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II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) No 1388/2011

of 16 December 2011

fixing for the 2012 fishing year the guide prices and Union producer prices for certain fishery products pursuant to Regulation (EC) No 104/2000

THE COUNCIL OF THE EUROPEAN UNION,

Article 18(2) of Regulation (EC) No 104/2000, the guide prices should be increased, maintained or reduced for the 2012 fishing year depending on the species.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 43(3) of the Treaty provides that the Council, on a proposal from the Commission, is to adopt measures on the fixing of prices.

(2) Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products⁽¹⁾ requires that guide prices and Union producer prices for each fishing year be fixed in order to determine price levels for intervention on the market for certain fisheries products.

(3) It is incumbent upon the Council to fix the guide prices for each of the products and groups of products listed in Annexes I and II to Regulation (EC) No 104/2000, and the Union producer prices for the products listed in Annex III to that Regulation.

(4) On the basis of the data currently available on the prices for the products concerned and the criteria laid down in

(5) It is appropriate to establish the Union producer price for one of the products listed in Annex III to Regulation (EC) No 104/2000 and to calculate the Union producer prices for the others by means of the conversion factors established by Commission Regulation (EC) No 802/2006 of 30 May 2006 fixing the conversion factors applicable to fish of the genera *Thunnus* and *Euthynnus* ⁽²⁾.

(6) On the basis of the criteria laid down in the first and second indents of Article 18(2) and in accordance with the procedure laid down in Article 26(1) of Regulation (EC) No 104/2000, the Union producer price for the 2012 fishing year should be fixed,

HAS ADOPTED THIS REGULATION:

Article 1

For the fishing year from 1 January to 31 December 2012, the guide prices as provided for in Article 18(1) of Regulation (EC) No 104/2000 shall be as set out in Annex I to this Regulation.

Article 2

For the fishing year from 1 January to 31 December 2012, the Union producer prices as provided for in Article 26(1) of Regulation (EC) No 104/2000 shall be as set out in Annex II to this Regulation.

⁽¹⁾ OJ L 17, 21.1.2000, p. 22.

⁽²⁾ OJ L 144, 31.5.2006, p. 15.

Article 3

This Regulation shall enter into force on 1 January 2012.

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

Done at Brussels, 16 December 2011.

For the Council

The President

M. SAWICKI

ANNEX I

Products listed in Annexes I and II to Regulation (EC) No 104/2000

Annexes	Species	Commercial presentation	Guide price (EUR/tonne)
I	1. Herring of the species <i>Clupea harengus</i>	Whole fish	282
	2. Sardines of the species <i>Sardina pilchardus</i>	Whole fish	574
	3. Dogfish (<i>Squalus acanthias</i>)	Whole fish or gutted fish with head	1 123
	4. Spotted dogfish (<i>Scyliorhinus</i> spp.)	Whole fish or gutted fish with head	711
	5. Redfish (<i>Sebastes</i> spp.)	Whole fish	1 230
	6. Cod of the species <i>Gadus morhua</i>	Whole fish or gutted fish with head	1 613
	7. Saithe (<i>Pollachius virens</i>)	Whole fish or gutted fish with head	823
	8. Haddock (<i>Melanogrammus aeglefinus</i>)	Whole fish or gutted fish with head	975
	9. Whiting (<i>Merlangius merlangus</i>)	Whole fish or gutted fish with head	902
	10. Ling (<i>Molva</i> spp.)	Whole fish or gutted fish with head	1 176
	11. Mackerel of the species <i>Scomber scombrus</i>	Whole fish	328
	12. Mackerel of the species <i>Scomber japonicus</i>	Whole fish	294
	13. Anchovy (<i>Engraulis</i> spp.)	Whole fish	1 268
	14. Plaice (<i>Pleuronectes platessa</i>)	Whole fish or gutted fish with head from 1.1.2012 to 30.4.2012	1 011
		Whole fish or gutted fish with head from 1.5.2012 to 31.12.2012	1 397
	15. Hake of the species <i>Merluccius merluccius</i>	Whole fish or gutted fish with head	3 235
	16. Megrim (<i>Lepidorhombus</i> spp.)	Whole fish or gutted fish with head	2 365
	17. Dab (<i>Limanda limanda</i>)	Whole fish or gutted fish with head	791
	18. Common flounder (<i>Platichthys flesus</i>)	Whole fish or gutted fish with head	493
	19. Albacore or longfinned tunas (<i>Thunnus alalunga</i>)	Whole fish	2 343
		Gutted fish with head	2 388
	20. Cuttlefish (<i>Sepia officinalis</i> and <i>Rossia macrosoma</i>)	Whole	1 817
	21. Monkfish (<i>Lophius</i> spp.)	Whole fish or gutted fish with head	2 879
		Without head	5 955
	22. Shrimp of the species <i>Crangon crangon</i>	Simply boiled in water	2 375
	23. Northern prawn (<i>Pandalus borealis</i>)	Simply boiled in water	6 868
		Fresh or chilled	1 638
	24. Edible crab (<i>Cancer pagurus</i>)	Whole	1 693
	25. Norway lobster (<i>Nephrops norvegicus</i>)	Whole	5 196
		Tails	4 039
	26. Sole (<i>Solea</i> spp.)	Whole fish or gutted fish with head	6 911

Annexes	Species	Commercial presentation	Guide price (EUR/tonne)
II	1. Greenland halibut (<i>Reinhardtius hippoglossoides</i>)	Frozen, in original packages containing the same products	1 954
	2. Hake of the genus <i>Merluccius</i> spp.	Frozen, whole, in original packages containing the same products	1 257
		Frozen, filleted, in original packages containing the same products	1 528
	3. Sea bream (<i>Dentex dentex</i> and <i>Pagellus</i> spp.)	Frozen, in lots or in original packages containing the same products	1 461
	4. Swordfish (<i>Xiphias gladius</i>)	Frozen, whole, in original packages containing the same products	4 139
	5. Cuttlefish (<i>Sepia officinalis</i>) (<i>Rossia macrosoma</i>) (<i>Sepiola rondeletti</i>)	Frozen, in original packages containing the same products	1 963
	6. Octopus (<i>Octopus</i> spp.)	Frozen, in original packages containing the same products	2 226
	7. Squid (<i>Loligo</i> spp.)	Frozen, in original packages containing the same products	1 191
	8. Squid (<i>Ommastrephes sagittatus</i>)	Frozen, in original packages containing the same products	961
	9. <i>Illex argentinus</i>	Frozen, in original packages containing the same products	899
	10. Prawn of the family <i>Penaeidae</i>		
	— Prawn of the species <i>Parapenaeus longirostris</i>	Frozen, in original packages containing the same products	4 153
	— Other species of the family <i>Penaeidae</i>	Frozen, in original packages containing the same products	7 813

ANNEX II

Products listed in Annex III to Regulation (EC) No 104/2000

Species	Weight	Commercial specifications	Union producer price (EUR/tonne)
Yellowfin tuna (<i>Thunnus albacares</i>)	weighing more than 10 kg each	Whole	1 224
		Gilled and gutted	
		Other	
	weighing not more than 10 kg each	Whole	
		Gilled and gutted	
		Other	
Albacore (<i>Thunnus alalunga</i>)	weighing more than 10 kg each	Whole	
		Gilled and gutted	
		Other	
	weighing not more than 10 kg each	Whole	
		Gilled and gutted	
		Other	
Skipjack (<i>Katsuwonus pelamis</i>)		Whole	
		Gilled and gutted	
		Other	
Bluefin tuna (<i>Thunnus thynnus</i>)		Whole	
		Gilled and gutted	
		Other	
Other species of the genera <i>Thunnus</i> and <i>Euthynnus</i>		Whole	
		Gilled and gutted	
		Other	

COUNCIL IMPLEMENTING REGULATION (EU) No 1389/2011**of 19 December 2011****imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid 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 11(2) thereof,

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

Whereas:

A. PROCEDURE**1. Measures in force**

- (1) By Regulation (EC) No 1631/2005 ⁽²⁾ the Council imposed definitive anti-dumping measures consisting of individual duties ranging from 7,3 % to 40,5 % with a residual duty of 42,6 % ⁽³⁾ on imports of trichloroisocyanuric acid originating in the People's Republic of China (PRC).
- (2) By Regulation (EC) No 855/2010 ⁽⁴⁾ the Council lowered the individual duty applied to one company from 14,1 % to 3,2 %.

2. Request for a review

- (3) Following the publication of a notice of impending expiry ⁽⁵⁾ of the definitive anti-dumping measures in force, on 6 July 2010 the Commission received a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the European Chemical Industry Council (CEFIC) on behalf of Union producers representing a major proportion, in this case more than 90 %, of the total Union production of trichloroisocyanuric acid (the applicants).

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

3. Initiation

- (5) Having determined, after consulting the Advisory Committee, that there was sufficient evidence for the initiation of an expiry review, on 6 October 2010 the Commission announced the initiation of such a review, pursuant to Article 11(2) of the basic Regulation, in a notice published in the *Official Journal of the European Union* ⁽⁶⁾ (the Notice of initiation).

4. Investigation**4.1. Investigation period**

- (6) The review investigation period (RIP) lasted from 1 July 2009 to 30 June 2010. The likelihood of continuation or recurrence of injury aspects was analysed during the period from 1 January 2007 to the end of the RIP (period considered).

4.2. Parties concerned by the investigation

- (7) The Commission officially advised the applicants, the other known Union producer, exporting producers, importers and users known to be concerned, as well as the representatives of the PRC, of the initiation of the expiry review.
- (8) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation. All interested parties who requested a hearing and who showed that there were specific reasons why they should be heard, were granted a hearing.
- (9) In view of the apparently large number of exporting producers in the PRC and unrelated importers in the Union, sampling was envisaged for these parties in the notice of initiation, in accordance with Article 17 of the basic Regulation.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 261, 7.10.2005, p. 1.

⁽³⁾ Duties range from 7,3 % (Puyang) to 8,1 % (Hebei), 14,1 % (Heze), 40,5 % (Zhucheng) and 42,6 % (other exporting producers).

⁽⁴⁾ OJ L 254, 29.9.2010, p. 1.

⁽⁵⁾ OJ C 104, 23.4.2010, p. 15.

⁽⁶⁾ OJ C 270, 6.10.2010, p. 7.

- (10) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the publication of the notice of initiation and to provide the Commission with the information requested in the Notice of initiation.
- (11) None of the exporting producers in the PRC cooperated in the investigation.
- (12) As regards importers, a few companies initially came forward but then withdrew their cooperation at a later stage.
- (13) The Commission sent questionnaires to all the parties known to be concerned within the deadlines set in the Notice of initiation. Replies were received from the three known Union producers and from two users.
- (14) The Commission sought and verified all the information it deemed necessary with a view to determining the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the two major Union producers:

— Fluidra (Inquide Sau), Passeig de Sanllehy, 25, 08213 Polinya (Barcelona), Spain,

— Ercros (Aragonesas), Avenida Diagonal 595, Barcelona, Spain.

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (15) The product concerned by the current review is trichloroisocyanuric acid and preparations thereof (TCCA), also referred to as 'symclosene' under the international non-proprietary name (INN), currently falling within CN codes ex 2933 69 80 and ex 3808 94 20 (TARIC codes 2933 69 80 70 and 3808 94 20 20), and originating in the PRC.
- (16) TCCA is a chemical product used as a broad-spectrum organic chlorine disinfectant and bleacher, in particular used for disinfecting water in swimming pools. It is sold in the form of powder, granules, tablets or chips. All forms of TCCA and preparations thereof share the same basic characteristics (chemical composition) and properties (disinfectant), are all intended for similar use and are therefore considered as a single product.
- (17) The present investigation has confirmed that the product concerned, as manufactured and sold by exporting producers to the Union, is similar in terms of its physical and chemical characteristics, as well as its uses, to the product produced and sold by the Union producers on the Union market and by the producer in the analogue country on both its domestic and export markets. Hence, they are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

- (18) In accordance with Article 11(2) of the basic Regulation, a review was held to determine whether the expiry of the existing measures was likely to lead to a continuation or recurrence of dumping.
- (19) As explained above, none of the 30 known exporting producers contacted came forward during the sampling exercise or made themselves known in the course of the investigation.
- (20) Since none of the exporting producers in the PRC cooperated, the findings on the likelihood of continuation or recurrence of dumping rely on facts available in accordance with Article 18 of the basic Regulation, namely Eurostat data, the review request and official PRC export statistics.
- (21) Additionally, data submitted by the cooperating exporting producer in the analogue country, Japan, were used to determine the normal value.

2. Dumping of imports during the RIP

2.1. Analogue country

- (22) Since the PRC is an economy in transition and since, pursuant to Article 2(7)(a) of the basic Regulation, normal value has to be determined on the basis of the price or constructed normal value obtained in an appropriate market economy third country (the analogue country), or on the basis of the price from the analogue country to other countries, including the European Union, or where those cannot be determined, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.

- (23) In its Notice of initiation the Commission announced that Japan had been used in the previous investigation as an appropriate market economy country for the purpose of establishing normal value in respect of the PRC and that it envisaged using Japan again for this purpose. In the course of the present review investigation, producers in other market economy countries such as the USA and Taiwan were also contacted, to seek their cooperation. However, cooperation was obtained only from one exporting producer in Japan.
- (24) It was therefore considered that Japan was an appropriate analogue country. In this connection, no comments or objections on the appropriateness of this country were received from interested parties.

2.2. Normal value

- (25) Pursuant to Article 2(7) of the basic Regulation, normal value was established on the basis of the information received from the cooperating exporting producer in the analogue country, i.e. on the basis of prices paid or payable on the domestic market in Japan for like products which were found to be sold in the ordinary course of trade.
- (26) It was first established for the cooperating exporting producer in Japan whether its total domestic sales of the like product to independent customers were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether they accounted for at least 5 % of the total export sales volume of the product concerned into the Union. Domestic sales of the cooperating exporting producer in Japan were found to be representative during the RIP.
- (27) Subsequently, domestic sales were examined to determine whether they were made in the ordinary course of trade (OCOT), in accordance with Article 2(4) of the basic Regulation.
- (28) Since all sales on the domestic market were considered to have been sold at a profit, normal value was based on the actual weighted average domestic price during the RIP.

2.3. Export price

- (29) In the absence of any cooperation from exporting producers in the PRC, the export price was established on the basis of Eurostat data.

2.4. Comparison

- (30) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade. In order to ensure a fair comparison between the normal value and the export price, account was taken, in

accordance with Article 2(10) of the basic Regulation, of differences in factors which affect prices and price comparability. For this purpose, due allowance in the form of adjustments was made for differences in transport and insurance costs.

2.5. Dumping margin

- (31) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value was compared with the weighted average export price. Based on the above methodology, the dumping margin established amounts to 75 %.

3. Development of imports if measures were repealed

3.1. Preliminary remark

- (32) In addition to analysing the existence of dumping during the RIP, the likelihood of the continuation of dumping was also investigated.
- (33) In this respect the following elements were analysed: the spare capacity available in the PRC, the attractiveness of the Union market for PRC exporting producers and their exports to third countries.

3.2. Spare capacity of PRC exporting producers

- (34) In the absence of other information concerning production capacity, the analysis was carried out in accordance with Article 18 of the basic Regulation on the basis of the information contained in the review request.
- (35) According to the review request, with rates below 40 % production capacity utilisation in the PRC remained low during the period considered. As a result of huge production capacity and low domestic demand, there appears to be more than 180 000 tonnes of spare capacity available in the PRC which could be exported. This compares to Union consumption of around 44 000 tonnes in the RIP.

3.3. Attractiveness of the Union market

- (36) The attractiveness of the Union market is reflected in the fact that the imposition of anti-dumping duties did not stop the expansion of PRC exports to the Union. Although during the period 2007-2009 import volumes were at a lower level compared to the investigation period of the original investigation that led to the imposition of the measures, import volumes in the RIP were above that level, reaching 22 696 tonnes.
- (37) Despite the increase in the average import price during the period considered, prices remained constantly below those of the Union industry.

- (38) The fact that PRC imports during the period considered increased during the RIP to a level that was higher than during the original investigation period shows that there is continued PRC interest in the Union market.

3.4. Export prices to third countries

- (39) PRC export statistics were analysed with respect to PRC export volumes and prices to other third countries. According to these statistics, 24 % of exports from the PRC in 2010 were destined for the Union market. EU export prices at FOB level were slightly higher than export prices to the rest of the world. However, in the absence of cooperation or any data in the review request regarding exports to other third countries, it was not possible to compare those prices at CIF level with the average price of the Union industry. Nevertheless, the fact that export prices to third countries are on average lower than export prices to the Union can be seen as an indication that the Union market is an attractive market for PRC exporters and that exports would be likely to increase further in the absence of measures.

4. Conclusion of the likelihood of continuation or recurrence of dumping

- (40) In view of the above findings, it can be concluded that exports from the PRC are still being dumped and that it is likely that dumping will continue on the Union market if the current anti-dumping measures are removed. Indeed, taking into account the existing spare capacity in the PRC and the attractiveness of the Union market, based on a comparison between export prices to the EU and those to third countries, it is likely that the volume of dumped PRC exports into the Union would increase substantially if measures were allowed to lapse.

D. SITUATION ON THE UNION MARKET

1. Definition of the Union industry

- (41) The product concerned is manufactured within the Union by three companies. They are therefore deemed to constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation (hereinafter referred to as the 'Union industry').

2. Preliminary remark

- (42) Data were obtained from Eurostat statistics, the review request, the responses to the questionnaire and information gathered during the verification visits.
- (43) The economic indicators concerning production, capacity, utilisation rate of capacity, volume of sales,

market share and employment refer to data supplied by the three Union producers. All the other indicators refer to data supplied by the applicants only, because of the limited cooperation of one of the Union producers that was not an applicant in the present review. Considering that the applicants represented around 90 % of Union production in the RIP, their data were deemed to be representative of the Union industry for the purposes of this review. Only the data obtained from the applicants were verified on the spot.

- (44) Data relating to the economic situation of the Union industry as well as consumption can only be provided in indexed form, so as to preserve confidentiality pursuant to Article 19 of the basic Regulation. This is because such economic indicators concern only two producers or, in some cases, three producers, one of them being only marginally active in the sector.
- (45) In June 2009, one of the applicants closed down one of its two plants, stopping production as of this date and laying off all employees. At first the plant in question was put on hold for a few months, but it closed down definitely in January 2010. This had some impact on a number of indicators such as consumption, production volume and productivity, as further explained below in recitals 47 and 62.

3. Consumption in the Union market

- (46) Union consumption was established on the basis of the sales volume of the three Union producers on the Union market and import data from Eurostat.
- (47) Between 2007 and 2009 Union consumption of TCCA decreased by 19 % before recovering in the RIP at a level exceeding by 6 % the one achieved in 2007. For the years 2008 and 2009 this trend can be explained by the combined effects of lower demand, due to the global economic crisis, and restricted supply, due to the closure of one production site in 2009 (see recital 45). The higher level of Union consumption achieved in the RIP is mainly linked to the recovery from the economic crisis and the increase of imports from the PRC.

Table 1

Union consumption

	2007	2008	2009	RIP
Union consumption (MT) Index (2007 = 100)	100	93	81	106

4. Volume and market share of dumped imports from the People's Republic of China

- (48) Trends in the volumes and market shares of dumped imports from the PRC are set out below. The following quantity and market shares are based on Eurostat import statistics, since no PRC exporters/producers cooperated in this review.
- (49) Quantities of TCCA imported from the PRC decreased slightly in 2008 and 2009. This downturn in imports was followed by a significant increase in the RIP (more than 35 % as compared to 2009). In parallel, PRC imports continuously increased their market share during the period considered.

Table 2

PRC import volumes and market shares

	2007	2008	2009	RIP
Import volumes in MT	17 957	17 298	16 645	22 696
Index (2007 = 100)	100	96	93	126
Market shares (ranges)	40 %- 50 %	40 %- 50 %	45 %- 55 %	50 %- 60 %

5. Trends in prices of dumped imports from the People's Republic of China and price undercutting

5.1. Trends in prices

- (50) Prices of imports from the PRC have shown a steady increase of 11,3 %. On the one hand this trend can be attributed to the evolution of the prices of the main raw materials component that started to increase more substantially in 2009 and during the RIP. On the other hand, it may to a certain extent reflect a variation in the product mix ⁽¹⁾.

Table 3

PRC unit price

	2007	2008	2009	RIP
EUR/MT	1 048	1 052	1 163	1 167
Index (2007 = 100)	100	100,4	111	111,3

⁽¹⁾ The product concerned is manufactured in different forms falling into two main categories: granular and powder products on the one hand and tablets on the other. Prices for tablets are higher than prices for granular and/or powder products. This means that the prices of the product concerned may vary according to the variation in composition of the given product mix. In other words, a product mix containing a higher proportion of tablets would be more expensive than a product mix containing comparatively more granular and powder products.

5.2. Price undercutting

- (51) Overall, the prices of PRC imports remained below the prices of the Union industry during the entire period. In determining the extent of price undercutting, the Commission based its calculation on the average CIF export prices of the PRC obtained from Eurostat. The prices of the product concerned were compared to the weighted average price of the Union industry adjusted to ex-works level. The comparison showed that imports from the PRC were undercutting the prices of the Union industry by more than 10 %, without taking into account the anti-dumping duty in place.

6. Imports from other countries

- (52) The volume and market shares of imports from other countries during the period considered are shown in the table below. The respective data is based on Eurostat figures:

Table 4

Imports from other countries (volume and market share)

	2007	2008	2009	RIP
Volume of imports from other third countries (MT)	501	239	296	378
Market share of imports from other third countries (ranges)	Below 2 %	Below 2 %	Below 2 %	Below 2 %

- (53) In terms of volume and market share, imports from other third countries were negligible during the period considered. Imports from the USA, another country subject to an anti-dumping measure, stopped completely during the period considered.

7. Economic situation of the Union industry

- (54) 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.

7.1. Production

- (55) There was a serious decline in production from 2009 onwards following the global economic crisis and the closing down of one production facility in June 2009, when production from that plant stopped completely (see recital 45 above).

Table 5

Union production

	2007	2008	2009	RIP
Union production volume index (2007 = 100)	100	95,2	66,5	70,7

7.2. Capacity and capacity utilisation rates

- (56) Production capacity followed the same trend as production during the period considered. Capacity utilisation, however, was positively influenced during the RIP by some process improvements.
- (57) As a result of the closure of one plant in the Union in 2009 (see recital 45 above), the data collected for the RIP is limited to the capacity of the remaining plant.

Table 6

Union production capacity and capacity utilisation

	2007	2008	2009	RIP
Production capacity Index (2007 = 100)	100	101,5	91,0	80,6
Capacity utilisation Index (2007 = 100)	100	93,4	72,8	86,9

7.3. Stocks

- (58) This indicator was based on the information supplied by the applicants, for the reasons explained in recital 54 above. The investigation at the company's premises revealed some seasonal patterns in the consumption of TCCA, with the product concerned being used mostly in summer. This has an impact on the variation in the level of stocks throughout the year: stocks peak in winter time and are considerably reduced in the summer period. For the years 2007-2009 the figures represent the level of stocks on 31 December of the given year. The figure for the RIP, however, shows the level of stocks at 30 June 2010, the time of the year with the highest stock utilisation. Hence, this indicator does not allow for a proper comparison between the RIP and the rest of the period concerned and is therefore considered not to be relevant for assessing injury.

7.4. Sales volume

- (59) The economic crisis had a negative influence on the sales volume of the product concerned on the Union market. The increase during the RIP can be attributed mainly to the increase of Union consumption due to recovery from the recession after the economic crisis.

Table 7

Sales

	2007	2008	2009	RIP
Volume Index (2007 = 100)	100	92	73	91

7.5. Market share

- (60) During the period considered the Union industry was unable to recover its market share, which decreased significantly over the period considered.

Table 8

Union market share

	2007	2008	2009	RIP
Union market share (ranges)	55 %-65 %	50 %-60 %	45 %-55 %	45 %-55 %

7.6. Employment and wages

- (61) Employment in the sector decreased in the EU during the period considered, particularly following the closing down of one of the production facilities (see recital 45 above). As a result, wage costs at the Union industry level also went down. Average wages per employee remained relatively stable throughout the period considered.

Table 9

Employment

	2007	2008	2009	RIP
Employees Index (2007 = 100)	100	98,7	84,1	74,2
Wages per employee Index (2007 = 100)	100	104,6	105,7	106,0

7.7. Productivity

- (62) The productivity of the Union industry's workforce, measured as output per person employed per year, developed negatively over the period considered, showing a sharp decrease by around 20 % in 2009. This was a result of the reorganisation required by the closure of the production facilities, putting production on hold for 6 months in 2009 until the plant was closed down in January 2010 (see recital 45 above). Productivity then recovered during the RIP, although for the first semester it was partly influenced by the negative trends in 2009.

Table 10

Productivity

	2007	2008	2009	RIP
Productivity Index (2007 = 100)	100	96,5	79,2	95,3

7.8. Sales prices

- (63) Average unit prices of TCCA in the EU (as shown in the table below) increased slightly between 2007 and 2009, returning to the 2007 level during the RIP. To some extent, the 2007-2009 increase is related to the product mix effect (see footnote 1 on page 10).

Table 11

Sales price Union market

	2007	2008	2009	RIP
Average unit price Index (2007 = 100)	100	104,6	111,4	103,1

7.9. Profitability

- (64) Profitability on sales of TCCA in the EU developed negatively from 2007 onwards, with a significant loss in 2009. This poor performance has to be seen in relation to the closure in that year of one production site by a Union producer. In the RIP, profitability did become slightly positive, although the profit level was far below the normal profit level (i.e. 10 %⁽¹⁾) that should be achieved in this sector of activity. This shows that the Union industry is still in a weak financial situation.

Table 12

Profitability

	2007	2008	2009	RIP
Profitability (range)	- 10 % to 0 %	- 10 % to 0 %	- 20 % to - 10 %	0 % to 10 %

7.10. Investments and return on investments

- (65) There was no major capital expenditure during the period considered. The indexed figures shown in the table present the investments made to improve productivity and the production process. The indexes for the return on investments follow the same trend as profitability.

⁽¹⁾ See the pre-tax profit margin fixed in recital 181 of Commission Regulation (EC) No 538/2005 (OJ L 89, 8.4.2005, p. 4).

Table 13

Investments

	2006	2007	2008	RIP
Net investments Index (2007 = 100)	100	158	32	23
ROI (range)	- 10 % to 0 %	- 10 % to 0 %	- 20 % to - 10 %	0 % to 10 %

7.11. Cash flow

- (66) Cash flow remained positive during the period considered, with the exception of the year 2009, when extra restructuring costs had to be covered due to the closing down of one of the production sites (see recital 45 above). The development of cash flow was in line with the development of profitability.

Table 14

Cash flow

	2007	2008	2009	RIP
Cash flow (range)	0 % to 10 %	0 % to 10 %	- 10 % to 0 %	5 % to 15 %

7.12. Magnitude of dumping margin

- (67) Dumping from the PRC continued during the RIP at a level significantly above the current level of measures. Moreover, given the spare capacity and prices of imports from the PRC, the impact on the Union industry of the actual margins of dumping cannot be considered to be negligible.

7.13. Recovery from past dumping

- (68) Anti-dumping measures were imposed in October 2005. Taking into account the overall situation of the Union industry as well as the imports from the PRC in the period from 2007 to RIP, it can be concluded that the Union industry has not recovered fully from these effects despite the anti-dumping measures in force.

7.14. Conclusion on injury

- (69) Several injury indicators developed negatively during the period considered. Taking into account the overall worsening situation of the Union producers, the Union industry is considered to have suffered material injury over the period considered.

8. Impact of dumped imports and other factors

8.1. Impact of dumped imports from the PRC

- (70) As set out in recital 49, imports of TCCA from the PRC grew significantly between 2007 and RIP, in terms of both volume and market share. Significant price undercutting was also found (see recital 51). The continuous massive inflow of dumped imports from the PRC occurred in a context of overall increasing Union consumption in the period considered, reaching in the RIP a level exceeding by 6 % the one achieved in 2007, despite a decrease between 2007 and 2009. As demonstrated by the worsening situation of the Union industry, it was mainly imports from the PRC that benefited from the increase in consumption.

8.2. Impact of other factors

- (71) The Commission analysed whether any known factors other than the dumped imports from the PRC could have had a bearing on the continued injury suffered by the Union producers.
- (72) In parallel with dumped imports from the PRC, it is likely that the reduced performance of the Union industry on third markets, where it also faced PRC competition, and on the US market in particular, had a negative impact on the Union production. However, most of the activity of the Union producers is devoted to the Union market, limiting to some extent the potential impact of reduced exports.
- (73) The economic crisis also had a negative impact on the performance of the Union industry, leading to a decrease in production and the restructuring of one of the Union producers. Nonetheless, the impact of the economic crisis was limited in time (part of 2008 and 2009), while the economic situation of the Union industry continued to deteriorate throughout the period considered. Moreover, developments in the RIP show that the Union industry did start to recover partially. It can therefore be considered that the impact of the economic crisis was not insignificant in this case, although it did not break the causal link between dumped imports from the PRC and the injury suffered by the Union industry.

8.3. Conclusion

- (74) The continued dumping of imports from the PRC along with the economic crisis altered the recovery process and accentuated the difficulties of the Union industry. Although other factors contributed to the deterioration in the performance of the Union industry, none of them proved to be sufficient to break the causal link between

dumped imports from the PRC and the injury suffered by the Union industry. On these grounds, it may be concluded that dumped imports from the PRC have caused material injury to the Union industry.

E. LIKELIHOOD OF CONTINUATION OF INJURY

1. Preliminary remarks

- (75) 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.
- (76) With regard to the likely effect on the Union industry of the expiry of the measures in force, the following factors were taken into account in line with the elements summarised above regarding the likelihood of the continuation of dumping.

2. PRC import volumes and prices

- (77) Imports of TCCA from the PRC, representing approximately 98 % of all imports to the EU, continued to gain market share during the period considered, reaching over 50 % during the RIP. The investigation revealed that these imports were made at dumped prices with a substantial dumping margin. Moreover, the prices of PRC imports remained steadily below the Union industry prices during the entire period, undercutting the Union prices by over 10 % (without taking into account the measures in force).

3. Spare capacity in the PRC market

- (78) As mentioned in recitals 34 and 35, the analysis of available capacities in the PRC showed that production capacity utilisation remained low during the period considered. The estimated excess production capacity was found to be more than three times higher than in the Union market. At the same time, according to the information received in the review request, there was only a limited market for the product concerned in the PRC.

4. Attractiveness of the Union market

- (79) In the light of growing import trends and available spare capacities in the PRC, the EU is likely to attract further imports from the PRC in the future. The fact that the Union market is attractive for PRC exporters is demonstrated by the developments in 2009, when the production shortage in the EU, which was caused by the restructuring of the sector, was partially met by extra imports from the PRC.

- (80) This situation may be further exacerbated by the fact that, in the US market, the existing anti-dumping measures on TCCA from the PRC have recently been extended. It is therefore to be expected that the expiry of the AD-measure in the EU would make the Union market comparatively more attractive.

5. Conclusion on the likelihood of continuation of injury

- (81) The Union industry had been suffering from the effects of PRC dumped imports for several years and is still in a precarious economic situation.
- (82) As established above, the investigation revealed that the injurious situation of the Union industry has continued throughout the period considered. According to Article 11(2) of the basic Regulation, the continuation of injury is in itself a strong indicator that the injury is likely to continue in the future, which would suggest that the measures should be maintained.
- (83) Given the spare capacity available in the PRC and the attractiveness of the Union market, if the measures are lifted the growing trend whereby large imports from the PRC at dumped prices significantly undercut Union producers' prices is likely to continue.
- (84) If the measures in force are not extended, the situation of the Union industry would deteriorate and its very existence would be jeopardised. Therefore, it can be concluded that there is a clear likelihood of continuation of injury to the Union industry, should existing measures be removed.

F. UNION INTEREST

1. Introduction

- (85) Pursuant to Article 21 of the basic Regulation, it was necessary to examine whether the maintenance of existing anti-dumping measures would be against the interest of the Union as a whole. Determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union producers, importers and users.
- (86) In previous investigations, it was considered that the adoption of measures was not against the interest of the Union. Furthermore, the fact that the current investigation is a review, and thus analyses a situation in which anti-dumping measures are already in place, allows for the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (87) On this basis it was examined whether, despite the conclusions on the likelihood of the continuation of

dumping and of injury, it could be clearly concluded that it is not in the Union interest to maintain measures in this particular case.

2. Interest of the Union industry

- (88) In view of the conclusions on the situation of the Union industry set out in recital 66 above, and in line with the arguments underpinning the likelihood of continuation of injury as explained in recitals 78 to 81, it can be considered that the expiry of the measures in force would lead to further deterioration in the economic situation of the Union TCCA industry, which has suffered from the injurious effect of the dumped imports from the PRC and whose situation has been worsened by the global economic crisis.
- (89) It is considered that the continuation of measures would benefit the Union industry, which could in this case recover from the injurious effect of past dumping aggravated by the economic crisis. In contrast, the discontinuation of the measures would put a stop to the recovery of the Union industry, seriously threatening its viability, and, as a result, putting its existence at risk, thus reducing supply and competition on the market.

3. Interest of importers and users

- (90) All known users, importers, processors and actors in the downstream TCCA industry were contacted.
- (91) Only two users came forward, both expressing their support for the continuation of the measures in force. Both claimed that the continuation of measures would not have a negative impact on competition in the Union market, but that, on the contrary, it would provide the user industry with a wider range of suppliers competing at market prices. Since no other parties came forward in this case, there is no evidence to show that the maintenance of the anti-dumping measures in the present case would have a serious effect on importers and users in the Union.

4. Conclusion on Union interest

- (92) The continuation of measures can be expected to assist the Union industry, with consequent beneficial effects on the competitive conditions on the Union market and the consolidation of the sector after the economic crisis and the restructuring. Furthermore, the continuation of the measures can be expected to benefit users and importers by maintaining a wide range of suppliers in the Union market.
- (93) Taking all the above factors into account, it is concluded that there are no compelling reasons against the continuation of the measures in question.

G. ANTI-DUMPING MEASURES

- (94) 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.
- (95) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of TCCA originating in the PRC should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of trichloroisocyanuric acid and preparations thereof, also referred to as 'synclosene' under the international non-proprietary name (INN), currently falling within CN codes ex 2933 69 80 and ex 3808 94 20 (TARIC codes 2933 69 80 70 and 3808 94 20 20), and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable before duty to the net free-at-Union-frontier price for products manufactured by the companies listed below shall be as follows:

Company	Anti-dumping duty rate	TARIC additional code
Hebei Jiheng Chemical Co. Limited	8,1 %	A604
Puyang Cleanway Chemicals Limited	7,3 %	A628
Heze Huayi Chemical Co. Limited	3,2 %	A629
Zhucheng Taisheng Chemical Co. Limited	40,5 %	A627
All other companies	42,6 %	A999

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

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

Article 2

This Regulation shall enter into force on the day following 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, 19 December 2011.

For the Council
The President
M. KOROLEC

ANNEX

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

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

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

Date and signature'.

DECISIONS

COUNCIL DECISION of 19 December 2011 amending the Council's Rules of Procedure (2011/900/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

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

Having regard to Article 2(2) of Annex III to the Council's Rules of Procedure ⁽¹⁾,

Whereas:

- (1) Article 3(3), first and fourth subparagraphs, of the Protocol (No 36) on transitional provisions annexed to the Treaties provides that, until 31 October 2014, when an act is to be adopted by the Council by a qualified majority, and if a member of the Council so requests, it must be verified that the Member States constituting the qualified majority represent at least 62 % of the total population of the Union calculated according to the population figures set out in Article 1 of Annex III to the Council's Rules of Procedure (hereinafter 'Rules of Procedure').
- (2) Article 2(2) of Annex III to the Rules of Procedure provides that, with effect from 1 January each year, the Council, in accordance with the data available to the Statistical Office of the European Union on 30 September of the preceding year, must amend the figures set out in Article 1 of that Annex.
- (3) The Rules of Procedure should therefore be amended accordingly for 2012,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 of Annex III to the Rules of Procedure shall be replaced by the following:

'Article 1

For the purposes of implementing Article 16(5) of the TEU and Article 3(3) and (4) of the Protocol (No 36) on transitional provisions annexed to the Treaties, the total population of each Member State for the period from 1 January 2012 to 31 December 2012 shall be as follows:

Member State	Population (× 1 000)
Germany	81 751,6
France	65 075,4
United Kingdom	62 435,7
Italy	60 626,4
Spain	46 152,9
Poland	38 200,0
Romania	21 413,8
Netherlands	16 655,8
Greece	11 325,9
Belgium	10 918,4
Portugal	10 637,0
Czech Republic	10 532,8
Hungary	9 985,7
Sweden	9 415,6
Austria	8 404,3
Bulgaria	7 504,9

⁽¹⁾ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).

Member State	Population (× 1 000)
Denmark	5 560,6
Slovakia	5 435,3
Finland	5 375,3
Ireland	4 480,9
Lithuania	3 244,6
Latvia	2 229,6
Slovenia	2 050,2
Estonia	1 340,2
Cyprus	804,4

Member State	Population (× 1 000)
Luxembourg	511,8
Malta	417,6
Total	502 486,7
Threshold (62 %)	311 541,8'

Article 2

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

It shall apply from 1 January 2012.

Done at Brussels, 19 December 2011.

For the Council
The President
M. KOROLEC

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