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EN

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

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

EN

[1] Text with EEA relevance

(Continued on inside back cover)

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 113/2012

of 10 February 2012

implementing Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EC) No 560/2005 of 12 April 2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire [1], and in particular Article 11a(2) thereof,

Whereas:

(1) On 12 April 2005, the Council adopted Regulation (EC) No 560/2005.

(2) In view of the developments in Côte d'Ivoire, the list of natural and legal persons, entities or bodies subject to restrictive measures set out in Annex IA to Regulation (EC) No 560/2005 should be amended,

HAS ADOPTED THIS REGULATION:

Article 1

The natural persons listed in the Annex to this Regulation shall be deleted from the list set out in Annex IA to Regulation (EC) No 560/2005.

Article 2

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

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

Done at Brussels, 10 February 2012.

For the Council
The President
C. ANTORINI

[1] OJ L 95, 14.4.2005, p. 1.

ANNEX

Natural persons referred to in Article 1

1	Mr Frank Anderson Kouassi
2	Mr Yanon Yapo
3	Mr Benjamin Yapo Atsé
4	Mr Blaise N'Goua Abi
5	Ms Anne Jacqueline Lohoués Oble
6	Ms Angèle Gnonsoa
7	Ms Danièle Boni Claverie
8	Mr Ettien Amoikon
9	Mr Kata Kéké Joseph
10	Mr Touré Amara
11	Ms Anne Gnahouret Tatret
12	Mr Thomas N'Guessan Yao
13	Ms Odette Lago Daléba Loan
14	Mr Georges Armand Alexis Ouégnin
15	Mr Rafaël Dogo Djéréké
16	Ms Marie Odette Lorougnon Souhonon
17	Mr Felix Nanihio
18	Mr Lahoua Souanga Etienne
19	Mr Jean Baptiste Akrou
20	Mr Lambert Kessé Feh
21	Togba Norbert
22	Kone Doféré
23	Hanny Tchélé Brigitte
24	Jacques Zady
25	Ali Keita
26	Blon Siki Blaise
27	Moustapha Aziz
28	Gnamien Yao
29	Ghislain N'Gbechi
30	Deby Dally Balawourou

COUNCIL REGULATION (EU) No 114/2012

of 10 February 2012

amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2012/36/CFSP of 23 January 2012 [1] amending Council Decision 2010/639/CFSP [2] concerning restrictive measures against Belarus,

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

Whereas:

(1) Council Regulation (EC) No 765/2006 [3] provides for a freezing of the assets of President Lukashenko and certain officials of Belarus.

(2) By Decision 2012/36/CFSP, the Council decided that the freezing of funds and economic resources should be extended both to persons responsible for serious violations of human rights or the repression of civil society and democratic opposition, including in particular persons in a leading position and persons and entities benefiting from or supporting the Lukashenko regime, including in particular persons and entities providing financial or material support to the regime.

(3) This measure falls within the scope of the Treaty on the Functioning of the European Union, and action at the level of the Union is therefore necessary in order to give effect to it, in particular with a view to ensuring its uniform application by economic operators in all Member States.

(4) Regulation (EC) No 765/2006 should therefore be amended accordingly.

(5) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force on the day following its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 765/2006 is hereby amended as follows:

(1) Article 2 is replaced by the following Article:

'*Article 2*

1. All funds and economic resources belonging to, or owned, held or controlled by the natural or legal persons, entities or bodies listed in Annexes I, IA and IB shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annexes I, IA or IB.

3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.

4. Annex I shall consist of a list of the natural or legal persons, entities and bodies who, in accordance with point (a) of Article 2(1) of Council Decision 2010/639/CFSP of 25 October 2010 concerning restrictive measures against Belarus (*), have been identified by the Council as being responsible for the violations of international electoral standards in the Presidential elections in Belarus on 19 March 2006 and the repression of civil society and democratic opposition, or as being associated with those responsible.

5. Annex IA shall consist of a list of the natural or legal persons, entities and bodies who, in accordance with Article 2(1)(b) of Decision 2010/639/CFSP, have been identified by the Council as being responsible for the violations of international electoral standards in the Presidential elections in Belarus on 19 December 2010 and the repression of civil society and democratic opposition, or as being associated with those responsible.

6. Annex IB shall consist of a list of the natural or legal persons, entities and bodies who, in accordance with points (c) and (d) of Article 2(1) of Decision 2010/639/CFSP, have been identified by the Council as being either (i) responsible for serious violations of human rights or the repression of civil society and democratic opposition in Belarus, or (ii) persons or entities benefiting from or supporting the Lukashenko regime.

(*) OJ L 280, 26.10.2010, p. 18.';

(2) in paragraphs 1 and 2 of Article 2b, in Article 3(1)(a), in Article 4a and in paragraphs 1 and 4 of Article 8a, references to 'Annexes I and IA' are replaced by references to 'Annexes I, IA and IB'.

[1] OJ L 19, 24.1.2012, p. 31.
[2] Decision of 25 October 2010 (OJ L 280, 26.10.2010, p. 18).
[3] OJ L 134, 20.5.2006, p. 1.

Article 2

The Annex to this Regulation shall be inserted as Annex IB to Regulation (EC) No 765/2006.

Article 3

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

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

Done at Brussels, 10 February 2012.

For the Council
The President
C. ANTORINI

ANNEX

'ANNEX IB

There are no entries in this Annex.'.

COMMISSION REGULATION (EU) No 115/2012

of 9 February 2012

imposing a provisional countervailing duty on imports of certain stainless steel fasteners and parts thereof originating in India

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 13 May 2011, the Commission announced, by a notice published in the *Official Journal of the European Union* [2] ('notice of initiation'), the initiation of an anti-subsidy proceeding ('AS proceeding') with regard to imports into the Union of certain stainless steel fasteners and parts thereof originating in India ('India' or 'the country concerned').

(2) On the same day, the Commission announced by a notice published in the *Official Journal of the European Union* [3] ('notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Union of certain stainless steel fasteners and parts thereof originating in India and commenced a separate investigation ('AD proceeding').

(3) The AS proceeding was initiated following a complaint lodged on 31 March 2011 by the European Industrial Fasteners Institute (EIFI) ('the complainant') on behalf of producers representing more than 25 % of total Union production of certain stainless steel fasteners and parts thereof. The complaint contained prima facie evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.

(4) Prior to the initiation of the proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of India (the 'GOI') that it had received a properly documented complaint alleging that subsidised imports of certain stainless steel fasteners and parts thereof originating in India were causing material injury to the Union industry. The GOI was invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. No mutually agreed solution was found.

1.2. Parties concerned by the proceeding

(5) The Commission officially advised the complainant Union producers, other known Union producers, the exporting producers, importers, users known to be concerned, and the Indian authorities of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(6) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

1.2.1. *Sampling for exporting producers in India*

(7) In view of the large number of exporting producers in India, sampling was envisaged in the notice of initiation for the determination of subsidisation in accordance with Article 27 of the basic Regulation.

(8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers in India were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies involved in the production and/or selling of the product concerned during the period from 1 April 2010 to 31 March 2011.

[1] OJ L 188, 18.7.2009, p. 93.
[2] OJ C 142, 13.5.2011, p. 36 and title corrected in corrigendum (2011/C 199/08) in OJ C 199, 7.7.2011, p. 13.
[3] OJ C 142, 13.5.2011, p. 30 and title corrected in corrigendum (2011/C 199/09) in OJ C 199, 7.7.2011, p. 13.

(9) The relevant Indian authorities were also consulted for the selection of a representative sample.

(10) In total, five exporting producers, including a group of related companies in India, provided the requested information and agreed to be included in the sample within the deadline set in the notice of initiation. These cooperating companies reported exports of the product concerned to the Union during the investigation period. The comparison between Eurostat import data and the volume of exports to the Union of the product concerned reported for the investigation period by the five cooperating companies revealed that the cooperation of Indian exporting producers was close to 100 %. Thus, the sample was chosen on the basis of the information submitted by these five exporting producers.

1.2.2. *Selection of the sample of cooperating companies in India*

(11) In accordance with Article 27 of the basic Regulation, the Commission selected a sample based on the largest representative volume of exports of the product concerned to the Union which could reasonably be investigated within the time available. The sample selected consisted of three individual companies, together representing ca. 98 % of the total volume of exports from India to the Union of the product concerned.

(12) In accordance with Article 27(2) of the basic Regulation, the parties concerned and the Indian authorities were consulted on the selection of the sample. The two non-sampled exporting producers insisted to be also included in the sample. However, in view of the representativity of the proposed sample, as mentioned in recital (11) above, it was concluded that it was not necessary to amend or enlarge the sample.

1.2.3. *Individual examination of companies not selected in the sample*

(13) A claim for individual examination as per Article 27(3) of the basic Regulation was received from a non-sampled exporting producer. The examination of this claim at the provisional stage would have been too burdensome to be carried out. Therefore, a decision whether individual examination will be granted to this company will be taken at a later stage.

1.2.4. *Sampling of Union producers*

(14) In view of the apparent large number of Union producers, sampling was provided for in the notice of initiation for the determination of injury, in accordance with Article 27 of the basic Regulation.

(15) In the notice of initiation the Commission announced that it had provisionally selected a sample of Union producers. This sample consisted of five companies, out of the 15 Union producers that were known prior to the initiation of the investigation, selected on the basis of their sales volume, size and geographic location in the Union. They represented 37 % of the total estimated Union production during the IP. Interested parties were invited to consult the file and to comment on the appropriateness of this choice within 15 days of the date of publication of the notice of initiation. No interested party opposed to the proposed sample composed of five companies.

(16) Subsequently one of the five sampled Union producers withdrew its cooperation. The remaining four sampled companies still represented 32 % of the total estimated Union production during the IP. Hence the sample was still considered to be representative of the Union industry. Verification visits took place at the premises of three of these companies. It was considered at this provisional stage of the investigation that a thorough desk analysis was sufficient to verify the data provided by the fourth sampled company.

1.2.5. *Sampling of unrelated importers*

(17) In view of the potentially large number of importers involved in the proceeding, sampling was envisaged for importers in the notice of initiation in accordance with Article 27 of the basic Regulation. Two importers provided the requested information and agreed to be included in the sample within the deadline set in the notice of initiation. Given the low number of importers who made themselves known, it was decided not to apply sampling.

1.2.6. *Questionnaire replies and verifications*

(18) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Questionnaires were thus sent to the GOI, the sampled exporting producers in India, the sampled Union producers, the cooperating importers in the Union and to all users known to be concerned by the investigation.

(19) Replies were received from the GOI, the sampled exporting producers and four sampled Union producers. None of the importers or users contacted replied to the questionnaire.

(20) The Commission sought and verified all the information provided by interested parties and deemed necessary for a provisional determination of subsidisation, resulting injury and Union interest. Verification visits were carried out at the premises of the GOI in Delhi and the following parties:

Producers in the Union

— Inox Viti di Cattinori Bruno & C.s.n.c., Grumello del Monte, Italy,

— Bontempi Vibo S.p.A., Rodengo Saiano, Italy,

— Ugivis S.A., Belley, France;

Exporting producers in India

— Viraj Profiles Limited, Boisar, Dist. Thane, Maharashtra,

— Agarwal Fastners Pvt. Ltd., Vasai (East), Dist. Thane, Maharashtra,

— Raajratna Ventures Ltd., Ahmedabad, Gujarat.

1.3. **Investigation period**

(21) The investigation of subsidisation and injury covered the period from 1 April 2010 to 31 March 2011 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 2008 to the end of the investigation period ('period considered').

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(22) The product concerned is stainless steel fasteners and parts thereof ('SSF') originating in India, currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61. and 7318 15 70.

2.2. **Like product**

(23) The product concerned and the product produced and sold on the domestic market of India as well as the product produced and sold on the Union market by the Union industry were found to have the same basic physical, chemical and technical characteristics as well as the same basic uses. They are therefore provisionally considered to be alike within the meaning of Article 2(c) of the basic Regulation.

3. **SUBSIDISATION**

3.1. **Introduction**

(24) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

(a) Duty Entitlement Passbook Scheme;

(b) Advance Authorisation Scheme;

(c) Export Promotion Capital Goods Scheme;

(d) Export Oriented Units Scheme;

(e) Focus Product Scheme;

(f) Export Credit Scheme;

(g) Electricity Duty Exemption.

(25) The schemes (a) to (e) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992), which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. The Foreign Trade Policy document relevant to the IP of this investigation is the FT-policy 09-14. In addition, the GOI also sets out the procedures governing the FT-policy 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 09-14'). The Handbook of Procedures is also updated on a regular basis.

(26) The Export Credit Scheme specified above under (f) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India ('RBI') to direct commercial banks in the field of export credits.

(27) The Electricity Duty Exemption specified above under (g) is included in the Package Scheme of Incentives 2007 of the Government of Maharashtra, Resolution No. PSI-1707/(CR-50)/IND-8, dated 30 March 2007.

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

(a) Legal Basis

(28) The detailed description of the DEPBS is contained in chapter 4.3 of the FT-policy 09-14 as well as in chapter 4 of the HOP I 09-14.

(b) Eligibility

(29) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) Practical implementation of the DEPBS

(30) An exporter can apply for DEPBS credits which are calculated as a specified percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of Standard Input Output Norms ('SIONs') taking into account a presumed import content of inputs in the export product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not.

(31) To be eligible for benefits under this scheme, a company must export. At the time of the export transaction, a declaration must be made by the exporter to the Indian authorities indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue an export shipping bill during the dispatch procedure. This document shows, *inter alia*, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit.

(32) It was found that in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods - except capital goods and goods where there are import restrictions. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 24 months from the date of issue.

(33) Application for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. *De facto* no strict deadlines apply to DEPBS credits. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the submission deadline mentioned in chapter 4.47 of the HOP I 09-14. Furthermore, as clearly provided in chapter 9.3 of the HOP I 09-14, applications received after the expiry of submission deadlines can always be considered subject to the imposition of a minor penalty fee.

(34) It was found that two of the companies in the sample, Agarwal Fastners Pvt. Ltd. and Raajratna Ventures Ltd. used this scheme during the IP.

(d) Conclusions on the DEPBS

(35) The DEPBS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A DEPBS credit is a financial contribution by the GOI since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the DEPBS credit confers a benefit upon the exporter because it improves its liquidity.

(36) Furthermore, the DEPBS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(37) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation since it does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. In particular, an exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I, and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an

exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS.

(e) Calculation of the subsidy amount

(38) In accordance with Articles 3(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient found to exist during the IP. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At that moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, *inter alia*, the amount of DEPBS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, it is considered appropriate to assess the benefit under the DEPBS as being the sums of the credits earned on export transactions made under this scheme during the IP.

(39) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amount as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the total export turnover during the IP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(40) The subsidy rate established in respect of this scheme for the companies concerned during the IP ranged from 4,70 % to 6,53 %.

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

(a) Legal basis

(41) The detailed description of the scheme is contained in paragraphs 4.1.3 to 4.1.14 of the FT-policy 09-14 and chapters 4.1 to 4.30A of the HOP I 09-14.

(b) Eligibility

(42) The AAS consists of six sub-schemes, as described in more detail in recital (43) below. Those sub-schemes differ *inter alia* in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement sub-schemes. Manufacturer–exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the FT-policy 09-14, such as suppliers of an export oriented unit ('EOU'), are eligible for the AAS deemed export sub-scheme. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order ('ARO') and back to back inland letter of credit.

(c) Practical implementation

(43) The AAS can be issued for:

(i) *Physical exports:* This is the main sub-scheme. It allows for duty-free import of input materials for the production of a specific resulting export product. 'Physical' in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the licence;

(ii) *Annual requirement:* Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can – up to a certain value threshold set by its past export performance – import duty-free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resulting product falling under the product group using such duty-exempt material;

(iii) *Intermediate supplies:* This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter who produces the intermediate product can import duty-free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product;

(iv) *Deemed exports:* This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2 of the FT-policy 09-14. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an export-oriented unit ('EOU') or to a company situated in a special economic zone ('SEZ');

(v) *Advance Release Order ('ARO'):* The AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the FT-policy 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;

(vi) *Back to back inland letter of credit:* This sub-scheme again covers indigenous supplies to an Advance Authorisation holder. The holder of an Advance Authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be validated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the FT-policy 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

(44) One company in the sample received concessions under the AAS linked to the product concerned during the IP. This company made use of one of the sub-schemes, i.e. AAS physical exports. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.

(45) For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain 'a true and proper account of consumption and utilisation of duty-free imported/domestically procured goods' in a specified format (chapters 4.26, 4.30 and Appendix 23 HOP I 09-14), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects.

(46) With regard to the sub-scheme used during the IP by the company concerned, i.e. physical exports, the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the Authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the Authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of Standard Input Output Norms ('SIONs') which exist for most products including the product concerned. Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (24 months with two possible extensions of 6 months each).

(47) The investigation established that the verification requirements stipulated by the Indian authorities were either not honoured or not yet tested in practice.

(48) The company using the scheme did maintain a certain production and consumption register. The Appendix 23 was not properly completed and, therefore, could not be considered an actual consumption register as prescribed by the chapters 4.26, 4.30 of the HOP I 09-14. An actual consumption register for the IP was not available, and consequently it was not possible to verify *inter alia* the consumption records in order to establish which inputs were consumed in the production of the exported product and in what amounts, as stated in the copy of the Appendix 23. Regarding the verification requirements referred to in recital (45) above, there were no records kept by the company on how this certification took place. There was no audit plan or any other supporting material of the audit performed (e.g. a report of the auditing), no recorded information on the methodology used and the specific requirements needed for such scrupulous work that required detailed technical knowledge on production processes. Any potential excess remission realized by the company and reported in the Appendix 23 did not entail any intervention or control by the relevant authorities. In sum, it is considered that the investigated exporter was not able to demonstrate that the relevant provisions of FT-policy 09-14 were met.

(d) Conclusion on the AAS

(49) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, since it constitutes a financial contribution of the GOI which conferred a benefit upon the investigated exporter.

(50) In addition, the subsidies related to AAS physical exports are clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under this scheme.

(51) The sub-scheme used in the present case cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The GOI did not effectively apply a verification system or a procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). Moreover, the SIONs for the product concerned were not sufficiently precise and they cannot constitute a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).

(52) The sub-scheme is therefore countervailable.

(e) Calculation of the subsidy amount

(53) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 3(1)(a)(ii) and Annex I(i) of the basic Regulation only when the conditions of Annexes II and III of the basic Regulation are met the excess remission of duties can be countervailed. However, these conditions were not fulfilled in the present case. Thus, if an adequate monitoring process is not demonstrated, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of unpaid duties (revenue forgone), applies, rather than of any purported excess remission. As set out in Annexes II(II) and III(II) of the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 3(1)(a)(ii) of the basic Regulation, the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

(54) The subsidy amount for the company which used the AAS was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the sub-scheme during the IP (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned during the IP as appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(55) The subsidy rate established in respect of this scheme for the company concerned during the IP was 2,94 %.

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

(a) Legal basis

(56) The detailed description of the EPCGS is contained in chapter 5 of the FT-policy 09-14 as well as in chapter 5 of the HOP I 09-14.

(b) Eligibility

(57) Manufacturer-exporters, merchant-exporters 'tied to' supporting manufacturers and service providers are eligible for this scheme.

(c) Practical implementation

(58) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods) at a reduced rate of customs duty. To this end, the GOI issues an EPCGS licence upon application and payment of a fee. This scheme provides for a reduced import duty rate of 5 % applicable to all capital goods imported under this scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period. Under FTP 09-14 the capital goods can be imported with 0 % duty rate under EPCGS but in such case the time period for fulfilment of the export obligation is shorter, i.e. 6 years instead of 8 years from Authorization issue-date. The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail himself of the benefit for duty free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS licence holder.

(59) It was found that all sampled exporting producers used this scheme during the IP.

(d) Conclusion on EPCG Scheme

(60) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI since this concession decreases the GOI's duty revenue, which would otherwise be due. In addition, the duty reduction confers a benefit upon the exporter because the duties saved upon import improve its liquidity.

(61) Furthermore, the EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(62) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I, item (i), to the basic Regulation because they are not consumed/incorporated in the production of the exported products.

(e) Calculation of the subsidy amount

(63) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. In accordance with the established practice, the amount so calculated, which is attributable to the IP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the investigation period in India was considered appropriate for this purpose. Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation.

(64) In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the appropriate export turnover during the IP as the appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(65) The subsidy rates established in respect of this scheme for the companies concerned during the IP were 0,11 %, 0,16 % and 0,19 %.

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

(a) Legal basis

(66) The details of the EOU scheme are contained in chapter 6 of the FT-policy 09-14 as well as in chapter 6 of the HOP I 09-14.

(b) Eligibility

(67) With the exception of pure trading companies, all enterprises which, in principle, undertake to export their entire production of goods or services may be set up under the EOUS. Undertakings in the industrial sectors have to fulfil a minimum investment threshold in fixed assets to be eligible for the EOUS.

(c) Practical implementation

(68) Export oriented units can be located and established anywhere in India.

(69) An application for EOU status must include details for a period of the next five years on, *inter alia*, planned production quantities, projected value of exports, import requirements and indigenous requirements. Upon acceptance by the authorities of the company's application, the terms and conditions attached to this acceptance will be communicated to the company. The agreement to be recognised as a company under EOUS is valid for a five-year period. The agreement may be renewed for further periods.

(70) A crucial obligation of an EOU as set out in the FT-policy 09-14 is to achieve net foreign exchange ('NFE') earnings; i.e. in a reference period (5 years) the total value of exports has to be higher than the total value of imported goods.

(71) Export oriented units are entitled to the following concessions:

(i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for the manufacture, production, processing, or in connection therewith;

(ii) exemption from excise duty on goods procured from indigenous sources;

(iii) reimbursement of central sales tax paid on goods procured locally;

(iv) the facility to sell part of production on the domestic market of up to 50 % of FOB value of exports, subject to fulfilment of positive NFE earnings upon payment of concessional duties, namely excise duties on finished products;

(v) partial reimbursement of duty paid on fuel procured from domestic oil companies;

(vi) exemption from income tax normally due on profits realised on export sales in accordance with Section 10B of the Income Tax Act for a 10-year period after starting its operations.

(72) Units operating under this scheme are bonded under the surveillance of customs officials.

(73) They are legally obliged to maintain a proper account of all imports, of the consumption and utilisation of all imported materials and of the exports made in accordance with the relevant paragraph of HOP I 09-14. These documents should be submitted periodically to the competent authorities in India through quarterly and annual progress reports.

(74) However, 'at no point in time an EOU shall be required to co-relate every import consignment with its exports, transfers to other units, sales in DTA ("domestic tariff area") or stocks', as the relevant section of the HOP I 09-14 states.

(75) Domestic sales are dispatched and recorded on a self-certification basis. The dispatch process of export consignments of an EOU is supervised by a customs/excise official.

(76) In the present case, the EOUS was used by one of the exporters in the sample. This exporter utilised the scheme to import raw materials, consumables and capital goods free of import duties, to procure goods domestically free of excise duty and to obtain sales tax reimbursement, and to sell part of its production on the domestic market. The exporter thereby availed of all benefits as described in recital (71) above under (i) to (vi). However, as regards income tax exemption pursuant to Section 10B of the Income Tax Act, the investigation revealed that, as from 1 April 2010, the company was no longer eligible for this exemption. Consequently, the income tax exemption provisions of the EOU were not further considered in the context of this investigation.

(77) At a very late stage, the company which was found to operate as an EOU submitted detailed comments on the scheme, *inter alia* alleging that the various measures available within an EOU do not constitute countervailable subsidies. The analysis of these comments could not be concluded at this point in time; however, it will be duly dealt with in the subsequent stage of this investigation.

(d) Conclusions on the EOUS

(78) The exemptions of an EOU from three types of import duties ('basic customs duty', 'education cess on customs duty' and 'higher secondary education cess') and the reimbursement of sales tax are financial contributions of the GOI within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Government revenue which would be otherwise due in the absence of this scheme is forgone, thus, conferring a benefit upon the EOU within the meaning of Article 3(2) of the basic Regulation because it improved liquidity by not having to pay duties normally due and by obtaining a sales tax reimbursement.

(79) In addition, the EOU cannot be considered as a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annex I items (h) and (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The GOI did not effectively apply a verification system or a procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). The verification system in place aims at monitoring the NFE earning obligation and not the consumption of imports in relation to the production of exported goods.

(80) The exemption from excise duty and its import duty equivalent ('EED'), however, do not lead to revenue forgone which is otherwise due. Excise and additional customs duty, if paid, could be used as a credit for its own future duty liabilities (the so-called 'CENVAT mechanism') which is a system comparable to VAT and which allows Indian companies to offset taxes on purchases with taxes payable on sales. Therefore, these duties are not definitive. By the means of 'CENVAT'-credit only an added value bears a definitive duty, not the input materials.

(81) Thus, only the exemption from basic customs duty, education cess on customs duty, higher secondary education cess and the central sales tax reimbursement, constitute subsidies within the meaning of Article 3 of the basic Regulation. They are contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. The export objective of an EOU as set out in chapter 6.1 of the FT-policy 09-14 is a *conditio sine qua non* to obtain the incentives.

(e) Calculation of the subsidy amount

(82) Accordingly, the countervailable benefit is the remission of import duties (basic customs duty, education cess on customs duty, higher secondary education cess) normally due upon importation as well as the reimbursement of central sales tax, during the IP.

(i) Exemption from import duties (basic customs duty, education cess on customs duty, higher secondary education cess), reimbursement of central sales tax on raw materials and consumables

(83) The subsidy amount for the exporter that are export oriented units was calculated on the basis of import duties forgone (basic customs duty, education cess on customs duty, higher secondary education cess) on the materials imported for the EOU as a whole and the sales tax reimbursed during the IP. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation from this sum to arrive at the subsidy amount as numerator. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the appropriate export turnover generated during the IP as appropriate denominator because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy margin thus obtained for the company concerned was 2,68 %.

(ii) Exemption from import duties (basic customs duty, education cess on customs duty, higher secondary education cess) on capital goods

(84) Capital goods are not physically incorporated into the finished goods. In accordance with Article 7(3) of the basic Regulation, the benefit to the concerned company has been calculated on the basis of the amount of unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in one of the investigated companies. The amount so calculated is then attributable to the IP and has been adjusted by adding interest during this period in order to reflect the value of the benefit over time and thereby establish the full benefit of this scheme to the recipient. The commercial interest rate during the investigation period in India was considered appropriate for this purpose. In accordance with Articles 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the appropriate export turnover generated during the IP as appropriate denominator because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy margin thus obtained for the company concerned was 0,05 %.

(85) The total subsidy margin obtained under the EOUS for the company concerned amounts to 2,73 %.

3.6. **Focus Product Scheme ('FPS')**

(a) Legal basis

(86) The detailed description of the scheme is contained in paragraphs 3.15 to 3.17 of the FT-policy 09-14 and chapters 3.9 to 3.11 of the HOP I 09-14.

(b) Eligibility

(87) According to paragraph 3.15.2 of the FT-policy 09-14, exporters of notified products in Appendix 37D of HOP I 09-14 are eligible for this scheme.

(c) Practical implementation

(88) An exporter of products included in the list of Appendix 37D of HOP I 09-14 can apply for FPS Duty Credit scrip equivalent to 2 % or 5 % of FOB value of exports. However, Special Focus product(s)/sector(s), covered under Table 2 and table 5 of the abovementioned Appendix 37D are entitled of a Duty Credit scrip equivalent to 5 % of FOB value of exports. The product concerned under investigation is included in these Special Focus products.

(89) FPS is a post export scheme, i.e. a company must export to be eligible for benefits under this scheme. As a result, the company proceeds to file an on-line application to the relevant authority along with copies of the export order and invoice, the bank receipt showing payment of application fees, copy of the shipping bills and bank realization certificate for the receipt of payment or foreign inward remittance certificate in the case of direct negotiation of documents. In cases where the original copy of the shipping bills and/or bank realisation certificates have been submitted for claiming benefits under any other scheme, the company can submit self-attested copies quoting the relevant authority where the original documents have been submitted. The on-line application for FPS credits can cover a maximum of up to 50 shipping bills.

(90) It was found that, in accordance with Indian accounting standards, FPS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods - except capital goods and goods where there are import restrictions. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. FPS credits are freely transferable and valid for a period of 24 months from the date of issue.

(91) It was found that two of the companies in the sample used this scheme during the IP.

(d) Conclusion on the FPS

(92) The FPS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. An FPS credit is a financial contribution by the GOI since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the FPS credit confers a benefit upon the exporter because it improves its liquidity.

(93) Furthermore, the FPS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation.

(94) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation since it does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. In particular, an exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I, and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the FPS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the FPS.

(e) Calculation of the subsidy amount

(95) In accordance with Articles 3(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient found to exist during the IP. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At that moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, *inter alia*, the amount of FPS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, it is considered appropriate to assess the benefit under the FPS as being the sums of the credits earned on export transactions made under this scheme during the IP.

(96) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amount as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the total export turnover during the IP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(97) The subsidy rate established in respect of this scheme for the two companies concerned during the IP was 4,80 %.

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

(a) Legal basis

(98) The details of the scheme are set out in the Master Circular DBOD No. DIR.(Exp).BC. 06/04.02.002/2010-10 (Rupee/Foreign Currency Export Credit) of the Reserve Bank of India ('RBI'), which is addressed to all commercial banks in India.

(b) Eligibility

(99) Manufacturing exporters and merchant exporters are eligible for this scheme.

(c) Practical implementation

(100) The ECS consists of two sub-schemes, the Pre-Shipment Export Credit Scheme ('packing credit'), which covers credits provided to an exporter for financing the purchase, processing, manufacturing, packing and/or shipping of goods prior to export, and the Post-Shipment Export Credit Scheme, which provides for working capital loans with the purpose of financing export receivables. Since July 1, 2010, commercial banks apply a new Base Rate System applicable for all tenors of rupee export credit advances. As regards ECS in foreign currency, the Reserve Bank of India (RBI) sets maximum ceiling interest rates applicable to export credits which commercial banks can charge an exporter. The RBI also directs the banks to provide a certain amount of their net bank credit towards export finance.

(101) As a result of the RBI Master Circular exporters can obtain export credits at preferential interest rates as compared with the interest rates for ordinary commercial credits ('cash credits'), which are solely set under market conditions. The difference in rates might decrease for companies with good credit ratings. In fact, high rating companies might be in a position to obtain export credits and cash credits at the same conditions.

(102) It was found that all the sampled exporting producers used this scheme during the IP.

(d) Conclusion on the ECS

(103) The preferential interest rates of an ECS credit set by the RBI Master Circular mentioned in recital (98) can decrease the interest costs of an exporter as compared with credit costs purely set by market conditions and confer in this case a benefit within the meaning of Article 3(2) of the basic Regulation on such an exporter.

(104) Despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is a financial contribution by a government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. In this context, it should be noted that neither Article 3(1)(a)(iv) of the basic Regulation nor Article 1.1(a)(1)(iv) of the Agreement on Subsidies and Countervailing Measures require a charge on the public accounts, e.g. reimbursement of the commercial banks by the GOI, to establish a subsidy, but only government direction to carry out functions illustrated in points (i), (ii) or (iii) of Article 3(1)(a) of the basic Regulation. The RBI is a public body and falls therefore under the definition of 'government' as set out in Article 2(b) of the basic Regulation. It is 100 % government-owned, pursues public policy objectives, e.g. monetary policy, and its management is appointed by the GOI. The RBI directs private bodies, within the meaning of the second indent of Article 3(1)(a)(iv) of the basic Regulation, since the commercial banks are bound by the conditions it imposes, *inter alia*, with regard to the setting of the interest rates on export credits mandated in the RBI Master Circular and the RBI provisions that commercial banks have to provide a certain amount of their net bank credit towards export finance. This direction obliges commercial banks to carry out functions mentioned in Article 3(1)(a)(i) of the basic Regulation, in this case to provide loans in the form of preferential export financing. Such direct transfer of funds in the form of loans under certain conditions would normally be vested in the government, and the practice differs, in no real sense, from practices normally followed by governments, within the meaning of Article 3(1)(a)(iv) of the basic Regulation. This subsidy is deemed to be specific and countervailable since the preferential interest rates are only available in relation to the financing of export transactions and are therefore contingent upon export performance, pursuant to Article 4(4), first subparagraph, point (a) of the basic Regulation.

(e) Calculation of the subsidy amount

(105) The subsidy amount has been calculated on the basis of the difference between the interest paid for export credits used during the IP and the amount that would have been payable for ordinary commercial credits used by the company concerned. This subsidy amount (numerator) has been allocated over the total export turnover during the IP as the appropriate denominator in accordance with Article 7(2) of the basic Regulation because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(106) The subsidy rates established in respect of this scheme for the companies concerned during the IP were 0,25 %, 0,31 % and 0,44 %.

3.8. **Electricity Duty Exemption**

(a) Legal basis

(107) The scheme is included in the Package Scheme of Incentives 2007 of the Government of Maharashtra, Resolution No PSI-1707/(CR-50)/IND-8, dated 30 March 2007. Following the Amendments to the Package Scheme of Incentives 2007 issued by the Government of Maharashtra on 30 June 2011, an extension period has been provided until 31 August 2011.

(b) Eligibility

(108) The abovementioned Resolution lists the categories of industries and enterprises which can be considered eligible for incentives under the 2007 scheme.

(c) Practical implementation

(109) In order to encourage the dispersal of industries to the less developed areas, the Maharashtra Government has provided a package of incentives to new/expansion industrial units set up in the developing region of the Maharashtra State. For the purpose of the Scheme, Annexure I to the Resolution classifies the area of the State eligible for incentives. However, the incentives under the 2007 Scheme cannot be claimed unless an Eligibility Certificate has been issued under the 2007 Scheme by the Implementing Agency and the eligible unit has complied with the stipulations/conditions of the Eligibility Certificate. An Eligibility Certificate is issued by the Implementing Agency with effect from the date of commencement of commercial production of the eligible unit.

(110) Exemption from Electricity Duty is granted to eligible new units set up in specified areas for a period of 15 years. In other parts of the State, 100 % Exported Oriented Units (EOUs), Information Technology (IT) and Bio-Technology (BT) units will also be exempted from payment of Electricity Duty for a period of 10 years.

(111) During the investigation it was found that one company in the sample, being an EOU located in Maharashtra, benefited from this scheme during the IP.

(d) Conclusion on the Electricity Duty Exemption

(112) The exemption from the Electricity Duty is a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(2)

of the basic Regulation, since it constitutes a financial contribution of the GOI which conferred a benefit upon the investigated exporters.

(113) The subsidy scheme is specific within the meaning of Article 4(3) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme to certain enterprises within a designated geographical region.

(114) Consequently, the subsidy should be considered countervailable.

(e) Calculation of the subsidy amount

(115) In accordance with Articles 3(2) and 5 of the basic Regulation, the amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipient in relation to the product concerned, which is found to exist during the IP. This amount (numerator) has been allocated over the total sales turnover of the product concerned of the exporting producer during the IP, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported, pursuant to Article 7(2) of the basic Regulation.

(116) The subsidy rate established with regard to this scheme during the IP for the company concerned amounts to 0,09 %.

3.9. **Amount of countervailable subsidies**

(117) Based on the findings, as summarised in the below table, the total amounts of countervailable subsidies, expressed *ad valorem*, were found to range from 3,2 % to 16,5 %:

Table 1

Scheme	EPCGS	DEPBS	AAS	EOUS	ECS	FPS	Electricity duty exemption	Total
Company								
Viraj Profiles Ltd.	0,16 %			2,73 %	0,25 %		0,09 %	3,2 %
Raajratna Ventures Ltd.	0,19 %	4,70 %	2,94 %		0,44 %	4,80 %		13,0 %
Agarwal Fastners Pvt. Ltd.	0,11 %	6,53 %			0,31 %	4,80 %		11,7 %
Cooperating non-sampled companies	0,16 %	5,53 %	2,94 %		0,25 %	4,80 %		13,6 %
Other companies	0,16 %	5,53 %	2,94 %	2,73 %	0,25 %	4,80 %	0,09 %	16,5 %

(118) In accordance with Article 15(3) of the basic Regulation, the subsidy margin for the cooperating companies not included in the sample, calculated on the basis of the weighted average subsidy margin established for each of the programmes which benefit the cooperating companies in the sample, is 13,6 %. For the purpose of calculating the weighted average subsidy margin for the sample, the subsidy amounts found for the EOUS and the electricity duty exemption under the Package Scheme of Incentives of the Government of Maharashtra (i.e. applicable to EOUs only) were excluded from the calculation as it was found that the scope of these subsidy schemes would not cover the two cooperating non-sampled companies. In particular, with regards to the EOU, it is not possible to cumulate EOU-related benefits with benefits under the other schemes. As regards the electricity duty exemption, this is only available to EOUs or to firms located in certain regions of Maharashtra. Therefore, the universe of beneficiaries under this scheme is too limited for it to be considered applicable to the non-sampled companies.

(119) With regard to all other exporters in India, the Commission first established the level of cooperation. As mentioned in recital (10) above, the comparison between Eurostat import data and the volume of exports to the Union of the product concerned reported for the investigation period by the cooperating companies or groups with exports of the product concerned to the Union during the investigation period shows that the cooperation of Indian exporting producers was very high, close to 100 %. Given this high level of cooperation, the subsidy rate for all non-cooperating companies is set at the level of the weighted average subsidy margin established for each of the programmes which benefit the cooperating companies in the sample, i.e. 16,5 %.

4. **UNION INDUSTRY**

4.1. **Union production**

(120) All available information concerning Union producers, including information provided in the complaint, data collected from Union producers before and after the initiation of the investigation, and the verified questionnaire responses of the sampled Union producers, was used in order to establish the total Union production.

(121) On that basis, the total Union production was estimated to be around 52 000 tonnes during the IP. This figure includes the production of all Union producers that made themselves known and the estimated production volume of producers that did not come forward in the proceeding.

(122) As indicated in recital (14) above sampling was applied for investigating Union producers. Of the 15 Union producers who provided data prior to the initiation of the proceeding, a sample of five companies was selected. Subsequently, as explained in recital (16) above, one company decided not to cooperate in the investigation. The remaining cooperating sampled companies represented around 32 % of the total estimated Union production during the IP and were deemed to be representative of the Union Industry. The sampled companies are the main producers and are located in France and Italy where the largest volume of the product concerned is manufactured.

4.2. **Union industry**

(123) All known Union producers referred to in recital (120) above are deemed to constitute the Union industry within the meaning of Article 9(1) and Article 10(8) of the basic Regulation and will hereinafter be referred to as the 'Union industry'.

5. **INJURY**

5.1. **Preliminary remarks**

(124) The relevant Eurostat import statistics, together with data provided in the complaint and data collected from Union producers before and after the initiation of the investigation, including the verified questionnaire responses of the sampled Union producers were used also in the evaluation of the relevant injury factors.

(125) The injury analysis with regard to macroeconomic data, such as production capacity, capacity utilization, sales volume, market share, growth, employment and productivity is based on the data of the Union industry as a whole.

(126) The injury analysis with regard to microeconomic data such as transaction prices, profitability, cash flow, investment and return on investment, ability to raise capital, stocks, and wages, is based on the data of the sampled Union producers.

(127) The four sampled Union producers were also sampled in the expiry review of the anti-dumping measures applicable to imports of SSF originating in China and Taiwan, concluded on 7 January 2012 [1]. In that review one other company, which was not sampled in the present investigation, was included in the sample. Given that the period considered for the injury analysis overlaps with that of the expiry review, data for the years 2008 and 2009 are identical except for that of one company. By disclosing figures for 2008 and 2009 it would be possible to deduce the figures of the company which was not included in the sample in the present case. Therefore, micro indicators such as stocks, wages, investments, cash flow, return on investments and profitability have been indexed.

5.2. **Union consumption**

(128) Union consumption was established on the basis of the sales volume of the Union industry in the Union as provided in the complaint and cross checked by the replies to the sampling questionnaires and the verified data obtained from the sampled producers. In addition, the volume of imports based on data from Eurostat for the period considered was also taken into account.

(129) On this basis the Union consumption developed as follows:

Table 2

	2008	2009	2010	IP
Union consumption (tonnes)	120 598	101 143	122 345	131 457
Index (2008 = 100)	*100*	*84*	*101*	*109*

Source: Eurostat, complaint data and questionnaire replies.

(130) Total consumption on the EU market increased by 9 % during the period considered. Between 2008 and 2009 there was a drastic decrease by 16 %, allegedly due to the global negative effects of the economic crisis on the market, after which consumption recovered again by 21 % between 2009 and 2010 and further by 7 % between 2010 and the IP.

5.3. **Imports from the country concerned**

(131) Imports into the Union from India developed as follows during the period considered:

Table 3

	2008	2009	2010	IP
Volume of imports from India (tonnes)	14 546	18 883	21 914	24 072
Index (2008 = 100)	*100*	*130*	*151*	*165*
Market share	12,1 %	18,7 %	17,9 %	18,3 %
Index (2008 = 100)	*100*	*155*	*149*	*152*

Source: Eurostat and questionnaire replies from exporting producers.

[1] OJ L 5, 7.1.2012, p. 1.

(132) Imports from India increased significantly by 65 % over the period considered. This increase was strongest between 2008 and 2009 when imports surged by 30 % and when consumption decreased by 16 %. On a year to year basis, Indian imports continued to increase during 2010 (+ 16 %) and during the IP (+ 10 %).

5.3.1. *Prices of imports and price undercutting*

Table 4

Imports from India	2008	2009	2010	IP
Average price in EUR/tonne	3 531	2 774	2 994	3 216
Index (2008 = 100)	*100*	*79*	*85*	*91*

Source: Eurostat and questionnaire replies from sampled EU producers.

(133) Average prices of imports from India decreased overall by 9 % during the period considered. This explains the increase in the market share of India from 12,1 % to 18,3 % over the same period. The highest increase occurred between 2008 and 2009, when Indian exporters gained more than 6 percentage points of market share.

(134) In order to determine price undercutting during the IP, the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports from India to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for the existing customs duties and post-importation costs.

(135) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison, when expressed as a percentage of the sampled Union producers' turnover during the IP, showed price undercutting ranging between 3 % and 13 %.

5.4. **Economic situation of the Union industry**

(136) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidised imports from India on the Union industry included an evaluation of all economic indicators established for the Union industry over the period considered.

5.4.1. *Production, production capacity and capacity utilization*

Table 5

	2008	2009	2010	IP
Production volume *(tonnes)*	69 514	56 396	62 213	51 800
Index (2008 = 100)	*100*	*81*	*89*	*75*
Production capacity (tonnes)	140 743	127 200	128 796	111 455
Index (2008 = 100)	*100*	*90*	*92*	*79*
Capacity utilisation	49 %	44 %	48 %	46 %
Index (2008 = 100)	*100*	*90*	*98*	*94*

Source: Total Union Industry.

(137) The table above shows that production decreased significantly by 25 % over the period considered. In line with a decrease in demand, production decreased sharply by 19 % in 2009, after which it recovered by around 10 % in 2010. In the IP, although the Union consumption increased by 7 %, Union production decreased again by around 17 % compared to the previous year.

(138) The production capacity of the Union industry decreased by around 21 % over the period considered. Capacity utilisation also decreased over the period considered, constantly remaining below 50 %.

5.4.2. *Sales volume and market share*

Table 6

	2008	2009	2010	IP
Sales volume *(tonnes)*	56 042	44 627	45 976	48 129
Index (2008 = 100)	*100*	*80*	*82*	*86*
Market share	46,5 %	44,1 %	37,6 %	36,6 %
Index (2008 = 100)	*100*	*95*	*81*	*79*

Source: Total Union Industry.

(139) In the context of an increasing consumption (+ 9 %), sales volume of the like product when sold to the first independent customer in the Union decreased by 14 % over the period considered. Consequently market share dropped from 46,5 % in 2008 to 36,6 % in the IP. Following sharp decrease in sales volume in 2009 (– 20 %), it recovered slightly in 2010 and in the IP.

5.4.3. *Growth*

(140) Union consumption increased by 9 % between 2008 and the IP. However, sales volume and market share of the Union industry decreased in the same period, by 14 % and 21 % respectively. At the same time imports from India increased significantly by 65 %.

5.4.4. *Employment*

Table 7

	2008	2009	2010	IP
Number of employees	1 007	863	821	761
Index (2008 = 100)	*100*	*86*	*82*	*76*
Productivity (unit/employee) *Index (2008 = 100)*	*100*	*95*	*110*	*99*

Source: Total Union Industry.

(141) Due to the downsizing activities of the Union industry, the number of employees was reduced accordingly during the period considered by 24 %. Between 2008 and the IP labour costs per employee increased by 6 %.

(142) Productivity of the Union industry workforce, measured as output per person employed per year, decreased slightly by 1 % over the period considered. It reached its lowest level in 2009, after which it started to recover towards the IP.

5.4.5. *Average unit prices in the Union*

Table 8

	2008	2009	2010	IP
Unit price in EU to unrelated customers *(Euro per tonne)*	4 336	2 792	3 914	4 244
Index (2008 = 100)	*100*	*64*	*90*	*98*

Source: Questionnaire replies sampled producers.

(143) Average sales prices decreased by 2 % over the period considered. In 2009 the Union industry was forced to reduce its sales prices by 36 %, in the context of the economic downturn and of a sharp decrease of import prices from India (– 21 %). During 2010 and the IP the Union industry sales prices recovered again.

(144) The investigation showed that the decrease in sales prices in 2009 reflected the decrease in costs which dropped by 18 % compared to 2008 levels. This decrease in costs was mainly due to the decrease in raw material prices, especially those of nickel, which has an unstable price dynamic. However, the Union industry was forced to decrease its sales prices more than the decrease in costs, in view of the expansion of the low-priced Indian imports in 2009.

5.4.6. *Profitability, cash flow, investments, return on investments and ability to raise capital*

Table 9

	2008	2009	2010	IP
Profitability of EU sales *(% of net sales)* *Index (2008 = 100)*	*– 100*	*– 442*	*– 74*	*– 24*
Cash Flow *Index (2008 = 100)*	*– 100*	*– 1 827*	*– 40*	*171*
Investments (EUR) *Index (2008 = 100)*	*100*	*29*	*59*	*6*
Return on Investments *Index (2008 = 100)*	*– 100*	*– 284*	*– 59*	*– 28*

Source: Questionnaire replies sampled EU producers.

(145) The investigation showed that, even if the decrease in sales prices partly reflected the decrease in costs, the price of the Union industry was under pressure by the imports of SSF from India. The profitability of the Union industry was negative since the beginning of the period concerned. Especially in 2009 the Union industry was forced to decrease its sales prices more than the decrease in costs, in view of the expansion of the low-priced Indian imports. This lead to a significant deterioration of profitability in that year. However, in 2010 and the IP profitability improved, but it still remained negative.

(146) Cash flow, which is the ability of the industry to self-finance its activities, followed a similar trend as profitability. It reached its lowest level in 2009, after which it showed an increasing trend and turned positive in the IP.

(147) After making investments in 2008 in the production of SSF, investments decreased by about 94 % during the period considered. The return on investment showed a similar negative development in line with the negative results achieved by the Union industry over the period considered and remained always negative.

(148) The evolution of profitability, the cash flow and the low level of investments points to the fact that the sampled EU producers may have experienced difficulties to raise capital.

5.4.7. *Stocks*

Table 10

	2008	2009	2010	IP
Closing stock of Union industry *Index (2008 = 100)*	*100*	*92*	*100*	*103*

Source: Questionnaire reply.

(149) The stock level of the sampled Union industry increased by 3 % during the period considered. In 2009 the level of closing stock decreased by 8 %; afterwards, in 2010 and in the IP it increased by 8 % and 3 % respectively.

5.4.8. *Magnitude of the subsidy margin*

(150) Given the volume, market share and prices of the subsidised imports from India, the impact on the Union industry of the actual subsidy margins cannot be considered to be negligible.

5.5. **Conclusion on injury**

(151) The investigation showed that most injury indicators such as production (– 25 %), capacity utilisation (– 6 %), sales volume (– 14 %), market share (– 21 %), and employment (– 24 %) deteriorated during the period considered. In the context of an increasing consumption, both sales volume and market share dropped. Sales volume recovered slightly in 2010 and the IP when compared to 2009; however, the Union industry was unable to regain its lost market share in view of the expansion of the Indian imports which increased steadily over the period considered, at prices constantly undercutting those of the Union industry.

(152) Furthermore, the injury indicators related to the financial performance of the Union industry, such as cash flow and profitability were seriously affected. This means that the ability of the Union industry to raise capital was undermined.

(153) In the light of the foregoing, it was concluded that the Union industry suffered material injury within the meaning of Article 8(5) of the basic Regulation.

6. CAUSATION

6.1. **Introduction**

(154) In accordance with Article 8(5) and 8(6) of the basic Regulation, it was examined whether the subsidised imports originating in India have caused injury to the Union industry to a degree that enables it to be classified as material. Known factors other than the subsidised imports, which could at the same time be injuring the Union industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the subsidised imports.

6.2. **Effect of the subsidised imports**

(155) The investigation showed that the Union consumption increased by 9 % over the period considered, while sales volume of the Union industry decreased by 14 % and market share dropped by 21 %. At the same time the subsidised imports from India increased dramatically by 65 %, increasing their market share by 52 %.

(156) In 2010 and the IP Union consumption increased in line with the general economic recovery. However, sales volume of the Union industry increased only slightly in 2010 (+ 3 %) and in the IP (+ 4,7). On the other hand, the investigation showed an annual increase in Indian imports by 16 % in 2010 and 10 % in the IP.

(157) The subsidised imports from India exerted pressure on the Union industry particularly in 2009, when they grew by 30 % compared to 2008 and gained 6.6 percentage points in market share. In the same year, sales of the Union industry decreased by 20 %.

(158) With regard to price pressure in 2009, average import prices from India decreased by 21 % forcing the Union industry to decrease its sales prices by 36 %. This decrease was more than the decrease in costs. This situation led to a significant deterioration in profitability which dropped dramatically in 2009.

(159) Prices of imports from India decreased overall by 9 % in the period considered, remaining always lower than import prices from the rest of the world and sales prices of the Union industry.

(160) Based on the above it is concluded that the massive increase of the subsidised imports from India at prices constantly undercutting those of the Union industry have had a determining role in the material injury suffered by the Union industry, which is reflected in its poor financial situation, the significant drop in sales volume and market share and the deterioration of almost all injury indicators.

6.3. **Effect of other factors**

6.3.1. *Imports from other third countries*

Table 11

	2008	2009	2010	IP
Volume of imports from other third countries in tonnes	50 010	37 633	54 454	59 255
Index (2008 = 100)	*100*	*75*	*109*	*118*
Market share of imports from other third countries	41,5 %	37,2 %	44,5 %	45,1 %
Index (2008 = 100)	*100*	*90*	*107*	*109*
Average price of imports from other third countries in EUR/tonne	5 380	5 236	5 094	5 234
Index (2008 = 100)	*100*	*97*	*95*	*97*
Volume of imports from Malaysia (tonnes)	13 712	9 810	9 611	9 966
Market share of imports from Malaysia	11,4 %	9,7 %	7,9 %	7,6 %
Average price of imports from Malaysia in EUR/tonne	4 203	2 963	3 324	3 633
Volume of imports from Philippines (tonnes)	7 046	5 406	15 576	18 149
Market share of imports from Philippines	5,8 %	5,3 %	12,7 %	13,8 %
Average price of imports from Philippines in EUR/tonne	4 645	3 474	3 714	3 912
Volume of imports from the People's Republic of China (tonnes)	2 332	2 452	3 217	3 288
Market share of imports from the People's Republic of China	1,9 %	2,4 %	2,6 %	2,5 %
Average price of imports from the People's Republic of China in EUR/tonne	4 004	4 561	5 272	5 648
Volume of imports from Taiwan (tonnes)	4 304	3 703	6 451	6 640
Market share of imports from Taiwan	3,6 %	3,7 %	5,3 %	5,1 %
Average price of imports from Taiwan in EUR/tonne	5 092	4 719	4 755	4 943

Source: Eurostat

(161) Based on Eurostat data, the volume of imports into the Union of SSF originating in other third countries increased by 18 % during the period considered. At the same time, average import prices decreased by about 3 % during the period considered and their market share increased by about 9 %.

(162) There have been anti-dumping measures in force on imports of SSF from the People's Republic of China and Taiwan as of 19 November 2005. Despite the measures, these imports have increased significantly over the period considered, although market shares remained rather modest, at 2,5 % and 5,1 % respectively in the IP. Other main sources of imports are the Philippines and Malaysia. Imports especially from the Philippines increased significantly over the period considered, increasing their market share from 5,8 % in 2008 to 13,8 % in the IP.

(163) As regards Malaysia, there was a decreasing trend over the period considered, however, imports still had a market share of 7,6 % in the IP. Import volume from the Philippines increased significantly during the period considered. However, as mentioned below the average import price was much higher, namely, about 20 %, than the average price of the Indian SSF.

(164) With regard to import prices, average prices of imports from other third countries remained quite stable over the period considered and were always above the average sales prices of the Union industry and the average import prices from India.

(165) On the basis of the above, it was provisionally concluded that imports from other third countries did not break the causal link between the impact of the subsidised imports from India and the material injury suffered by the Union industry.

6.3.2. *Economic crisis*

(166) The economic crisis partially explains the contraction of the Union consumption in 2009. However, it is noteworthy that despite the decrease of 16 % in consumption in 2009, the volume of Indian imports increased by 30 %.

(167) In 2010 and the IP Union consumption increased in line with the general economic recovery. However, sales volume of the Union industry increased only slightly, by 3 % in 2010 and by 4,7 % in the IP This compares to an annual increase in Indian imports by 16 % and 10 % respectively.

(168) Under normal economic conditions and in the absence of strong price pressure and increased import levels from the subsidised imports, the Union industry might have had some difficulty in coping with the decrease in consumption and the increase in fixed costs per unit due to the decreased capacity utilisation it experienced. However, the subsidised imports have intensified the effect of the economic downturn and even during the general economic recovery, the Union industry was unable to recover and to regain the market share lost to the Indian imports.

(169) Therefore, although the economic crisis 2008-2009 may have contributed to the Union industry's poor performance, it cannot be considered to have an impact such as to break the causal link between the subsidised imports and the injurious situation of the Union industry.

6.3.3. *Export performance of the sampled Union industry*

Table 12

	2008	2009	2010	IP
Export sales in tonnes	967	689	933	884
Index (2008 = 100)	*100*	*71*	*97*	*91*
Unit selling price in euro	4 770	3 060	4 020	4 313
Index (2008 = 100)	*100*	*64*	*84*	*90*

(170) During the period considered the volume of export sales of the sampled Union industry decreased by 9 % while average export prices dropped by 10 %. While it cannot be excluded that the negative trend in the export performance may have had a further negative impact on the Union industry, it is considered that, given the low volume of exports in relation to sales on the Union market, the impact does not break the causal link between the subsidised imports and the injury found.

6.4. **Conclusion on causation**

(171) The above analysis demonstrated that there was a substantial increase over the period considered in the volume and market share of the low-priced, subsidised imports originating in India. In addition, it was found that these imports were constantly undercutting the prices charged by the Union industry on the Union market.

(172) This increase in volume and market share of the subsidised Indian imports was continuous, even during 2009, when Union consumption decreased by 16 %, and coincided with the negative development in the market share of the Union industry during the same period.

(173) Starting from 2008, in the context of the economic slowdown and a sharp decrease in Union consumption, the Indian exporting producers managed to significantly increase their market share. This coincided with a negative development in the market share of the Union industry and a sharp decrease in profitability and other financial indicators. Over the period considered, the surge in the low-priced subsidised imports from India, which were constantly undercutting the prices of the Union industry, had an overall negative impact on the financial situation of the Union industry. Even if the situation improved slightly towards the IP, the Union industry was unable to regain its lost market share and profitability remained negative.

(174) The analysis of the other known factors, including the economic crisis, which could have caused injury to the Union industry showed that these factors did not break the causal link established between the subsidised imports from India and the injury suffered by the Union industry.

(175) Based on the above analysis, it was provisionally concluded that the subsidised imports from India have caused material injury to the Union industry within the meaning of Article 8(5) of the basic Regulation.

7. **UNION INTEREST**

7.1. **Preliminary remark**

(176) In accordance with Article 31 of the basic Regulation, the Commission examined whether, despite the conclusion on injurious subsidisation, compelling reasons existed for concluding that it is not in the Union interest to adopt measures in this particular case. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users of the product concerned.

7.2. **Interest of the Union industry**

(177) The Union industry has suffered material injury caused by the subsidised imports from India. It is recalled that most of the injury indicators showed a negative trend during the period considered. In the absence of measures, a further deterioration in the Union industry's situation appears unavoidable.

(178) It is expected that the imposition of provisional countervailing duties will restore effective trade conditions on the Union market, allowing the Union industry to align the prices of the product investigated to reflect the costs of the various components and the market conditions. It can also be expected that the imposition of provisional measures would enable the Union industry to regain at least part of the market share lost during the period considered, with a further positive impact on its profitability and overall financial situation.

(179) Should measures not be imposed, further losses in market share could be expected and the Union industry would remain loss-making. This would be unsustainable in the medium to long-term. In view of the losses incurred and the high level of investment in production made at the beginning of the period considered it can be expected that most Union producers would be unable to recover their investments should measures not be imposed. In addition, it is expected that the imposition of countervailing measures will help to maintain employment which deteriorated constantly over the period considered.

(180) It is therefore provisionally concluded that the imposition of countervailing duties would be in the interest of the Union industry.

7.3. **Interest of users and importers**

(181) There was no cooperation by users in this investigation; 20 users were contacted but none of them replied to the questionnaires sent to them. As regards importers, questionnaires were sent to two unrelated importers which expressed their willingness to cooperate, but no reply was received.

(182) It is recalled that also in previous investigations on the same product, cooperation from users has been very limited. In the recent expiry review of the anti-dumping measures applicable to imports of SSF originating in the People's Republic of China and Taiwan the same users were contacted but none of them cooperated in that investigation either [1].

(183) According to the complaint, the impact on users would be negligible, should measures be imposed on imports of SSF from India, given that SSF represents only a fraction of their total cost. An estimate was given in the complaint for the proportion of the cost of SSF in manufacturing a car and a washing machine/dishwasher. In both cases it was concluded that SSF represents a negligible proportion of the total cost of manufacturing of these products.

(184) In view of the low capacity utilisation of the Union industry (46 % in the IP) there would not be any risk of shortage of supply on the market, if measures were to be imposed against Indian imports. Furthermore, there are other sources of supply, such as imports of SSF from other countries, which are not subject to any measures.

(185) Finally, the level of measures proposed is moderate and therefore it is expected that imports from India will continue to enter the EU market, albeit at fair prices.

7.4. **Conclusion on Union interest**

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

8. **PROVISIONAL COUNTERVAILING MEASURES**

8.1. **Injury elimination level**

(187) In view of the conclusions reached with regard to subsidisation, injury, causation and Union interest, provisional countervailing measures should be imposed in order to prevent further injury being caused to the Union industry by the subsidised imports.

(188) For the purpose of determining the level of these measures, account was taken of the subsidy margins found and the amount of duty necessary to eliminate the injury sustained by the Union industry, without exceeding the subsidy margin found.

(189) When calculating the amount of duty necessary to remove the effects of the injurious subsidisation, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of subsidised imports, on sales of the like product in the Union. It is considered that the profit that could be achieved in the absence of the subsidised imports should be based on the average pre-tax profit margin of the sampled Union producers in the year 2007, i.e. prior to the period considered when the industry was still profitable. It is thus considered that a profit margin of 7 % of turnover could be regarded as an appropriate minimum which the Union industry could have expected to obtain in the absence of injurious subsidisation.

[1] OJ L 5, 7.1.2012, p. 1.

(190) On this basis, a non-injurious price was calculated for the Union industry for the like product. The non-injurious price was obtained by adjusting the sales prices of the sampled Union producers by the actual profit/loss made during the IP and by adding the above mentioned profit margin.

(191) The necessary price increase was then determined on the basis of a comparison of the weighted average import price of the cooperating exporting producers in India, as established for the price undercutting calculations, with the non-injurious price of the products sold by the Union industry on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the average total CIF import value.

8.2. **Provisional measures**

(192) In the light of the foregoing, it is considered that, in accordance with Article 12(1) of the basic Regulation, provisional countervailing measures should be imposed in respect of imports originating in India at the level of the lower of the subsidy and the injury margins, in accordance with the lesser duty rule.

(193) On the basis of the above, the countervailing duty rates have been established by comparing the injury elimination margins and the subsidy margins. Consequently, the proposed countervailing duty rates are as follows:

Company	Subsidy margin	Injury margin	Provisional CVD rate
Agarwal Fastners Pvt. Ltd.	11,7 %	20,9 %	11,7 %
Raajratna Ventures Ltd.	13,0 %	13,7 %	13,0 %
Viraj Profiles Limited	3,2 %	27,7 %	3,2 %
Cooperating non-sampled companies	13,6 %	17,3 %	13,6 %
All other companies	16,5 %	20,9 %	16,5 %

(194) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in India and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(195) Any claim requesting the application of these individual company countervailing duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

9. **DISCLOSURE**

(196) The above provisional findings will be disclosed to all interested parties which will be invited to make their views known in writing and request a hearing. Their comments will be analysed and taken into consideration where warranted before any definitive determinations are made. Furthermore, it should be stated that the findings concerning the imposition of countervailing duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive findings,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is hereby imposed on imports of stainless steel fasteners and parts thereof currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 and originating in India.

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

Company	Rate of duty (%)	TARIC additional code
Agarwal Fastners Pvt. Ltd., Vasai (East), Thane, Maharashtra	11,7	B266
Raajratna Ventures Ltd., Ahmedabad, Gujarat	13,0	B267
Viraj Profiles Limited, Boisar, Thane, Maharashtra	3,2	B268
Companies listed in the Annex	13,6	B269
All other companies	16,5	B999

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

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

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

Article 2

1. Without prejudice to Article 30 of Council Regulation (EC) No 597/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 31(4) of Council Regulation (EC) No 597/2009, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

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

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

Done at Brussels, 9 February 2012.

For the Commission
The President
José Manuel BARROSO

ANNEX

Indian cooperating exporting producers not included in the sample

TARIC Additional Code B269

Company name	City
Kundan Industries Ltd.	Mumbai
Lakshmi Precision Screws Ltd.	Rohtak

COMMISSION IMPLEMENTING REGULATION (EU) No 116/2012

of 9 February 2012

amending Council Regulation (EC) No 872/2004 concerning further restrictive measures in relation to Liberia

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 872/2004 concerning further restrictive measures in relation to Liberia, [1] and in particular Articles 11(a) and 11(b) thereof,

Whereas:

(1) Annex I to Regulation (EC) No 872/2004 lists the natural and legal persons, bodies and entities covered by the freezing of funds and economic resources under that Regulation; Annex II to Regulation (EC) No 872/2004 lists the competent authorities to which specific functions relating to the implementation of that Regulation are attributed.

(2) On 23 December 2011, the Sanctions Committee of the United Nations Security Council with its decision No. SC/10510 decided to amend the list of persons, groups and entities to whom the freezing of funds and economic resources should apply. Annex I should therefore be amended accordingly,

(3) Annex II to Regulation (EC) No 872/2004 should also be updated, on the basis of the information most recently provided by Member States regarding the identification of competent authorities.

(4) Annexes I and II to Regulation (EC) No 872/2004 should therefore be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 872/2004 is hereby amended as set out in Annex I to this Regulation.

Article 2

Annex II to Regulation (EC) No 872/2004 shall be replaced by Annex II to this Regulation.

Article 3

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, 9 February 2012.

For the Commission,
On behalf of the President,
Head of the Service for Foreign Policy Instruments

[1] OJ L 162, 30.4.2004, p. 32.

ANNEX I

Annex I to Regulation (EC) No 872/2004 is amended as follows:

(1) The entry 'Cyril **Allen**. Date of birth: 26.7.1952. Other information: former Chairman, National Patriotic Party.' shall be replaced with:

'Cyril A. **Allen**. Date of birth: 26.7.1952. Other information: former Chairman, National Patriotic Party.'

(2) The entry 'Myrtle **Gibson**. Date of birth: 3.11.1952. Other information: former Senator, advisor to former Liberian President Charles Taylor.' shall be replaced with:

'Myrtle Francelle **Gibson**. Date of birth: 3.11.1952. Other information: former Senator, advisor to former Liberian President Charles Taylor.'

(3) The entry 'Mohamed Ahmad **Salame** (*alias* (a) Mohamed Ahmad Salami, (b) Ameri Al Jawad, (c) Jawad Al Ameri, (d) Moustapha Salami, (e) Moustapha A Salami). Date of birth: (a) 22.9.1961, (b) 18.10.1963. Place of birth: Abengourou, Côte d'Ivoire. Nationality: Lebanese. Passports No: (a) 1622263 (Ordinary Lebanese passport, valid 24.4.2001-23.4.2006), (b) 004296/00409/00 (Togolese Diplomatic passport, valid 21.8.2002- 23.8.2007), (c) 000275 (Liberian Diplomatic Passport, valid 11.1.1998- 10.1.2000), (d) 002414 (Liberian Diplomatic Passport, valid 20.6.2001- 19.6.2003, name: Ameri Al Jawad, date of birth: 18.10.1963, place of birth: Ganta, Nimba County), (e) D/001217 (Liberian Diplomatic Passport), (f) Diplomatic-2781 (Liberian Diplomatic Passport). Other information: (a) Ivorian Passport; no details available, (b) Owner of Mohamed and Company Logging Company. Date of designation referred to in Article 6(b): 23.6.2004.' shall be replaced with:

'Mohamed Ahmad **Salame** (*alias* (a) Mohamed Ahmad Salami, (b) Ameri Al Jawad, (c) Jawad Al Ameri, (d) Moustapha Salami, (e) Moustapha A Salami). Date of birth: (a) 22.9.1961, (b) 18.10.1963. Place of birth: (a) Abengourou, Côte d'Ivoire (b) Ganta, Nimba County, Liberia. Nationality: Lebanese. Passports No: (a) 2210697 (Lebanese passport, valid 14.12.2010-14.12.2011), (b) 1622263 (Ordinary Lebanese passport, valid 24.4.2001-23.4.2006), (c) 004296/00409/00 (Togolese Diplomatic passport, valid 21.8.2002-23.8.2007), (d) 000275 (Liberian Diplomatic Passport, valid 11.1.1998- 10.1.2000), (e) 002414 (Liberian Diplomatic Passport, valid 20.6.2001- 19.6.2003), (f) D/001217 (Liberian Diplomatic Passport), (g) Diplomatic-2781 (Liberian Diplomatic Passport). Other information: (a) Ivorian Passport; no details available, (b) Owner of Mohamed and Company Logging Company. Date of designation referred to in Article 6(b): 23.6.2004.'

(4) The entry 'Edwin M., **Snowe** jr. Address: Elwa Road, Monrovia, Liberia. Date of birth: 11.2.1970. Place of birth: Mano River, Grand Cape Mount, Liberia. Nationality: Liberian. Passport number: (a) OR/0056672-01, (b) D/005072, (c) D005640 (diplomatic passport), (d) D-00172 (ECOWAS-DPL Passport, valid 7.8.2008-6.7.2010). Other information: Managing Director of the Liberian Petroleum and Refining Corporation (LPRC). Date of designation referred to in Article 6(b): 10.9.2004.' shall be replaced with:

'Edwin M., **Snowe** jr. Address: Elwa Road, Monrovia, Liberia. Date of birth: 11.2.1970. Place of birth: Mano River, Grand Cape Mount, Liberia. Nationality: Liberian. Passport number: (a) OR/0056672-01, (b) D/005072, (c) D005640 (diplomatic passport), (d) D-00172 (ECOWAS-DPL Passport, valid 7.8.2008-6.7.2010). Other information: Representative, Liberian House of Representatives. Managing Director of the Liberian Petroleum and Refining Corporation (LPRC). Date of designation referred to in Article 6(b): 10.9.2004.'

(5) The entry 'Tupee Enid **Taylor**. Date of birth: (a) 17.12.1960, (b) 17.12.1962. Liberian diplomatic passport: D/002216. Other information: former wife of former President Charles Taylor' shall be replaced with:

'Tupee Enid **Taylor**. Date of birth: (a) 17.12.1960, (b) 17.12.1962. Passports No: (a) L014670 (Liberian passport, valid 28.12.2009-28.12.2014) (b) D/002216 (Liberian diplomatic passport, valid 17.10.2007-17.10.2009). Other information: former wife of former President Charles Taylor'

ANNEX II

Web sites for information on the competent authorities referred to in Articles 3(1), 3(2), 4(e), 5, 7, 8(1)(a), 8(1)(b), 8(2) and address for notifications to the European Commission

BELGIUM

http://www.diplomatie.be/eusanctions

BULGARIA

http://www.mfa.government.bg

CZECH REPUBLIC

http://www.mfcr.cz/mezinarodnisankce

DENMARK

http://www.um.dk/da/menu/Udenrigspolitik/FredSikkerhedOgInternationalRetsorden/Sanktioner/

GERMANY

http://www.bmwi.de/BMWi/Navigation/Aussenwirtschaft/Aussenwirtschaftsrecht/embargos.html

ESTONIA

http://www.vm.ee/est/kat_622/

IRELAND

http://www.dfa.ie/home/index.aspx?id=28519

GREECE

http://www1.mfa.gr/en/foreign-policy/global-issues/international-sanctions.html

SPAIN

http://www.maec.es/es/MenuPpal/Asuntos/Sanciones%20Internacionales/Paginas/Sanciones_%20Internacionales.aspx

FRANCE

http://www.diplomatie.gouv.fr/autorites-sanctions/

ITALY

http://www.esteri.it/UE/deroghe.html

CYPRUS

http://www.mfa.gov.cy/sanctions

LATVIA

http://www.mfa.gov.lv/en/security/4539

LITHUANIA

http://www.urm.lt

LUXEMBOURG

http://www.mae.lu/sanctions

HUNGARY

http://www.kormany.hu/download/5/35/50000/ENSZBT-ET-szankcios-tajekoztato.pdf

MALTA

http://www.doi.gov.mt/EN/bodies/boards/sanctions_monitoring.asp

NETHERLANDS

http://www.minbuza.nl/sancties

AUSTRIA

http://www.bmeia.gv.at/view.php3?f_id=12750&LNG=en&version=

POLAND

http://www.msz.gov.pl

PORTUGAL

http://www.min-nestrangeiros.pt

ROMANIA

http://www.mae.ro/index.php?unde=doc&id=32311&idlnk=1&cat=3

SLOVENIA

http://www.mzz.gov.si/si/zunanja_politika/mednarodna_varnost/omejevalni_ukrepi/

SLOVAKIA

http://www.foreign.gov.sk

FINLAND

http://formin.finland.fi/kvyhteistyo/pakotteet

SWEDEN

http://www.ud.se/sanktioner

UNITED KINGDOM

www.fco.gov.uk/competentauthorities

Address for notifications to the European Commission:

European Commission
Service for Foreign Policy Instruments (FPI)
Office: EEAS/309
B-1049 Bruxelles/Brussel
Belgium
E-mail: relex-sanctions@ec.europa.eu

COMMISSION IMPLEMENTING REGULATION (EU) No 117/2012

of 10 February 2012

amending Regulation (EC) No 1295/2008 on the importation of hops from third countries

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], and in particular Articles 192(2) and 195(2) in conjunction with Article 4 thereof,

Whereas:

(1) Annex I to Commission Regulation (EC) No 1295/2008 [2] lists the agencies in third countries which are authorised to issue the attestations accompanying hop products imported from those countries. Those attestations are recognised as equivalent to the certificate provided for in Article 117 of Regulation (EC) No 1234/2007.

(2) It is the responsibility of the agencies concerned in those third countries to keep the information shown in Annex I to Regulation (EC) No 1295/2008 up to date and to communicate that information to the Commission in a spirit of close cooperation.

(3) Australia and New Zealand communicated information on changes of name and/or address concerning the competent agency authorised to issue attestations of equivalence. The list in Annex I to Regulation (EC) No 1295/2008 should therefore be amended accordingly.

(4) Regulation (EC) No 1295/2008 should be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1295/2008 is hereby replaced by the text in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the seventh 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, 10 February 2012.

For the Commission
The President
José Manuel BARROSO

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 340, 19.12.2008, p. 45.

ANNEX

'ANNEX I

AGENCIES AUTHORISED TO ISSUE ATTESTATIONS IN RESPECT OF

Hop cones CN code: ex 1210

Hop powders CN code: ex 1210

Saps and extracts of hops CN code: 1302 13 00

Country of origin	Authorised agencies	Address	Code	Telephone	Fax	e-mail (optional)
Australia	Quarantine Tasmania Quarantine Centre	163-169 Main Road, Moonah, 7009 Tasmania, Australia	(61-3)	62 33 33 52	62 34 67 85	
Canada	Plant Protection Division, Animal and Plant Health Directorate, Food Production and Inspection Branch, Agriculture and Agri-food Canada	Floor 2, West Wing 59, Camelot Drive Napean, Ontario, K1A OY9	(1-613)	952 80 00	991 56 12	
China	Tianjin Airport Entry-Exit Inspection and Quarantine Bureau of the People's Republic of China	No 33 Youyi Road, Hexi District Tianjin 300201	(86-22)	28 13 40 78	28 13 40 78	ciqtj2002@163.com
	Tianjin Economic and Technical Development Zone Entry-Exit Inspection and Quarantine Bureau of the People's Republic of China	No 8, Zhaofaxincun 2nd Avenue, TEDA Tianjin 300457	(86-22)	662 98-343	662 98-245	zhujw@tjciq.gov.cn
	Inner Mongolia Entry-Exit Inspection and Quarantine Bureau of the People's Republic of China	No 12 Erdos Street, Saihan District, Huhhot City Inner Mongolia 010020	(86-471)	434-1943	434-2163	zhaoxb@nmciq.gov.cn
	Xinjiang Entry-Exit Inspection and Quarantine Bureau of the People's Republic of China	No 116 North Nanhu Road Urumqi City Xinjiang 830063	(86-991)	464-0057	464-0050	xjciq_jw@xjciq.gov.cn
Croatia	Križevci College of Agriculture	Milislava Demerca 1, HR-48260 Križevci	(385-48)	279 198	682 790	ssrecec@vguk.hr
New Zealand	Ministry of Agriculture and Forestry	PO box 2526 Wellington 6140	(64-4)	894-0100	894 0720	

Country of origin	Authorised agencies	Address	Code	Telephone	Fax	e-mail (optional)
Serbia	Institut za ratarstvo i povrtarstvo/Institute of Field and Vegetable Crops	21000 Novi Sad Maksima Gorkog 30	(381-21)	780 365 Operator: 4898 100	780 198	institut@ifvcns.ns.ac.rs
South Africa	CSIR Food Science and Technology	PO box 395 0001 Pretoria	(27-12)	841 31 72	841 35 94	
Switzerland	Labor Veritas	Engimattstrasse 11 Postfach 353 CH-8027 Zürich	(41-44)	283 29 30	201 42 49	admin@laborveritas.ch
Ukraine	Productional-Technical Centre (PTZ) Ukrhmel	Hlebnaja 27 262028 Zhitomir	(380)	37 21 11	36 73 31	
United States	Washington Department of Agriculture State Chemical and Hop Lab	21 N. 1st Ave. Suite 106 Yakima, WA 98902	(1-509)	225 76 26	454 76 99	
	Idaho Department of Agriculture Division of Plant Industries Hop Inspection Lab	2270 Old Penitentiary Road PO box 790 Boise, ID 83701	(1-208)	332 86 20	334 22 83	
	Oregon Department of Agriculture Commodity Inspection Division	635 Capital Street NE Salem, OR 97310-2532	(1-503)	986 46 20	986 47 37	
	California Department of Food and Agriculture (CDFA-CAC) Division of Inspection Services Analytical Chemistry Laboratory	3292 Meadowview Road Sacramento, CA 95832	(1-916)	445 00 29 or 262 14 34	262 15 72	
	USDA, GIPSA, FGIS	1100 NW Naito Parkway Portland, OR 97209-2818	(1-503)	326 78 87	326 78 96	
	USDA, GIPSA, TSD, Tech Service Division, Technical Testing Laboratory	10383 Nth Ambassador Drive Kansas City, MO 64153-1394	(1-816)	891 04 01	891 04 78	
Zimbabwe	Standards Association of Zimbabwe (SAZ)	Northend Close, Northridge Park Borrowdale, PO box 2259 Harare	(263-4)	88 20 17, 88 20 21, 88 55 11	88 20 20	info@saz.org.zw saz.org.zw'

COMMISSION IMPLEMENTING REGULATION (EU) No 118/2012

of 10 February 2012

amending Regulations (EC) No 2380/2001, (EC) No 1289/2004, (EC) No 1455/2004, (EC) No 1800/2004, (EC) No 600/2005, (EU) No 874/2010, Implementing Regulations (EU) No 388/2011, (EU) No 532/2011 and (EU) No 900/2011 as regards the name of the holder of the authorisation of certain additives in animal feed and correcting Implementing Regulation (EU) No 532/2011

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition [1] and in particular Article 13(3) thereof,

Whereas:

(1) Alpharma BVBA and Pfizer Ltd have submitted an application under Article 13(3) of Regulation (EC) No 1831/2003 proposing to change the name of the holder of the authorisations as regards Commission Regulations (EC) No 2380/2001 of 5 December 2001 concerning the 10-year authorisation of an additive in feedingstuffs [2], (EC) No 1289/2004 of 14 July 2004 concerning the authorisation for 10 years of the additive Deccox® in feedingstuffs, belonging to the group of coccidiostats and other medicinal substances [3], (EC) No 1455/2004 of 16 August 2004 concerning the authorisation for 10 years of the additive 'Avatec 15 %' in feedingstuffs, belonging to the group of coccidiostats and other medicinal substances [4], (EC) No 1800/2004 of 15 October 2004 concerning the authorisation for 10 years of the additive Cycostat 66G in feedingstuffs, belonging to the group of coccidiostats and other medicinal substances [5], (EC) No 600/2005 of 18 April 2005 concerning a new authorisation for 10 years of a coccidiostat as an additive in feedingstuffs, the provisional authorisation of an additive and the permanent authorisation of certain additives in feedingstuffs [6], (EU) No 874/2010 of 5 October 2010 concerning the authorisation of lasalocid A sodium as a feed additive for turkeys up to 16 weeks (holder of authorisation Alpharma (Belgium) BVBA) and amending Regulation (EC) No 2430/1999 [7], Commission Implementing Regulations (EU) No 388/2011 of 19 April 2011 concerning the authorisation of maduramicin ammonium alpha as a feed additive for chickens for fattening (holder of authorisation Alpharma (Belgium) BVBA) and amending Regulation (EC) No 2430/1999 [8], (EU) No 532/2011 of 31 May 2011 concerning the authorisation of robenidine hydrochloride as a feed additive for rabbits for breeding and rabbits for fattening (holder of authorisation Alpharma Belgium BVBA) and amending Regulations (EC) No 2430/1999 and (EC) No 1800/2004 [9] and as regards (EU) No 900/2011 of 7 September 2011 concerning the authorisation of lasalocid A sodium as a feed additive for pheasants, guinea fowl, quails and partridges other than laying birds (holder of authorisation Alpharma (Belgium) BVBA) [10].

(2) The applicants claim that, with effect from 1 March 2011 as a result of the acquisition of Alpharma BVBA by Pfizer Ltd, the latter owns the marketing rights for the additives decoquinate, lasalocid A sodium, maduramicin ammonium alpha, robenidine hydrochloride and salinomycin.

(3) The proposed change of the terms of the authorisations is purely administrative in nature and does not entail a fresh assessment of the additives concerned. The European Food Safety Authority was informed of the application.

(4) To allow the applicant to exploit its marketing rights under the name of Pfizer Ltd it is necessary to change the terms of the authorisations.

(5) Regulations (EC) No 2380/2001, (EC) No 1289/2004, (EC) No 1455/2004, (EC) No 1800/2004, (EC) No 600/2005, (EU) No 874/2010, Implementing Regulations (EU) No 388/2011, (EU) No 532/2011 and (EU) No 900/2011 should therefore be amended accordingly.

(6) Since the modifications to the conditions of the authorisations are not related to safety reasons, it is appropriate to provide for a transitional period during which existing stocks may be used up.

[1] OJ L 268, 18.10.2003, p. 29.
[2] OJ L 321, 6.12.2001, p. 18.
[3] OJ L 243, 15.7.2004, p. 15.
[4] OJ L 269, 17.8.2004, p. 14.
[5] OJ L 317, 16.10.2004, p. 37.
[6] OJ L 99, 19.4.2005, p. 5.
[7] OJ L 263, 6.10.2010, p. 1.
[8] OJ L 104, 20.4.2011, p. 3.
[9] OJ L 146, 1.6.2011, p. 7.
[10] OJ L 231, 8.9.2011, p. 15.

(7) The maximum residue limits (MRLs) for turkeys and chickens for fattening introduced into the Annex to Regulation (EC) No 1800/2004 by Commission Regulation (EC) No 101/2009 [1] and the trade name 'Robenz 66 G' for turkeys and chickens for fattening introduced into the Annex to Regulation (EC) No 1800/2004 by Commission Regulation (EC) No 214/2009 [2] were, by error, omitted in the Annex to Regulation (EC) No 1800/2004 as amended by Implementing Regulation (EU) No 532/2011. It is therefore necessary to reintroduce these MRLs and the trade name.

(8) Therefore, the Annex to Implementing Regulation (EU) No 532/2011 should be corrected accordingly.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EC) No 2380/2001

In column 2 of the Annex to Regulation (EC) No 2380/2001, the words 'Alpharma Belgium BVBA' are replaced by 'Pfizer Ltd'.

Article 2

Amendment to Regulation (EC) No 1289/2004

In column 2 of the Annex to Regulation (EC) No 1289/2004, the words 'Alpharma (Belgium) BVBA' are replaced by 'Pfizer Ltd'.

Article 3

Amendment to Regulation (EC) No 1455/2004

In column 2 of the Annex to Regulation (EC) No 1455/2004, the words 'Alpharma (Belgium) BVBA' are replaced by 'Pfizer Ltd'.

Article 4

Amendment to Regulation (EC) No 1800/2004

In column 2 of the Annex to Regulation (EC) No 1800/2004, the words 'Alpharma (Belgium) BVBA' are replaced by 'Pfizer Ltd'.

Article 5

Amendment to Regulation (EC) No 600/2005

In column 2 of Annex I to Regulation (EC) No 600/2005, the words 'Alpharma (Belgium) BVBA' are replaced by 'Pfizer Ltd'.

Article 6

Amendment to Regulation (EU) No 874/2010

In column 2 of the Annex to Regulation (EU) No 874/2010, the words 'Alpharma (Belgium) BVBA' are replaced by 'Pfizer Ltd'.

Article 7

Amendment to Implementing Regulation (EU) No 388/2011

In column 2 of the Annex to Implementing Regulation (EU) No 388/2011, the words 'Alpharma (Belgium) BVBA' are replaced by 'Pfizer Ltd'.

Article 8

Amendment to Implementing Regulation (EU) No 532/2011

In column 2 of Annex I to Implementing Regulation (EU) No 532/2011 the words 'Alpharma Belgium BVBA' are replaced by 'Pfizer Ltd'.

Article 9

Amendment to Implementing Regulation (EU) No 900/2011

In column 2 of the Annex to Implementing Regulation (EU) No 900/2011, the words 'Alpharma (Belgium) BVBA' are replaced by 'Pfizer Ltd'.

Article 10

Correction to Implementing Regulation (EU) No 532/2011

Annex II to Implementing Regulation (EU) No 532/2011 is corrected in accordance with the Annex to this Regulation.

Article 11

Transitional measures

Existing stocks which are in conformity with the provisions applying before the date of entry into force of this Regulation may continue to be placed on the market and used until 2 September 2012.

Article 12

Entry into force

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

Article 10 and the Annex shall, however, apply from 21 June 2011.

[1] OJ L 34, 4.2.2009, p. 5.
[2] OJ L 73, 19.3.2009, p. 12.

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

Done at Brussels, 10 February 2012.

For the Commission
The President
José Manuel BARROSO

ANNEX

In Annex II to Implementing Regulation (EU) No 532/2011, the Annex to Regulation (EC) No 1800/2004 as amended by Implementing Regulation (EU) No 532/2011 is corrected as follows:

(1) in column 3 the words '(Cycostat 66G)' are replaced by '(Robenz 66 G)';

(2) A new column is added:

'Maximum residue limits (MRLs) in the relevant foodstuffs of animal origin
800 µg robenidine hydrochloride/kg of wet liver. 350 µg robenidine hydrochloride/kg of wet kidney. 200 µg robenidine hydrochloride/kg of wet muscle. 1 300 µg robenidine hydrochloride/kg of wet skin/fat.
400 µg robenidine hydrochloride/kg of skin/fat. 400 µg robenidine hydrochloride/kg of wet liver. 200 µg robenidine hydrochloride/kg of wet kidney. 200 µg robenidine hydrochloride/kg of wet muscle.'

COMMISSION IMPLEMENTING REGULATION (EU) No 119/2012

of 10 February 2012

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

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 10 February 2012.

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	MA	55,6
	TN	77,0
	TR	129,1
	ZZ	87,2
0707 00 05	EG	229,9
	JO	137,5
	TR	159,9
	US	57,6
	ZZ	146,2
0709 91 00	EG	330,9
	ZZ	330,9
0709 93 10	MA	82,8
	TR	183,3
	ZZ	133,1
0805 10 20	EG	48,9
	IL	72,0
	MA	54,5
	TN	54,0
	TR	74,4
	ZZ	60,8
0805 20 10	IL	163,3
	MA	104,6
	ZZ	134,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	60,1
	EG	95,0
	IL	118,1
	JM	98,5
	MA	80,9
	TR	72,9
	ZZ	87,6
0805 50 10	EG	61,9
	TR	61,8
	ZZ	61,9
0808 10 80	CA	123,2
	CL	98,4
	CN	111,0
	MK	26,7
	US	158,2
	ZZ	103,5
0808 30 90	CL	48,2
	CN	74,6
	US	122,3
	ZA	100,5
	ZZ	86,4

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

COMMISSION IMPLEMENTING REGULATION (EU) No 120/2012

of 10 February 2012

fixing the allocation coefficient to be applied to applications for import licences for olive oil lodged from 6 to 7 February 2012 under the Tunisian tariff quota and suspending the issue of import licences for the month of February 2012

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences [2], and in particular Article 7(2) thereof,

Whereas:

(1) Article 3(1) and (2) of Protocol No 1 [3] to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part [4], opens a tariff quota at a zero rate of duty for imports of untreated olive oil falling within CN codes 1509 10 10 and 1509 10 90, wholly obtained in Tunisia and transported direct from that country to the European Union, up to the limit laid down for each year.

(2) Article 2(2) of Commission Regulation (EC) No 1918/2006 of 20 December 2006 opening and providing for the administration of tariff quota for olive oil originating in Tunisia [5] lays down monthly quantitative limits for the issue of import licences.

(3) Import licence applications have been submitted to the competent authorities under Article 3(1) of Regulation (EC) No 1918/2006 in respect of a total quantity exceeding the limit laid down for the month of February in Article 2(2) of that Regulation.

(4) In these circumstances, the Commission must set an allocation coefficient allowing import licences to be issued in proportion to the quantity available.

(5) Since the limit for the month of February has been reached, no more import licences can be issued for that month,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications were lodged for 6 and 7 February 2012 under Article 3(1) of Regulation (EC) No 1918/2006 shall be multiplied by an allocation coefficient of 12,493792 %.

The issue of import licences in respect of amounts applied for as from 13 February 2012 shall be suspended for February 2012.

Article 2

This Regulation shall enter into force on 11 February 2012.

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

Done at Brussels, 10 February 2012.

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 238, 1.9.2006, p. 13.
[3] OJ L 97, 30.3.1998, p. 57.
[4] OJ L 97, 30.3.1998, p. 2.
[5] OJ L 365, 21.12.2006, p. 84.

DECISIONS

COUNCIL IMPLEMENTING DECISION 2012/74/CFSP

of 10 February 2012

implementing Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(2) thereof,

Having regard to Council Decision 2010/656/CFSP of 29 October 2010 renewing the restrictive measures against Côte d'Ivoire [1], and in particular Article 6(2) thereof,

Whereas:

(1) On 29 October 2010, the Council adopted Decision 2010/656/CFSP.

(2) In view of the developments in Côte d'Ivoire, the list of persons and entities subject to restrictive measures set out in Annex II to Decision 2010/656/CFSP should be amended,

HAS ADOPTED THIS DECISION:

Article 1

The persons listed in the Annex to this Decision shall be deleted from the list set out in Annex II to Decision 2010/656/CFSP.

Article 2

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

Done at Brussels, 10 February 2012.

For the Council
The President
C. ANTORINI

[1] OJ L 285, 30.10.2010, p. 28.

ANNEX

Persons referred to in Article 1

1	Mr Frank Anderson Kouassi
2	Mr Yanon Yapo
3	Mr Benjamin Yapo Atsé
4	Mr Blaise N'Goua Abi
5	Ms Anne Jacqueline Lohoués Oble
6	Ms Angèle Gnonsoa
7	Ms Danièle Boni Claverie
8	Mr Ettien Amoikon
9	Mr Kata Kéké Joseph
10	Mr Touré Amara
11	Ms Anne Gnahouret Tatret
12	Mr Thomas N'Guessan Yao
13	Ms Odette Lago Daléba Loan
14	Mr Georges Armand Alexis Ouégnin
15	Mr Rafaël Dogo Djéréké
16	Ms Marie Odette Lorougnon Souhonon
17	Mr Felix Nanihio
18	Mr Lahoua Souanga Etienne
19	Mr Jean Baptiste Akrou
20	Mr Lambert Kessé Feh
21	Togba Norbert
22	Kone Doféré
23	Hanny Tchélé Brigitte
24	Jacques Zady
25	Ali Keita
26	Blon Siki Blaise
27	Moustapha Aziz
28	Gnamien Yao
29	Ghislain N'Gbechi
30	Deby Dally Balawourou

COMMISSION IMPLEMENTING DECISION

of 9 February 2012

on the recognition of Ghana pursuant to Directive 2008/106/EC of the European Parliament and of the Council as regards the systems for the training and certification of seafarers

(notified under document C(2012) 616)

(Text with EEA relevance)

(2012/75/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers [1], and in particular the first subparagraph of Article 19(3) thereof,

Having regard to the request from Cyprus on 13 May 2005,

Whereas:

(1) According to Directive 2008/106/EC Member States may decide to endorse seafarers' appropriate certificates issued by third countries, provided that the third country concerned is recognised by the Commission. Those third countries have to meet all the requirements of the International Maritime Organisation (IMO) Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention) [2], as revised in 1995.

(2) The request for the recognition of Ghana was submitted by Cyprus by letter of 13 May 2005. Following this request, the Commission assessed the training and certification system in Ghana in order to verify whether Ghana meets all the requirements of the STCW Convention and whether the appropriate measures have been taken to prevent fraud involving certificates. That assessment was based on the results of an inspection carried out by experts of the European Maritime Safety Agency in December 2009. During that inspection certain deficiencies in the training and certification systems were identified.

(3) The Commission provided the Member States with a report on the results of the assessment.

(4) By letter of 20 December 2010, the Commission requested Ghana to provide evidence demonstrating that the deficiencies identified had been corrected.

(5) By letter of 21 February 2011, Ghana provided the requested information and evidence concerning the implementation of appropriate and sufficient corrective action to address most of the deficiencies identified during the assessment of compliance.

(6) Two shortcomings remain. The first refers to the fact that Ghana does not fully ensure that seagoing service carried out in the navy or on pilot ships is actually relevant for the competencies required for certification. The other relates to deficiencies of fire-fighting training and equipment of a maritime training institution. Ghana has therefore been invited to implement further corrective actions in this respect. However, these shortcomings do not warrant calling into question the overall level of compliance of Ghana with STCW requirements on training and certification of seafarers.

(7) The outcome of the assessment of compliance and the evaluation of the information provided by Ghana demonstrates that Ghana complies with the relevant requirements of the STCW Convention, while this country has taken appropriate measures to prevent fraud involving certificates.

(8) The measures provided for in this Decision are in accordance with the opinion of the Committee on Safe Seas and the Prevention of Pollution from Ships,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 19 of Directive 2008/106/EC, Ghana is recognised as regards the systems for the training and certification of seafarers.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 9 February 2012.

For the Commission

Siim KALLAS

Vice-President

[1] OJ L 323, 3.12.2008, p. 33.

[2] Adopted by the International Maritime Organisation.

COMMISSION IMPLEMENTING DECISION

of 9 February 2012

on the recognition of Uruguay pursuant to Directive 2008/106/EC of the European Parliament and of the Council as regards the systems for the training and certification of seafarers

(notified under document C(2012) 619)

(Text with EEA relevance)

(2012/76/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers [1], and in particular the first subparagraph of Article 19(3) thereof,

Having regard to the request from Spain on 14 February 2006,

Whereas:

(1) According to Directive 2008/106/EC Member States may decide to endorse seafarers' appropriate certificates issued by third countries, provided that the third country concerned is recognised by the Commission. Those third countries have to meet all the requirements of the International Maritime Organisation (IMO) Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention) [2], as revised in 1995.

(2) The request for the recognition of Uruguay was submitted by Spain by letter of 14 February 2006. Following this request, the Commission assessed the training and certification system in Uruguay in order to verify whether Uruguay meets all the requirements of the STCW Convention and whether the appropriate measures have been taken to prevent fraud involving certificates. That assessment was based on the results of an inspection carried out by experts of the European Maritime Safety Agency in June 2007. During that inspection certain deficiencies in the training and certification systems were identified.

(3) The Commission provided the Member States with a report on the results of the assessment.

(4) By letters of 16 February 2009 and 8 December 2010, the Commission requested Uruguay to provide evidence demonstrating that the deficiencies identified had been corrected.

(5) By letters of 30 April 2009 and 18 March 2011, Uruguay provided the requested information and evidence concerning the implementation of appropriate and sufficient corrective action to address most of the deficiencies identified during the assessment of compliance.

(6) Two shortcomings remain. The first refers to the fact that the quality standards system does not cover some of the activities of the administration, such as the approval of training programmes. The other shortcoming relates to the format of certificates. Uruguay has therefore been invited to implement further corrective actions in this respect. However, these shortcomings do not warrant calling into question the overall level of compliance of Uruguay with STCW requirements on training and certification of seafarers.

(7) The outcome of the assessment of compliance and the evaluation of the information provided by Uruguay demonstrates that Uruguay complies with the relevant requirements of the STCW Convention, while this country has taken appropriate measures to prevent fraud involving certificates.

(8) The measures provided for in this Decision are in accordance with the opinion of the Committee on Safe Seas and the Prevention of Pollution from Ships,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 19 of Directive 2008/106/EC, Uruguay is recognised as regards the systems for the training and certification of seafarers.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 9 February 2012.

For the Commission

Siim KALLAS

Vice-President

[1] OJ L 323, 3.12.2008, p. 33.

[2] Adopted by the International Maritime Organisation.

COMMISSION DECISION

of 9 February 2012

concerning the non-inclusion of flufenoxuron for product type 18 in Annex I, IA or IB to Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market

(notified under document C(2012) 621)

(Text with EEA relevance)

(2012/77/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [1], and in particular the second subparagraph of Article 16(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market [2] establishes a list of active substances to be assessed, with a view to their possible inclusion in Annex I, IA or IB to Directive 98/8/EC. That list includes flufenoxuron.

(2) Pursuant to Regulation (EC) No 1451/2007, flufenoxuron (CAS No 101463-69-8; EC No 417-680-3) has been evaluated in accordance with Article 11(2) of Directive 98/8/EC for use in product type 18, insecticides, acaricides and products to control other arthropods, as defined in Annex V to that Directive.

(3) France was designated as rapporteur Member State and submitted the competent authority report, together with a recommendation, to the Commission on 17 March 2009 in accordance with Article 14(4) and (6) of Regulation (EC) No 1451/2007.

(4) The competent authority report was reviewed by the Member States and the Commission. In accordance with Article 15(4) of Regulation (EC) No 1451/2007, the findings of the review were incorporated, within the Standing Committee on Biocidal Products on 22 September 2011, in an assessment report.

(5) The assessment of risks to the environmental compartments of concern, carried out using a realistic approach, has demonstrated unacceptable effects for the aquatic compartment. Furthermore, the characteristics of flufenoxuron render it persistent, liable to bioaccumulate and toxic, as well as very persistent and very liable to bioaccumulate, in accordance with the criteria laid down in Annex XIII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council [3]. It is therefore not appropriate to include flufenoxuron for use in product type 18 in Annexes I, IA or IB to Directive 98/8/EC.

(6) The date as of which date biocidal products of product type 18 containing flufenoxuron should no longer be placed on the market should be reasonable with regard to the outcome of the risk assessment as well as the date of entry into force of this Decision..

(7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

Flufenoxuron (CAS No 101463-69-8; EC No 417-680-3) shall not be included in Annexes I, IA or IB to Directive 98/8/EC for product type 18.

Article 2

For the purposes of Article 4(2) of Regulation (EC) No 1451/2007, biocidal products of product type 18 containing flufenoxuron shall no longer be placed on the market with effect from 1 August 2012.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 9 February 2012.

For the Commission

Janez POTOČNIK

Member of the Commission

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[1] OJ L 123, 24.4.1998, p. 1.

[2] OJ L 325, 11.12.2007, p. 3.

[3] OJ L 396, 30.12.2006, p. 1.

COMMISSION DECISION

of 9 February 2012

concerning the non-inclusion of certain substances in Annex I, IA or IB to Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market

(notified under document C(2012) 645)

(Text with EEA relevance)

(2012/78/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [1], and in particular the second subparagraph of Article 16(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market [2] establishes a list of active substances to be assessed, with a view to their possible inclusion in Annex I, IA or IB to Directive 98/8/EC.

(2) For a number of substance/product type combinations included in that list, either all participants have discontinued their participation in the review programme, or no complete dossier was received within the time period specified in Articles 9 and 12(3) of Regulation (EC) No 1451/2007 by the Member State designated as rapporteur for the evaluation.

(3) Consequently, and pursuant to Articles 11(2), 12(1) and 13(5) of Regulation (EC) No 1451/2007, the Commission informed the Member States accordingly. That information was also made public by electronic means.

(4) Within the period of three months from those publications, a number of companies indicated an interest in taking over the role of participant for certain of the substances and product types concerned. However, those companies subsequently failed to submit a complete dossier.

(5) Pursuant to Articles 12(4) and 12(5) of Regulation (EC) No 1451/2007, the substances and product types concerned should therefore not be included in Annexes I, IA or IB to Directive 98/8/EC.

(6) In the interest of legal certainty, it is appropriate to specify the date after which biocidal products of the product types listed in the Annex to this Decision containing the active substances listed in that Annex should no longer be placed on the market.

(7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

The substances indicated in the Annex to this Decision shall not be included for the product types concerned in Annexes I, IA or IB to Directive 98/8/EC.

Article 2

For the purposes of Article 4(2) of Regulation (EC) No 1451/2007, biocidal products of the product types listed in the Annex to this Decision which contain the active substances listed in that Annex shall no longer be placed on the market with effect from 1 February 2013.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 9 February 2012.

For the Commission

Janez POTOČNIK

Member of the Commission

[1] OJ L 123, 24.4.1998, p. 1.
[2] OJ L 325, 11.12.2007, p. 3.

ANNEX

Substances and product types not to be included in Annexes I, IA or IB to Directive 98/8/EC

Name	EC number	CAS number	Product type	Rapporteur Member State
Cyclohexylhydroxydiazene 1-oxide, potassium salt		66603-10-9	6	AT
Cyclohexylhydroxydiazene 1-oxide, potassium salt		66603-10-9	7	AT
Cyclohexylhydroxydiazene 1-oxide, potassium salt		66603-10-9	9	AT
Cyclohexylhydroxydiazene 1-oxide, potassium salt		66603-10-9	10	AT
Cyclohexylhydroxydiazene 1-oxide, potassium salt		66603-10-9	12	AT
Cyclohexylhydroxydiazene 1-oxide, potassium salt		66603-10-9	13	AT
Diphenoxarsin-10-yl oxide	200-377-3	58-36-6	9	FR
Glyoxal	203-474-9	107-22-2	12	FR
1,3-dichloro-5,5-dimethylhydantoin	204-258-7	118-52-5	12	NL
Tosylchloramide sodium	204-854-7	127-65-1	11	ES
Disodium tetraborate, anhydrous	215-540-4	1330-43-4	11	NL
Copper	231-159-6	7440-50-8	2	FR
Copper	231-159-6	7440-50-8	4	FR
Copper	231-159-6	7440-50-8	5	FR
Copper	231-159-6	7440-50-8	11	FR
Copper sulphate	231-847-6	7758-98-7	1	FR
Copper sulphate	231-847-6	7758-98-7	4	FR
Calcium hypochlorite	231-908-7	7778-54-3	1	IT
Boric acid	233-139-2	10043-35-3	22	NL
Trimagnesium diphosphide	235-023-7	12057-74-8	20	DE
Chloralose	240-016-7	15879-93-3	15	PT
Chloralose	240-016-7	15879-93-3	23	PT
Aluminium phosphide	244-088-0	20859-73-8	20	DE
1,3-dichloro-5-ethyl-5-methylimidazolidine-2,4-dione	401-570-7	89415-87-2	12	NL
Methyl neodecanamide	414-460-9	105726-67-8	19	ES

Name	EC number	CAS number	Product type	Rapporteur Member State
Tetrachlorodecaoxide complex	420-970-2	92047-76-2	5	DE
3-benzo(b)thien-2-yl-5,6-dihydro-1,4,2-oxathiazine, 4-oxide	431-030-6	163269-30-5	9	PT
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	2	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	2	FR
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	3	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	3	FR
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	4	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	4	FR
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	7	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	7	FR
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	9	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	9	FR
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	10	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	10	FR
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	11	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	11	FR
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	12	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	12	FR
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	20	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	20	FR

CORRIGENDA

Corrigendum to Council Regulation (EU) No 44/2012 of 17 January 2012 fixing for 2012 the fishing opportunities available in EU waters and, to EU vessels, in certain non-EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements

(Official Journal of the European Union L 25 of 27 January 2012)

On page 105, Annex IB, for the TAC for cod in I and IIb (COD/1/2B.), footnote 3:

for: '([3]) By-catches of haddock may represent up to 19 % of landings per haul. The by-catch quantities of haddock are in addition to the quota for cod.',

read: '([3]) By-catches of haddock may represent up to 19 % per haul. The by-catch quantities of haddock are in addition to the quota for cod.'.

Corrigenda

EN

([1]) Text with EEA relevance

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