10):2882.

Article 3

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, 21 February 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						mg/kg of complete feedingstuff with a moisture content of 12 %			
Category of technological additives. Functional group: acidity regulators									
1j524	—	Sodium hydroxide	<i>Additive composition</i> Sodium hydroxide 50 % w/w (water solution) <i>Characterisation of the active substance</i> Sodium hydroxide ≥ 98,0 % total alkali (calculated as NaOH) NaOH CAS No.: 1310-73-2 Produced by chemical synthesis <i>Method of Analysis</i> ⁽¹⁾ Determination of sodium hydroxide in feed additive: Titrimetry — FAO JECFA Combined Compendium for Food Additive Specifications, Monograph No 1 (2006) ‘sodium hydroxide’.	Cats, dogs and ornamental fish	—	—	—	1. For safety: breathing protection, eye protection, gloves and protective clothing shall be used during handling. 2. For use: the resulting total sodium concentration in feed shall not compromise the overall electrolyte balance.	14 March 2023

⁽¹⁾ Details of the analytical methods are available at the following addresses: http://irmm.jrc.ec.europa.eu/EURLs/EURL_feed_additives/Pages/index.aspx and <http://www.fao.org/ag/jecfa-additives/details.html?id=400>

COMMISSION IMPLEMENTING REGULATION (EU) No 162/2013**of 21 February 2013****amending the Annex to Regulation (EC) No 3199/93 on the mutual recognition of procedures for the complete denaturing of alcohol for the purposes of exemption from excise duty**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages ⁽¹⁾, and in particular Article 27(4) thereof,

Whereas:

- (1) Pursuant to Article 27(1)(a) of Directive 92/83/EEC, Member States are required to exempt from excise duty alcohol which has been completely denatured in accordance with the requirements of any Member State, provided that such requirements have been duly notified and accepted in accordance with the conditions laid down in paragraphs 3 and 4 of that Article.
- (2) Commission Regulation (EC) No 3199/93 of 22 November 1993 on the mutual recognition of procedures for the complete denaturing of alcohol for the purposes of exemption from excise duty ⁽²⁾ provides that the denaturants which are employed in each Member State for the purposes of completely denaturing alcohol in accordance with Article 27(1)(a) of Directive 92/83/EEC are to be described in the Annex to that Regulation.
- (3) The proliferation of denaturing procedures adds complexity to the denaturing system, weakens the ability for effective administration of the system, and offers more opportunities for fraud.
- (4) In 2008, Member States provided wide support for a project group operating under Decision No 1482/2007/EC of the European Parliament and of the Council of 11 December 2007 establishing a Community programme to improve the operation of taxation systems in the internal market (Fiscalis 2013) and repealing Decision No 2235/2002/EC ⁽³⁾, involving a large number of Customs Chemical Laboratories and the Joint Research Centre. The object of the project was to explore the possibility of applying common denaturing procedures (euro-denaturants) for the purposes of completely denaturing alcohol.
- (5) The project group suggested, in its final report published in June 2011 that a denaturing procedure consisting of 3 litres of isopropyl alcohol (IPA), 3 litres of methyl ethyl ketone (MEK) and of 1 gram of denatonium benzoate per hectolitre of absolute alcohol, could be considered for adoption as a common denaturing procedure for the purposes of completely denaturing alcohol. One main advantage of that common procedure is that it is likely to replace numerous procedures individual to the various Member States. That procedure should therefore be employed as a procedure common to all Member States for the purposes of completely denaturing alcohol in order to prevent evasion, avoidance and abuse in this area.
- (6) Subsequently, each Member State has communicated to the Commission a new list of requirements in accordance with Article 27(3) of Directive 92/83/EEC. Each of those lists referred to the common denaturing procedure and, in some cases, to other existing procedures. As regards existing procedures, certain Member States expressed the wish to maintain them for a transitional period or for a non-specified period of time due to specific technical requirements.
- (7) The Commission transmitted all the communications received to the other Member States on 28 June 2012.
- (8) None of the Member States objected to the proposed common denaturing procedure.
- (9) As regards existing procedures, no new elements have been raised indicating the existence of risk of evasion, avoidance and abuse.
- (10) In addition to the common denaturing procedure for the purposes of completely denaturing alcohol, patenting and related cost issues have led Austria to adopt an alternative procedure which is already employed by other Member States as a denaturing procedure.
- (11) In order to allow industry adequate time to exhaust stocks of denaturants and denatured products covered so far by Regulation (EC) No 3199/93, but which will no longer be covered once this Regulation becomes applicable, the application of this Regulation as regards Section I of this Annex should be deferred.

⁽¹⁾ OJ L 316, 31.10.1992, p. 21.

⁽²⁾ OJ L 288, 23.11.1993, p. 12.

⁽³⁾ OJ L 330, 15.12.2007, p. 1.

- (12) Regulation (EC) No 3199/93 should therefore be amended accordingly.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Excise Duties,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 3199/93 is replaced by the Annex to this Regulation.

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*.

It shall apply from 1 July 2013.

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

Done at Brussels, 21 February 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

List of authorised products with their Chemical Abstracts Service (CAS) registered number when available and formulas authorised for the complete denaturing of alcohol:

Acetone	CAS: 67-64-1
CI reactive red 24	CAS: 70210-20-7
Crude pyridine	CAS: not available
Crystal violet (C.I. No 42555)	CAS: 548-62-9
Denatonium benzoate	CAS: 3734-33-6
Ethanol	CAS: 64-17-5
Ethyl acetate	CAS: 141-78-6
Ethyl sec-amyl ketone	CAS: 541-85-5
Ethyl <i>tert</i> -butyl ether	CAS: 637-92-3
Fluorescein	CAS: 2321-07-5
Formaldehyde	CAS: 50-00-0
Fusel oil	CAS: 8013-75-0
Gasoline (including unleaded gasoline)	CAS: 86290-81-5
Isopropyl alcohol (IPA)	CAS: 67-63-0
Kerosene	CAS: 8008-20-6
Lamp oil	CAS: 64742-47-8 to 64742-48-9
Methanol	CAS: 67-56-1
Methyl ethyl ketone (butanone) (MEK)	CAS: 78-93-3
Methyl isobutyl ketone	CAS: 108-10-1
Methyl isopropyl ketone	CAS: 563-80-4
Methyl violet	CAS: 8004-87-3
Methylene blue	CAS: 61-73-4
Mineral naphtha	CAS: not available
Solvent naphtha	CAS: 8030-30-6
Pyridine (or Pyridine bases)	CAS: 110-86-1
Spirit of turpentine	CAS: 8006-64-2
Technical petrol	CAS: 92045-57-3
<i>tert</i> -butyl alcohol	CAS: 75-65-0
Thiophene	CAS: 110-02-1
Thymol blue	CAS: 76-61-9
Wood naphtha	Not available

Synonyms of the authorised products are available in various European languages in the European Customs Inventory of Chemical Substances database.

The term 'absolute ethanol' is used throughout the Annex in conformity with the terminology used by International Union of Pure and Applied Chemistry (IUPAC).

I. Denaturing procedure employed in all Member States

Per hectolitre of absolute ethanol:

— 3 litres isopropyl alcohol (IPA),

- 3 litres methyl ethyl ketone (MEK),
- 1 gram denatonium benzoate.

Member States, for internal market, are allowed to add a dye to give to the product a characteristic colour, which makes it immediately identifiable.

II. Additional denaturing procedures employed in certain Member States

Czech Republic

Per hectolitre of absolute ethanol, any of the following formulations:

1. — 0,4 litre solvent naphtha,
 - 0,2 litre kerosene,
 - 0,1 litre technical petrol.
2. — 3 litres ethyl *tert*-butyl ether,
 - 1 litre isopropyl alcohol,
 - 1 litre unleaded gasoline,
 - 10 milligrams fluorescein.

Germany

Per hectolitre of absolute ethanol:

One litre ketone mixture, consisting of:

- 95 % to 96 % by weight of methyl ethyl ketone (MEK),
 - 2,5 % to 3 % by weight of methyl isopropyl ketone (3-methyl-2-butanone),
 - 1,5 % to 2 % by weight of ethyl sec-amyl ketone (5-methyl-3-heptanone),
- together with 1 gram denatonium benzoate.

Estonia

Per hectolitre of absolute ethanol:

- 3 litres acetone,
- 2 grams denatonium benzoate.

Ireland

A base is produced by mixing the following:

- 90 % by volume ethanol,
- 9,5 % by volume wood naphtha,
- 0,5 % by volume crude pyridine.

To each 10 hectolitres of the base add:

- 3,75 litres mineral naphtha (petroleum oil),
- 1,5 grams methyl violet.

Note: The wood naphtha and crude pyridine components of the base may be substituted with 10 % by volume of methanol.

Greece

Only low quality alcohol (heads and tails from distillation), with an alcoholic strength of at least 93 % volume and not exceeding 96 % volume can be denatured.

Per hectolitre of hydrated alcohol of 93 % volume the following substances are added:

- 2 litres methanol,
- 1 litre spirit of turpentine,

- 0,50 litre lamp oil,
- 0,40 gram methylene blue.

At a temperature of 20 °C, the end product will reach, in its unaltered state, 93 % volume.

Italy

Per hectolitre of absolute ethanol the following is added:

- 125 grams of thiophene,
- 0,8 gram of denatonium benzoate,
- 3 grams of CI reactive red 24 (red colorant), solution at 25 % w/w,
- 2 litres of methyl ethyl ketone (MEK).

The ethyl alcohol to be denatured must have an ethyl alcohol content of at least 83 % by volume and a strength measured on the EC alcoholmeter of at least 90 % by volume.

In order to ensure the complete solubility of all the components, the denaturant mixture must be prepared in ethyl alcohol below 96 % by volume measured on the EC alcoholmeter.

The purpose of CI reactive red 24 is to give the product a characteristic red colour, which makes the purpose of the product immediately identifiable.

Latvia

1. Per hectolitre of absolute ethanol, any of the following formulations:

(a) at least:

- 9 litres isopropyl alcohol,
- 1 litre acetone,
- 0,4 gram methylene blue or thymol blue or crystal violet;

(b) at least:

- 3 litres methyl isobutyl ketone,
- 2 litres methyl ethyl ketone (MEK);

(c) at least:

- 3 litres acetone,
- 2 grams denatonium benzoate;

(d) at least 10 litres ethyl acetate.

2. Per 1 hectolitre of dehydrated ethyl alcohol (containing not more than 0,5 % water):

Gasoline at minimum 5 litres and maximum 7 litres.

Lithuania

Per hectolitre of absolute ethanol:

- 3 litres acetone,
- 2 grams denatonium benzoate.

Hungary

Alcoholic products by reference to its pure alcohol quantity, contain at least, one of the following:

- (a) 2 % by weight of methyl ethyl ketone (MEK), 3 % by weight of methyl isobutyl ketone and 0,001 % by weight of denatonium benzoate;
- (b) 1 % by weight of methyl ethyl ketone (MEK), and 0,001 % by weight of denatonium benzoate;
- (c) 2 % by weight of isopropyl alcohol, 1 % by weight of *tert*-butyl alcohol, and 0,001 % by weight of denatonium benzoate.

Malta

A base is produced by mixing the following:

- 90 % by volume ethanol,

— 9,5 % by volume wood naphtha,

— 0,5 % by volume crude pyridine.

To each 10 hectolitres of the base add:

— 3,75 litres mineral naphtha (petroleum oil),

— 1,5 grams methyl violet.

Netherlands

Per hectolitre of absolute ethanol:

Five litres of a mixture consisting of:

— 60 % by volume of methanol,

— 20 % by volume of acetone,

— 11 % by volume of fusel oil (a concentrate of by-products of alcohol distillation),

— 8 % by volume of water,

— 0,5 % by volume of methyl ethyl ketone (MEK),

— 0,5 % by volume of formalin (a watery solution of 37 % by weight of formaldehyde).

Austria

Per hectolitre of absolute ethanol:

One litre ketone mixture, consisting of:

— 95 % to 96 % by weight of methyl ethyl ketone (MEK),

— 2,5 % to 3 % by weight of methyl isopropyl ketone,

— 1,5 % to 2 % by weight of ethyl sec-amyl ketone,

together with 1 gram denatonium benzoate.

Poland

Per hectolitre of absolute ethanol, any of the following formulations:

1. 0,75 litre ketone mixture, consisting of:

— 95 % to 96 % by weight of methyl ethyl ketone (MEK),

— 2,5 % to 3 % by weight of methyl isopropyl ketone,

— 1,5 % to 2 % by weight of ethyl sec-amyl ketone,

together with 0,25 litre of pyridine bases.

2. One litre ketone mixture, consisting of:

— 95 % to 96 % by weight of methyl ethyl ketone (MEK),

— 2,5 % to 3 % by weight of methyl isopropyl ketone,

— 1,5 % to 2 % by weight of ethyl sec-amyl ketone,

together with 1 gram denatonium benzoate.

Romania

Per hectolitre of absolute ethanol:

— 2 litres methyl ethyl ketone (MEK),

— 1 gram denatonium benzoate,

— 0,2 gram methylene blue.

Slovenia

Per hectolitre of absolute ethanol:

— 1 580 grams isopropyl alcohol,

- 790 grams *tert*-butyl alcohol,
- 0,79 gram denatonium benzoate.

Slovakia

Per hectolitre of absolute ethanol:

1. 3 litres methyl isobutyl ketone,
2 litres methyl ethyl ketone (MEK),
1 gram denatonium benzoate,
0,2 gram methylene blue.
2. 1,5 litres technical petrol,
1,5 litres kerosene,
2 grams denatonium benzoate.

Finland

Per hectolitre of absolute ethanol any of the following formulations:

1. 2 litres methyl ethyl ketone (MEK),
3 litres methyl isobutyl ketone.
2. 2 litres acetone,
3 litres methyl isobutyl ketone.

Sweden

Per hectolitre of absolute ethanol:

- 3 litres methyl isobutyl ketone,
- 2 litres methyl ethyl ketone (MEK).

United Kingdom

A base is produced by mixing the following:

- 90 % by volume ethanol,
- 9,5 % by volume wood naphtha,
- 0,5 % by volume crude pyridine.

To each 10 hectolitres of the base add:

- 3,75 litres mineral naphtha (petroleum oil),
 - 1,5 grams methyl violet (C.I. No 42555).
-

COMMISSION IMPLEMENTING REGULATION (EU) No 163/2013**of 21 February 2013****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, 21 February 2013.

*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	IL	83,8
	MA	61,8
	TN	86,4
	TR	102,8
	ZZ	83,7
0707 00 05	EG	191,6
	MA	190,0
	TR	175,4
	ZZ	185,7
0709 91 00	EG	66,7
	ZZ	66,7
0709 93 10	MA	44,1
	TR	102,3
	ZZ	73,2
0805 10 20	EG	51,1
	IL	71,3
	MA	63,4
	TN	56,2
	TR	58,0
	ZZ	60,0
0805 20 10	IL	125,9
	MA	109,8
	ZZ	117,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	EG	57,7
	IL	144,7
	KR	134,8
	MA	120,0
	TR	70,3
	ZZ	105,5
0805 50 10	TR	72,2
	ZZ	72,2
0808 10 80	CN	83,6
	MK	31,3
	US	180,2
	ZZ	98,4
0808 30 90	AR	140,0
	CL	228,4
	CN	77,9
	TR	172,7
	US	187,5
	ZA	109,1
	ZZ	152,6

⁽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'.

COMMISSION IMPLEMENTING REGULATION (EU) No 164/2013**of 21 February 2013****amending Regulation (EC) No 1484/95 as regards representative prices in the poultrymeat and egg sectors and for egg albumin**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 143 in conjunction with Article 4 thereof,

Having regard to Council Regulation (EC) No 614/2009 of 7 July 2009 on the common system of trade for ovalbumin and lactalbumin ⁽²⁾, and in particular Article 3(4) thereof,

Whereas:

(1) Commission Regulation (EC) No 1484/95 ⁽³⁾ lays down detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.

(2) Regular monitoring of the data used to determine representative prices for poultrymeat and egg products and for

egg albumin shows that the representative import prices for certain products should be amended to take account of variations in price according to origin.

(3) Regulation (EC) No 1484/95 should be amended accordingly.

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

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is replaced by the text set out 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, 21 February 2013.

*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 181, 14.7.2009, p. 8.

⁽³⁾ OJ L 145, 29.6.1995, p. 47.

ANNEX

‘ANNEX I

CN code	Description of goods	Representative price (EUR/100 kg)	Security pursuant to Article 3(3) (EUR/100 kg)	Origin ⁽¹⁾
0207 12 10	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “70 % chickens”, frozen	158,2	0	AR
		121,7	0	BR
0207 12 90	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “65 % chickens”, frozen	153,1	0	AR
		150,0	0	BR
0207 14 10	Fowls of the species <i>Gallus domesticus</i> , boneless cuts, frozen	271,6	9	AR
		241,2	18	BR
		318,4	0	CL
		223,0	23	TH
0207 27 10	Turkeys, boneless cuts, frozen	280,0	5	BR
		323,6	0	CL
0408 11 80	Egg yolks	569,2	0	AR
0408 91 80	Eggs, not in shell, dried	486,0	0	AR
1602 32 11	Preparations of fowls of the species <i>Gallus domesticus</i> , uncooked	266,7	6	BR
		206,3	24	TH
3502 11 90	Egg albumin, dried	750,3	0	AR

⁽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”.

DIRECTIVES

COMMISSION DIRECTIVE 2013/7/EU

of 21 February 2013

amending Directive 98/8/EC of the European Parliament and of the Council to include Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride as an active substance in Annex I thereto

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market ⁽¹⁾, and in particular the second subparagraph of Article 16(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market ⁽²⁾ establishes a list of active substances to be assessed, with a view to their possible inclusion in Annex I, IA or IB to Directive 98/8/EC. That list includes Quaternary ammonium compounds, benzyl-C₁₂₋₁₆-alkyldimethyl, chlorides, which is synonymous with Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride.

(2) Pursuant to Regulation (EC) No 1451/2007, Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride has been evaluated in accordance with Article 11(2) of Directive 98/8/EC for use in product-type 8, wood preservatives, as defined in Annex V to that Directive.

(3) Italy was designated as Rapporteur Member State and submitted the competent authority report, together with a recommendation, to the Commission on 14 August 2007 in accordance with Article 10(5) and (7) of Commission Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market, and amending Regulation (EC) No 1896/2000 ⁽³⁾.

(4) The competent authority report was reviewed by the Member States and the Commission. In accordance with Article 15(4) of Regulation (EC) No 1451/2007, the findings of the review were incorporated, within the Standing Committee on Biocidal Products on 21 September 2012, in an assessment report.

(5) It appears from the evaluations that biocidal products used as wood preservatives and containing Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride may be expected to satisfy the requirements laid down in Article 5 of Directive 98/8/EC. It is therefore appropriate to include Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride for use in product type 8 in Annex I to that Directive.

(6) Not all potential uses and exposure scenarios have been evaluated at Union level. For example, neither use by non-professionals, nor exposure of food or feeding stuff were assessed. It is therefore appropriate to require that Member States assess those uses or exposure scenarios and those risks to human populations and to environmental compartments that have not been representatively addressed in the Union level risk assessment and, when granting product authorisations, ensure that appropriate measures are taken or specific conditions imposed in order to reduce the identified risks to acceptable levels.

(7) In view of the risks identified for human health, it is appropriate to require that safe operational procedures are established, that products are used with appropriate personal protective equipment, and that products are not applied on wood with which children may enter in direct contact, unless it can be demonstrated in the application for product authorisation that risks can be reduced to an acceptable level.

(8) In view of the risks identified for the environment, it is appropriate to require that industrial or professional application is conducted within a contained area or on impermeable hard standing with bunding, that freshly treated timber is stored after treatment on impermeable hard standing to prevent direct losses to soil or water, and that any losses from the application of products used as wood preservatives and containing Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride are collected for reuse or disposal.

⁽¹⁾ OJ L 123, 24.4.1998, p. 1.

⁽²⁾ OJ L 325, 11.12.2007, p. 3.

⁽³⁾ OJ L 307, 24.11.2003, p. 1.

- (9) Unacceptable risks for the environment were identified for situations where wood treated with Alkyl (C_{12-16}) dimethylbenzyl ammonium chloride was continually exposed to the weather or subject to frequent wetting (use class 3 as defined by OECD ⁽⁴⁾), was used for outdoor constructions near or above water (the 'bridge' scenario in use class 3, as defined by OECD ⁽⁵⁾) or was in contact with fresh water (use class 4b as defined by OECD ⁽⁶⁾). It is therefore appropriate to require that products are not authorised for the treatment of wood intended for those uses, unless data is submitted demonstrating that the product will meet the requirements of both Article 5 of and Annex VI to Directive 98/8/EC, if necessary by the application of appropriate risk mitigation measures.
- (10) The provisions of this Directive should be applied simultaneously in all Member States in order to ensure equal treatment on the Union market of biocidal products of product-type 8 containing the active substance Alkyl (C_{12-16}) dimethylbenzyl ammonium chloride and also to facilitate the proper operation of the biocidal products market in general.
- (11) A reasonable period should be allowed to elapse before an active substance is included in Annex I to Directive 98/8/EC, in order to permit Member States and interested parties to prepare themselves to meet the new requirements entailed and to ensure that applicants who have prepared dossiers can benefit fully from the 10-year period of data protection, which, in accordance with Article 12(1)(c)(ii) of Directive 98/8/EC, starts from the date of inclusion.
- (12) After inclusion, Member States should be allowed a reasonable period to implement Article 16(3) of Directive 98/8/EC.
- (13) Directive 98/8/EC should therefore be amended accordingly.
- (14) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽⁷⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments.
- (15) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 98/8/EC is amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by 31 January 2014 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those provisions from 1 February 2015.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 21 February 2013.

For the Commission

The President

José Manuel BARROSO

⁽⁴⁾ OECD Series on Emission Scenario Documents, Number 2, 'Emission Scenario Document for Wood Preservatives, part 2', p. 64.

⁽⁵⁾ Ibid.

⁽⁶⁾ Ibid.

⁽⁷⁾ OJ C 369, 17.12.2011, p. 14.

ANNEX

In Annex I to Directive 98/8/EC, the following entry is added:

No	Common Name	IUPAC Name Identification Numbers	Minimum degree of purity of the active substance (*)	Date of inclusion	Deadline for compliance with Article 16(3), unless one of the exceptions indicated in the footnote to this heading applies (**)	Expiry date of inclusion	Product type	Specific provisions (***)
'64	Alkyl (C ₁₂₋₁₆) dimethylbenzyl ammonium chloride; C ₁₂₋₁₆ -ADBAC	IUPAC name: Not applicable EC No: 270-325-2 CAS No: 68424-85-1	Dry weight: 940 g/kg	1 February 2015	31 January 2017	31 January 2025	8	The Union level risk assessment did not address all potential uses and exposure scenarios; certain uses and exposure scenarios, such as use by non-professionals and exposure of food or feed, were excluded. When assessing the application for authorisation of a product in accordance with Article 5 and Annex VI, Member States shall assess, where relevant for the particular product, those uses or exposure scenarios and those risks to human populations and to environmental compartments that have not been representatively addressed in the Union level risk assessment. Member States shall ensure that authorisations are subject to the following conditions: (1) For industrial or professional users safe operational procedures shall be established, and products shall be used with appropriate personal protective equipment, unless it can be demonstrated in the application for product authorisation that risks can be reduced to an acceptable level by other means. (2) Products shall not be used for treatment of wood with which children may enter in direct contact, unless it can be demonstrated in the application for product authorisation that risks can be reduced to an acceptable level. (3) Labels and, where provided, safety data sheets of products authorised shall indicate that industrial or professional application shall be conducted within a contained area or on impermeable hard standing with bunding, and that freshly treated timber shall be stored after treatment on impermeable hard standing to prevent direct losses to soil or water, and that any losses from the application of the product shall be collected for reuse or disposal. (4) Products shall not be authorised for treatment of wood that will be in contact with fresh water or used for outdoor constructions near or above water, continually exposed to the weather or subject to frequent

No	Common Name	IUPAC Name Identification Numbers	Minimum degree of purity of the active substance (*)	Date of inclusion	Deadline for compliance with Article 16(3), unless one of the exceptions indicated in the footnote to this heading applies (**)	Expiry date of inclusion	Product type	Specific provisions (***)
								wetting, unless data is submitted to demonstrate that the product will meet the requirements of Article 5 and Annex VI, if necessary by the application of appropriate mitigation measures.'

(*) The purity indicated in this column was the minimum degree of purity of the active substance used for the evaluation made in accordance with Article 11. The active substance in the product placed on the market can be of equal or different purity if it has been proven technically equivalent with the evaluated substance.

(**) For products containing more than one active substance covered by Article 16(2), the deadline for compliance with Article 16(3) is that of the last of its active substances to be included in this Annex. For products for which the first authorisation has been granted later than 120 days before the deadline for compliance with Article 16(3) and a complete application has been submitted for mutual recognition in accordance with Article 4(1) within 60 days of the granting of the first authorisation, the deadline for compliance with Article 16(3) in relation to that application is extended to 120 days after the date of reception of the complete application for mutual recognition. For products for which a Member State has proposed to derogate from mutual recognition in accordance with Article 4(4), the deadline for compliance with Article 16(3) is extended to 30 days after the date of the Commission Decision adopted in accordance with the second subparagraph of Article 4(4).

(***) For the implementation of the common principles of Annex VI, the content and conclusions of assessment reports are available on the Commission website: <http://ec.europa.eu/comm/environment/biocides/index.htm>

DECISIONS

COUNCIL DECISION

of 18 February 2013

appointing one French member and two French alternate members of the Committee of the Regions

(2013/101/EU)

THE COUNCIL OF THE EUROPEAN UNION,

(a) as member:

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

— Mr Pierrick MASSIOT, *président du Conseil régional de Bretagne*;

Having regard to the proposal of the French Government,

and

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.

(b) as alternate members:

— Ms Josette BOREL-LECERTIN, *présidente du Conseil régional de Guadeloupe*,

(2) A member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Jean-Yves Le DRIAN.

— Mr Daniel DUGLERY, *conseiller régional d'Auvergne*.

(3) Two alternate members' seats on the Committee of the Regions have become vacant following the end of the terms of office of Mr Victorin LUREL and Ms Caroline CAYEUX.

Article 2

This Decision shall take effect on the day of its adoption.

HAS ADOPTED THIS DECISION:

Done at Brussels, 18 February 2013.

Article 1

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

For the Council
The President
S. SHERLOCK

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

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