ISSN 1977-0677

Official Journal of the European Union

L 240

English edition

Legislation

Volume 56

7 September 2013

Contents

II *Non-legislative acts*

REGULATIONS

★ **Council Implementing Regulation (EU) No 861/2013 of 2 September 2013 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India** 1

★ **Commission Implementing Regulation (EU) No 862/2013 of 5 September 2013 approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Casatella Trevigiana (PDO))** 15

★ **Commission Implementing Regulation (EU) No 863/2013 of 5 September 2013 concerning the classification of certain goods in the Combined Nomenclature** 17

Commission Implementing Regulation (EU) No 864/2013 of 6 September 2013 establishing the standard import values for determining the entry price of certain fruit and vegetables 19

DECISIONS

★ **Council Decision 2013/446/CFSP of 6 September 2013 amending Decision 2010/452/CFSP on the European Union Monitoring Mission in Georgia, EUMM Georgia** 21

(Continued overleaf)

Price: EUR 3

EN

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

The titles of all other acts are printed in bold type and preceded by an asterisk.

2013/447/EU:

★ **Commission Decision of 5 September 2013 on the standard capacity utilisation factor pursuant to Article 18(2) of Decision 2011/278/EU** [1] 23

2013/448/EU:

★ **Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council** *(notified under document C(2013) 5666)* [1] 27

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

2013/449/EU:

★ **Decision No 1/2013 of the ESA-EU customs cooperation Committee of 7 August 2013 on a derogation from the rules of origin laid down in Protocol 1 to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, to take account of the special situation of Mauritius with regard to preserved skipjack** 36

Notice to readers — Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union* (see page 3 of the cover)

Note to readers — way of referring to acts (see page 3 of the cover)

EN

[1] Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 861/2013

of 2 September 2013

imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular Article 15 thereof,

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission imposed a provisional countervailing duty on imports of certain stainless steel wires originating in India by Regulation (EU) No 419/2013 [2] ('the provisional Regulation').

(2) The investigation was initiated following a complaint lodged on 28 June 2012 by the European Confederation of Iron and Steel Industries (Eurofer) ('the complainant') on behalf of Union producers representing more than 50 % of total Union production of certain stainless steel wires.

(3) In the parallel anti-dumping investigation, the Commission imposed a provisional anti-dumping duty on imports of certain stainless steel wires originating in India by Regulation (EU) No 418/2013 [3].

1.2. Parties concerned by the investigation

(4) At the provisional stage of the investigation sampling was applied for the Indian exporting producers, the Union producers and unrelated importers. However, as two of the importers chosen for the sample did not return questionnaire replies, sampling for importers could no longer be pursued. All available information pertaining to cooperating importers was used to reach definitive findings, in particular as far the Union interest is concerned.

(5) Seven Indian exporting producers outside the sample requested individual examination. Two of them replied to the questionnaires. Five did not reply to the questionnaire. Out of the two which replied to the questionnaire, one withdrew its individual examination request. As a result, the Commission has examined the request of one Indian exporting producer outside the sample:

— KEI Industries Limited, New Delhi (KEI).

(6) Apart from the above, recitals 5, 6, 7, 8, 10, 11, 12 and 14 of the provisional Regulation are confirmed.

[1] OJ L 188, 18.7.2009, p. 93.

[2] Commission Regulation (EU) No 419/2013 of 3 May 2013 imposing a provisional countervailing duty on imports of certain stainless steel wires originating in India (OJ L 126, 8.5.2013, p. 19).

[3] Commission Regulation (EU) No 418/2013 of 3 May 2013 imposing a provisional anti-dumping duty on imports of certain stainless steel wires originating in India (OJ L 126, 8.5.2013, p. 1).

1.3. **Investigation period and the period considered**

(7) As set out in recital 20 of the provisional Regulation, the investigation of subsidisation and injury covered the period from 1 April 2011 to 31 March 2012 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2009 to 31 March 2012 ('period considered').

1.4. **Subsequent procedure**

(8) Following the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional countervailing measures ('provisional disclosure'), several interested parties, namely two exporting producers, the complainant, and 11 users, submitted comments. The parties who so requested were granted a hearing. The Commission continued to seek information it deemed necessary for the definitive findings. All comments received were considered and, where appropriate, taken into account.

(9) The Commission informed the interested parties of the essential facts and considerations on the basis of which it intended to recommend the imposition of a definitive countervailing duty on imports of certain stainless steel wires originating in India and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). The parties were also granted a period within which they could comment on the final disclosure. All comments received were considered and taken into account, where appropriate.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

(10) As stated in recital 21 of the provisional Regulation, the product concerned is defined as stainless steel wires containing by weight:

(i) 2,5 % or more of nickel, other than wire containing by weight 28 % or more but not more than 31 % of nickel and 20 % or more but not more than 22 % of chromium,

(ii) less than 2,5 % of nickel, other than wire containing by weight 13 % or more but not more than 25 % of chromium and 3,5 % or more but not more than 6 % of aluminium,

currently falling within CN codes 7223 00 19 and 7223 00 99, originating in India.

(11) Some users expressed concerns about the apparent lack of distinction between the various types of the product concerned and the like product because a wide product mix exists among all the product types. There was a particular concern as to how a fair comparison among all types could be ensured in the investigation. As is the case in most investigations, the definition of the product concerned covers a wide variety of product types which share the same or similar basic physical technical and chemical characteristics. The fact that these characteristics can vary from product type to product type may indeed lead, in an investigation, to covering a wide range of types. This is the case in the current investigation. The Commission took account of the differences among the product types and ensured a fair comparison. A unique product control number (PCN) was allocated to each product type, produced and sold by the Indian exporting producers and to each one produced and sold by the Union industry. The number depended on the main characteristics of the product, in this case, the steel grade, the tensile strength, the coating, the surface, diameter, and the shape. Therefore, the types of wires exported to the Union were compared on a PCN basis with the products produced and sold by the Union industry that have the same or similar characteristics. All these types fell within the definition of the product concerned and the like product in the notice of initiation [1] and in the provisional Regulation.

(12) One party reiterated its claim that the so called 'highly technical' product types are different and not interchangeable with other types of the product concerned. Hence, it argues, they should be excluded from the product definition. According to the case-law, when determining whether products are alike so that they form part of the same product, it needs to be assessed whether they share the same technical and physical characteristics, have the same basic end-uses, and have the same price-quality ratio. In that regard, the interchangeability of, and competition between, those products should also be assessed [2]. The investigation found that the 'highly technical' product types referred to by the party have the same basic physical, chemical, and technical characteristics as the other products subject to the investigation. They are made from stainless steel and they are wires. They constitute a semi-finished steel product (which in the majority of cases is then subject to further transformation in view of producing a broad variety of finished goods), and the production process is similar, using similar machines, such that producers can switch between different variants of the product, according to demand. Therefore, although different types of wires are not directly interchangeable and do not directly compete, producers are competing for contracts covering a broad range of stainless steel wires. Moreover, these product types are produced and sold by both the Union industry and the Indian exporting producers using a similar production method. Therefore, the claim cannot be accepted.

[1] OJ C 240, 10.8.2012, p. 6.
[2] Case C-595/11 Steinel [2013] not yet reported, paragraph 44.

(13) In response to definitive disclosure one party claimed that the analysis carried out by the Commission in terms of establishing whether the so-called highly technical product types should be included in the investigation was insufficient. This argument is rejected. The investigation established that the highly technical product type fall within the product definition as stated in recital 12 above. The party wrongly assumes that all the criteria referred to in the case-law have to be met at the same time; this is incorrect. According to the case-law, the Commission enjoys a wide discretion when defining the product scope [1], and has to base this assessment on the set of criteria developed by the Court of Justice of the European Union. Often, as in the present case, some criteria may point in one direction and some in the other; in such a situation, the Commission needs to carry out a global assessment, as it has done in the present case. Therefore, this interested party erred in assuming that product types need to share all characteristics in order to fall the same product definition.

(14) Some users claimed that the so-called stainless steel wires 'series 200' should be excluded from the product scope. In particular, they alleged this type was hardly produced by the Union industry. However, this claim is unfounded. First, the fact that a certain product type is not produced by the Union industry is not a sufficient reason to exclude it from the scope of the investigation, where the production process is such that the Union producers could start producing the product type in question. Second, as for highly technical wires (see recital 12), it was found that these types of the product concerned have basic physical, chemical, and technical characteristics identical or similar to other types of the like product produced and sold by the Union industry. Therefore, the claim cannot be accepted.

(15) Alternatively, these users claimed that wire rod should be included in the definition of the product concerned. However, wire rod is the raw material used for the production of the product concerned but can also be used for the production of different products such as fasteners and nails. Therefore, contrary to the product under investigation, it does not constitute a finished steel product. Through the cold forming production process, the wire rod amongst other products can be transformed into the product concerned or a like product. On that basis, wire rod cannot be included in the product scope within the meaning of the basic Regulation.

(16) On the basis of the above, the definition of the product concerned and the like product in recitals 21 to 24 of the provisional Regulation are hereby confirmed.

[1] Case T-170/94 Shanghai Bicycle [1997] ECR II-1383, paragraph 64.

3. SUBSIDISATION

3.1. Introduction

(17) In recital 25 of the provisional Regulation, reference was made to the following schemes, which allegedly involve the granting of countervailing subsidies:

(a) Duty Entitlement Passbook Scheme ('DEPBS');

(b) Duty Drawback Scheme ('DDS');

(c) Advance Authorisation Scheme ('AAS');

(d) Export Promotion Capital Goods Scheme ('EPCGS');

(e) Export Credit Scheme ('ECS');

(f) Focus Market Scheme ('FMS');

(g) Special Economic Zones/Export Oriented Units ('SEZ/EOU').

(18) The Union industry alleged that the Commission had failed to take into account a number of subsidy schemes, especially regional ones, and as a result believed that the subsidies found to be received by Indian producers were underestimated. The allegation is unfounded. The Commission investigated all of the national and local subsidy schemes contained in the complaint. However, the Commission found that during the IP the sampled exporting producers had received subsidies only with regard to the schemes listed in recital 14 above.

(19) The Union industry also argued that, since in the parallel anti-dumping investigation the data submitted by the sampled Indian producers were found unreliable and Article 18 of Council Regulation (EC) No 1225/2009 [2] was applied, the corresponding Article 28 of the basic Regulation should have equally been applied in the current investigation. However, Article 28 of the basic Regulation applies only if its conditions are met, which has not been the case with regard to the information provided by the sampled Indian producers. Therefore, the claim cannot be accepted.

(20) The investigation has shown that the DEPBS, the DDS and the AAS all form part of one subsidy mechanism, that is a duty drawback mechanism. India has used

[2] Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

various types of this mechanism over a long time, modifying the individual sub-mechanisms frequently. The investigation has shown that it is appropriate to analyse these sub-mechanisms together, as exporters typically have to choose between them (they are mutually exclusive), and in the event one of the sub-mechanisms is discontinued, switch to another one.

(21) In the absence of other comments, recitals 25 to 28 of the provisional Regulation are confirmed.

3.2. **Duty Entitlement Passbook Scheme ('DEPBS')**

(22) One of the sampled Indian exporting producers argued that the DEPBS should not be considered as a countervailing subsidy, since the purpose of the scheme is to offset customs duties on imports. It was furthermore alleged that for the product under investigation, there is no domestic production of inputs, so that it is a reasonable assumption that all imports have been taxed at 5 %, and that the cap established by the Government of India ('GOI') ensures that there is no over-compensation. As explained in recital 38 of the provisional Regulation, this scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation since it does not conform to the rules laid down in point (i) of Annex I, Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. In particular, an exporter benefiting from DEPBS is under no obligation actually to consume the goods imported free of duty in its production process and the amount of credit is not calculated in relation to the actual value of the inputs used. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported.

The GOI has failed to establish a system which links the amount of duty exempted on the imported inputs with their consumption in the exported products. From their side, the companies benefitting from this scheme also did not have a mechanism in place to demonstrate that they did not receive any excess remission. In addition, regarding the non-existing of over-compensation in this specific case, the company failed to demonstrate that this was the case, it could for example have benefitted from compensation for other imported goods or it could have benefitted from compensation for imported inputs without having consumed it for the production of the product concerned. It also has to be noted that the statement that there is no domestic production of inputs is incorrect since at least one of the companies investigated produced this domestically while the other two investigated companies were purchasing from a domestic producer, and not from a domestic importing trader. Therefore, these arguments cannot be accepted.

(23) One party argued that in case of the sale of the DEPBS licence, the actual selling price was below the licence value and therefore the countervailing benefit was lower than the one provisionally established. However, the benefit under this scheme was calculated on the basis of the amount of credit granted in the licence regardless of whether the licence was used to offset customs duties on imports or whether the licence was actually sold. Any sale of a licence at a price less than its face value is a purely commercial decision which does not alter the amount of benefit received under this scheme. Therefore, this argument cannot be accepted.

(24) The GOI argued that the DEPBS has been withdrawn during the IP and therefore should not be countervailed. They furthermore argued that since the duty drawback is not a successor programme of DEPB, DEPB may not be countervailed. Indeed the DEPBS ceased to exist on 30 September 2011, during the IP. However, the subsidisation continued to exist. As an alternative to the DEPBS the exporters were found to receive benefits under AAS and especially DDS. As described in recitals 42 to 44 of the provisional Regulation, AAS and DDS were adjusted to organise a smooth transition from the DEPBS. In addition, the nature of the benefits under the three schemes, i.e. revenue foregone in the form of exemption from customs duties, is exactly the same. Companies have thus a choice which scheme to use for the offsetting of customs duties. Therefore, despite the fact that the DEPBS ceased to exist halfway through the IP, the subsidies granted by the GOI during the IP should be countervailed because the overarching system of benefits continued as, for the reasons set out above in recital 20, all duty drawback schemes form one subsidy mechanisms with different, often changing sub-mechanisms. This argument can thus not be accepted.

(25) In its response to the definitive disclosure, the GOI reiterated its arguments concerning the withdrawal of the DEPBS after definitive disclosure. However, since no new arguments were presented which would lead to a change in the conclusion with regard to the replacement of the subsidisation under the ceased DEPBS by the adjusted DDS, this argument cannot be accepted.

(26) In the absence of other comments, recitals 29 to 47 of the provisional Regulation are confirmed.

(27) In addition, it was found that the Indian exporting producer KEI was using the DEPBS in the IP. The subsidy rate amounted to 0,50 %.

3.3. **Duty Drawback Scheme ('DDS')**

(28) The GOI argued that the DDS should not be considered as a countervailing subsidy, since the purpose of the scheme is to offset import duties and excises taxes paid on inputs. As explained in recitals 58 to 60 of the provisional Regulation this scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation since it does not conform to the rules laid down in point (i) of Annex I, Annex II and Annex III of the basic Regulation. In particular, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III of the basic Regulation. Furthermore, an exporter is eligible for the DDS benefits regardless of whether it imports any input materials at all. To obtain the benefit, it is sufficient for an exporter simply to export goods without demonstrating that any input material was imported. The above was confirmed by the findings made at the visited companies and by the corresponding legislation, namely the GOI's circular No 24/2001 as explained in recital 60 of the provisional Regulation. In addition, in its submission, the GOI admitted itself in paragraph 32 thereof that DDS may result in excess remission. Therefore, the GOI's argument cannot be accepted.

(29) The GOI further argued that, although the verification system for the consumption of inputs was not complete, in particular due to the high number of beneficiaries and the administrative burden involved in controlling all of them, the verification mechanism in place based on sampling should be accepted. This argument however cannot be accepted as it is not foreseen in Article 3(1)(a)(ii), point (i) of Annex I, Annex II or Annex III of the basic Regulation.

(30) In the absence of other comments, recitals 48 to 64 of the provisional Regulation are confirmed.

(31) In addition, it was found that the Indian exporting producer, KEI Industries, was using the DDS in the IP. The subsidy rate amounted to 0,29 %.

3.4. **Advance Authorisation Scheme ('AAS')**

(32) One of the sampled Indian exporting producers argued that the AAS should be considered as a duty drawback system, because the imported materials are used to produce exported goods. As explained in recital 76 of the provisional Regulation the sub-scheme used in the present case is not a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in point (i) of Annex I, Annex II or Annex III of the basic Regulation. The GOI did not effectively apply a verification system or a procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). Moreover, the Standard Input Output Norms ('SIONs') for the product concerned were not sufficiently precise and they cannot constitute a verification system of actual consumption. The design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the production of the exported products. In addition, the GOI did not carry out any further examination based on actual inputs involved as explained in recital 73 of the provisional Regulation, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation). The sub-scheme is therefore countervailing, and the argument is rejected.

(33) In the absence of other comments, recitals 65 to 80 of the provisional Regulation are confirmed.

(34) The Indian exporting producer, KEI Industries, was found not to use AAS in the IP.

3.5. **Export Promotion Capital Goods Scheme ('EPCGS')**

(35) Upon the definitive disclosure, one of the Indian exporting producers provided comments on a calculation error. This comment was partially warranted and was acknowledged in the calculation of the subsidy amount. Since the overall subsidy margin for this company was below the *de minimis* level even before this correction, the adjustment neither changes the final level of the countervailing duty of this company nor does it affect the average subsidy margin calculated for the cooperating non-sampled companies or the country-wide subsidy margin.

(36) Apart from the above, recitals 81 to 91 of the provisional Regulation are confirmed.

(37) The Indian exporting producer, KEI Industries, was found not to benefit from the EPCGS in the IP with regard to the product concerned.

3.6. **Export Credit Scheme ('ECS')**

(38) The GOI argued that in recital 92 of the provisional Regulation the Commission incorrectly cited the legal basis of the ECS. The GOI indicated that the Master

Circular DBOD No DIR(Exp.) BC 01/04.02.02/2007-2008 ('MC 07-08') and Master Circular DBOD No DIR(Exp.) BC 09/04.02.02/2008-09 ('MC 08-09') were updated and these were Master Circular DBOD No DIR(Exp.) BC 06/04.02.002/2010-11 ('MC 10-11') and Master Circular DBOD No DIR(Exp.) BC 04/04.02.002/2011-2012 ('MC 11-12) which constituted the legal basis for the ECS in the IP. Indeed the observation of the GOI is correct in this regard.

(39) The GOI further argued that, had the proper updated legal basis been taken into account, the Commission would have to take a note of the fact that the maximum ceiling interest rate applicable to export credits, previously made mandatory by the Reserve Bank of India ('RBI') for the commercial banks, ceased to exist before the IP with regard to export credits in rupees. Therefore, this scheme as far as credits in rupees are concerned can no longer be considered a subsidy. The investigation demonstrated that two sampled companies benefited in practice from export credits from privately owned banks with rates below the reference rate set by the Bank of India. The investigation has not revealed a commercial rational as to why these privately owned banks provide credits at discounted and apparently loss-making rates. These lending practices of the banks could suggest that there is still government involvement. However, the investigation did not produce evidence of the level required under WTO rules to show continuing entrustment or direction of the commercial banks. Therefore, the Commission has decided not to count the benefit of the discounted rates as a subsidy under this sub-scheme, in the absence of sufficient evidence of direction and/or a financial contribution by the GOI.

(40) Last, the GOI argued that the latest update of Master Circular — DBOD No DIR(Exp.) BC. 06/04.02.002/2012-13 ('MC 12-13'), which had entered into force two months after the end of the IP, had erased the maximum ceilings on interest rates of the export credits also with regard to credits in the foreign currency. Invoking Article 15(1) of the basic anti-subsidy Regulation the GOI argues that in such a case also this element of the export credit scheme should not be countervailed, because government direction of the banks has been removed. Although in the submitted MC 12-13 there is a provision which makes it free for the commercial banks to determine the interest rates on export credits in foreign currency with effect from May 2012 as claimed by the GOI, such a change of instruction of RBI to the private banks during the investigation would by itself be insufficient to exclude this scheme, since government direction may continue in an informal manner which would have to be the subject of further investigation. However, in view of the above conclusion on the sub-scheme concerning export credits in rupees, the Commission has decided not to countervail this sub-scheme concerning credits in foreign currency at this stage.

(41) In light of the above, the duty rates will be adjusted where applicable.

3.7. **Focus Market Scheme ('FMS')**

(42) Upon the definitive disclosure, the GOI submitted comments on FMS. The GOI argued that the scheme is geographically related to countries not part of the Union and can thus not be countervailed by the Union. Nevertheless, the GOI was not able to dispute either the practical implementations of the scheme or that the FMS benefit can be used for the product concerned, namely the fact that duty credits under FMS are freely transferable and that they can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods. Therefore, this claim had to be rejected as the investigation has shown that the product concerned can and does benefit from this scheme when exported to the Union.

(43) In the absence of any other comments, recitals 101 to 111 of the provisional Regulation are confirmed.

(44) The Indian exporting producer, KEI Industries, was found not to use FMS in the IP.

3.8. **Export Oriented Units Scheme ('EOUS')**

(45) Upon the definitive disclosure, the sole exporting producer investigated using EOUS submitted comments on this scheme. The company claimed that the Commission should use a different method to calculate the benefit received under the EOUS. The company argued that certain benefits under EOUS should be treated as a permissible duty drawback scheme within the meaning of Annexes II and III of the basic Regulation and that they therefore should not be countervailing.

(46) It was however found that regardless of which method of calculation used, the subsidy rate for this scheme would not exceed 0,95 %, meaning that the overall subsidy margin for this company would remain below *de minimis* level. Therefore it was not deemed necessary to analyse this claim further in the context of this investigation.

(47) In the absence of any other comments, recital 112 of the provisional Regulation is confirmed.

(48) The Indian exporting producer, KEI Industries, was found not to benefit the EOUS in the IP.

3.9. **Amount of countervailing subsidies**

(49) Following the decision not to count the benefits under the ESC as a subsidy as described in recitals 38 to 41 and correction of EPCGS benefit calculation for one of the companies as described in recital 35, the duty rates have been adjusted where applicable. The definitive amounts of countervailing subsidies established in accordance with the provisions of the basic Regulation, expressed *ad valorem*, now range from 0,79 % to 3,72 %.

Scheme	Company	Raajratna	Venus Group	Viraj	KEI
DEPBS (*)		0,58 %	0,93 %, 1,04 %, 1,32 %, 2,04 %	—	0,50 %
DDS (*)		0,61 %	1,14 %, 1,77 %, 1,68 %, 1,91 %	—	0,29 %
AAS (*)		2,43 %	0,15 %, 0 %, 0 %, 0 %	—	—
EPCGS (*)		0,09 %	0,02 %, 0 %, 0 %, 0 %	0,03 %	—
ECS (*)		—	—	—	—
FMS (*)		—	0,13 %, 0,71 %, 0,07 %, 0 %	—	—
EOU (*)		—	—	0,95 %	—
	TOTAL	3,72 %	3,03 % (**)	0,98 % (***)	0,79 % (***)

(*) Subsidies marked with an asterisk are export subsidies.
(**) Total subsidy margin on the basis of consolidated calculation for the Group.
(***) *de minimis*.

(50) The recalculated subsidy margin for the cooperating companies not included in the sample is 3,41 %.

(51) The recalculated country-wide subsidy margin is 3,72 %.

4. UNION INDUSTRY

4.1. **Union industry**

(52) Some users questioned the number of Union producers as stated in recital 116 of the provisional Regulation. They claim that number of producers was wrongly assessed and in reality there are fewer producers present on the Union market.

(53) The Commission points out that the above claim was not substantiated and confirms after verification the information given in recital 116 of the provisional Regulation, namely that 27 Union producers were manufacturing the product concerned in the Union during the IP. This is the number identified on the basis of the complaint, at standing phase and during the investigation. The Commission contacted all known Union producers and received data which was used in the context of the current investigation.

4.2. **Union production and Sampling of Union producers**

(54) In the absence of comments, recitals 117 to 119 of the provisional Regulation are confirmed.

5. INJURY

5.1. **Union consumption**

(55) Some users claimed that the injury analyses should have disregarded the data relating to 2009 because the financial crisis which occurred that year had distorting effects in particular on the Union consumption. However, even if 2009 was excluded from the analysis, there would still be a growing trend for consumption (+ 5 %) which is an indication of an improving market. Moreover, the negative effects of the financial crises are recognised in recital 120 of the provisional Regulation, but was concluded that the market situation improved. In absence of other comments, recital 120 of the provisional Regulation is confirmed.

5.2. **Imports into the Union from the country concerned**

(56) The subsidy margin established for KEI Industries is below the *de minimis* threshold foreseen in Article 14(5) of the basic Regulation (see recital 49 above). Therefore,

it is deemed that this exporting producer has not benefited from subsidy schemes within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation during the investigation period. As a result, its import volumes were excluded from the volume of subsidised imports from India. One exporting producer, namely the Venus group submitted that certain transactions were mistakenly double counted. The Commission agreed with the exporting producer, therefore these transactions were removed from the total volume of subsidised imports from India. Accordingly, the volume, market share and the average price of the subsidised imports were revised.

(57) Volume and market share of the subsidised imports:

	2009	2010	2011	IP
Volume (MT)	11 620	20 038	25 326	24 415
Index (2009 = 100)	100	172	218	210
Market share	8,8 %	10,7 %	12,9 %	12,4 %
Index (2009 = 100)	100	121	146	140

Source: Eurostat and questionnaire replies.

(58) KEI Industries exported limited quantities of the product concerned during the IP and the transactions of the Venus group mentioned above also constituted limited quantities, therefore the deduction of these import volumes from the total volume of subsidised imports from India does not result in changes concerning in the trends as described in recitals 123 and 124 of the provisional Regulation. Thus these recitals of the provisional Regulation are confirmed.

(59) Average price of the subsidised imports:

	2009	2010	2011	IP
Average price (euro/MT)	2 419	2 856	3 311	3 259
Index (2009 = 100)	100	118	137	135

Source: Eurostat and questionnaire replies.

(60) As explained above, K.E.I Industries exported limited quantities during the IP and the removal of certain transactions of the Venus group affected only limited quantities. The exclusion of KEI Industries import volumes and the above mentioned transactions of the Venus group from the total volume of subsidised imports from India does therefore not result in any significant change in the average price of the subsidised Indian imports or in the undercutting calculations. The recalculated undercutting margin is 11,7 %. For the rest, the conclusions drawn from the findings described in recitals 128 to 130 of the provisional Regulation are confirmed.

(61) In response to the final disclosure, the GOI argued that the Commission had applied the pro rata reduction of subsidised imports only on the import volumes of cooperating exporting producers in order to take account of the *de minimis* findings KEI and the removal of certain mistakenly double counted transactions of the Venus group. This claim is based on a misunderstanding. The Commission has applied the pro rata reduction to the entire import volume, including non-cooperating importers. The claim therefore has to be rejected.

5.3. **Economic Situation of the Union industry**

(62) Some parties claimed that the results obtained by the Union industry should be considered as reasonably positive in the context of the global economic crisis and that, with the exception of one injury indicator namely, market share, none of the other indicators pointed to the existence of injury.

(63) One party claimed that the average selling prices of the Union industry increased by around 34 % far more than its cost of production which increased by 13 % over the same period. In this respect it needs to be noted that, at the beginning of the period considered, namely in 2009, the Union industry was selling below cost of production, and only managed to sell above cost of production from 2011 onwards.

(64) The investigation showed that, although some injury indicators such as production volumes and capacity utilisation followed a positive trend, or remained stable such as employment, a number of other indicators relating to the financial situation of the Union industry, namely profitability, cash flow, investment and return on investment did not follow a satisfactory trend during the period considered. While the indicator relating to investments improved in 2010, it dropped below 2009 figures in 2011 and the IP. Although it is true that return on investments improved from 2009 until 2011 reaching 6,7 %, it dropped again to 0,8 % in the IP. Similarly indicators relating to profitability and cash flow improved until 2011 though they started again to deteriorate in the IP. Therefore, it can be concluded that the Union industry started to improve after 2009, but its recovery was slowed down by the subsidised imports from India subsequently.

(65) On a request by an interested party it is confirmed that the stock levels established in recital 153 of the provisional Regulation concerned the activity of the sampled Union companies.

(66) The Union industry argued that the target profit margin of 5 % set at the provisional stage was too low. The party did not substantiate its claim sufficiently. Recital 148 of the provisional Regulation explains the reasons behind the choice of this profit margin and the investigation did not reveal any other reasons to change it. Therefore, the target profit of 5 % is maintained for the purpose of the definitive findings.

(67) One exporting producer argued that the Union industry's difficulties are largely due to structural problems. Therefore, the target profit margin of 5 % was also unrealistic.

(68) It is recalled that according to the case-law [1], the Institutions need to establish the profit margin which the Community industry could reasonably count on under normal conditions of competition, in the absence of the subsidised imports. In the present case, it has proven impossible to carry out this analysis for the Union industry of the product concerned for the following reasons. Sufficient information to calculate profit margins for the product concerned is only available as of the year 2007. In 2007, the profit margin was 3,7 %; as of 2008, due to the financial and economic crisis, it became negative. The complaint argued, and the investigation established, that subsidised imports started to arrive on the Union market as of 2007, when the volume of imports increased from 17 727 tonnes in 2006 to 24 811,3 tonnes. Therefore, the Institutions have established the target profit margins on the basis of the real profits observed in other parts of the steel industry, which have not suffered from dumped and subsidised imports [2].

5.4. **Conclusion on injury**

(69) The Commission therefore concludes that the Union industry has suffered material injury during the IP.

6. **CAUSATION**

6.1. **Effect of subsidised imports**

(70) One exporting producer claimed that the provisional Regulation ignored that the Union industry was able to benefit from the increase in consumption since 2009 and that the Commission cannot assume that the Union industry will be able to maintain its market share indefinitely.

(71) In response to these arguments it needs to be noted that the investigation revealed the market share of the subsidised Indian import grew with a higher pace than the consumption in the Union market. The volume of Indian subsidised imports increased by 110 % while consumption increased by 50 % over the same period. Furthermore the investigation also showed that the average Indian price was constantly below the average price of the Union industry during the same period and undercut the Union industry average price by 11,7 % during the IP. As a result, while the Union industry indeed benefited from the increased consumption to a certain extent and it also could increase its sales volumes by 40 %, it could not maintain its market share as it could be expected under improving market conditions and given the Union industry's free production capacity.

6.2. **Effect of other factors**

6.2.1. *Non-subsidised imports*

(72) Some interested parties claimed that the effect of the non-subsidised import needed to be reassessed in light of the fact that KEI Industries received a *de minimis* subsidy margin and the fact that, due to double counting errors, certain transactions of the Venus group were removed from the analysis. They also argued that the prices of the non-subsidised imports were lower than the prices of the subsidised imports.

(73) The table below shows the development of the non-subsidised export volume and prices during the period considered. Their volume represented around a third of Indian exports during the IP and followed the same trend as the subsidised imports.

	2009	2010	2011	IP
Volume (MT)	5 227	9 015	11 394	10 938
Volume (*Index*)	100	172	218	210
Average price (*EUR/mt*)	2 268	2 678	3 105	3 056
Average price (*Index*)	100	118	137	135

Source: Questionnaire replies and Eurostat.

(74) It is therefore correct that prices of non-subsidised imports were lower than prices of subsidised imports. However, the volume of non-subsidised imports is only a third of the volume of subsidised imports. Therefore,

[1] Case T-210/95 European Fertilizer Manufacturer's Association (EFMA) v Council [1999] ECR II-3291, paragraph 60.

[2] Council Regulation (EU) No 383/2009 of 5 May 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pre- and post-stressing wires and wire strands of non-alloy steel (PSC wires and strands) originating in the People's Republic of China (OJ L 118, 13.5.2009, p. 1); Commission Regulation (EU) No 1071/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand (OJ L 318, 15.11.2012, p. 10); Commission Regulation (EU) No 845/2012 of 18 September 2012 imposing provisional anti-dumping duty on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 252, 19.9.2012, p. 33).

the injury caused by non-subsidised imports does not break the causal link between the subsidised imports, from India and the material injury suffered by the Union industry during the IP.

6.2.2. *Imports from third countries*

(75) One Indian exporting producer and the GOI reiterated the claim that the People's Republic of China should have been included in the investigation and that the impact the imports from the People's Republic of China had on the Union market and the Union industry was underestimated.

(76) As mentioned in recital 170 of the provisional Regulation, neither at initiation stage nor at definitive stage is there any evidence of subsidisation that may have justified the initiation of an anti-subsidy investigation on imports originating in People's Republic of China. The claim that People's Republic of China should have been included in the scope of the investigation is therefore not founded and is rejected.

(77) However, the imports from the People's Republic of China showed an increasing trend during the period considered and reached a market share of 8,3 % in the IP as stated in recital 168 of the provisional Regulation. In addition, the Chinese import prices were lower than the prices of the Union industry and those of the Indian exporting producers in the Union market. It was, therefore, further investigated whether the imports from People's Republic of China could have contributed to the injury suffered by the Union industry and broken the causal link between that injury and the Indian subsidised imports.

(78) The information available at the provisional stage suggested that the product mix represented by the Chinese imports was different, and that the ranges where the Chinese products were present were different, compared to the products sold by the Union industry or even those of Indian origin products sold in the Union market.

(79) After publication of the provisional measure the Commission received several claims pointing to the possibility that Chinese low-priced imports during the IP would break the causal link between dumped Indian imports and material injury suffered by the Union industry.

(80) Analysis made on the basis of the import statistics concerning the two CN codes under investigation showed that 29 % of Chinese imports were made on the lower end of the market (under CN code 7223 00 99). This partly explains why Chinese prices on average are lower than those of the Union industry and the Indian exporting producers. The statistics for CN code 7223 00 99 also showed that the customers of the Chinese producers were concentrated in the United Kingdom where the Union industry was basically not present.

Average price (euro/MT)	2009	2010	2011	IP
72 230 019	2 974	3 286	3 436	2 995
72 230 099	765	1 458	1 472	1 320

Source: Eurostat

(81) As concerns CN code 7223 00 19 the analyses carried out on a PCN basis showed that both the Union industry and Indian producers were mainly competing in the higher end of the market where prices could be up to four times higher than prices in the lower end within the same CN [1]. The investigation also showed that in general price variations are linked to the product type and the nickel content. Furthermore the investigation showed that Chinese exporters are predominantly selling the lower quality product types falling within the abovementioned CN code in the Union market. Therefore, the product mix becomes a predominant factor in evaluating the Chinese imports.

(82) As concerns the price level of imports from the People's Republic of China, it needs to be pointed out that from 2009 until the IP the average price of Chinese imports remained above the price of the subsidised Indian exporting producers' prices, as can be seen from the following table showing the average price of subsidised Indian exports falling under CN code 7223 00 19.

Average price (euro/MT)	2009	2010	2011	IP	IP + 1
73 320 019	2 974	3 286	3 436	2 995	3 093

Source: Eurostat.

(83) In the IP for the first time the average Chinese import price dropped below that of the Indian import price for subsidised imports. However, this observation was found to be of a temporary nature since the Chinese price level in the year after the IP increased and was again higher than the Indian prices.

(84) Furthermore, the comparison between the import volumes from India and the People's Republic of China showed that at any point during the period considered and particularly in the IP, imports from the People's Republic of China were at much lower levels than the imports from India. The import volumes for the People's Republic of China amounted to basically less than half of the total imports from India.

[1] However, it is noted that both the Union industry and the Indian exporting producers are also present in the lower end of the market even if to a lesser extent.

(85) On the basis of the above it is confirmed that significant proportion of the Chinese imports during the IP are different from the Union industry product mix and that any direct competition with the products produced and sold by the Union industry is limited.

(86) Therefore, the imports from the People's Republic of China could not have affected the situation of the Union industry to the extent to break the causal link between the subsidised imports from India and the injury suffered by the Union industry. Therefore, recital 168 of the provisional Regulation is confirmed.

6.2.3. *Competition from other producers in the Union*

(87) One party argued that the Union producers' poor financial performance might have been caused by competition from other Union producers which were not complainants or did not express their support for the investigation at the initiation of the case.

(88) The market share of other producers in the Union developed as follows:

	2009	2010	2011	IP
Volume (MT)	34 926	55 740	55 124	55 124
Index (2009 = 100)	100	160	158	158
Market share of other producers in the Union	26,6 %	29,8 %	28,1 %	27,9 %

Source: Complaint.

(89) The Union producers which were not complainants and which did not specifically express support to the investigation accounted for 44 % of total Union sales reported in recital 139 to the provisional Regulation. Their sales volume increased by 58 % from an estimated 34 926 tonnes in 2009 to 55 124 tonnes during the period considered. However, such growth is relatively modest if compared to the growth of the subsidised imports from India in the same period (+ 110 %). Furthermore, the market share of those Union producers remained relatively stable during the period considered and no indication was found that their prices were lower than those of the sampled Union producers. It is therefore concluded that their sales on the Union market did not contribute to the injury suffered by the Union industry.

6.3. **Conclusion on causation**

(90) In the absence of comments, recitals 176 to 179 of the provisional Regulation are confirmed.

7. UNION INTEREST

7.1. General considerations

(91) In the absence of comments, recital 180 of the provisional Regulation is confirmed.

7.2. Interest of the Union industry

(92) In the absence of comments, recitals 181 to 188 of the provisional Regulation are confirmed.

7.3. Interest of users

(93) Following the imposition of the provisional measures, seven users and one users' association contacted the Commission and showed interest to cooperate in the investigation. Following their request, questionnaires were sent to them in April 2013. However, only two users submitted a full questionnaire reply and overall the cooperating users represented 12 % of total imports from India during the IP and 2,5 % of the total Union consumption. The economic impact of the measures on users was reassessed on the basis of the new data available in the questionnaire replies and two users were visited to verify the information provided.

(94) Users claimed that the level of profitability of 9 %, stated in recital 191 of the provisional Regulation was too high and was not representative for the users' industry. Following the receipt of the additional questionnaire replies the average profitability of all cooperating users was recalculated and established at 2 % on turnover.

(95) It was also found that on average concerning the cooperating users, purchases from India constituted 44 % of the total purchases of the product concerned, and that India represented the exclusive source of supply for two cooperating users. During the IP, the turnover of the product incorporating the product concerned represented on average 14 % of turnover of the cooperating users.

(96) Assuming the worst case scenario for the Union market, i.e. that no potential price increase could be passed on to the distribution chain and that the users would continue purchasing from India in previous volumes, the impact of the duty on the users' profitability achieved from activities using or incorporating the product concerned would mean on average a decrease by 0,25 percentage points to 1,75 %.

(97) The Commission acknowledges that the impact will be more important, on an individual level, for those users which source their entire imports from India. However,

these are relatively few in number (two of the cooperating users). Furthermore, they have the possibility, provided that their Indian producer cooperates, to request the refund of the duties pursuant to Article 21 of the basic Regulation, if all conditions for such a refund are met.

(98) Some users reiterated the concern that measures would hit certain type of wires not produced in Europe, namely types included in the so-called series 200 as described in recital 194 of the provisional Regulation. According to the users, the absence of production in the Union is due to the limited demand and to the specificity of the production process.

(99) However, the investigation showed that such types of stainless steel wires are produced by the Union industry and that they represent a limited share of the Union market. There are also alternative sources of supply available for users from countries not subject to anti-dumping or anti-subsidy measures. In addition, two Indian exporting producers received 0 % countervailing duty rate, therefore the imposition of the measures will have no have significant effects on supplies from them. Furthermore, other product types of stainless steel wires can be used for the same purposes. Therefore, the imposition of the measures cannot have a significant impact on the Union market or on these users. This claim is therefore rejected.

(100) Some users pointed out the longer delivery time for the like product by the Union producers compared to the delivery time of the product concerned from India. However, the possibility for merchants and traders of stocking the products and of having them swiftly available does not undermine the factual evidence of the negative effects of the subsidised imports. Therefore, this argument has to be rejected.

(101) Taking the above into consideration, even if some users are likely to be negatively affected more than others by the measures on imports from India, it is considered that in balance the Union market will benefit from the imposition of the measures. In particular, it is considered that restoring fair trade conditions on the Union market would allow the Union industry to align its prices with cost of production; to keep production and employment; to regain the market share previously lost and to benefit from increased economies of scale. This should allow the industry to reach reasonable profit margins that will permit it to operate efficiently in the medium and long term. In parallel the industry will improve its overall financial situation. In addition, the investigation established that the measures will have an overall limited impact on the users and on unrelated importers. Therefore it is concluded that the overall benefit of the measures appears to outweigh the impact on the users of the product concerned in the Union market.

7.4. **Interest of unrelated importers**

(102) In the absence of comments, recitals 197 to 199 of the provisional Regulation are confirmed.

7.5. **Conclusion on Union interest**

(103) In view of the above, the assessment in recitals 200 and 201 of the provisional Regulation is confirmed.

8. **DEFINITIVE COUNTERVAILING MEASURES**

8.1. **Injury elimination level**

(104) In absence of any comments, recitals 203 to 206 of the provisional Regulation are confirmed.

8.2. **Conclusion on injury elimination level**

(105) No individual injury margin was calculated for KEI Industries since this company's definitive subsidy margin was at a *de minimis* level as stated in recital 49 above.

(106) The methodology used in the provisional Regulation is hereby confirmed.

8.3. **Definitive measures**

(107) In the light of the above and in accordance with Article 15(1) of the basic Regulation, a definitive countervailing duty should be imposed at a level sufficient to eliminate the injury caused by the subsidised imports without exceeding the subsidy margin found.

(108) Therefore, the countervailing duty rates were established by comparing the injury margins and the subsidy margins. Consequently, the proposed countervailing duty rates are as follows:

Company	Subsidy margin	Injury margin	Countervailing duty rate
Raajratna Metal Industries	3,7 %	17,2 %	3,7 %
Venus group	3,0 %	23,4 %	3,0 %
Viraj Profiles Vpl. Ltd	0,9 %	n/a	0,0 %
KEI Industries Limited	0,7 %	n/a	0,0 %
Cooperating non-sampled companies	3,4 %	19,3 %	3,4 %
All other companies	3,7 %	23,4 %	3,7 %

(109) The individual company countervailing duty rates specified in this working document 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 exclusively applicable to imports of products originating in India and produced by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this working document, 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'.

(110) Any claim requesting the application of an individual company countervailing 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 [1] 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 imposing the definitive countervailing duties will be amended accordingly by updating the list of companies benefiting from individual duty rates.

8.4. **Definitive collection of provisional countervailing duties**

(111) In view of the magnitude of the subsidy margins found and in the light of the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of the provisional countervailing duty, imposed by the provisional Regulation be definitively collected to the extent of the amount of the definitive duties imposed.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of wire of stainless steel containing by weight:

(i) 2,5 % or more of nickel, other than wire containing by weight 28 % or more but not more than 31 % of nickel and 20 % or more but not more than 22 % of chromium,

(ii) less than 2,5 % of nickel, other than wire containing by weight 13 % or more but not more than 25 % of chromium and 3,5 % or more but not more than 6 % of aluminium,

currently falling within CN codes 7223 00 19 and 7223 00 99 and originating in India.

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

Company	Duty (%)	TARIC additional code
Raajratna Metal Industries, Ahmedabad, Gujarat	3,7	B775
Venus Wire Industries Pvt. Ltd, Mumbai, Maharashtra	3,0	B776
Precision Metals, Mumbai, Maharashtra	3,0	B777
Hindustan Inox Ltd, Mumbai, Maharashtra	3,0	B778
Sieves Manufacturer India Pvt. Ltd, Mumbai, Maharashtra	3,0	B779
Viraj Profiles Vpl. Ltd, Thane, Maharashtra	0,0	B780
KEI Industries Limited, New Delhi	0,0	B925
Companies listed in the Annex	3,4	
All other companies	3,7	B999

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

Article 2

Amounts secured by way of provisional countervailing duties in accordance with Regulation (EU) No 419/2013 on imports of wire of stainless steel containing by weight:

(i) 2,5 % or more of nickel, other than wire containing by weight 28 % or more but not more than 31 % of nickel and 20 % or more but not more than 22 % of chromium,

(ii) less than 2,5 % of nickel, other than wire containing by weight 13 % or more but not more than 25 % of chromium and 3,5 % or more but not more than 6 % of aluminium,

currently falling within CN codes 7223 00 19 and 7223 00 99 and originating in India,

shall be definitively collected. The amounts secured in excess of the definitive rates of the countervailing duty shall be released.

[1] European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

Article 3

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

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

Done at Brussels, 2 September 2013.

For the Council
The President
L. LINKEVIČIUS

ANNEX

INDIAN COOPERATING EXPORTING PRODUCERS NOT SAMPLED

Company name	City	TARIC additional code
Bekaert Mukand Wire Industries	Lonand, Tal. Khandala, Satara District, Maharastra	B781
Bhansali Bright Bars Pvt. Ltd	Mumbai, Maharashtra	B781
Bhansali Stainless Wire	Mumbai, Maharashtra	B781
Chandan Steel	Mumbai, Maharashtra	B781
Drawmet Wires	Bhiwadi, Rajastan	B781
Garg Inox Ltd	Bahadurgarh, Haryana	B931
Jyoti Steel Industries Ltd	Mumbai, Maharashtra	B781
Macro Bars and Wires	Mumbai, Maharashtra	B932
Mukand Ltd	Thane	B781
Nevatia Steel & Alloys Pvt. Ltd	Mumbai, Maharashtra	B933
Panchmahal Steel Ltd	Dist. Panchmahals, Gujarat	B781

COMMISSION IMPLEMENTING REGULATION (EU) No 862/2013

of 5 September 2013

approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Casatella Trevigiana (PDO))

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [1], and in particular Article 52(2) thereof,

Whereas:

(1) Regulation (EU) No 1151/2012 entered into force on 3 January 2013. It repealed and replaced Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2].

(2) In accordance with the first subparagraph of Article 9(1) of Regulation (EC) No 510/2006, the Commission has examined Italy's application for the approval of amendments to the specification for the protected designation of origin 'Casatella Trevigiana' registered under Commission Regulation (EC) No 487/2008 [3].

(3) Since the amendments in question are not minor, the Commission published the amendment application in the *Official Journal of the European Union* [4], as required by Article 6(2) of Regulation (EC) No 510/2006. As no statement of objection under Article 7 of that Regulation has been received by the Commission, the amendments should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* regarding the name contained in the Annex to this Regulation are hereby approved.

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, 5 September 2013.

For the Commission,
On behalf of the President,
Dacian CIOLOȘ
Member of the Commission

[1] OJ L 343, 14.12.2012, p. 1.
[2] OJ L 93, 31.3.2006, p. 12.
[3] OJ L 143, 3.6.2008, p. 12.
[4] OJ C 322, 24.10.2012, p. 4.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.3. Cheeses

ITALY

Casatella Trevigiana (PDO)

COMMISSION IMPLEMENTING REGULATION (EU) No 863/2013

of 5 September 2013

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], and in particular Article 9(1)(a) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information which has been issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature but which is not in accordance with this Regulation can, for a period of three months, continue to be invoked by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2].

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Binding tariff information issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked for a period of three months under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

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

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

Done at Brussels, 5 September 2013.

For the Commission,
On behalf of the President,
Algirdas ŠEMETA
Member of the Commission

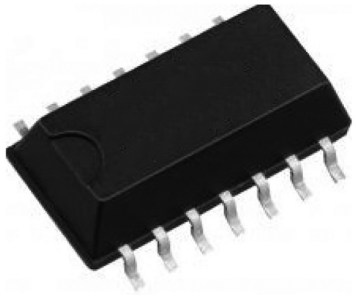
[1] OJ L 256, 7.9.1987, p. 1.

[2] OJ L 302, 19.10.1992, p. 1.

ANNEX

Description of the goods	Classification (CN-code)	Reasons
(1)	(2)	(3)
A product (so-called "Real Time Clock Module") consisting of a monolithic integrated circuit and a quartz crystal assembled together on a metal frame and embedded in a plastic housing with dimensions of approximately 10 × 7 × 3 mm. The product operates with an oscillating frequency of 32,768 kHz and a supply voltage of between 2,7 and 3,6 V. It has a digital output signal. The product is used in various apparatus as the source of a clock signal for determining intervals of time. (*) See image.	9114 90 00	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 1(n) to Section XVI and by the wording of CN codes 9114 and 9114 90 00. As the product contains both a monolithic integrated circuit and a quartz crystal, it does not fulfil the conditions laid down in Note 8(b) to Chapter 85. Consequently, classification under heading 8542 is excluded. The product provides a clock signal for determining intervals of time, which is a function of Chapter 91. Classification under heading 9110 is also excluded as the product does not have all the necessary components to be considered an incomplete clock movement and is not mounted (see also the Harmonised System Explanatory Notes (HSEN) to heading 9110, third paragraph). The product is therefore to be classified under CN code 9114 90 00 as other watch or clock parts (see also HSEN to heading 9114, (A), point (8)).

(*) The image is purely for information.



COMMISSION IMPLEMENTING REGULATION (EU) No 864/2013

of 6 September 2013

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

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors [2], and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round 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, 6 September 2013.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	MK	29,8
	ZZ	29,8
0707 00 05	TR	95,4
	ZZ	95,4
0709 93 10	TR	124,0
	ZZ	124,0
0805 50 10	AR	109,7
	CL	126,2
	TR	74,0
	UY	120,7
	ZA	124,0
	ZZ	110,9
0806 10 10	BR	183,4
	EG	184,2
	IL	162,2
	TR	143,0
	ZA	168,3
	ZZ	168,2
0808 10 80	AR	155,4
	BR	103,3
	CL	135,2
	CN	67,2
	NZ	133,1
	US	147,8
	ZA	115,0
	ZZ	122,4
0808 30 90	AR	160,7
	CN	84,1
	TR	137,4
	ZA	138,4
	ZZ	130,2
0809 30	TR	129,9
	ZZ	129,9
0809 40 05	BA	50,7
	MK	50,9
	XS	55,5
	ZZ	52,4

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

DECISIONS

COUNCIL DECISION 2013/446/CFSP

of 6 September 2013

amending Decision 2010/452/CFSP on the European Union Monitoring Mission in Georgia, EUMM Georgia

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Whereas:

(1) On 12 August 2010, the Council adopted Decision 2010/452/CFSP [1] which continued the European Union Monitoring Mission in Georgia, EUMM Georgia (hereinafter "EUMM Georgia" or the "Mission") established by Joint Action 2008/736/CFSP of 15 September 2008 [2]. Decision 2010/452/CFSP expires on 14 September 2013.

(2) EUMM Georgia should be extended for a further period of 15 months on the basis of its current mandate.

(3) The Mission will be conducted in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2010/452/CFSP is hereby amended as follows:

(1) Article 6 is hereby amended as follows:

(a) the following paragraph is inserted:

'1a. The Head of Mission shall be the representative of the Mission. The Head of Mission may delegate management tasks in staff and financial matters to staff members of the Mission, under his/her overall responsibility.';

(b) paragraph 4 is deleted.

(2) In Article 8, paragraph 3 is replaced by the following:

'3. The conditions of employment and the rights and obligations of international and local staff shall be laid down in the contracts to be concluded between EUMM Georgia and the staff member concerned.';

(3) The following Article is inserted:

'Article 13a

Legal arrangements

EUMM Georgia shall have the capacity to procure services and supplies, to enter into contracts and administrative arrangements, to employ staff, to hold bank accounts, to acquire and dispose of assets and to discharge its liabilities, and to be a party to legal proceedings, as required in order to implement this Decision.';

(4) Article 14 is replaced by the following:

'Article 14

Financial arrangements

1. The financial reference amount intended to cover the expenditure related to the Mission between 15 September 2010 and 14 September 2011 shall be EUR 26 600 000.

The financial reference amount intended to cover the expenditure related to the Mission between 15 September 2011 and 14 September 2012 shall be EUR 23 900 000.

The financial reference amount intended to cover the expenditure related to the Mission between 15 September 2012 and 14 September 2013 shall be EUR 20 900 000.

The financial reference amount intended to cover the expenditure related to the Mission between 15 September 2013 and 14 December 2014 shall be EUR 26 650 000.

2. All expenditure shall be managed in accordance with the rules and procedures applicable to the general budget of the European Union.

3. Nationals of third States, of the host State, and of neighbouring countries shall be allowed to tender for contracts. Subject to the Commission's approval, the Mission may conclude technical arrangements with Member States, participating third States, and other international actors regarding the provision of equipment, services and premises to EUMM Georgia.

[1] OJ L 213, 13.8.2010, p. 43.
[2] OJ L 248, 17.9.2008, p. 26.

4. EUMM Georgia shall be responsible for the implementation of the Mission's budget. For this purpose, the Mission shall sign an agreement with the Commission

5. EUMM Georgia shall be responsible for any claims and obligations arising from the implementation of the mandate starting from 15 September 2013, with the exception of any claims relating to serious misconduct by the Head of Mission, for which he or she shall bear the responsibility.

6. The financial arrangements shall respect the chain of command as provided for in Articles 5, 6 and 9, and the operational requirements of EUMM Georgia, including the compatibility of equipment and the interoperability of its teams.

7. Expenditure shall be eligible as of the date of entry into force of this Decision.';

(5) In Article 18, the second paragraph is replaced by the following:

'It shall expire on 14 December 2014.'.

Article 2

This Decision shall enter into force on the date of its adoption. It shall apply from 15 September 2013.

Done at Brussels, 6 September 2013.

For the Council
The President
L. LINKEVIČIUS

COMMISSION DECISION

of 5 September 2013

on the standard capacity utilisation factor pursuant to Article 18(2) of Decision 2011/278/EU

(Text with EEA relevance)

(2013/447/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC [1], and in particular Article 10a thereof,

Whereas:

(1) In order to enable Member States to determine in accordance with Article 18(1) and (3) of Commission Decision 2011/278/EU [2] the activity levels of new entrant installations pursuant to Article 3(h) of Directive 2003/87/EC, the Commission has to determine and publish standard capacity utilisation factors.

(2) For the purpose of calculating the number of free emission allowances to be allocated to new entrant installations eligible for such allocation in the period 2013-20, Member States have to determine the activity levels of these installations. In this context, the standard capacity utilisation factor is necessary to determine the product-related activity level for products for which a product benchmark has been determined in Annex I to Decision 2011/278/EU. For new entrant installations, with the exception of new entrants due to a significant extension, this activity level is determined by multiplying the initial installed capacity for the production of this product in accordance with Article 17(4) of Decision 2011/278/EU with the standard capacity utilisation factor. For installations which had a significant capacity extension or reduction, Member States are to use the standard capacity utilisation factor to determine the product-related activity level of the added or reduced capacity of the subinstallation concerned.

(3) The standard capacity utilisation factor should be the 80-percentile of the average annual capacity utilisation of all installations producing the product concerned. As part of the overall baseline data collection for incumbent installations carried out for the establishment of the National Implementation Measures (NIMs), Member States collected data on the average annual production of the product concerned in the period 2005-08. By dividing these production figures by the initial installed capacity as referred to in Article 7(3) of Decision 2011/278/EU, Member States then determined, on this basis, the capacity utilisation factors of the relevant installations on their territory. Member States then shared this information with the Commission as part of the NIMs.

(4) Upon receipt of the NIMs from all Member States and taking into account the NIMs of the EEA-EFTA countries, the Commission determined the 80-percentile of the average annual capacity utilisation factors of installations producing a product for which a benchmark exists, taking into account the need to ensure neutral conditions of competition for industrial activities carried out in installations operated by a single operator and production in outsourced installations. The calculation is based on information available to the Commission up until 31 December 2012.

(5) The standard capacity utilisation factors per product benchmark are set out in the Annex to this Decision. These factors apply for the years 2013 to 2020,

HAS ADOPTED THIS DECISION:

Article 1

The standard capacity utilisation factors listed in the Annex shall be used by Member States to determine the product-related activity level of installations referred to in Article 3(h) of Directive 2003/87/EC in accordance with Article 18 of Decision 2011/278/EU.

[1] OJ L 275, 25.10.2003, p. 32.

[2] Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 130, 17.5.2011, p. 1).

Article 2

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

Done at Brussels, 5 September 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

Product benchmark listed in Annex I to Decision 2011/278/EU	Standard capacity utilisation factor (SCUF)
Coke	0,960
Sintered ore	0,886
Hot metal	0,894
Pre-bake anode	0,928
Aluminium	0,964
Grey cement clinker	0,831
White cement clinker	0,787
Lime	0,813
Dolime	0,748
Sintered dolime	0,784
Float glass	0,946
Bottles and jars of colourless glass	0,883
Bottles and jars of coloured glass	0,912
Continuous filament glass fibre products	0,892
Facing bricks	0,809
Pavers	0,731
Roof tiles	0,836
Spray dried powder	0,802
Plaster	0,801
Dried secondary gypsum	0,812
Short fibre kraft pulp	0,808
Long fibre kraft pulp	0,823
Sulphite pulp, thermo-mechanical and mechanical pulp	0,862
Recovered paper pulp	0,887
Newsprint	0,919
Uncoated fine paper	0,872
Coated fine paper	0,883

Product benchmark listed in Annex I to Decision 2011/278/EU	Standard capacity utilisation factor (SCUF)
Tissue	0,900
Testliner and fluting	0,889
Uncoated carton board	0,863
Coated carton board	0,868
Nitric acid	0,876
Adipic acid	0,849
Vinyl chloride monomer (VCM)	0,842
Phenol/acetone	0,870
S-PVC	0,873
E-PVC	0,834
Soda ash	0,926
Refinery products	0,902
EAF carbon steel	0,798
EAF high alloy steel	0,802
Iron casting	0,772
Mineral wool	0,851
Plasterboard	0,843
Carbon black	0,865
Ammonia	0,888
Steam cracking	0,872
Aromatics	0,902
Styrene	0,879
Hydrogen	0,902
Synthesis gas	0,902
Ethylene oxide/ethylene glycols	0,840

COMMISSION DECISION

of 5 September 2013

concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council

(notified under document C(2013) 5666)

(Text with EEA relevance)

(2013/448/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC [1], and in particular Articles 10a and 11 thereof,

Whereas:

(1) Auctioning is the rule for the allocation of emission allowances from 2013 onwards to operators of installations within the scope of the emissions trading scheme of the Union (EU ETS). However, eligible operators will continue to receive free allowances between 2013 and 2020. The amount of allowances that each such operator receives is determined on the basis of Union-wide harmonised rules set out in Directive 2003/87/EC and Commission Decision 2011/278/EU [2].

(2) Member States were required to submit to the Commission by 30 September 2011 their National Implementation Measures (NIMs) comprising, among other mandatory information, a list of installations covered by Directive 2003/87/EC on their territory and the preliminary amount of free allowances to be allocated between 2013 and 2020 calculated on the basis of the Union-wide harmonised rules.

(3) Article 18 of the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community [3] provides for transitional measures applying in respect of Croatia and set out in Annex V to this Act. Pursuant to point 10 of that Annex V, Croatia is required to ensure that operators comply with Directive 2003/87/EC for the whole year 2013. Likewise, operators of eligible installations receive free allocation for the whole year 2013 to allow them full compliance with the EU ETS and its principle of annual monitoring, reporting and verification of emissions and surrender of emission allowances. Accordingly, Croatia submitted the NIMs to the Commission in accordance with Article 11(1) of Directive 2003/87/EC and Article 15(1) of Decision 2011/278/EU.

(4) To ensure data quality and comparability, the Commission provided an electronic template for the submission of the NIMs. All Member States submitted in this or in a similar format a list of installations, a table containing all relevant data per installation and a methodology report setting out the data collection process conducted by Member States' authorities.

(5) Given the wide range of information and data submitted, the Commission first analysed the completeness of all the NIMs. Where the Commission noted that submissions were incomplete, it requested additional information from the Member States concerned. In reply to those requests, the relevant authorities submitted additional relevant information in order to complete the submitted NIMs.

(6) The NIMs, including the preliminary total annual amounts of emission allowances to be allocated for free between 2013 and 2020, have then been evaluated against the criteria contained in Directive 2003/87/EC, notably Article 10a thereof, and in Decision 2011/278/EU, taking into account the Commission's guidance documents to Member States endorsed by the Climate Change Committee on 14 April 2011. Where applicable, account has been taken of the guidance on interpretation of Annex I to Directive 2003/87/EC.

[1] OJ L 275, 25.10.2003, p. 32.

[2] Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 130, 17.5.2011, p. 1).

[3] OJ L 112, 24.4.2012, p. 21.

(7) The Commission carried out an in-depth compliance assessment of the NIMs for each individual Member State. As part of that comprehensive assessment, the Commission analysed the consistency of the data itself and the consistency of the data with the harmonised allocation rules. First, the Commission examined the eligibility of installations for free allocation, the division of installations into subinstallations and their boundaries. The Commission then analysed the application of the correct benchmark values to the relevant subinstallations. Considering that for product-benchmark subinstallations Decision 2011/278/EU lays down, in principle, for each product one benchmark, the Commission paid particular attention to the application of the benchmark value to the final product produced in accordance with the product definition and the system boundaries set out in Annex I to Decision 2011/278/EU. Furthermore, given the significant impact on allocations, the Commission analysed in detail the calculation of the historical activity levels of installations, cases of significant capacity changes during the baseline period as well as cases of installations starting operation during the baseline period, the calculation of the preliminary number of emission allowances to be allocated free of charge taking into account the exchangeability of fuel and electricity, the carbon leakage status as well as heat exports to private households. Further statistical analyses and plausibility checks using indicators such as, for example, proposed allocation per historical activity level compared to benchmark values or historical activity level compared to production capacity helped in identifying additional potential irregularities in the application of the harmonised allocation rules.

(8) On the basis of the results of that assessment, the Commission carried out a detailed assessment of installations where potential irregularities in the application of the harmonised allocation rules were identified, seeking further clarification from the competent authorities of the Member State concerned.

(9) In the light of the results of that compliance assessment, the Commission considers the NIMs of Belgium, Bulgaria, Denmark, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom to be compatible with Directive 2003/87/EC and Decision 2011/278/EU. The installations included in the NIMs by these Member States have been found eligible for free allocation and no inconsistencies with regard to the preliminary total annual amounts of emission allowances allocated free of charge proposed by each of these Member States could be detected.

(10) But, in the light of the results of the assessment, the Commission finds that certain aspects of the NIMs submitted by the Czech Republic and Germany are incompatible with the criteria contained in Directive 2003/87/EC and in Decision 2011/278/EU, taking into account the Commission's guidance documents to Member States endorsed by the Climate Change Committee on 14 April 2011.

(11) The Commission notes that Germany has proposed that seven installations receive an increase in the level of free allocation of emission allowances because it considers this would avoid undue hardship. In accordance with Article 10a of Directive 2003/87/EC and Decision 2011/278/EU, the preliminary amounts of free allocation to be submitted as part of the NIMs are calculated on the basis of harmonised Union-wide rules. Decision 2011/278/EU does not provide for the adjustment which Germany would wish to make on the basis of Article 9(5) of the German Greenhouse Gas Emissions Trading Act — TEHG of 28 July 2011. Whereas until 2012, free allocation of emission allowances was organised nationally, for the period as of 2013 the legislator intentionally established fully-harmonised rules for free allocation to installations, so that all installations are treated in the same manner. Any unilateral change to the preliminary amounts of free allocation calculated by Member States on the basis of Decision 2011/278/EU would undermine this harmonised approach. Germany has not substantiated that the allocation for the installations in question calculated on the basis of Decision 2011/278/EU was manifestly inappropriate having regard to the objective of full harmonisation of allocations to be achieved. Assigning more free allowances to some installations would distort or threaten to distort competition and has cross-border effects given Union-wide trade in all sectors covered by Directive 2003/87/EC. In the light of the principle of equal treatment of installations under the EU ETS and of Member States, the Commission finds that it is therefore appropriate to object to the preliminary amounts of free allocation to certain installations contained in the German NIMs and listed in point A of Annex I.

(12) The Commission finds that the NIMs proposed by Germany also contravene Decision 2011/278/EU because the application of the product benchmark for hot metal in the cases listed in point B of Annex I to this Decision is inconsistent with the relevant rules. In this regard, the Commission observes that in the German NIMs, in cases of basic oxygen furnace (BOF) steelmaking processes and where hot metal from the blast furnace is

not refined to steel within the same installation, but exported for further processing, no free allocation of emission allowances is provided to the operator of the installation with the blast furnace for the production of the hot metal. Instead, the free allocation is provided to the installation where the steel refining takes place.

(13) The Commission notes that for the purposes of allocating emission allowances, product benchmarks have been laid down in Decision 2011/278/EU taking into account the product definitions and the complexity of the production processes that allow for verification of production data and a uniform application of the product benchmarks across the Union. For the application of the product benchmarks, installations are divided into sub-installations, a product benchmark sub-installation being defined as inputs, outputs and corresponding emissions relating to the production of a product for which a benchmark has been set in Annex I to Decision 2011/278/EU. Benchmarks are thus established for products and not for processes. Accordingly, a benchmark has been developed for hot metal, with the product defined as liquid iron saturated with carbon for further processing. The fact that the system boundaries for the hot metal benchmark set out in Annex I to Decision 2011/278/EU comprise the BOF cannot permit Member States to disregard that allocations should take place for the production of a given product. This consideration is corroborated by the fact that the benchmark values should cover all production-related direct emissions. However, it is the production of hot metal in the blast furnace that mainly causes emissions while the process of refining the hot metal to steel in the BOF converter is relatively low in emissions. Accordingly, the benchmark value would be much lower, if it also covered installations importing hot metal and refining it in the BOF converter to steel. Moreover, in the light of the overall scheme for allocation set up by Decision 2011/278/EU, in particular with regard to the rules on significant capacity changes, the allocation proposed by Germany cannot be regarded as consistent. The Commission therefore finds that due to the lack of a corresponding sub-installation that would allow for the determination of the allocation in accordance with Article 10 of Decision 2011/278/EU, installations importing hot metal for further processing cannot be regarded eligible for receiving free allocation on the basis of the hot metal benchmark for the amount of hot metal imported. The Commission therefore objects to the preliminary total annual amounts of free allocation proposed for the installations listed in point B of Annex I to this Decision.

(14) With regard to the application of the benchmark for hot metal in the NIMs as proposed by the Czech Republic, the Commission notes that the allocation to the installation listed under point C with the identifier CZ-existing-CZ-73-CZ-0134-11/M does not correspond to the value of the hot metal benchmark multiplied by the relevant product-related historical activity level as submitted in the NIMs and is therefore not in line with Article 10(2)(a) of Decision 2011/278/EU. The Commission therefore objects to the allocation to this installation unless this error is corrected. Furthermore, the Commission notes that the allocation to the installation listed under point C with the identifier CZ-existing-CZ-52-CZ-0102-05 takes account of processes that are covered by the system boundaries of the hot metal benchmark. The installation, however, does not produce, but imports hot metal. Due to the lack of production of hot metal in the installation with the identifier CZ-existing-CZ-52-CZ-0102-05, and thus a lack of a corresponding product benchmark sub-installation that would allow for the determination of the allocation in accordance with Article 10 of Decision 2011/278/EU, the proposed allocation is not consistent with the allocation rules and may give rise to double counting. The Commission therefore objects to the allocation to the installations listed in point C of Annex I to this Decision.

(15) The Commission notes that the installations referred to in point D of Annex I to this Decision receive an allocation on the basis of a process emissions sub-installation for the production of zinc in the blast furnace and related processes. In this regard, the Commission notes that the emissions covered by the process emissions sub-installation are already covered by the product benchmark sub-installation for hot metal on the basis of which one of the installations also receives an allocation and are thus double counted. The product benchmark sub-installation for hot metal clearly covers inputs, outputs and corresponding emissions relating to the production of hot metal in the blast furnace and all related processes as set out in Annex I to Decision 2011/278/EU, including slag treatment. The NIMs proposed by Germany therefore contravene Article 10(8) of Decision 2011/278/EU and the obligation to avoid double-counting of emissions because certain emissions are accounted for twice in the allocation to these installations. The Commission therefore objects to the allocation to these installations on the basis of a process emissions sub-installation for the production of zinc in the blast furnace and related processes.

(16) The Commission also notes that the list of installations set out in the German NIMs is incomplete and therefore

contravenes Article 11(1) of Directive 2003/87/EC. The list does not include installations producing polymers, in particular S-PVC and E-PVC, and vinyl chloride monomer (VCM) with the quantities of allowances intended to be allocated to each of these installations situated within the territory of Germany, to which that Directive applies and which are referred to in Section 5.1 of the Commission's guidance on the interpretation of Annex I to Directive 2003/87/EC, endorsed by the Climate Change Committee on 18 March 2010. In this regard, the Commission is aware of the opinion brought forward by Germany that the production of polymers, in particular S-PVC and E-PVC, and VCM is not covered by Annex I to Directive 2003/87/EC. The Commission considers that polymers, including S-PVC and E-PVC, and VCM, satisfy the definition of the relevant activity (production of bulk organic chemicals) in Annex I to Directive 2003/87/EC. Accordingly, in close cooperation with Member States and the industry sectors concerned corresponding product benchmarks for S-PVC, E-PVC and VCM were derived as set out in Annex I to Decision 2011/278/EU.

(17) The Commission notes that the fact that the German list of installations is incomplete has undue effects on the allocation on the basis of the heat benchmark subinstallation for installations listed in point E of Annex I to this Decision exporting heat to installations producing bulk organic chemicals. Whereas only heat exports to an installation or other entity not covered by Directive 2003/87/EC give rise to free allocation on the basis of the heat benchmark subinstallation, in the German NIMs, heat exports to installations carrying out activities within the scope of Annex I to Directive 2003/87/EC are taken into account for the allocation to installations listed in point E of Annex I to this Decision. Consequently, the proposed allocations to the installations listed in point E of Annex I are not consistent with the allocation rules. The Commission therefore objects to the allocation to the installations listed in point E of Annex I to this Decision.

(18) In accordance with Articles 9 and 9a of Directive 2003/87/EC, the Commission published by Decision 2010/634/EU [1] the absolute Union-wide quantity of allowances for the period from 2013 to 2020. In this regard, the quantity taken into account pursuant to Article 9 of Directive 2003/87/EC is based on the total quantities of allowances issued by the Member States in accordance with the Commission decisions on their National Allocation Plans for the period from 2008 to 2012. However, after the end of the trading period from 2008 to 2012, additional information and more accurate data has become available to the Commission in particular with regard to the quantity of allowances issued to new entrants from the Member States' New Entrant Reserves and on the use of allowances in Member States' set-asides for Joint Implementation projects established pursuant to Article 3 of Commission Decision 2006/780/EC [2]. Furthermore, with regard to the adjustment of the Union-wide quantity of allowances pursuant to Article 9a of Directive 2003/87/EC, and in particular paragraphs 1 and 4 thereof, account should be taken of the latest scientific data with regard to the global warming potential of greenhouse gases, Commission Decisions C(2011) 3798 and C(2012) 497 to accept the unilateral inclusion of additional greenhouse gases and activities by Italy and the United Kingdom pursuant to Article 24 of Directive 2003/87/EC as well as the exclusion of installations with low emissions from the EU ETS by Germany, Spain, France, Italy, the Netherlands, Slovenia and the United Kingdom, pursuant to Article 27 of Directive 2003/87/EC.

(19) In addition, the absolute Union-wide quantity of allowances should take account of the accession of Croatia to the European Union as well as the extension of the EU ETS to the EEA-EFTA States. Pursuant to point 8 of Annex III to the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, the quantity taken into account pursuant to Article 9 of Directive 2003/87/EC is increased as a result of Croatia's accession by the quantity of allowances that Croatia shall auction pursuant to Article 10(1) of Directive 2003/87/EC. The incorporation into the European Economic Area (EEA) Agreement of Directive 2009/29/EC of the European Parliament and of the Council [3] and Decision 2011/278/EU as amended by Commission Decision 2011/745/EU [4] by Decision of the EEA Joint Committee No 152/2012 [5] implies an increase of the total quantity of allowances in the EU ETS as a whole under Articles 9 and 9a of Directive 2003/87/EC. It is therefore necessary to take account of the relevant figures provided by the EEA-EFTA States in Part A of the Appendix to that Directive in the EEA Agreement.

[1] Commission Decision 2010/634/EU of 22 October 2010 adjusting the Union-wide quantity of allowances to be issued under the Union Scheme for 2013 and repealing Decision 2010/384/EU (OJ L 279, 23.10.2010, p. 34).

[2] Commission Decision 2006/780/EC of 13 November 2006 on avoiding double counting of greenhouse gas emission reductions under the Community emissions trading scheme for project activities under the Kyoto Protocol pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 316, 16.11.2006, p. 12).

[3] Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63).

[4] Commission Decision 2011/745/EU of 11 November 2011 amending Decisions 2010/2/EU and 2011/278/EU as regards the sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage (OJ L 299, 17.11.2011, p. 9).

[5] Decision of the EEA Joint Committee No 152/2012 of 26 July 2012 amending Annex XX (Environment) to the EEA Agreement (OJ L 309, 8.11.2012, p. 38).

(20) Decision 2010/634/EU should therefore be amended accordingly.

(21) In 2014 and each subsequent year, the total quantity of allowances determined for 2013 on the basis of Articles 9 and 9a of Directive 2003/87/EC decreases by a linear factor of 1,74 % from 2010, amounting to 38 264 246 allowances.

(22) Article 10a(5) of Directive 2003/87/EC limits the maximum annual quantity of allowances that is the basis for calculating allocations free of charge to installations not covered by Article 10a(3) of Directive 2003/87/EC. This limit is composed of two elements referred to in points (a) and (b) of Article 10a(5) of Directive 2003/87/EC, each of which has been determined by the Commission on the basis of the quantities determined pursuant to Articles 9 and 9a of Directive 2003/87/EC, data publicly available in the Union registry and information provided by Member States, in particular with regard to the share of emissions from electricity generators and other installations not eligible for free allocation referred to in Article 10a(3) of Directive 2003/87/EC as well as verified emissions in the period from 2005 to 2007 from installations only included in the EU ETS from 2013 onwards, where available, taking into account the latest scientific data with regard to the global warming potential of greenhouse gases.

(23) The limit set by Article 10a(5) of Directive 2003/87/EC may not be exceeded, and this is ensured by the application of an annual cross-sectoral correction factor which, if necessary, reduces the number of free allowances in all installations eligible for free allocation in a uniform manner. Member States have to take this factor into account when deciding on the basis of preliminary allocations and this Decision on the final annual amounts of allocation to installations. Article 15(3) of Decision 2011/278/EU requires the Commission to determine the cross-sectoral correction factor, which is done through comparing the sum of the preliminary total annual amounts of free allocation submitted by Member States to the limit set by Article 10a(5) in the manner set out in Article 15(3) of Decision 2011/278/EU.

(24) Following the incorporation into the EEA Agreement of Directive 2009/29/EC by Decision of the EEA Joint Committee No 152/2012, the limit set by Article 10a(5) of Directive 2003/87/EC, the harmonised allocation rules and the cross-sectoral correction factor are to be applied within the EEA-EFTA countries. It is therefore necessary to take into account the preliminary annual amounts of emission allowances allocated free of charge over the period 2013 to 2020 fixed by the decisions of the EFTA Surveillance Authority of 10 July 2013 concerning the NIMs of Iceland, Liechtenstein and Norway.

(25) The limit set by Article 10a(5) of Directive 2003/87/EC is 809 315 756 allowances in 2013. In order to derive this limit, the Commission first collected from Member States and the EEA-EFTA countries information on whether installations qualify as an electricity generator or other installation covered by Article 10a(3) of Directive 2003/87/EC. The Commission then determined the share of emissions in the period from 2005 to 2007 from the installations not covered by that provision, but included in the EU ETS in the period from 2008 to 2012. The Commission then applied this share of 34,78289436 % to the quantity determined on the basis of Article 9 of Directive 2003/87/EC (1 976 784 044 allowances). To the result of this calculation, the Commission then added 121 733 050 allowances, based on the average annual verified emissions in the period from 2005 to 2007 of relevant installations taking into account the revised scope of the EU ETS as of 2013. In this respect, the Commission used information provided by Member States and the EEA-EFTA countries for the adjustment of the cap. Where annual verified emissions for the period 2005-2007 were not available, the Commission extrapolated, to the extent possible, the relevant emission figures from verified emissions in later years by applying the factor of 1,74 % in reverse direction. The Commission consulted and obtained confirmation from Member States' authorities on information and data used in this respect. The limit set by Article 10a(5) of Directive 2003/87/EC compared to the sum of the preliminary annual amounts of free allocation without application of the factors referred to in Annex VI to Decision 2011/278/EU gives the annual cross-sectoral correction factor as set out in Annex II to this Decision.

(26) Given the improved overview of the number of allowances that will be allocated free of charge that results from this Decision, the Commission is able to better estimate the amount of allowances to be auctioned in accordance with Article 10(1) of Directive 2003/87/EC. Taking into account the limit set by Article 10a(5) of Directive 2003/87/EC, the allocation in respect of heat production pursuant to Article 10a(4) set out in the table below and the size of the new entrants' reserve, the Commission estimates that the amount of allowances to be auctioned in the period from 2013 to 2020 is 8 176 193 157.

(27) The following table sets out the annual allocation in respect of heat production pursuant to Article 10a(4) of Directive 2003/87/EC:

Year	Free allocation under Article 10a(4) of Directive 2003/87/EC
2013	104 326 872
2014	93 819 860
2015	84 216 053
2016	75 513 746
2017	67 735 206
2018	60 673 411
2019	54 076 655
2020	47 798 754

(28) Member States should, on the basis of the NIMs, the cross-sectoral correction factor and the linear factor, proceed to the determination of the final annual amount of emission allowances allocated free of charge for each year over the period from 2013 to 2020. The final annual amount of free emission allowances should be determined by Member States in accordance with this Decision, Directive 2003/87/EC, Decision 2011/278/EU and with other relevant provisions of Union law. Likewise, the EEA EFTA States should proceed to the determination of the final annual amount of allowances allocated free of charge for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU to installations on their territory on the basis of their NIMs, the cross-sectoral correction factor and the linear factor.

(29) The Commission considers that the allocation of allowances free of charge to installations covered by the EU ETS on the basis of Union-wide harmonised rules does not confer a selective economic advantage to undertakings with the potential to distort competition and affect intra-Union trade. Member States are obliged under Union law to allocate allowances for free and cannot choose to auction the relevant quantities instead. Member States' decisions with regard to the allocation of allowances free of charge cannot therefore be considered as involving State aid in the sense of Articles 107 and 108 TFEU,

HAS ADOPTED THIS DECISION:

CHAPTER I

NATIONAL IMPLEMENTING MEASURES

Article 1

1. The inscription of the installations listed in Annex I to this Decision on the lists of installations covered by Directive 2003/87/EC submitted to the Commission pursuant to Article 11(1) of Directive 2003/87/EC and the corresponding preliminary total annual amounts of emission allowances allocated free of charge to these installations is rejected.

2. No objections are raised should a Member State amend the preliminary total annual amounts of emission allowances submitted for the installations in its territory included in the lists referred to in paragraph 1 and listed in point A of Annex I to this Decision before determining the final total annual amount for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU to the extent that the amendment consists of excluding any increase in allocation that is not provided for in that Decision.

No objections are raised should a Member State amend the preliminary total annual amounts of emission allowances allocated for free to installations in its territory included in the lists referred to in paragraph 1 and listed in point B of Annex I to this Decision before determining the final total annual amount for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU to the extent that the amendment consists of excluding any allocation on the basis of the hot metal benchmark to installations importing hot metal as defined in Annex I to Decision 2011/278/EU for further processing. Where this leads to an increase of the preliminary total annual amount of emission allowances in an installation producing and exporting hot metal to an installation listed in point B of Annex I to this Decision, no objections are raised should the Member State concerned amend the preliminary total annual amount of this installation producing and exporting hot metal accordingly.

No objections are raised should a Member State amend the preliminary total annual amounts of emission allowances allocated free of charge to installations in its territory included in the lists referred to in paragraph 1 and listed in point C of Annex I to this Decision before determining the final total annual amount for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU to the extent that the amendment consists of bringing the allocation in line with Article 10(2)(a) of Decision 2011/278/EU and excluding any allocation for processes that are covered by the system boundaries of the product benchmark for hot metal as defined in Annex I to Decision 2011/278/EU to an installation not producing, but importing hot metal that would otherwise lead to double counting.

No objections are raised should a Member State amend the preliminary total annual amounts of emission allowances allocated free of charge to installations in its territory included in the lists referred to in paragraph 1 and listed in point D of Annex I to this Decision before determining the final total annual amount for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU to the extent that the amendment consists of excluding any allocation on the

basis of a process emissions sub-installation for the production of zinc in the blast furnace and related processes. Where this leads to an increase of the preliminary allocation under the fuel or heat benchmark sub-installation in an installation with a blast furnace and listed in point D of Annex I to this Decision, no objections are raised should the Member State concerned amend the preliminary total annual amount of this installation accordingly.

No objections are raised should a Member State amend the preliminary total annual amounts of emission allowances allocated free of charge to installations in its territory included in the lists referred to in paragraph 1 and listed in point E of Annex I to this Decision before determining the final total annual amount for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU to the extent that the amendment consists of excluding any allocation for heat exported to installations producing polymers, such as S-PVC and E-PVC, and VCM.

3. Any amendment referred to in paragraph 2 shall be notified to the Commission as soon as possible, and a Member State may not proceed to the determination of the final total annual amount for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU until acceptable amendments have been made.

Article 2

Without prejudice to Article 1, no objections are raised with regard to the lists of installations covered by Directive 2003/87/EC submitted by Member States pursuant to Article 11(1) of Directive 2003/87/EC and the corresponding preliminary total annual amounts of emission allowances allocated for free to these installations.

CHAPTER II

TOTAL QUANTITY OF ALLOWANCES

Article 3

Article 1 of Decision 2010/634/EU is replaced by the following:

"*Article 1*

On the basis of Articles 9 and 9a of Directive 2003/87/EC, the total quantity of allowances to be issued from 2013 onwards and annually decreased in a linear manner pursuant to Article 9 of Directive 2003/87/EC, is 2 084 301 856 allowances."

CHAPTER III

CROSS-SECTORAL CORRECTION FACTOR

Article 4

The uniform cross-sectoral correction factor referred to in Article 10a(5) of Directive 2003/87/EC and determined in accordance with Article 15(3) of Decision 2011/278/EU is set out in Annex II to this Decision.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 5 September 2013.

For the Commission

Connie HEDEGAARD

Member of the Commission

ANNEX I

POINT A

Installation Identifier as submitted in the NIMs
DE000000000000010
DE000000000000563
DE000000000000978
DE000000000001320
DE000000000001425
DE-new-14220-0045
DE-new-14310-1474

POINT B

Installation Identifier as submitted in the NIMs
DE000000000000044
DE000000000000053
DE000000000000056
DE000000000000059
DE000000000000069

POINT C

Installation identifier as submitted in the NIMs
CZ-existing-CZ-73-CZ-0134-11/M
CZ-existing-CZ-52-CZ-0102-05

POINT D

Installation Identifier as submitted in the NIMs
DE-new-14220-0045
DE000000000001320

POINT E

Installation Identifier as submitted in the NIMs
DE000000000000005
DE000000000000762

DE000000000001050
DE000000000001537
DE000000000002198

ANNEX II

Year	Cross-sectoral correction factor
2013	94,272151 %
2014	92,634731 %
2015	90,978052 %
2016	89,304105 %
2017	87,612124 %
2018	85,903685 %
2019	84,173950 %
2020	82,438204 %

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2013 OF THE ESA-EU CUSTOMS COOPERATION COMMITTEE

of 7 August 2013

on a derogation from the rules of origin laid down in Protocol 1 to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, to take account of the special situation of Mauritius with regard to preserved skipjack

(2013/449/EU)

THE CUSTOMS COOPERATION COMMITTEE,

Having regard to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, and in particular Article 41(4) of Protocol I thereto,

Whereas:

(1) The Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part [1] ('the interim EPA') applies provisionally as from 14 May 2012 between the Union and the Republic of Madagascar, the Republic of Mauritius, the Republic of Seychelles and the Republic of Zimbabwe.

(2) Protocol 1 to the interim EPA concerning the definition of the concept of 'originating products' and methods of administrative cooperation contains the rules of origin for the importation of products originating in the ESA States into the Union.

(3) In accordance with Article 42(1) of Protocol 1 to the interim EPA, derogations from those rules of origin are granted where the development of existing industries in the ESA States justifies them.

(4) In accordance with Article 42(5), when a request for derogation concerns an island state, its examination shall be carried out with a favourable bias having particular regard to the economic and social impact of the decision to be taken especially in respect of employment and the need to apply the derogation for a period taking into account the particular situation of the island state and its difficulties.

(5) On 29 November the ESA-EU Customs Cooperation Committee granted, in accordance with Article 42(8) of Protocol 1 to the interim EPA, an automatic derogation [2] to the beneficiary ESA States (Mauritius, Seychelles and Madagascar) for 8 000 tonnes of preserved tuna and 2 000 tonnes of tuna loins.

(6) In addition to the automatic derogation referred to before, Mauritius has requested a derogation covering a quantity of 6 000 tonnes of preserved tuna of CN codes 1604 14 11, 1604 14 18 and 1604 20 70 manufactured from tuna of the species *Katsuwonus pelamis* (skipjack), *Thunnus alalunga* (albacore tuna), *Thunnus albacares* (yellow fin tuna) and *Thunnus obesus* (big eye tuna) imported into the Union from 1 April 2013 to 31 December 2013 in accordance with Article 42(1) of Protocol 1 to the interim EPA.

(7) Mauritian tuna processors heavily rely on the supply by EU purse seiners of originating tuna under the interim EPA. Recent catches of originating skipjack (Katsuwonus pelamis) in the Indian Ocean have decreased causing new challenges for Mauritian processors confronted with an increasing demand for skipjack-based products in the Union. Granting a derogation for yellow fin tuna-based products (*Thunnus albacares*) is not justified as catches of originating yellow fin tuna in the Indian Ocean have increased. Derogation should therefore be granted for skipjack only.

(8) Exports of canned tuna from Mauritius to the Union have been constantly increasing over the last five years.

(9) Mauritius benefits from the global quota provided for by the automatic derogation granted to all beneficiary ESA states (Mauritius, Seychelles and Madagascar). In case of partial use of the quota by the other beneficiary ESA states, Mauritius could also benefit from possible

[1] OJ L 111, 24.4.2012, p. 2.

[2] OJ L 347, 15.12.2012, p. 38.

annual re-allocations of unused quantities by these states. Given the recent provisional application of the interim EPA, an appropriate monitoring of the utilization rate of the automatic derogation has not yet been possible in order to verify the re-allocation patterns of unused quantities among the beneficiary ESA states.

(10) Mauritius may source originating raw tuna from outside the Indian Ocean in accordance with Articles 4 and 5 of Protocol 1 to the interim EPA.

(11) The on-going EPA negotiations between the European Union and other ACP states from which Mauritius may source originating raw tuna for its processing industry may offer alternative supply opportunities of originating tuna in the near future.

(12) It is therefore appropriate to provide Mauritius with a derogation for 2 000 tonnes of preserved skipjack which respects the ability of the existing industry to continue its exports to the Union.

(13) The potential re-allocation of unused quantities between the beneficiary ESA states and the cumulation provided for in the interim EPA justify that the derogation is granted temporarily. To provide for legal certainty for operators, the derogation should be granted for a period of 1 year with effect from 1 April 2013.

(14) In order to benefit from the derogation, the non-originating materials to be used for the manufacture of preserved skipjack of CN codes 1604 14 11, 1604 14 18 and 1604 20 70 should be frozen skipjack (*Katsuwonus pelamis*) of HS Heading 0303.

(15) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [1] lays down rules relating to the management of tariff quotas. In order to ensure efficient management carried out in close cooperation between the authorities of the ESA States, the customs authorities of the Union and the Commission, those rules should apply mutatis mutandis to the quantities imported under the derogation granted by this Decision.

(16) In order to allow efficient monitoring of the operation of the derogation, the authorities of the ESA States should communicate regularly to the Commission details of the EUR.1 movement certificates issued.

HAS DECIDED AS FOLLOWS:

Article 1

By way of derogation from Protocol 1 to the interim EPA and in accordance with Article 42(1) and (5) of that Protocol, preserved skipjack of HS Heading 1604 manufactured from non-originating skipjack (*Katsuwonus pelamis*) of HS Heading 0303 shall be regarded as originating in Mauritius in accordance with the terms set out in Articles 2 to 5 of this Decision.

Article 2

The derogation provided for in Article 1 shall apply for one year for the product and the quantity set out in the Annex to this Decision which are declared for release for free circulation into the Union from Mauritius during the period of 1 April 2013 to 31 March 2014.

Article 3

The quantities set out in the Annex shall be managed in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 4

The customs authorities Mauritius shall carry out quantitative checks on exports of the products referred to in Article 1.

All the EUR.1 movement certificates they issue in relation to the products referred to in Article 1 shall bear a reference to this Decision.

Before the end of the month following each quarter, the customs authorities Mauritius shall forward to the Commission, via the Secretariat of the Customs Cooperation Committee, a statement of the quantities in respect of which movement certificates EUR. 1 have been issued pursuant to this Decision and the serial numbers of those certificates.

Article 5

Box 7 of movement certificates EUR.1 issued under this Decision shall contain one of the following indications:

'Derogation — Decision No 1/2013 of the ESA-EU Customs Cooperation Committee of 7 August 2013';

'Dérogation — Décision n° 1/2013 du Comité de Coopération Douanière AfOA-UE du 7 août 2013'.

Article 6

1. Mauritius and the Union shall take the measures necessary on their part to implement this Decision.

2. Where the Union has made a finding, on the basis of objective information, of irregularities or fraud or of a repeated failure to respect the obligations laid down in Article 4, the Union may seek temporary suspension of the derogation referred to in Article 1 in accordance with the procedure provided for in Article 22(5) and (6) of the interim EPA.

[1] OJ L 253, 11.10.1993, p. 1.

Article 7

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

This Decision shall apply from 1 April 2013.

Done at Brussels, 7 August 2013.

For the ESA-EU Customs Cooperation Committee

The Joint Chairmen

Vivianne FOCK TAVE Péter KOVÁCS

ANNEX

Order No	CN Code	Description of goods	Period	Quantities (in tonnes)
09.1620	ex 1604 14 11, ex 1604 14 18, ex 1604 20 70	Preserved skipjack (*Katsuwonus pelamis*) (1)	1.4.2013 – 31.3.2014	2 000

(1) In any form of packaging whereby the product is considered as preserved within the meaning of HS heading 1604.

NOTICE TO READERS

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

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

Where it is not possible to publish the electronic edition of the Official Journal due to unforeseen and exceptional circumstances, the printed edition shall be authentic and shall have legal effect in accordance with the terms and conditions set out in Article 3 of Regulation (EU) No 216/2013.

NOTE TO READERS — WAY OF REFERRING TO ACTS

As of 1 July 2013 the way of referring to acts has changed.

During a transitional period this new practice will coexist with the previous one.

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN