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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 508/2013

of 29 May 2013

imposing a definitive anti-dumping duty on imports of certain tungsten electrodes originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 9(4) and 11(2), (5) and (6) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) Following an investigation (the 'original investigation') the Council, by Regulation (EC) No 260/2007 ⁽²⁾, imposed a definitive anti-dumping duty on imports of certain tungsten electrodes originating in the People's Republic of China ('the PRC') (the 'original measures'). The measures took the form of an *ad valorem* duty of 63,5 % for all companies except three Chinese exporting producers to whom individual duties were granted.

2. Initiation of an expiry review

- (2) On 9 March 2012, the Commission announced by a notice ('Notice of initiation') ⁽³⁾, published in the *Official Journal of the European Union*, the initiation of an expiry

review of the anti-dumping measures applicable to imports of certain tungsten electrodes originating in the PRC.

- (3) The review was initiated following a substantiated request lodged by Eurométaux ('the applicant') on behalf of a Union producer representing more than 50 % of the Union production of certain tungsten electrodes.
- (4) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and injury to the Union industry.

3. Investigation

3.1. Review investigation period and the period considered

- (5) The investigation of continuation or recurrence of dumping covered the period from 1 January 2011 to 31 December 2011 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2008 to the end of the RIP ('the period considered').

3.2. Parties concerned by the investigation

- (6) The Commission officially advised the applicant, the other known Union producer, exporting producers in the PRC, unrelated importers and users known to be concerned, producers in the potential analogue countries and the representatives of the PRC of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation.
- (7) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 72, 13.3.2007, p. 1.

⁽³⁾ OJ C 71, 9.3.2012, p. 23.

- (8) In view of the apparently large number of exporting producers in the PRC and unrelated importers in the

Union involved in the investigation, sampling was envisaged in the Notice of initiation, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the publication of the Notice of initiation and to provide the Commission with the information requested in the Notice of initiation.

- (9) Three importers made themselves known. None of them, however, imported certain tungsten electrodes originating in the PRC during the RIP.
- (10) As only two exporting producers from the PRC came forward with the requested information it was not necessary to select a sample of exporting producers.
- (11) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from two Union producers, two exporting producers in the PRC and one producer in the USA.
- (12) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) *Union producers*

- Plansee SE, Austria
- Gesellschaft für Wolfram Industrie mbH, Germany

(b) *Exporting producers in the PRC*

- Shandong Weldstone Tungsten Industry Co., Ltd, Zibo
- Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd, Baoji

(c) *Related company to one cooperating exporting producer in the PRC*

- Shanghai Weldstone Asia Co., Ltd, Shanghai

(d) *Related companies to one cooperating exporting producer in the European Union*

- Weldstone GmbH, Wilnsdorf, Germany
- Binzel Benelux bvba, Eke – Nazareth, Belgium

(e) *Analogue Country*

- Global Tungsten & Powders Corp, Towanda, USA.

B. PRODUCT UNDER REVIEW AND LIKE PRODUCT

- (13) The product concerned is the same as that covered by Regulation (EC) No 260/2007, namely tungsten welding electrodes, including tungsten bars and rods for welding electrodes, containing 94 % or more by weight of tungsten, other than those obtained simply by sintering, whether or not cut to length, originating in the PRC ('TE' or 'the product under review'), currently falling within CN codes ex 8101 99 10 and ex 8515 90 00.
- (14) The product under review is used in welding and similar processes. TE are used in a wide variety of industrial sectors such as construction, shipbuilding, automobile manufacturing, marine, chemical and nuclear engineering, aerospace as well as oil and gas pipelines. Based on the physical and chemical characteristics and the substitutability of the different types of the product from the perspective of the user, all TE are considered to constitute a single product for the purpose of this proceeding.
- (15) The investigation confirmed that, as in the original investigation, the product under review and that manufactured and sold on the domestic market of the PRC, as well as that produced and sold by the Union industry on the Union market and that produced and sold on the analogue country market have the same basic physical and technical characteristics and the same basic uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR A RECURRENCE OF DUMPING

1. Preliminary remarks

- (16) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.
- (17) As explained above, it was not necessary to select a sample of exporting producers in the PRC. The two cooperating companies covered the imports of product concerned from the PRC to the Union in a range of 80 % to 85 % during the RIP. On this basis, it was concluded that cooperation was high.
- (18) One of the cooperating exporting producers benefited from market economy treatment ('MET') in accordance with Article 2(7)(c) of the basic Regulation, while the second benefited from individual treatment ('IT') in accordance with Article 9(5) of the basic Regulation, granted to them during the original investigation. It is recalled that in the context of investigations in accordance with Article 11(2) of the basic Regulation, MET and IT are not reconsidered. A third company, who did not cooperate in the current expiry review, was granted IT in the original investigation.

2. Dumping of imports during the RIP

2.1. Analogue country

- (19) Since the PRC is an economy in transition and in accordance with the provisions of Article 2(7)(a) of the basic Regulation, normal value for exporting producers not granted market economy treatment has to be determined on the basis of the price or constructed value in an appropriate market economy third country ('analogue country').
- (20) As in the original investigation, the USA was proposed as analogue country in the Notice of initiation for the purpose of establishing normal value. Interested parties were given the opportunity to comment on the appropriateness of this choice. No comments were received in this regard.
- (21) The Commission also examined whether other countries could be a reasonable choice of an analogue country and identified other third countries from which imports of tungsten electrodes were recorded in Eurostat. Potential known producers in these countries were contacted and invited to cooperate in the investigation. However, no cooperation was obtained.
- (22) It was considered that the USA was representative as a reference market, especially in view of the openness and competitiveness of their domestic market. The USA was used also as an analogue country in the original investigation. No new or changed circumstances which would justify a change appeared to exist nor were any such circumstances communicated to the Commission.
- (23) Therefore, the USA has been used as an analogue market economy country for the purpose of this review. The only known USA producer was contacted and agreed to cooperate, to reply to the questionnaire and to accept a verification visit. The verified sales and production figures of this company have been used for the determination of the normal value for companies not granted MET during the original investigation.

2.2. Normal value

- (24) For the company granted MET in the original investigation, normal value has been established based on its data. In accordance with Article 2(2) of the basic Regulation, it was examined whether the domestic sales of TE to independent customers were representative during the RIP, i.e. if the sales volume of the product intended for domestic consumption represented 5 % or more of their exports of the product under review to the Union.

- (25) It was subsequently examined whether the domestic sales of the like product could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers on the domestic market.
- (26) For the types of the product concerned where the domestic sales were representative and made in the ordinary course of trade, normal value was established on the prices paid by independent customers in the exporting country. For the remaining types of the product under review the normal value had to be constructed in accordance with Article 2(3) of the basic Regulation. Therefore, the established normal value was calculated using the company's cost of manufacturing and adding selling, general and administrative costs (SG&A) and profit achieved on the domestic sale made in the ordinary course of trade in accordance with Article 2(6) of the basic Regulation.
- (27) Following disclosure, one party argued that the methodology used to determine SG&A expenses was different from the one used in the original investigation which may have had an impact on the determination of the profit margin used to calculate the constructed normal value in accordance with Article 2(6) of the basic Regulation. Further to the information already previously submitted in the investigation the party did not substantiate its claim by any evidence. It is noted that in accordance with Article 2(5) of the basic Regulation SG&A expenses were allocated on turnover basis and that this methodology was also used in the original investigation.
- (28) Profit used in the initial investigation was not from the OCOT test (ordinary course of trade) as none of the exported types of the product concerned were sold on the domestic market in the ordinary course of trade. The current expiry review showed that some types of the product concerned were profitable and therefore, in compliance with Article 2(3) and (6) of the basic Regulation, profit of these profitable transactions was used for constructing the normal value.
- (29) As far as the company not granted MET in the original investigation is concerned, pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of information collected from the cooperating producer in the analogue country. Domestic sales of the producer in the analogue country were found to be made in sufficient quantities and in the ordinary course of trade and could thus be used as a basis to determine normal value for the company not granted MET.

2.3. Export price

- (30) Regarding the company granted MET, all export sales to the Union were made via related importers and subsequently resold to related and unrelated companies in the Union. The export price was therefore constructed, pursuant to Article 2(9) of the basic Regulation, on the basis of the price at which the imported products were first resold to an independent buyer, duly adjusted for all costs incurred between importation and resale, as well as a reasonable margin for SG&A and profits. In this regard, the related companies' own SG&A costs were used.
- (31) Following disclosure one party argued that when determining SG&A of the related importers, certain expenses were taken into consideration that were related to the sales of other products than the product concerned and that these expenses should therefore be excluded. It is noted that the verified SG&A expenses as provided by the companies concerned were taken into consideration when constructing the export price in accordance with Article 2(9) of the basic Regulation. The claim that the SG&A expenses reported included SG&A expenses from sales of other products was not supported by any evidence and had therefore to be rejected.
- (32) In addition, the comments submitted by an interested party on export prices were based on an erroneous quotation of the relevant currency. Therefore this claim was rejected.
- (33) As far as the profit margin is concerned, none of the unrelated importers in the Union cooperated. In the original investigation, the profit margin of the related importers was used, based on the fact that the activities of the unrelated importers were not sufficiently comparable to that of the related importer concerned. The investigation showed that the activities of the related importer were the same during the RIP as during the investigation period of the original investigation, i.e. the majority of the TE imported was further integrated into the main product produced by the group, the welding torch. It should also be noted that the TE are of minor value compared to the end-product. On this basis and as in the original investigation it was concluded that the related importer's own profit margin would constitute an accurate basis for a profit margin to construct the export price.
- (34) Regarding the company granted IT in the original investigation, all export sales to the Union were made directly to independent customers established in the Union. In accordance with Article 2(8) of the basic Regulation, the export price was therefore established on the basis of the prices actually paid or payable.
- (35) The determination of the export price of all other producers established in the PRC was based on imports statistics available in the Article 14(6) database.

- (36) In accordance with Article 11(10) of the basic Regulation, export prices were established by deducting the anti-dumping duties paid, as none of the parties submitted any evidence that the duty was duly reflected in resale prices and subsequent selling prices in the Union market.

2.4. Comparison

- (37) The comparison between normal value and export price was made on an ex-works basis.
- (38) For the purpose of ensuring a fair comparison between the normal value and the export price of the both cooperating exporting producers, and in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made with regard to differences in transport, insurance and credit costs which affected prices and price comparability.

2.5. Dumping margin

- (39) As provided for under Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price.
- (40) For the cooperating exporting producer granted MET in the original investigation this comparison showed that this company continued dumping at significant levels.
- (41) For the cooperating exporting producer granted IT in the original investigation as well as country-wide dumping margin applicable to all other non-cooperating exporting producers in the PRC showed a significant level of dumping even higher than in the original investigation.

3. Development of imports should measures be repealed

3.1. Preliminary remark

- (42) Further to the finding of the existence of dumping during the RIP, the likelihood of continuation of dumping should measures be repealed was investigated.
- (43) In this regard, it should be noted that the cooperating exporting producers represented only around 10 % of the total production capacity in the PRC. Therefore, findings had to be largely based on information submitted in the review request as well as publicly available information. The export price behaviour of Chinese producers to other third country markets, the Chinese production capacity as well as available spare capacities and the attractiveness of the Union market for Chinese exporters were considered in particular.

3.2. *Export price behaviour of Chinese producers to other third country markets*

- (44) As far as exports to other third country markets are concerned, it should be noted that the statistical information available from Chinese public databases covers a broader product scope than the product under review and therefore no meaningful analysis of quantities exported to other markets or prices on these markets could be made. The two cooperating producers from the PRC did not export to unrelated customers in other third markets. On this basis, the export prices to other third country markets during the RIP could not be reliably established and no firm conclusions could be drawn on the basis of the information available.

3.3. *Spare capacity of the Chinese producers*

- (45) The data on the basis of which the analysis below is made were provided by the applicant in the review request and was cross-checked with publicly available information.
- (46) On this basis, capacities of producers in the PRC were estimated at 1 600 000 kg. The applicant's estimation of the capacity utilisation of Chinese producers is around 63 % resulting in an unused capacity of about 600 000 kg, exceeding nearly five times the total Union consumption during the RIP. Thus, there are large quantities available for export from the PRC, in particular, because there are no indications that third country markets or the domestic market could absorb this significant spare capacity.

3.4. *Volume and prices of dumped imports from the PRC*

- (47) Imports from the PRC into the Union increased by 9 % over the period considered and reached the level of well above 50 000 kilograms during the RIP representing approximately half of the total Union consumption during the RIP.
- (48) Throughout the period considered, import prices were fluctuating and followed the same trends as the sales prices of the Union industry on the Union market. Overall, import prices increased from 2008 to the RIP by 42 % and were still at dumped levels. The price growth is mainly explained by the higher cost of the main raw material (tungsten powder) during the RIP.

3.5. *Attractiveness of the Union market*

- (49) The Union market is among the largest in the world reaching around 20 % of the world consumption of TE. Chinese companies have shown a serious interest in developing their presence on the Union market which is supported by the fact that they maintained and even increased their significant market share of 45 % during the RIP.

3.6. *Conclusion of the likelihood of continuation of dumping*

- (50) The foregoing analysis demonstrates that Chinese imports continued to enter the Union market at dumped prices with significant dumping margins. Given most notably the analysis of price levels on the Union market, and the interest Chinese exporters have shown in the Union market, as well as the significant spare capacities available in the PRC, going far beyond the total Union consumption, it can be concluded there is a strong likelihood of continuation of dumping should measures be removed.

D. SITUATION ON THE UNION MARKET

1. Definition of the Union industry

- (51) The current investigation confirmed that TE is manufactured by two producers in the Union. Both producers cooperated fully with the investigation.
- (52) The above companies constitute the Union industry within the meaning of Article 4(1) and 5(4) of the basic Regulation and will hereafter be referred to as the 'Union industry'.

2. Preliminary remark

- (53) Since there are only two companies which constitute the Union industry, the data referring to the Union industry will be either presented in indexed form or ranges, so as to protect confidentiality pursuant to Article 19 of the basic Regulation.
- (54) Since imports under CN code level from Eurostat also included products other than TE, information on imports have been analysed at TARIC code level, supplemented by data collected in accordance with Article 14(6) of the basic Regulation. TARIC data are considered confidential as they provide a level of detail which allows for identification of parties. For this reason some information is presented in ranges.

3. Union consumption

- (55) Union consumption was established on the basis of the sales volume of the Union industry on the Union market, and import data from Eurostat, at TARIC code level supplemented by information from data collected in accordance with Article 14(6) of the basic Regulation.
- (56) Between 2008 and the RIP ('period considered'), Union consumption decreased by 16 %. Consumption in the Union has decreased substantially between 2008 and 2009, and has increased since, without reaching the pre-crisis levels during the RIP. From the low peak in 2009 to the RIP, Union consumption increased by almost 40 %.

Table 1

Consumption

Volume (kg)	2008	2009	2010	RIP
Consumption	140 000-150 000	90 000-100 000	110 000-120 000	120 000-130 000
Index (2008 = 100)	100	61	75	84

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

4. Volume and market share of dumped imports from the PRC

- (57) The volumes and market shares of dumped imports from the PRC was established on the basis of statistical information provided at TARIC level supplemented by information from data collected in accordance with Article 14(6) of the basic Regulation.
- (58) Notwithstanding the absolute decrease of the Union consumption, the volume of imports of the product under review originating in the PRC increased by 9 % over the period considered, keeping a level well above 50 000 kg during the RIP (see Table 2). This increase, together with the general reduction of the Union consumption during the period considered, led to an increase of the market share of the Chinese exporters to approximately half of the total Union market.

Table 2

Imports from the PRC

	2008	2009	2010	RIP
Volume	51 771	36 188	39 953	56 289
Index (2008 = 100)	100	70	77	109
Market share (%)	35-40	35-40	35-40	45-50

Source: Eurostat, Article 14(6) database.

5. Prices of the imports from the PRC

5.1. Evolution of prices

- (59) Prices from the PRC increased in the region of 40 % between the year 2008 and the RIP, with a sharp increase during the RIP. The price growth is mainly explained by the higher cost of the main raw material (tungsten powder) during the RIP.

Table 3

Prices of the imports from the PRC

	2008	2009	2010	RIP
Prices EUR/kg	36,59	33,83	41,56	51,83
Index (2008 = 100)	100	92	114	142

Source: Eurostat, Article 14(6) database.

5.2. Price undercutting

- (60) The investigation revealed that import prices from the PRC were undercutting the Union industry average prices. An undercutting margin of 37 % was established during the RIP, and when including the anti-dumping duty in the calculation, the undercutting margin was still significant at a level of 24 %. The calculation was based on a comparison of the CIF export prices of the cooperating exporting producers with the average Union industry prices at ex-work level. The prices were considered representative for the PRC as the two cooperating exporting producers covered around 80 % of the imports of TE from the PRC.
- (61) Following disclosure one exporting producer claimed that prices were not compared on a per-type basis and due to alleged significant price variations between different product types the undercutting levels calculated were not meaningful. On the basis of the information available, a price comparison on a per-type basis was only possible for part of the Union industry's sales on the Union market and only for part of the export sales made to the Union. However, the party did not present evidence that would call into question the reasonableness of the methodology applied. This claim had therefore to be rejected.
- (62) Following disclosure it was also argued that the Chinese import prices and the Union industry's sales prices on the Union market were not compared at the same level of trade. This claim was not substantiated as the party concerned did not submit any information or evidence that demonstrated consistent and distinct differences in function and prices of the seller for the alleged different levels of trade. This claim was therefore rejected.

6. Imports from other third countries

- (63) The volume of imports and prices from other countries during the period considered is shown in the table below. The volumes and market shares of imports from other third countries were established on the basis of statistical information provided at TARIC level supplemented by information from data collected in accordance with Article 14(6) of the basic Regulation.

Table 4

Imports from other third countries

	2008	2009	2010	RIP
Vietnam				
Volume of imports (kg)	27 878	14 184	13 776	25 833
Index (2008 = 100)	100	51	49	93
Price EUR/kg	44,36	45,34	46,02	56,01
Index (2008 = 100)	100	102	104	126
South Korea				
Volume of imports (kg)	21 299	8 174	11 051	3 319
Index (2008 = 100)	100	38	52	16
Price EUR/kg	50,99	44,16	44,16	59,31
Index (2008 = 100)	100	87	87	116
Other third countries				
Volume of imports (kg)	7 641	6 247	10 942	9 186
Index (2008 = 100)	100	82	143	120
Price EUR/kg	43,24	59,82	64,98	57,75
Index (2008 = 100)	100	138	150	134
Total				
Volume of imports (kg)	56 818	28 605	35 779	38 338
Index (2008 = 100)	100	50	63	67
Market share of imports from other third countries (%)	35-40	30-35	30-35	30-35
Price EUR/kg	46,70	48,17	51,25	56,71
Index (2008 = 100)	100	103	110	121

Source: Eurostat, Article 14(6) database.

(64) Import volumes from other third countries to the Union market decreased during the period considered by around 33 %. Market shares decreased over the period considered and were between 30 % to 35 % during the RIP. Prices from other third countries increased by 21 % over the same period.

(65) It is recalled that in the original investigation there were no significant imports of the like product to the Union market other than from the PRC. The original investigation established that the core markets of the remaining US and Japanese producers were their respective domestic markets. It was therefore concluded that imports from countries other than the PRC were extremely small.

(66) Information provided by the Union industry alleged that there is no existing production of TE in Vietnam and South Korea and that imports from those countries were in fact coming from the PRC. However, no information was obtained confirming this allegation during the current investigation.

7. Economic situation of the Union industry**7.1. Preliminary remarks**

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

(68) Since the Union industry is composed of only two producers, the data are reported in ranges for confidentiality reasons.

7.2. Production, production capacity and capacity utilisation

(69) The Union industry's production decreased each year during the period considered. By the end of RIP, the production had decreased by 29 % compared to 2008. The trend has been particularly negative during 2009, with a decrease of more than 40 %.

Table 5

Total Union production

Volume (kg)	2008	2009	2010	RIP
Production	60 000-70 000	35 000-40 000	50 000-60 000	40 000-50 000
Index (2008 = 100)	100	60	82	71

Source: Questionnaire replies.

(70) Production capacity remained stable during the period considered. As production decreased, the resulting capacity utilisation showed an overall decrease of 27 % between 2008 and the RIP, reaching a 41 % capacity utilisation during the RIP. Detailed data is shown below:

Table 6

Production capacity and capacity utilisation

Volume (kg)	2008	2009	2010	RIP
Production capacity	95 000-110 000	95 000-110 000	95 000-110 000	95 000-110 000
Index (2008 = 100)	100	100	100	100
Capacity utilisation (%)	57	35	47	41
Index (2008 = 100)	100	60	82	73

Source: Questionnaire replies.

7.3. Stocks

- (71) The level of closing stocks of the Union industry decreased by 20 % between 2008 and the RIP. This trend is in line with the trend of decreasing consumption on the Union market over the same period.

Table 7

Closing stock

Volume (kg)	2008	2009	2010	RIP
Closing stock	5 000-15 000	5 000-15 000	5 000-15 000	5 000-15 000
Index (2008 = 100)	100	70	85	80

Source: Questionnaire replies.

7.4. Sales volume

- (72) The sales volume of the Union industry on the Union market to unrelated customers decreased by 23 % between 2008 and the RIP, with a sharp decrease between 2008 and 2009. This negative trend has been sharper than the decrease in the total consumption, with the exception of year 2010.

Table 8

Sales to unrelated customers

	2008	2009	2010	RIP
Volume (kg)	40 000-50 000	25 000-30 000	35 000-40 000	30 000-35 000
Index (2008 = 100)	100	65	87	77

Source: Questionnaire replies.

7.5. Market share

- (73) As a result of what is observed in the previous recital regarding sales volume of the Union industry on the

Union market, the market share held by the Union industry fell during the period considered. The Union industry, whilst losing sales volumes, was able to maintain its market shares through 2009 and 2010, but suffered a setback during the RIP, with declining sales notwithstanding the growing market. This resulted in a market share of between 20 % to 25 %, slightly lower than the one which was registered at the beginning of the period considered.

Table 9

Union market share

	2008	2009	2010	RIP
Union market share	25 %-30 %	25 %-30 %	30 %-35 %	20 %-25 %
Index (2008 = 100)	100	107	117	91

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

7.6. Growth

- (74) As explained above, consumption in the Union has decreased substantially between 2008 and 2009, as a result of the economic downturn, and has increased since, without reaching the pre-crisis levels during the RIP. The Union industry, whilst losing sales volumes, was able to maintain its market shares through 2009 and 2010, but suffered a setback during the RIP, with declining sales notwithstanding the growing market.

7.7. Employment and productivity

- (75) The level of employment of the Union industry declined between 2008 and the RIP by 13 %.
- (76) Following the fall in production, the productivity per employee, measures as output in kg per employee, has also decreased during the period considered. Detailed data is shown below:

Table 10

Total Union employment and productivity

	2008	2009	2010	RIP
Index of employees	100	65	84	87
Index of productivity	100	92	106	83

Source: Questionnaire replies.

7.8. Unit sales prices

- (77) Unit sales prices of the Union industry to unrelated customers in the Union decreased slightly between 2008 and 2010, partly reflecting the impact of the economic crises. Between 2010 and the RIP unit sales prices increased substantially. Overall, the prices of the Union industry increased by 35 % during the period considered. This price development, in particular between 2010 and the RIP, was caused by the increase of prices of the main components making up TE.

Table 11

Unit price of Union sales

	2008	2009	2010	RIP
Unit price of Union sales (EUR per unit)	80-120	80-120	80-120	100-140
Index (2008 = 100)	100	94	96	135

Source: Questionnaire replies.

7.9. Profitability

- (78) Profitability improved between 2008 and the RIP, after having reached a lower level in 2009 and 2010. However profitability remained negative throughout the whole period considered.

Table 12

Profitability

	2008	2009	2010	RIP
Profitability Union sales Index (2008 = 100)	100	95	95	104

Source: Questionnaire replies.

7.10. Investment and return on investment

- (79) Investment in the business of the product concerned significantly decreased during the period considered.
- (80) Return on investment followed the profitability trend. In 2008 the Union industry registered a negative return on investment which slightly improved, though it remained negative, during the RIP.

Table 13

Investments and return on investment

Index (2008 = 100)	2008	2009	2010	RIP
Investments	100	2	23	18
Return on investment	100	100	96	103

Source: Questionnaire replies.

7.11. Cash flow and ability to raise capital

- (81) The cash flow, which is the ability of the industry to self-finance its activities, expressed as a percentage of the turnover of the product concerned, significantly improved during the period considered, although it remained negative.

Table 14

Cash flow

	2008	2009	2010	RIP
Cash flow Index (2008 = 100)	100	99	96	106

Source: Questionnaire replies.

7.12. Wages

- (82) Between 2008 and the RIP the wages of the Union industry decreased by 16 % in line with the reduction of the number of employees.

7.13. Magnitude of dumping margin

- (83) Despite the measures in force, substantial dumping continued during the RIP at a level which is significantly above the current level of measures. Given the large spare capacity, the actual volumes of imports from the PRC and prices significantly undercutting the Union industry's sales price, the impact on the Union industry of the actual margins of dumping cannot be considered to be negligible.

7.14. Recovery from past dumping

- (84) It was analysed whether the Union industry recovered from the effects of past dumping. Despite the anti-dumping measures in force, the Union industry did not manage to recover from past dumping. As a response to the price pressure of the Chinese imports the Union industry tried to keep their market share but had losses as a result.

8. Conclusion on the situation of the Union industry

- (85) The Union industry remained in a vulnerable economic situation and continued to suffer material injury. Almost all injury indicators relating to the financial performance of the Union industry deteriorated during the period considered. Consequently, it could not be concluded that the situation of the Union industry was secure.
- (86) As a response to the price pressure of the Chinese imports the Union industry tried to keep its market share, but selling at prices largely below the break-even level. Indeed, the increase of the sales prices of the Union industry between 2010 and the RIP is linked to the increase of raw material prices and did not cover the total cost of the Union industry.

- (87) In conclusion, the difficulties of the Union industry can be clearly linked to the massive presence of Chinese low-priced imports of the product under review on the Union market, which are sold at significantly dumped prices, despite the measures in force. This factor was enough

to determine a situation where the Union industry suffer losses in an attempt to keep a reasonable market share. In addition, these difficulties have been further deepened throughout almost the entire period considered by two factors: the downturn of the market during the economic crisis of 2008-09 and, even if to a minor extent, the sudden increase of raw material costs during the RIP. This led to a scenario where losses have reached significant levels.

- (88) In view of the negative development of the indicators pertaining to the Union industry, it is considered that the Union industry continued to suffer material injury within the meaning of the Article 3(5) of the basic Regulation during the period considered.

E. LIKELIHOOD OF CONTINUATION OF INJURY

1. Preliminary remarks

- (89) During the period considered, the Union industry appeared in a vulnerable situation, still exposed to the injurious effect of the dumped imports from the PRC.
- (90) In accordance with Article 11(2) of the basic Regulation, imports from the country concerned were assessed in order to establish if there was a likelihood of continuation of injury, should measures be allowed to lapse.

2. Chinese import volumes

- (91) It is recalled that consumption on the Union market decreased significantly since the original investigation mainly due to the economic downturn. In these circumstances, the Chinese import volumes increased to a level well above 50 000 kg during the RIP. As to the import volumes, this has increased by 9 % while the market share of the Union industry decreased.

3. Spare capacity in the PRC

- (92) As described in recital 46, based on the information available there is significant spare capacity available in the PRC. It can be expected that a large part of this spare capacity could be used to increase imports in the Union market in the absence of anti-dumping measures. This is because there are no indications that third country markets or the Chinese domestic markets could absorb the significant Chinese spare capacity. Therefore, the capacity to significantly increase imports to the Union exists. The estimation of the unused capacity would exceed nearly five times the Union consumption during the RIP.
- (93) Moreover, information submitted during the investigation indicated important distortions in the raw material (ammonium paratungstate – ‘APT’) market used to manufacture the product under review. This raw material is subject to export quotas imposed by the Chinese authorities as well as export taxes. This limits the exports of APT and artificially increases its world price. These distortions are likely to confer further incentives to the Chinese industry to produce and export at low prices, while the Union industry has to produce the like product on the basis of artificially high raw material prices.

4. Attractiveness of the Union market

- (94) It was demonstrated that the Chinese exporting producers showed a continuous interest in the Union market and were able to increase import volumes at the expense of the sales of the Union industry. They even increased their already significant market share during the RIP.

5. Conclusion

- (95) The Union industry had been suffering from the effects of the Chinese dumped imports for several years and is currently still in a fragile economic situation.
- (96) If measures were allowed to lapse there is a strong likelihood of increased dumped imports which could seriously threaten the existence of the Union industry. Indeed, in the PRC there is a significant spare capacity which is likely to be largely directed to the Union market, at dumped prices undercutting the Union industry sales prices in the Union market, should measures be allowed to lapse.
- (97) In view of the findings of the investigation, namely the continuation of dumping, the spare capacity in the PRC, the distortion found in the market for raw materials, the potential of the exporting producers in the PRC to redirect their export volumes to the Union market, the price behaviour of the Chinese exporters clearly undercutting the prices of the Union industry and the attractiveness of the Union market, any repeal of the measures would point to a likelihood of continuation of injury.

F. UNION INTEREST

1. Introduction

- (98) In accordance with Article 21 of the basic Regulation, it has been examined whether the maintenance of the existing measures would be against the Union interest as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, of importers and of users. All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (99) It should be recalled that in the original investigation the imposition of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (100) On this basis it was examined whether, despite the conclusion on the likelihood of a continuation of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

2. Interest of the Union industry

- (101) In view of the situation of the Union industry and the analysis on the likelihood of recurrence of injury, it is clear that the Union industry would be likely to experience a serious deterioration of its financial situation in case the anti-dumping measures were allowed to lapse. Throughout the period considered the Union industry lost production and sales volume while imports from the country concerned increased despite the measures in force. During the same period the financial situation of the Union industry deteriorated as it experiences heavy losses. Therefore, effective competitive conditions need to be enforced on the Union market.
- (102) It is considered that the continuation of measures would benefit the Union industry, which should then be able to increase sales volumes and improve its financial situation. By contrast, the discontinuation of the measures would seriously threaten the viability of the Union industry.

3. Interest of users

- (103) None of the 15 contacted users came forward to cooperate. As in the original investigation no questionnaire replies were received from interested users. In the original investigation the non-cooperation was explained by the low impact of TE on their production costs as it appears that quality and reliability are primary criteria for customers. Given the apparent marginal impact of the product under review on the costs of downstream products, it was concluded that measures would not adversely impact the user industry.

4. Interest of importers

- (104) Three importers contacted the Commission at the beginning of the investigation, but they were not considered as being interested parties since they had not imported the product concerned from the PRC during the RIP. Given that importers of TE did not show any interest during the investigation, it was concluded that it would not be clearly against EU interest to maintain measures.

5. Conclusion

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

G. ANTI-DUMPING MEASURES

- (106) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.

- (107) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain tungsten electrodes originating in the PRC, imposed by Regulation (EC) No 260/2007 should be maintained.
- (108) In order to minimise the risk of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures, which only apply to companies for which an individual duty rate is introduced, include the following: the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other producers,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of tungsten welding electrodes, including tungsten bars and rods for welding electrodes, containing 94 % or more by weight of tungsten, other than those obtained simply by sintering, whether or not cut to length, currently falling within CN codes ex 8101 99 10 and ex 8515 90 00 (TARIC codes 8101 99 10 10 and 8515 90 00 10) and originating in the People's Republic of the China.

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

Company	Anti-Dumping Duty	TARIC Additional Code
Shandong Weldstone Tungsten Industry Co., Ltd	17,0 %	A754
Shaanxi Yuheng Tungsten & Molybdenum Industrial Co., Ltd	41,0 %	A755
Beijing Advanced Metal Materials Co., Ltd	38,8 %	A756
All other companies	63,5 %	A999

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

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

Article 2

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

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

Done at Brussels, 29 May 2013.

For the Council
The President
R. BRUTON

ANNEX

The valid commercial invoice referred to in Article 1(3) of this Regulation must include a declaration signed by an official of the company, in the following format:

1. The name and function of the official of the company which has issued the commercial invoice.
 2. The following declaration 'I, the undersigned, certify that the [volume] of tungsten electrodes sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'
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COMMISSION REGULATION (EU) No 509/2013

of 3 June 2013

amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of several additives in certain alcoholic beverages

(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 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives ⁽¹⁾, and in particular Articles 10(3) and 30(5) thereof,

Whereas:

- (1) Annex II to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in foods and their conditions of use.
- (2) That list may be updated in accordance with the common procedure referred to in Article 3(1) of Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings ⁽²⁾ either on the initiative of the Commission or following an application.
- (3) An application to amend the Union list of food additives was submitted by the National Council of Viticulture and Meadery of Poland on 10 February 2011 in order to allow the use of several additives in certain alcoholic beverages as described in the Polish Decree of 12 May 2011 on manufacturing and bottling of wine products, trade of those products and market organisation ⁽³⁾ ('the Polish Decree on wine products').
- (4) The alcoholic beverages covered by the Polish Decree on wine products are not covered by 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 ⁽⁴⁾, since they do not fall under one of the categories of grapevine products listed in Annex XIb to that Regulation. Aromatised products covered by the Polish Decree on wine are accordingly also not covered by Council Regulation (EEC) No 1601/91 of 10 June 1991 laying down general rules on the definition,

description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails ⁽⁵⁾.

- (5) The use of additives in products covered by Regulation (EC) No 1234/2007 is authorised by Commission Regulation (EC) No 606/2009 of 10 July 2009 laying down certain detailed rules for implementing Council Regulation (EC) No 479/2008 as regards the categories of grapevine products, oenological practices and the applicable restrictions ⁽⁶⁾ and their implementing measures. Those acts do not apply to the alcoholic beverages covered by the Polish Decree on wine products.
- (6) However, Article 113d(1) of Regulation (EC) No 1234/2007 provides that the Member States may allow the use of the term 'wine' for products other than those provided in Annex XIb to that Regulation, if it is accompanied by the name of a fruit in the form of a composite name to market products obtained by the fermentation of fruit other than grapes or if it is part of a composite name. In accordance with Article 113d(1) of Regulation (EC) No 1234/2007, Poland allowed the use of the term 'wine' for the alcoholic beverages listed in the Polish Decree on wine products. Therefore, the use of additives in those products should be listed in Annex II to Regulation (EC) No 1333/2008, without prejudice to the rules applicable in the other Member States with regard to the denomination of these products.
- (7) Alcoholic beverages listed in the Polish Decree on wine products belong to the food categories listed in Annex II to Regulation (EC) No 1333/2008 as follows:
 - Wino owocowe markowe (Mark fruit wine), wino owocowe wzmocnione (fortified fruit wine), wino owocowe aromatyzowane (aromatised fruit wine), wino z soku winogronowego (wine from grape juice) and aromatyzowane wino z soku winogronowego (aromatised wine from grape juice) should be listed in category 14.2.4: 'Fruit wine and made wine' of Annex II to Regulation (EC) No 1333/2008,
 - Nalewka na winie owocowym (Tincture of fruit wine), aromatyzowana nalewka na winie owocowym (aromatised tincture on fruit wine), nalewka na winie z soku winogronowego (tincture of wine from grape juice), aromatyzowana nalewka na winie z soku winogronowego (aromatised tincture of wine from grape juice), napój winny owocowy lub miodowy (fruit or honey-wine

⁽¹⁾ OJ L 354, 31.12.2008, p. 16.⁽²⁾ OJ L 354, 31.12.2008, p. 1.⁽³⁾ Dziennik Urzędowy z 2011 r. Nr 120, poz. 690.⁽⁴⁾ OJ L 299, 16.11.2007, p. 1.⁽⁵⁾ OJ L 149, 14.6.1991, p. 1.⁽⁶⁾ OJ L 193, 24.7.2009, p. 1.

based drinks), *aromatyzowany napój winny owocowy lub miodowy* (aromatised fruit or honey-wine based drinks), *wino owocowe niskoalkoholowe* (low alcoholic fruit wine) and *aromatyzowane wino owocowe niskoalkoholowe* (aromatised low alcoholic fruit wine) should be listed in category 14.2.8 of Annex II to Regulation (EC) No 1333/2008: 'Other alcoholic drinks including mixtures of alcoholic drinks with non-alcoholic drinks and spirits with less than 15 % of alcohol'.

- (8) The authorisation of the use of additives in the products covered by the Polish Decree on wine products does not lead to an additional exposure of the consumer to those substances and therefore does not raise safety concerns.
- (9) Pursuant to Article 3(2) of Regulation (EC) No 1331/2008, the Commission has to seek the opinion of the European Food Safety Authority (the Authority) in order to update the Union list of food additives set out in Annex II to Regulation (EC) No 1333/2008, except where the update in question is not liable to have an effect on human health. Since the authorisation of the use of several additives in certain alcoholic beverages covered by the Polish Decree on wine products constitutes an update of that list which is not liable to

have an effect on human health, it is not necessary to seek the opinion of the Authority.

- (10) Regulation (EC) No 1333/2008 should therefore be amended accordingly.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health and neither the European Parliament nor the Council has opposed them,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1333/2008 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 3 June 2013.

For the Commission

The President

José Manuel BARROSO

Part E of Annex II to Regulation (EC) No 1333/2008 is amended as follows:

(1) In food category 14.2.4 'Fruit wine and made wine', the entries concerning Groups II and III and additives E 160d, E 242 and E 353 are replaced by the following:

	'Group II	Colours at <i>quantum satis</i>	<i>quantum satis</i>		Excluding <i>wino owocowe markowe</i>
	Group III	Colours with combined maximum limit	200		Excluding <i>wino owocowe markowe</i>
	E 160d	Lycopene	10		Excluding <i>wino owocowe markowe</i>
	E 242	Dimethyl dicarbonate	250	(24)	Only fruit wine, alcohol reduced wine and <i>wino owocowe markowe</i> , <i>wino owocowe wzmocnione</i> , <i>wino owocowe aromatyzowane</i> , <i>wino z soku winogronowego</i> and <i>aromatyzowane wino z soku winogronowego</i>
	E 353	Metatartaric acid	100		only made wine and <i>wino z soku winogronowego</i> and <i>aromatyzowane wino z soku winogronowego</i>

(2) In food category 14.2.4 'Fruit wine and made wine', the following entry for E 1105 is added:

	'E 1105	Lysozyme	<i>quantum satis</i>		only <i>wino z soku winogronowego</i> and <i>aromatyzowane wino z soku winogronowego</i>
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(3) The food category 14.2.8 'Other alcoholic drinks including mixtures of alcoholic drinks with non-alcoholic drinks and spirits with less than 15 % of alcohol' is amended as follows:

(a) the entries concerning Group III, E 123 and E 200-203 are replaced by the following:

	'Group III	Colours with combined maximum limit	200		only alcoholic drinks with less than 15 % of alcohol and <i>nalewka na winie owocowym</i> , <i>aromatyzowana nalewka na winie owocowym</i> , <i>nalewka na winie z soku winogronowego</i> , <i>aromatyzowana nalewka na winie z soku winogronowego</i> , <i>napój winny owocowy lub miodowy</i> , <i>aromatyzowany napój winny owocowy lub miodowy</i> , <i>wino owocowe niskoalkoholowe</i> and <i>aromatyzowane wino owocowe niskoalkoholowe</i>
	E 123	Amaranth	30		only alcoholic drinks with less than 15 % of alcohol and <i>nalewka na winie owocowym</i> , <i>aromatyzowana nalewka na winie owocowym</i> , <i>nalewka na winie z soku winogronowego</i> , <i>aromatyzowana nalewka na winie z soku winogronowego</i> , <i>napój winny owocowy lub miodowy</i> , <i>aromatyzowany napój winny owocowy lub miodowy</i> , <i>wino owocowe niskoalkoholowe</i> and <i>aromatyzowane wino owocowe niskoalkoholowe</i>

	E 200-203	Sorbic acid — sorbates	200	(1) (2)	only alcoholic drinks with less than 15 % of alcohol and <i>nalewka na winie owocowym, aromatyzowana nalewka na winie owocowym, nalewka na winie z soku winogronowego, aromatyzowana nalewka na winie z soku winogronowego, napój winny owocowy lub miodowy, aromatyzowany napój winny owocowy lub miodowy, wino owocowe niskoalkoholowe and aromatyzowane wino owocowe niskoalkoholowe</i>
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(b) the following entry for E 220-228 is inserted after the entry concerning E 210-213 Benzoic acid — benzoates:

	E 220-228	Sulphur dioxide — sulphites	200	(3)	only <i>nalewka na winie owocowym, aromatyzowana nalewka na winie owocowym, nalewka na winie z soku winogronowego, aromatyzowana nalewka na winie z soku winogronowego, napój winny owocowy lub miodowy, aromatyzowany napój winny owocowy lub miodowy, wino owocowe niskoalkoholowe and aromatyzowane wino owocowe niskoalkoholowe</i>
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(c) the following entry for E 353 is inserted after the entry concerning E 338-452 Phosphoric acid-phosphates-di-tri-and polyphosphates:

	E 353	Metatartaric acid	100		only <i>nalewka na winie z soku winogronowego and aromatyzowana nalewka na winie z soku winogronowego</i>
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(d) the following entry for E 1105 is added:

	E 1105	Lysozyme	<i>quantum satis</i>		only <i>nalewka na winie owocowym, aromatyzowana nalewka na winie owocowym, nalewka na winie z soku winogronowego, aromatyzowana nalewka na winie z soku winogronowego, napój winny owocowy lub miodowy, aromatyzowany napój winny owocowy lub miodowy, wino owocowe niskoalkoholowe and aromatyzowane wino owocowe niskoalkoholowe</i>
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COMMISSION REGULATION (EU) No 510/2013**of 3 June 2013****amending Annexes I, II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of iron oxides and hydroxides (E 172), hydroxypropyl methyl cellulose (E 464) and polysorbates (E 432-436) for marking of certain fruits****(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 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives⁽¹⁾, and in particular Article 9(2), Article 10(3) and Article 30(5) thereof,

Whereas:

(1) Annex I to Regulation (EC) No 1333/2008 lays down functional classes of food additives in foods and of food additives in food additives and food enzymes.

(2) Where necessary as a result of scientific progress or technological developments additional functional classes may be added to Annex I to Regulation (EC) No 1333/2008.

(3) Research and development have shown that iron oxides and hydroxides (E 172) when applied to the surface of fruit or vegetables following depigmentation of certain parts (e.g. by laser treatment), enhance the contrast of these parts to the remaining surface by interacting with certain released components of the epidermis. That effect can be used for marking fruit or vegetables. Therefore, it is appropriate to add a new functional class 'contrast enhancers' to Annex I to Regulation (EC) No 1333/2008.

(4) Annex II to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in foods and their conditions of use.

(5) Annex III to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in food additives, food enzymes, flavourings, nutrients and their conditions of use.

(6) Those lists may be amended in accordance with the procedure referred to in Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings⁽²⁾.

(7) Pursuant to Article 3(1) of Regulation (EC) No 1331/2008, the Union list of food additives may be updated either on the initiative of the Commission or following an application.

(8) An application for authorisation of the use of iron oxides and hydroxides (E 172) as a contrast enhancer, hydroxypropyl methyl cellulose (E 464) as a glazing agent for indelible marking of certain fruits and polysorbates (E 432-436) as emulsifiers in the contrast enhancer preparation was submitted on 8 April 2011 and has been made available to the Member States.

(9) New marking technology using a carbon dioxide laser for etching information on the surface of fresh fruit was developed. Some foodstuffs develop a distinguishable mark on its surface due to the direct depigmentation action of a laser beam, but some of them do not. Therefore, there is a technological need for the use of iron oxides and hydroxides (E 172) as a contrast enhancer, hydroxypropyl methyl cellulose (E 464) as a glazing agent and polysorbates (E 432-436) as emulsifiers in the contrast enhancer preparation in order to improve the contrast and to allow indelible marking of certain fruits. Iron oxides and hydroxides (E 172) provide sufficient contrast of marked areas to the remaining surface of the fruit, hydroxypropyl methyl cellulose (E 464) forms a thin protective film on the marked areas and polysorbates (E 432-436) ensure a homogenous dispersion of the food additive preparation on the marked areas of foodstuffs.

(10) The use of food additives should have advantages and benefits for the consumer. The new marking technology can be used to repeat all or some of the mandatory information particulars required by the Union legislation or by the legislation of the Member States. In addition, the consumers may benefit from the use of the new marking technology when the brand name and production method are provided on a voluntary basis.

⁽¹⁾ OJ L 354, 31.12.2008, p. 16.

⁽²⁾ OJ L 354, 31.12.2008, p. 1.

- (11) Furthermore, the new indelible marking technology provides an alternative to removable adhesive paper stickers which are currently in use and limits the risks of losing, mixing up or inverting food items and therefore facilitates transportation and storage of the fruits concerned. For that purpose, the indication of the PLU-code (an identification number used by food business operators to facilitate check-out and inventory control of products), the QR-code (matrix barcode enabling the encoded information to be scanned at high speed) and of a barcode can also be useful. Therefore, it is appropriate to allow such information on certain fruits.
- (12) Iron oxides and hydroxides (E 172), hydroxypropyl methyl cellulose (E 464) and polysorbates (E 432-436) are to be used in small quantities and only on the external part of fruit and are not expected to migrate significantly into the internal part. For that reason, the treatment of fruit of which the peels are not commonly consumed is not liable to have an effect on human health. It is therefore appropriate only to allow the use of iron oxides and hydroxides (E 172) and hydroxypropyl methyl cellulose (E 464) for marking of citrus fruit, melons and pomegranates and polysorbates (E 432-436) for use in the contrast enhancer preparation.
- (13) Iron oxides and hydroxides (E 172) were last evaluated by the Scientific Committee for Food in 1975 ⁽¹⁾. It was shown that only 1 % of the iron oxides and hydrated iron oxides were likely to become solubilised in the human gastrointestinal tract and therefore the Committee established an acceptable daily intake without specifying an upper limit. Hydroxypropyl methyl cellulose (E 464) was last evaluated by the Scientific Committee for Food in 1992 ⁽²⁾. A group acceptable daily intake 'not specified' was allocated for 5 of the modified celluloses. In 1983 the Committee allocated to the group of polysorbates (E 432-436) an acceptable daily intake at a level of 10 mg/kg bw/day ⁽³⁾. The Report from the Commission on Dietary Food Additive Intake in the European Union ⁽⁴⁾ concluded that polysorbates (E 432-436) may require a more realistic intake assessment based on actual use levels of the food additives. The European Food Safety Authority is expected to carry out that intake assessment during the re-evaluation of polysorbates (E 432-436) by the end of 2016 as foreseen by Commission Regulation (EU) No 257/2010 ⁽⁵⁾. By then, only insignificant contributors to the total intake of those substances should be examined for a potential extension of use.
- (14) Pursuant to Article 3(2) of Regulation (EC) No 1331/2008, the Commission is to seek the opinion of the European Food Safety Authority in order to update Union lists of food additives set out in Annexes II and III to Regulation (EC) No 1333/2008, except where the update in question is not liable to have an effect on human health. Since the authorisation of use of iron oxides and hydroxides (E 172) and hydroxypropyl methyl cellulose (E 464) for marking of citrus fruit, melons and pomegranates and polysorbates (E 432-436) for use in the contrast enhancer preparation constitutes updates of these lists which are not liable to have an effect on human health, it is not necessary to seek the opinion of the European Food Safety Authority.
- (15) Pursuant to the transitional provisions of Commission Regulation (EU) No 1129/2011 of 11 November 2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council by establishing a Union list of food additives ⁽⁶⁾, Annex II establishing the Union list of food additives approved for use in foods and conditions of use applies from 1 June 2013. In order to allow the use of iron oxides and hydroxides (E 172) and hydroxypropyl methyl cellulose (E 464) for marking on certain fruits before that date, it is necessary to specify an earlier date of application with regard to these food additives.
- (16) Therefore, Annexes I, II and III to Regulation (EC) No 1333/2008 should be amended accordingly.
- (17) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health and neither the European Parliament nor the Council has opposed them,
- HAS ADOPTED THIS REGULATION:
- Article 1*
- Annexes I, II and III to Regulation (EC) No 1333/2008 are amended in accordance with the Annex to this Regulation.
- Article 2*
- This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
- (14) Pursuant to Article 3(2) of Regulation (EC) No 1331/2008, the Commission is to seek the opinion of the European Food Safety Authority in order to update

⁽¹⁾ http://ec.europa.eu/food/fs/sc/scf/reports/scf_reports_01.pdf

⁽²⁾ http://ec.europa.eu/food/fs/sc/scf/reports/scf_reports_32.pdf

⁽³⁾ http://ec.europa.eu/food/fs/sc/scf/reports/scf_reports_15.pdf

⁽⁴⁾ COM(2001) 542 final.

⁽⁵⁾ OJ L 80, 26.3.2010, p. 19.

⁽⁶⁾ OJ L 295, 12.11.2011, p. 1.

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

Done at Brussels, 3 June 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

Regulation (EC) No 1333/2008 is amended as follows:

(1) in Annex I the following entry 27 is added:

‘27. “contrast enhancers” are substances which, when applied to the external surface of fruit or vegetables following depigmentation of predefined parts (e.g. by laser treatment), help to distinguish these parts from the remaining surface by imparting colour following interaction with certain components of the epidermis.’;

(2) Annex II is amended as follows:

(a) in Part B, Section 3 ‘Additives other than colours and sweeteners’, after the entry for E 170, the following entry is inserted:

E 172	Iron oxides and hydroxides
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(b) in Part E, the food category 04.1.1 ‘Entire fresh fruit and vegetables’ is amended as follows:

(i) the following entry E 172 is inserted before the entry for E 200-203:

E 172	Iron oxides and hydroxides	6	only as a contrast enhancer for marking citrus fruit, melons and pomegranates in order to: — repeat all or some of the mandatory information particulars required by the Union legislation and/or national law, and/or — provide on a voluntary basis brand name, production method, PLU-code, QR-code and/or barcode	Period of application: From 24 June 2013.’
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(ii) the following entry E 464 is inserted after the entry for E 445:

E 464	Hydroxypropyl methyl cellulose	10	only for citrus fruit, melons and pomegranates in order to: — repeat all or some of the mandatory information particulars required by the Union legislation and/or national law, and/or — provide on a voluntary basis brand name, production method, PLU-code, QR-code and/or barcode	Period of application: From 24 June 2013.’
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(3) in Part 2 of Annex III, the entry for ‘E 432 – E 436’ is replaced by the following:

E 432 – E 436	Polysorbates	<i>quantum satis</i>	Preparations of colours, contrast enhancers, fat soluble antioxidants and glazing agents for fruit’
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COMMISSION IMPLEMENTING REGULATION (EU) No 511/2013**of 3 June 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, 3 June 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	AL	15,1
	MA	51,3
	MK	65,0
	TN	27,7
	TR	71,2
	ZZ	46,1
0707 00 05	AL	41,5
	MK	46,1
	TR	142,5
	ZZ	76,7
0709 93 10	TR	142,3
	ZZ	142,3
0805 50 10	AR	85,2
	TR	81,9
	ZA	103,0
	ZZ	90,0
0808 10 80	AR	162,3
	BR	104,0
	CL	122,4
	CN	74,2
	NZ	131,6
	US	166,2
	ZA	117,8
0809 29 00	ZZ	125,5
	TR	465,1
	US	557,8
	ZZ	511,5

⁽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

of 27 May 2013

on the position to be adopted on behalf of the European Union within the ACP-EU Council of Ministers concerning the multiannual financial framework for the period 2014 to 2020 of the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part

(2013/257/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 209(2), in conjunction with Article 218(9) thereof,

Having regard to the Internal agreement between the representatives of the governments of the Member States, meeting within the Council, on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement ⁽¹⁾, and in particular Article 1 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 ⁽²⁾, as amended in Luxembourg on 25 June 2005 ⁽³⁾ and in Ouagadougou on 22 June 2010 ⁽⁴⁾ ('the ACP-EU Agreement') provides for the adoption of financial protocols for each five-year period.
- (2) The European Union and its Member States, in accordance with Article 7 of Annex Ib to the ACP-EU Partnership Agreement, together with the ACP States, conducted a performance review, assessing among other things the degree of realisation of commitments and disbursements.
- (3) On 8 February 2013, the Union and its Member States agreed to lay down the financing mechanism, namely,

the 11th European Development Fund ('EDF'), the exact period to be covered (2014-20), and the amount of funds to be allocated to that mechanism.

- (4) It is appropriate to establish the position to be adopted on behalf of the Union within the ACP-EU Council of Ministers concerning the multiannual financial framework for the period 2014 to 2020 of the ACP-EU Partnership Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the European Union within the ACP-EU Council of Ministers regarding the protocol on the multiannual financial framework for the period 2014-20 shall be based on the draft Decision of the ACP-EU Council of Ministers attached to this Decision.

Article 2

After its adoption, the Decision of the ACP-EU Council of Ministers shall be published in the *Official Journal of the European Union*.

Done at Brussels, 27 May 2013.

For the Council

The President

C. ASHTON

⁽¹⁾ OJ L 317, 15.12.2000, p. 376.

⁽²⁾ OJ L 317, 15.12.2000, p. 3. Agreement as rectified by OJ L 385, 29.12.2004, p. 88.

⁽³⁾ OJ L 209, 11.8.2005, p. 27.

⁽⁴⁾ OJ L 287, 4.11.2010, p. 3.

DRAFT

DECISION OF THE ACP-EU COUNCIL OF MINISTERS

of

adopting a protocol on the multiannual financial framework for the period 2014-20 under the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part

THE ACP-EU COUNCIL OF MINISTERS,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 ⁽¹⁾, as amended in Luxembourg on 25 June 2005 ⁽²⁾ and in Ouagadougou on 22 June 2010 ⁽³⁾ (the 'ACP-EU Partnership Agreement'), and in particular Article 95(2) and Article 100 thereof,

Whereas:

- (1) The European Union and its Member States together with the ACP States conducted a performance review, in accordance with Article 7 of Annex Ib to the ACP-EU Partnership Agreement, assessing among other things the degree of realisation of commitments and disbursements.
- (2) The European Union and its Member States have agreed to lay down the financing mechanism, namely the 11th EDF, the exact period to be covered (2014-20), and the amount of funds to be allocated to that mechanism.

- (3) The protocol establishing the multiannual financial framework for the period 2014 to 2020 should be inserted into the Agreement as Annex Ic,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to this Decision is adopted as a new Annex Ic to the Partnership Agreement between the members of the African, Caribbean and Pacific group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as revised in Luxembourg on 25 June 2005 and in Ouagadougou on 22 June 2010.

Article 2

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

Done at [...], [...].

*For the ACP-EU Council of Ministers
The President*

⁽¹⁾ OJ L 317, 15.12.2000, p. 3. Agreement as rectified by OJ L 385, 29.12.2004, p. 88.

⁽²⁾ OJ L 209, 11.8.2005, p. 27.

⁽³⁾ OJ L 287, 4.11.2010, p. 3.

ANNEX

The following Annex shall be inserted in the ACP-EU Partnership Agreement:

‘ANNEX Ic

Multiannual financial framework for the period 2014-20

1. For the purposes set out in this Agreement and for a period starting on 1 January 2014, the overall amount of financial assistance available to the ACP States within this multiannual financial framework shall be EUR 31 589 million, as specified in points 2 and 3.
 2. The sum of EUR 29 089 million under the 11th European Development Fund (EDF), shall be made available from the date of entry into force of the multiannual financial framework. It shall be allocated between the cooperation instruments as follows:
 - (a) EUR 24 365 million to finance national and regional indicative programmes. This allocation will be used to finance:
 - (i) the national indicative programmes of individual ACP States;
 - (ii) the regional indicative programmes of support for regional and inter-regional cooperation and integration of Groups of ACP States;
 - (b) EUR 3 590 million to finance intra-ACP and inter-regional cooperation with many or all of the ACP States. This envelope may include structural support to institutions and bodies created under this Agreement. It shall also cover assistance with the operating expenditure of the ACP Secretariat referred to in points 1 and 2 of Protocol No 1 on the operating expenditure of the joint institutions;
 - (c) EUR 1 134 million to finance the Investment Facility in accordance with the terms and conditions set out in Annex II (Terms and conditions of financing) to this Agreement, comprising an additional contribution to EUR 500 million to the resources of the Investment Facility, managed as a revolving fund, and EUR 634 million under the form of grants for the financing of the interest rate subsidies and project-related technical assistance provided for in Articles 1, 2 and 4 of that Annex over the period of the 11th EDF.
 3. The operations financed under the Investment Facility, including the corresponding interest rate subsidies, shall be managed by the European Investment Bank (EIB). An amount of up to EUR 2 500 million in addition to the funds available from the 11th EDF shall be made available by the EIB in the form of loans from own resources. These resources shall be granted for the purposes set out in Annex II to this Agreement, in accordance with the conditions laid down in the statutes of the EIB and the relevant provisions of the terms and conditions for investment financing in that Annex. All other financial resources under this multiannual financial framework shall be administered by the Commission.
 4. After 31 December 2013 or after the date of entry into force of this multiannual financial framework, whichever is the later, balances from the 10th EDF or from previous EDFs and funds decommitted from projects under these EDFs shall no longer be committed, unless the Council of the European Union decides otherwise by unanimity, with the exception of the remaining balances and reimbursements of the amounts allocated for the financing of the Investment Facility, excluding the related interest rate subsidies, and the remaining balances of the primary agricultural export receipt stabilisation guarantee system (Stabex) under the EDFs prior to the 9th EDF.
 5. The overall amount of this multiannual financial framework shall cover the period from 1 January 2014 to 31 December 2020. The funds of the 11th EDF, and, in the case of the Investment Facility, the funds stemming from reflows, shall no longer be committed beyond 31 December 2020, unless the Council of the European Union decides otherwise by unanimity, on a proposal from the Commission. However, the funds subscribed by Member States under the 9th, 10th and 11th EDF to finance the Investment Facilities shall remain available after 31 December 2020 for disbursement.
 6. The Committee of Ambassadors, acting on behalf of the ACP-EU Council of Ministers, may, within the overall amount of the multiannual financial framework, take appropriate measures in order to meet programming requirements under one of the allocations provided for in point 2, including the reassignment of funds between these allocations.
 7. The Parties may decide to conduct a performance review, assessing the degree of realisation of commitments and disbursements, as well as the results and impact of the aid provided. This review would be undertaken on the basis of a proposal prepared by the Commission.
 8. Any Member State may provide the Commission or the EIB with voluntary contributions to support the objectives of the ACP-EU Partnership Agreement. Member States may also co-finance projects or programmes, for example in the framework of specific initiatives to be managed by the Commission or the EIB. ACP ownership of such initiatives at the national level must be guaranteed.’
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COUNCIL DECISION

of 27 May 2013

on the position to be adopted on behalf of the European Union within the ACP-EU Council of Ministers concerning the status of the Federal Republic of Somalia in relation to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part

(2013/258/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Article 218(9) thereof,

Having regard to the Internal Agreement between the Representatives of the Governments of the Member States, meeting within the Council, on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement ⁽¹⁾, in particular Article 1 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 94 of the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 ⁽²⁾, as amended in Luxembourg on 25 June 2005 ⁽³⁾ and amended in Ouagadougou on 22 June 2010 ⁽⁴⁾ ('the ACP-EU Partnership Agreement') stipulates that any request for accession by a State is to be presented to, and approved by, the ACP-EU Council of Ministers.
- (2) On 25 February 2013, the Federal Republic of Somalia presented a request for accession in accordance with Article 94 of the ACP-EU Agreement.
- (3) The approval of the accession of the Federal Republic of Somalia by the ACP-EU Council of Ministers should be supported by the Union.
- (4) The Federal Republic of Somalia should deposit its Act of Accession with the Secretariat-General of the Council of the European Union and the Secretariat of the ACP States, as the Depositaries of the ACP-EU Agreement.

- (5) It is therefore appropriate to establish the position to be adopted on behalf of the Union within the ACP-EU Council of Ministers concerning the status of the Federal Republic of Somalia in relation to the ACP-EU Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the European Union within the ACP-EU Council of Ministers concerning the request by the Federal Republic of Somalia for observership with regard to, and subsequent accession to, the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as amended in Luxembourg on 25 June 2005, and amended in Ouagadougou on 22 June 2010, shall be based on the draft Decision of the ACP-EU Council of Ministers attached to this Decision.

Formal and minor changes to the attached draft Decision of the ACP-EU Council of Ministers may be agreed without requiring this Decision to be amended.

Article 2

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

Done at Brussels, 27 May 2013.

For the Council
The President
C. ASHTON

⁽¹⁾ OJ L 317, 15.12.2000, p. 376.

⁽²⁾ OJ L 317, 15.12.2000, p. 3. Agreement as rectified by OJ L 385, 29.12.2004, p. 88.

⁽³⁾ OJ L 209, 11.8.2005, p. 27.

⁽⁴⁾ OJ L 287, 4.11.2010, p. 3.

DRAFT

DECISION No.../.... OF THE ACP-EU COUNCIL OF MINISTERS

of.....

concerning the request made by the Federal Republic of Somalia for observer status with regard to, and subsequent accession to, the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part

THE ACP-EU COUNCIL OF MINISTERS,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 ⁽¹⁾, as amended in Luxembourg on 25 June 2005 ⁽²⁾ and as amended in Ouagadougou on 22 June 2010 ⁽³⁾ ('the ACP-EU Agreement'), and in particular Article 94 thereof,

Having regard to Decision No 1/2005 of 8 March 2005 of the ACP-EU Council of Ministers concerning the adoption of the Rules of Procedure of the ACP-EU Council of Ministers ⁽⁴⁾ and, in particular, Article 8(2) thereof,

Whereas

- (1) The Cotonou Agreement entered into force on 1 July 2008 in accordance with Article 93(3) thereof. It was first amended in Luxembourg on 25 June 2005, and for a second time in Ouagadougou on 22 June 2010. The second revision has provisionally been applied since 31 October 2010 ⁽⁵⁾.
- (2) Article 94 of the ACP-EU Agreement stipulates that any request for accession by a State is to be presented to, and approved by, the ACP-EU Council of Ministers.
- (3) On 25 February 2013, the Federal Republic of Somalia presented a request for observership and subsequent accession in accordance with Article 94 of the ACP-EU Agreement.
- (4) The Federal Republic of Somalia should deposit the Act of Accession with the Depositaries of the ACP-EU Agreement, namely the Secretariat-General of the Council of the European Union and the Secretariat of the ACP States,

HAS ADOPTED THIS DECISION:

*Article 1***Approval of request for accession and observer status**

The request made by the Federal Republic of Somalia to accede to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as amended in Luxembourg on 25 June 2005 and as amended in Ouagadougou on 22 June 2010, is hereby approved.

The Federal Republic of Somalia shall deposit its Act of Accession with the Depositaries of the ACP-EU Agreement, namely, the Secretariat-General of the Council of the European Union and the Secretariat of the ACP States.

Pending its accession, the Federal Republic of Somalia may attend Council sessions as an observer.

*Article 2***Entry into force**

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

Done at,

For the ACP-EU Council of Ministers
The President

⁽¹⁾ OJ L 317, 15.12.2000, p. 3.

⁽²⁾ Agreement amending the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ L 209, 11.8.2005, p. 27).

⁽³⁾ Agreement amending for the second time the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005 (OJ L 287, 4.11.2010, p. 3).

⁽⁴⁾ OJ L 95, 14.4.2005, p. 44.

⁽⁵⁾ Decision No 2/2010 of the ACP-EU Council of Ministers of 21 June 2010, OJ L 287, 4.11.2010, p. 68.

COMMISSION IMPLEMENTING DECISION

of 31 May 2013

amending Annex I to Decision 2004/211/EC as regards the entries for Bahrain and China in the list of third countries and parts thereof from which imports into the Union of live equidae and semen, ova and embryos of the equine species are authorised

*(notified under document C(2013) 2927)***(Text with EEA relevance)**

(2013/259/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(I) to Directive 90/425/EEC ⁽¹⁾, and in particular Article 17(3)(a) thereof,

Having regard to Council Directive 2009/156/EC of 30 November 2009 on animal health conditions governing the movement and importation from third countries of equidae ⁽²⁾, and in particular Article 12(1) and (4), and the introductory phrase of Article 19 and points (a) and (b) of Article 19 thereof,

Whereas:

- (1) Directive 92/65/EEC lays down conditions applicable to imports into the Union, inter alia, of semen, ova and embryos of the equine species. Those conditions are to be at least equivalent to those applicable to trade between Member States.
- (2) Directive 2009/156/EC lays down animal health conditions for the importation into the Union of live equidae. It provides that imports of equidae into the Union are only authorised from those third countries that meet certain animal health requirements.
- (3) Commission Decision 2004/211/EC of 6 January 2004 establishing the list of third countries and parts of territory thereof from which Member States authorise imports of live equidae and semen, ova and embryos of the equine species, and amending Decisions 93/195/EEC and 94/63/EC ⁽³⁾ establishes a list of third countries, or parts thereof where regionalisation applies, from which Member States are to authorise the importation of equidae and semen, ova and embryos thereof, and indicates the other conditions applicable to such imports. That list is set out in Annex I to Decision 2004/211/EC.

(4) Following the eradication of glanders, Bahrain continued enhanced surveillance and movement restrictions on equidae kept in the northern part of the country. Annex I to Decision 2004/211/EC therefore indicates different conditions for the introduction into the Member States of registered horses from the northern and southern parts of that country. Since there has been no case of glanders since September 2011 in Bahrain, it is possible to allow the importation of registered horses under the same conditions from the entire territory of Bahrain.

(5) In order to host an equestrian event of the Global Champions Tour in October 2013, carried out under the auspices of the World Equestrian Federation (FEI), the competent Chinese authorities have requested the recognition of an equine disease-free zone in the Metropolitan area of Shanghai, directly accessible from the nearby international airport. In view of the temporary nature of the purpose-built facilities at the EXPO 2010 parking it is appropriate to foresee only a temporary approval of that zone.

(6) The Chinese authorities have provided guarantees in particular as regards the notifiability in their country of the diseases listed in Annex I to Directive 2009/156/EC and the undertaking to fully comply with Article 12(2)(f) of that Directive as regards the information to the Commission and the Member States. In addition, the Chinese authorities have informed the Commission that the entire group of horses competing in that event will come from and return to Member States and will be kept completely separated from any equidae not of the same origin and health status.

(7) In the light of those guarantees and information provided by the Chinese authorities, it is possible to allow for a limited period of time from a part of the territory of China the re-entry of registered horses after temporary export in accordance with the requirements of Commission Decision 93/195/EEC of 2 February 1993 on animal health conditions and veterinary certification for the re-entry of registered horses for racing, competition and cultural events after temporary export ⁽⁴⁾.

(8) The entries for Bahrain and China in Annex I to Decision 2004/211/EC should therefore be amended.

⁽¹⁾ OJ L 268, 14.9.1992, p. 54.

⁽²⁾ OJ L 192, 23.7.2010, p. 1.

⁽³⁾ OJ L 73, 11.3.2004, p. 1.

⁽⁴⁾ OJ L 86, 6.4.1993, p. 1.

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

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Decision 2004/211/EC is amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 31 May 2013.

For the Commission

Tonio BORG

Member of the Commission

ANNEX

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

- (1) The entry for Bahrain is replaced by the following:

'BH	Bahrain	BH-0	Whole country	E	X	X	X	—	—	—	—	—	—	—
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- (2) The entry for China is replaced by the following:

CN	China	CN-0	Whole country		—	—	—	—	—	—	—	—	
		CN-1	The equine disease-free zone in Conghua City, Guangzhou Municipality, Guangdong Province including the Biosecurity Highway Passage from and to the airport in Guangzhou and Hong Kong (see Box 3 for details)	C	X	X	X	—	—	—	—	—	
		CN-2	The venue for the Global Champions Tour at the Expo 2010 No 15 Parking Lot and the passage to the Shanghai Pudong International Airport in the northern part of the Pudong New area and the Eastern part of the Minhang District of the Metropolitan area of Shanghai (see Box 5 for details)	C	—	X	—	—	—	—	—	—	Valid from 24 September to 24 October 2013'

- (3) Box 4 is deleted.

- (4) The following Box 5 is added:

‘Box 5:

CN	China	CN-2	Delimitation of the zone in the Metropolitan area of Shanghai: Western boundary: Huangpu River from its estuary in the North to the bifurcation of the Dazhi River, Southern boundary: from the bifurcation of the Huanpu River to the estuary of the Dazhi River in the East, Northern and Eastern boundaries: coast line.'
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COMMISSION DECISION

of 31 May 2013

on a measure taken by Germany according to Article 11 of the Machinery Directive 2006/42/EC of the European Parliament and of the Council prohibiting the placing on the market of a chainsaw of the type HV 0003 manufactured by Regal Tools Co. Ltd

*(notified under document C(2013) 3125)***(Text with EEA relevance)**

(2013/260/EU)

THE EUROPEAN COMMISSION,

2.3 (c) Automatic brake:

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

The chainsaw did not stop in a sufficiently short time when the manual chain brake was activated nor under the conditions when the non-manual chain brake system shall be active (EN ISO 11681-1:2008 – clauses 5.5.1 and 5.5.2).

Having regard to Directive 2006/42/EC of the European Parliament and of the Council⁽¹⁾ on machinery, and in particular Article 11 thereof,

Whereas:

- (1) In accordance with Article 11(2) of Directive 2006/42/EC, the German authorities notified to the Commission and to the other Member States a measure prohibiting the placing on the market of a chainsaw of the type HV 0003 manufactured by Regal Tools Co. Ltd, Technology Industrial Park, Chengxin Road 223, Yongkang, China, imported into the EU by Bergner Europe GmbH, Am Seestern 18, 40547 Düsseldorf, Germany.
- (2) The reason for the measure given by the German authorities was the non-conformity of the chainsaw with the following essential health and safety requirements set out in Annex I to Directive 2006/42/EC (with reference to the specifications of the relevant European harmonised standard EN ISO 11681-1):

1.3.2. Risk of break-up during operation:

Both rear and front handles of the chainsaw failed the strength tests set out in the relevant harmonised European standard (EN ISO 11681-1:2008 – clause 5.2.1);

1.7.4. Instructions:

The instructions did not include the business name and full address of the manufacturer (1.7.4.2 a), the EC declaration of conformity (1.7.4.2 c), a general description of the machinery (1.7.4.2 d), information on airborne noise emissions (1.7.4.2 u) and information on vibrations transmitted by the tool (2.2.1.1);

- (3) The German authorities noted that, while the chainsaw bore the CE marking, it was not accompanied by an EC Declaration of conformity drawn up and signed by the manufacturer or his authorised representative as required by Article 5(1)(e) of Directive 2006/42/EC. They also noted that, while portable chainsaws are among the categories of machinery listed in Annex IV to the Directive to which one of the conformity assessment procedures referred to in Article 12(3) or (4) must be applied, proof had not been provided that the chainsaw of the type HV 0003 had undergone such a procedure.
- (4) The notification was accompanied by an inspection report established by the Deutsche Prüf- und Zertifizierungsstelle für Land- und Forsttechnik GbR.
- (5) In accordance with the procedure set out in Article 11(3) of Directive 2006/42/EC, the Commission wrote to the manufacturer and the importer inviting them to comment on the measure taken by the German authorities.
- (6) No reply was received from the manufacturer. The importer informed the Commission that sale of the chainsaw had ceased and that he no longer imported this type of chainsaw.
- (7) Examination of the evidence provided by the German authorities confirms that the chainsaw of the type HV 0003 manufactured by Regal Tools Co. Ltd fails to comply with the essential health and safety requirements of Directive 2006/42/EC and that this non-conformity gives rise to serious risks of injury to users,

HAS ADOPTED THIS DECISION:

Article 1

The measure taken by the German authorities prohibiting the placing on the market of a chainsaw of the type HV 0003 manufactured by Regal Tools Co. Ltd is justified.

⁽¹⁾ OJ L 157, 9.6.2006, p. 24.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 31 May 2013.

For the Commission

Antonio TAJANI

Vice-President

NOTICE TO READERS

Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union*

In accordance with Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union* (OJ L 69, 13.3.2013, p. 1), as of 1 July 2013, only the electronic edition of the Official Journal shall be considered authentic and shall have legal effect.

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