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(<sup>1</sup>) Text with EEA relevance

EN

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<sup>(1)</sup> Text with EEA relevance

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION DELEGATED REGULATION (EU) No 826/2012

of 29 June 2012

**supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps <sup>(1)</sup>, and in particular Articles 9(5), 11(3) and 16(3) thereof,

After consulting the European Data Protection Supervisor,

Whereas:

(1) This Regulation aims to establish a uniform regime for the submission of notifications and information by investors to national competent authorities or by those competent authorities to the European Securities and Markets Authority (hereinafter 'ESMA'). Since the turnover calculation to determine exempted shares is also closely linked to the giving of information concerning shares where their principal trading venue is in the Union, it should also be covered by this Regulation. To ensure coherence between such provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations it is desirable to include all the regulatory technical standards required by Regulation (EU) No 236/2012 in a single Regulation.

(2) In relation to the notifications of net short positions on shares, sovereign debt and uncovered sovereign credit default swaps and to the public disclosure of significant net short positions on shares, uniform rules regarding the details of the information including the common standard to be used in the notification should be specified to ensure consistency in the application of the notification requirements across the Union, to foster efficiency in the reporting process and to provide comparable information to the public.

(3) To ensure the proper identification of the position holders, notification should, where available, include a code that can complement the name of the position holder. Until a single, robust and publicly recognised global legal entity identifier is available, it is necessary to rely on existing codes that some position holders may have, such as the Bank Identifier Code.

(4) For the purpose of carrying out its duties under this Regulation and under Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) <sup>(2)</sup>, ESMA is to be provided with information by competent authorities on a quarterly basis in relation to notification of net short positions on shares, sovereign debt and uncovered sovereign credit default swaps, as well as with additional information on net short positions upon its request.

(5) In order to efficiently use such information, in particular with respect to the objective of ensuring the orderly functioning and integrity of the financial markets and the stability of the financial system in the Union, the

<sup>(1)</sup> OJ L 86, 24.3.2012, p. 1.

<sup>(2)</sup> OJ L 331, 15.12.2010, p. 84.

quarterly information should be standardised, stable over time and of sufficient granularity, in the form of some daily aggregated data, to allow ESMA to process it and to conduct research and analyses.

- (6) ESMA is not in a position to determine beforehand the specific information it may require from a competent authority, as that information may only be determined on a case-by-case basis and may include input as diverse as individual or aggregated data on the net short positions or uncovered positions in credit default swaps. Nonetheless, it is important to establish the general information to be provided in this respect.
- (7) For the purposes of calculating turnover, both in the Union and in trading venues outside the Union, to determine the principal trading venue of a share, each relevant competent authority needs to determine the relevant sources of information to identify and measure the trading on a specific share. There are currently neither harmonised transaction reporting requirements in the Union for shares admitted only on multilateral trading facilities nor international standards with regard to trading statistics on individual shares on trading venues, which may show relevant variations. Thus, it is necessary to allow some flexibility to competent authorities to carry out that calculation.
- (8) In order to ensure consistency, the date of application of this Regulation should be the same as that of Regulation (EU) No 236/2012. However, in order to allow sufficient time for natural and legal persons to process the list of shares exempted pursuant to Article 16 of Regulation (EU) No 236/2012, the preparation of that list and its subsequent publication on the ESMA website should take place sufficiently in advance before the application date of Regulation (EU) No 236/2012. Therefore, the method set out for turnover calculation to determine the principal venue for the trading of a share should apply from the date of entry into force of this Regulation.
- (9) Since Regulation (EU) No 236/2012 recognised that binding technical standards should be adopted before that Regulation can be usefully applied, and as it is essential to specify before 1 November 2012 the required non-essential elements to facilitate compliance by market participants with that Regulation and enforcement by competent authorities, it is necessary that this Regulation should enter into force on the day following that of its publication.
- (10) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (11) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

#### Subject matter

This Regulation lays down regulatory technical standards specifying the following:

- (a) the details of the information on net short positions to be provided to the competent authorities and disclosed to the public by a natural or legal person pursuant to Article 9(5) of Regulation (EU) No 236/2012;
- (b) the details of the information to be provided to the European Securities and Markets Authority (hereinafter 'ESMA') by the competent authority pursuant to Article 11(3) of Regulation (EU) No 236/2012;
- (c) the method for calculation of turnover to determine the principal venue for the trading of a share pursuant to Article 16(3) of Regulation (EU) No 236/2012.

## CHAPTER II

### DETAILS OF THE INFORMATION ON NET SHORT POSITIONS TO BE NOTIFIED AND DISCLOSED

#### (ARTICLE 9 OF REGULATION (EU) No 236/2012)

#### Article 2

#### Notification of net short positions in shares, sovereign debt and uncovered sovereign credit default swaps to competent authorities

1. A notification made under Article 5(1), Article 7(1) or Article 8 of Regulation (EU) No 236/2012 shall contain the information specified in Table 1 of Annex I to this Regulation.

The notification shall be made using a form issued by the relevant competent authority which shall take the format set out in Annex II.

2. Where the competent authority has secure systems in place that allow it to fully identify the person filing the notification and the position holder, including all the information contained in fields 1 to 7 of Table 1 of Annex I, the corresponding fields in the form may be left blank in the notification format.

3. A natural or legal person who has submitted a notification referred to in paragraph 1 which contains an error shall send, on becoming aware of the error, a cancellation to the relevant competent authority.

The cancellation shall be made using a form issued by that competent authority which shall take the format set out in Annex III.

The natural or legal person concerned shall submit a new notification in accordance with paragraphs 1 and 2 if necessary.

#### Article 3

### Public disclosure of information on net short positions in shares

Any public disclosure of a net short position in shares that reaches, or upon having reached, subsequently falls below, a relevant publication threshold in accordance with Article 6(1) of Regulation (EU) No 236/2012 shall contain the information specified in Table 2 of Annex I to this Regulation.

#### CHAPTER III

### DETAILS OF THE INFORMATION TO BE PROVIDED TO ESMA IN RELATION TO NET SHORT POSITIONS

(ARTICLE 11 OF REGULATION (EU) No 236/2012)

#### Article 4

#### Periodic information

Pursuant to Article 11(1) of Regulation (EU) No 236/2012, competent authorities shall provide ESMA with the following information on a quarterly basis:

- (a) the daily aggregated net short position on each individual share in the main national equity index as identified by the relevant competent authority;
- (b) the end of quarter aggregated net short position for each individual share which is not in the index referred to in point (a);
- (c) the daily aggregated net short position on each individual sovereign issuer;
- (d) where applicable, daily aggregated uncovered positions on credit default swaps of a sovereign issuer.

#### Article 5

#### Information upon request

Information to be provided by a relevant competent authority on an ad hoc basis pursuant to Article 11(2) of Regulation (EU) No 236/2012 shall include all requested information specified by ESMA that has not previously been submitted by the competent authority in accordance with Article 4 of this Regulation.

#### CHAPTER IV

### METHOD OF CALCULATION OF TURNOVER TO DETERMINE THE PRINCIPAL TRADING VENUE FOR A SHARE

(ARTICLE 16 OF REGULATION (EU) No 236/2012)

#### Article 6

### Turnover calculation to determine the principal venue for the trading of a share

1. When calculating turnover pursuant to Article 16 of Regulation (EU) No 236/2012, a relevant competent authority shall use the best available information, which may include:

- (a) publicly available information;
- (b) transaction data obtained under Article 25(3) of Directive 2004/39/EC of the European Parliament and of the Council<sup>(1)</sup>;
- (c) information from trading venues where the relevant share is traded;
- (d) information provided by another competent authority, including a competent authority of a third country;
- (e) information provided by the issuer of the relevant share;
- (f) information from other third parties, including data providers.

2. In determining what constitutes the best available information, a relevant competent authority shall ensure so far as reasonably possible that:

- (a) it uses publicly available information in preference to other sources of information;
- (b) the information covers all trading sessions during the relevant period, irrespective of whether the share traded during all of the sessions;
- (c) transactions received and included in the calculations are counted only once;
- (d) transactions reported through a trading venue but executed outside it are not counted.

3. The turnover of a share on a trading venue shall be deemed to be zero where the share is no longer admitted to trading on that trading venue even if the share was admitted to trading on the trading venue during the relevant calculation period.

#### CHAPTER V

### FINAL PROVISIONS

#### Article 7

#### Entry into force

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

<sup>(1)</sup> OJ L 145, 30.4.2004, p. 1.

It shall apply from 1 November 2012, except for Article 6 which shall apply from the date referred to in the first paragraph.

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

Done at Brussels, 29 June 2012.

*For the Commission*  
*The President*  
José Manuel BARROSO

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## ANNEX I

TABLE 1

**List of fields for notification purpose (Article 2)**

| Field identifier                           | Description  |
|--|--|
| 1. Position holder                         | For natural persons: the first name and the last name<br>For legal persons: full name including legal form as provided for in the register where it is incorporated, if applicable   |
| 2. Legal person identification code        | Bank Identifier Code, if available   |
| 3. Address of the position holder          | Full address (e.g. street, street number, postal code, city, state/province) and country   |
| 4. Contact details of the position holder  | Telephone number, fax number (if available), e-mail address  |
| 5. Reporting person                        | For natural persons: the first name and the last name<br>For legal persons: full name including legal form as provided for in the register where it is incorporated, if applicable   |
| 6. Address of the reporting person         | Full address (e.g. street, street number, postal code, city, state/province) and country, when different from the position holder  |
| 7. Contact details of the reporting person | Telephone number, fax number (if available), e-mail address, when different from the position holder   |
| 8. Reporting date                          | Date on which the notification is submitted in accordance with ISO standard 8601:2004 (yyyy-mm-dd)   |
| 9. Issuer identification                   | For shares: full name of the company that has shares admitted to trading on a trading venue<br>For sovereign debt: full name of the issuer<br>For uncovered sovereign credit default swaps: full name of the underlying sovereign issuer   |
| 10. ISIN                                   | For shares only: ISIN of the main class of ordinary shares of the issuer. If there are no ordinary shares admitted to trading, the ISIN of the class of preference shares (or of the main class of preference shares admitted to trading if there are several classes of such shares)                                      |
| 11. Country code                           | Two letter code for the sovereign issuer country in accordance with ISO standard 3166-1  |
| 12. Position date                          | Date on which the position was created, changed or ceased to be held. Format in accordance with ISO standard 8601:2004 (yyyy-mm-dd)  |
| 13. Net short position size in percentage  | For shares only: percentage (rounded to 2 decimal places) of the issued share capital, expressed in absolute terms, with no '+' or '-' signs   |
| 14. Net short position equivalent amount   | For shares: total number of equivalent shares<br>For sovereign debt: equivalent nominal amount in euro<br>For uncovered sovereign credit default swaps: equivalent nominal amount in euro<br>Figures expressed in absolute terms, with no '+' or '-' signs and the currency expressed in accordance with ISO standard 4217 |

| Field identifier                      | Description  |
|---------------------------------------|--|
| 15. Date of the previous notification | Date on which the last position reported by the position holder in relation to the same issuer was notified. Format in accordance with ISO standard 8601:2004 (yyyy-mm-dd) |
| 16. Cancellation date                 | Date on which a cancellation form is submitted to cancel an erroneous notification previously submitted. Format in accordance with ISO standard 8601:2004 (yyyy-mm-dd)     |
| 17. Comments                          | Free text — optional   |

TABLE 2

**List of fields for public disclosure purpose (Article 3)**

| Field identifier                         | Description  |
|--|--|
| 1. Position holder                       | For natural persons: the first name and the last name<br>For legal persons: full name including legal form as provided for in the register where it is incorporated, if applicable   |
| 2. Name of the issuer                    | Full name of the company that has shares admitted to trading on a trading venue  |
| 3. ISIN                                  | ISIN of the main class of ordinary shares of the issuer. If there are no ordinary shares admitted to trading, the ISIN of the class of preference shares (or of the main class of preference shares admitted to trading if there are several classes of such shares) |
| 4. Net short position size in percentage | Percentage (rounded to 2 decimal places) of the issued share capital   |
| 5. Position date                         | Date on which position was created, changed or ceased to be held in accordance with ISO standard 8601:2004 (yyyy-mm-dd)  |

## ANNEX II

## Format of notification form for net short positions (Article 2)

|                 |  |                         |  |
|-----------------|--|-------------------------|--|
| POSITION HOLDER | First name<br>LAST NAME<br>Full company name |                         |  |
|                 | BIC code<br>(if the holder has one)          |                         |  |
|                 | Country                                      |                         |  |
|                 | Address                                      |                         |  |
|                 | Contact person                               | First name<br>Last name |  |
|                 |  | Phone number            |  |
|                 | Fax number                                   |                         |  |
|                 | E-mail address                               |                         |  |

|                                    |  |                         |  |
|------------------------------------|--|-------------------------|--|
| REPORTING PERSON<br>(if different) | First name<br>LAST NAME<br>Full company name |                         |  |
|                                    | Country                                      |                         |  |
|                                    | Address                                      |                         |  |
|                                    | Contact person                               | First name<br>Last name |  |
|                                    |  | Phone number            |  |
|                                    |  | Fax number              |  |
|                                    | E-mail address                               |                         |  |

## NET SHORT POSITION IN SHARES

|                                   |  |
|-----------------------------------|--|
| 1. Reporting date<br>(yyyy-mm-dd) |  |
| 2. Name of the issuer             |  |
| 2.1. ISIN code                    |  |
| 2.2. Full name                    |  |
| 3. Position date<br>(yyyy-mm-dd)  |  |

## NET SHORT POSITION IN SHARES

|  |  |
|--|--|
| 4. Net short position after threshold crossing   |  |
| 4.1. Number of equivalent shares                 |  |
| 4.2. % of issued share capital                   |  |
| 5. Date of previous notification<br>(yyyy-mm-dd) |  |
| 6. Comment                                       |  |

## NET SHORT POSITION IN SOVEREIGN DEBT

|   |  |
|---|--|
| 1. Reporting date<br>(yyyy-mm-dd)   |  |
| 2. Name of the issuer   |  |
| 2.1. Country code   |  |
| 2.2. Full name  |  |
| 3. Position date<br>(yyyy-mm-dd)  |  |
| 4. Net short position after threshold crossing<br>Equivalent nominal amount |  |
| 5. Date of previous notification<br>(yyyy-mm-dd)                            |  |
| 6. Comment  |  |

## POSITION IN UNCOVERED SOVEREIGN CREDIT DEFAULT SWAPS

|   |  |
|---|--|
| 1. Reporting date<br>(yyyy-mm-dd)   |  |
| 2. Name of the issuer   |  |
| 2.1. Country code   |  |
| 2.2. Full name  |  |
| 3. Position date<br>(yyyy-mm-dd)  |  |
| 4. Net short position after threshold crossing<br>Equivalent nominal amount |  |
| 5. Date of previous notification<br>(yyyy-mm-dd)                            |  |
| 6. Comment  |  |

## ANNEX III

## Format of cancellation form for erroneous notifications (Article 2)

|                 |  |   |  |
|-----------------|--|---|--|
| POSITION HOLDER | First name<br>LAST NAME<br>Full company name |   |  |
|                 | BIC code<br>(if the holder has one)          |   |  |
|                 | Country                                      |   |  |
|                 | Address                                      |   |  |
|                 | Contact person                               | First name<br>Last name<br>Phone number<br>Fax number<br>E-mail address |  |
|                 |  |   |  |

|                                    |  |   |  |
|------------------------------------|--|---|--|
| REPORTING PERSON<br>(if different) | First name<br>LAST NAME<br>Full company name |   |  |
|                                    | Country                                      |   |  |
|                                    | Address                                      |   |  |
|                                    | Contact person                               | First name<br>Last name<br>Phone number<br>Fax number<br>E-mail address |  |
|                                    |  |   |  |
|                                    |  |   |  |

## CANCELLED NET SHORT POSITION IN SHARES

|  |  |
|--|--|
| 1. Cancellation date<br>(yyyy-mm-dd)   |  |
| 2. Name of the issuer  |  |
| 2.1. ISIN code   |  |
| 2.2. Full name   |  |
| 3. Position date of the notification being cancelled<br>(yyyy-mm-dd)                         |  |
| 4. Net short position after threshold crossing contained at the notification being cancelled |  |
| 4.1. Number of equivalent shares   |  |

## CANCELLED NET SHORT POSITION IN SHARES

|   |  |
|---|--|
| 4.2. % of issued share capital  |  |
| 5. Reporting date of the notification being cancelled<br>(yyyy-mm-dd) |  |
| 6. Comment  |  |

## CANCELLED NET SHORT POSITION IN SOVEREIGN DEBT

|   |  |
|---|--|
| 1. Cancellation date<br>(yyyy-mm-dd)  |  |
| 2. Name of the issuer   |  |
| 2.1. Country code   |  |
| 2.2. Full name  |  |
| 3. Position date of the notification being cancelled<br>(yyyy-mm-dd)  |  |
| 4. Net short position after threshold crossing contained at the notification being cancelled<br>Equivalent nominal amount |  |
| 5. Reporting date of the notification being cancelled<br>(yyyy-mm-dd)   |  |
| 6. Comment  |  |

## CANCELLED POSITION IN UNCOVERED SOVEREIGN CREDIT DEFAULT SWAPS

|   |  |
|---|--|
| 1. Cancellation date<br>(yyyy-mm-dd)  |  |
| 2. Name of the issuer   |  |
| 2.1. Country code   |  |
| 2.2. Full name  |  |
| 3. Position date of the notification being cancelled<br>(yyyy-mm-dd)  |  |
| 4. Net short position after threshold crossing contained at the notification being cancelled<br>Equivalent nominal amount |  |
| 5. Reporting date of the notification being cancelled<br>(yyyy-mm-dd)   |  |
| 6. Comment  |  |

## COMMISSION IMPLEMENTING REGULATION (EU) No 827/2012

of 29 June 2012

laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 236/2012 of 14 March 2012 of the European Parliament and of the Council on short selling and certain aspect of credit default swaps<sup>(1)</sup> and in particular Articles 9(6), 11(4), 12(2), 13(5) and 16(4) thereof,

After consulting the European Data Protection Supervisor,

Whereas:

- (1) This Regulation aims to determine the list of exempted shares as a necessary step for the disclosure to the public of short positions in all non-exempted shares and the conditions under which that information should be sent to the European Securities and Markets Authority (hereinafter "ESMA"). It is therefore essential that rules also be laid down regarding arrangements and measures to be adopted with respect to those non-exempted shares. To ensure coherence between those provisions on short selling which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is appropriate to include all the implementing technical standards required by Regulation (EU) No 236/2012 in a single Regulation.
- (2) To ensure the uniform application of Regulation (EU) No 236/2012 in relation to the information to be provided to ESMA by competent authorities and to achieve the efficient processing of that information, it should be exchanged electronically in a secure way using a standard template.
- (3) It is important to allow easy access to and re-use of the data on net short positions that is disclosed to the market through central websites operated or supervised by a competent authority. To this end, these data should be provided in a format that allows for flexible use of data and that does not offer only the possibility of static,

facsimile documents. Wherever technically possible, machine-readable formats should be used to enable users to process the information in a structured and cost-efficient way.

- (4) In order to ensure the publicity of this information to the market, in addition to disclosure on the central website operated or supervised by a competent authority, it should be possible to make available the details of a net short position to the public in other ways.
- (5) It is essential for users to have two basic outputs when making public individual net short positions in shares above the relevant publication threshold. These should comprise a compact list or table of the net short positions above the publication threshold that are outstanding at the time of consultation of the central website and a list or table with historical data on all individual net short positions published.
- (6) When a net short position in shares falls below a relevant disclosure threshold, the details, including the actual size of the position, should be published. In order to avoid confusion for users consulting the central websites, disclosures of positions that have fallen below 0,5 % of the issued share capital of the company concerned should not remain indefinitely alongside the live positions but should be available as historical data after being displayed for 24 hours.
- (7) In order to provide for a consistent and clear framework which is nevertheless flexible, it is important to specify the types of agreement to borrow and other enforceable claims having similar effect and the types of arrangement with a third party that adequately ensure that shares or sovereign debt instruments will be available for settlement, and specify the criteria such agreements and arrangements must fulfil.
- (8) The use of rights to subscribe for new shares in relation to a short sale may adequately ensure availability for settlement only where the arrangement is such that settlement of the short sale is ensured when it is due. Therefore, it is essential to specify rules to ensure that the shares resulting from the subscription rights are available on or before the settlement date and in a quantity at least equivalent to the number of shares intended to be sold short.

<sup>(1)</sup> OJ L 86, 24.3.2012, p. 1.

- (9) In defining time limited confirmation arrangements, it is important to specify the timeframe for covering a short sale through purchases in a way compatible with different settlement cycles in different jurisdictions.
- (10) In order to adequately ensure that instruments are available for settlement where a natural or legal person entering into a short sale has an arrangement with a third party under which that third party has confirmed that the instrument has been located, it is essential that there be confidence that the third party is, when established in a third country, subject to appropriate supervision and that there are appropriate arrangements for exchange of information between supervisors. Such appropriate arrangements could include being a signatory of a memorandum of understanding established by the International Organisation of Securities Commissions (IOSCO).
- (11) To ensure proper implementation of the requirement to determine whether the principal trading venue of a share is located outside the Union, transitional arrangements should be put in place for determining for the first time the list of exempted shares under Article 16 of Regulation (EU) No 236/2012. In addition, although the list of exempted shares is effective for a two year period, it is necessary to provide some flexibility as there are cases where a review of that list might be necessary during the two-year period.
- (12) In order to ensure consistency, the date of application of this Regulation should be the same as that of Regulation (EU) No 236/2012. However, in order to allow sufficient time for natural and legal persons to process the list of shares exempted pursuant to Regulation (EU) No 236/2012, the preparation of that list and its subsequent publication on the ESMA website should take place sufficiently in advance before the application date of Regulation (EU) No 236/2012. Therefore, the provisions concerning the date and period for principal trading venue calculations, the date of notification to ESMA of shares with a principal trading venue outside the Union and the effectiveness of the list of exempted shares should apply from the date of entry into force of this Regulation.
- (13) Since Regulation (EU) No 236/2012 recognised that binding technical standards should be adopted before that Regulation can be usefully applied, and as it is essential to specify before 1 November 2012 the required non-essential elements to facilitate compliance by market participants with that Regulation and enforcement by competent authorities, it is necessary that this Regulation enter into force on the day following its publication.
- (14) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.

- (15) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) <sup>(1)</sup>,

HAS ADOPTED THIS REGULATION:

CHAPTER I  
GENERAL PROVISIONS

*Article 1*

**Subject Matter**

This Regulation lays down implementing technical standards specifying the following:

- (a) the means by which information on net short positions may be disclosed to the public by natural or legal persons as well as the format of information to be provided to the European Securities and Markets Authority (hereinafter "ESMA") by competent authorities pursuant to Article 9(6) and Article 11(4) of Regulation (EU) No 236/2012;
- (b) the types of agreements, arrangements and measures that adequately ensure that the shares are available for settlement and the types of agreements or arrangements that adequately ensure that the sovereign debt is available for settlement pursuant to Article 12(2) and 13(5) of Regulation (EU) No 236/2012;
- (c) the date and period for principal trading venue calculations, notification to ESMA and the effectiveness of the relevant list pursuant to 16(4) of Regulation (EU) No 236/2012.

CHAPTER II

**MEANS FOR PUBLIC DISCLOSURE OF SIGNIFICANT NET SHORT POSITIONS IN SHARES**

[ARTICLE 9 OF REGULATION (EU) No 236/2012]

*Article 2*

**Means by which information may be disclosed to the public**

Information on net short positions in shares shall be disclosed to the public by posting it on a central website operated or supervised by the relevant competent authority pursuant to Article 9(4) of Regulation (EU) No 236/2012. The information shall be disclosed to the public through means which:

<sup>(1)</sup> OJ L 331, 15.12.2010, p. 84.

- (a) publish it in the format specified in Annex I in such a way as to allow the public consulting the website to access one or more tables offering all the relevant information on positions per share issuer;
- (b) allow users to identify and filter on whether the net short positions in a share issuer at the time of accessing the website has reached or exceeded the relevant publication threshold;
- (c) provide for historical data on the published net short positions in a share issuer;
- (d) include, whenever technically possible, downloadable files with the published and historical net short positions in a machine-readable format, meaning that the files are sufficiently structured for software applications to identify reliably individual statements of fact and their internal structure;
- (e) show for one day, together with the information specified in point (b), the net short positions that are published because they have fallen below the publication threshold of 0,5 % of the issued share capital, before removing and transferring the information to a historical data section.

## CHAPTER III

**FORMAT OF THE INFORMATION TO BE PROVIDED TO ESMA BY COMPETENT AUTHORITIES IN RELATION TO NET SHORT POSITIONS**

[ARTICLE 11 OF REGULATION (EU) No 236/2012]

*Article 3***Format of the periodic information**

1. The information to be provided on a quarterly basis to ESMA on net short positions in shares, sovereign debt and credit default swaps pursuant to Article 11(1) of Regulation (EU) No 236/2012 shall be provided by relevant competent authorities in the format specified in Annex II to this Regulation.
2. The information referred to in paragraph 1 shall be sent to ESMA electronically through a system established by ESMA that ensures that the completeness, integrity and confidentiality of the information are maintained during its transmission.

*Article 4***Format of the information to be provided upon request**

1. A relevant competent authority shall provide the information on net short positions in shares and sovereign debt or on uncovered positions relating to sovereign credit default swaps pursuant to Article 11(2) of Regulation (EU) No 236/2012 in the format specified by ESMA in its request.
2. Where information requested relates to information contained in the notification received by the competent

authority pursuant to Articles 5, 7 and 8 of Regulation (EU) No 236/2012, that information shall be provided in accordance with the requirements established in Article 2 of Commission Delegated Regulation (EU) No 826/2012 <sup>(1)</sup>.

3. Information requested shall be sent by the competent authority in electronic format, using a system established by ESMA for exchanging information that ensures that the completeness, integrity and confidentiality of the information are maintained during its transmission.

## CHAPTER IV

**AGREEMENTS, ARRANGEMENTS AND MEASURES TO ADEQUATELY ENSURE AVAILABILITY FOR SETTLEMENT**

[ARTICLES 12 AND 13 OF REGULATION (EU) No 236/2012]

*Article 5***Agreements to borrow and other enforceable claims having similar effect**

1. An agreement to borrow or other enforceable claim referred to in Article 12(1)(b) and Article 13(1)(b) of Regulation (EU) No 236/2012 shall be made by means of the following types of agreement, contract or claim which are legally binding for the duration of the short sale:

- (a) futures and swaps: futures and swap contracts leading to a physical settlement of the relevant shares or sovereign debt and covering at least the number of shares or amount of sovereign debt proposed to be sold short by the natural or legal person, entered into prior to or at the same time as the short sale and specifying a delivery or expiration date that ensures settlement of the short sale can be effected when due;
- (b) options: options contracts leading to a physical settlement of the relevant shares or sovereign debt and covering at least the number of shares or amount of sovereign debt proposed to be sold short by the natural or legal person, entered into prior to or at the same time as the short sale and specifying an expiration date that ensures settlement of the short sale can be effected when due;
- (c) repurchase agreements: repurchase agreements covering at least the number of shares or amount of sovereign debt proposed to be sold short by the natural or legal person, entered into prior to or at the same time as the short sale and specifying a repurchase date that ensures settlement of the short sale can be effected when due;
- (d) standing agreements or rolling facilities: an agreement or facility which is entered into prior to or at the same time as the short sale, of a predefined amount of specifically identified shares or sovereign debt, which for the duration

<sup>(1)</sup> See page 1 of this Official Journal.

of the short sale, covers at least the number of shares or amount of sovereign debt proposed to be sold short by the natural or legal person and specifies a delivery or execution date that ensures settlement of the short sale can be effected when due;

- (e) agreements relating to subscription rights: agreements relating to subscription rights where the natural or legal person is in possession of rights to subscribe for new shares of the same issuer and of the same class and covering at least the number of shares proposed to be sold short provided that the natural or legal person is entitled to receive the shares on or before settlement of the short sale;
- (f) other claims or agreements leading to delivery of the shares or sovereign debt: agreements or claims which cover at least the number of shares or amount of sovereign debt proposed to be sold short by the natural or legal person, entered into prior to or at the same time as the short sale, and specifying a delivery or an execution date that ensures settlement can be effected when due.

2. The agreement, contract or claim shall be provided in a durable medium by the counterparty to the natural or legal person as evidence of the existence of the agreement to borrow or other enforceable claim.

#### Article 6

### Arrangements and measures to be taken in relation to short sales of a share admitted to trading on a trading venue

#### [Article 12(1)(c) of Regulation (EU) No 236/2012]

1. Paragraphs 2, 3 and 4 shall determine the arrangements and measures to be taken in relation to short sales of a share admitted to trading on a trading venue pursuant to Article 12(1)(c) of Regulation (EU) No 236/2012.

2. Standard locate arrangements and measures shall mean arrangements, confirmations and measures that include each of the following elements:

- (a) for locate confirmations: a confirmation provided by the third party, prior to the short sale being entered into by a natural or legal person, that it considers that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions and which indicates the period for which the share is located;
- (b) for put on hold confirmations: a confirmation by the third party, provided prior to the short sale being entered into, that it has at least put on hold the requested number of shares for that person.

3. Standard same day locate arrangements and measures shall mean arrangements, confirmations and measures that include each of the following elements:

- (a) for requests for confirmation: a request for confirmation from the natural or legal person to the third party which states that the short sale will be covered by purchases during the day on which the short sale takes place;
- (b) for locate confirmations: a confirmation provided by the third party prior to the short sale being entered into that it considers that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions, and which indicates the period for which the shares are located;
- (c) for easy to borrow or purchase confirmations: a confirmation by the third party, provided prior to the short sale being entered into, that the share is easy to borrow or purchase in the relevant quantity taking into account the market conditions and other information available to that third party on the supply of the shares or, in the absence of this confirmation by the third party, that it has at least put on hold the requested number of shares for the natural or legal person;
- (d) for monitoring: an undertaking by the natural or legal person to monitor the amount of the short sale not covered by purchases;
- (e) for instructions in the event of failure to cover: an undertaking from the natural or legal person that in the event that executed short sales are not covered by purchases in the same day, the natural or legal person will promptly send an instruction to the third party to procure the shares to cover the short sale to ensure settlement in due time.

4. Easy to borrow or purchase arrangements and measures shall mean arrangements, confirmations and measures when the natural or legal person enters into a short sale of shares that meet the liquidity requirements established in Article 22 of Commission Regulation (EC) No 1287/2006<sup>(1)</sup>, or other shares that are included in the main national equity index as identified by the relevant competent authority of each Member State and are the underlying financial instrument for a derivative contract admitted to trading on a trading venue, that include the following elements:

- (a) for locate confirmations: a confirmation provided by the third party prior to the short sale being entered into that it considers that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions and indicating the period for which the share is located;
- (b) for easy to borrow or purchase confirmations: a confirmation by the third party, provided prior to the short sale being entered into, that the share is easy to borrow or purchase in the relevant quantity taking into account the market conditions and other information available to that

<sup>(1)</sup> OJ L 241, 2.9.2006, p. 1.

third party on the supply of the shares, or in the absence of this confirmation by the third party, that it has at least put on hold the requested number of shares for the natural or legal person; and

- (c) for instructions to cover: when executed short sales will not be covered by purchases or borrowing, a undertaking that a prompt instruction will be sent by the natural or legal person instructing the third party to procure the shares to cover the short sale to ensure settlement in due time.

5. The arrangements, confirmations and instructions referred to in paragraphs 2, 3 and 4 shall be provided in a durable medium by the third party to the natural or legal person as evidence of the existence of the arrangements, confirmations and instructions.

#### Article 7

### Arrangements with third parties to be taken in relation to sovereign debt

#### [Article 13(1)(c) of Regulation (EU) No 236/2012]

1. Paragraphs 2 to 5 shall determine the arrangements with third parties to be taken in relation to sovereign debt pursuant to Article 13(1)(c) of Regulation (EU) No 236/2012.

2. Standard sovereign debt locate arrangement shall mean a confirmation from the third party, prior to the short sale being entered into, that it considers that it can make the sovereign debt available for settlement in due time, in the amount requested by the natural or legal person, taking into account market conditions and indicating the period for which the sovereign debt is located.

3. Time limited confirmation arrangement shall mean an arrangement where the natural or legal person states to the third party that the short sale will be covered by purchases during the same day of the short sale and the third party confirms, prior to the short sale being entered into, that it has a reasonable expectation that the sovereign debt can be purchased in the relevant quantity taking into account the market conditions and other information available to that third party on the supply of the sovereign debt instruments on the day of entering into the short sale.

4. Unconditional repo confirmation shall mean a confirmation where the third party confirms, prior to the short sale being entered into, that it has a reasonable expectation that settlement can be effected when due as a result of its participation in a structural based arrangement, organised or operated by a central bank, a debt management office or a securities settlement system that provides unconditional access to the sovereign debt in question for a size consistent with the size of the short sale.

5. Easy to purchase sovereign debt confirmation shall mean a confirmation by the third party, provided prior to the short sale

being entered into, that it has a reasonable expectation that settlement can be effected when due on the basis that the sovereign debt in question is easy to borrow or purchase in the relevant quantity taking into account the market conditions and any other information available to that third party on the supply of the sovereign debt.

6. The arrangements, confirmations and instructions referred to in paragraphs 2 to 5 shall be provided in a durable medium by the third party to the natural or legal person as evidence of the existence of the arrangements, confirmations and instructions.

#### Article 8

### Third parties with whom arrangements are made

1. Where an arrangement referred to in Articles 6 and 7 is made with a third party, the third party shall be one of the following types:

- (a) in the case of an investment firm: an investment firm which meets the requirements set out in paragraph 2;
- (b) in the case of a central counterparty: a central counterparty which clears the relevant shares or sovereign debt;
- (c) in the case of a securities settlement system: a securities settlement system as defined under Directive 98/26/EC of the European Parliament and of the Council <sup>(1)</sup> which settles payments in respect of the relevant shares or sovereign debt;
- (d) in the case of a central bank: a central bank that accepts the relevant shares or sovereign debt as collateral or conducts open market or repo transactions in relation to the relevant shares or sovereign debt;
- (e) in the case of a national debt management entity: the national debt management entity of the relevant sovereign debt issuer;
- (f) any other person who is subject to authorisation or registration requirements in accordance with Union law by a member of the European System of Financial Supervision and meets the requirements set out in paragraph 2;
- (g) a person established in a third country who is authorised or registered, and is subject to supervision by an authority in that third country and who meets the requirements set out in paragraph 2, provided that the third country authority is a party to an appropriate cooperation arrangement concerning exchange of information with the relevant competent authority.

<sup>(1)</sup> OJ L 166, 11.6.1998, p. 45.

2. For the purposes of points (a), (f) and (g) of paragraph 1, the third party shall meet the following requirements:

- (a) participate in the management of borrowing or purchasing of relevant shares or sovereign debt;
- (b) provide evidence of such participation;
- (c) be able, on request, to provide evidence of its ability to deliver or process the delivery of shares or sovereign debt on the dates it commits to do so to its counterparties including statistical evidence.

#### CHAPTER V

### DETERMINATION OF THE PRINCIPAL TRADING VENUE FOR THE EXEMPTION

[ARTICLE 16 OF REGULATION (EU) No 236/2012]

#### Article 9

##### Date and period for principal trading venue calculations

1. Relevant competent authorities shall make any calculations determining the principal trading venue for a share by at least 35 calendar days before the date of application of Regulation (EU) No 236/2012 in respect of the period between 1 January 2010 and 31 December 2011.

2. Subsequent calculations shall be made before 22 February 2014 in respect of the period between 1 January 2012 and 31 December 2013, and every two years thereafter in respect of the subsequent two year period.

3. Where the share concerned was not admitted to trading during the whole two-year period on the trading venue in the Union and the third country trading venue, the period for calculation shall be the period during which the share was admitted to trading on both venues concurrently.

#### Article 10

##### Date of notification to ESMA

Relevant competent authorities shall notify ESMA of those shares for which the principal trading venue is outside the Union at least 35 calendar days before the date of application of the Regulation (EU) No 236/2012 and thereafter on the day before the first trading day in March every second year commencing from March 2014.

#### Article 11

##### Effectiveness of the list of exempted shares

The list of shares for which the principal trading venue is located outside the Union shall be effective as of 1 April

following its publication by ESMA, except that the first list published by ESMA shall be effective from the date of entry into application of Regulation (EU) No 236/2012.

#### Article 12

##### Specific cases of review of exempted shares

1. A relevant competent authority which determines whether the principal trading venue for a share is located outside the Union following one of the circumstances set out in paragraph 2 shall ensure that:

- (a) any calculations determining the principal trading venue are made as soon as possible after the relevant circumstances arise and in respect of the two year period preceding the date of calculation;
- (b) it notifies ESMA of its determination as soon as possible and, where relevant, before the date of admission to trading on a trading venue in the Union.

Any revised list shall be effective from the day following that of its publication by ESMA.

2. The provisions of paragraph 1 apply when:

- (a) the shares of a company are removed from trading on a permanent basis on the principal venue located outside the Union;
- (b) the shares of a company are removed from trading on a permanent basis on a trading venue in the Union;
- (c) the shares of a company that was previously admitted to trading in a trading venue outside the Union are admitted to trading on a trading venue in the Union.

#### CHAPTER VI

### FINAL PROVISIONS

#### Article 13

##### Entry into force

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

It shall apply from 1 November 2012, except for Articles 9, 10 and 11 which shall apply from the date referred to in the first paragraph.



## ANNEX II

**Format of the information to be provided to ESMA on quarterly basis (Article 3)**

| Information   | Format  |
|---|---|
| 1. Issuer identification  | For shares: full name of the company that has shares admitted to trading on a trading venue<br>For sovereign debt: full name of the issuer<br>For uncovered sovereign credit default swaps: full name of the underlying sovereign issuer  |
| 2. ISIN   | For shares only: ISIN of the main class of ordinary shares of the issuer. If there are no ordinary shares admitted to trading, the ISIN of the class of preference shares (or of the main class of preference shares admitted to trading if there are several classes of such shares) |
| 3. Country code   | Two letter code for the sovereign issuer country in accordance with ISO standard 3166-1   |
| 4. Position date  | Date for which the position is reported. Format in accordance with ISO standard 8601:2004 (yyyy-mm-dd)  |
| 5. Daily aggregated net short position on main national index shares                  | Percentage figure rounded to 2 decimal places   |
| 6. End of quarter aggregated net short position on other shares                       | Percentage figure rounded to 2 decimal places   |
| 7. Daily aggregated net short positions in sovereign debt                             | Figure of equivalent nominal amount in Euros  |
| 8. Daily aggregated uncovered positions on credit default swaps of a sovereign issuer | Figure of equivalent nominal amount in Euros  |

**COMMISSION REGULATION (EU) No 828/2012****of 14 September 2012****establishing a prohibition of fishing for roundnose grenadier in EU and international waters of Vb, VI, VII by vessels flying the flag of Spain**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy <sup>(1)</sup>, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) No 1225/2010 of 13 December 2010 fixing for 2011 and 2012 the fishing opportunities for EU vessels for fish stocks of certain deep-sea fish species <sup>(2)</sup>, lays down quotas for 2012.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2012.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2012 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**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, 14 September 2012.

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

Lowri EVANS

*Director-General for Maritime Affairs and Fisheries*

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<sup>(1)</sup> OJ L 343, 22.12.2009, p. 1.

<sup>(2)</sup> OJ L 336, 21.12.2010, p. 1.

## ANNEX

|              |   |
|--------------|---|
| No           | 16/DSS  |
| Member State | Spain   |
| Stock        | RNG/5B67-   |
| Species      | Roundnose grenadier ( <i>Coryphaenoides rupestris</i> ) |
| Zone         | EU and international waters of Vb, VI, VII              |
| Date         | 30.7.2012   |

**COMMISSION REGULATION (EU) No 829/2012****of 14 September 2012****establishing a prohibition of fishing for roundnose grenadier in EU and international waters of VIII, IX, X, XII and XIV by vessels flying the flag of Spain**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy <sup>(1)</sup>, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) No 1225/2010 of 13 December 2010 fixing for 2011 and 2012 the fishing opportunities for EU vessels for fish stocks of certain deep-sea fish species <sup>(2)</sup>, lays down quotas for 2012.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2012.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2012 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**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, 14 September 2012.

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

Lowri EVANS

*Director-General for Maritime Affairs and Fisheries*

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<sup>(1)</sup> OJ L 343, 22.12.2009, p. 1.

<sup>(2)</sup> OJ L 336, 21.12.2010, p. 1.

## ANNEX

|              |   |
|--------------|---|
| No           | 17/DSS  |
| Member State | Spain   |
| Stock        | RNG/8X14-   |
| Species      | Roundnose grenadier ( <i>Coryphaenoides rupestris</i> ) |
| Zone         | EU and international waters of VIII, IX, X, XII and XIV |
| Date         | 30.7.2012   |

**COMMISSION REGULATION (EU) No 830/2012****of 14 September 2012****establishing a prohibition of fishing for Atlantic salmon in EU waters of subdivisions 22-31 (Baltic Sea excl. Gulf of Finland) by vessels flying the flag of Finland**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy <sup>(1)</sup>, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) No 1256/2011 of 30 November 2011 fixing for 2012 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea and amending Regulation (EU) No 1124/2010 <sup>(2)</sup>, lays down quotas for 2012.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2012.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2012 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**

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, 14 September 2012.

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

Lowri EVANS

*Director-General for Maritime Affairs and Fisheries*

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 1.

<sup>(2)</sup> OJ L 320, 3.12.2011, p. 3.

## ANNEX

|              |  |
|--------------|--|
| No           | 32/Baltic  |
| Member State | Finland  |
| Stock        | SAL/3BCD-F   |
| Species      | Atlantic Salmon ( <i>Salmo Salar</i> )                             |
| Zone         | EU waters of subdivisions 22-31 (Baltic Sea excl. Gulf of Finland) |
| Date         | 4.8.2012   |

**COMMISSION REGULATION (EU) No 831/2012****of 14 September 2012****establishing a prohibition of fishing for Hake in EU waters of IIa and IV by vessels flying the flag of the Netherlands**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy <sup>(1)</sup>, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) No 43/2012 of 17 January 2012 fixing for 2012 the fishing opportunities available to EU vessels for certain fish stocks and groups of fish stocks which are not subject to international negotiations or agreements <sup>(2)</sup>, lays down quotas for 2012.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2012.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2012 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**

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, 14 September 2012.

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

Lowri EVANS

*Director-General for Maritime Affairs and Fisheries*

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 1.

<sup>(2)</sup> OJ L 25, 27.1.2012, p. 1.

## ANNEX

|              |                                       |
|--------------|---------------------------------------|
| No           | 33/TQ43                               |
| Member State | The Netherlands                       |
| Stock        | HKE/2AC4-C                            |
| Species      | Hake ( <i>Merluccius merluccius</i> ) |
| Zone         | EU waters of IIa and IV               |
| Date         | 17.8.2012                             |

**COMMISSION IMPLEMENTING REGULATION (EU) No 832/2012****of 17 September 2012****concerning the authorisation of a preparation of ammonium chloride as a feed additive for lambs for fattening (holder of authorisation Latochemia Co. Ltd)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition<sup>(1)</sup>, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003, an application was submitted for the authorisation of ammonium chloride. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) The application concerns the authorisation of the preparation of ammonium chloride, as specified in the Annex, as a feed additive for lambs for fattening, to be classified in the additive category 'zootechnical additives'.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 31 January 2012<sup>(2)</sup> that, under the proposed conditions of use and for a limited period of feeding, the preparation of ammonium chloride, as specified in the Annex, does not have an adverse effect on animal health, human health or the

environment, and that its use can reduce the pH value in the urine in lambs for fattening. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.

- (5) The assessment of the preparation of ammonium chloride, as specified in the Annex, shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of this preparation should be authorised as specified in the Annex to this Regulation.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

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

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

Done at Brussels, 17 September 2012.

For the Commission  
The President  
José Manuel BARROSO

<sup>(1)</sup> OJ L 268, 18.10.2003, p. 29.

<sup>(2)</sup> EFSA Journal 2012; 10(2):2569.

## ANNEX

| Identification number of the additive   | Name of the holder of authorisation | Additive          | Composition, chemical formula, description, analytical method  | Species or category of animal | Maximum age | Minimum content  | Maximum content | Other provisions   | End of period of authorisation |
|---|-------------------------------------|-------------------|--|-------------------------------|-------------|--|-----------------|--|--------------------------------|
|   |                                     |                   |  |                               |             | mg of the additive/kg of complete feedingstuff with a moisture content of 12 % |                 |  |                                |
| <b>Category of zootechnical additives. Functional group: other zootechnical additives (reduction of urinary pH)</b> |                                     |                   |  |                               |             |  |                 |  |                                |
| 4d7   | Latochema Co. Ltd                   | Ammonium chloride | <p><i>Additive composition</i></p> <p>Ammonium chloride ≥ 99,5 %<br/>(Solid form)</p> <p><i>Characterisation of the active substance</i></p> <p>Ammonium chloride ≥ 99,5 %<br/>NH<sub>4</sub>Cl CAS No: 12125-02-9<br/>Sodium chloride ≤ 0,5 %<br/>Produced by chemical synthesis</p> <p><i>Method of Analysis</i> <sup>(1)</sup></p> <p>Quantification of ammonium chloride in feed additive: titration with sodium hydroxide (European Pharmacopoeia, monograph 0007) or titration with silver nitrate (JECFA monograph 'ammonium chloride).</p> | Lambs for fattening           | —           | —  | 10 000          | <ol style="list-style-type: none"> <li>The additive shall be incorporated into feed in the form of a premixture.</li> <li>For safety: breathing protection, eye protection, gloves and protective clothing shall be used during handling.</li> <li>Feed containing the additive shall not be feed for a period exceeded three months.</li> </ol> | 8 October 2022                 |

<sup>(1)</sup> Details of the analytical methods are available at the following address of the Reference Laboratory: [http://irmm.jrc.ec.europa.eu/EURLs/EURL\\_feed\\_additives/Pages/index.aspx](http://irmm.jrc.ec.europa.eu/EURLs/EURL_feed_additives/Pages/index.aspx)

## COMMISSION REGULATION (EU) No 833/2012

of 17 September 2012

**imposing a provisional anti-dumping duty on imports of certain aluminium foils in rolls originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

#### A. PROCEDURE

##### 1. Initiation

- (1) On 20 December 2011, the European Commission (the 'Commission') announced, by a notice published in the Official Journal of the European Union<sup>(2)</sup> ('Notice of Initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Union of certain aluminium foil in rolls originating in the People's Republic of China ('PRC').
- (2) The proceeding was initiated following a complaint lodged on 9 November 2011 by the European Association of Metals (Eurométaux) ('the complainant') on behalf of producers representing more than 50 % of the total Union production of certain aluminium foil in rolls. The complaint contained prima facie evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.

##### 2. Parties Concerned by the Proceeding

- (3) The Commission officially advised the complainant, other known Union producers, the exporting producers in the PRC, producers in the analogue country, importers, distributors, and other parties known to be concerned, and representatives of the PRC of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation.
- (4) The complainant, other Union producers, the exporting producers in the PRC, importers and distributors made their views known. All interested parties, who so

requested and showed that there were particular reasons why they should be heard, were granted a hearing.

- (5) In view of the apparent high number of Union producers, importers and exporting producers sampling was envisaged in the Notice of Initiation, in accordance with Article 17 of the basic Regulation.
- (6) In order to enable the Commission to decide whether sampling would be necessary and if so, to select a sample, importers and exporting producers were asked to make themselves known to the Commission and to provide, as specified in the Notice of Initiation, basic information on their activities related to the product concerned (as defined in section 3 below) during the period from 1 October 2010 to 30 September 2011.
- (7) As regards the Union producers, in the Notice of Initiation the Commission announced that it had provisionally selected a sample of Union producers on the basis of the information received from the cooperating Union producers prior to the initiation of the investigation. That sample consisted of the four largest known companies or groups of companies in the Union.
- (8) As explained in recital (24) below, only two unrelated importers provided the requested information and agreed to be included in the sample. Therefore, in view of the limited number of cooperating importers, sampling was deemed to be no longer necessary. A third importing company provided a submission without submitting a questionnaire response.
- (9) As explained in recital (26) below, 14 exporting producers in the PRC provided the requested information and agreed to be included in the sample. On the basis of the information received from these parties, the Commission selected a sample of four exporting producers having the largest volume of exports to the Union.
- (10) In order to allow exporting producers to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to all Chinese exporting producers known to be concerned and to the authorities of the PRC. Two companies came forward and requested MET, one company was part of the selected sample, the other not. Requests for IT were received from the companies in the sample and the company that requested MET but was not part of the sample.
- (11) The Commission sent questionnaires to all exporting producers that made themselves known within the deadlines set out in the Notice of Initiation, namely the four sampled companies and all other companies

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ C 371, 20.12.2011, p. 4.

in order to allow them to request individual examination. Questionnaires were also sent to other parties known to be concerned, namely the four sampled Union producers, the cooperating importers in the Union, users and an association of consumers.

- (12) Replies were received from three sampled exporting producers in the PRC, from the four sampled Union producers and two unrelated importers. Also six retailers replied to the user's questionnaire.
- (13) The Commission has not received any claims for individual examination in accordance with Article 17(3) of the basic Regulation.
- (14) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:

*Producers in the Union*

- CUKI Cofresco SPA, Volpiano (TO), Italy;
- Fora Folienfabrik GmbH, Radolfzell, Germany;
- ITS BV, Apeldoorn, The Netherlands;
- SPHERE Group, Paris, France.

*Exporting producers in the PRC*

- CeDo Shanghai Co. Ltd., Shanghai;
- Ningbo Favoured Commodity Co. Ltd., Ningbo;
- Ningbo Times Co. Ltd., Ningbo;
- Shanghai Blue Diamond Co. Ltd., Shanghai.

*Related importer in the Union*

- CeDo Limited, Telford, UK

*Producer in Turkey (analogue country)*

- Sedat Tahir Ltd., Ankara

- (15) In order to collect information concerning the cost of the major indirect raw material in the production of aluminium foil, i.e. primary aluminium, information from the Shanghai Futures Exchange ('SHFE' or 'Exchange'), the main trading platform for aluminium in China was sought. Information about world markets and prices was requested from the London Metal Exchange ('LME'), to which also an information visit was paid. The SHFE provided some written information following the request of the Commission. The Commission also proposed an information visit to SHFE which initially

was accepted. However at a later stage, the SHFE considered that an approval from the Chinese government would be required for such a visit. The Chinese authorities on the other hand denied that such an approval would be necessary. Eventually the SHFE reversed its initial acceptance and decided not to accept the visit.

- (16) An information visit was paid to Shanghai Metals Markets ('SMM'), a price information provider and publisher in Shanghai.

### 3. Investigation Period

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

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product Concerned

- (18) The product concerned is aluminium foil of a thickness of 0,007 mm or more but less than 0,021 mm, not backed, not further worked than rolled but whether or not embossed, in low weight rolls of a weight not exceeding 10 kg ('the product concerned' or 'aluminium foil in rolls' or 'AHF'). The product concerned currently falls within CN codes ex 7607 11 11 and ex 7607 19 10.
- (19) The product concerned is generally used as a consumer product for packaging and other household/catering application. The product definition was not contested.

### 2. Like Product

- (20) The investigation has shown that aluminium foil in rolls produced in and exported from the PRC, aluminium foil in rolls produced and sold in the Union by the Union producers and aluminium foil in rolls produced and sold in Turkey (the analogue country) by the cooperating Turkish producer have the same basic physical and technical characteristics as well as the same basic uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

## C. SAMPLING

### 1. Sampling of Union Producers

- (21) In view of the apparent large number of Union producers, sampling for the determination of injury was provided for in the notice of initiation, in accordance with Article 17 of the basic Regulation.
- (22) In the Notice of Initiation the Commission announced that it had provisionally selected a sample of Union producers. This sample consisted of the four largest (groups of) companies, out of more than 30 Union producers that were known to produce the like

product prior to the initiation of the investigation. The selection of the sample was done on the basis of the producers' sales volume, their size and geographic location in the Union and the proposed sample represented 44 % of the total estimated Union production during the IP. Interested parties were invited to consult the file for inspection by interested parties and to comment on the appropriateness of this choice within 15 days of the date of publication of the notice of initiation. After the deadline for comments, one interested party argued that the sample should have included a producer from the United Kingdom. In this respect, it is noted that a UK producer company (part of the Sphere Group) was indeed in the sample. No other interested party opposed the final sample and the sample was, consequently, confirmed.

## 2. Sampling of Unrelated Importers

(23) In view of the potentially large number of importers involved in the proceeding, sampling of importers was provided for in the Notice of Initiation in accordance with Article 17 of the basic Regulation.

(24) Only two unrelated importers provided the requested information and agreed to cooperate. Consequently, sampling was no longer deemed to be necessary.

## 3. Sampling of Exporting Producers

(25) In view of the apparent large number of exporting producers, sampling for the determination of dumping was provided for in the Notice of Initiation, in accordance with Article 17 of the basic Regulation.

(26) A total of 14 exporting producers in the PRC provided the requested information and agreed to be included in a sample. These companies exported around 7.800 tonnes, i.e. around 60 % of the Chinese exports to the EU market in the IP. On the basis of the information received from these parties, the Commission selected a sample of four exporting producers having the largest representative volume of production, sales and exports which could reasonably be investigated within the time available. One of the sampled companies subsequently withdrew its cooperation and another notified the Commission that the information it has provided to the Commission in its sampling form was erroneous. Based on this new information it was decided to exclude this company from the sample of companies. The Commission invited two further companies to be in the sample. The cooperating exporting producers, the Mission of the PRC to the EU and the complainant were consulted about the final composition of the sample. No interested party opposed this selection. Subsequently one of the newly sampled companies also withdrew its cooperation. The final sample thus included three exporting producers in the PRC covering around 30 % of the imports of the product concerned to the Union during the IP and representing 50 % of the sales volume of the 14 exporting producers which provided data for the sampling exercise.

## D. DUMPING

### 1. Market Economy Treatment and Individual Treatment

#### 1.1. Market Economy Treatment (MET)

(27) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(28) Two companies, CeDo Shanghai Co. Ltd. ('CeDo Shanghai') and Shanghai Blue Diamond Co. Ltd. ('Blue Diamond'), came forward and requested MET. Only CeDo Shanghai was selected to be part of the sample as explained above; the other company was not. However, following the judgement by the Court of Justice in Case C-249/10 P Brosmann Footwear (HK) and Others v Council of the European Union, it was decided to examine all MET claim forms received within the deadline – i.e. the claims by the two above mentioned companies.

(29) The claims for MET were analysed against the five criteria laid down in Article 2(7)(c) of the basic Regulation. Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of basic accounting records, which are independently audited in line with international accounting standards and are applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty, and

— exchange rate conversions are carried out at market rates.

(30) On-the-spot investigations regarding MET claims were carried out at the premises of these companies.

(31) For both companies, MET was denied under Criterion 1 of Article 2(7)(c) based on evidence that the price of the upstream basic raw material, aluminium, was distorted. These distortions were also found in the price of the

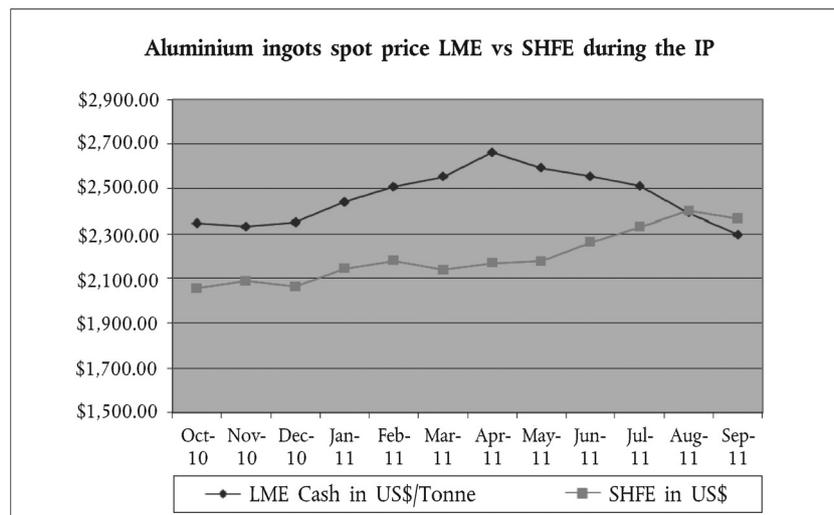
intermediate raw material, aluminium foil in jumbo rolls as described below. The companies also failed to meet other criteria as explained below.

1.1.1. Industry-wide conclusions concerning Criterion  
1- Business decisions and costs of major inputs

(32) Aluminium foil in small rolls is produced through a simple process of rewinding, cutting and packaging of aluminium foil on jumbo rolls onto smaller rolls. The main raw material for the production of aluminium foil is primary aluminium. Primary aluminium accounts for ca. 60-70 % of the costs of production of the product concerned by this investigation and it is thus the main cost-driver in its production. This is reflected in the industry-wide practice of quoting both purchasing and sales prices for aluminium foil on the basis of a reference price for primary aluminium (aluminium ingot) plus a production / conversion fee. Indeed, the companies requesting MET purchased aluminium foil on jumbo rolls on the basis of purchase contracts that set the price of aluminium foil on jumbo rolls with reference to primary aluminium prices published in the SMM, a price information provider on different metals,

which quotes these prices on the basis of spot traded prices in the Shanghai area. The SMM publication is highly representative of domestic aluminium prices. These prices follow very closely prices quoted on the SHFE where most transactions take place in China.

(33) The world-wide reference for the price of primary aluminium, which is a commodity, is the quotation at the LME. The price of aluminium on the domestic Chinese market diverges significantly from LME prices. As shown in the following graph, the LME v. SHFE price difference in the IP ranged from + 500 to - 90 USD/tonne. During the investigation period, the price quotation at the LME has been, on a monthly average basis more than 9 % higher than in the SHFE (net price), the difference reaching as high as + 23 % in the middle of the period. It is also noteworthy that during the latter part of the IP when globally prices were decreasing due to a market contraction in demand, the opposite trend could be observed in the SHFE prices, (resulting even in prices 3 % above LME prices) which further illustrates the price distortions prevalent in this market.



(34) This substantial price divergence of primary aluminium compared to the rest of the world, as explained above, is considered to be due to a combination of a series of State-driven factors and significant interference by the State in the domestic market with a number of tools. This State influence resulted in the creation and existence of a rather isolated domestic market for primary aluminium in China insulated from market forces.

(35) First of all, the SHFE is controlled by the China Securities Regulatory Commission ('CSRC'). SHFE performs its functions in accordance with the Regulation on the Administration of Futures Trading, the Measures for the Administration of Futures Exchanges and its AoA. Several of these state-imposed rules governing the functioning of the Exchange contribute to low volatility, distorted prices and price trends at the SHFE: daily price fluctuations are limited to 4 % above or below

the settlement price of the previous trading day, trading happens at a low frequency (until the 15th day of each month), futures contracts are limited to a duration of up to 12 months, open interests by traders are limited to a certain amount, price speculation is restricted.

(36) Access to the Exchange is limited by law only to Chinese traders which also need an approval from CSRC to trade on the Exchange. Market representatives of SHFE members can only perform transactions at the request of SHFE members, cannot accept orders from other organizations and cannot trade on their own account. Physical deliveries can only take place in an approved warehouse within the PRC, unlike international exchanges, where delivery can take place worldwide. Moreover, as they are a platform for physical exchanges only (no derivatives are sold) this completely insulates the Chinese aluminium markets. As a

- consequence, arbitrage with the LME or other markets is practically not possible and the Exchange works in isolation from world markets. Thus an equalization among these markets cannot take place.
- (37) Second, the State interferes in the price setting mechanism in the SHFE given its position both as a seller of primary aluminium and as a purchaser via the State Reserve Bureau and other State Bodies. For example, the Chinese Government enacted a stimulus package aiming at limiting the effects of the economic crisis at the end of 2008 and this package included a scheme for the State Reserves Bureau to buy aluminium from smelters in order to support their operations by artificially increasing domestic demand as the global financial / economic crisis reduced global demand. Those State arranged purchases distorted the prices significantly during the first half of 2009. It is interesting to note in this respect that at the end of the investigation period prices on the Chinese domestic market moved in an opposite direction to prices on world markets.
- (38) The Chinese State described its policy of interference in the aluminium sector in its 12th 5-Year Development Plan for Aluminium (2011-15). The plan states "adjusting tax and export tax rebates and other economic levers, and strictly control the total amount of expansion and exports of primary products". In practice this means that a combination of specific tax schemes is geared to promote the aluminium industry. These tools discourage the exports of primary aluminium from the PRC whilst encouraging the imports and the manufacture of downstream products (such as the product concerned) incorporating aluminium for both the domestic and export markets.
- (39) This plan continues the policy which has existed for many years in previous Plans. Furthermore these plans have been implemented over many years and during the IP several implementing measures were in operation and are described below. These schemes are:
- 1) an export duty of 17 % on primary aluminium and aluminium scrap (compared with a 0 % duty on aluminium foil in small rolls);
  - 2) a VAT rebate of 0 % on primary aluminium (compared with the 15 % rebate on aluminium foil since June 2009);
  - 3) elimination of the 5 % import duty on metal.
- (40) Thus the combination of these measures is used by the State to restrict exports of primary aluminium, which in turn results in an increased domestic supply and leads to a reduction of its price on the domestic market.
- (41) The large majority of the Chinese aluminium smelters are state-owned. The various industrial plans that clearly influence aluminium production capacity and output, currently in particular the 12th 5 -year plan (2011-2015) for the Aluminium Industry encourages the strategic development of "aluminium deep processing products and to promote aluminium fabrication industry to further extend industrial chain".
- (42) The measures taken by the Chinese State as described above were consequently considered as evidence of underlying State interference in decisions of firms regarding acquisition of raw materials and their production costs. Indeed, the current Chinese system of high export duties and lack of VAT reimbursement for export of primary aluminium, combined with no export taxes and partial VAT reimbursement on exports of the downstream aluminium products such as the product concerned, and State interference in the setting of prices in the SHFE, has essentially lead to a situation where Chinese primary aluminium prices and the prices of downstream aluminium products (also used as raw material in the production of other aluminium products) are the result of State intervention independent from price fluctuations on international markets. This has a direct influence on company decisions when acquiring downstream aluminium raw materials. Prices of aluminium have always been distorted and, except for a very limited period of time when as mentioned above other State distortive priorities appear to have been in play, this has provided an unfair advantage to Chinese producers of aluminium foil.
- (43) Bearing in mind that primary aluminium accounts for ca. 60 % of cost of production of aluminium foil in small rolls this difference is translated into an unfair significant cost advantage for Chinese producers, which for a commodity type product like aluminium foil in small rolls is decisive.
- (44) CeDo Shanghai disputed the findings of the Commission after they were disclosed to them. First, it claimed that some of the Commission's findings are erroneous and inconsistent which negatively affects the overall finding concerning business decisions of firms in the PRC. Specifically it stated that access to the SHFE is not limited to Chinese nationals as it is possible to open accounts with brokers who have the authorization to trade on the SHFE. Overall, the company did not dispute the fact that controlled actions on the side of Chinese State exist, but in its view the purpose of these actions is not to distort prices and secure a low volatility on the market, but rather to prevent speculation and potential mistakes while carrying out transactions. Secondly, the company claimed that there were rather limited price variations and gaps between the SHFE and LME in the IP, including a period where prices in the PRC were even higher than elsewhere. Consequently the

cost advantage of the Chinese producers that would exist through depressed prices is minimal, if existing at all. It further explains the reversing price trends at the end of the IP were due to the fact that the Chinese economy was still expanding at the end of 2011 and were not the result of distortions induced by the State. Finally it claimed that the above-mentioned mechanisms or procedures do not have material impact on the company's decisions with respect to its costs and pricing policies.

(45) The company's statements do not contradict the Commission's finding that only Chinese traders are allowed to trade on this Exchange. As to the purpose and objective of the State's actions the company's statements are speculative and no evidence has been provided at this stage. Further, it is irrelevant why these regulations and limitations were put in place. What is at issue is their overall effect of creating an isolated domestic market for aluminium where price trends do not follow price trends on world markets. In this respect it is also noted that upon disclosure, the Chinese authorities did not comment on this point. As concluded above in recital (43), the distortion on the Chinese aluminium market (minus 9 % price difference in the IP) is significant enough to result in an unfair significant cost advantage to Chinese producers of a commodity type of product such as the product concerned. This cost advantage cannot be explained by any comparative advantage of the Chinese aluminium producers. Finally, all cooperating companies purchased their raw material on the Chinese domestic market on the basis of contracts that are indexed to local aluminium price indices. Thus individual companies' decisions are clearly influenced by the State's actions creating a distorted market for aluminium.

(46) Blue Diamond explained that SMM prices are not State-ruled prices and SMM is similar to LME as they are public information sources. The Commission did not find that prices were directly set by the State thus this comment is irrelevant. Secondly, the fact that prices are publicly available does not ensure automatically that they are the result of market forces.

#### 1.1.2. Company-specific conclusions concerning Criterion 2 to 5

(47) The Commission found that CeDo Shanghai did not fulfil Criterion 3 as its repayment of a loan in foreign currency was subject to the approval of the Foreign Exchange Administration which is considered to have a distortive effect on decisions of the company on borrowing and thus its financial situation.

(48) CeDo Shanghai disputed the Commission's findings concerning Criterion 3. It claimed that the registration

with the Foreign Exchange Administration is a country-wide practice which applies to any company which repays borrowings from abroad and it is merely good governance by the Chinese financial authorities to ensure that improper transactions are not used to channel finances out of China. The company further claimed that neither its production costs nor its overall financial situation in any way depend on this approval. Thus CeDo claimed that the Commission's definition of Criterion 3 in this regard is deficient.

(49) Financing decisions clearly are one of the most important decisions for firms. The Regulation of external debt provided by CeDO clearly puts in place an approval procedure for borrowings originating from outside of China. Thus decisions of firms to take financing from abroad are subject to approval of the State which creates a distortion in their financial situation. The company's claims thus were rejected.

(50) Blue Diamond did not meet Criterion 1 for the further reason that it benefits from an extended income tax exemption. It also failed Criterion 2 as it does not have one clear set of basic accounting records audited in line with international accounting standards and which would be applied for all purposes. Finally the company could not demonstrate that it meets Criterion 3 as it uses industrial premises for free, which distorts its costs and financial situation.

(51) The company disputed some of these findings. It claimed that the tax exemption has no effect on its export prices, the latter being the focus of anti-dumping investigations. It also claimed that it has followed Chinese VAT-rules in its accounting and explained that differing sales and accounting records were the result of contractual conditions and were not a regular practice followed by the company. The company further confirmed that it uses a considerable industrial area for free on the basis of an agreement.

(52) The comments concerning double invoicing contradicted the explanation and evidence provided during the on-spot investigation. No further evidence was provided concerning double invoicing and how the company's depreciation practice was in line with Chinese VAT rules as claimed by the company. Finally, the company confirmed the findings concerning tax exemptions and free use of industrial estate. It is noted in this regard that the Criteria used for the assessment of MET claims are not all strictly export price-relevant criteria but they are there to determine whether market economy conditions prevail for the producer in respect of the manufacture and sale of the like product concerned. Furthermore,

since the company neither claimed individual examination, nor was it selected to be part of the sample, no information about its export prices was requested.

(53) MET is therefore denied to both companies.

#### 1.2. Individual Treatment (IT)

(54) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation. Briefly, and for ease of reference only, these criteria are set out below:

— In the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;

— Export prices and quantities, and conditions and terms of sale are freely determined;

— The majority of the shares belong to private persons. State officials appearing on the Boards of Directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;

— Exchange rate conversions are carried out at the market rate; and

— State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

(55) All sampled companies and Blue Diamond requested IT. These claims were examined. The investigation showed that all the sampled companies and Blue Diamond fulfilled all the conditions of Article 9(5) of the basic Regulation.

(56) Thus all sampled exporting producers and Blue Diamond were granted IT.

#### 2. Analogue Country

(57) According to Article 2(7)(a) of the basic Regulation, normal value for exporting producers not granted MET shall be established on the basis of the domestic prices or constructed normal value in an analogue country.

(58) In the notice of initiation, the Commission indicated its intention to use the United States of America as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited interested parties to comment on this.

(59) No substantive comments were received concerning the United States of America ('USA') as a proposed analogue

country. None of the interested parties suggested alternative analogue country producers of the like product.

(60) However there was no co-operation from the producers in the USA although all known producers in the USA were contacted during the investigation. The Commission requested that from producers in other third countries which were mentioned in the complaint such as Mexico and South Africa cooperate, however was no cooperation from these countries either.

(61) The Commission through its own research tried to identify any additional producers in third countries. Letters and questionnaires were therefore sent to all known producers in other third countries (Turkey, India, South Korea).

(62) Two Turkish producers came forward showing willingness to cooperate. Ultimately one producer provided a full questionnaire reply and accepted a verification visit at its premises.

(63) The Commission placed its assessment concerning the appropriateness of Turkey as an analogue country in the non-confidential file for inspection by interested parties. None of the interested parties made comments on the selection of Turkey as the analogue country in the present case.

(64) It is therefore provisionally concluded that Turkey constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

#### 3. Normal Value

(65) As none of the companies requesting MET could demonstrate that they fulfil the MET criteria and the other two companies that were selected to be part of the sample did not request MET, the normal value for all Chinese exporting producers was determined, as explained in recital (57) above, on the basis of the prices actually paid or payable or a constructed normal value in Turkey for the like product. Following the choice of the prices paid or payable in the Union, normal value was calculated on the basis of the data verified at the premises of the cooperating Turkish producer listed in recital (14) above.

(66) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the sales of the like product to independent customers were representative. The sales of the Turkish cooperating producer of the like product were found to be representative compared to the product concerned exported to the Union by the exporting producers included in the sample.

- (67) The Commission subsequently examined whether these sales could be considered as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable sales to independent customers. The sales transactions were considered profitable where the unit price was equal to or above the cost of production. Cost of production on the Turkish market during the IP was therefore determined.
- (68) For those product types where more than 80 % by volume of sales on the domestic market of the product type were above cost and the weighted average sales price of that type was equal to or above the unit cost of production, normal value, by product type, was calculated as the weighted average of the actual domestic prices of all sales of the type in question, irrespective of whether those sales were profitable or not.
- (69) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average price of only the profitable domestic sales of that type made during the IP.
- (70) Wherever there were no domestic sales of a particular product type by the cooperating Turkish producer, the normal value was constructed in accordance with Article 2(3) of the basic Regulation.
- (71) For product types that were not sold on the domestic market by the Turkish cooperating producer but these product types were sold on other markets, a normal value was constructed by adding to the cost of manufacturing of the same product type sold on other markets its SG&A and profit. In case of product types that were not sold by the Turkish cooperating producer at all, a normal value was constructed by adding to the cost of manufacturing of all product types their SG&A and profit.
- (72) Pursuant to Article 2(6) of the basic Regulation, the amounts for SG&A and profit were established on the basis of the actual data pertaining to production and sales in the ordinary course of trade of the like product by the Turkish producer.

#### 4. Export Prices

- (73) The exporting producers made export sales to the Union either directly to independent customers or through related companies located in the Union.
- (74) Where export sales to the Union were made directly to independent customers in the Union, export prices were established on the basis of the prices actually paid or

payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

- (75) Where export sales to the Union were made through related companies located in the Union, export prices were established on the basis of the first resale prices of these related companies to independent customers in the Union, pursuant to Article 2(9) of the basic Regulation. Adjustments were made for all costs incurred between importation and resale including sales, general and administrative expenses and profit. With respect to profit margin, the profit realised by two unrelated importers of the product concerned was used since the actual profit of the related importer was not considered reliable because of the relationship between the exporting producer and the related importer.

#### 5. Comparison

- (76) As Chinese imports were of private label business, comparisons were made only on the basis of sales of private label products by the Turkish cooperating company.
- (77) The comparison between normal value and export price was made on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments for indirect taxes, freight, insurance, handling, warranty and credit costs were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence. The weight of packaging was disregarded in the comparison.
- (78) Using the PCN-system to classify product types, there was a low degree of matching for all sampled exporting producer. Where no direct matches could be identified, similar types were compared and adjustments were made for differences, such as the packaging types. Where the resembling technique was employed the details were disclosed to the party involved.

#### 6. Dumping Margins

- (79) According to Article 2(11) and (12) of the basic Regulation, the dumping margin for the sampled exporting producers was established based on the comparison of the weighted average normal value with the weighted average export price expressed as a percentage of the CIF Union frontier price, duty unpaid.
- (80) A weighted average of these three dumping margins was calculated for the non-sampled co-operating companies.

- (81) Given the low degree of co-operation from the PRC (around 60 %), it is considered appropriate that the countrywide dumping margin applicable to all other exporting producers in the PRC should be based on the most dumped transactions of the cooperating exporters.
- (82) The provisional dumping margins thus established, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 1

**Dumping margins**

| Company Name                       | Status | Dumping margin |
|------------------------------------|--------|----------------|
| CeDo Shanghai Co. Ltd.             | IT     | 39,3 %         |
| Ningbo Times Co. Ltd.              | IT     | 31,4 %         |
| Ningbo Favoured Commodity Co. Ltd. | IT     | 28,6 %         |
| Other co-operating companies       |        | 35,2 %         |
| Countrywide dumping margin         |        | 43,4 %         |

**E. INJURY****1. Union Production and Union Industry**

- (83) In the Union, there are 31 producers or groups of producers of the like product, most of them relatively small. They will hereafter be referred to as 'Union industry' within the meaning of Articles 4(1) and 5(4) of the basic Regulation. The complainant, Eurométaux, acted on behalf of seven producers whose collective output, during the IP, amounted to ca. 50 % of the total Union production of certain aluminium foil in rolls. However, it should be noted that the data submitted by the complainant, as checked with other available sources, covered all known companies producing and selling the product concerned on the Union market. On that basis, the total Union production of the like product was estimated to amount to 91 000 tonnes in the IP. Given that, through the complainant, information was collected or available from all known companies producing and selling the product concerned on the Union market, such information will be used as macroeconomic indicators in this investigation.

**2. Union Consumption**

- (84) Union consumption was established on the basis of the sales volume on the Union market by the Union industry plus imports to the Union market. This data was supplied by the complainant and was made available to all interested parties. The data supplied for Union

producers was crosschecked to the data received by the Commission during the standing and sampling exercises. Import data for the product concerned for both the country concerned and third countries was crosschecked to the COMEXT data available on Eurostat. The complainant pointed out that its figures for sales on the Union market contained certain volumes produced in the PRC already included in the import figures. A deduction was therefore made to the sales volume of certain non-sampled producers in the EU which also imported from the PRC. This deduction prevented double counting of these sales volumes in the total consumption.

- (85) On this basis the Union consumption was found to have developed as follows:

Table 1

**Consumption in the EU (tonnes)**

|   | 2008   | 2009   | 2010   | IP     |
|---|--------|--------|--------|--------|
| Total import                              | 4 600  | 7 600  | 10 300 | 14 300 |
| Union production sold on the Union market | 91 000 | 91 500 | 87 700 | 82 456 |
| Total consumption                         | 95 600 | 99 100 | 98 000 | 96 756 |
| <i>Index (2008 = 100)</i>                 | 100    | 104    | 103    | 101    |

- (86) Total consumption on the EU market only fluctuated slightly over the period considered. The reason for this stability is that the EU market for the product concerned is mature and, being a product generally used for household purposes, it was not subject to fluctuation despite the economic crisis.

**3. Imports from the Country Concerned****3.1. Volumes and market share**

- (87) Import volumes were obtained from the complainant who adjusted the Eurostat statistical data on the basis of its market knowledge. This adjustment was necessary because the CN code statistics contain imports which are not the product concerned. The adjustment was based on knowledge of exports to the EU market from the various exporting countries and the import price which would indicate whether the import was the product concerned or not. The detailed figures and methodology were made available to interested parties at Annex 3 of the complaint. On that basis, imports into the Union from the PRC developed as follows during the period considered:

Table 2

**Imports from the PRC**

|                               | 2008  | 2009  | 2010   | IP     |
|-------------------------------|-------|-------|--------|--------|
| Imports from the PRC (tonnes) | 4 270 | 6 836 | 9 839  | 12 994 |
| <i>Index (2008 = 100)</i>     | 100   | 160   | 230    | 304    |
| Market share                  | 4,5 % | 6,9 % | 10,0 % | 13,4 % |
| <i>Index (2008 = 100)</i>     | 100   | 154   | 225    | 301    |

Source: Complainant

- (88) Following the anti-dumping investigation on the main raw material and upstream product (aluminium foil in jumbo reels), which resulted in the imposition of duties in 2009 on Chinese producers, import volumes from the PRC increased substantially. The volume of imports of the product concerned increased by more than 200 % over the period considered.
- (89) The market share held by Chinese exporting producers shows the same increasing trend of the imports over the period considered, passing from 4,5 % in 2008 to 13,4 % during the IP.

### 3.2. Prices of dumped imports and price undercutting

- (90) Average prices of imports from the PRC developed as follows:

Table 3

**Prices of imports from the PRC**

|                                 | 2008 | 2009  | 2010  | IP    |
|---------------------------------|------|-------|-------|-------|
| Average CIF price in EUR/tonnes | (*)  | 2 335 | 2 600 | 2 518 |
| <i>Index (2009 = 100)</i>       | (*)  | 100   | 111   | 108   |

(\*) No price available as the CN code 7607 11 11 for aluminium foil was created in 2009

Source: Eurostat

- (91) It should be stated that Chinese import prices follow, to a large extent, Chinese raw material prices (mainly aluminium alloys). However, import prices fell by 3 % in the IP as compared to 2010 at a time when raw material prices increased by around 4 % (see table below).

Table 4

**Development of average Chinese aluminium prices**

|  | 2008  | 2009  | 2010  | IP    |
|--|-------|-------|-------|-------|
| SHFE monthly spot weighted average price per tonne (EUR) | 1 408 | 1 187 | 1 467 | 1 523 |
| <i>Index (2008 = 100)</i>                                | 100   | 84    | 104   | 108   |

Source: Shanghai Futures Exchange (SHFE) excluding VAT

- (92) As all known Chinese imports were of private label business, undercutting (and underselling) comparisons were made on the basis of Union industry sales of private label products only.
- (93) In order to determine price undercutting during the IP, the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports from the cooperating Chinese producers to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for the existing customs duties and post-importation costs.
- (94) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison, when expressed as a percentage of the sampled Union producers' turnover during the IP, showed a weighted average undercutting margin of 10,0 % by the Chinese exporting producers.

## 4. Economic Situation of the Union Industry

### 4.1. Preliminary remarks

- (95) 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.
- (96) The macroeconomic indicators (production, capacity, capacity utilization, sales volume and market share) were assessed at the level of the whole Union industry. The assessment was based on the information provided by the complainant, cross-checked with data provided by the cooperating Union producers.
- (97) The analysis of microeconomic indicators (average unit prices, employment, wages, productivity, stocks, profitability, cash flow, investments, return on investments

and ability to raise capital) was carried out at the level of the sampled Union producers. The assessment was based on their information, duly verified.

#### 4.2. Macro-economic indicators

##### 4.2.1. Production, production capacity and capacity utilisation

Table 5

##### Total Union production, production capacity and capacity utilisation

|                              | 2008    | 2009    | 2010    | IP      |
|------------------------------|---------|---------|---------|---------|
| Production volume (tonnes)   | 95 500  | 95 000  | 93 000  | 91 000  |
| Index (2008 = 100)           | 100     | 99      | 97      | 95      |
| Production capacity (tonnes) | 160 000 | 164 000 | 164 000 | 164 000 |
| Index (2008 = 100)           | 100     | 103     | 103     | 103     |
| Capacity utilisation         | 59,7 %  | 57,9 %  | 56,7 %  | 55,5 %  |
| Index (2008 = 100)           | 100     | 97      | 95      | 93      |

- (98) The table above shows that production decreased over the period considered despite consumption remaining stable throughout the same period. Although the production capacity remained moderately stable over the period considered, the capacity utilisation followed the same declining trend of the production.

##### 4.2.2. Sales volume and market share

Table 6

##### Sales volume and market share

|  | 2008   | 2009   | 2010   | IP     |
|--|--------|--------|--------|--------|
| Sales volume on the EU market (tonnes) | 91 000 | 91 500 | 87 700 | 82 456 |
| Index (2008 = 100)                     | 100    | 101    | 96     | 91     |
| Market share                           | 95,2 % | 92,3 % | 89,5 % | 85,2 % |
| Index (2008 = 100)                     | 100    | 97     | 94     | 90     |

- (99) The Union industry sales volume decreased by 9 % over the period considered and its market share continuously dropped from 95,2 % in 2008 to 85,2 % during the IP.

#### 4.2.3. Growth

- (100) The drop in EU sales volumes and market share of the Union industry over the period considered should be seen in the context of stable consumption over the same period, as described in recital (85).

#### 4.3. Data of the sampled Union producers (micro-economic indicators)

##### 4.3.1. Average unit prices in the Union and cost of production

Table 7

##### Sales prices

|  | 2008  | 2009  | 2010  | IP    |
|--|-------|-------|-------|-------|
| Unit price in EU to unrelated customers (Euro per tonne) | 4 479 | 3 950 | 4 237 | 4 378 |
| Index (2008 = 100)                                       | 100   | 88    | 95    | 98    |

- (101) The trend of the average sales prices (including branded and non-branded products) shows a decrease of 2 % over the period considered. However, sales prices were not considered to be a reliable indicator of injury because they were largely affected by the prices of raw materials (mainly aluminium) which showed a similar trend over the period considered. Overall, prices in 2010 and the IP were suppressed due to the undercutting described in recital (94) above.

##### 4.3.2. Employment, productivity and wages

Table 8

##### Employment, productivity and wages

|                              | 2008   | 2009   | 2010   | IP     |
|------------------------------|--------|--------|--------|--------|
| Number of employees          | 301    | 314    | 287    | 284    |
| Index (2008 = 100)           | 100    | 104    | 95     | 94     |
| Productivity (unit/employee) | 143    | 138    | 141    | 138    |
| Index (2008 = 100)           | 100    | 96     | 98     | 96     |
| Wages per employee           | 41 070 | 38 913 | 44 115 | 43 600 |
| Index (2008 = 100)           | 100    | 95     | 107    | 106    |

(102) The number of employees decreased by 6 % over the period considered, although wages per employee increased slightly. In addition the decrease of employees did not lead to an increase in productivity as the loss in sales volumes, as described in recital (99) above, was even stronger. Indeed, the productivity of the Union industry workforce, measured as output per person employed per year, decreased slightly over the period considered. It reached its lowest level in 2009, after which it started to recover in the 2010, without reaching the initial levels. In the IP the productivity returned to the 2009 lowest level.

#### 4.3.3. Stocks

Table 9

##### Stocks

|   | 2008  | 2009  | 2010  | IP    |
|---|-------|-------|-------|-------|
| Closing stock                             | 2 873 | 2 994 | 3 092 | 3 534 |
| <i>Index (2008 = 100)</i>                 | 100   | 104   | 108   | 123   |
| Closing stock as percentage of production | 6,7 % | 6,9 % | 7,7 % | 9,1 % |
| <i>Index (2008 = 100)</i>                 | 100   | 104   | 115   | 136   |

(103) Although the sampled companies of the Union industry maintained their stocks at a low level using a production to order system, some common products were kept in stock. The stock level increased significantly both in

absolute terms and as percentage of production. Over the period concerned, the end of year stock level increased from 6,7 % to 9,1 %.

#### 4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

Table 10

##### Profitability

|  | 2008  | 2009  | 2010  | IP    |
|--|-------|-------|-------|-------|
| Profitability of EU sales (% of net sales) | 2,7 % | 6,2 % | 2,7 % | 0,7 % |
| <i>Index (2008 = 100)</i>                  | 100   | 231   | 101   | 27    |

(104) Profitability of the Union industry was established by expressing the pre-tax net profit of the sales of the like product as a percentage of the turnover of these sales. The profitability thus calculated reached its highest level in 2009 due to decreased purchase costs of the main raw material item (i.e. aluminium). Profit fell from 2009 onwards reaching 0,7 % in the IP. These profitability figures cover all segments of the market, including the relatively profitable branded segment which was to a much lesser extent subject to competition from the low priced Chinese imports. Indeed, the private label segment alone was substantially loss-making in the IP.

(105) Ability to raise capital was not mentioned as a significant problem by the Union industry.

Table 11

##### Cash flow, investments and return on investment (ROI)

|                           | 2008       | 2009       | 2010       | IP        |
|---------------------------|------------|------------|------------|-----------|
| Cash Flow                 | 12 716 283 | 17 369 815 | 12 030 581 | 7 771 917 |
| <i>Index (2008 = 100)</i> | 100        | 137        | 95         | 61        |
| Investments (EUR)         | 4 604 286  | 2 167 756  | 2 770 090  | 1 716 570 |
| <i>Index (2008 = 100)</i> | 100        | 47         | 60         | 37        |
| Return on Investment      | 33,3 %     | 68,7 %     | 27,2 %     | 7,4 %     |
| <i>Index (2008 = 100)</i> | 100        | 206        | 82         | 22        |

(106) The trend in cash flow, which is the ability of the industry to self-finance its activities, as well as return on investment, followed a similar negative trend as the return on turnover.

(107) In 2008 an EU producer invested in extra storage facilities. In the other years of the period considered, no major investments were identified in respect of the sampled companies of the Union industry.

#### 4.3.5. Magnitude of the actual dumping margin

- (108) The dumping margins are specified above in the dumping section. All margins established are significantly above the *de minimis* level. Furthermore, given the volume and the prices of dumped imports from the PRC the impact on the EU market of the actual margin of dumping cannot be considered negligible.

### 5. Conclusion on Injury

- (109) The investigation showed that many of the injury indicators pertaining to the economic situation of the Union industry deteriorated or did not develop in line with consumption during the period considered. This observation particularly applies to the period from 2010 up to the end of the IP.
- (110) Over the period considered, in the context of a stable consumption, volume of imports from the PRC increased steadily and significantly. At the same time, the Union industry sales volume decreased overall by 9 % and its market share dropped by around 10 percentage points. Also the Union industry's stock volume increased significantly, indicating its inability to sell the product. The low-priced dumped imports increased steadily over the period considered and undercut the prices of the Union industry significantly in the IP.
- (111) Furthermore, the injury indicators related to the financial performance of the Union industry, such as cash flow and profitability were seriously affected in 2010 and the IP.
- (112) In the light of the foregoing, it is concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

## F. CAUSATION

### 1. Introduction

- (113) In accordance with Article 3(6) and 3(7) of the basic Regulation, it was examined whether the dumped imports originating in the PRC have caused injury to the Union industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which might have injured the Union industry, were examined to ensure that any injury caused by those other factors was not attributed to the dumped imports.

### 2. Effect of the Dumped Imports

- (114) At the end of 2009 anti-dumping duties were imposed on jumbo reels of aluminium foil originating in the PRC. From this date imports of the product concerned (the

downstream product) increased rapidly. These increases coincide with a deterioration of the situation of the Union industry.

- (115) The investigation showed that the Union consumption remained stable over the period considered, while the volume of dumped imports from the PRC increased dramatically by over 200 %. The market share of these imports also increased from 4,5 % in 2008 to 13,4 % in the IP (i.e. by around 9 percentage points). At the same time, sales volume of the Union industry decreased by 9 % and market share dropped also by 9 percentage points, from 95,2 % in 2008 to 85,2 % in the IP.
- (116) With regard to the price pressure, it should be highlighted that the Chinese exporting producers undercut the Union industry in the IP. The price pressure at increasing volumes allowed the Chinese exporting producers to win contracts with major customers (retailers and wholesalers). For contracts maintained the Union industry had to forego price increases which it needed to offset increases in aluminium prices. Undercutting in the IP was around 10 % and in that year the Union industry raised average prices by 3 % to reflect increased raw material costs, whereas the Chinese exporting producers reduced their prices on the EU market by around 3 % (see Table 3). This resulted in a significant deterioration in profitability of the Union industry.
- (117) Based on the above it is concluded that the large increase of the dumped imports from the PRC at prices undercutting those of the Union industry have had a determining role in the material injury suffered by the Union industry, which is reflected in particular in its poor financial situation, in the drop in sales volume and in market share and in the deterioration of many of the injury indicators.

## 3. Effect of Other Factors

### 3.1. Imports from third countries

- (118) The volume of imports from other third countries during the period considered is shown in the table below. The quantity and price trends were supplied from the complainant based on Eurostat data.

Table 12

Imports from third countries

|                              | 2008  | 2009  | 2010  | IP    |
|------------------------------|-------|-------|-------|-------|
| Imports from third countries | 330   | 764   | 461   | 1 306 |
| <i>Index (2008 = 100)</i>    | 100   | 231   | 140   | 396   |
| Market share                 | 0,3 % | 0,8 % | 0,5 % | 1,3 % |
| <i>Index (2008 = 100)</i>    | 100   | 223   | 136   | 391   |

(119) Imports from third countries (mainly India, Russia, Taiwan and Turkey) increased by 300 % over the period considered. However, the total EU market share of these imports still remains marginal. Therefore, they cannot have contributed to the injury suffered by the Union industry during the IP.

### 3.2. Export volumes and prices

(120) The volume of exports of the sampled Union producers during the period considered is shown in the table below. The quantity and price trends are verified figures from the sampled producers.

Table 13

#### Exports of the Sampled Union Producers

|                                     | 2008  | 2009  | 2010  | IP    |
|-------------------------------------|-------|-------|-------|-------|
| EU Export volume                    | 1 900 | 1 800 | 1 600 | 1 700 |
| <i>Index (2008 = 100)</i>           | 100   | 95    | 84    | 89    |
| Exports as percentage of production | 2,0 % | 1,9 % | 1,7 % | 1,9 % |
| <i>Index (2008 = 100)</i>           | 100   | 95    | 86    | 94    |
| Export Prices                       | 3 792 | 3 460 | 3 447 | 3 565 |
| <i>Index (2008 = 100)</i>           | 100   | 91    | 91    | 94    |

(121) The sampled producers' export volumes were not significant over the period considered, never representing more than 2 % of the produced volumes. They followed a trend similar to that of the sales volumes in the European market. In view of their limited volumes, the development of exports of the Union industry did not contribute to the material injury suffered.

### 3.3. The impact of the economic crisis

(122) The economic crisis did not produce any contraction of the Union consumption during the period considered. As could be expected for non-luxury household products, the financial crisis had no impact on consumption of AHF which remains a very stable product in the food processing and packaging industry. Thus, the economic crisis did not contribute to the injury suffered by the Union industry during the IP.

### 3.4. Competition on the Union market

(123) Competition on the Union market is strong bearing in mind that the Union industry is quite diverse (there are

over 30 producers) and that one of their main customers is the powerful retail sector.

(124) Over many years the major European Union retailers have developed their own brands (private labels) which in respect of AHF has gradually reduced the volume of sales of the producers own brands. This has been detrimental to the Union industry producers which have suffered falls in sales of the more profitable branded segment and forced them into greater competition with each other in the increasing private label segment.

(125) However, this development has been a gradual process over many years and the investigation has shown that the private label business has only increased from 83 % to 84 % from 2010 to the IP. Therefore although this increase will have had a small impact on the EU producers it does not explain the magnitude of the injurious trends experienced by them.

### 3.5. Development of the Union industry cost of production

(126) It was argued by interested parties that fluctuations in the cost of production, mainly the aluminium price, contributed to the injury.

(127) The cost of production of AHF is closely linked to the price development of aluminium the main raw material used to produce this product. The LME is the worldwide benchmark for aluminium prices.

Table 14

#### Development of LME average aluminium prices

|   | 2008  | 2009  | 2010  | IP    |
|---|-------|-------|-------|-------|
| LME cash average price per tonne in USD | 2 750 | 1 750 | 2 150 | 2 460 |
| <i>Index (2008 = 100)</i>               | 100   | 64    | 78    | 90    |

Source: LME

(128) The development seen above resulted from the financial crisis which began around October 2008. Aluminium prices fell on reduced demand and recovered to some extent by the end of the IP. However, the AHF industry normally sets its prices on an LME benchmark basis plus a margin to cover transformation costs and profit. This means that under normal circumstances fluctuations in the LME benchmark do not have a big impact on the situation of the AHF industry as prices of the

finished products move in line with LME prices. In fact the Union industry has always existed in an environment of fluctuating aluminium prices.

- (129) It was also argued that the Union industry has inefficient equipment which contributed to the injury. It must be said that the investigation did not support this view and that in fact EU and Chinese transformation costs as a whole were quite similar. Furthermore any such inefficiency would mean that Union industry profitability would have been low for many years and this kind of claim does not explain the loss of market share, sales volume and profitability which occurred from 2009 to the IP.
- (130) In view of the above, the fluctuating aluminium prices or the alleged lack of production efficiency cannot be considered a cause of the injury suffered by the Union industry.

### 3.6. Overcapacity

- (131) As mentioned above the capacity utilisation of the European producers was relatively low over the period considered. However, as the Union producers are able to use the same machinery for rewinding other products (such as cling film) the capacity utilisation figures are not considered to be a major causation factor. Also the capacity utilisation figures were already quite low in 2008 and 2009 when profitability rates and the situation of the industry in general were satisfactory.
- (132) It was therefore concluded that overcapacity was not a substantial cause of the injury suffered by the EU producers.

### 4. Conclusion on Causation

- (133) The above analysis demonstrated that there was a substantial increase in the volume and market share of the dumped imports originating in the PRC particularly in 2010 and the IP. It was found that these imports undercut the prices charged by the Union industry on the Union market during the IP.
- (134) This increase in volume and market share of the low-priced dumped imports from the PRC coincided with the negative development in the economic situation of the Union industry. This situation worsened in the IP, when the Union industry continued to lose market share and profitability and other financial indicators such as cash flow and return on investments reached their lowest levels.
- (135) The analysis of the other known factors, including the economic crisis, showed that any negative impact of these factors cannot be such as to break the causal link established between the dumped imports from the PRC and the injury suffered by the Union industry.

- (136) Based on the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped exports, it is provisionally concluded that the dumped exports from the PRC have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

## G. UNION INTEREST

### 1. Preliminary Remarks

- (137) In accordance with Article 21 of the basic Regulation, the Commission examined whether, despite the provisional conclusion on injurious dumping, compelling reasons existed for concluding that it is not in the Union interest to adopt measures in this particular case. The analysis of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers/wholesalers and retailers of the product concerned.

### 2. Interest of the Union Industry

- (138) The Union industry has suffered material injury caused by the dumped imports from the PRC. It is recalled that many of the injury indicators showed a negative trend during the period considered. In the absence of measures, a further deterioration in the Union industry's situation appears unavoidable. The situation of the Union industry deteriorated rapidly following the imposition of anti-dumping measures on the upstream product (aluminium foil in jumbo reels) in 2009. As the same structural problems in the Chinese aluminium sector already observed during that investigation continue to exist on the market, the Union industry argued that it too should be protected from unfair competition.
- (139) It is expected that the imposition of provisional anti-dumping duties will restore effective trade conditions on the Union market, allowing the Union industry to align the prices of the product investigated to reflect the costs of the various components and the market conditions. It can also be expected that the imposition of provisional measures would enable the Union industry to regain at least part of the market share lost during the period considered, with a further positive impact on its profitability and overall financial situation.
- (140) Should measures not be imposed, further losses in market share could be expected and the Union industry would remain loss-making, notably in the private label sector. This would be unsustainable in the medium to long-term. In view of the decreasing trend in profitability and of other financial indicators such as cash flow and return on investments, it can be expected that most Union producers would be unable to remain competitive on the market, should measures not be imposed.

- (141) Furthermore the Union industry supplies its customers (mainly retailers and wholesalers) with other food processing and packaging products such as cling film and paper products. Some of these products are produced on the same rewinding equipment as is used for the product concerned. The product concerned is a major segment of the portfolio of products sold by the various Union industry companies to the extent that for some it represents more than 50 % of turnover. If the situation of the product concerned deteriorates further this would jeopardise the Union production of the other products too.
- (142) It is therefore provisionally concluded that the imposition of anti-dumping duties would be in the interest of the Union industry.

### 3. Interest of Importers/Wholesalers

- (143) As regards importers, a large proportion of imports of the product concerned, estimated at around 50 % during the IP, are made by two large players on the European market which source their products in the PRC.
- (144) One of those importers is related to a sampled co-operating exporting producer (CeDo Shanghai). The CeDo Group has developed a dual sourcing strategy whereby the foil it sells on the Union market is produced in both the PRC and the Union. The Group pointed out that anti-dumping measures would threaten this strategy and reduce its profitability. However, the measures proposed are not directed at any particular company but are designed to restore fair trade on the Union market.
- (145) It is not known to the investigation if the other large importer (Quickpack) is related to any of its Chinese suppliers. This is because, although it has been invited to participate in the investigation it has opted not to cooperate. Therefore, the impact of any duties, of the level proposed, on its business is not clear.
- (146) Of the remaining importers only two cooperated in this investigation by responding to the questionnaire. Their replies represent around 6 % of total imports from the PRC. These companies claimed that they may be forced to exit the foil market if an anti-dumping duty were imposed, however, other products represented over 80 % of their turnover because these two companies imported many other products in the food and household goods sector.
- (147) A further importer/producer (Terinex Ltd) did not supply a questionnaire response but supplied its opinion based on the UK market. Terinex Ltd explained that its sourcing from the PRC undercut its own production but that as a small player on the market it did not consider that its imports were injurious to the Union industry. However, if all imports from the PRC are taken into account (recital (87) onwards) then as explained at recital (114) onwards, it is clear that the imports from the PRC are a

major cause of the injury suffered by the Union industry. As the turnover of the product concerned is relatively small in relation to the total companies' activities the imposition of measures is not likely to have a severe impact on its total profits.

- (148) In respect of the importing sector in general (whether related or not) it cannot be excluded that the imposition of measures would negatively affect this sector because a duty is likely to make imports less attractive and the Union industry would probably be able to win back some orders/contracts to the detriment of the importing sector. Nevertheless, this would be on the basis of a restoration of fair competition and the impact on the importing sector as a whole would not be disproportionate.
- (149) On the basis of the above, it is provisionally concluded that the impact on importers would not be as such that the measures have to be considered to be against the overall Union interest.

### 4. Interest of Retailers

- (150) Six retailers co-operated in the investigation. These retailers can be considered representative in view of their wide spread of geographic location in the European Union as well as their differing size in terms of turnover. All of them oppose the imposition of any measures on the grounds that those will impose extra costs on their businesses and that measures would restrict their choice of suppliers.
- (151) However, it is very clear from their responses that the product under investigation is a tiny part of these retailers' turnover (in any case less than 1 %) and any anti-dumping measure would have little or no impact on their turnover or profits.

### 5. Interest of Consumers

- (152) The Commission contacted one association of consumers which replied that it was not interested in cooperating in the investigation. No other consumers' association made itself known.
- (153) The impact of anti-dumping duties on consumers is likely to be very marginal since AHF forms a very low percentage of a consumer's weekly budget. Furthermore it is expected that any increase in AHF prices at retail level caused by the imposition of duties would be either very marginal or non-existent.

### 6. Conclusion on Union Interest

- (154) In view of the above, it is provisionally concluded that based on the information available concerning the Union interest, there are no compelling reasons against the imposition of provisional measures on imports of the product concerned originating in the PRC.

## H. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES

### 1. Injury Elimination Level

- (155) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, provisional anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.
- (156) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Union industry, without exceeding the dumping margins found.
- (157) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on sales of the like product in the Union.
- (158) In previous investigations involving AHF (jumbo reels) the margin of normal profit was set at 5 % on the basis described above. The complainant claimed that 6 % would be a reasonable profit margin, for the industry, in the absence of injurious dumping. However, it failed to duly substantiate this claim and therefore, in the absence of other comments in this regard, it is considered appropriate to resort to the 5 % profit margin established in the previous investigation. It is thus provisionally considered that a profit margin of 5 % of turnover could be regarded as an appropriate figure which the Union industry could have expected to obtain in the absence of injurious dumping. On this basis, a non-injurious price was calculated for the Union industry for the like product. The non-injurious price was obtained by subtracting from the EU sales prices the actual profit achieved during the IP and replacing it by the above mentioned profit margin.
- (159) The necessary price increase was then determined on the basis of a comparison of the weighted average import price of the cooperating exporting producers in the PRC, as established for the price undercutting calculations, with the non-injurious price of the products sold by the Union industry on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the average total CIF import value.

### 2. Provisional Measures

- (160) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping measures should be imposed in respect of imports originating in the PRC at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.

- (161) On the basis of the above, the anti-dumping duty rates have been established by comparing the injury elimination margins and the dumping margins. Consequently, the proposed anti-dumping duty rates are as follows:

**Proposed provisional anti-dumping duties**

| Company Name                       | Dumping margin | Injury margin | Provisional Duty |
|------------------------------------|----------------|---------------|------------------|
| CeDo Shanghai Co. Ltd.             | 39,3 %         | 16,3 %        | 16,3 %           |
| Ningbo Times Co. Ltd.              | 31,4 %         | 15,5 %        | 15,5 %           |
| Ningbo Favoured Commodity Co. Ltd. | 28,6 %         | 13,0 %        | 13,0 %           |
| Other co-operating companies       | 35,2 %         | 15,5 %        | 15,5 %           |
| Countrywide dumping margin         | 43,4 %         | 35,4 %        | 35,4 %           |

- (162) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the PRC and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (163) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission<sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

## I. FINAL PROVISION

- (164) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive measures,

<sup>(1)</sup> European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A provisional anti-dumping duty is hereby imposed on imports of aluminium foil of a thickness of 0,007 mm or more but less than 0,021 mm, not backed, not further worked than rolled but whether or not embossed, in low weight rolls of a weight not exceeding 10 kg, currently falling within CN codes ex 7607 11 11 and ex 7607 19 10 (TARIC codes 7607 11 11 10 and 7607 19 10 10) and originating in the People's Republic of China.

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

| Company  | Duty (%) | TARIC additional code |
|--|----------|-----------------------|
| CeDo Shanghai Co. Ltd.                                     | 16,3 %   | B299                  |
| Ningbo Times Co. Ltd.                                      | 15,5 %   | B300                  |
| Ningbo Favoured Commodity Co. Ltd.                         | 13,0 %   | B301                  |
| Able Packaging Co.,Ltd                                     | 15,5 %   | B302                  |
| Guangzhou Chuanlong Aluminium Foil Product Co.,Ltd         | 15,5 %   | B303                  |
| Ningbo Ashburn Aluminium Foil Products Co.,Ltd             | 15,5 %   | B304                  |
| Shanghai Blue Diamond Aluminium Foil Manufacturing Co.,Ltd | 15,5 %   | B305                  |
| Weifang Quanxin Aluminium Foil Co.,Ltd                     | 15,5 %   | B306                  |
| Zhengzhou Zhuoshi Tech Co. Ltd                             | 15,5 %   | B307                  |
| Zhuozhou Haoyuan Foil Industry Co.,Ltd                     | 15,5 %   | B308                  |
| Zibo Hengzhou Aluminium Plastic Packing Material Co.,Ltd   | 15,5 %   | B309                  |
| Yuyao Caelurn Aluminium Foil Products Co.,Ltd              | 15,5 %   | B310                  |
| All other companies  | 35,4 %   | B999                  |

3. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

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

*Article 2*

1. Without prejudice to Article 20 of Regulation (EC) No 1225/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing

and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Regulation (EC) No 1225/2009, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

*Article 3*

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 17 September 2012.

For the Commission  
The President

José Manuel BARROSO

**COMMISSION IMPLEMENTING REGULATION (EU) No 834/2012****of 17 September 2012****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

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 <sup>(2)</sup>, 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 multilateral 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, 17 September 2012.

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

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 157, 15.6.2011, p. 1.

## ANNEX

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

| <i>(EUR/100 kg)</i> |                                   |                       |
|---------------------|-----------------------------------|-----------------------|
| CN code             | Third country code <sup>(1)</sup> | Standard import value |
| 0702 00 00          | MK                                | 59,9                  |
|                     | XS                                | 59,9                  |
|                     | ZZ                                | 59,9                  |
| 0707 00 05          | MK                                | 31,3                  |
|                     | TR                                | 106,4                 |
|                     | ZZ                                | 68,9                  |
| 0709 93 10          | TR                                | 112,4                 |
|                     | ZZ                                | 112,4                 |
| 0805 50 10          | AR                                | 98,1                  |
|                     | BO                                | 100,6                 |
|                     | CL                                | 88,5                  |
|                     | TR                                | 97,0                  |
|                     | UY                                | 107,8                 |
|                     | ZA                                | 100,3                 |
|                     | ZZ                                | 98,7                  |
| 0806 10 10          | EG                                | 180,7                 |
|                     | MK                                | 41,5                  |
|                     | TN                                | 197,3                 |
|                     | TR                                | 118,3                 |
|                     | ZZ                                | 134,5                 |
| 0808 10 80          | AR                                | 201,7                 |
|                     | BR                                | 89,7                  |
|                     | CL                                | 117,0                 |
|                     | NZ                                | 115,6                 |
|                     | US                                | 120,9                 |
|                     | ZA                                | 108,3                 |
|                     | ZZ                                | 125,5                 |
| 0808 30 90          | AR                                | 196,5                 |
|                     | CN                                | 49,3                  |
|                     | TR                                | 115,4                 |
|                     | ZA                                | 154,7                 |
|                     | ZZ                                | 129,0                 |
| 0809 30             | TR                                | 160,5                 |
|                     | ZZ                                | 160,5                 |
| 0809 40 05          | BA                                | 60,9                  |
|                     | HR                                | 73,9                  |
|                     | IL                                | 63,3                  |
|                     | TR                                | 107,6                 |
|                     | XS                                | 60,5                  |
|                     | ZZ                                | 73,2                  |

<sup>(1)</sup> 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

## COMMISSION DECISION

of 17 September 2012

on Eurostat

(2012/504/EU)

THE EUROPEAN COMMISSION,

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

Whereas:

(1) Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics<sup>(1)</sup> provides the basic legal framework for European statistics. That Regulation refers to the Commission (Eurostat) as the Union's statistical authority responsible for the development, production and dissemination of European statistics.

(2) European statistics should be developed, produced and disseminated by Eurostat in accordance with the statistical principles set out in the Treaty on the Functioning of the European Union and in Regulation (EC) No 223/2009, and further elaborated in the European statistics Code of Practice as reviewed and updated by the European Statistical System Committee on 28 September 2011.

(3) Regulation (EC) No 223/2009 also provides for the protection of confidential data, which should be used exclusively for statistical purposes.

(4) The Commission has undertaken to reinforce the statistical governance in the Union and to respect the above statistical principles<sup>(2)</sup>. This commitment was confirmed and further developed in the Communication of 15 April 2011 to the European Parliament and the Council 'Towards robust quality management for European Statistics'<sup>(3)</sup>. The present Decision should be regarded as a renewed commitment from the Commission on confidence in European statistics developed, produced and disseminated by Eurostat.

(5) Recent developments in the Union's economic governance framework have had an impact on the statistical domain and should be taken into account. This

concerns, in particular, statistical independence as laid down in Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies<sup>(4)</sup>.

(6) In this context, the powers of the Commission as appointing authority with regard to the recruitment, transfer and dismissal of the Director-General of Eurostat should be exercised, in accordance with the Staff Regulations, with due regard to the need to guarantee independence, objectivity and efficiency in the exercise of his or her responsibilities, and following a transparent procedure based on professional criteria only.

(7) In addition, Eurostat has been assigned specific tasks by Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community<sup>(5)</sup>.

(8) Furthermore, as set out in the Communication from the Commission to the European Parliament and the Council on 'the production method of EU statistics: a vision for the next decade'<sup>(6)</sup>, Eurostat should provide a high-quality statistical service by also enhancing relations with the Union bodies in order to anticipate statistical needs and advance the usage of existing statistics. This also involves building closer relations with other services of the Commission.

(9) Statistics should be defined with reference to Regulation (EC) No 223/2009. For the purposes of this Decision, a distinction should also be made between European statistics and other statistics.

(10) Setting policy objectives and determining the information required to achieve these objectives is a matter for policy-makers. Those activities should therefore fall within the mandate and responsibilities of the concerned Commission services, while Eurostat should ensure the

<sup>(1)</sup> OJ L 87, 31.3.2009, p. 164.

<sup>(2)</sup> Communication from the Commission to the European Parliament and to the Council on the independence, integrity and accountability of the national and Community statistical authorities, COM(2005) 217 final.

<sup>(3)</sup> COM(2011) 211 final.

<sup>(4)</sup> OJ L 306, 23.11.2011, p. 12.

<sup>(5)</sup> OJ L 145, 10.6.2009, p. 1.

<sup>(6)</sup> COM(2009) 404 final.

programming of activities related to European statistics, taking into account user needs, relevant policy developments and resource constraints.

- (11) Commission activities related to other statistics should be subject to a planning and coordination exercise with a view to ensuring consolidated information on these activities. This exercise should be steered by Eurostat and its scope limited to subjects upon which there is mutual agreement between the Commission services concerned and Eurostat.
- (12) European statistics are determined by the European statistical programme and the corresponding annual work programme.
- (13) To secure public trust in European statistics and to promote high-quality statistics developed, produced and disseminated by Eurostat, a process for labelling European statistics should be developed and applied.
- (14) The development, production and dissemination of high-quality European statistics should be safeguarded by the Director-General of Eurostat, who is the Chief Statistician. In addition, his or her tasks should include coordinating the statistical activities of the Commission with a view to ensuring quality and minimising reporting burden. Therefore, the Chief Statistician should also be consulted on the development and production of other statistics.
- (15) Close cooperation between Eurostat and other Commission services on statistical activities and the appropriate coordination of these activities by the Chief Statistician should ensure the coherence and comparability of European statistics and a better response to future challenges, in particular the need to minimise response burden and administrative burden. For the same purposes, access to administrative data sources within the Commission should be provided to the extent necessary and cost-effective for the development, production and dissemination of European statistics.
- (16) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>(1)</sup> is applicable to the extent Eurostat processes personal data. In addition, European statistics produced on the basis of personal data should be gender-disaggregated when relevant.
- (17) It is therefore necessary to further define and clarify Eurostat's role and responsibilities within the Commission.

- (18) Commission Decision 97/281/EC of 21 April 1997 on the role of Eurostat as regards the production of Community statistics<sup>(2)</sup> should be repealed,

HAS DECIDED AS FOLLOWS:

#### Article 1

##### Subject matter

This Decision defines the role and responsibilities of Eurostat within the internal organisation of the Commission, as regards the development, production and dissemination of statistics.

#### Article 2

##### Definitions

For the purposes of this Decision, the following definitions apply:

- (1) 'Statistics' mean statistics as defined in Article 3(1) of Regulation (EC) No 223/2009. They are either European statistics or other statistics;
- (2) 'European statistics' means statistics as referred to in Article 1 of Regulation (EC) No 223/2009 and as determined by the European statistics annual work programme;
- (3) 'Other statistics' means statistics that are not European statistics and that are identified in the planning and coordination exercise referred to in Article 5(2).

#### Article 3

##### Eurostat

Eurostat is the statistical authority of the Union referred to in Article 6(1) of Regulation (EC) No 223/2009. It is a service of the Commission, headed by a Director-General.

#### Article 4

##### Statistical principles

Eurostat shall develop, produce and disseminate European statistics in accordance with the statistical principles of professional independence, impartiality, objectivity, reliability, statistical confidentiality and cost-effectiveness as defined in Article 2(1) of Regulation (EC) No 223/2009 and as further elaborated in the European statistics Code of Practice.

#### Article 5

##### Planning and programming

1. Activities related to European statistics shall be determined by the European statistical programme referred to in Article 13 of Regulation (EC) No 223/2009, and by the annual work programme referred to in Article 17 of that Regulation.

<sup>(1)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(2)</sup> OJ L 112, 29.4.1997, p. 56.

2. Activities related to other statistics shall be subject to and identified through a planning and coordination exercise steered by Eurostat. The scope of this exercise shall be limited to subjects upon which there is mutual agreement between the Commission services concerned and Eurostat.

3. Specific inter-service agreements may be established between Eurostat and the other services of the Commission for the purpose of these activities, including also activities related to administrative records.

#### Article 6

##### Tasks of Eurostat

1. Eurostat shall be in charge of the development, production and dissemination of European statistics.

To this end, Eurostat shall, in particular:

- (a) collect and aggregate the statistical information necessary to compile European statistics;
- (b) develop and promote statistical standards, methods and procedures;
- (c) steer the European Statistical System, strengthen cooperation among its partners, and ensure its leading role in official statistics worldwide;
- (d) cooperate with international organisations and third countries in order to facilitate the comparability of European statistics with statistics produced in other statistical systems and, where appropriate, support third countries in the improvement of their statistical systems.

2. Eurostat shall ensure that European statistics are made accessible to all users in accordance with statistical principles, in particular the principles of professional independence, impartiality and statistical confidentiality.

In this respect, Eurostat shall provide the technical explanations and the support necessary for the use of European statistics and may use appropriate communication channels for the purpose of statistical news releases.

3. Eurostat shall ensure cooperation and regular constructive dialogue with other services of the Commission and, where necessary, with data providers with a view to taking into account user needs, relevant policy developments and other initiatives. To this end, those Commission services that are potential users of specific European statistics shall be informed and involved from an early stage in the development of new or changed statistics, among other things in order to understand the potential policy implications of new or changed statistical methods, standards and definitions.

4. Eurostat shall coordinate the development and production of other statistics. For that purpose, it shall:

- (a) optimise the use of existing information that can be used for statistical purposes, in order to ensure quality and minimise burden for respondents; Eurostat shall invite any service of the Commission concerned to contribute for that purpose;

- (b) be informed by all services of the Commission about the scope and quality characteristics of statistics produced by them, about significant changes in the methodology for the production of statistics, and about new data collections planned;

- (c) provide guidance, appropriate training and expert services to other Commission services necessary for the development and production of other statistics, subject to available resources.

#### Article 7

##### Director-General of Eurostat

1. With regard to European statistics, the Director-General of Eurostat shall have sole responsibility for deciding on processes, statistical methods, standards and procedures, or on the content and timing of statistical releases, in accordance with the European statistical programme and the annual work programme. When carrying out these statistical tasks, the Director-General of Eurostat shall act in an independent manner; he or she shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State, or from any other institution, body, office or entity.

2. The Director-General of Eurostat shall act as authorising officer for the implementation of the appropriations allocated to Eurostat.

#### Article 8

##### Chief Statistician

1. The Director-General of Eurostat shall be regarded as the Chief Statistician.

2. The Chief Statistician shall:

- (a) be in charge of the development, production and dissemination of European statistics within the Commission;
- (b) be responsible for coordination of the development and production of other statistics as referred to in Articles 5(2) and 6(4);
- (c) represent the Commission in international statistical forums, notably for the purposes of coordinating the statistical activities of the institutions and bodies of the Union as referred to in Article 6(3) of Regulation (EC) No 223/2009;
- (d) chair the European Statistical System Committee referred to in Article 7 of Regulation (EC) No 223/2009;
- (e) prepare the programmes referred to in Article 5(1) of this Decision in close consultation with other services of the Commission, taking into account as far as possible user needs and other relevant developments;
- (f) liaise between the European Statistical System (ESS) and the European Statistical Governance Advisory Board in all matters relating to the implementation of the European statistics Code of Practice within the ESS as a whole.

3. Any service that intends to undertake activities involving the production of statistics shall consult the Chief Statistician at an early stage in the preparation of the activities concerned. The Chief Statistician may make recommendations in this regard. Initiatives not related to the development, production and dissemination of European statistics, especially in cases of specific inter-service agreements, shall fall entirely under the responsibility of the concerned service.

#### Article 9

##### Access to administrative records

1. In order to reduce the burden on respondents, Eurostat shall have the right to access administrative data within the Commission services, subject to confidentiality rules established in Union legislation, and to integrate these administrative data with statistics to the extent that these data are relevant for the development, production and dissemination of European statistics.

2. Eurostat shall be consulted on and may be involved in the initial design, subsequent development and discontinuation of administrative registers and databases built up and maintained by other Commission services, in order to facilitate further use of the data contained in these registers and databases for the purposes of European statistics. To that end, Eurostat shall have the right to propose standardisation activities concerning administrative records that are relevant for the production of European statistics.

3. To enhance the effectiveness of the provisions of this Article, each service of the Commission shall ensure that access to administrative data is granted to Eurostat upon request to the extent necessary for the development, production and dissemination of European statistics, in accordance with confidentiality rules established in Union legislation.

#### Article 10

##### European statistics Code of Practice

1. In accordance with Article 11 of Regulation (EC) No 223/2009, European statistics shall be developed, produced and disseminated by Eurostat in accordance with the European statistics Code of Practice as reviewed and updated by the European Statistical System Committee.

2. Eurostat shall involve the European Statistical Governance Advisory Board in all actions concerning the European statistics Code of Practice in accordance with the mandate of the Board.

3. Eurostat shall monitor the effective implementation of the European statistics Code of Practice by national statistical authorities.

#### Article 11

##### Quality assurance and labelling

1. Eurostat shall ensure the quality management of European statistics. For that purpose, and on the basis of established quality criteria, while answering user needs for statistics with different quality profiles, Eurostat shall:

- (a) monitor and assess the quality of the data that it collects or receives, and report upon the quality of the European statistics that it disseminates;
- (b) promote and apply a labelling process for European statistics;
- (c) verify the data that are under Eurostat's responsibility in the context of the Union's enhanced economic governance and apply all the powers that have been specifically granted to Eurostat in the relevant procedures.

2. Eurostat shall establish a quality assurance framework, reflecting the measures in place or to be taken in order to ensure the proper implementation of the European statistics Code of Practice.

#### Article 12

##### Use of confidential data

1. The Director-General of Eurostat shall take all necessary measures to ensure that statistical confidentiality is respected.

2. Data that are considered confidential pursuant to Article 3(7) of Regulation (EC) No 223/2009 shall, according to the provisions of Chapter V of the same Regulation, be accessible only to officials and other staff of Eurostat and other natural persons working for Eurostat under contract, wherever such data are necessary for the production of European statistics and within their specific domain of work.

3. The Director-General of Eurostat shall, in addition, take all necessary measures to protect data whose disclosure would cause prejudice to Union interests, or to the interests of the Member State to which they relate.

#### Article 13

##### Repeal

Decision 97/281/EC is repealed.

References to the repealed Decision shall be construed as references to this Decision.

Done at Brussels, 17 September 2012.

For the Commission

The President

José Manuel BARROSO



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