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II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 372/2013

of 22 April 2013

amending Implementing Regulation (EU) No 1008/2011 imposing a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the People's Republic of China following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁽¹⁾ ('the basic Regulation'), and in particular Article 9(4) and Article 11(3), (5) and (6) thereof,

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

Whereas:

A. PROCEDURE

1. Previous investigations and existing anti-dumping measures

- (1) In July 2005, by Regulation (EC) No 1174/2005⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the People's Republic of China ('the PRC'). The measures consisted of an *ad valorem* anti-dumping duty ranging between 7,6 % and 46,7 %.
- (2) In July 2008, by Regulation (EC) No 684/2008⁽³⁾, the Council, following a product scope interim review, clarified the product scope of the original investigation.
- (3) In June 2009, by Regulation (EC) No 499/2009⁽⁴⁾, the Council, following an anti-circumvention investigation, extended the definitive anti-dumping duty applicable to

'all other companies' imposed by Regulation (EC) No 1174/2005 to hand pallet trucks and their essential parts consigned from Thailand whether declared as originating in Thailand or not.

- (4) In October 2011, by Implementing Regulation (EU) No 1008/2011⁽⁵⁾, the Council imposed a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the PRC following an expiry review pursuant to Article 11(2) of the basic Regulation. The extended duty as mentioned in recital 3 above was also maintained by Implementing Regulation (EU) No 1008/2011.

2. Initiation of a partial interim review

- (5) During the expiry review the European Commission ('Commission') noticed a change in the competition landscape on the Union market as of the imposition of the measures. Indeed, the Chinese exporting producer with the lowest duty rate — who was granted market economy treatment ('MET') in the original investigation — was able to virtually take over a very big part of the Union market and increased significantly its share of imports in the Union. The Commission also had doubts with regard to the original MET determination in view of prima facie evidence of distortions on the steel market in the PRC. In this context, the circumstances on the basis of which the existing measures were established were considered to have changed and those changes seemed to be of a lasting nature.
- (6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced by a notice published on 14 February 2012 in the *Official Journal of the European Union*⁽⁶⁾ ('the Notice of initiation'), the *ex-officio* initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation limited in scope to the examination of dumping in respect of Chinese exporting producers.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 189, 21.7.2005, p. 1.

⁽³⁾ OJ L 192, 19.7.2008, p. 1.

⁽⁴⁾ OJ L 151, 16.6.2009, p. 1.

⁽⁵⁾ OJ L 268, 13.10.2011, p. 1.

⁽⁶⁾ OJ C 41, 14.2.2012, p. 14.

3. Review investigation period

- (7) The investigation of the level of dumping covered the period from 1 January to 31 December 2011 ('the review investigation period' or 'the RIP').

4. Parties concerned

- (8) The Commission officially advised exporting producers, unrelated importers known to be concerned, the authorities of the PRC and the Union industry of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation.
- (9) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (10) In view of the potentially large number of exporting producers and unrelated importers, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the initiation of the review and to provide the Commission with information requested in the Notice of initiation. Two exporting producers and eight unrelated importers came forward to cooperate. Sampling was therefore not necessary for both exporting producers and unrelated importers.
- (11) The Commission sent questionnaires and MET claim forms to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from one Chinese exporting producer, Zhejiang Noblift Equipment Joint Stock Co. Ltd ('Noblelift'), and from three unrelated importers.
- (12) The Commission sought and verified all information it deemed necessary for the determination of dumping. A verification visit was carried out at the premises of Noblift in Changxing, PRC.
- (13) In light of the need to establish a normal value for the exporting producer in the PRC to which MET was not granted, a verification at the premises of the following producer in Brazil, which was used as an analogue country, took place:

— Paletrans Equipamentos Ltda, Cravinhos, São Paulo ('Paletrans').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (14) The product concerned by this review is the same as the one in the original investigation and clarified by the

product scope interim review, namely hand pallet trucks and their essential parts, i.e. chassis and hydraulics, originating in the PRC, currently falling within CN codes ex 8427 90 00 and ex 8431 20 00. For the purpose of this Regulation, hand pallet trucks are trucks with wheels supporting lifting fork arms for handling pallets, designed to be manually pushed, pulled and steered, on smooth, level, hard surfaces, by a pedestrian operator using an articulated tiller. The hand pallet trucks are only designed to raise a load, by pumping the tiller, to a height sufficient for transporting and do not have any other additional functions or uses such as for example: (i) to move and to lift the loads in order to place them higher or assist in storage of loads (highlifters); (ii) to stack one pallet above the other (stackers); (iii) to lift the load to a working level (scissorlifts); or (iv) to lift and to weigh the loads (weighing trucks).

2. Like product

- (15) The investigation confirmed that the product concerned and the product manufactured and sold on the domestic market in the PRC, the product manufactured and sold in the analogue country, Brazil, and the product manufactured and sold in the Union by the Union producers have the same basic physical and technical characteristics as well as the same uses.
- (16) Those products are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

(a) Market economy treatment ('MET')

- (17) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC normal value is determined in accordance with paragraphs 1 to 6 of that Article for those producers which were found to meet the criteria laid down in point (c) of Article 2(7) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. For ease of reference only, these criteria are set out in a summarised form as follows:
- business decisions and costs are made in response to market signals and without significant State interference; and costs of major inputs substantially reflect market values,
 - firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,
 - there are no significant distortions carried over from the former non-market economy system,

- bankruptcy and property laws guarantee legal certainty and stability,
 - exchange rate conversions are carried out at market rates.
- (18) Noblelift, requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the deadlines given.
- (19) The Commission sought all information deemed necessary and verified all information submitted in the MET application at the premises of the company in question.
- (20) The investigation established that the prices paid by Noblelift in the RIP for Chinese hot-rolled carbon steel, a main raw material accounting for about 25 % of the cost of a finished product, were significantly distorted as they stood approximately between 24 % and 31 % below international prices over the same period. The international prices were based on statistics for the Union and North American markets from the *Steel Business Briefing*⁽¹⁾ as well as from Comext import prices. On that basis it was found that Chinese steel prices clearly did not reflect market values. Moreover, there is an established practice of State interference in the market of raw materials. The China 12th five-year plan (2011-15) for the Iron and Steel sector contains a series of measures which demonstrate that steel companies have no possibility other than to act in line with the Chinese Government instructions due to the firm control the Chinese State has. It is thus concluded that Noblelift does not fulfil the requirements of the first criterion of MET.
- (21) Furthermore, in the financial year 2010, a related company gave Noblelift a bank guarantee for two loans representing a significant proportion of that related company's and Noblelift's total assets. The guarantees were disclosed neither in Noblelift's financial statements nor in the related company's accounts. This is not in line with IAS 24 (Related Party Disclosures) and the auditor had no reservation on this practice. The disclosure of related party transactions in the financial statements is important because it draws attention to possible effects on the financial position of a company. In this case, the non-disclosure of significant commitments such as the guarantees in question does not allow a proper assessment of the company's operations and in particular the risks and opportunities the company is facing. Therefore, it is considered that the company's accounting records have not been properly audited in line with international accounting standards and, thus, it does not fulfil the requirements of the second criterion.
- (22) Finally, Noblelift received State benefits in the form of preferential income tax as well as grants which distort its financial situation and, thus, it does not fulfil the requirements of the third criterion.
- (23) The exporting producer concerned and the Union industry were given an opportunity to comment on the above findings.
- (24) Following the disclosure of the MET findings, Noblelift requested more details with regard to the calculation of the international market price for steel. The company argued that distortions in raw material prices should be dealt with by adjusting the normal value in the dumping calculation rather than by denying MET. However, Article 2(7)(c) of the basic Regulation is very clear and requires that 'costs of major inputs substantially reflect market values'. Hence, any adjustment in the dumping calculations in order to address the distorted input costs would render Article 2(7)(c) largely meaningless. The comments could therefore not alter the above findings.
- (25) Following the disclosure of the final findings, Noblelift reiterated its arguments. It stated firstly that the Commission failed to disclose the details, i.e. all the data used for the calculation of differences in raw material prices.
- (26) In this respect, it is noted first and foremost that the sources of data for the comparisons of steel prices have been indicated by the Commission on several occasions. The Commission repeated the explanations provided earlier in the proceeding that the prices based on the *Steel Business Briefing* were copyright protected as the service is available on subscription. Consequently, the Commission is legally prevented from publicly disclosing those data directly but the database is otherwise available and can be accessed with payment of the appropriate fee. Nevertheless, in order to ensure a balance between the protection of intellectual property rights and the protection of the rights of defence, the data used was verified by the Hearing Officer of the Directorate-General for External Trade, who confirmed the calculation of the price difference and communicated the result of his verification to Noblelift.
- (27) It is further noted that the *Steel Business Briefing* describes exactly the methodology used (dimensions, thickness, width, point in transport). Those parameters are general and are a guide which is also indicative of the level of detail in price comparisons of raw materials which aim at establishing whether costs of major inputs substantially reflect market values. The Commission has used European and North American prices as reference.
- (28) Noblelift further claimed that in the original investigation, differences between domestic steel prices in the PRC and international steel prices were not considered as a factor preventing the company from meeting the first MET criterion. As stated in recital 22 of Commission

(1) <http://www.steelbb.com/steelprices/>

Regulation (EC) No 128/2005⁽¹⁾ of 27 January 2005 imposing a provisional anti-dumping duty in the framework of the original investigation, *'For all four companies, it was established (...) that costs and prices reflected market values'*. Indeed, the original investigation did not establish a substantial price difference between raw materials procured locally in the PRC and those purchased at international prices. However, this conclusion cannot prevent the institutions from finding a price difference in a later investigation should the circumstances be different and there is a price difference. As indicated in recital 76 below the circumstances have significantly changed since 2004 (time of the original investigation) and 2011 (the IP of the review at hand), i.e. in a period of seven years. In this regard, and in particular during the expiry review investigation in 2010, *prima facie* evidence of price distortions in the steel market in the PRC, due to State interference, were collected. This also constituted one of the reasons which led to the *ex-officio* initiation of the current review and indeed was confirmed in the current investigation (see recital 20 above).

- (29) Next, Noblelift reiterated its comments concerning the non-material impact of loan guarantees or the negligible impact of state benefits. In this respect, it is noted that Article 2(7)(c) of the basic Regulation is clear and does not refer to material impact on financial results ('firms have one set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes'). In any case, as stated above in recital 21, the non-disclosure of significant commitments such as the loan guarantees in question does not allow a proper assessment of the company's operations and in particular the risks and opportunities the company is facing. As far as state benefits are concerned, the Commission has already replied to the party in the course of the investigation that those benefits represented amounts exceeding 10 million RMB. The claims could thus not be accepted.
- (30) Finally, Noblelift argued that the investigation should have been terminated due to violation of the three-month deadline for the MET determination as specified in Article 2(7)(c) the basic Regulation. In this respect, reference is made to an amendment introduced by Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community⁽²⁾ and the retroactive effects thereof. Further, it is noted that the MET determination was made more than three months after the beginning of the investigation due to the procedural aspects and time constraints of the investigation. Indeed, the increased complexity of issues raised in the context of MET assessments has shown that the three-month deadline was virtually impossible to adhere to. It

is noted however that the timing of the determination did not have an impact on the outcome.

- (31) Consequently, it is concluded that the comments suggesting that MET should be granted are not justified.

- (32) In view of the above and pursuant to Article 2(7)(c) of the basic Regulation, it is determined not to grant MET to Noblelift.

(b) *Normal value*

Analogue country

- (33) According to Article 2(7)(a) of the basic Regulation, for non-market economy countries and, to the extent that MET could not be granted, for countries in transition, normal value has to be established on the basis of the price or constructed value in an analogue country.
- (34) In the original investigation, Canada served as an analogue country for the purposes of establishing a normal value. Given that production in Canada had ceased, Brazil was envisaged as an analogue country in the Notice of initiation of the present review.
- (35) Two exporting producers and an importer objected to the proposal to use Brazil as an analogue country. The arguments against the choice of Brazil were that there was a low degree of competition on the Brazilian market for hand pallet trucks due to the very small number of domestic producers and, thus, sales prices, profits as well as production costs in Brazil are inflated. The exporting producers in question suggested India, Malaysia or Taiwan as appropriate analogue countries.
- (36) Following those comments, the Commission contacted 38 Indian, 3 Taiwanese, 2 Malaysian and 2 Brazilian known producers of hand pallet trucks by sending them the relevant questionnaire. Cooperation could be obtained from only one producer in Brazil: Palettrans.
- (37) Following the disclosure of the final findings and the Commission's proposal, parties reiterated their comments that Brazil was not an appropriate choice of analogue country due to the lack of competition on the Brazilian market. Parties alleged that the cooperating analogue country producer enjoyed a monopolistic position on the Brazilian market reinforced by high import duties. Other comments related to deficiencies in the non-confidential questionnaire reply of the analogue country producer. Finally, it was claimed that

⁽¹⁾ OJ L 25, 28.1.2005, p. 16.

⁽²⁾ OJ L 344, 14.12.2012, p. 1.

adjustments should be made to account for differences between the analogue country producer and the exporting producer in the country concerned.

(38) As concerns the suitability of Brazil as an analogue country, it has to be pointed out that while the analogue country producer is the main producer on the Brazilian market, it does not monopolise that market. There is competition with at least two local producers and a significant level of imports, and the profit margin of the analogue country producer has been found to be consistent with an open market.

(39) As stated in recital 36 above, following comments at the early stage of the proceeding against the use of Brazil as an analogue country, the Commission contacted 45 producers in four different countries, including the companies suggested by Noblilift. Despite repeated contacts by telephone and e-mail with these companies, only one producer from Brazil submitted the requested information and cooperated with the investigation.

(40) With regard to the alleged deficiencies it has to be noted that only one producer in the analogue country cooperated with the investigation. Such a situation is not uncommon, but poses difficulties with regard to the disclosure of data. Given frequent difficulties in obtaining cooperation from analogue country producers, the Commission has to guarantee a high level of protection of confidential information. In the current case, the presentation of non-confidential data created some misunderstandings concerning alleged deficiencies but they were clarified with the parties. In particular, one party claimed that deficiencies in the reply of the analogue country producer should disqualify Brazil as an analogue country and the investigation should be terminated since the Commission cannot establish the normal value. In this respect it is noted that in the current investigation the Commission did have all the necessary information to perform a dumping calculation.

(41) Consequently, the claims concerning the suitability of Brazil as an analogue country could not be accepted.

(42) With regard to the claims for adjustments, it is noted that the level of trade differences between the Brazilian producer and the Chinese exporting producer has been accounted for by means of a level of trade adjustment (see recital 59 below).

(43) Finally, one party claimed that an adjustment should be made to account for an allegedly distorting effect of the 14 % import duty in the analogue country. This claim cannot be accepted as no link can be established between an import duty as such and the price level on the domestic market.

(44) Consequently, Brazil is considered an appropriate analogue country since there is sufficient competition with at least two producers and a significant level of imports.

Determination of normal value

(45) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether Paletrans' domestic sales of the like product to independent customers were representative. In this respect, it was found that the total volume of such sales was equal to at least 5 % of the total volume of Noblilift's export sales to the Union.

(46) The Commission subsequently examined whether there are types of the like product sold domestically by Paletrans that were sufficiently comparable in terms of functions and materials used to the types sold by Noblilift for export to the Union. The investigation established that a number of types sold domestically by Paletrans were sufficiently comparable with the types exported by Noblilift to the Union.

(47) The Commission subsequently examined for the analogue country producer whether each comparable type of the like product sold domestically could be considered as being sold in the ordinary course of trade. This was done by establishing for each product type the proportion of profitable sales to independent customers on the domestic market during the RIP.

(48) Where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average sales price of that type was equal to or higher than the cost of production, normal value was based on the actual domestic price. This was the case for all comparable types and the normal value was calculated as a weighted average of the prices of all domestic sales of each comparable type made during the RIP.

(49) For non-comparable types the normal value could be constructed in accordance with Article 2(3) of the basic Regulation by adding to the manufacturing cost, adjusted where necessary, a reasonable percentage for domestic selling, general and administrative expenses and a reasonable margin for domestic profit. The selling, general and administrative expenses and the profit were based on actual data pertaining to production and sales, in the ordinary course of trade, for the like product, by the producer in the analogue country. It should be noted that the price constructed on that basis was subject to the adjustments described in recital 59, in particular to

take account of the difference in level of trade between export sales by Noblelift and the domestic sales of the analogue country producer.

comment on the calculations performed in this case. Full details of the calculations have been disclosed and redisclosed.

(50) The sole cooperating exporting producer claimed that the Commission performed dumping calculations on the basis of 'truncated PCNs' and that no explanations were provided concerning the parameters used for conducting the comparison.

(56) Consequently, the foregoing claims had to be rejected.

(51) According to Article 2(11) of the basic Regulation the dumping margin is normally established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions subject to the relevant provisions governing fair comparison.

(c) Export price

(57) All export sales to the Union of the Chinese exporting producer were made directly to independent customers in the Union. Therefore, the export price was established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

(52) With regard to the fair comparison, it has to be noted that the product control number is a tool used in the investigation in order to structure and organise the substantial amounts of very detailed data submitted by the companies. It is an aid to conduct a more detailed analysis of different product characteristics within the category of the product concerned and the like product.

(58) One party claimed that the export sales of chassis and hydraulics should have been included in the calculation. That claim has been accepted.

(53) The Commission has collected information in relation to a number of parameters (chassis material, chassis painted, lift capacity, type of hydraulic system, working length, fork, width over forks, steering wheel material, load wheel material, load wheel type, brake type) but in order to take into consideration all export transactions it was considered reasonable and it was found possible to base the comparison in this case on certain of those parameters that constitute the most pertinent characteristics (chassis material, chassis painted, steering wheel material, load wheel material, load wheel type).

(d) Comparison

(54) Therefore, the comparison was based on the most pertinent characteristics in order to increase the matching and to ensure a fair comparison. It has to be stressed that the Commission did not disregard any information. However, it is not uncommon that certain parameters used in the product control number have a lesser weight and that specific parameters more than others form a better basis for fair comparison. No products have been disregarded from the comparison on the basis of physical differences or for any other reasons, nor have any new product types been created. On the contrary, all sales were included in the comparison. While it was acknowledged that other parameters had some impact on prices, it was found more appropriate that the calculations should be based on the five most relevant parameters as this led to the highest level of matching.

(59) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade. In order to ensure a fair comparison between normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which affected prices and price comparability. For this purpose, due allowance in the form of adjustments was made, where applicable and justified, for differences in level of trade (estimated price difference for sales to different type of customers in the domestic market of the analogue country), transport (comprising inland freight cost in the exporting country and ocean freight for transportation to the Union), insurance (ocean insurance cost), handling, loading and ancillary costs, commissions (paid for export sales), bank charges (paid for export sales), credit costs (based on the agreed payment terms and the prevailing interest rate) and packing costs (cost of packing materials used).

(55) As far as procedural aspects of the comparison are concerned, it has to be noted that the exporting producer was provided with full opportunity to

(60) Following a claim from the sole cooperating exporting producer, an adjustment for the differences in thickness of steel used by the producer in the analogue country and the exporting producer in the country concerned was made to the normal value, as it was found reasonable. The adjustment was based on the difference in thickness in proportion to the contribution of steel to the price of the like product sold in Brazil by the analogue country producer. This led to a change in the dumping margin (see recital 73 below). Following an

additional disclosure (inviting comments on the steel thickness adjustment), one party contested that adjustment as lacking factual basis. It also pointed out that the exporting producer's non-confidential submissions seeking the adjustment were deficient thereby violating other parties' rights of defence. The Commission verified the data on file on which the steel thickness adjustment was based and confirmed that it was warranted.

- (61) The sole cooperating exporter presented claims for several other adjustments due to differences in efficiency and productivity, claiming, *inter alia*, that the producer in the analogue country was less productive (has a lower output per worker) and had higher consumption of raw materials per unit.
- (62) It has to be noted at the outset that while differences in efficiency or productivity might exist between companies, the guiding principle is to ensure comparability between export prices and normal value, which does not require that the circumstances of an analogue country producer and an exporting producer in a non-market economy country are completely aligned. Indeed, only differences for factors affecting prices and price comparability between an analogue country producer and an exporting producer in a non-market economy country warrant an adjustment.
- (63) Nevertheless, it has to be pointed out that the investigation did not reveal any circumstances which would suggest that the producer in the analogue country did not have a reasonably efficient production process.
- (64) As far as cost factors are concerned (e.g. productivity), those should not be picked and assessed individually. Rather, a comprehensive analysis would be needed to assess whether advantages in relation to one cost factor (e.g. productivity) are possibly compensated by disadvantages in others. Indeed, a lower use of labour is often the result of a higher level of automation, which in turn leads to higher costs in other areas (depreciation, capital, financing, manufacturing overheads). Only a comprehensive analysis could reveal all differences in cost factors and demonstrate whether prices and price comparability are affected, thereby justifying an adjustment. The claims cannot therefore be accepted.
- (65) In addition to the foregoing, the claims for adjustment for a per-unit energy difference and for a per-unit depreciation and manufacturing overheads difference were unsubstantiated. In particular, in relation to energy efficiency it was not explained what elements in the production process make the Brazilian producer inefficient as compared to the sole cooperating exporting producer. The amount of the adjustment was based on a ratio of labour cost difference per unit (based on productivity difference) related to the share of labour cost in total cost. The link between such ratio and

energy efficiency and depreciation and manufacturing overheads difference had not been explained and was not understandable. The claims are thus rejected.

- (66) One party also claimed that adjustments should be made for parameters, *inter alia*, such as lift capacity and fork. In this respect, reference is made to comments concerning the parameters of comparison (see recital 50 above) where it is noted that a comparison is based on the most relevant parameters to ensure the highest level of matching. In any case the claims were not substantiated.
- (67) Another claim was that adjustment should be made due to the fact that the exporting producer uses patented technology. This claim has not been further substantiated. Notably, the exporting producer failed to quantify the adjustment. The only piece of information provided was a document which was stated to be the patent. In a later submission the adjustment was partially quantified but without any supporting evidence. Therefore, the claim could not be accepted.
- (68) Furthermore, the claim for adjustment for difference in efficiency in use of raw materials has been covered by the adjustment for thickness of steel (see recital 60 above), as the use of different steel thickness might lead to a lower overall consumption of steel.
- (69) Finally, the exporting producer stated that it sold via a sales channel, in particular non-branded products on an OEM (Original Equipment Manufacturer) basis, different from that of the producer in the analogue country. Accordingly, a claim for an adjustment reflecting this difference was put forward. As specified above (recital 59), a level of trade adjustment was made. It was based on an estimated price difference for sales to different types of customers, including OEM sales, in the domestic market of the analogue country. For confidentiality reasons the extent of this adjustment could not be disclosed as it would reveal the normal value based on data of the sole analogue country producer. It was therefore concluded that the differences for which the adjustment was claimed have already been accounted for.
- (70) Nevertheless, it has to be pointed out that the exporting producer failed to quantify the adjustment claimed. It stated merely that a 40 % adjustment had been granted in another proceeding. An adjustment granted in another proceeding (hence specific to the particular circumstances of another proceeding) cannot serve as such as a benchmark for quantifying an adjustment in the current case.
- (71) Following the additional disclosure (inviting comments on the steel thickness adjustment), the exporting producer presented additional claims for adjustments (unrelated to the steel thickness adjustment): adjustment for coating, handle, and steel prices in Brazil.

- (72) It is noted first and foremost that the claims were submitted after the deadline for comments and were thus formally inadmissible. In any case the claims were either not quantified or not substantiated. The company neither provided evidence for its claims nor did it explain how the extent of different adjustments had been or should be calculated.

(e) *Dumping margin*

- (73) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the product concerned. The dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, is 70,8 %.
- (74) As regards the dumping margins for all exporting producers in the original investigation other than Noblilift, they ranged from 28,5 % to 46,7 %. Given that in the current review only Noblilift cooperated and that the cooperation could be considered high since the vast majority of Chinese exports were those of Noblilift, the Commission revised the country-wide dumping margin for all other exporters as well. Consequently, the residual dumping margin should be set at the same level as that of Noblilift, i.e. 70,8 %.
- (75) One party claimed that the country-wide duty should not be set at the level of the sole cooperating exporting producer's dumping margin as there is no evidence that the vast majority of imports were those of that sole cooperating exporter. In this respect, it has been confirmed that according to statistical data the vast majority of imports from the PRC were those of the sole cooperating exporting producer. The claim has been therefore rejected.

D. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (76) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.
- (77) In this regard the original investigation did not establish a substantial price difference between prices of raw materials procured locally in the PRC by the Chinese exporting producers (including Noblilift) and those at international markets. The circumstances have significantly changed between 2004 (time of the original investigation) and 2011 (the RIP) where the price of hot-rolled steel, the main raw material, stood between 24 % and 31 % below international prices. They did not reflect market values as a result of price distortions in the steel market in the PRC (see recital 20 above). Indeed, the Chinese steel market changed significantly within these seven years and the PRC has shifted in the meantime from a net steel importing country to a

sizeable steel producer and exporter worldwide, which fact could reasonably be considered to be of a lasting nature.

- (78) In addition, Chinese high-tech enterprises including Noblilift are receiving State benefits in the form of preferential income tax (15 %) since 2008. In the investigation period of the original investigation, the companies were subject to the standard rate of 25 %. This changed circumstance could also reasonably be considered to be of a lasting nature.
- (79) It was therefore considered that the circumstances that led to the initiation of this interim review are unlikely to change in the foreseeable future in a manner that would affect the findings of the interim review. Therefore it was concluded that the changed circumstances are of a lasting nature and that the application of the measure at its current level is no longer justified.

E. ANTI-DUMPING MEASURES

- (80) In light of the results of this review investigation and since the new dumping margin of 70,8 % is lower than the injury elimination level established in the original investigation (see recitals 120 to 123 of Regulation (EC) No 128/2005), it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned both from Noblilift and from all other exporting producers to 70,8 %.
- (81) One party claimed that the newly established dumping margin should not have been compared with the injury elimination level established in the original investigation. Rather, an injury elimination level should be established in every investigation, even in a partial review limited to dumping. According to that party, the current practice whereby injury is not assessed, constitutes a breach of the lesser duty rule. The party also claimed that a full interim review should have been opened.
- (82) In this respect it is noted that since the Commission initiated a partial interim review limited to dumping, injury could not be reassessed in this framework. According to Article 11(3) of the basic Regulation the continued imposition of measures may be reviewed, where warranted, on the initiative of the Commission. Hence, there is no obligation for the Commission to initiate an *ex-officio* interim review covering both dumping and injury, and in any event it should be warranted. In this case, the information and evidence at the Commission's disposal was sufficient for the initiation of an interim review limited to dumping. Moreover, if injury is always to be assessed in interim reviews the possibility of having a partial interim review limited to dumping as provided for in Article 11(3) of the basic Regulation would be devoid of meaning. The claim has

therefore to be rejected. Nevertheless it is recalled that the interested party in question has the possibility to request a partial review of injury pursuant to Article 11(3) of the basic Regulation.

- (83) The lesser duty rule has been fully respected and the newly established dumping margin was indeed compared with the injury elimination level established in the original investigation (the latest injury finding).
- (84) One party claimed that a minimum import price would be better suited in the current case. Alternatively, a fixed duty should be imposed.
- (85) In this respect it is noted that neither the minimum import price nor the fixed duty are suitable for products which exist in a multitude of individual types with varying prices, which are also subject to continuous changes and upgrades. A multitude of duty levels would be very difficult to administer. An additional limitation of the current case is that the minimum import price would have to be based on the normal value (since the duty is based on dumping), which is based on confidential data of one company in an analogue country market. The claims are thus rejected.
- (86) The exporting producer expressed interest in an undertaking within the statutory deadlines. However, no formal offer was submitted and thus the Commission was not in a position to consider it further.
- (87) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to amend the duty rates applicable to exporting producers and were given the opportunity to comment.
- (88) The oral and written comments submitted by the parties were considered.

- (89) It is noted that pursuant to Article 1(3) of Implementing Regulation (EU) No 1008/2011, the 70,8 % anti-dumping duty imposed to 'all other companies' by this Regulation applies to hand pallet trucks and their essential parts, as defined in Article 1(1) of Implementing Regulation (EU) No 1008/2011, consigned from Thailand whether declared as originating in Thailand or not,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Implementing Regulation (EU) No 1008/2011, is replaced by the following:

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

Company	Rate of duty (%)	TARIC additional code
Zhejiang Noblelift Equipment Joint Stock Co. Ltd, 58, Jing Yi Road, Economy Development Zone, Changxing, Zhejiang Province, 313100, PRC	70,8	A603
All other companies	70,8	A999'

Article 2

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

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

Done at Luxembourg, 22 April 2013.

For the Council
The President
S. COVENEY

COMMISSION IMPLEMENTING REGULATION (EU) No 373/2013

of 23 April 2013

approving the active substance *Candida oleophila* strain O, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011

(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 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular Article 13(2) and Article 78(2) thereof,

Whereas:

- (1) In accordance with Article 80(1)(a) of Regulation (EC) No 1107/2009, Council Directive 91/414/EEC ⁽²⁾ is to apply, with respect to the procedure and the conditions for approval, to active substances for which a decision has been adopted in accordance with Article 6(3) of that Directive before 14 June 2011. For *Candida oleophila* strain O the conditions of Article 80(1)(a) of Regulation (EC) No 1107/2009 are fulfilled by Commission Decision 2007/380/EC ⁽³⁾.
- (2) In accordance with Article 6(2) of Directive 91/414/EEC the United Kingdom received on 12 July 2006 an application from Bionext sprl for the inclusion of the active substance *Candida oleophila* strain O in Annex I to Directive 91/414/EEC. Decision 2007/380/EC confirmed that the dossier was 'complete' in the sense that it could be considered as satisfying, in principle, the data and information requirements of Annexes II and III to Directive 91/414/EEC.
- (3) For that active substance, the effects on human and animal health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of Directive 91/414/EEC, for the uses proposed by the applicant. The designated rapporteur Member State submitted a draft assessment report on 15 November 2011.
- (4) The draft assessment report was reviewed by the Member States and the European Food Safety Authority (hereinafter 'the Authority'). The Authority presented to the Commission its conclusion on the review of the pesticide

risk assessment of the active substance *Candida oleophila* strain O ⁽⁴⁾ on 24 October 2012. The draft assessment report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and the draft assessment report was finalised on 15 March 2013 in the format of the Commission review report for *Candida oleophila* strain O.

- (5) It has appeared from the various examinations made that plant protection products containing *Candida oleophila* strain O may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) and Article 5(3) of Directive 91/414/EEC, in particular with regard to the uses which were examined and detailed in the Commission review report. It is therefore appropriate to approve *Candida oleophila* strain O.
- (6) A reasonable period should be allowed to elapse before approval in order to permit Member States and the interested parties to prepare themselves to meet the new requirements resulting from the approval.
- (7) Without prejudice to the obligations provided for in Regulation (EC) No 1107/2009 as a consequence of approval, taking into account the specific situation created by the transition from Directive 91/414/EEC to Regulation (EC) No 1107/2009, the following should, however, apply. Member States should be allowed a period of six months after approval to review authorisations of plant protection products containing *Candida oleophila* strain O. Member States should, as appropriate, vary, replace or withdraw authorisations. By way of derogation from that deadline, a longer period should be provided for the submission and assessment of the update of the complete Annex III dossier, as set out in Directive 91/414/EEC, of each plant protection product for each intended use in accordance with the uniform principles.
- (8) The experience gained from inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8 (2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market ⁽⁵⁾ has shown that difficulties can arise in interpreting the duties of

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ OJ L 230, 19.8.1991, p. 1.

⁽³⁾ OJ L 141, 2.6.2007, p. 78.

⁽⁴⁾ EFSA Journal 2012; 10(11):2944. Available online: www.efsa.europa.eu

⁽⁵⁾ OJ L 366, 15.12.1992, p. 10.

holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the Directives which have been adopted until now amending Annex I to that Directive or the Regulations approving active substances.

- (9) In accordance with Article 13(4) of Regulation (EC) No 1107/2009, the Annex to Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances⁽¹⁾ should be amended accordingly.
- (10) 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

Approval of active substance

The active substance *Candida oleophila* strain O, as specified in Annex I, is approved subject to the conditions laid down in that Annex.

Article 2

Re-evaluation of plant protection products

1. Member States shall in accordance with Regulation (EC) No 1107/2009, where necessary, amend or withdraw existing authorisations for plant protection products containing *Candida oleophila* strain O as an active substance by 31 March 2014.

By that date they shall in particular verify that the conditions in Annex I to this Regulation are met, with the exception of those identified in the column on specific provisions of that Annex, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to Directive 91/414/EEC in accordance with the conditions of Article 13(1) to (4) of that Directive and Article 62 of Regulation (EC) No 1107/2009.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing *Candida oleophila* strain O as either the only active substance or as one of several active substances, all of which were listed in the Annex to Implementing Regulation (EU) No 540/2011 by 30 September 2013 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, on the basis of a dossier satisfying the requirements of Annex III to Directive 91/414/EEC and taking into account the column on specific provisions of Annex I to this Regulation. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 29(1) of Regulation (EC) No 1107/2009.

Following that determination Member States shall:

- (a) in the case of a product containing *Candida oleophila* strain O as the only active substance, where necessary, amend or withdraw the authorisation by 31 March 2015 at the latest; or
- (b) in the case of a product containing *Candida oleophila* strain O as one of several active substances, where necessary, amend or withdraw the authorisation by 31 March 2015 or by the date fixed for such an amendment or withdrawal in the respective act or acts which added the relevant substance or substances to Annex I to Directive 91/414/EEC or approved that substance or those substances, whichever is the latest.

Article 3

Amendments to Implementing Regulation (EU) No 540/2011

The Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

Article 4

Entry into force and date of application

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 October 2013.

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

Done at Brussels, 23 April 2013.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 153, 11.6.2011, p. 1.

ANNEX I

Common name, identification numbers	IUPAC name	Purity ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
<i>Candida oleophila</i> strain O Collection number: MUCL40654	Not applicable	Nominal content: 3×10^{10} CFU/g dried product Range: $6 \times 10^9 - 1 \times 10^{11}$ CFU/g dried product	1 October 2013	30 September 2023	For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on <i>Candida oleophila</i> strain O, and in particular Appendices I and II thereto, as finalised in the Standing Committee on the Food Chain and Animal Health on 15 March 2013 shall be taken into account.

⁽¹⁾ Further details on identity and specification of active substance are provided in the review report.

ANNEX II

In Part B of the Annex to Implementing Regulation (EU) No 540/2011, the following entry is added:

Number	Common name, identification numbers	IUPAC name	Purity (*)	Date of approval	Expiration of approval	Specific provisions
'37	<i>Candida oleophila</i> strain O Collection number: MUCL40654	Not applicable	Nominal content: 3×10^{10} CFU/g dried product Range: $6 \times 10^9 - 1 \times 10^{11}$ CFU/g dried product	1 October 2013	30 September 2023	For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on <i>Candida oleophila</i> strain O, and in particular Appendices I and II thereto, as finalised in the Standing Committee on the Food Chain and Animal Health on 15 March 2013 shall be taken into account.'

(*) Further details on identity and specification of active substance are provided in the review report.

COMMISSION IMPLEMENTING REGULATION (EU) No 374/2013

of 23 April 2013

concerning the authorisation of a preparation of *Clostridium butyricum* (FERM BP-2789) as a feed additive for chickens reared for laying (holder of authorisation Miyarisan Pharmaceutical Co. Ltd represented by Miyarisan Pharmaceutical Europe S.L.U.)

(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.
- (2) The use of a preparation of *Clostridium butyricum* (FERM BP-2789), belonging to the additive category of 'zootechnical additives', was authorised for 10 years as a feed additive for use on chickens for fattening by Commission Regulation (EC) No 903/2009⁽²⁾ and for minor avian species (excluding laying birds) and for weaned piglets and minor porcine species (weaned) by Commission Implementing Regulation (EU) No 373/2011⁽³⁾.
- (3) In accordance with Article 7 of Regulation (EC) No 1831/2003, an application was submitted for a new use of the preparation of *Clostridium butyricum* (FERM BP-2789) for chickens reared for laying, requesting that the additive be classified in the additive category 'zootechnical additives'.
- (4) The application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003, and by the relevant data to support its requests.
- (5) The European Food Safety Authority ('the Authority') concluded in its opinion of 11 December 2012⁽⁴⁾ that, under the proposed conditions of use, the preparation of *Clostridium butyricum* (FERM BP-2789) does not have an adverse effect on animal health, human health and the environment. It also concluded that the additive shows some potential to improve performance in chickens reared for laying. 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.
- (6) The assessment of the preparation of *Clostridium butyricum* (FERM BP-2789) 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.
- (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 'zootechnical additives' and to the functional group 'gut flora stabilisers', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

Article 2

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

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

Done at Brussels, 23 April 2013.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ OJ L 256, 29.9.2009, p. 26.

⁽³⁾ OJ L 102, 16.4.2011, p. 10.

⁽⁴⁾ EFSA Journal 2013; 11(1):3040.

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
						CFU/kg of complete feedingstuff with a moisture content of 12 %			
Category of zootechnical additives. Functional group: gut flora stabilisers									
4b1830	Miyarisan Pharmaceutical Co. Ltd represented by Miyarisan Pharmaceutical Europe S.L.U.	<i>Clostridium butyricum</i> (FERM BP-2789)	<i>Additive composition</i> Preparation of <i>Clostridium butyricum</i> (FERM BP-2789) containing in solid form a minimum of 5 × 10 ⁸ CFU/g additive. <i>Characterisation of the active substance</i> Viable spores of <i>Clostridium butyricum</i> FERM BP-2789. <i>Analytical method</i> ⁽¹⁾ Quantification: pour plate method based on ISO 15213 standard. Identification: pulsed-field gel electrophoresis (PFGE) method.	Chickens reared for laying	—	2,5 × 10 ⁸	—	1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. 2. The use is allowed in feed containing the authorised coccidiostats: monensin sodium, diclazuril, salinomycin sodium or lasalocid sodium. 3. For safety: breathing protection and safety glasses shall be used during the handling.	14 May 2023

⁽¹⁾ Details of the analytical methods are available at the following address of the European Union Reference Laboratory for Feed Additives: www.irmm.jrc.be/crl-feed-additives

COMMISSION IMPLEMENTING REGULATION (EU) No 375/2013

of 23 April 2013

approving the active substance spiromesifen, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011

(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 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC⁽¹⁾, and in particular Articles 13(2) and 78(2) thereof,

Whereas:

- (1) In accordance with Article 80(1)(a) of Regulation (EC) No 1107/2009, Council Directive 91/414/EEC⁽²⁾ is to apply, with respect to the procedure and the conditions for approval, to active substances for which a decision has been adopted in accordance with Article 6(3) of that Directive before 14 June 2011. For spiromesifen the conditions of Article 80(1)(a) of Regulation (EC) No 1107/2009 are fulfilled by Commission Decision 2003/105/EC⁽³⁾.
- (2) In accordance with Article 6(2) of Directive 91/414/EEC the United Kingdom received on 18 April 2002 an application from Bayer CropScience AG for the inclusion of the active substance spiromesifen in Annex I to Directive 91/414/EEC. Decision 2003/105/EC confirmed that the dossier was 'complete' in the sense that it could be considered as satisfying, in principle, the data and information requirements of Annexes II and III to Directive 91/414/EEC.
- (3) For that active substance, the effects on human and animal health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of Directive 91/414/EEC, for the uses proposed by the applicant. The designated rapporteur Member State submitted a draft assessment report on 9 March 2004. This draft assessment report was reviewed by the Member States and the European Food Safety Authority (hereinafter 'the Authority') and a final discussion took place on 26 April 2007. The Authority presented to the Commission its conclusion⁽⁴⁾ on the review of the pesticide risk assessment of the active substance spiromesifen on 13 June 2007.
- (4) In its conclusion, the Authority did not take into account all information submitted by the applicant before 26 April 2007. The Commission requested the Authority to revise its conclusion and to take into account all information submitted.
- (5) The designated rapporteur Member State assessed all additional information and submitted an Addendum to the draft assessment report on 28 September 2009.
- (6) The Addendum to the draft assessment report was reviewed by the Member States and the Authority. The Authority presented to the Commission its second conclusion on the review of the pesticide risk assessment of the active substance spiromesifen⁽⁵⁾ on 19 September 2012. The updated draft assessment report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and the draft assessment report was finalised on 15 March 2013 in the format of the Commission review report for spiromesifen.
- (7) It has appeared from the various examinations made that plant protection products containing spiromesifen may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) and Article 5(3) of Directive 91/414/EEC, in particular with regard to the uses which were examined and detailed in the Commission review report. It is therefore appropriate to approve spiromesifen.
- (8) In accordance with Article 13(2) of Regulation (EC) No 1107/2009 in conjunction with Article 6 thereof and in the light of current scientific and technical knowledge, it is, however, necessary to include certain conditions and restrictions. It is, in particular, appropriate to require further confirmatory information.
- (9) A reasonable period should be allowed to elapse before approval in order to permit Member States and the interested parties to prepare themselves to meet the new requirements resulting from the approval.
- (10) Without prejudice to the obligations provided for in Regulation (EC) No 1107/2009 as a consequence of approval, taking into account the specific situation created by the transition from Directive 91/414/EEC to

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.⁽²⁾ OJ L 230, 19.8.1991, p. 1.⁽³⁾ OJ L 43, 18.2.2003, p. 45.⁽⁴⁾ EFSA Scientific Report (2007) 105, 1-69. Available online: www.efsa.europa.eu⁽⁵⁾ EFSA Journal 2012; 10(10):2873. Available online: www.efsa.europa.eu

Regulation (EC) No 1107/2009, the following should, however, apply. Member States should be allowed a period of six months after approval to review authorisations of plant protection products containing spiromesifen. Member States should, as appropriate, vary, replace or withdraw authorisations. By way of derogation from that deadline, a longer period should be provided for the submission and assessment of the update of the complete Annex III dossier, as set out in Directive 91/414/EEC, of each plant protection product for each intended use in accordance with the uniform principles.

- (11) The experience gained from inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market⁽¹⁾ has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the Directives which have been adopted until now amending Annex I to that Directive or the Regulations approving active substances.
- (12) In accordance with Article 13(4) of Regulation (EC) No 1107/2009, the Annex to Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances⁽²⁾ should be amended accordingly.
- (13) 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

Approval of active substance

The active substance spiromesifen, as specified in Annex I, is approved subject to the conditions laid down in that Annex.

⁽¹⁾ OJ L 366, 15.12.1992, p. 10.

⁽²⁾ OJ L 153, 11.6.2011, p. 1.

Article 2

Re-evaluation of plant protection products

1. Member States shall in accordance with Regulation (EC) No 1107/2009, where necessary, amend or withdraw existing authorisations for plant protection products containing spiromesifen as an active substance by 31 March 2014.

By that date they shall in particular verify that the conditions in Annex I to this Regulation are met, with the exception of those identified in the column on specific provisions of that Annex, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to Directive 91/414/EEC in accordance with the conditions of Article 13(1) to (4) of that Directive and Article 62 of Regulation (EC) No 1107/2009.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing spiromesifen as either the only active substance or as one of several active substances, all of which were listed in the Annex to Implementing Regulation (EU) No 540/2011, by 30 September 2013 at the latest Member States shall re-evaluate the product in accordance with the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, on the basis of a dossier satisfying the requirements of Annex III to Directive 91/414/EEC and taking into account the column on specific provisions of Annex I to this Regulation. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 29(1) of Regulation (EC) No 1107/2009.

Following that determination Member States shall:

- (a) in the case of a product containing spiromesifen as the only active substance, where necessary, amend or withdraw the authorisation by 31 March 2015 at the latest; or
- (b) in the case of a product containing spiromesifen as one of several active substances, where necessary, amend or withdraw the authorisation by 31 March 2015 or by the date fixed for such an amendment or withdrawal in the respective act or acts which added the relevant substance or substances to Annex I to Directive 91/414/EEC or approved that substance or those substances, whichever is the latest.

Article 3

Amendments to Implementing Regulation (EU) No 540/2011

The Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

*Article 4***Entry into force and date of application**

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 October 2013.

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

Done at Brussels, 23 April 2013.

For the Commission

The President

José Manuel BARROSO

ANNEX I

Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
Spiromesifen CAS No 283594-90-1 CIPAC No 747	3-mesityl-2-oxo-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutyrate	≥ 965 g/kg (racemic) The impurity N,N-dimethylacetamide is of toxicological relevance and must not exceed 4 g/kg in the technical material.	1 October 2013	30 September 2023	For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on spiromesifen, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 15 March 2013, shall be taken into account. In this overall assessment Member States shall pay particular attention to: — the long-term risk to aquatic invertebrates, — the risk to pollinating hymenoptera and non-target arthropods if exposure is not negligible, — the protection of workers and operators. Conditions of use shall include risk mitigation measures, where appropriate. The applicant shall submit confirmatory information as regards the recalculation of the predicted concentration in groundwater (PECGW) with a FOCUS GW scenario adapted to the supported uses using a Q10 value of 2,58. The applicant shall submit to the Commission, the Member States and the Authority that information by 30 September 2015.

⁽¹⁾ Further details on identity and specification of active substance are provided in the review report.

ANNEX II

In Part B of the Annex to Implementing Regulation (EU) No 540/2011, the following entry is added:

Number	Common Name, Identification Numbers	IUPAC Name	Purity (*)	Date of approval	Expiration of approval	Specific provisions
'41	Spiromesifen CAS No 283594-90-1 CIPAC No 747	3-mesityl-2-oxo-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutyrate	≥ 965 g/kg (racemic) The impurity N,N-dimethylacetamide is of toxicological relevance and must not exceed 4 g/kg in the technical material.	1 October 2013	30 September 2023	For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on spiromesifen, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 15 March 2013, shall be taken into account. In this overall assessment Member States shall pay particular attention to: — the long-term risk to aquatic invertebrates, — the risk to pollinating hymenoptera and non-target arthropods if exposure is not negligible, — the protection of workers and operators. Conditions of use shall include risk mitigation measures, where appropriate. The applicant shall submit confirmatory information as regards the recalculation of the predicted concentration in groundwater (PECGW) with a FOCUS GW scenario adapted to the supported uses using a Q10 value of 2,58. The applicant shall submit to the Commission, the Member States and the Authority that information by 30 September 2015.'

(*) Further details on identity and specification of active substance are provided in the review report.

COMMISSION IMPLEMENTING REGULATION (EU) No 376/2013**of 23 April 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, 23 April 2013.

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

*Jerzy PLEWA
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	58,1
	TN	81,5
	TR	101,9
	ZZ	80,5
0707 00 05	MA	99,6
	TR	134,3
	ZZ	117,0
0709 93 10	MA	91,2
	TR	107,5
	ZZ	99,4
0805 10 20	EG	55,4
	IL	71,6
	MA	52,7
	TN	69,6
	TR	63,4
	US	84,5
	ZZ	66,2
0805 50 10	TR	91,6
	ZA	116,4
	ZZ	104,0
0808 10 80	AR	109,1
	BR	93,0
	CL	114,3
	CN	79,3
	MK	30,8
	NZ	142,4
	US	196,8
	ZA	109,4
0808 30 90	ZZ	109,4
	AR	113,2
	CL	120,8
	CN	72,9
	ZA	122,9
	ZZ	107,5

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COUNCIL DECISION 2013/189/CFSP

of 22 April 2013

establishing a European Security and Defence College (ESDC) and repealing Joint Action 2008/550/CFSP

THE COUNCIL OF THE EUROPEAN UNION,

EEAS is to provide the ESDC with the support previously provided by the General Secretariat of the Council,

Having regard to the Treaty on European Union, and in particular Articles 28(1), 42(4) and 43(2) thereof,

HAS ADOPTED THIS DECISION:

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

CHAPTER I

ESTABLISHMENT, MISSION, OBJECTIVES AND TASKS*Article 1***Establishment**

A European Security and Defence College (ESDC) is hereby established.

*Article 2***Mission**

The ESDC shall provide training in the field of the Union Common Security and Defence Policy (CSDP) in the context of the Common Foreign and Security Policy (CFSP) at the strategic level in order to develop and promote a common understanding of CSDP among civilian and military personnel, and to identify and disseminate, through its training activities ('ESDC training activities'), best practice in relation to various CSDP issues.

*Article 3***Objectives**

The objectives of the ESDC shall be the following:

- Whereas:
- (1) On 18 July 2005, the Council adopted Joint Action 2005/575/CFSP establishing a European Security and Defence College (ESDC) ⁽¹⁾. That Joint Action was replaced by Council Joint Action 2008/550/CFSP of 23 June 2008 establishing a European Security and Defence College (ESDC) ⁽²⁾.
 - (2) On 1 December 2008, pursuant to Article 13 of Joint Action 2008/550/CFSP, the ESDC Steering Committee ('the Committee') agreed on recommendations on the future perspectives of the ESDC.
 - (3) The Council, in its conclusions of 8 December 2008, approved the Committee's recommendations. Joint Action 2008/550/CFSP should therefore be replaced by a new legal act reflecting these recommendations.
 - (4) The training activities within the ESDC framework should be carried out in the field of the Common Security and Defence Policy (CSDP), including in the areas of conflict resolution and stabilisation.
 - (5) It is appropriate during the period covered by this Decision for the ESDC to rely only on seconded staff.
 - (6) Pursuant to Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service ⁽³⁾ (EEAS), the

- (a) to further enhance the common European security and defence culture within CSDP;
- (b) to promote a better understanding of CSDP as an essential part of CFSP;
- (c) to provide Union instances with knowledgeable personnel able to work efficiently on all CSDP matters;
- (d) to provide Member States' administrations and staff with knowledgeable personnel familiar with Union policies, institutions and procedures in the field of CFSP;

⁽¹⁾ OJ L 194, 26.7.2005, p. 15.⁽²⁾ OJ L 176, 4.7.2008, p. 20.⁽³⁾ OJ L 201, 3.8.2010, p. 30.

- (e) to support Union partnerships in the field of CSDP, in particular partnerships with those countries participating in CSDP missions;
- (f) to help promote professional relations and contacts among participants in ESDC training activities ('participants').

Where appropriate, attention shall be paid to ensuring consistency with other activities of the Union.

Article 4

Tasks

1. The main tasks of the ESDC shall be, in accordance with its mission and objectives, to organise and conduct ESDC training activities in the field of CSDP.

2. The ESDC training activities shall include:

- (a) the CSDP High Level Course;
- (b) the CSDP Orientation Courses;
- (c) CSDP courses for specialised audiences or with specific focus.

Other training activities shall be undertaken, as decided by the Steering Committee referred to in Article 8 ('the Committee').

3. In addition to the activities referred to in paragraph 2, the ESDC shall in particular:

- (a) support the relations to be established between the institutes referred to in Article 5(1) engaged in the network referred to in that paragraph ('the network');
- (b) run and further develop an internet-Based Distance Learning (IDL) System to support CSDP training activities;
- (c) develop and produce training material for Union training in the field of CSDP also drawing on already existing relevant material;
- (d) facilitate an alumni network between former participants;
- (e) support exchange programmes in the field of CSDP between the Member States' training institutes;
- (f) provide contributions to the annual Union training programme in CSDP;
- (g) provide support to the management of training in the field of conflict prevention and civilian crisis management;
- (h) organise and run an annual networking conference bringing together civilian and military training experts in CSDP from

Member States' training institutes and ministries, and relevant external training actors as appropriate; and

- (i) review annually its performance in delivering against the objectives listed in Article 3.

4. The ESDC training activities shall be conducted through the network.

5. As part of the network, the European Union Institute for Security Studies (EU ISS) shall support the ESDC training activities, in particular through EU ISS publications and by providing lectures given by EU ISS researchers and by providing contributions to the ESDC IDL System.

CHAPTER II

ORGANISATION

Article 5

Network

1. The ESDC shall be organised as a network bringing together civilian and military institutes, colleges, academies, universities, institutions and other actors dealing with security and defence policy issues within the Union as identified by Member States and the EU ISS ('institutes') to support the conduct of training activities in the field of CSDP.

2. The ESDC shall establish close links with the Union institutions and relevant Union agencies, in particular with the European Police College (CEPOL).

3. The ESDC shall work under the overall responsibility of the High Representative of the Union for Foreign Affairs and Security Policy ('High Representative').

Article 6

Legal Capacity

1. The ESDC shall have the necessary legal capacity in order to fulfill its tasks and meet its objectives, to enter into contracts and administrative arrangements necessary for its functioning, including to implement staff secondments, acquire equipment, in particular teaching equipment, hold bank accounts and be a party to legal proceedings.

2. Any liability which may arise from contracts concluded by the ESDC shall be covered by the funds available to it pursuant to Articles 14, 15 and 16.

Article 7

Structure

The following structure shall be set up under the ESDC:

- (a) the Committee with responsibility for the overall coordination and direction of the ESDC training activities;

- (b) an Executive Academic Board ('the Board') with responsibility for ensuring the quality and coherence of the ESDC training activities;
- (c) the Head of the ESDC with responsibility for the financial and administrative management of the ESDC, as well as assisting the Committee and the Board in organising and managing ESDC activities;
- (d) an ESDC Secretariat ('the Secretariat') which is to assist the Head of the ESDC in fulfilling his tasks.
- (g) appoint the Chairpersons of the Board and its different configurations for a period of at least two academic years;
- (h) take the necessary decisions with regard to the functioning of the ESDC in so far as these are not attributed to other bodies;
- (i) approve the annual budget and any amending budget, acting on proposals from the Head of the ESDC;
- (j) approve the annual accounts and give a discharge to the Head of the ESDC;

Article 8

Steering Committee

1. The Committee, composed of one representative appointed by each Member State, shall be the decision-making body of the ESDC. Each member of the Committee may be represented or accompanied by an alternate.
 2. Members of the Committee may be accompanied by experts to meetings of the Committee.
 3. The Committee shall be chaired by a representative of the High Representative who has appropriate experience. It shall meet at least twice a year.
 4. Representatives from countries acceding to the Union may attend the Committee's meetings as active observers.
 5. The Head of the ESDC, the Chairperson of the Board and where appropriate the Chairpersons of its different configurations, as well as a representative of the Commission shall participate in the meetings of the Committee without the right to vote.
 - (k) approve additional rules applicable to expenditure managed by the ESDC;
 - (l) approve any financing agreement and/or technical arrangement with the Commission, the EEAS or a Member State regarding the financing and/or the implementation of the ESDC expenditure;
 - (m) approve the rules applicable to staff seconded to the ESDC;
 - (n) decide on opening specific ESDC training activities to third-country participation within the general political framework set by the Political and Security Committee.
7. The Committee shall approve its Rules of Procedure.
8. The Committee shall act by qualified majority, as defined in Title II of Protocol No 36 on Transitional Provisions, as annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

Article 9

The Executive Academic Board

6. The tasks of the Committee shall be to:
 - (a) establish the annual academic programme of the ESDC, drawing on the ESDC training concept;
 - (b) provide overall guidance to the work of the Board;
 - (c) approve and keep under regular review the ESDC training concept reflecting the agreed ESDC training requirements;
 - (d) select the Member State(s) hosting the ESDC training activities and the institutes conducting them;
 - (e) develop and agree the outline curricula for all ESDC training activities;
 - (f) take note of the courses evaluation reports and approve a general annual report on ESDC training activities, to be forwarded to the relevant Council bodies;
1. The Board shall be composed of senior representatives from those civilian and military institutes and other actors identified by Member States to support the conduct of ESDC training activities. Where there are several representatives from one Member State, they shall together form a single delegation.
2. The Chairperson of the Board shall be appointed by the Committee among the members of the Board.
3. Representatives of the Commission and of the EEAS shall be invited to attend the meetings of the Board.
4. Academic experts and senior officials from national and Union institutions may be invited to attend meetings of the Board.
5. The tasks of the Board shall be to:
 - (a) provide academic advice and recommendations to the Committee;

- (b) implement, through the network, the agreed annual academic programme;
- (c) oversee the IDL System;
- (d) develop detailed curricula for all ESDC training activities building on the agreed outline curricula;
- (e) ensure general coordination of ESDC training activities among all institutes;
- (f) review standards of the ESDC training activities undertaken in the previous academic year;
- (g) submit to the Committee proposals for ESDC training activities in the next academic year;
- (h) ensure a systematic evaluation of all ESDC training activities and approve the courses evaluation reports;
- (i) contribute to the draft general annual report on ESDC activities.

6. To fulfil its tasks, the Board may meet in different project-focused configurations. The Board shall draw up the rules and arrangements governing the creation and functioning of these configurations to be agreed by the Committee.

7. The Rules of Procedure of the Board shall be adopted by the Committee.

Article 10

The Head of the ESDC

1. The Head of the ESDC shall be responsible for organising and managing ESDC training activities. The Head of the ESDC shall support the work of the Committee and the Board in this field and shall act as the representative of the ESDC for ESDC training activities within and outside the network. The Head of the ESDC shall in particular:

- (a) take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the effective functioning of ESDC activities;
- (b) draw up the preliminary draft annual report of the ESDC and its preliminary draft work programme to be submitted to the Committee on the basis of the proposals submitted by the Board;
- (c) coordinate the implementation of the ESDC work programme;
- (d) maintain contacts with the relevant authorities in the Member States;
- (e) maintain contacts with relevant external training actors in the field of CSDP;

- (f) conclude where necessary technical arrangements on ESDC training activities with the relevant authorities and training actors in the field of CSDP;

- (g) perform any other task attributed to him by the Committee.

2. The Head of the ESDC shall be responsible for the financial and administrative management of the ESDC, and in particular:

- (a) draw up and submit to the Committee any draft budget;
- (b) adopt the budgets after their approval by the Committee;
- (c) be the authorising officer for the ESDC budget;
- (d) open one or more bank accounts on behalf of the ESDC;
- (e) negotiate, submit to the Committee and conclude any financing agreement and/or technical arrangement with the Commission, the EEAS or a Member State regarding the financing and/or the implementation of the ESDC's expenditure;
- (f) negotiate and sign on behalf of the ESDC any Exchange of Letters for the secondment to the ESDC of Secretariat staff;
- (g) generally, represent the ESDC for the purpose of all legal acts with financial implications;
- (h) submit to the Committee the ESDC's annual accounts.

3. The Head of the ESDC shall be appointed by the High Representative, after consulting the Committee. He shall be appointed as a member of the EEAS staff for the period of his appointment. The Member States may put forward candidates for the position of Head of the ESDC and staff of the Union institutions and the EEAS may apply for this position, in accordance with the applicable rules.

4. The Head of the ESDC shall be accountable to the Committee for his activities.

Article 11

The ESDC Secretariat

1. The Secretariat shall assist the Head of the ESDC in fulfilling his tasks.

2. The Head of the ESDC, assisted by a selection panel, shall be responsible for selecting the staff of the Secretariat.

3. The Secretariat shall provide support to the Committee, to the Board and to institutes for the organisation of the ESDC training activities.

4. Each institute shall designate a point of contact with the Secretariat to deal with the organisational and administrative issues connected with the organisation of the ESDC training activities.

5. The Secretariat shall closely cooperate with the Commission and the EEAS.

Article 12

ESDC Staff

1. The ESDC staff shall consist of:
 - (a) staff seconded to the ESDC by Union institutions, the EEAS and Union agencies;
 - (b) national experts seconded to the ESDC by Member States.
2. The ESDC may receive interns and visiting fellows.
3. The Committee, acting on a proposal from the High Representative, shall define in so far as necessary the conditions applicable to interns and visiting fellows.
4. The Decision of the High Representative of the Union for Foreign Affairs and Security Policy of 23 March 2011 establishing the rules applicable to National Experts Seconded to the European External Action Service ⁽¹⁾ shall be applicable *mutatis mutandis* to national experts seconded to the ESDC by Member States.

CHAPTER III

FINANCING

Article 13

Contributions in kind to ESDC training activities

1. Each Member State, Union institution, Union agency and institute, and the EEAS shall bear all costs related to its participation in the ESDC, including salaries, allowances, travel and subsistence expenses and costs related to organisational and administrative support of the ESDC training activities.
2. Each participant shall bear all costs related to his participation.

Article 14

Support by the EEAS

1. The EEAS shall bear the costs arising from the hosting of the Head of the ESDC and the Secretariat within its premises, including information technology costs, the secondment of the Head of the ESDC and the secondment of one assistant staff member to the Secretariat.

2. The EEAS shall provide the ESDC with the administrative support necessary to recruit and manage its staff and to implement its budget.

3. A technical arrangement with the EEAS for the support it provides shall be negotiated by the Head of the ESDC and approved by the Committee.

Article 15

Voluntary contributions

1. For the purpose of financing specific activities, the ESDC may receive voluntary contributions from Member States and institutes or other donors. Such contributions shall be managed by the ESDC as earmarked revenue.
2. Technical arrangements for the contributions referred to in paragraph 1 shall be negotiated by the Head of the ESDC and approved by the Committee.

Article 16

Contribution from the Union Budget

1. The ESDC shall receive an annual contribution from the general budget of the Union. Such a contribution may in particular cover costs for support to ESDC training activities and national experts seconded by Member States to the ESDC.
2. The financial reference amount intended to cover the expenditure of the ESDC during the first 12 months after the conclusion of the financing agreement referred to in paragraph 3 shall be EUR 535 000. The financial reference amounts intended to cover the expenditure of the ESDC for subsequent periods shall be decided by the Council.

3. Following the decision by the Council as referred to in paragraph 2, a financing agreement with the Commission shall be negotiated by the Head of the ESDC and approved by the Committee.

Article 17

Financial rules

The Financial Rules set out in the Annex shall apply to expenditure funded by the ESDC and to financing of such expenditure.

CHAPTER IV

MISCELLANEOUS PROVISIONS

Article 18

Participation in ESDC training activities

1. All ESDC training activities shall be open to participation by nationals of all Member States and acceding States. The organising and conducting institutes shall ensure that this principle applies without any exception.

⁽¹⁾ OJ C 12, 14.1.2012, p. 8.

The ESDC training activities shall also be open in principle to participation by nationals of countries that are candidates for accession to the Union and, as appropriate, of other third countries.

2. Participants shall be civilian and military personnel dealing with strategic aspects in the field of CSDP and experts to be deployed in CSDP missions or operations.

Representatives of, inter alia, international organisations, non-governmental organisations, academic institutions and the media, as well as members of the business community, may be invited to participate in ESDC training activities.

3. A certificate signed by the High Representative shall be awarded to a participant who has completed an ESDC course. The modalities of the certificate shall be kept under review by the Committee. The certificate shall be recognised by the Member States and by the Union institutions.

Article 19

Cooperation

The ESDC shall cooperate with and draw on the expertise of international organisations and other relevant actors, such as national training institutes of third countries.

Article 20

Security regulations

Council Decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information ⁽¹⁾ shall apply to the ESDC.

CHAPTER V

FINAL PROVISIONS

Article 21

Continuity

The rules and regulations adopted for the implementation of Joint Action 2008/550/CFSP shall remain in force for the purpose of implementing this Decision in so far as they are compatible with this Decision and until they are amended or repealed.

Article 22

Repeal

Joint Action 2008/550/CFSP is hereby repealed.

Article 23

Review, entry into force and termination

1. This Decision shall enter into force on 1 April 2013. It shall be reviewed as appropriate, and, in any case, no later than six months before its expiry.

2. This Decision shall expire four years after the date of conclusion of the financing agreement referred to in Article 16(3).

Done at Luxembourg, 22 April 2013.

For the Council

The President

C. ASHTON

⁽¹⁾ OJ L 141, 27.5.2011, p. 17.

ANNEX

Financial Rules applicable to expenditure funded by the ESDC and its financing*Article 1***Budgetary principles**

1. The ESDC budget is the act which for each financial year lays down and authorises all ESDC revenue and all expenditure funded by the ESDC.
2. Budget revenue and expenditure shall be in balance.
3. No revenue or expenditure funded by the ESDC may be implemented other than by allocation to a heading in the budget.

*Article 2***Adoption of budgets**

1. Each year the Head of the ESDC shall draw up a draft budget for the following financial year, which begins on 1 January and ends on 31 December of the same year. The draft budget shall include the appropriations deemed necessary to cover the expenditure to be funded by the ESDC during that period and a forecast of the revenue expected to cover such expenditure.
2. Appropriations shall be classified as necessary by type or purpose in chapters and articles. Detailed comments by article shall be included in the draft.
3. Revenue shall consist of Member States' voluntary contributions, the annual contribution from the budget of the European Union and miscellaneous revenue.
4. The Head of the ESDC shall submit a detailed budget report on the current and previous financial years and propose the draft budget to the Committee by 31 October. The Committee shall approve the draft budget by 31 December.
5. In the case of unforeseen circumstances and compelling need, the Head of the ESDC may propose an amending budget. Any draft amending budget and the budget for the first year following adoption of this Decision shall be proposed, approved and adopted in accordance with the same procedure as that applicable to the annual budget, except that the deadlines applicable to the annual budget shall not apply.

*Article 3***Transfers of appropriations**

The Head of the ESDC may make transfers of appropriations within the budget with the approval of the Committee.

*Article 4***Carry-overs of appropriations**

1. Appropriations necessary to pay for legal obligations entered into by 31 December of a financial year shall be carried over to the next financial year.
2. The Head of the ESDC may carry over other appropriations in the budget to the next financial year with the approval of the Committee.
3. Other appropriations shall be cancelled at the end of the financial year.

*Article 5***Implementation of the budget and staff management**

For the purpose of implementing its budget and managing its staff, the ESDC shall use existing administrative structures of the Union, in particular the EEAS, to the greatest possible extent.

*Article 6***ESDC Bank accounts**

1. Any ESDC bank account shall be opened at a first-rate financial institution whose head office is in a Member State and shall be a current or short-term account in euro.
2. No ESDC bank account shall be overdrawn.

*Article 7***Payments**

Any payment from an ESDC bank account shall require the joint signature of the Head of the ESDC and another member of the ESDC staff.

*Article 8***Accounting**

1. The Head of the ESDC shall ensure that accounts showing the ESDC revenue, expenditure and inventory of assets are kept in accordance with the internationally accepted accounting standards for the public sector.
2. The Head of the ESDC shall submit to the Committee the annual accounts for a given financial year no later than the following 31 March.
3. The necessary accounting services shall be outsourced.

*Article 9***Auditing**

1. An audit of the ESDC accounts shall be conducted annually.
2. The necessary auditing services shall be outsourced.
3. The audit reports shall be made available to the Committee if requested.

*Article 10***Discharge**

1. The Committee shall decide on the basis of the annual accounts and in view of the annual audit report whether to grant the Head of the ESDC a discharge in respect of the implementation of the ESDC budget.
 2. The Head of the ESDC shall take all appropriate steps to satisfy the Committee that a discharge may be granted and to act on the observations in the decisions giving discharge, if any.
-

COMMISSION IMPLEMENTING DECISION

of 22 April 2013

concerning the validity of certain binding tariff information

(notified under document C(2013) 2297)

(Only the German text is authentic)

(2013/190/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, and in particular Article 12(5)(a)(iii) and Article 248 thereof,

Having regard to 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 ⁽²⁾, and in particular Article 9(1) thereof,

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature, the Commission adopted Regulation (EC) No 160/2007 of 15 February 2007 concerning the classification of certain goods in the Combined Nomenclature ⁽³⁾, classifying a product consisting of a clear, dark brown liquid with an aromatic, herb-like smell and a bitter, herbal taste, having an actual alcoholic strength of 43 % by volume and consisting of a mixture of 32 kinds of medicinal herb extracts with caramel extract, water and alcohol under CN code 2208 90 69.
- (2) This classification was adopted on the following reasons: 'Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Additional Note 1(b) to Chapter 30, and by the wording of CN codes 2208, 2208 90 and 2208 90 69. The product cannot be regarded as a medicament of Chapter 30. Neither the label, nor the accompanying user directions nor the packaging contains any information about the type and concentration of the active substance(s). Only the amount and type of plants or parts of plants used are mentioned. The conditions of Additional Note 1(b) to Chapter 30 are therefore not met. The product is a spirituous beverage of heading 2208, having the characteristics of a food supplement, designed to maintain general health or well-being, based on extracts from plants (see the Harmonised System Explanatory Note to heading 2208, third paragraph, item 16).'
- (3) Following publication of the above Regulation on 20 February 2007, all Binding Tariff Information (BTIs)

previously issued by Member States classifying the products concerned as medicaments of heading 3004 ceased to be valid.

- (4) Subsequently Member States issued BTIs for such products under heading 2208.
- (5) However, Austria has issued the BTI referred to in the Annex, classifying a similar product under CN Code 3004 90 00. In so doing, Austria has failed to take account of the fact that the classification regulation constitutes the application of a general rule to a particular case, and thus contains guidance on the interpretation of the rule which can be applied by the authority responsible for the classification of an identical or similar product.
- (6) The BTI referred to in the Annex concerns a product that consists of a transparent, yellowish-brown liquid with specific aromatic odour and a bitter, spicy-aromatic taste. The product has an actual alcoholic strength of 43,4 % by volume and consists of a mixture of Camphor and 26 other medicinal herb extracts with essential oils, a food colouring agent and alcohol. That product is sufficiently similar to the one covered by Regulation (EC) No 160/2007.
- (7) The conditions of Additional Note 1(b) to Chapter 30 are not met because the labelling is not precise regarding the quantitative composition. The product described in the BTI issued by Austria consists of an alcoholic mix of camphor with different herbal extracts. However, a clear rationale for mixing all these herbs together is absent. The product does not treat or prevent specific diseases or ailments. Some of the indications are related to pathophysiological conditions not clearly defined.
- (8) To ensure equality between operators and the uniform application of the CN, the BTI referred to in the Annex should cease to be valid. The customs administration which issued the information should therefore revoke it as soon as possible and notify the Commission to that effect.
- (9) According to Article 12(6) of Regulation (EEC) No 2913/92 the holder should be given, during a certain period of time, the possibility of invoking binding tariff information which has ceased to be valid subject to the conditions laid down in Article 14(1) of Regulation (EEC) No 2454/93.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Customs Code Committee,

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 253, 11.10.1993, p. 1.

⁽³⁾ OJ L 51, 20.2.2007, p. 3.

HAS ADOPTED THIS DECISION:

Article 1

1. The binding tariff information referred to in column 1 of the table set out in the Annex, which has been issued by the customs authorities specified in column 2 for the tariff classification specified in column 3 shall cease to be valid.

2. The customs authorities specified in column 2 of the table set out in the Annex shall revoke the binding tariff information referred to in column 1 at the earliest possible date and in any case not later than 10 days from the notification of this Decision.

3. The customs authority which revokes the binding tariff information shall notify the Commission thereof.

Article 2

The binding tariff information referred to in the Annex may continue to be invoked under Article 12(6) of Regulation (EEC) No 2913/92 for a period of six months provided that the conditions laid down in Article 14(1) of Regulation (EEC) No 2454/93 are met.

Article 3

This Decision is addressed to the Republic of Austria.

Done at Brussels, 22 April 2013.

For the Commission

Algirdas ŠEMETA

Member of the Commission

ANNEX

Binding tariff information Reference No	Customs authority	Tariff classification
1	2	3
AT 2009/000788	Zollamt Wien	30049000

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