

Official Journal

of the European Union

L 111



English edition

Legislation

Volume 53

4 May 2010

Contents

II *Non-legislative acts*

REGULATIONS

- ★ **Commission Regulation (EU) No 375/2010 of 3 May 2010 refusing to authorise a health claim made on foods, other than those referring to the reduction of disease risk and to children's development and health ⁽¹⁾** 1
- ★ **Commission Regulation (EU) No 376/2010 of 3 May 2010 amending Regulation (EC) No 983/2009 on the authorisation and refusal of authorisation of certain health claims made on food and referring to the reduction of disease risk and to children's development and health ⁽¹⁾** 3
- ★ **Commission Regulation (EU) No 377/2010 of 3 May 2010 imposing a provisional anti-dumping duty on imports of sodium gluconate originating in the People's Republic of China** 5
- Commission Regulation (EU) No 378/2010 of 3 May 2010 establishing the standard import values for determining the entry price of certain fruit and vegetables 17

Price: EUR 3

(Continued overleaf)

(¹) Text with EEA relevance

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.

DECISIONS

2010/251/EU:

- ★ **Council Decision of 31 March 2010 appointing a member of the Court of Auditors** 19

2010/252/EU:

- ★ **Council Decision of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union** 20

RECOMMENDATIONS

2010/253/EU:

- ★ **Commission Recommendation of 28 April 2010 on the research joint programming initiative on 'Agriculture, food security and climate change'** 27

IV *Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty*

2010/254/EC:

- ★ **Decision No 1/2009 of the EU-Ukraine Cooperation Council of 23 November 2009 on the establishment of a Joint Committee** 30

2010/255/EC:

- ★ **Recommendation No 1/2009 of the EU-Ukraine Cooperation Council of 23 November 2009 on the implementation of the EU-Ukraine Association Agenda** 31

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 375/2010

of 3 May 2010

refusing to authorise a health claim made on foods, other than those referring to the reduction of disease risk and to children's development and health

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods⁽¹⁾, and in particular Article 18(5) thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 1924/2006 health claims made on food are prohibited unless they are authorised by the Commission in accordance with that Regulation and included in a list of permitted claims.
- (2) Regulation (EC) No 1924/2006 also provides that applications for authorisations of health claims may be submitted by food business operators to the national competent authority of a Member State. The national competent authority is to forward valid applications to the European Food Safety Authority (EFSA), hereinafter referred to as the Authority.
- (3) Following receipt of an application the Authority is to inform without delay the other Member States and the Commission and to deliver an opinion on a health claim concerned.
- (4) The Commission is to decide on the authorisation of health claims taking into account the opinion delivered by the Authority.
- (5) Following an application from PROBI AB, submitted on 22 December 2008 pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to the effects of *Lactobacillus plantarum* 299v on improved iron

absorption (Question No EFSA-Q-2008-785)⁽²⁾. The claim proposed by the applicant was worded as follows: '*Lactobacillus plantarum* 299v (DSM 9843) improves iron absorption'.

- (6) On 6 April 2009, the Commission and the Member States received the scientific opinion from the Authority which concluded that on the basis of the data presented, a cause and effect relationship had not been established between the consumption of *Lactobacillus plantarum* 299v (DSM 9843) and the claimed effect. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.
- (7) The comments from the applicants and the members of the public received by the Commission, pursuant to Article 16(6) of Regulation (EC) No 1924/2006, have been considered when setting the measures provided for in this Regulation.
- (8) Health claims referred to in Article 13(1)(a) of Regulation (EC) No 1924/2006 are subject to the transition measures laid down in Article 28(5) of that Regulation only if they comply with the conditions therein mentioned, among which that they have to comply with the Regulation. As the Authority concluded that a cause and effect relationship had not been established between the consumption of *Lactobacillus plantarum* 299v (DSM 9843) and the claimed effect, the claim does not comply with Regulation (EC) No 1924/2006, and therefore the transition period foreseen in Article 28(5) of that Regulation is not applicable. A transition period of six months is provided for, to enable food business operators to adapt to the requirements laid down in this Regulation.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health and neither the European Parliament nor the Council have opposed them,

⁽¹⁾ OJ L 404, 30.12.2006, p. 9.

⁽²⁾ *The EFSA Journal* (2009) 999, 1-9.

HAS ADOPTED THIS REGULATION:

Article 1

The health claim set out in the Annex to this Regulation shall not be included in the Community list of permitted claims as provided for in Article 13(3) of Regulation (EC) No 1924/2006.

However, it may continue to be used for six months after the entry into force of this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 3 May 2010.

For the Commission
The President
José Manuel BARROSO

ANNEX

Rejected health claims

Application — Relevant provisions of Regulation (EC) No 1924/2006	Nutrient, substance, food or food category	Claim	EFSA opinion reference
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	<i>Lactobacillus plantarum</i> 299v (DSM 9843)	<i>Lactobacillus plantarum</i> 299v (DSM 9843) improves iron absorption	Q-2008-785

COMMISSION REGULATION (EU) No 376/2010

of 3 May 2010

amending Regulation (EC) No 983/2009 on the authorisation and refusal of authorisation of certain health claims made on food and referring to the reduction of disease risk and to children's development and health

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods⁽¹⁾, and in particular Article 17(3) thereof,

Having consulted the European Food Safety Authority,

Whereas:

- (1) Pursuant to Article 16(4) of Regulation (EC) No 1924/2006, an opinion of the European Food Safety Authority (EFSA), hereinafter referred to as the Authority, in favour of authorising a health claim should include certain particulars. Accordingly, those particulars should be set out in the Annex of authorised claims to the Regulations authorising and/or refusing to authorise certain health claims made on foods and include, as the case may be, the revised wording of the claim, specific conditions of use of the claim, and, where applicable, conditions or restrictions of use of the food and/or an additional statement or warning, in accordance with the rules laid down in Regulation (EC) No 1924/2006 and in line with the opinions of the Authority.
- (2) Following two opinions of the Authority on plant stanols and plant sterols and lowering/reducing blood LDL-cholesterol (Question No EFSA-Q-2008-085 and Question No EFSA-Q-2008-118)⁽²⁾, the Commission authorised the health claims stating that plant sterols/plant stanol esters 'have been shown to lower/reduce blood cholesterol. High cholesterol is a risk factor in the development of coronary heart disease' in Regulation (EC) No 983/2009⁽³⁾ with the specific conditions of use of 'Information to the consumer that the beneficial effect is obtained with a daily intake of at least 2 g of plant sterols/plant stanols'.
- (3) In the context of the procedure for the authorisation of health claims under Regulation (EC) No 1924/2006, the

Standing Committee on the Food Chain and Animal Health, at its meeting of 20 February 2009, concluded that, regarding the indication of a quantitative effect in health claims there was a need for scientific advice from the Authority to ensure that such health claims are authorised in a way which will not mislead the consumer, and that conditions of use are set in a coherent way. To that end, the Commission submitted a request for advice to the Authority, in accordance with Article 19(2) of that Regulation.

- (4) On 3 August 2009 the Commission and the Member States received the scientific opinion from the Authority (Question No EFSA-Q-2009-00530 and EFSA-Q-2009-00718)⁽⁴⁾ which concluded that for a daily intake of 1,5-2,4 g plant sterols/stanols added to foods such as yellow fat spreads, dairy products, mayonnaise and salad dressings an average reduction of between 7 and 10,5 % can be expected and that such reduction is of biological significance. In addition, the Authority indicated that the blood LDL cholesterol lowering effect is usually established within the 2-3 weeks and can be sustained by a continued consumption of plant sterols/stanols.
- (5) Therefore, taking into account the scientific opinion from the Authority and in order to ensure that such health claims referring to the magnitude of the claimed effect are authorised in a way that would not mislead the consumer, and that their conditions of use are set in a coherent way, it is necessary to amend the conditions of use set for the two authorised health claims related to the effects of plant sterols and plant stanol esters on the lowering of the blood cholesterol.
- (6) Following the opinion of the Authority on essential fatty acids and in particular α -linolenic acid (ALA) and linoleic acid (LA) and normal growth and development of children (Question No EFSA-Q-2008-079)⁽⁵⁾, the Commission, authorised the health claim 'Essential fatty acids are needed for normal growth and development of children' in Regulation (EC) No 983/2009 with the specific conditions of use of 'Information to the consumer that the beneficial effect is obtained with a daily intake of 1 % of total energy for linoleic acid and 0,2 % of total energy for α -linolenic acid'.

⁽¹⁾ OJ L 404, 30.12.2006, p. 9.

⁽²⁾ *The EFSA Journal* (2008) 781, 1-2 and 825, 1-13 respectively.

⁽³⁾ OJ L 277, 22.10.2009, p. 3.

⁽⁴⁾ *The EFSA Journal* (2009) 1175, 1-9.

⁽⁵⁾ *The EFSA Journal* (2008) 783, 1-10.

- (7) In the context of the procedure for the authorisation of health claims under Regulation (EC) No 1924/2006, the Standing Committee on the Food Chain and Animal Health, at its meeting of 20 February 2009, concluded that the Authority should be asked to give general advice on reference values for the purpose of labelling for fatty acids to enable the review of the conditions of use for the relevant authorised health claim, in accordance with Article 19(2) of that Regulation. On 3 August 2009 the Commission and the Member States received the scientific opinion from the Authority (Question No EFSA-Q-2009-00548) ⁽¹⁾ which concluded that the proposed labelling reference value of 2 g for the n-3 polyunsaturated fatty acid (PUFA) ALA is consistent with the recommended intakes for individuals in the general population in European countries. In addition, the Authority proposed 10 g as labelling reference intake value for n-6 PUFA LA.
- (8) Therefore, taking into account the scientific opinion from the Authority and in order to set appropriate conditions of use for the health claims related to the effects of fatty acids, it is necessary to amend the conditions of use set for the authorised health claim related to the effects of essential fatty acids on normal growth and development of children.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health and neither the European Parliament nor the Council have opposed them,
1. the text of the first entry, fifth column (Conditions of use of the claim), is replaced by the following:
- ‘Information to the consumer that the beneficial effect is obtained with a daily intake of 1,5-2,4 g plant sterols. Reference to the magnitude of the effect may only be made for foods within the following categories: yellow fat spreads, dairy products, mayonnaise and salad dressings. When referring to the magnitude of the effect, the entire range “7 to 10 %” and the duration to obtain the effect “in 2 to 3 weeks” must be communicated to the consumer.’;
2. the text of the second entry, fifth column (Conditions of use of the claim), is replaced by the following:
- ‘Information to the consumer that the beneficial effect is obtained with a daily intake of 1,5-2,4 g plant stanols. Reference to the magnitude of the effect may only be made for foods within the following categories: yellow fat spreads, dairy products, mayonnaise and salad dressings. When referring to the magnitude of the effect, the entire range “7 to 10 %” and the duration to obtain the effect “in 2 to 3 weeks” must be communicated to the consumer.’;
3. the text of the third entry, fifth column (Conditions of use of the claim), is replaced by the following:
- ‘Information to the consumer that the beneficial effect is obtained with a daily intake of 2 g of α-linolenic acid (ALA) and a daily intake of 10 g of linoleic acid (LA)’.

HAS ADOPTED THIS REGULATION:

Article 1

In Annex I to Regulation (EC) No 983/2009, the table is amended as follows:

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 3 May 2010.

For the Commission
The President
 José Manuel BARROSO

⁽¹⁾ *The EFSA Journal* (2009) 1176, 1-11.

COMMISSION REGULATION (EU) No 377/2010

of 3 May 2010

imposing a provisional anti-dumping duty on imports of sodium gluconate originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

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

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

- (1) On 30 June 2009, the Commission received a complaint concerning imports of dry sodium gluconate (SG) originating in the People's Republic of China (China) lodged pursuant to Article 5 of the basic Regulation by the European Chemical Industry Council (CEPIC) (the complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Union production of dry sodium gluconate.
- (2) The complaint contained prima facie evidence of dumping and of material injury caused by such dumping which was considered sufficient to justify the opening of an anti-dumping proceeding.
- (3) On 11 August 2009, a proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union*⁽²⁾.

2. Parties concerned by the proceeding

- (4) The Commission officially advised the exporting producers in China, importers, traders, users and associations known to be concerned, the authorities of China and the complainant Union producers of the

initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

- (5) All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.
- (6) In order to allow exporting producers to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned and to the authorities of China. One exporting producer requested MET pursuant to Article 2(7) of the basic Regulation and another exporting producer, including two related companies, requested IT pursuant to Article 9(5) of the same Regulation.
- (7) In view of the apparent high number of exporting producers in China and importers in the Union, the Commission indicated in the notice of initiation that sampling might be applied for these parties in accordance with Article 17 of the basic Regulation.
- (8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in China and Union importers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period (1 July 2008 to 30 June 2009).
- (9) Given the limited number of responses to the sampling exercise, it was decided that sampling was not necessary for Chinese exporting producers or importers in the Union.
- (10) Questionnaires were sent to all companies in China and importers in the Union who responded to the sampling exercise, to the Union producers, and to all known importers and users in the Union. Replies were received from two exporting producers or groups of exporting producers in China, two producers in the Union and four importers/users.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 188, 11.8.2009, p. 24.

(11) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest and carried out verifications at the premises of the following companies:

1. Producers in the Union:

— Jungbunzlauer (JBL), Marckolsheim, France and related sales companies,

— Roquette Italia SpA, Cassano Spinola, Italy and related sales companies;

2. Exporting producers in China:

— Shandong Kaison Biochemical Co., Ltd,

— Qingdao Kehai Biochemistry Co., Ltd;

3. Users/importers in the Union:

— Chryso SAS, Issy les Moulineaux, France,

— Henkel AG, Düsseldorf, Germany,

— CHT R. Beitlich GmbH, Tübingen, Germany.

(12) In view of the need to establish a normal value for exporting producers in China to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country, the USA in this case, took place at the premises of the following company:

— Producer in the USA: PMP — Fermentation Products Inc., Peoria, USA.

3. Investigation period

(13) The investigation of dumping and injury covered the period from 1 July 2008 to 30 June 2009 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2005 to the end of the investigation period (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(14) The product concerned is dry sodium gluconate originating in China (the product concerned), with a Customs Union and Statistics (CUS) number 0023277-9 and a Chemical Abstracts Service (CAS) registry number 527-07-1, currently falling within CN code ex 2918 16 00.

(15) Dry sodium gluconate is used mainly in the construction industry as a set retarder and concrete plasticiser and in other industries as surface treatment for metals (removal of rust, oxides and fat) and for the cleaning of bottles and industrial equipment. The product can also be used in the food and pharmaceutical industries.

2. Like product

(16) The investigation has shown that dry sodium gluconate produced and sold by the Union industry in the Union, dry sodium gluconate produced and sold on the domestic market in the USA, which was selected as an analogue country, dry sodium gluconate produced and sold on the domestic market in China and dry sodium gluconate produced in China and sold to the Union have essentially the same basic physical and technical characteristics.

(17) Therefore these products are provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Market Economy Treatment (MET)

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

(19) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

1. business decisions and costs are made in response to market signals and without significant State interference; costs of major inputs substantially reflect market values;

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

3. there are no significant distortions carried over from the former non-market economy system;
4. bankruptcy and property laws guarantee legal certainty and stability;
5. exchange rate conversions are carried out at market rates.
- (20) Following the initiation of the proceeding, one Chinese exporting producer, Shandong Kaison Biochemical Co., Ltd, requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadline.
- (21) The company demonstrated that it fulfilled the criteria of Article 2(7)(c) of the basic Regulation and could be granted MET.
- 2. Individual treatment (IT)**
- (22) Pursuant to Article 2(7)(a) of the basic Regulation, a countrywide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation to be granted IT.
- (23) Briefly, and for ease of reference only, these criteria are set out below:
1. in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;
 2. export prices and quantities, and conditions and terms of sale are freely determined;
 3. the majority of the shares belong to private persons. State officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;
 4. exchange rate conversions are carried out at the market rate; and
 5. State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.
- (24) Following the initiation of the proceeding, one Chinese exporting producer, Qingdao Kehai Biochemistry Co., Ltd requested IT pursuant to Article 9(5) of the basic Regulation and replied to the IT claim form within the given deadline.
- (25) On the basis of information available, it was found that the Chinese exporting producer met all the requirements for IT as set out in Article 9(5) of the basic Regulation.
- 3. Normal value**
- 3.1. Analogue country**
- (26) According to Article 2(7)(a) of the basic Regulation, in economies in transition, normal value for exporting producers not granted MET has to be established on the basis of the price or constructed value in a market economy third country (analogue country).
- (27) In the notice of initiation, USA was proposed as an appropriate analogue country for the purpose of establishing normal value for China. The Commission invited all interested parties to comment on this proposal.
- (28) There were no comments from any interested party.
- (29) Outside the EU, dry sodium gluconate is produced in very few countries, namely the USA, China and South Korea. Therefore the only possible alternative to the USA was South Korea. The Commission contacted the known companies producing dry sodium gluconate in South Korea, however, no replies were received from those producers.
- (30) The producer in the USA cooperated fully with the investigation by submitting a full questionnaire response and accepting a verification visit.
- (31) The Commission found that the USA met the criteria for an appropriate analogue country since the quantities sold in this market were sufficiently large and there was significant competition on the market with both domestic production and imports from other countries, i.e. China, Italy and France. In addition, the USA had no anti-dumping duty on the product concerned.
- (32) In view of the above, it is therefore provisionally concluded that the USA constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.
- 3.2. Methodology applied for the determination of normal value**
- 3.2.1. For the company granted MET**
- (33) For the company granted MET, in accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of dry sodium gluconate to independent customers were representative during the IP, i.e. whether the total volume of such sales represented at least 5 % of Chinese export sales of the product concerned to the Union.

- (34) The Commission subsequently identified those product types sold domestically by the company having overall representative domestic sales that were identical or directly comparable with the types sold for export to the Union.
- (35) For each type sold by the exporting producer on its domestic market and found to be directly comparable with the type of dry sodium gluconate sold for export to the Union, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the IP represented at least 5 % of the total volume of the comparable product type sold for export to the Union.
- (36) The Commission subsequently examined whether the domestic sales of dry sodium gluconate sold domestically in representative quantities could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each product type the proportion of profitable sales to independent customers on the domestic market during the investigation period.
- (37) Where the sales volume of a product type, sold at a net sales price equal to or above the cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.
- (38) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only.
- (39) Since the investigation showed that domestic sales were both representative and were made in the ordinary course of trade, the normal value was therefore based on the actual domestic price of all transactions during the investigation period.

3.2.2. For the company granted IT

- (40) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for China was established on the basis of

verified information received from the cooperating producer in the analogue country. The domestic sales of the US producer of the like product were found to be representative compared to the product concerned exported to the Union by the sole cooperating exporting producer in China.

- (41) An examination was also made as to whether the domestic sales could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers. Therefore, normal value was based on the actual domestic price per product type, calculated as a weighted average of the prices of all domestic sales made during the IP.

3.3. Export Price

- (42) All export sales of the product concerned by the cooperating exporting producers were made directly to independent customers in the Union, and therefore the export price was established on the basis of the prices actually paid or payable for the product concerned in the IP in accordance with Article 2(8) of the basic Regulation.

3.4. Comparison

- (43) The comparison between normal value and export price was made on an ex-factory basis.
- (44) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. For all investigated companies (cooperating exporting producers and the producer in the analogue country) allowances for differences in transport costs, freight and insurance costs, indirect taxation, bank charges, packing costs, credit costs and commissions were made where applicable and justified.

4. Dumping margins

- (45) For the company granted MET the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price, as provided for in Article 2(11) and (12) of the basic Regulation.
- (46) For the company granted IT, the weighted average normal value established for the analogue country was compared with the weighted average export price to the Union, as provided for in Article 2(11) of the basic Regulation.

- (47) The provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are:

Company	Provisional dumping margin
Shandong Kaison Biochemical Co., Ltd	5,6 %
Qingdao Kehai Biochemistry Co. Ltd	51,1 %

- (48) With regard to all other Chinese exporters, the Commission first established the level of cooperation. A comparison was made between the total export quantities indicated in the questionnaire replies of the cooperating exporting producers and total imports from China as derived from Eurostat import statistics.

- (49) Since the level of cooperation was low, i.e. 56 %, and given the lack of suitable Eurostat price data since it included other high-priced products which could not be accurately deducted, the countrywide dumping margin was calculated by using data from the complaint updated to the IP.

- (50) On this basis, the countrywide level of dumping is provisionally established at 79,2 % of the CIF Union frontier price, duty unpaid.

D. INJURY

1. Definition of Union industry and Union production

- (51) The cooperating industrial groups Jungbunzlauer (JBL) and Roquette Frères (RF) accounted for 100 % of the Union production.

- (52) They are therefore deemed to constitute the Union industry (UI) within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

- (53) As the UI is thus constituted of only two producers, all figures related to sensitive data had to be indexed or given in a range for reasons of confidentiality.

2. Union consumption

- (54) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, plus imports into the Union as per Eurostat data. As these latter data include not only the product concerned but also some products other than sodium gluconate, appropriate adjustments were made to Eurostat figures in order to estimate reasonable import volumes of the product concerned into the Union.

- (55) Consumption in the Union market increased by 12 % between 2005 and 2007. After that, it decreased by 21 % up to the IP below levels of 2005. Overall, during the period under consideration consumption decreased by 8 %.

Table 1

	2005	2006	2007	2008	IP
Union consumption (in tonnes) <i>Index</i>	100	106	112	104	91

Source: Adjusted import volumes from Eurostat and questionnaire replies.

3. Imports into the Union from China

3.1. Volume and market share of imports

- (56) Chinese import volume increased significantly from around 2 300 tonnes in 2005 to around 4 000 tonnes in the IP, i.e. by 77 %, having reached a peak of ca 5 300 tonnes in 2008. The corresponding Chinese market share almost doubled from 12,8 % in 2005 to 24,8 % during the IP. It is noted that market share of the Chinese imports reached 28,6 % in 2008 just prior to the IP and dropped in the IP to 24,8 %.

Table 2

	2005	2006	2007	2008	IP
Chinese import volumes (in tonnes)	2 291	3 470	5 204	5 348	4 065
Chinese imports (tonnes) <i>Index</i>	100	152	227	234	177
Chinese market share	12,8 %	18,3 %	26 %	28,6 %	24,8 %
Chinese market share, index	100	143	203	224	194

Source: Adjusted import volumes from Eurostat.

3.2. Unit selling price

- (57) Average Chinese import prices were EUR 482 per tonne in 2005. They steadily increased until reaching a level of EUR 524 per tonne in 2008 and then dropped in the IP to EUR 502 per tonne. Overall during the period considered they increased by 4 %.

Table 3

	2005	2006	2007	2008	IP
Chinese import prices (EUR/tonnes)	482	511	514	524	502
<i>Index</i>	100	106	107	109	104

Source: Adjusted import prices from Eurostat.

3.3. Price undercutting

- (58) For the purposes of analysing price undercutting, the weighted average sales prices per product type of the UI to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports concerned, established on a CIF basis with an appropriate adjustment for customs duties and post-importation costs. The comparison was made after deduction of rebates and discounts.
- (59) Based on the above methodology, the difference between the abovementioned prices, expressed as a percentage of the UI's weighted average price (ex-works), showed a price undercutting margin ranging from 13 % to 29 %, with the higher end being attributed to non-cooperating exporting producers.

4. Economic situation of the Union industry

- (60) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the UI included an evaluation of all economic factors having a bearing on the state of the UI during the period considered.

4.1. Production capacity, production and capacity utilisation

- (61) The production capacity increased by 4 % in the period from 2005 to 2007, and remained at that level until the end of the period considered.
- (62) Production of the product concerned increased between 2005 and 2007 before decreasing in the period up to the IP. Overall, production decreased by 12 % over the period considered. Total output during the IP was between 30 000 and 40 000 tonnes.
- (63) As a result of the decrease in production volumes, the capacity utilisation decreased by 15 % over the period considered.

Table 4

	2005	2006	2007	2008	IP
Production capacity Index	100	100	104	104	104
Production volume Index	100	104	105	84	88
Capacity utilisation Index	100	104	101	81	85

Source: Questionnaire replies.

4.2. Sales volume, market share and average unit prices in the Union

- (64) Sales in volume of the product concerned by the UI to unrelated customers on the Union market remained at similar levels from 2005 to 2007 and then dropped by 13 percentage points. Over the period considered the decrease in sales volumes was of 21 %.
- (65) Market share of the UI decreased over the period considered, falling from 74,9 % in 2005 to 64,7 % during the IP.
- (66) Average sales prices to unrelated customers in the Union market decreased by 12 % over the period considered. From 2006 to 2008 average sales prices stayed at similar levels but then dropped by 9 % during the IP.

Table 5

	2005	2006	2007	2008	IP
Sales volumes Index	100	104	99	86	79
Market share of UI	74,9 %	73,4 %	66,5 %	61,4 %	64,7 %
Index	100	98	89	82	86
Average prices Index	100	97	97	97	88

Source: Questionnaire replies.

4.3. Stocks

- (67) During the period considered stocks decreased by 37 %. At the end of the IP, the stock level was between 1 000 and 5 000 tonnes.

Table 6

	2005	2006	2007	2008	IP
Stocks Index	100	92	120	92	63

Source: Questionnaire replies.

4.4. Profitability, investments, return on investments and cash flow

- (68) The sales of the UI of the like product in the Union market were profitable during the period considered but profitability fell dramatically from 2005 to the IP.
- (69) Although investments continued over the period between 2005 and 2007, with a decrease in 2006, they fell drastically in 2008 and during the IP. Over the period considered investments decreased by 76 %.

- (70) In a similar trend, return on investments from the production and sale of the product concerned was stable from 2005 to 2007 but decreased in 2008 and during the IP.
- (71) As with the other financial indicators, the cash flow generated by the UI fell by 51 % over the period considered.

Table 7

	2005	2006	2007	2008	IP
Profitability Index	100	90	86	52	19
Investments Index	100	61	140	16	24
Returns on investments Index	100	100	100	60	21
Cash flow Index	100	92	20	106	49

Source: Questionnaire replies.

4.5. Employment, productivity and wages

- (72) Employment slightly increased from 2005 to 2007 and then decreased in 2008 and the IP. Over the period considered employment decreased by 13 %.
- (73) Wages decreased by 6 % in 2006 but returned to the 2005 levels in 2007 and then increased in 2008 and during the IP. Over the period considered wages increased by 10 %.
- (74) Productivity per employee remained stable along the period considered, increasing by 1 % from 2005 to the IP.

Table 8

	2005	2006	2007	2008	IP
Employment Index	100	99	104	85	87
Wages Index	100	94	100	104	110
Productivity Index	100	104	101	99	101

Source: Questionnaire replies.

4.6. Growth

- (75) While Union consumption decreased by 9 % over the period considered, the sales volume of the UI decreased by 21 %. This led to a loss of market share by the UI during the period considered of 10 percentage points.

4.7. Magnitude of the margin of dumping

- (76) The dumping margins for China, specified above in the dumping section, are significant. Given the volumes and the prices of the dumped imports, the impact of the margins of dumping cannot be considered to be negligible.

5. Conclusion on injury

- (77) Most injury indicators pertaining to the UI developed negatively during the period considered. The indicators related to the financial performance of the UI, including return on investments, cash flow and profitability, also developed negatively during the period considered.
- (78) The investigation also showed that low-priced Chinese imports were undercutting Union industry prices by up to 29 % during the IP. The UI suffered a decrease in sales volumes and a drop in market share.
- (79) In the light of the foregoing, it is provisionally concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

E. CAUSALITY

1. Introduction

- (80) In accordance with Article 3(6) and Article 3(7) of the basic Regulation, the European Commission has examined whether the dumped imports of dry sodium gluconate originating in China have caused injury to the UI to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time have injured the UI, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. Effect of the dumped imports

- (81) Over the period considered low-priced dumped imports from China increased in terms of volume by 77 %, which resulted in an increase of Union market share by Chinese imports of 94 % in the same period. The decrease in imports from China between 2008 and the IP including the loss of market share is not considered significant in comparison to the overall situation observed during the period considered.
- (82) This increase in imports from China over the period considered coincided with a downward trend in most injury indicators of the UI. The UI suffered a decrease in its sales, both in terms of volumes and of values, on the Union market, resulting in a loss of market share of 10 percentage points over the period considered as mentioned above at recital 65. Price undercutting by the dumped Chinese imports prevented the UI to keep their price levels in the Union market. This led to a significant decrease in profitability below levels which would allow for necessary investments.

- (83) Based on the above, it is provisionally concluded that the low-priced dumped imports from China which significantly undercut the prices of the UI during the period considered have had a determining role in the injury suffered by the Union industry, which is reflected in its poor financial situation and in the deterioration of other injury indicators during the period considered, as well as in loss of market share.

3. Effect of other factors

3.1. Imports from other third countries

- (84) The imports from third countries not concerned by this investigation decreased by 23 % over the period considered resulting in a loss of market share of 2 percentage points over the period considered. The prices of these imports increased by 102 % during the period considered.
- (85) The trends in import volumes and prices from other third countries over the period considered were as follows:

Table 9

Other third countries	2005	2006	2007	2008	IP
Total other imports in volume (tonnes)	2 210	1 566	1 502	1 867	1 709
Index	100	71	68	84	77
Average price other imports (EUR/tonne)	914	1 275	1 305	1 680	1 844
Index	100	140	143	184	202

Source: Adjusted Eurostat data

- (86) Import volumes from other third countries decreased by 23 % over the period considered, while import prices doubled during the same period. Import prices from other third countries were significantly above the UI's sales prices during the entire period considered. On this basis, it is provisionally concluded that imports from other third countries did not break the causal link between the dumping found and the material injury caused to the UI by the dumped imports from China.

3.2. Export performance of the Union industry

- (87) During the period considered export sales by the UI decreased by 10 % and prices increased by 8 %.
- (88) In view of the above, it is considered that the UI's export sales to other third countries could not break the causal

link between the dumped imports from China and the material injury suffered by it.

3.3. Captive use

- (89) During the period considered captive use by the UI increased by 56 %, as shown in the following table:

Table 10

	2005	2006	2007	2008	IP
Captive use Index	100	126	115	148	156

Source: Questionnaire replies

- (90) However, it is noted that the UI still had a spare capacity ranging between 10 000 and 20 000 tonnes. This means that a shift to captive use can be seen as a business response against dumped imports from China, as it may be more lucrative to produce downstream products given the low price levels of sodium gluconate. The fact that considerable spare capacity for sodium gluconate is still available indicates that the UI does not seek to definitively shift production to the downstream products and that the production of downstream products may be seen as a measure in defence of the dumped imports.
- (91) Therefore it is considered that the increase in captive use did not break the causal link between the dumped imports from China and the material injury suffered by the UI.

3.4. Development of EU consumption

- (92) It is noted that EU consumption decreased by 9 % during the period considered, and this may be seen as a consequence of the ongoing economic downturn. It was therefore examined whether the decrease in consumption could have had an effect on the injurious situation of the UI.
- (93) However, the UI sales volume decreased to a much larger extent, i.e. by 21 % while Chinese imports increased by 77 % during the same period. Concerning market share, the same trends can be observed. The UI lost about 10 percentage points of their market share while the Chinese imports almost doubled theirs, from 12,8 % in 2005 to 24,9 % in the IP.
- (94) Considering the above, it is provisionally concluded that the decrease in the EU consumption cannot be considered by itself as a cause for breaking the causal link between the dumped imports from China and the material injury suffered by the UI.

4. Conclusion on causation

- (95) The above analysis has demonstrated that there was a substantial increase in volume and market share of the dumped imports originating in China over the period considered together with significant price undercutting. This increase in market share of the low-priced imports from China coincided with a drop in the market share of the UI which, together with the downward pressure on prices, resulted in a deterioration of the situation of the UI during the period considered. On the other hand, the examination of the other factors which could have injured the UI revealed that none of these could have had a significant negative impact.
- (96) Based on the above analysis, which has properly distinguished and separated the effects of all known factors having an effect on the situation of the UI from the injurious effect of the dumped imports, it is provisionally concluded that the imports from China have caused material injury to the UI within the meaning of Article 3(6) of the basic Regulation.

F. UNION INTEREST

1. Preliminary remark

- (97) In accordance with Article 21 of the basic Regulation, the European Commission examined whether, despite the conclusion on injurious dumping, compelling reasons existed for concluding that it is not in the Union interest to adopt anti-dumping measures in this particular case. The determination of the Union interest was based on an appreciation of all the various interests involved, i.e. those of the UI, the importers and the users of the product concerned.

2. Union industry

2.1. *Effects of the imposition or non-imposition of measures on the Union industry*

- (98) As explained above, due to the dumped imports, injury has occurred in the form of a significant decrease in sales volume and prices, which in turn resulted in a deterioration of the situation of the UI. It is expected that, following the imposition of anti-dumping duties, volumes and prices of dry sodium gluconate sold by the UI would increase and this would consequently enable the UI to reach an acceptable level of profitability.
- (99) It is considered that the imposition of measures would restore fair competition on the market. It should be noted that the decrease in profits of the UI is the result of its difficulty in competing with the dumped, low-priced imports originating in China. The imposition

of anti-dumping measures is likely to put the UI in the position to regain at least part of its lost market share with a consequent positive impact on profitability.

- (100) If measures are not imposed, a further deterioration in the situation of the UI is probable. The price-depressive effect of the dumped imports would continue to foil all efforts made by the UI to regain a sufficiently profitable level. Not taking measures would put at risk the long-term presence of the UI.
- (101) In conclusion, it is expected that measures would be effective in giving the Union industry the opportunity to recover from the injurious dumping found during the investigation.

3. Importers/traders

- (102) Questionnaires were sent to five importers. None of them cooperated with the investigation.
- (103) In these circumstances, it is provisionally concluded that the effect of the anti-dumping measures, if any, will most likely not have a material impact on importers/traders.

4. Users

- (104) Questionnaires were sent to 23 users. However, only four users cooperated in the investigation, out of which only three were using and directly importing the product concerned from China. The direct imports of these three cooperating users accounted for 10 % of the total imports of dry sodium gluconate from China during the IP. The fourth cooperating user was not using the product concerned imported from China.
- (105) These four users, located in Germany, France and the UK, are active in the chemical industry, producing a wide variety of products, some using sodium gluconate as a raw material. On average, sodium gluconate does not represent a significant part of the input cost. In general, the maximum effect of the anti-dumping duty proposed, assuming that price increases cannot be passed on to the final customer, was estimated to be very low. It should also be noted that the turnover of these companies for products using sodium gluconate was less than 5 % of their total turnover.

- (106) In light of the above, it is provisionally concluded that, on the basis of the information provided, the effect of the anti-dumping measures, if any, will most likely not have a material impact on users.

5. Conclusion on Union interest

- (107) Given the above, it is provisionally concluded that there are no compelling reasons against the imposition of anti-dumping duties in the present case.

G. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

- (108) In view of the conclusions reached with regard to dumping, resulting injury, causation and Union interest, provisional measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.
- (109) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the UI.
- (110) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the UI to cover its costs of production and to obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on sales of the like product in the Union. The pre-tax profit margin claimed in the complaint was considered reasonable and used for this purpose.
- (111) On this basis, a non-injurious price was calculated for the UI for the like product. The non-injurious price was obtained by adding the abovementioned profit margin to the cost of production.
- (112) The necessary price increase was then determined on the basis of a comparison of the adjusted weighted average import price, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the UI on the Union market. Any difference resulting from this comparison was then expressed as a percentage of the total CIF import value.
- (113) Concerning the calculation of the countrywide injury elimination level for all other exporting producers in China, it should be recalled that the level of cooperation was low. Therefore this injury margin was calculated using data from the complaint updated to the IP.

2. Provisional measures

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

- (115) The proposed anti-dumping duties are the following:

Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate
Shandong Kaison Biochemical Co., Ltd	29,9 %	5,6 %	5,6 %
Qingdao Kehai Biochemistry Co. Ltd	27,3 %	51,1 %	27,3 %
All other companies	53,4 %	79,2 %	53,4 %

- (116) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, 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'.
- (117) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission⁽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 will accordingly be amended by updating the list of companies benefiting from individual duty rates.

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

(118) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the IP.

3. Special monitoring

(119) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the following:

(120) The presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.

(121) Should the exports by the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a countrywide duty.

H. FINAL PROVISION

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of dry sodium gluconate with a Customs Union and

Statistics (CUS) number 0023277-9 and a Chemical Abstracts Service (CAS) registry number 527-07-1, currently falling within CN code ex 2918 16 00 (TARIC code 2918 16 00 10) and originating in the People's Republic of China.

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

Company	Duty	TARIC additional codes
Shandong Kaison Biochemical Co., Ltd	5,6 %	A972
Qingdao Kehai Biochemistry Co. Ltd	27,3 %	A973
All other companies	53,4 %	A999

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

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

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

Article 2

Without prejudice to Article 20 of Regulation (EC) No 1225/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 1 month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 1225/2009, the parties concerned may comment on the application of this Regulation within 1 month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of 6 months.

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

Done at Brussels, 3 May 2010.

For the Commission
The President
José Manuel BARROSO

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

1. The name and function of the official of the entity issuing the commercial invoice.
2. The following declaration:

'I, the undersigned, certify that the (volume) of dry sodium gluconate sold for export to the European Union covered by this invoice was manufactured by (company name and registered seat) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.

Date and signature'

COMMISSION REGULATION (EU) No 378/2010**of 3 May 2010****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 Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 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 XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 4 May 2010.

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

Done at Brussels, 3 May 2010.

*For the Commission,
On behalf of the President,
Jean-Luc DEMARTY
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, 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	JO	68,6
	MA	126,4
	TN	107,3
	TR	95,9
	ZZ	99,6
0707 00 05	MA	61,4
	TR	111,2
	ZZ	86,3
0709 90 70	TR	105,8
	ZZ	105,8
0805 10 20	EG	56,8
	IL	69,6
	MA	60,6
	TN	47,1
	TR	54,8
	ZZ	57,8
0805 50 10	TR	66,3
	ZA	77,8
	ZZ	72,1
0808 10 80	AR	82,0
	BR	79,2
	CA	80,5
	CL	79,7
	CN	81,9
	MK	22,1
	NZ	107,9
	US	126,4
	UY	93,0
	ZA	92,6
	ZZ	84,5

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

DECISIONS

COUNCIL DECISION

of 31 March 2010

appointing a member of the Court of Auditors

(2010/251/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 286(5) thereof,

Having regard to the proposal of the Irish Government,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The term of office of Ms Máire GEOGHEGAN-QUINN was renewed for the period from 1 March 2006 to 29 February 2012 by Council Decision of 23 January 2006 ⁽¹⁾.
- (2) By letter of 8 February 2010 addressed to the President of the Council, Ms Máire GEOGHEGAN-QUINN presented her resignation as Member of the Court of Auditors.

- (3) Following her resignation, it is necessary for a successor to be appointed for the remainder of her term,

HAS ADOPTED THIS DECISION:

Article 1

Mr Eoin O'SHEA is hereby appointed a member of the Court of Auditors for the remainder of the term of office of Ms Máire GEOGHEGAN-QUINN, which runs until 29 February 2012.

Article 2

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

Done at Brussels, 31 March 2010.

For the Council
The President
A. PÉREZ RUBALCABA

⁽¹⁾ OJ L 22, 26.1.2006, p. 51.

COUNCIL DECISION

of 26 April 2010

supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

(2010/252/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ⁽¹⁾, and in particular Article 12(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The purpose of border surveillance is to prevent unauthorised border crossings, to counter cross-border criminality and to apprehend or take other measures against persons who have crossed the border illegally. Border surveillance should be effective in preventing and discouraging persons from circumventing the checks at border crossing points, and in detecting the unauthorised crossing of the external borders.
- (2) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereinafter referred to as 'the Agency') is responsible for the coordination of operational cooperation between Member States to facilitate the application of Union law, including with regard to border surveillance. Additional rules are necessary with regard to border surveillance activities carried out by maritime and aerial units of one Member State at the sea border of other Member States in the context of the operational cooperation coordinated by the Agency and the further strengthening of such cooperation.
- (3) In accordance with Regulation (EC) No 562/2006 and general principles of Union law, measures taken in the course of the surveillance operation should be proportionate to the objectives pursued and fully respect fundamental rights and the rights of refugees and asylum

seekers, including, in particular, the prohibition of *refoulement*. Member States are bound by the provisions of the asylum *acquis*, and in particular of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ⁽²⁾, with regard to applications for asylum made in the territory, including at the border, or in the transit zones of Member States.

- (4) At its meetings of 18 and 19 June 2009 and of 29 and 30 October 2009, the European Council underlined the need for strengthened border control operations coordinated by the Agency and for clear rules of engagement for joint patrolling. The European Council in June also stressed the need for rules on disembarkation of rescued persons.
- (5) Account should be taken of the fact that border surveillance operations coordinated by the Agency are conducted in accordance with an operational plan and with the schedule and instructions issued by a coordination centre in which participating Member States and the Agency are represented, and that one or more host Member States whose border will be surveyed are identified before the start of the operation.
- (6) Implementation of this Decision does not prejudice the division of competence between the Union and the Member States, and does not affect obligations of Member States under the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the United Nations Convention against Transnational Organised Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention relating to the Status of Refugees, the Convention for the Protection of Human Rights and Fundamental Freedoms and other relevant international instruments.
- (7) When conducting a border surveillance operation at sea, a situation may occur where it will be necessary to render assistance to persons found in distress.

⁽¹⁾ OJ L 105, 13.4.2006, p. 1.

⁽²⁾ OJ L 326, 13.12.2005, p. 13.

- (8) In accordance with international law, every State has to require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers, to render assistance to any person found at sea in danger of being lost and to proceed with all possible speed to the rescue of persons in distress. Such assistance should be provided regardless of the nationality or status of the persons to be assisted or of the circumstances in which they are found.
- (9) In order to provide for better coordination among the Member States participating in the operations with regard to such situations and to facilitate the conduct of such operations, non-binding guidelines should be included in this Decision. This Decision should not affect the responsibilities of search and rescue authorities, including for ensuring that coordination and cooperation is carried out in such a way that the persons rescued can be delivered to a place of safety.
- (10) This Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably human dignity, prohibition of torture and inhuman or degrading treatment or punishment, right to liberty and security, non-refoulement, non-discrimination and the rights of the child. This Decision should be applied by the Member States in accordance with those rights and principles.
- (11) Since the objectives of this Decision, namely the adoption of additional rules for the surveillance of the sea borders by border guards operating under the coordination of the Agency, cannot be sufficiently achieved by the Member States due to the differences in their laws and practices, and can therefore, by reason of the multi-national character of the operations, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (12) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of 6 months after the date of adoption of this Decision whether it will implement it in its national law.
- (13) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*⁽¹⁾ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC⁽²⁾ of 17 May 1999 on certain arrangements for the application of that Agreement.
- (14) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁽³⁾, which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC⁽⁴⁾ of 28 January 2008 on the conclusion of that Agreement on behalf of the European Community.
- (15) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC⁽⁵⁾ of 28 February 2008 on the signature of that protocol on behalf of the European Community.
- (16) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*⁽⁶⁾. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (17) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*⁽⁷⁾. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

⁽²⁾ OJ L 176, 10.7.1999, p. 31.

⁽³⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁴⁾ OJ L 53, 27.2.2008, p. 1.

⁽⁵⁾ OJ L 83, 26.3.2008, p. 3.

⁽⁶⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁷⁾ OJ L 64, 7.3.2002, p. 20.

(18) The Schengen Borders Code Committee, consulted on 19 October 2009, did not deliver an opinion, with the consequence that the Commission, in accordance with point (a) of Article 5a(4) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾, submitted a proposal relating to the measures to be taken to the Council and forwarded it to the European Parliament at the same time,

HAS ADOPTED THIS DECISION:

Article 1

The surveillance of the sea external borders in the context of the operational cooperation between Member States coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the

European Union (the Agency) shall be governed by the rules laid down in Part I to the Annex. Those rules and the non-binding guidelines laid down in Part II to the Annex shall form part of the operational plan drawn up for each operation coordinated by the Agency.

Article 2

This Decision is addressed to the Member States in accordance with the Treaties.

Done at Luxembourg, 26 April 2010.

For the Council
The President
M. Á. MORATINOS

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

ANNEX

PART I

Rules for sea border operations coordinated by the Agency**1. General principles**

- 1.1. Measures taken for the purpose of the surveillance operation shall be conducted in accordance with fundamental rights and in a way that does not put at risk the safety of the persons intercepted or rescued as well as of the participating units.
- 1.2. No person shall be disembarked in, or otherwise handed over to the authorities of, a country in contravention of the principle of non-refoulement, or from which there is a risk of expulsion or return to another country in contravention of that principle. Without prejudice to paragraph 1.1, the persons intercepted or rescued shall be informed in an appropriate way so that they can express any reasons for believing that disembarkation in the proposed place would be in breach of the principle of non-refoulement.
- 1.3. The special needs of children, victims of trafficking, persons in need of urgent medical assistance, persons in need of international protection and other persons in a particularly vulnerable situation shall be considered throughout all the operation.
- 1.4. Member States shall ensure that border guards participating in the surveillance operation are trained with regard to relevant provisions of human rights and refugee law, and are familiar with the international regime on search and rescue.

2. Interception

- 2.1. Upon detection, the ship or other sea craft (ship) shall be approached in order to observe its identity and nationality and, pending further measures, it shall be surveyed at a prudent distance. Information about the ship shall be communicated immediately to the coordination centre established in the context and for the purposes of the sea operation coordinated by the Agency.
- 2.2. If the ship is about to enter or it has entered the contiguous zone or the territorial waters of a Member State that does not participate in the operation, information about the ship shall be communicated to the coordination centre, which will convey the information to the Member State concerned.
- 2.3. Information about any ship suspected of being engaged in illegal activities at sea outside the scope of the operation shall be communicated to the coordination centre, which will convey the information to the Member State or Member States concerned.
- 2.4. Measures taken in the course of the surveillance operation against ships or other sea craft with regard to which there are reasonable grounds for suspecting that they carry persons intending to circumvent the checks at border crossing points may include:
 - (a) requesting information and documentation on ownership, registration and elements relating to the voyage, and on the identity, nationality and other relevant data on persons on board;
 - (b) stopping, boarding and searching the ship, its cargo and persons on board, and questioning persons on board;
 - (c) making persons on board aware that they are not authorised to cross the border and that persons directing the craft may face penalties for facilitating the voyage;
 - (d) seizing the ship and apprehending persons on board;
 - (e) ordering the ship to modify its course outside of or towards a destination other than the territorial waters or contiguous zone, escorting the vessel or steaming nearby until the ship is heading on such course;
 - (f) conducting the ship or persons on board to a third country or otherwise handing over the ship or persons on board to the authorities of a third country;
 - (g) conducting the ship or persons on board to the host Member State or to another Member State participating in the operation.

- 2.5. Measures referred to in paragraph 2.4 shall be taken under the following conditions:
- 2.5.1. Territorial waters and contiguous zone
- 2.5.1.1. Measures referred to in paragraph 2.4 shall be taken upon authorisation and in accordance with the instructions from the host Member State transmitted to the participating unit via the coordination centre. To that end, the participating unit shall communicate to the host Member State, via the coordination centre, whether the master of the intercepted vessel has requested that a diplomatic agent or consular officer of the flag State be notified.
- 2.5.1.2. Any operational activities in the territorial waters or contiguous zone of a Member State that does not participate in the operation shall be conducted in accordance with the authorisation of the coastal State. The coordination centre shall be informed of any communication with the coastal State and of the subsequent course of action.
- 2.5.2. The high seas beyond the contiguous zone
- 2.5.2.1. If the ship flies the flag or displays the marks of registry of the nationality of a Member State participating in the operation, measures referred to in paragraph 2.4 shall be taken upon authorisation of the flag State. The national official representing that Member State at the coordination centre shall be entitled to grant or to transmit such authorisation.
- 2.5.2.2. If the ship flies the flag or displays the marks of registry of a Member State that does not participate in the operation or of a third country, confirmation of registry shall be requested from the flag State through the appropriate channels and, if nationality is confirmed, authorisation shall be requested, in accordance with the Palermo Protocol against the smuggling of migrants, from the flag State to take the measures referred to in paragraph 2.4.

The coordination centre shall be informed of any communication with the flag State.

- 2.5.2.3. If, though flying a foreign flag or refusing to show its flag, there are reasonable grounds for suspecting that the ship is, in reality, of the same nationality as the participating unit, the participating unit shall proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it shall proceed to a further examination on board the ship, which must be carried out with all possible consideration. The country of which the ship is allegedly flying the flag shall be contacted through the appropriate channels.
- 2.5.2.4. If, though flying a foreign flag or refusing to show its flag, there is reasonable ground for suspecting that the ship is, in reality, of the nationality of another Member State participating in the operation, verification of the ship's right to fly its flag shall be conducted upon authorisation of that Member State. The national official representing that Member State at the coordination centre shall be entitled to grant or to transmit such authorisation.

If, in the above cases, the suspicions regarding the nationality of the ship prove to be founded, measures referred to in paragraph 2.4 shall be taken under the conditions laid down in paragraph 2.5.2.1.

- 2.5.2.5. If there are reasonable grounds for suspecting that the ship is without nationality or may be assimilated to a ship without nationality, the participating unit shall proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it shall proceed to a further examination on board the ship, which shall be carried out with all possible consideration.

Measures referred to in paragraph 2.4 shall be taken if the suspicions that the ship is without nationality prove to be founded and that there are reasonable grounds to suspect that the ship is engaged in the smuggling of migrants by sea in accordance with the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime.

A ship is without nationality or may be assimilated to a ship without nationality when the ship has not been granted by any State the right to fly its flag or when it sails under the flags of two or more States, using them according to convenience.

- 2.5.2.6. Pending or in the absence of authorisation of the flag State, the ship shall be surveyed at a prudent distance. No other measures shall be taken without the express authorisation of the flag State, except those necessary to relieve imminent danger to the lives of persons as set out in Section 1 of Part II or those measures which derive from relevant bilateral or multilateral agreements, or unless the ship has entered the contiguous zone.

PART II**Guidelines for search and rescue situations and for disembarkation in the context of sea border operations coordinated by the Agency****1. Search and rescue situations**

- 1.1. The obligation to render assistance to the persons in distress at sea shall be carried out by Member States in accordance with the applicable provisions of international conventions governing the search and rescue situations and in accordance with requirements concerning the respect for fundamental rights. Participating units shall provide assistance to any vessel or person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.
- 1.2. When facing in the course of the border surveillance operation a situation in which uncertainty or apprehension exists as to the safety of a ship or of any person on board, the participating unit should forward as soon as possible all available information to the Rescue Coordination Centre responsible for the search and rescue region where the situation is taking place.

In cases where the Rescue Coordination Centre of the third country responsible for the search and rescue region does not respond to the notification transmitted by the participating unit, the latter should contact the Rescue Coordination Centre of the host Member State.

While awaiting instructions from the Rescue Coordination Centre, participating units should take all the appropriate measures to ensure the safety of the persons concerned.

- 1.3. Participating units should take all relevant elements into account and communicate their assessment to the responsible Rescue Coordination Centre, including in particular:
- (a) the existence of a request for assistance;
 - (b) the seaworthiness of the ship and the likelihood that the ship will not reach its final destination;
 - (c) the number of passengers in relation to the type of ship (overloading);
 - (d) the availability of necessary supplies (fuel, water, food, etc.) to reach a shore;
 - (e) the presence of qualified crew and command of the ship;
 - (f) the availability of safety, navigation and communication equipment;
 - (g) the presence of passengers in urgent need of medical assistance;
 - (h) the presence of deceased passengers;
 - (i) the presence of pregnant women or children;
 - (j) the weather and sea conditions.

- 1.4. The existence of an emergency should not be exclusively dependent on or determined by an actual request for assistance.

In cases where, despite a ship being perceived to be in a state of emergency, the persons on board refuse to accept assistance, the participating unit should inform the Rescue Coordination Centre and continue to fulfil a duty of care, taking any measure necessary to the safety of the persons concerned, while avoiding taking any action that might aggravate the situation or increase the chances of injury or loss of life.

- 1.5. The coordination centre of the operation should be informed as soon as possible of any contact with the Rescue Coordination Centre and of the course of action taken by the participating unit.
- 1.6. If the ship cannot or can no longer be considered as being in a state of emergency or the search and rescue operation has been concluded, the participating unit should, in consultation with the coordination centre of the operation, resume the operation in accordance with Part I.

2. Disembarkation

- 2.1. The operational plan should spell out the modalities for the disembarkation of the persons intercepted or rescued, in accordance with international law and any applicable bilateral agreements. The operational plan shall not have the effect of imposing obligations on Member States not participating in the operation.

Without prejudice to the responsibility of the Rescue Coordination Centre, and unless otherwise specified in the operational plan, priority should be given to disembarkation in the third country from where the ship carrying the persons departed or through the territorial waters or search and rescue region of which that ship transited and if this is not possible, priority should be given to disembarkation in the host Member State unless it is necessary to act otherwise to ensure the safety of these persons.

- 2.2. The coordination centre should be informed of the presence of persons within the meaning of paragraph 1.2 of Part I, and should convey that information to the competent authorities of the host Member State. Based on that information, the operational plan should determine which follow-up measures may be taken.
-

RECOMMENDATIONS

COMMISSION RECOMMENDATION

of 28 April 2010

on the research joint programming initiative on 'Agriculture, food security and climate change'

(2010/253/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 181 thereof,

Whereas:

- (1) The sectors of agriculture and forestry are highly exposed to climate change since they directly depend on climatic conditions while emissions from agriculture in the Union account for 14 % of global greenhouse gas emissions.
- (2) Climate change is one of the main challenges to agriculture in feeding the world's population, which is expected to reach 9 billion by 2050.
- (3) Global demand for food is expected to have increased by 50 % by 2030 and to have doubled by 2050, in a time when demand for biomass for non-food purposes is predicted to grow strongly.
- (4) Agriculture and forestry face strongly increasing non-food demand for biomass, driven by mitigation efforts in other sectors and by the need to switch to a low-carbon economy.
- (5) Global stocks of some staple foods have declined, and peaks in food prices, such as those seen during 2008, may become more frequent if rising demand cannot be consistently matched by supply.
- (6) Climate change can affect crop yields, livestock management and the location of production, and can have important consequences for farm income, land use and rural economies in certain parts of the Union.
- (7) The agricultural sector of tropical and sub-tropical countries, particularly in sub-Saharan Africa, is extremely vulnerable to climate change and any major food crisis in those regions would have an impact on Europe.
- (8) Concerted actions are needed to prevent that those combined risks lead to irreversible damage and to achieve a sustainable food supply under changing climate conditions.
- (9) This joint programming initiative is also relevant to the development of the common agricultural policy.
- (10) At its meeting on 3 December 2009, the Competitiveness Council recognised 'Agriculture, food security and climate change' as an area where joint programming would provide a major added value to the current, fragmented research efforts by Member States. It therefore adopted conclusions recognising the need to launch a joint programming initiative on the subject and inviting the Commission to contribute to the preparation of that initiative. The Council also reaffirmed that joint programming is a process led by Member States, with the Commission acting as a facilitator.
- (11) Joint programming in research in the area of agriculture, food security and climate change would encourage the pooling of skills, knowledge and resources, with a view to advancing research to address the challenge of food security and the threat brought by climate change, global population growth, and food and non-food demand.
- (12) In order to achieve the goals set by this Recommendation, Member States should cooperate with the Commission in exploring possible Commission initiatives to assist Member States in developing and implementing the strategic research agenda. Member States should also cooperate with the Standing Committee on Agricultural Research to ensure that the joint programming activities are coordinated with the wider agricultural research agenda.

(13) In order for the Commission to be able to report to the European Parliament and to the Council, Member States should report regularly to the Commission on the progress made on this joint programming initiative,

(g) exporting and disseminating knowledge, innovation and interdisciplinary approaches to other parts of Europe and worldwide and ensuring the effective use of research outputs to enhance European competitiveness and policy making;

HAS ADOPTED THIS RECOMMENDATION:

1. Member States are encouraged to develop a common vision on how cooperation and coordination in the field of research at Union level can address the challenge of food security and the threat of climate change, global population growth, and food and non-food demand.

(h) encouraging better collaboration between the public and private sectors, together with open innovation between different business sectors;

2. Member States are encouraged to develop a common strategic research agenda establishing medium to long-term research needs and objectives in the area of food security through adaptation to, and mitigation of the effects of, climate change in agriculture. The strategic research agenda should contain an implementation plan establishing priorities and timelines and specifying the actions, instruments and resources required for the implementation of the strategic research agenda.

(i) considering the changing needs of consumers and those of the agri-food industry in the Union when setting the objectives for related programmes.

3. Member States are encouraged to include the following actions, as part of the strategic research agenda and of the implementation plan:

4. Member States are encouraged to set up a common management structure in the field of agriculture, food security and climate change, with a mandate to establish common conditions, rules and procedures for cooperation and coordination and to monitor the implementation of the strategic research agenda.

(a) identifying and exchanging information on relevant national programmes and research activities;

5. Member States are encouraged to jointly implement the strategic research agenda, including via their national research programmes or other national research activities.

(b) reinforcing joint foresight exercises and technology assessment capacities, in order to ensure that emerging and new threats are constantly monitored and regularly reported;

6. Member States are encouraged to cooperate with the Commission with a view to exploring possible Commission initiatives to assist Member States in developing and implementing the strategic research agenda, and with a view to coordinating joint programmes with other Union initiatives in this field.

(c) exchanging information, resources, best practices, methodologies and guidelines;

(d) identifying areas or research activities that would benefit from coordination or joint calls for proposals or pooling of resources;

7. Member States are encouraged to cooperate with the Commission in looking into possible forms of engaging the farming community and other stakeholders in the application of the results obtained and in considering how best to integrate the joint programming initiative into the development of the common agricultural policy.

(e) defining the procedures for research to be undertaken jointly in the areas referred to in point (d);

(f) sharing, where appropriate, existing research infrastructures or developing new facilities;

8. Member States are encouraged to cooperate with the Commission in using all the relevant innovation policy instruments to facilitate transforming research results into products and services, and in particular making all forms of innovation accessible to small and medium-sized enterprises, including farmers.

9. Member States are encouraged to cooperate with the Commission in looking into possible forms of consultation and cooperation on this subject with appropriate bodies or groups at international level.
10. Member States are encouraged to cooperate with the Standing Committee on Agricultural Research to ensure that joint programming activities are coordinated with the wider agricultural research agenda.
11. Member States are encouraged to report regularly to the Commission on the progress made on this joint programming initiative.

Done at Brussels, 28 April 2010.

For the Commission
Máire GEOGHEGAN-QUINN
Member of the Commission

IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

DECISION No 1/2009 OF THE EU-UKRAINE COOPERATION COUNCIL
of 23 November 2009
on the establishment of a Joint Committee
(2010/254/EC)

THE EU-UKRAINE COOPERATION COUNCIL,

Having regard to the Partnership and Cooperation Agreement establishing a partnership between the European Communities and its Member States, and Ukraine, hereinafter referred to as 'the Agreement', and in particular Article 88 thereof,

Whereas:

- (1) Article 88 of the Agreement gives the Cooperation Council the power to set up any other special committee or body that can assist it in carrying out its duties and shall determine the composition and duties of such committees or bodies and how they shall function.
- (2) The Parties to the Agreement are currently negotiating an Association Agreement, including a deep and comprehensive Free Trade Area.
- (3) The Parties to the Agreement have agreed on the text of the EU-Ukraine Association Agenda.
- (4) There is a need for a Committee to review progress in implementing the Association Agenda as well as future

priorities and any necessary adjustments. This Joint Committee will function at senior official level,

HAS DECIDED AS FOLLOWS:

Sole Article

The Cooperation Council hereby establishes a Joint Committee at senior official level. The Joint Committee shall review progress in implementing the Association Agenda as well as future priorities and any necessary adjustments to it.

The Joint Committee shall meet regularly, at least once per year.

Done at Brussels, 23 November 2009.

For the Cooperation Council

Head of the EU Delegation

C. BILDT

*Head of the Ukrainian
Delegation*

Y. TYMOSHENKO

RECOMMENDATION No 1/2009 OF THE EU-UKRAINE COOPERATION COUNCIL
of 23 November 2009
on the implementation of the EU-Ukraine Association Agenda
(2010/255/EC)

THE EU-UKRAINE COOPERATION COUNCIL,

Having regard to the Partnership and Cooperation Agreement establishing a partnership between the European Communities and its Member States, and Ukraine, hereinafter referred to as 'the Agreement', and in particular Article 85 thereof,

Whereas:

- (1) Article 85 of the Agreement gives the Cooperation Council the power to make appropriate recommendations by agreement between the two Parties.
- (2) By the terms of Article 102 of the Agreement, the Parties shall take any general or specific measures required to fulfil their obligations under the Agreement and shall see to it that the objectives set out therein are attained.
- (3) The Parties are currently negotiating an Association Agreement, including a deep and comprehensive Free Trade Area.
- (4) The Parties have agreed on the text of the EU-Ukraine Association Agenda.
- (5) The EU-Ukraine Association Agenda will replace the current EU-Ukraine Action Plan and will prepare for and facilitate the early entry into force of the future EU-Ukraine Association Agreement through the elaboration of and agreement on concrete steps which will provide practical guidance for such preparations and implementation.

(6) The Association Agenda serves the dual purpose of setting out concrete steps in the preparation of the Association Agreement, and of providing a broader framework for the overall goal of achieving political association and greater economic integration of Ukraine to the European Union.

(7) The Association Agenda is an operational document, which will be revised as necessary on the basis of progress reviews referred to in Section 3.9 of the Association Agenda and in pursuit of its overall objectives,

HAS ADOPTED THE FOLLOWING RECOMMENDATION:

Sole Article

The Cooperation Council recommends that the Parties implement the EU-Ukraine Association Agenda as set out in document UE-UA 1056/2/09 REV 2, insofar as such implementation is directed towards the preparations for and implementation of the future EU-Ukraine Association Agreement.

Done at Brussels, 23 November 2009.

For the Cooperation Council

Head of the EU Delegation

C. BILDT

*Head of the Ukrainian
Delegation*

Y. TYMOSHENKO

2010 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 100 per year
EU Official Journal, L + C series, paper + annual CD-ROM	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 770 per year
EU Official Journal, L + C series, monthly CD-ROM (cumulative)	22 official EU languages	EUR 400 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week	multilingual: 23 official EU languages	EUR 300 per year
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual CD-ROM.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

CD-Rom formats will be replaced by DVD formats during 2010.

Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our commercial distributors. The list of commercial distributors is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (<http://eur-lex.europa.eu>) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: <http://europa.eu>

