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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Information on the conclusion of the Protocol setting out the fishing opportunities and the financial contribution provided for by the Fisheries Partnership Agreement between the European Union and the Democratic Republic of São Tomé and Príncipe

On 13 July 2011, the European Union informed the Government of the Democratic Republic of São Tomé and Príncipe of its approval, on 12 July 2011, of the Protocol setting out the fishing opportunities and the financial contribution provided for by the Fisheries Partnership Agreement.

On 28 August 2011, the Democratic Republic of São Tomé and Príncipe informed the General Secretariat of the Council of the European Union in writing of the completion of its procedures necessary for the Protocol's entry into force.

In accordance with Article 14 of the Protocol, it accordingly entered into force on 29 August 2011.

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 990/2011

of 3 October 2011

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

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) By Regulation (EEC) No 2474/93⁽²⁾ the Council imposed a definitive anti-dumping duty of 30,6 % on imports of bicycles originating in the People's Republic of China (the 'original measures'). Following an anti-circumvention investigation in accordance with Article 13 of the basic Regulation, this duty was extended by Council Regulation (EC) No 71/97⁽³⁾ to imports of certain bicycle parts originating in the People's Republic of China ('PRC'). In addition, it was decided to create an 'exemption scheme' on the basis of Article 13(2) of the basic Regulation. The details of the scheme were provided for in Commission Regulation (EC) No 88/97⁽⁴⁾. In order to receive an exemption from the extended duty, bicycle producers in the Union have to respect the conditions of Article 13(2) of the basic Regulation, namely to respect a ratio of less than 60 % of Chinese bicycle parts in their operation or the addition of more than 25 % value to all parts brought into the operation. To date, more than 250 exemptions have been granted.

- (2) Following an expiry review pursuant to Article 11(2) of the basic Regulation, the Council, by Regulation (EC) No 1524/2000⁽⁵⁾, decided that the abovementioned measures should be maintained.

- (3) Following an interim review pursuant to Article 11(3) of the basic Regulation (the 'previous investigation'), the Council, by Regulation (EC) No 1095/2005⁽⁶⁾, decided to increase the anti-dumping duty in force to 48,5 %.

2. Present investigation

- (4) On 13 July 2010, the Commission announced by a notice ('Notice of initiation')⁽⁷⁾, published in the *Official Journal of the European Union*, the initiation of an expiry review of the anti-dumping measures applicable to imports of bicycles originating in the PRC.

- (5) The review was initiated following a substantiated request lodged by the European Bicycles Manufacturers Association (EBMA, the 'applicant') on behalf of Union producers representing a major proportion, in this case more than 25 %, of the Union production of bicycles.

- (6) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and recurrence of injury to the Union industry.

3. Parties concerned by the investigation

- (7) The Commission officially advised the applicant, the Union producers mentioned in the request, any other known Union producers, the exporting producers, importers as well as the associations known to be concerned and the authorities of the PRC, of the initiation of the investigation.

- (8) Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limits set in the Notice of initiation.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 228, 9.9.1993, p. 1.

⁽³⁾ OJ L 16, 18.1.1997, p. 55.

⁽⁴⁾ OJ L 17, 21.2.1997, p. 17.

⁽⁵⁾ OJ L 175, 14.7.2000, p. 39.

⁽⁶⁾ OJ L 183, 14.7.2005, p. 1.

⁽⁷⁾ OJ C 188, 13.7.2010, p. 5.

- (9) A number of Union producers represented by the applicant, other cooperating Union producers, exporting producers, importers, and user associations made their views known.
- (10) All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.
- 4. Sampling**
- (11) In view of the large number of exporting producers, Union producers and importers involved in the investigation, sampling was envisaged in the Notice of initiation, in accordance with Article 17 of the basic Regulation.
- (12) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers and representatives acting on their behalf, Union producers and importers were requested to make themselves known and to provide information as specified in the Notice of initiation. The Commission also contacted known associations of exporting producers and the relevant authorities of the PRC. These parties raised no objections to the use of sampling.
- (13) In total, 7 exporters/producers, around 100 Union producers and 4 importers provided the requested information within the time limits set.
- (14) Given that only seven Chinese producers replied to the sampling information requested in the Notice of initiation, it was decided not to apply sampling. Questionnaires were sent to these seven companies, only three of which submitted replies. Of these three companies, only two reported exports of the product concerned to the Union during the period from 1 April 2009 to 31 March 2010 (the 'review investigation period' or 'RIP').
- (15) As for the Union producers, in accordance with Article 17(1) of the basic Regulation, the sample was selected after consultation with the relevant association and with their consent on the basis of the largest representative volume of sales and production within the Union. As a result, eight Union producers were selected in the sample. The Commission sent questionnaires to the eight companies selected, which submitted complete replies.
- (16) Given the limited number of importers who replied and indicated their willingness to cooperate (four importers), it was decided that sampling was not necessary as regard importers. The Commission sent questionnaires to the four importers. Subsequently, only one importer sent a reply to the questionnaire, but this reply was incomplete as the importer was involved in the process of closing down its operations.
- (17) The Commission sought and verified all information it deemed necessary for the purpose of determining the likelihood of continuation or recurrence of dumping and injury to the Union interest. Information submitted by the following companies was verified on spot:
- (a) *Producers in the Union*
- Accell Group NV, Heerenveen, the Netherlands,
 - Decathlon SA, Villeneuve d'Ascq, France,
 - Cycleurope Industries S.A.S., Romilly sur Seine, France,
 - Denver S.R.L., Dronero, Italy,
 - Derby Cycle Werke GmbH, Cloppenburg, Germany,
 - MIFA Mitteldeutsche Fahrradwerke AG, Sangerhausen, Germany,
 - Sprick Rowery Sp.zo.o., Świebodzin, Poland, and Sprick Cycle GmbH, Gütersloh, Germany,
 - UAB Baltik Vairas and UAB Baltic Bicycle Trade, Šiauliai, Lithuania, and Pantherwerke AG and Onyx Cycle GmbH, Löhne, Germany.
- (b) *Exporting producers in the PRC*
- Oyama Bicycles (Taicang) Co., China,
 - Tianjin Golden Wheel Bicycle (Group) Co. Ltd, China.
- (18) The investigation of dumping and injury covered the RIP. The examination of trends in the context of the analysis of injury covered the period from January 2007 to the end of the RIP (the 'period considered').
- B. PRODUCT CONCERNED AND LIKE PRODUCT**
- (19) The product concerned is the same as that covered by Regulation (EC) No 1524/2000, namely bicycles and other cycles (including delivery tricycles, but excluding unicycles), not motorised, currently falling within CN codes ex 8712 00 10, 8712 00 30 and ex 8712 00 80.
- (20) As in the previous investigation, the bicycles were classified in the following categories:
- (A) ATB (all-terrain bicycles including mountain bicycles 24" or 26"),
 - (B) trekking/city/hybrid/VTC/touring bicycles 26" or 28",
 - (C) junior action (BMX) and children's bicycles 16" or 20",
 - (D) other bicycles/cycles (excluding unicycles).

- (21) All types of bicycles as defined above have the same basic physical and technical characteristics. Furthermore, they are sold through similar distribution channels such as specialised retailers, sport chains and mass merchandisers on the Union market. The basic application and use of bicycles being identical, they are largely interchangeable and models from different categories therefore compete with each other. On this basis, it was concluded that all the categories form one single product.
- (22) The investigation also showed that bicycles produced and sold by the Union industry on the Union market, those produced and sold on the analogue country market and those imported into the Union market originating in the PRC have the same basic physical and technical characteristics and the same basic uses.
- (23) After disclosure, one party alleged that there was little or no competition between the Chinese bicycles and the bicycles produced in the Union market. However, there was no information in the file that could have supported such a claim and no documentary evidence was submitted in support to this claim. In this context, it is also noted that, as mentioned below in recital 26, the cooperation of the Chinese exporting producers was very low and they provided very limited information concerning the products produced and sold by the Chinese producers to the Union market. Therefore, and in the absence of any more reliable information, the claim was rejected.
- (24) Bicycles produced and sold by the Union industry on the Union market, those produced and sold on the analogue country market and those imported into the Union market originating in the PRC are, therefore, considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR A RECURRENCE OF DUMPING

1. Preliminary remarks

- (25) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was likely to continue or recur upon a possible expiry of the measures in force.
- (26) The level of cooperation in this proceeding was very low since its initiation. As indicated in recital 14, only three Chinese producers submitted questionnaire replies and were willing to cooperate initially. Of these three companies, only two reported exports of the product concerned to the Union during the RIP, representing together less than 10 % of the total exports of the product concerned to the Union.
- (27) Verification visits were carried out at the premises of the two companies with exports sales to the Union.
- However, for one of them it was not possible to verify information given in the questionnaire reply as the company failed to provide documents that would substantiate the data which it had submitted. The other company cooperated satisfactorily, but its exports to the Union during the RIP represent less than 5 % of the total exports of the product concerned from the PRC to the Union.
- (28) On the basis of the above, the Chinese authorities and the three companies were notified of the possibility that Article 18 of the basic Regulation might be applied due to a low level of cooperation by the exporting producers and were given an opportunity to present their comments. The Commission did not receive any comments in response to this communication. Consequently, conclusions regarding the likelihood of continuation or recurrence of dumping below are based on facts available in accordance with Article 18 of the basic Regulation, namely trade statistics and submissions by interested parties, including the request.

2. Dumping of Chinese imports during the RIP

2.1. Analogue country

- (29) In the Notice of initiation, it was envisaged to use Mexico as an analogue country for the purpose of establishing a normal value for the PRC. Interested parties were invited to comment on the appropriateness of this choice.
- (30) One party commented on the appropriateness of the selection of Mexico as the analogue country, claiming that domestic prices of bicycles in Mexico are not reliable and are unsuitable for the purpose of this investigation. India was proposed as an alternative. This claim was, however, not substantiated and, therefore, rejected.
- (31) Mexico was used as an analogue country in the previous investigations and no new or changed circumstances which would justify a change were proven to exist. The Mexican market profile for the product concerned, number of operators, domestic competition and the features of production process confirmed that Mexico was still an appropriate analogue country.
- (32) Questionnaires were sent to three Mexican companies. Of the three companies, only one wished to cooperate and submitted a questionnaire reply.

2.2. Normal value

- (33) Domestic sale prices from the analogue country were used to establish an average normal value, using the average currency rate for the RIP between euro and Peso in order to obtain a weighted average ex-works price in euro.

2.3. Export price

(34) Due to the application of Article 18 and to the absence of other reliable information available, export prices were mainly established on the basis of Eurostat data and on information provided by the only Chinese cooperating exporter.

(35) During the previous investigation, it was concluded that the prices found in Eurostat were inconclusive for the purpose of the analysis ⁽¹⁾. However, due to the low cooperation from the Chinese exporters, the Commission considered the import prices of Eurostat for the PRC as a reasonable source for the purpose of the current investigation. Nonetheless, the Commission is aware of the limitations of this analysis and that it can only serve as an indicator of price trends.

(36) The export price derived from Eurostat is a CIF price, which had to be adjusted for the average cost of sea freight per transaction in order to calculate an ex-works level. Information contained in the reply of the sole cooperating Chinese producer was used to establish the average sea freight cost per unit, calculated at EUR 8,30. The ex-works export price to the Union of the only Chinese cooperating company was established on a similar basis. The resulting unit price was then used to calculate a weighted average Chinese ex-works price.

2.4. Comparison

(37) Pursuant to Article 2(11) of the basic Regulation, the weighted average normal value from Mexico was compared to the weighted average Chinese export price on an ex-works basis. A weighted average dumping margin was thus established.

2.5. Dumping margin

(38) The dumping calculations showed a countrywide dumping margin of more than 20 %. This level should, however, be considered as conservative due to the fact that the Eurostat data does not take into account the substantial price differences among the various types of the product concerned. It should be noted in this context that according to information submitted in the request, dumping margins reached levels of more than 100 %.

3. Development of imports should measures be repealed

3.1. Preliminary remark

(39) The likely development of the imports from the PRC was analysed in terms of both expected price trends and volume.

3.2. Spare capacity of the Chinese exporting producers

(40) Based on information submitted in the request, the Chinese bicycles manufacturing industry is, in volume

terms, the largest in the world. The PRC has a production capacity of 100 to 110 million bicycles and a production of about 80 million bicycles per year. The Chinese bicycles industry is export oriented: out of an annual production of 80 million bicycles, 25 million bicycles are for the domestic market and the remaining 55 million bicycles, or 69 % of total production, is for export.

(41) The estimated annual spare capacity in the PRC is about 20 to 30 million bicycles, which is more than double the present production in the Union as stated in recital 66. Moreover, information obtained during the investigation shows that the production capacity in the PRC for bicycles can be easily increased, inter alia, through the employment of additional workforce, in case of an increased demand.

(42) Therefore, in view of the above, it cannot be excluded that spare capacity available in the PRC could be used to increase exports to the Union in the absence of anti-dumping measures.

(43) After disclosure, one party argued that the Chinese production capacity mentioned in the Regulation was unfounded and based on pure speculation. In this respect, it is reminded that the cooperation from the Chinese exporting producers was very low and that to a large extent findings had to be based on the facts available. In this case, and as mentioned above in recital 40, in the absence of any other more reliable information, the Commission used the prima facie evidence submitted in the request. The investigation did not bring into light any information that would have suggested that such prima facie evidence was inaccurate. The party in question did also not submit any information or evidence that would have shown substantially different levels of spare capacity in PRC. This claim was therefore rejected.

3.3. Attractiveness of the Union market and export prices to third countries

(44) Data from Eurostat and from the request show that the Union constitutes an attractive market for the Chinese exporting producers.

(45) Price information provided by the only cooperating Chinese exporting company show that the weighted average ex-works export prices of the product regarding third countries is lower than the average ex-works sales prices in the Union for the RIP. Taking the production capacity in the PRC and the demand in the Union market into consideration, it would be quite likely that Chinese manufacturers would immediately increase their exports of bicycles to the Union, should the measures be repealed. Moreover, the existing overcapacity gives the Chinese manufacturers the possibility to be present on the European market at very low prices.

⁽¹⁾ OJ L 183, 14.7.2005, p. 20.

3.4. Conclusion of the likelihood of continuation of dumping

- (46) In view of the fact that even considering the measures currently in force, a conservative comparison using Eurostat figures and information submitted by the only Chinese cooperating exporter showed a dumping margin of over 20 % for Chinese exports during the RIP, it is very likely that dumping will continue in the absence of measures.
- (47) The foregoing analysis demonstrated that Chinese imports continued to enter the Union market at dumped prices. Given most notably the spare capacity available in the PRC, which can easily be increased even more if needed, as well as the analysis of the price levels in the Union and other third countries, it can be concluded that there is a likelihood of continuation of dumping, should measures be removed.

D. SITUATION ON THE UNION MARKET

1. Union production and Union industry

- (48) In the course of the present investigation it was found that bicycles have been manufactured by around 100 Union producers which made themselves known in the investigation plus other producers, most of which are represented by their national associations. These companies constitute the Union industry within the meaning of Article 4(1) of the basic Regulation. Furthermore, the investigation showed that the industry

is benefiting from the exemption scheme which was described in recital 1 above.

- (49) All available information, including information provided in the request, data collected from Union producers and national associations before and after the initiation of the investigation, as well as general production statistics was used in order to establish total Union production.

2. Consumption in the Union market

- (50) The Union producers' sales were assessed on the basis of data collected from producers in the reply to the sampling forms and data reported in the request lodged by the applicant. The data in the request was collected from various bicycle-manufacturing associations in the Union.
- (51) The apparent Union consumption was established on the basis of the sales of all Union producers on the Union market, as estimated in recital 68, plus imports from all countries, as reported by Eurostat.
- (52) Between 2007 and the RIP, Union consumption decreased by 11 % from 22 912 066 units in the year 2007 to 20 336 813 units during the RIP. Consumption fell in particular between 2008 and 2009. Detailed data, expressed in units, are as follows:

Table 1 – Consumption

	2007	2008	2009	RIP
Volume (units)				
+ Total imports	10 073 428	10 017 551	8 973 969	9 202 752
+ Union production sold on the Union market	12 838 638	12 441 446	11 604 072	11 134 061
= Consumption	22 912 066	22 458 997	20 578 041	20 336 813
<i>Index (2007 = 100)</i>	100	98	90	89

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

- (53) The volume of imports of the product concerned was established on the basis of statistical information provided by Eurostat. The volume of dumped imports of the product concerned originating in the PRC decreased by 38 % over the period considered to 615 920 units during the RIP (see Table 2). The imports of the product concerned from the PRC at the beginning of the period considered was 26 % higher than that imported during the RIP of the previous investigation (1 April 2003 to 31 March 2004: 733 901 units⁽¹⁾). The largest drop in the imports of the product concerned occurred between 2008 and 2009, which is in line with what occurred in total Union consumption (see Tables 1 and 2).
- (54) Since the imports from the PRC fell more than the consumption during the period considered, the market share of the PRC dropped slightly from 4,4 % in 2007 to 3,1 % in the RIP.

⁽¹⁾ OJ L 183, 14.7.2005, p. 19.

- (55) The developments of imports and market share of bicycles originating in the PRC during the period considered is shown in the following table:

Table 2 – Imports from PRC

	2007	2008	2009	RIP
Volume of imports from the country concerned (units)	986 514	941 522	598 565	615 920
<i>Index (2007 = 100)</i>	100	95	61	62
Market share of imports from the country concerned	4,4 %	4,3 %	3,0 %	3,1 %

4. Prices of the imports concerned

4.1. Evolution of prices

- (56) As explained in recital 35 the Commission considered the imports prices of Eurostat for the PRC as a reasonable source for the purpose of the current investigation.
- (57) According to Eurostat data, the weighted average import prices, hereafter indicated by index, from the PRC increased by 125 % between the year 2007 and the RIP. The import prices rose significantly in 2009 and then remained almost constant. Detailed data is shown in the following table:

Table 3 – Prices of the imports concerned

	2007	2008	2009	RIP
PRC				
<i>Index (2007 = 100)</i>	100	128	224	225

4.2. Price undercutting

- (58) For the determination of the price undercutting of bicycles originating in the PRC, the Commission based its analysis on the information submitted in the course of the investigation by the sampled Union producers and the average prices from Eurostat. The relevant sales prices of the Union industry were those to independent customers, which were adjusted when necessary to ex-works level. The comparison showed that after deduction of the anti-dumping duty, imports from the PRC were undercutting the prices of the Union industry by 53 %.

5. Imports from other countries

- (59) Based on Eurostat data, imports from other third countries decreased from 9 087 000 units in 2007 to 8 587 000 units in the RIP; an overall decrease of 6 %. They followed the decreasing trend of Union consumption (– 11 %), but at a slower pace. The market share of third countries increased from 40 % to 42 % during the period considered. However, as stated in recital 35 and 56, the prices in Eurostat do not take into consideration the various product mixes from each country and therefore only indexes are used to indicate the price trends. Since the product mix of the imports from other third countries is unknown, it is not meaningful to compare prices of the imports below with those of the Union industry. Nevertheless, some additional information was sought and obtained regarding imports from those countries that account for most other imports of bicycles. Detailed data is shown below:

Table 4 – Imports from other countries

	2007			2008			2009			RIP		
All Types	Units '000	Market share	Price EUR/unit	Units '000	Market share	Price EUR/unit	Units '000	Market share	Price EUR/unit	Units '000	Market share	Price EUR/unit
Taiwan	3 186	14 %		3 428	15 %		2 949	14 %		2 958	15 %	
<i>Indexed</i>	100	100	100	108	110	104	93	103	125	93	105	125
Thailand	1 534	7 %		1 522	7 %		1 384	7 %		1 397	7 %	
<i>Indexed</i>	100	100	100	99	101	107	90	100	127	91	103	127
Philippines	690	3 %		437	2 %		449	2 %		476	2 %	
<i>Indexed</i>	100	100	100	63	65	105	65	73	106	69	78	103
Malaysia	475	2 %		361	2 %		193	1 %		265	1 %	
<i>Indexed</i>	100	100	100	76	77	106	41	45	116	56	63	99
Sri Lanka	574	3 %		749	3 %		1 017	5 %		1 101	5 %	
<i>Indexed</i>	100	100	100	131	133	107	177	197	108	192	216	107
Tunisia	550	2 %		527	2 %		530	3 %		495	2 %	
<i>Indexed</i>	100	100	100	96	98	105	96	107	113	90	101	113
Others	2 078	9 %		2 052	9 %		1 854	9 %		1 895	9 %	
<i>Indexed</i>	100	100	100	99	101	110	89	99	131	91	103	127
TOTAL	9 087	40 %		9 076	40 %		8 375	41 %		8 587	42 %	
<i>Indexed</i>	100	100	100	100	102	109	92	103	125	94	106	122

(1) *Taiwan*

- (60) The imports from Taiwan have decreased during the period considered from 3 158 600 units in 2007 to 2 958 000 units in the RIP and their market share slightly increased from 14 % to 15 % during the same period. Imports of bicycles from Taiwan are aimed at the high-end market. During the investigation it has been demonstrated, applying model comparison, that imports from Taiwan are sold at a higher price than the similar models produced by the Union industry, as in the previous investigation period ⁽¹⁾. In addition, during the period considered, the price of the imports had an increasing trend, registering an increase of 25 % in the RIP as compared to 2007.

(2) *Thailand*

- (61) Imports originating in Thailand have decreased during the period considered from 1 534 000 units in 2007 to 1 397 000 units during the RIP. The decline of the imports was in line with the consumption trend as their market share remained constant at 7 %. However, the imports of bicycles from Thailand are mid-range bicycles and the investigation showed that applying model comparison, the imports from Thailand are sold at a higher price than the similar models produced by the Union industry. In addition, during the period considered, the price of the imports had an increasing trend, registering an increase of 27 % in the RIP as compared to 2007.

(3) *Sri Lanka*

- (62) The imports from Sri Lanka almost doubled during the period considered from 574 000 units in 2007 to 1 101 000 units during the RIP and their market share reached 5 % at the end of the period considered. It has, however, been alleged by one party that the Chinese exporters are circumventing the anti-dumping duties by means of transshipment via Sri Lanka. At this moment in time, the Commission does not have sufficient information to draw any conclusion in respect of the situation of these imports. In these circumstances, it cannot be excluded that imports reported as originating from Sri Lanka are contributing to the injury suffered by the Union industry.
- (63) After disclosure, one interested party claimed that the conclusions on a possible circumvention via Sri Lanka were only a conjecture and any allegation concerning

circumvention practices via Sri Lanka should not be taken into consideration in the final conclusions. In reply to this claim, it should be underlined that, as clearly expressed in recital 62 above, the Commission did not draw any conclusion on this issue.

6. Economic situation of the Union industry*6.1. Preliminary remarks*

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

- (65) As explained above, considering the large number of complainant Union producers, the provisions on sampling had to be used. For the purpose of the injury analysis, the injury indicators have been established as follows:

- The macroeconomic elements (production capacity, sales volume, market share, employment, productivity, growth, magnitude of dumping margins and recovery from the effects of past dumping) were assessed at the level of the whole Union production, on the basis of the information collected from the national Union producers associations and individual companies. These factors were cross-checked, where possible, with the overall information provided by the relevant official statistics.
- The analysis of microeconomic elements (stocks, sales prices, cash flow, profitability, return on investments, ability to raise capital, investments and wages) was carried out for the individual companies, i.e. at the level of those Union producers which were included in the sample.

*6.2. Macroeconomic indicators**(a) Production, production capacity and capacity utilisation*

- (66) The Union industry's production slightly decreased each year during the period considered. By the end of RIP, the production decreased by 11 % compared to 2007 in line with the consumption trend. The detailed data is shown in Table 5:

Table 5 – Total Union production

	2007	2008	2009	RIP
Volume (units)				
Production	13 813 966	13 541 244	12 778 305	12 267 037
<i>Index (2007 = 100)</i>	100	98	93	89

⁽¹⁾ OJ L 183, 14.7.2005, p. 30.

- (67) Production capacity increased slightly by 2 % between 2007 and the RIP. As production decreased, the resulting capacity utilisation showed an overall decrease of 13 % between 2007 and the RIP, reaching an 81 % capacity utilisation during the RIP. Detailed data is shown below:

Table 6 – Production capacity and capacity utilisation

	2007	2008	2009	RIP
Volume (units)				
Production capacity	14 785 000	15 804 000	15 660 000	15 118 000
<i>Index (2007 = 100)</i>	100	107	106	102
Capacity utilisation	93 %	86 %	82 %	81 %
<i>Index (2007 = 100)</i>	100	92	87	87

(b) Sales volume

- (68) The sales volume of the Union industry on the Union market to unrelated customers decreased by 13 % between 2007 and the RIP. This development is in line with the general trend of decreasing consumption on the Union market. Detailed data is shown below:

Table 7 – Sales to unrelated customers

	2007	2008	2009	RIP
Volume (units)	12 838 638	12 441 446	11 604 072	11 134 061
<i>Index (2007 = 100)</i>	100	97	90	87

(c) Market share

- (69) The market share held by the Union industry slightly fluctuated between 2007 and the RIP. Overall, there has been a decrease of 1,3 percentage points during the period considered. Detailed data is shown below:

Table 8 – Union market share

	2007	2008	2009	RIP
Union market share	56,0 %	55,4 %	56,4 %	54,7 %
<i>Index (2007 = 100)</i>	100	99	101	98

(d) Employment and productivity

- (70) Employment decreased by 9 % during the period considered from 14 925 employees in 2007 to 13 646 during the RIP.
- (71) The productivity slightly increased in 2008 as compared to 2007, but then it declined. Overall, the productivity slightly decreased by 3 % during the period considered. Detailed data is shown below:

Table 9 – Total Union employment and productivity

	2007	2008	2009	RIP
Number of employees	14 925	14 197	14 147	13 646
<i>Index (2007 = 100)</i>	100	95	95	91
Productivity (units/year)	926	954	903	899
<i>Index (2007 = 100)</i>	100	103	98	97

(e) *Growth*

- (72) Overall, it should be noted that the market share of all Union producers slightly decreased by 1,3 percentage points, while the level of consumption decreased by 11 %, which indicates clearly that they have not been able to grow.

(f) *Magnitude of dumping margin*

- (73) Dumping from the PRC continued during the RIP. As explained in recital 34, the dumping calculation is based on average prices from Eurostat due to the low cooperation from the Chinese exporters. As stated in recital 35, the average prices from Eurostat contains limited information concerning the product mix which is of significant importance for the calculation of the dumping margin; nevertheless, given the spare capacity from the PRC, the impact on the Union industry of the actual margins of dumping cannot be considered to be negligible.

(g) *Recovery from past dumping*

- (74) It was analysed whether the Union industry recovered from the effects of past dumping. It was concluded that the expected recovery of the Union industry from the effects of past dumping has not happened to the extent anticipated as shown, in particular, by the persistently low profitability and a decrease in the capacity utilisation.

6.3. *Microeconomic Indicators*(h) *Stocks*

- (75) One producer could not provide consistent information regarding stocks for the period considered due to its current internal structure. Accordingly, data from this company had to be excluded when carrying out the analysis of stocks for the period considered.
- (76) Stocks of bicycles increased over the analysis period from 880 935 units in 2007 to 1 091 516 units in the RIP, an increase of 24 %. Detailed data is shown below:

Table 10 – Stocks

	2007	2008	2009	RIP
Volume (units)				
Closing stocks	880 935	1 132 612	818 276	1 091 516
<i>Index (2007 = 100)</i>	100	129	93	124

(i) *Sales prices and costs*

- (77) Average ex-works sales prices of the Union industry to unrelated customers in the Union followed a slightly increasing trend over the period considered. Overall, the Union industry increased its prices by 9 % between 2007 and the RIP in line with the increase of the cost of production, as explained in recital 79.

Table 11 – Unit price Union market

	2007	2008	2009	RIP
Unit price of Union sales (EUR per unit)	163	170	176	178
<i>Index (2007 = 100)</i>	100	104	108	109

- (78) The cost of production was calculated on the basis of the weighted average of all types of the like product produced by the sampled producers.
- (79) The cost of production throughout the period increased by 9 %. This increase is mainly due to a change in the mix of the products. Detailed data is shown below:

Table 12 – Unit cost of production

	2007	2008	2009	RIP
Unit cost of production (EUR per unit)	165	169	180	180
<i>Index (2007 = 100)</i>	100	102	109	109

- (80) After disclosure, one party alleged that the increasing cost of production took place against a background of significant reductions in some raw material costs, namely steel and aluminium, which would suggest that the injury suffered was self-inflicted. However, this allegation was not substantiated by sufficient evidence. Indeed, the party provided only data showing, in very general terms, the price evolution of aluminium and steel during the period under consideration, but did not show to what extent these developments should have impacted the overall cost of production of bicycles. In addition, this argument was only raised after disclosure, i.e. at an advanced stage of the proceeding, and it was, therefore, not verifiable anymore. Therefore, the allegation was rejected.

(j) *Profitability*

- (81) The overall profitability of the sampled producers in respect of the product concerned during the first year of the period considered was negative (-1,7 %). In 2008, the Union producers became profitable. However, in 2009 and in the RIP, the industry was again loss-making.
- (82) The above trend indicates that the industry is in a fragile situation as compared to the previous investigation when the Union industry profitability was 3,6 % during the RIP.

Table 13 – Profitability

	2007	2008	2009	RIP
Profitability Union sales	-1,7 %	0,6 %	-2,2 %	-1,1 %
<i>Index (2007 = 100)</i>	-100	33	-129	-68

- (83) After disclosure, it was alleged without providing, however, any supporting documentary evidence, that the Union industry had failed to improve its efficiency and performance. To the contrary, the investigation has shown that the Union industry has done evident efforts to adjust to the price pressure coming from dumped imports by relocating the production facilities within the Union and, thus, to increase cost effectiveness, as stated in recital 85 below. Therefore, these allegations have been rejected.

(k) *Return on investment*

- (84) Investment in the business of the product concerned significantly decreased during the period considered, from EUR 21 491 000 in 2007 to EUR 11 738 000 during the RIP. This can be explained in large part by the economic crisis which began in 2008 and reached its deepest point during the RIP when access to new capital was ever more difficult and sales' forecasts were pessimistic.
- (85) It should be noted that a sizeable part of investments has been done in order to increase the efficiency of the manufacturing process and keep up-to-date with the latest technologies. In this process, some of the production capacity has been shifted from western European countries to eastern European countries, expanding the production base over almost all Member States and showing the Union industry's vitality and efforts to remain competitive.

Table 14 – Investments and Return on Investment

	2007	2008	2009	RIP
Investments (EUR '000)	21 491	21 743	10 701	11 738
<i>Index (2007 = 100)</i>	100	101	50	55
Return on investment	-16 %	5 %	-20 %	-10 %

- (86) One producer was not able to provide consistent information on net production of fixed assets for the period considered for the calculation of the return on investment due to its internal structure. Accordingly, data from this company had to be excluded when carrying out the analysis of return on investment for the period considered.
- (87) Return on investment followed the profitability trend. In 2007 the sampled Union producers registered a negative return on investment of 16 % which slightly increased to a negative 10 % during the RIP.

(l) *Cash flow and ability to raise capital*

- (88) One producer was not able to provide consistent information on cash flow for the period considered due to its structure which made it impossible to estimate the cash flow for only a bicycle part out of its total activity. Accordingly, data from this company had to be excluded when carrying out the analysis of the cash flow for the period considered.
- (89) The cash flow, which is the ability of the industry to self-finance its activities, remained positive during the period under investigation. However, between 2007 and the RIP, it decreased by around 33 %. Detailed data is shown below:

Table 15 – Cash flow

	2007	2008	2009	RIP
Cash flow (EUR '000)	19 981	20 767	19 261	13 350
<i>Index (2007 = 100)</i>	100	104	96	67

- (90) The sampled producers raise capital either internally when they belong to a group of companies or by bank loans. In other cases, cash flow generated by the company is used as a source of financing. None of the sampled producers have shown any significant difficulties to raise capital.

(m) *Wages*

- (91) During the period considered, the wage cost per employee increased by 11 %. This reflects a shift of production to slightly more sophisticated products.

Table 16 – Wages

	2007	2008	2009	RIP
Wage cost per employee (EUR)	20 239	20 880	22 499	22 541
<i>Index (2007 = 100)</i>	100	103	111	111

- (92) After disclosure, it was alleged that the wage cost per employee was increasing while, at the same time, the demand slumped, which would indicate that the injury was self-inflicted. Indeed, as shown in the table above, the wage cost per employee increased by 11 % during the period considered. However, as explained in recital 70, the number of employees decreased by 9 %. Consequently, the total wage cost increased by only 2 %. Therefore, the overall impact on the profitability of the Union industry was found to be very small.

7. Conclusion on injury

- (93) The existing anti-dumping measures have clearly had an effect on the situation of the Union industry. Indeed, the latter has managed, to some extent, to benefit from the

existence of the measures maintaining a stable market share. However, the Union production decreased and profit margin remained insufficient. Any possibility for further growth and profits has been undermined by the price and volume pressure of dumped imports.

- (94) As shown in recital 53, volumes of imports from the PRC decreased between 2007 and the RIP. However, the biggest drop of the volume of imports was between 2008 and 2009 when the import prices from the PRC increased significantly. Nevertheless, as the investigation showed and as explained in recital 58, this increase in price was still not enough to allow the industry to improve its situation. Indeed, the imports from the PRC were undercutting the prices of the Union industry by 53 %.

- (95) The industry is clearly in a fragile situation, as it is loss-making. Almost all injury indicators relating to the financial performance of the Union producers – such as profitability, return on investments and cash flow – deteriorated during the period considered. Consequently, it cannot be concluded that the situation of the Union industry is secure. Moreover, this situation could have been further exacerbated by the pressure of the possibly circumventing imports.
- (96) On this basis, it is concluded that the Union industry, as a whole, remains in a vulnerable economic situation and has continued to suffer material injury within the meaning of Article 3 of the basic Regulation.

8. Impact of dumped imports and other factors

8.1. Impact of the dumped imports

- (97) In parallel to the shrinking consumption in the Union, the market share of Chinese imports slightly decreased from 4,4 % to 3,1 % (see recital 53). As mentioned in recital 58 above, based on a calculation excluding the anti-dumping duty, the Chinese imports undercut the Union industry prices by 53 % during the RIP. It is recalled that the duty rate amounts to 48,5 %. Consequently, the level of undercutting demonstrates on the one hand the effectiveness of the duties in place, and on the other hand the necessity to continue the measures. This conclusion is reinforced by the fact that the undercutting found was at the same level as in the last review investigation. Hence, the injurious price impact of dumped imports from the PRC on the Union industry remained significant and, as explained above in recital 58, it is likely to continue.

8.2. Impact of the economic crisis

- (98) Due to the negative economic conditions prevailing during the RIP, the consumption of bicycles decreased. Production and employment also decreased to follow the consumption trend. As the bicycle industry does not have high fixed costs, the decline in production did not have an impact on the profitability of the Union bicycles industry.
- (99) After disclosure, it was alleged that the Union industry created additional production capacity when the Union consumption was declining which had a negative impact on the Union industry's situation. This statement is in contradiction with the development of consumption and capacity as described in recitals 52 and 67 above. Indeed, consumption mainly decreased between 2008 and 2009, while the production capacity had already increased 1 year before, namely in 2007 and 2008. Consequently, this allegation was rejected.

8.3. Imports from other countries

- (100) As explained in recital 59, the volume of imports from other third countries decreased by 6 % in line with the

consumption trend. The market share of imports from other countries increased from 40 % in 2007 to 42 % in the RIP. Their average imports price had an increasing trend by 6 % between 2007 and the RIP. The main countries from which the product concerned was imported were Taiwan, Thailand and Sri Lanka.

- (101) The market share of imports from Taiwan slightly increased over the period considered (from 14 % to 15 %). However, the available information indicates that, as explained in recital 60, the imports from Taiwan are competing under fair conditions with the Union produced bicycles.
- (102) The market share of imports from Thailand remained constant over the period considered. As explained in recital 61, the available information indicates that during the RIP these imports were sold at a competitive price with similar bicycles produced in the Union.
- (103) Imports originating in Sri Lanka have increased by 92 % during the period considered. Their market share during the RIP was 5 %. However, as explained in recital 62, the imports from Sri Lanka are alleged to include Chinese origin bicycles.
- (104) In conclusion, among the biggest exporters of bicycles to the Union, the imports from Taiwan and Thailand could not have a negative impact on the situation of the Union industry mainly because of their price levels (similar to or even higher than that of the Union industry prices). In contrast, it cannot be excluded that imports reported as originating from Sri Lanka are contributing to the injury suffered by the Union industry.

8.4. Circumvention

- (105) It has been alleged with evidence that the Chinese exporters are continuously circumventing the measures through imports via several countries and these imports cause injury to the Union industry. Taking into account the evidence of circumvention discovered by the European Anti-Fraud Office ('OLAF') in the past, most specifically for imports via Philippines, it cannot be excluded that such illegal behaviour still occurs on the market and that it causes injury to the Union industry.

E. LIKELIHOOD OF CONTINUATION OF INJURY

1. Preliminary remarks

- (106) As described in recitals 66 to 91, the imposition of anti-dumping measures allowed the Union industry to recover from the injury suffered, but only to some extent. During the period considered, the Union industry appeared in a fragile and vulnerable situation, still exposed to the injurious effect of the dumped imports from the PRC.

(107) In accordance with Article 11(2) of the basic Regulation, imports from the country concerned were assessed in order to establish if there was a likelihood of continuation of injury.

2. Chinese export volumes

(108) As mentioned in recital 40, the Chinese bicycles industry is export oriented. The Chinese bicycles are present on the main markets worldwide, particularly in the USA and Japan, where they have a dominant position. As mentioned in a previous investigation⁽¹⁾, at the end of the nineties, after a 2-year absence from the US market following the imposition of anti-dumping duties, the Chinese exporting producers managed to significantly increase their presence on that market in a very short period of time. In 2009, the exports of Chinese bicycles to the USA were in the range of 14 055 000 units, out of a total consumption of 14 888 000 units.

(109) This situation shows that the Chinese producers are able to quickly export and penetrate new markets and to maintain a dominant position for a long period of time.

(110) After disclosure, one party claimed that should measures be allowed to lapse there would not be a substantial increase of imports of Chinese bicycles because Chinese exporters faced difficulties in complying with the European bicycle safety standards (EN 14764, EN 14765, EN 14766 and EN 14781). However, this allegation was not substantiated by any documentary evidence. To the contrary, the investigation has shown that a significant proportion of bicycles and bicycle parts are already imported from the PRC complying with the necessary safety standards. There was, therefore, no reason to believe that Chinese producers are not able to comply with the safety standards in force for bicycles. This claim was, therefore, rejected.

3. Spare capacity in the PRC market

(111) As described in recital 41, data collected during the investigation showed that there is a significant spare capacity available in the PRC. Clear indications were found pointing to the conclusion that a large part of this spare capacity could be used to increase exports to the Union in the absence of anti-dumping measures. This is confirmed in particular because there are no indications that third country markets or the Chinese domestic market could absorb any additional production from the PRC.

(112) In addition, after disclosure, it was alleged that the increase of Chinese labour costs would severely restrict the increase of Chinese production capacity. In this regard it is noted that, as mentioned in recital 26, the cooperation of the Chinese exporting producers was very low and figures relating to labour cost and capacity in the PRC have not been provided. In addition, the party concerned did not submit any evidence to support its claim. Therefore, this claim had to be rejected.

4. Circumvention allegations

(113) As explained in recital 105, it has been alleged with evidence that the Chinese exporters are continuously circumventing the measures through imports via several countries. This is further confirmed by OLAF in the Philippines case. This type of behaviour shows the high interest of the Chinese exporters for the attractive Union market.

5. Conclusion

(114) The Union industry had been suffering from the effects of the Chinese dumped imports for several years and is still currently in a fragile economic situation.

(115) As shown above, the Union industry managed to recover from the Chinese dumping practice thanks to the anti-dumping measures in force. During the RIP, however, it found itself in a difficult economic situation. In this context, should the Union industry be exposed to increased volumes of dumped low-priced imports from the country concerned, this would be likely to result in a further deterioration of its sales, market share and sales prices, as well as a further deterioration of its financial situation.

(116) In addition, as stated in recital 58 above, it was also found that the fact that the sales prices of Chinese producers undercut those of the Union industry on average by 53 % appears to indicate that in the absence of measures, Chinese exporting producers are likely to export the product concerned to the Union market at prices considerably lower than those of the Union industry.

(117) In view of the findings made during the investigation, namely the spare capacity in the PRC, the export oriented characteristic of the Chinese industry and the past behaviour of the Chinese exporters on foreign markets, any repeal of the measures would point to a likelihood of continuation of injury.

(118) Finally, as referred to in recitals 105 and 113, the circumvention is strongly underpinning the conclusion of the likelihood of the continuation of injury. It constitutes clear evidence that the Union market continues to be an attractive market for the Chinese producers who would likely direct higher volumes of exports into the Union in the absence of the anti-dumping measures.

F. UNION INTEREST

1. Introduction

(119) In accordance with Article 21 of the basic Regulation, it has been examined whether, despite the conclusion on injurious dumping, it could be clearly concluded that it would not be in the Union interest to maintain the anti-dumping measures against imports from the PRC.

⁽¹⁾ OJ L 175, 14.7.2000, p. 49.

- (120) It should be recalled that in the previous investigations, the adoption of measures was considered not to be against the Union interest. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (121) The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, importers and users.

2. Interest of the Union industry

- (122) The Union bicycle industry has shown that it is viable and competitive if fair market conditions prevail. However, the investigation showed that the industry is still in a weak situation with a financial result close to break-even. Therefore, effective competitive conditions need to be maintained on the Union market.
- (123) Furthermore, considering that new bicycle models are developed by the industry in the Union to a large extent, they would also fully benefit from such developments, in terms of sales volumes and prices, if the pressure of dumped imports is kept under control by measures.
- (124) It is considered that the continuation of measures would benefit the Union industry which should then be able to maintain and possibly increase sales volumes and, probably, sales prices thereby generating the necessary return level which would enable it to continue to invest in new technology.
- (125) By contrast, if measures on imports from the PRC were to lapse, further trade distortions are likely to occur, which would inevitably lead to a halt in the recovery process of the Union industry. Considering the spare production capacity of the PRC, the past behaviour of the Chinese exporters on foreign markets, it is clear that if measures were to lapse, it would be very difficult, if not impossible, for the Union industry to recover and even to maintain its position. Otherwise, the injurious situation of the Union industry is likely to further deteriorate, which may lead to a further reduction of production capacity in the Union and closure of several producing companies. It is therefore concluded that anti-dumping measures are in the interest of the Union industry.
- (126) In view of the conclusions on the situation of the Union industry as set out in recitals 93 to 96 above, and pursuant to the arguments relating to the analysis on the likelihood of continuation of injury as explained in recitals 106 to 117, it can also be considered that the Union industry would be likely to experience a serious deterioration of its financial situation in case the anti-dumping duties were allowed to expire.

3. Interest of users

- (127) The present investigation is supported by the European Cyclists' Federation (ECF), an umbrella federation of the national cyclists' associations in Europe.
- (128) ECF argues that Europe is the most important market for modern cycling products with high standards in quality and safety and that an inflow of products from the PRC would lessen those standards. In addition, ECF states that there is an enormous potential for growth of the bicycles industry within the Union's economy, which would be jeopardised if anti-dumping duties are terminated.
- (129) It is recalled that in the previous investigations, it was found that the impact of the imposition of measures would not be significant for the users. Despite the existence of measures, importers/users in the Union were able to continue to source their supply, inter alia, from the PRC. No indications were brought forward whether there have been difficulties in finding other sources. It is therefore concluded that the maintenance of the anti-dumping measures is not likely to have a serious effect on users in the Union.

4. Interest of suppliers

- (130) The Association of the Bicycles Parts Producers (COLIPED) made itself known during the investigation. COLIPED argued that in the Union there are about 300 factories which are supplying components to the bicycle producers which employ about 7 300 people and that the further existence of the supplier industry was therefore inevitably depending on the continuation of the bicycles production in Europe. In this respect, it was found that without the existence of the measures, it is to be expected that further closures of bicycles production in Europe will occur, which would have negative consequences for the Union parts industry and would jeopardise employment in the supplier industry. It is therefore concluded that the imposition of anti-dumping measures would be in the interest of the suppliers.

5. Interest of importers

- (131) Only one questionnaire reply was received from the unrelated importers concerning the imports from the PRC but this questionnaire was incomplete as the company was preparing to cease its operations for undisclosed reasons.
- (132) It should be noted first of all that in view of the low level of cooperation of importers, it was impossible to make a proper full assessment of the possible effects of imposition or non-imposition of measures. It

should also be recalled that the purpose of the anti-dumping measures is not to prevent imports, but to restore fair trade and ensure that imports are not made at injuriously dumped prices. As fairly priced imports will still be allowed to enter into the Union market, and as imports from third countries will also continue, it is likely that the traditional business of importers will not be substantially affected. It is also clear that the Union producers have sufficient capacity to supply a possible increase in demand of bicycles. Moreover, as seen from the table in recital 59, imports from other third countries indicate that there is a substantial capacity to produce bicycles in these countries. It is therefore highly unlikely that a shortage of bicycles would occur.

- (133) As fairly priced imports will still be allowed to enter into the Union market, it is likely that the traditional business of the importers will continue even if anti-dumping measures against dumped imports are maintained on the PRC. The low cooperation by unrelated importers, and the fact that after the imposition of measures on the PRC the investigation could not gather any evidence of importers experiencing particular difficulties, further underscores this conclusion.

6. Conclusion

- (134) The continuation of measures on imports of bicycles originating in the PRC would clearly be in the interest of the Union industry, the consumers and in the interest of the Union suppliers of bicycle parts. It will allow the Union industry to grow and improve its situation in a restored fair competition. Furthermore, the importers will not be substantially affected since fairly priced bicycles will still be available in the market. In contrast, if measures are not imposed, Union producers of bicycles will likely go out of business, thus also threatening the existence of Union suppliers of bicycle parts.
- (135) In view of the above, it is concluded that there are no compelling reasons not to impose anti-dumping duties against imports of bicycles originating in the PRC.

G. DEFINITIVE ANTI-DUMPING MEASURES

- (136) In the light of the foregoing, the anti-dumping measures on bicycles should be maintained. In accordance with Article 11(2) of the basic Regulation the extension of the measures following an expiry review would normally apply for 5 years, unless there are specific grounds or circumstances which call for a shorter period of time.
- (137) In this context, it should be noted that the present proceeding is characterised by particular circumstances as referred to in recitals 1 and 48, which should also be adequately reflected in the duration of the anti-dumping measures. In substance, the Union industry is benefiting from an atypical set of measures which combine both *ad valorem* duties on finished bicycles as

well as an exemption scheme which allows this industry to use Chinese bicycle parts free of anti-circumvention duties provided that specific conditions are met.

- (138) The current expiry review has confirmed the complexity of the bicycle sector and its close interconnection with the sector of bicycle parts. It showed that the Union industry of bicycles is using to a large extent, as shown in recital 1, the exemption scheme for imports of bicycle parts. It is therefore important that the functioning of the measures is regularly re-examined. On these grounds, consideration was given to whether the measures should be limited to 3 years.
- (139) After disclosure, several Union producers and their associations argued that measures should be extended for 5 years. The parties mainly argued that the bicycle producers were ready to make investments in the production of bicycle parts in order to reduce their dependence on imports of Chinese bicycle parts, but a period of 3 years was not sufficient to obtain a positive return on such investments.
- (140) In this respect, the argument that several parties have made or intend to make investments in the bicycles or the bicycle parts sector is not relevant when assessing the need and the duration of anti-dumping measures in the context of an expiry review. Indeed, the latter can only be based on the determination that the expiry of the measures would be likely to lead to the continuation or recurrence of dumping and injury.
- (141) As already explained in recital 137 above, it is recalled that since the initial imposition of measures in 1993 and their extension to bicycle parts in 1997, the situation of bicycles production in the Union changed significantly as more than 250 exemptions have been granted. Furthermore, measures on bicycles are directly linked to the measures extended to bicycle parts and to the exemption scheme system created. In view of this, the conclusion that the measures would warrant re-examination as established above on recital 138 still applies. In this respect, the Council notes that the Commission has the possibility to initiate *ex officio* an interim review covering dumping, injury as well as the exemption scheme aspects pursuant to Article 11(3) of the basic Regulation.
- (142) On these grounds, and in view of the fact that the period of measures would be, in any event, an issue in any review, it is premature to assess in the framework of the current expiry review whether there are specific grounds or circumstances which call for a period of time different from the normal period of 5 years as specified in Article 11(2) of the basic Regulation. It is considered, therefore, that the measures should be prolonged for a period of 5 years. This is without prejudice to the fact that the duration of the current anti-dumping measures may be revisited in a subsequent full interim review, if any, depending on the findings.

H. FINAL PROVISIONS

- (143) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.
- (144) It follows from the above that the anti-dumping duties should be maintained for 5 years,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of bicycles and other cycles (including delivery tricycles,

but excluding unicycles), not motorised, currently falling within CN codes ex 8712 00 10 (TARIC code 8712 00 10 90), 8712 00 30 and ex 8712 00 80 (TARIC code 8712 00 80 90) and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the net free-at-Union-frontier price, before duty, for the products described in paragraph 1 shall be 48,5 %.

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

Article 2

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

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

Done at Luxembourg, 3 October 2011.

For the Council
The President
J. FEDAK

COMMISSION IMPLEMENTING REGULATION (EU) No 991/2011

of 5 October 2011

amending Annex II to Decision 2007/777/EC and Annex I to Regulation (EC) No 798/2008 as regards the entries for South Africa in the lists of third countries or parts thereof with respect to highly pathogenic avian influenza

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption ⁽¹⁾ and in particular the introductory phrase of Article 8, the first paragraph of point 1 of Article 8 and point 4 of Article 8 thereof,

Having regard to Council Directive 2009/158/EC of 30 November 2009 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs ⁽²⁾, and in particular Articles 23(1) and 24(2) thereof,

Whereas:

- (1) Commission Decision 2007/777/EC of 29 November 2007 laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries and repealing Decision 2005/432/EC ⁽³⁾ lays down rules on imports into the Union and the transit and storage in the Union of consignments of meat products, and of consignments of treated stomachs, bladders and intestines, as defined in Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽⁴⁾.
- (2) Decision 2007/777/EC also lays down lists of third countries and parts thereof from which such imports and transit and storage are to be authorised, sets out the model public and animal health certificates, and the rules on the origin and treatments required for those imported products.
- (3) Commission Regulation (EC) No 798/2008 of 8 August 2008 laying down a list of third countries, territories, zones or compartments from which poultry and

poultry products may be imported into and transit through the Community and the veterinary certification requirements ⁽⁵⁾ lays down veterinary certification requirements for imports into and transit, including storage during transit, through the Union of poultry, hatching eggs, day-old chicks, specified pathogen-free eggs, meat, minced meat and mechanically separated meat of poultry, including ratites and wild game birds, eggs and egg products. That Regulation provides that those commodities are only to be imported into the Union from the third countries, territories, zones or compartments listed in Part 1 of Annex I thereto.

- (4) Due to recent outbreaks of highly pathogenic avian influenza (HPAI) in South Africa, Decision 2007/777/EC and Regulation (EC) No 798/2008 were amended by Commission Implementing Regulation (EU) No 536/2011 ⁽⁶⁾, in order to prescribe specific treatments for imports from South Africa of meat products, treated stomachs, bladders and intestines for human consumption obtained from meat of farmed ratites and of biltong/jerky and pasteurised meat products consisting of, or containing meat of farmed feathered game, ratites and wild game birds which are sufficient to eliminate animal health risks linked to these commodities and to prohibit imports of breeding and productive ratites and of day-old chicks, hatching eggs and meat of ratites from the whole territory of South Africa covered by Regulation (EC) No 798/2008.
- (5) South Africa has submitted information to the Commission on the control measures taken in relation to the recent HPAI outbreaks. The Commission has evaluated that information and the epidemiological situation following those outbreaks in South Africa.
- (6) In addition, the Union's Veterinary Emergency Team carried out a mission to South Africa to assess the situation and give recommendations to improve disease control.
- (7) South Africa has implemented a stamping-out policy in order to control the disease and limit its spread. South Africa is carrying out surveillance activities for avian influenza which appear to meet the requirements laid down in Part II of Annex IV to Regulation (EC) No 798/2008.

⁽¹⁾ OJ L 18, 23.1.2003, p. 11.

⁽²⁾ OJ L 343, 22.12.2009, p. 74.

⁽³⁾ OJ L 312, 30.11.2007, p. 49.

⁽⁴⁾ OJ L 139, 30.4.2004, p. 55.

⁽⁵⁾ OJ L 226, 23.8.2008, p. 1.

⁽⁶⁾ OJ L 147, 2.6.2011, p. 1.

- (8) The positive outcome of the evaluation of the disease situation and the epidemiological investigations carried out by South Africa allow limiting the restrictions on imports of ratite meat into the Union to the disease-affected part of the territory of South Africa, placed under restrictions by South Africa. However, the restrictions on imports of live ratites and their hatching eggs should be maintained for the whole territory of South Africa owing to the higher risk for a possible virus introduction into the Union.
- (9) With respect to the treatments laid down in Decision 2007/777/EC for imports of certain meat products, treated stomachs, bladders and intestines for human consumption as well as for biltong/jerky and pasteurised meat products, the treatments applied before the occurrence of the HPAI outbreaks should again be applied for those commodities originating from the disease-free part of the territory of South Africa.
- (10) Part 1 of Annex II to Decision 2007/777/EC lists the territories or parts of territories of third countries to which regionalisation for animal health reasons applies. South Africa's entry should be amended to take account of the new disease situation as regards HPAI in that third country and the resulting consequences for the restrictions on imports of affected commodities into the Union.
- (11) Decision 2007/777/EC and Regulation (EC) No 798/2008 should therefore be amended accordingly.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Decision 2007/777/EC is amended in accordance with Annex I to this Regulation.

Article 2

Annex I to Regulation (EC) No 798/2008 is amended in accordance with Annex II to this Regulation.

Article 3

This Regulation shall enter into force on the third 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, 5 October 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX II

In Part 1 of Annex I to Regulation (EC) No 798/2008, the entry for South Africa is replaced by the following:

‘ZA — South Africa	ZA-0	Whole country	SPF							
			EP, E							S4'
			BPR	I	P2	9.4.2011	A			
			DOR	II						
			HER	III						
	ZA-1	Whole country excluding ZA-2	RAT	VII			9.10.2011			
	ZA-2	Part of the territory within the following boundaries: — to the North: Swart Berg Mountain range, — to the South: Outeniqua Mountain range, — to the East: R339 road linking the Swartberg Mountain range with the Outeniqua Mountain range, from Barandas through Uniondale, — to the West: Gamka Mountains linking the Swartenberg Mountain range with the Gamka river in a southerly direction towards the Outeniqua Mountains.	RAT	VII	P2	9.4.2011				

COMMISSION IMPLEMENTING REGULATION (EU) No 992/2011**of 5 October 2011****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 6 October 2011.

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

Done at Brussels, 5 October 2011.

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	BR	31,9
	MK	38,5
	ZZ	35,2
0707 00 05	EG	98,1
	MK	44,0
	TR	126,8
	ZZ	89,6
0709 90 70	TR	123,0
	ZZ	123,0
0805 50 10	AR	69,4
	BR	41,3
	CL	60,5
	TR	64,6
	UY	68,8
	ZA	75,1
	ZZ	63,3
0806 10 10	CL	79,6
	EG	65,0
	MK	82,2
	TR	108,1
	ZA	62,4
	ZZ	79,5
0808 10 80	CL	90,0
	CN	82,6
	NZ	116,9
	US	114,5
	ZA	85,4
	ZZ	97,9
0808 20 50	CN	50,2
	TR	107,9
	ZA	60,3
	ZZ	72,8

⁽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 20 September 2011

appointing two Irish members and an Irish alternate member of the Committee of the Regions

(2011/649/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal from the Irish Government,

Whereas:

- (1) On 22 December 2009 and 18 January 2010, the Council adopted Decisions 2009/1014/EU ⁽¹⁾ and 2010/29/EU ⁽²⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.
- (2) Two members' seats on the Committee of the Regions have become vacant following the end of the terms of office of Ms Michelle MULHERIN and Mr Denis LANDY. An alternate member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Terry BRENNAN,

HAS ADOPTED THIS DECISION:

Article 1

The following are hereby appointed to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2015:

(a) as members:

- Mr John SHEAHAN, *Member of Limerick County Council,*
- Mr Des HURLEY, *Member of Carlow Local Authorities (County and Town).*

and

(b) as alternate member:

- Ms Catherine YORE, *Member of Meath County Council.*

Article 2

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

Done at Brussels, 20 September 2011.

For the Council
The President
M. SAWICKI

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

COUNCIL DECISION
of 20 September 2011
appointing a Luxembourg member and a Luxembourg alternate member of the Committee of the Regions
(2011/650/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Article 1

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

The following are hereby appointed to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2015:

Having regard to the proposal of the Luxembourg Government,

(a) as member:

— Mr Gilles ROTH, *Bourgmestre de la Commune de Mamer*;

Whereas:

and

(b) as alternate member:

— Mr Pierre WIES, *Bourgmestre de la Commune de Larochette*.

(1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU ⁽¹⁾ and 2010/29/EU ⁽²⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

Article 2

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

(2) A member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Paul-Henri MEYERS. An alternate member's seat has become vacant following the appointment of Mr Gilles ROTH as a member of the Committee of the Regions,

Done at Brussels, 20 September 2011.

For the Council
The President
M. SAWICKI

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

COMMISSION DECISION

of 29 June 2011

concerning aid to the rendering sector in 2003 State aid C 23/05 (ex NN 8/04 and ex N 515/03)

(notified under document C(2011) 4425)

(Only the French text is authentic)

(Text with EEA relevance)

(2011/651/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(2) thereof,

Whereas:

I. PROCEDURE

- (1) By letter of 7 November 2003, the French Permanent Representation to the European Union notified the Commission under Article 108(3) of the Treaty on the Functioning of the European Union (hereinafter 'TFEU')⁽¹⁾ of an exemption from the rendering levy for certain undertakings retailing meat.
- (2) The original notification concerned, on the one hand, aid granted in 2003 and, on the other, aid planned to be granted starting in 2004. As part of the aid had already been granted, the Commission decided at the time to split the file into two cases. Of the aid granted in 2003, only the exemption from the rendering levy is being examined under this decision.
- (3) The rendering levy was abolished on 1 January 2004. After that the financing of public-sector rendering plants was guaranteed by the proceeds of a 'slaughtering tax', to which the Commission did not raise any objections⁽²⁾.
- (4) In the context of examining the 'slaughtering tax' file (State aid No N515A/03), the French authorities sent the Commission information relevant also to this case, in particular by letter of 29 December 2003.

⁽¹⁾ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty are replaced by Articles 107 and 108, respectively, of the TFEU. These two series of provisions are identical in substance. For the purposes of this Decision, references to Articles 107 and 108 TFEU should be considered references to Articles 87 and 88, respectively, of the EC Treaty, where necessary.

⁽²⁾ State aid No N 515A/03, letter to the French authorities No C(2004) 936 fin of 30.3.2004.

- (5) By letter of 7 April 2005, registered on 12 April 2005, the French authorities submitted the additional information requested by the Commission by letter of 4 March 2005.
- (6) The Commission initiated the procedure laid down in Article 108(2) TFEU concerning the aid in question by letter No SG(2005)D/202956 of 7 July 2005.
- (7) The decision initiating the procedure was published in the *Official Journal of the European Union*⁽³⁾. The Commission called on the other Member States and interested third parties to submit their comments on the aid in question.
- (8) The French authorities provided their comments by letters dated 20 September 2005 and 15 November 2005, registered on 17 November 2005.
- (9) The Commission received comments from the French Confederation of Butchers, Delicatessens and Caterers (hereinafter 'CFBCT') on 18 October 2005 and from a private company on 17 October 2005⁽⁴⁾ and 11 July 2008.
- (10) By letter of 18 April 2011, the French authorities confirmed that the exemption from the payment of the tax on meat purchases ('rendering levy'), granted for 2003 to certain companies marketing agricultural products, was covered by Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid⁽⁵⁾.

II. DESCRIPTION

- (11) The measure in question concerns the financing in 2003 of public-sector rendering plants and the destruction of meat and bone meal that can no longer be used commercially.

⁽³⁾ OJ C 228, 17.9.2005, p. 13.

⁽⁴⁾ The company has requested that its identity be treated as confidential.

⁽⁵⁾ OJ L 379, 28.12.2006, p. 5.

- (12) Public-sector rendering plants used to be financed by the rendering levy, introduced by Article 302a ZD of the French General Tax Code, which was adopted under Article 1 of French Law No 96-1139 of 26 December 1996 on the collection and destruction of animal carcasses and slaughterhouse waste (hereinafter 'Law of 1996').
- (13) The rendering levy was applied to the purchases of meat and other specified products by all retailers of those products. In principle, this levy was payable by all persons carrying out retail sales. The tax rate was the ex-VAT value of all purchases of meat and other specified products by all retailers of these products:
- fresh, cooked, chilled or frozen meats and offal of poultry, rabbit and game, of animals of the bovine, ovine, caprine and porcine species and of horses, asses and their crosses,
 - salted meats, cured meat products, lard, preserved meats and processed offal,
 - meat- and offal-based animal feed.
- (14) Undertakings whose turnover in the previous calendar year was less than FRF 2 500 000 ⁽⁶⁾ (EUR 381 122) excluding VAT were exempt from the payment of the levy. The rate of the levy was 0,5 % on monthly purchases of up to FRF 125 000 (EUR 19 056) excluding VAT and 0,9 % on monthly purchases above that amount. Article 35 of the Amending Finance Act for 2000 (Law No 2000-1353 of 30 December 2000) made certain amendments to the rendering levy scheme, which entered into force on 1 January 2001. These amendments were to offset the effects of the BSE crisis and the resulting extra costs. The levy was subsequently extended to 'other meat products'. The levy was set at 2,1 % on monthly purchases of up to FRF 125 000 (EUR 19 056) and 3,9 % on monthly purchases above that amount. In addition, all undertakings with a turnover in the previous calendar year of less than FRF 5 000 000 (EUR 762 245) excluding VAT were exempt from the levy.
- (15) Initially, i.e. from 1 January 1997, the proceeds of the levy were paid into an ad hoc fund used to finance the collection and destruction of animal carcasses and material seized at slaughterhouses and recognised as being unfit for human or animal consumption, i.e. the activities defined under Article 264 of the Rural Code as falling within the remit of a public service. The fund was managed by the National Centre for the Development of Farm Structures (CNASEA).
- (16) Starting on 1 January 2001, the proceeds of the rendering levy were paid directly into the general budget of the State and no longer into the fund set up for that purpose. For 2003, the funds were made available at the Ministry of Agriculture, Food, Fisheries and Rural Affairs by Decree No 2002-1580 of 30 December 2002 implementing the Finance Law for 2003. They were entered under the Ministry's ordinary expenditure under Title IV, Public aid, Part 4, economic measures, incentives and aid. The proceeds of this levy in 2003 were estimated at EUR 550 million.
- (17) The 2003 notification provided for aid for the stocking and destruction of animal meal as well as aid for the transport and destruction of fallen stock and slaughterhouse waste. In addition, under the Law of 1996, undertakings that retailed meat and had an annual turnover of less than EUR 762 245 were exempt from the levy. According to the information available to the Commission, the Law of 1996 was in force throughout 2003.
- (18) In its decision to initiate the procedure, the Commission concluded that the aid measures concerning the removal and destruction of fallen stock and the stocking and destruction of animal meal and slaughterhouse waste did not risk adversely affecting trading conditions to an extent contrary to the common interest. They could therefore qualify under the exception provided for in Article 107(3)(c) TFEU as measures able to contribute to the development of the sector. On the other hand, the Commission has decided to initiate the procedure referred to in Article 108(2) TFEU as regards the existence and compatibility of aid for trade exempt from the payment of the rendering levy.
- Points raised by the Commission in the context of initiating an investigation procedure*
- (19) When the investigation procedure was initiated, the Commission estimated that the exemption from the payment of the rendering levy implied a loss of resources for the State and did not appear to be justified by the nature and the general scheme of the tax system, which is designed to provide the State with revenue. Indeed, according to the information available to the Commission, the exemption was based on the overall turnover, not just the turnover on meat sales.
- (20) As the rendering levy is calculated on the value of meat products, it did not seem justified to exempt from the payment of the levy undertakings with a higher turnover on meat sales when their competitors with a lower turnover on meat products would have to pay it.

⁽⁶⁾ On the basis of FRF 1 = EUR 0,15.

- (21) Consequently, the exemption seemed to constitute a selective advantage. It would be aid in favour of the exempted vendors, whose tax burden would be lighter as a result. On the basis of the figures for trade in meat, the Commission concluded that the exemption of traders with a turnover of less than EUR 762 245 from the levy in 2003 was an advantage that might constitute State aid within the meaning of Article 107(1) TFEU.
- (22) The Commission could not rule out the possibility that the tax exemption might have an effect on trade between Member States, in particular in border areas.
- (23) Therefore the exemption of traders with a turnover of less than EUR 762 245 from the levy seemed to constitute State aid under the terms of Article 107(1) TFEU.
- (24) The exemption in this case seemed to consist of a tax reduction measure lacking any incentive element or counterpart on the part of the beneficiaries, and its compatibility with competition rules had not been demonstrated.
- (25) Therefore the Commission considered that the aid fell within the scope of point 3.5 of the Community Guidelines for State aid in the agriculture sector⁽⁷⁾, which were effective at that time. According to that point, any aid measure must contain some incentive element or require some counterpart on the part of the beneficiary in order to be considered compatible with the common market. Unless exceptions are expressly provided for in Community legislation or in the Guidelines, unilateral State aid measures which are simply intended to improve the financial situation of producers but which in no way contribute to the development of the sector are considered to constitute operating aid which is incompatible with the common market.
- (26) As regards trade exempt from the payment of the rendering levy, the Commission could not rule out that the aid in question might be State aid within the meaning of Article 107(1) TFEU and might constitute operating aid, regarding the compatibility of which with the internal market the Commission had doubts.

III. COMMENTS BY FRANCE

- (27) The French authorities submitted their comments by letters dated 20 September 2005 and 15 November 2005. In those letters, they stated that it could not be disputed that the tax exemption granted to the exempt companies represented aid within the meaning of the EC Treaty. Moreover, the Commission had come to a similar conclusion in its Decision 2005/474/EC⁽⁸⁾ on the exemption applied between 1 January 1997 and 31 December 2002 (aid NN 17/01 reclassified as C 49/02).
- (28) However, the French authorities had argued prior to the entry into force of Regulation (EC) No 1998/2006 that the aid fell within the scope of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid⁽⁹⁾. They pointed out that the number of undertakings concerned, an average of more than 100 000 a year, and the turnover threshold used for the exemption (EUR 762 245) implied that the amount of the exemption that might constitute State aid would in any case be below the threshold of EUR 100 000 over a three-year period provided for in Regulation (EC) No 69/2001.
- (29) In order to show that the amount of the exemption granted to these undertakings in 2003 was consistently below EUR 100 000 over a period of 3 years, the French authorities used two methods.
- (30) Firstly, the French authorities attempted to establish the turnover of an undertaking that had paid a levy of EUR 100 000 over 3 years, or an average annual levy of EUR 33 333. On the basis of the amount established, broken down by tax bracket (2,1 % and 3,9 %), they established the tax rate corresponding to the meat purchases of the undertaking. Finally, using the value of these meat purchases, the French authorities estimated the annual turnover on the basis of the maximalist assumption that the undertaking in question specialised in the meat trade. This method allowed them to establish a turnover for the undertaking that markedly exceeded the exemption threshold of the levy. The exemption threshold of EUR 762 245 was thus exceeded by far, meaning that a company that pays EUR 100 000 in taxes over 3 years may under no circumstances be exempt from the tax on meat purchases.
- (31) Secondly, the French authorities tried to establish the amount of tax for an undertaking that specialises in meat and has a turnover of EUR 762 000, which is just below the exemption threshold. On the basis of a purchases/turnover coefficient of 0,58⁽¹⁰⁾, the French authorities calculated the value of the meat purchases of the undertaking, i.e. EUR 441 960 (762 000 × 0,58). This second method shows that the maximum amount of the exemption is EUR 13 132 per year and undertaking, in other words less than EUR 100 000 over 3 years.
- (32) Following the entry into force of Regulation (EC) No 1998/2006, the French authorities confirmed that the exemption from the payment of the tax on meat purchases ('rendering levy'), granted for 2003 to certain companies marketing agricultural products, fell within the scope of the said Regulation, in particular Article 5 thereof on transitional measures.

⁽⁷⁾ OJ C 28, 1.2.2000, p. 2.
⁽⁸⁾ OJ L 176, 8.7.2005, p. 1.

⁽⁹⁾ OJ L 10, 13.1.2001, p. 30.

⁽¹⁰⁾ Information from the French authorities based on industry sources (management centres of the French Confederation of Butchers).

IV. COMMENTS FROM THIRD PARTIES

Comments of the Confederation of Butchers, Delicatessens and Caterers (CFBCT)

- (33) Firstly, the Confederation of Butchers, Delicatessens and Caterers (hereinafter 'CFBCT') pointed out that the measure in question did not meet the criteria for the definition of State aid and that the tax mechanism applied to certain companies on the basis of the amount of their turnover was fully justified owing to the general scheme of the tax system. The CFBCT states that the tax on meat purchases was collected and checked according to the rules applied to VAT and similar taxes. The exemption threshold was based on an objective and logical criterion identical to that for thresholds applied to other taxes. The Law of 1996 was part of the French system of collecting VAT. The goal was not to grant an exceptional advantage for certain companies but rather, by introducing a threshold level, to take into account the taxpaying capacity of undertakings and, in particular, the viability of artisanal butchers.
- (34) Secondly, according to the CFBCT, this measure did not affect intra-Community trade. Indeed, the extremely modest size of the companies concerned by the measure in question and the extremely limited geographical market on which they operate cast doubt on the claim that the measure constituted State aid within the meaning of Article 107(1) TFEU.
- (35) Even if it were considered that the tax-exempt undertakings had received aid, the CFBCT maintains that, in any case, this aid would comply with the rules of the Treaty.
- (36) The Commission should take the view that exempting small butcheries and artisanal butchers was, in fact, justified by an objective of general interest: the management of the mad cow crisis and the treatment necessary for dangerous products. Besides, this measure only concerned SMEs and would probably be covered by the exemption regulations valid at the time, namely Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ⁽¹¹⁾ and Commission Regulation (EC) No 1/2004 of 23 December 2003 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products ⁽¹²⁾.
- (37) In any case, the CFBCT maintains that the requirement that the aid be recovered, which would be the consequence of classifying the measure as incompatible State aid, would violate Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed

rules for the application of Article 93 of the EC Treaty ⁽¹³⁾, because a negative decision and recovery would not take into account the legitimate expectations of the recipient undertakings.

- (38) Furthermore, if the amount of the aid were evaluated a posteriori on the basis of presumptive retroactive taxation it would probably remain below the de minimis thresholds, given that most of the potential beneficiaries of the aid were microenterprises.

Comments from a private company domiciled in France

- (39) According to the information available to the Commission, the private company in question engages in food distribution operations in France. Having paid the rendering levy for the years 2001 to 2003 and having requested that the French tax authorities refund the amount paid, the company considers that it is in its interest to submit its comments in the present procedure.
- (40) The company maintains that, contrary to the Commission's conclusion in its decision of 5 July 2005 (2005/C 228/06) ⁽¹⁴⁾ to initiate an investigation procedure, there was no disconnection between the aid to the rendering sector and the tax on meat purchases. It considers that the rendering tax paid for 2003 is based on Article 302a ZD of the French General Tax Code and finances a State aid scheme pursuant to Article 107 TFEU. As this mechanism was not notified to the Commission in advance, it should be declared illegal.
- (41) In addition, the company maintains that the tax exemption is incompatible with Article 107 TFEU and that it would make the tax incompatible with the principle of equality vis-à-vis charges levied by the State and consequently with the rules on competition.

V. ASSESSMENT

- (42) Pursuant to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the internal market, in so far as it affects trade between Member States, save as otherwise provided for in the Treaty.
- (43) Articles 107, 108 and 109 TFEU apply to the pigmeat sector pursuant to Article 21 of Regulation (EEC) No 2759/75 of the Council of 29 October 1975 on the common organisation of the market in pigmeat ⁽¹⁵⁾. They apply to the beef and veal sector pursuant to

⁽¹¹⁾ OJ L 10, 13.1.2001, p. 33.

⁽¹²⁾ OJ L 1, 3.1.2004, p. 1.

⁽¹³⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹⁴⁾ See footnote 3.

⁽¹⁵⁾ OJ L 282, 1.11.1975, p. 1.

- Article 40 of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal⁽¹⁶⁾. Prior to the adoption of Regulation (EC) No 1254/1999, Articles 107, 108 and 109 TFEU applied to the beef and veal sector pursuant to Article 24 of Regulation (EEC) No 805/68 of the Council⁽¹⁷⁾. They apply to the sheepmeat and goatmeat sector pursuant to Article 22 of Council Regulation (EC) No 2467/98 of 3 November 1998 on the common organisation of the market in sheepmeat and goatmeat⁽¹⁸⁾. They apply to the poultrymeat sector pursuant to Article 19 of Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organisation of the market in poultrymeat⁽¹⁹⁾. 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')⁽²⁰⁾ repealed these Regulations, and Article 180 thereof states that the rules on State aid apply to the above-mentioned products.
- (44) The French authorities confirmed that the exemption from the payment of the tax on meat purchases ('rendering levy'), granted for 2003 to certain companies marketing agricultural products, fell within the scope of Regulation (EC) No 1998/2006.
- (45) According to Regulation (EC) No 1998/2006, aid that fulfils the conditions laid down therein is deemed not to meet all the criteria of Article 107(1) of TFEU and is therefore exempt from the notification requirement of Article 108(3) TFEU.
- (46) Regulation (EC) No 1998/2006 applies to aid granted to undertakings in all sectors but, in the case of undertakings active in the processing and marketing of agricultural products as listed in Annex I to the Treaty, only when the amount of aid is not fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned and when the aid is not conditional on being partly or entirely passed on to primary producers.
- (47) Pursuant to Article 5(1) thereof, Regulation (EC) No 1998/2006 applies to aid granted before its entry into force to undertakings active in the processing and marketing of agricultural products if the aid fulfils all the conditions laid down in Articles 1 and 2. Regulation (EC) No 1998/2006 entered into force on 29 December 2006.
- (48) Pursuant to Article 2(2) and (3) of Regulation (EC) No 1998/2006, the total de minimis aid granted to any one undertaking must not exceed EUR 200 000 over any period of three fiscal years. The ceiling laid down is expressed as a cash grant. All figures used are gross, that is, before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount is the gross grant equivalent of the aid.
- (49) The undertakings in question were active in the processing and marketing of the products as listed in Annex I of the Treaty and other products and were exempt from the rendering levy in 2003. Pursuant to the transitional measures laid down in Article 5 thereof, Regulation (EC) No 1998/2006 applies consequently to this case.
- (50) The French authorities have established that the conditions required by Regulation (EC) No 1998/2006 were fulfilled by showing that the grant equivalent of the aid received by each beneficiary did not under any circumstances exceed EUR 200 000 over any period of 3 years, as the maximum amount of the exemption was EUR 13 132 per year and undertaking (see recital 29).
- (51) In view of the foregoing, the Commission considers that the tax-exemption of undertakings retailing meat whose annual turnover was less than EUR 762 245 in 2003 falls within the scope of Regulation (EC) No 1998/2006 and fulfils the conditions laid down therein. Therefore this exemption does not constitute State aid within the meaning of Article 107(1) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The exemption of undertakings retailing meat whose turnover is less than EUR 762 245 from the rendering levy in 2003 does not constitute aid pursuant to Article 107(1) TFEU.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 29 June 2011.

For the Commission

Dacian CIOLOȘ

Member of the Commission

⁽¹⁶⁾ OJ L 160, 26.6.1999, p. 21.

⁽¹⁷⁾ OJ L 148, 28.6.1968, p. 24.

⁽¹⁸⁾ OJ L 312, 20.11.1998, p. 1.

⁽¹⁹⁾ OJ L 282, 1.11.1975, p. 77.

⁽²⁰⁾ OJ L 299, 16.11.2007, p. 1.

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