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II

(Non-legislative acts)

REGULATIONS

IMPLEMENTING REGULATION OF THE COUNCIL (EU) No 151/2010

of 22 February 2010

terminating the partial interim review of the anti-dumping measures applicable to imports of certain tungsten electrodes originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the basic Regulation) and in particular Articles 11(3) and 9(1) thereof,

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

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) By Regulation (EC) No 260/2007⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of certain tungsten electrodes originating in the People's Republic of China. For the three companies with individual duties, the duties in force range from 17 % to 38,8 %. The residual duty is 63,5 %.

1.2. Request for review

- (2) In May 2008, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation from one exporting producer of certain tungsten electrodes originating in the People's Republic of China.

- (3) The request was lodged by Shandong Weldstone Tungsten Industry Co. Ltd ('SWT' or 'the applicant').

- (4) The applicant had provided prima facie evidence showing that, on the basis of a comparison of constructed normal values and export prices to the Union, its dumping margin appeared to be substantially lower than the existing level of the measure and that the continued application of the measure at the existing level was no longer necessary to offset dumping.

1.3. Initiation

- (5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced, by a notice (the notice of initiation) published in the *Official Journal of the European Union*⁽³⁾, the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation, limited to the examination of dumping as far as SWT is concerned. The 'product concerned' was the same as that set out in Council Regulation (EC) No 260/2007, being tungsten welding electrodes, containing 94 % or more by weight of tungsten, other than those obtained simply by sintering, whether or not cut to length, falling within CN codes ex 8101 99 10 and ex 8515 90 00 and originating in the People's Republic of China.

- (6) The investigation of dumping covered the period from 1 October 2007 to 30 September 2008.

- (7) The Commission officially advised the applicant, representatives of the Union industry and the representatives of the exporting country of the initiation of the review investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 72, 13.3.2007, p. 1.

⁽³⁾ OJ C 309, 4.12.2008, p. 11.

2. WITHDRAWAL OF THE REQUEST AND TERMINATION OF THE PROCEEDING

- (8) By letter to the Commission dated 9 November 2009 SWT formally withdrew its request for the partial interim review of the anti-dumping measures applicable to imports of certain tungsten electrodes originating in the People's Republic of China. In the light of the recent economic crisis, the applicant has begun to reconsider the economic viability of certain aspects of its operations.
- (9) The representatives of the Union industry considered that the reasons given by the applicant for the withdrawal were circumstantial and not acceptable.
- (10) However, since the request for the review had already been submitted in May 2008, i.e. before the onset of the economic crisis, and that the applicant withdrew the request well after the beginning of the crisis, when the investigation was still ongoing and not yet complete, the Commission cannot consider the reasons for withdrawal as circumstantial.
- (11) It was considered whether it would be warranted to continue the review investigation *ex officio*. The Commission services found that the termination would not affect the actual anti-dumping measures and no compelling arguments were received that termination would be against the Union interest. On this basis, the review investigation should be terminated.

(12) Interested parties were informed of the intention to terminate the review investigation and were given the opportunity to comment. No comments received were such as to alter the conclusions set out in recitals 10 and 11.

(13) It is therefore concluded that the review concerning imports of certain tungsten electrodes originating in the People's Republic of China should be terminated without amending the anti-dumping measures in force,

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-dumping measures applicable to imports of certain tungsten electrodes originating in the People's Republic of China initiated pursuant to Article 11(3) of Regulation (EC) No 1225/2009 is hereby terminated without amending the anti-dumping measures in force.

Article 2

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

Article 3

This Regulation shall be published 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, 22 February 2010.

For the Council
The President
C. ASHTON

COMMISSION REGULATION (EU) No 152/2010**of 23 February 2010****concerning the classification of certain goods in the Combined Nomenclature**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

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

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

Done at Brussels, 23 February 2010.

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

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

⁽²⁾ OJ L 302, 19.10.1992, p. 1.

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
An article consisting of dark green electric cables incorporating 160 clear mini filament lamps (1,5 V/0,5 W), joined together so as to form a net of 320 × 150 cm (so called 'light net'). The individual meshes of the net are 19 × 19 cm so that the distance between each lamp is approximately 19 cm. The article is presented in a package for retail sale together with a 24 V static converter, 8 suction pads with hooks and 10 spare lamps. The light net is made for both outdoor and indoor use. The article is intended for decorating, for example, a Christmas tree or a window.	9405 30 00	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 9405 and 9405 30 00. The size of the net enables it to be easily placed over and cover a Christmas tree. The colour of the cables and the 19 × 19 cm individual meshes, that allow the net to be pulled inwards over the outer tips of the branches, ensure that, when the lamps are lit, the wires and lamps are concealed while the lights shine through to the outside, providing for a uniform decorative effect. Although the article may be used for other purposes, its objective and identifiable characteristics indicate that it is intended to be used to decorate by lighting a Christmas tree. The article is therefore to be classified under CN code 9405 30 00 as a lighting set of a kind used for Christmas trees.

COMMISSION REGULATION (EU) No 153/2010
of 23 February 2010
concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to those general rules, the goods described in column 1 of the table set out in the Annex should be classified under the CN code indicated in column 2, by virtue of the reasons set out in column 3 of that table.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

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

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

Done at Brussels, 23 February 2010.

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

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

⁽²⁾ OJ L 302, 19.10.1992, p. 1.

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
A product in the form of a so-called 'pop-up book' incorporating printed pages of paperboard, two of them with a limited text related to the playing activity. It has six other pages which, when opened, produce a three-dimensional representation of several sections of a space station. It also incorporates a page with press-out, stand-up figures made from paperboard which can be inserted into different parts of the space station.	9503 00 99	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 1(c) to Chapter 49 and by the wording of CN codes 9503 00 and 9503 00 99. In view of its characteristics (construction), the intended use of the product is essentially for playing. Children's picture books, incorporating stand-up or movable figures or cut-out portions, are to be classified under heading 4903 (Children's picture, drawing or colouring books), unless the article is essentially a toy. Articles being a toy are excluded from heading 4903 and are to be classified in Chapter 95 (see also the Harmonised System Explanatory Notes to heading 4903). Articles of Chapter 95 are excluded from Chapter 49 by virtue of Note 1(c) to Chapter 49. The product is therefore to be classified under heading 9503 as a toy.

COMMISSION REGULATION (EU) No 154/2010**of 24 February 2010****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 25 February 2010.

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

Done at Brussels, 24 February 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	IL	114,6
	JO	88,1
	MA	88,3
	TN	123,7
	TR	110,4
	ZZ	105,0
0707 00 05	EG	216,8
	JO	138,7
	TR	148,0
	ZZ	167,8
0709 90 70	IL	265,5
	MA	132,0
	TR	168,0
	ZZ	188,5
0709 90 80	EG	82,2
	ZZ	82,2
0805 10 20	EG	45,2
	IL	53,4
	MA	49,6
	TN	56,7
	TR	61,9
	ZZ	53,4
0805 20 10	EG	65,1
	IL	139,6
	MA	89,2
	TR	87,0
	ZZ	95,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	56,8
	EG	69,6
	IL	97,7
	JM	97,9
	MA	111,7
	PE	62,6
	PK	34,1
	TR	60,0
	ZZ	73,8
0805 50 10	EG	76,3
	IL	73,1
	MA	68,6
	TR	66,0
	ZZ	71,0
0808 10 80	CA	77,1
	CL	59,9
	CN	68,5
	MK	24,7
	US	130,3
	ZZ	72,1
0808 20 50	AR	83,8
	CL	75,8
	CN	75,8
	US	92,0
	ZA	101,0
	ZZ	85,7

⁽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 REGULATION (EU) No 155/2010**of 24 February 2010****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 877/2009 for the 2009/10 marketing year**

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 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ⁽²⁾, and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2009/10 marketing year are fixed by Commission Regulation (EC) No 877/2009 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EU) No 150/2010 ⁽⁴⁾.

- (2) The data currently available to the Commission indicate that those amounts should be amended in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 877/2009 for the 2009/10, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 25 February 2010.

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

Done at Brussels, 24 February 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 253, 25.9.2009, p. 3.

⁽⁴⁾ OJ L 47, 24.2.2010, p. 14.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 25 February 2010

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 ⁽¹⁾	42,05	0,00
1701 11 90 ⁽¹⁾	42,05	2,29
1701 12 10 ⁽¹⁾	42,05	0,00
1701 12 90 ⁽¹⁾	42,05	1,99
1701 91 00 ⁽²⁾	48,21	3,01
1701 99 10 ⁽²⁾	48,21	0,00
1701 99 90 ⁽²⁾	48,21	0,00
1702 90 95 ⁽³⁾	0,48	0,23

⁽¹⁾ For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.⁽²⁾ For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.⁽³⁾ Per 1 % sucrose content.

COMMISSION REGULATION (EU) No 156/2010**of 24 February 2010****fixing an acceptance percentage for the issuing of export licences, rejecting export licence applications and suspending the lodging of export licence applications for out-of-quota sugar**

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 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ⁽²⁾, and in particular Article 7e in conjunction with Article 9(1) thereof,

Whereas:

- (1) According to Article 61, first subparagraph, point (d) of Regulation (EC) No 1234/2007 the sugar produced during the marketing year in excess of the quota referred to in Article 56 of that Regulation may be exported only within the quantitative limit fixed by the Commission.
- (2) Commission Regulation (EU) No 94/2010 of 3 February 2010 fixing an additional quantitative limit for the exports of out-of-quota sugar in respect of marketing year 2009/2010 ⁽³⁾ sets the above mentioned limit.

- (3) The quantities of sugar covered by applications for export licences exceed the quantitative limit fixed by Regulation (EU) No 94/2010. An acceptance percentage should therefore be set for quantities applied from 15 February 2010 to 19 February 2010. All export licence applications for sugar lodged after 22 February 2010 should accordingly be rejected and the lodging of export licence applications should be suspended,

HAS ADOPTED THIS REGULATION:

Article 1

1. Export licences for out-of-quota sugar for which applications were lodged from 15 February 2010 to 19 February 2010, shall be issued for the quantities applied for, multiplied by an acceptance percentage of 38,647912 %.
2. Applications for out-of-quota sugar export licences submitted on 22, 23, 24, 25 and 26 February 2010 are hereby rejected.
3. The lodging of applications for out-of-quota sugar export licences shall be suspended for the period 1 March 2010 to 30 September 2010.

Article 2

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

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

Done at Brussels, 24 February 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 32, 4.2.2010, p. 2.

DECISIONS

COMMISSION DECISION

of 23 February 2010

amending Annex II to Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles

(notified under document C(2010) 972)

(Text with EEA relevance)

(2010/115/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles ⁽¹⁾, and in particular Article 4(2)(b) thereof,

Whereas:

- (1) Directive 2000/53/EC prohibits the use of lead, mercury, cadmium or hexavalent chromium in materials and components of vehicles put on the market after 1 July 2003, other than in cases listed in Annex II to that Directive and under the conditions specified therein. Pursuant to Article 4(2)(b) of Directive 2000/53/EC, Annex II to that Directive should be adapted to scientific and technical progress by the Commission on a regular basis.
- (2) Annex II to Directive 2000/53/EC lists vehicle materials and components exempted from the prohibition set out in Article 4(2)(a) of that Directive. Vehicles put on the market before the expiry date of a given exemption may contain lead, mercury, cadmium or hexavalent chromium in materials and components listed in Annex II to Directive 2000/53/EC. Commission Decision 2008/689/EC of 1 August 2008 amending Annex II to Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles ⁽²⁾ specifies that in the case of solder in electronic circuit boards and other electrical applications except on glass, described in point (8)(a), and solder in electrical applications on glass, described in point (8)(b), the exemptions should be reviewed in 2009.
- (3) Technical and scientific assessment has demonstrated that these two exemptions should be split into 10 more

specific applications. Out of these, five materials and components containing lead should continue to be temporarily exempted from the prohibition set out in Article 4(2)(a) of Directive 2000/53/EC, since the use of these substances in those specific materials and components is still technically or scientifically unavoidable. It is therefore appropriate to prolong the expiry date of these exemptions until the use of the prohibited substances becomes avoidable.

- (4) Five other materials and components containing lead should continue to be exempted from the prohibition set out in Article 4(2)(a) of Directive 2000/53/EC without an expiry date since the use of these substances in those specific materials and components is technically or scientifically unavoidable and no viable alternatives are envisaged in the near future. These exemptions should be reviewed in 2014 in the light of technical and scientific progress to assess when the use of these substances will become avoidable. The exemption concerning lead in solders in electrical glazing applications on glass except for soldering in laminated glazing should be reviewed by 1 January 2012 since substitutes for this application exist but their technical properties need to be further tested and confirmed.
- (5) In the case of lead and lead compounds in components in bonding agents for elastomers in power-train applications containing up to 0,5 % lead by weight, the exemption should not be prolonged because the use of lead in this type of applications has become avoidable.
- (6) Annex II to Directive 2000/53/EC provides that spare parts put on the market after 1 July 2003 which are used for vehicles put on the market before 1 July 2003 are exempted from the prohibition set out in Article 4(2)(a) of Directive 2000/53/EC. This exemption allows for the repair of vehicles put on the market before the entry into force of the prohibition of Article 4(2)(a)

⁽¹⁾ OJ L 269, 21.10.2000, p. 34.

⁽²⁾ OJ L 225, 23.8.2008, p. 10.

with spare parts meeting the same quality and safety requirements as the parts with which they were originally equipped.

(7) Spare parts for vehicles put on the market after 1 July 2003 but before the expiry date of a given exemption under Annex II to Directive 2000/53/EC are not covered by that exemption. Hence, spare parts for those vehicles must be heavy metal free, even if they are used to replace parts which originally contained heavy metals.

(8) In certain cases it is technically impossible to repair vehicles with spare parts other than original ones as this would require changes in dimensional and functional properties of entire vehicle systems. Such spare parts cannot fit into the vehicle systems originally manufactured with parts containing heavy metals and these vehicles cannot be repaired and may need to be prematurely disposed of. For reasons of consumer safety and environmental benefits derived from the extension of the product's lifetime it is appropriate to allow the repair of these vehicle components with the original parts.

(9) Directive 2000/53/EC should therefore be amended accordingly.

(10) The measures provided for in this Decision are in accordance with the opinion of the Committee established under Article 18(1) of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste ⁽¹⁾,

HAS ADOPTED THIS DECISION:

Article 1

Annex II to Directive 2000/53/EC is replaced by the text set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 23 February 2010.

For the Commission

Janez POTOČNIK

Member of the Commission

⁽¹⁾ OJ L 114, 27.4.2006, p. 9.

ANNEX

‘ANNEX II

Materials and components exempt from Article 4(2)(a)

Materials and components	Scope and expiry date of the exemption	To be labelled or made identifiable in accordance with Article 4(2)(b)(iv)
<i>Lead as an alloying element</i>		
1. Steel for machining purposes and galvanised steel containing up to 0,35 % lead by weight		
2(a). Aluminium for machining purposes with a lead content up to 2 % by weight	As spare parts for vehicles put on the market before 1 July 2005	
2(b). Aluminium with a lead content up to 1,5 % by weight	As spare parts for vehicles put on the market before 1 July 2008	
2(c). Aluminium with a lead content up to 0,4 % by weight		
3. Copper alloy containing up to 4 % lead by weight		
4(a). Bearing shells and bushes	As spare parts for vehicles put on the market before 1 July 2008	
4(b). Bearing shells and bushes in engines, transmissions and air conditioning compressors	1 July 2011 and after that date as spare parts for vehicles put on the market before 1 July 2011	
<i>Lead and lead compounds in components</i>		
5. Batteries		X
6. Vibration dampers		X
7(a). Vulcanising agents and stabilisers for elastomers in brake hoses, fuel hoses, air ventilation hoses, elastomer/metal parts in the chassis applications, and engine mountings	As spare parts for vehicles put on the market before 1 July 2005	
7(b). Vulcanising agents and stabilisers for elastomers in brake hoses, fuel hoses, air ventilation hoses, elastomer/metal parts in the chassis applications, and engine mountings containing up to 0,5 % lead by weight	As spare parts for vehicles put on the market before 1 July 2006	
7(c). Bonding agents for elastomers in power-train applications containing up to 0,5 % lead by weight	As spare parts for vehicles put on the market before 1 July 2009	
8(a). Lead in solders to attach electrical and electronic components to electronic circuit boards and lead in finishes on terminations of components other than electrolyte aluminium capacitors, on component pins and on electronic circuit boards	Vehicles type approved before 1 January 2016 and spare parts for these vehicles	X ⁽¹⁾

Materials and components	Scope and expiry date of the exemption	To be labelled or made identifiable in accordance with Article 4(2)(b)(iv)
8(b). Lead in solders in electrical applications other than soldering on electronic circuit boards or on glass	Vehicles type approved before 1 January 2011 and spare parts for these vehicles	X ⁽¹⁾
8(c). Lead in finishes on terminals of electrolyte aluminium capacitors	Vehicles type approved before 1 January 2013 and spare parts for these vehicles	X ⁽¹⁾
8(d). Lead used in soldering on glass in mass airflow sensors	Vehicles type approved before 1 January 2015 and spare parts of such vehicles	X ⁽¹⁾
8(e). Lead in high melting temperature type solders (i.e. lead-based alloys containing 85 % by weight or more lead)	⁽²⁾	X ⁽¹⁾
8(f). Lead in compliant pin connector systems	⁽²⁾	X ⁽¹⁾
8(g). Lead in solders to complete a viable electrical connection between semiconductor die and carrier within integrated circuit flip chip packages	⁽²⁾	X ⁽¹⁾
8(h). Lead in solder to attach heat spreaders to the heat sink in power semiconductor assemblies with a chip size of at least 1 cm ² of projection area and a nominal current density of at least 1 A/mm ² of silicon chip area	⁽²⁾	X ⁽¹⁾
8(i). Lead in solders in electrical glazing applications on glass except for soldering in laminated glazing	Vehicles type approved before 1 January 2013 and spare parts for these vehicles ⁽³⁾	X ⁽¹⁾
8(j). Lead in solders for soldering in laminated glazing	⁽²⁾	X ⁽¹⁾
9. Valve seats	As spare parts for engine types developed before 1 July 2003	
10. Electrical components which contain lead in a glass or ceramic matrix compound except glass in bulbs and glaze of spark plugs		X ⁽⁴⁾ (for components other than piezo in engines)
11. Pyrotechnic initiators	Vehicles type-approved before 1 July 2006 and spare parts for these vehicles	
<i>Hexavalent chromium</i>		
12(a). Corrosion preventive coatings	As spare parts for vehicles put on the market before 1 July 2007	
12(b). Corrosion preventive coatings related to bolt and nut assemblies for chassis applications	As spare parts for vehicles put on the market before 1 July 2008	
13. Absorption refrigerators in motor caravans		

Materials and components	Scope and expiry date of the exemption	To be labelled or made identifiable in accordance with Article 4(2)(b)(iv)
<i>Mercury</i>		
14(a). Discharge lamps for headlight application	Vehicles type approved before 1 July 2012 and spare parts for these vehicles	
14(b). Fluorescent tubes used in instrument panel displays	Vehicles type approved before 1 July 2012 and spare parts for these vehicles	
<i>Cadmium</i>		
15. Batteries for electrical vehicles	As spare parts for vehicles put on the market before 31 December 2008	

(¹) Dismantling if, in correlation with entry 10, an average threshold of 60 grams per vehicle is exceeded. For the application of this clause electronic devices not installed by the manufacturer on the production line shall not be taken into account.

(²) This exemption shall be reviewed in 2014.

(³) This exemption shall be reviewed before 1 January 2012.

(⁴) Dismantling if, in correlation with entries 8(a) to 8(j), an average threshold of 60 grams per vehicle is exceeded. For the application of this clause electronic devices not installed by the manufacturer on the production line shall not be taken into account.

Notes:

A maximum concentration value up to 0,1 % by weight and in homogeneous material, for lead, hexavalent chromium and mercury and up to 0,01 % by weight in homogeneous material for cadmium shall be tolerated.

The reuse of parts of vehicles which were already on the market at the date of expiry of an exemption shall be allowed without limitation since it is not covered by Article 4(2)(a).

Spare parts put on the market after 1 July 2003 which are used for vehicles put on the market before 1 July 2003 shall be exempted from the provisions of Article 4(2)(a) (*).

(*) This clause shall not apply to wheel balance weights, carbon brushes for electric motors and brake linings.'

COMMISSION DECISION**of 24 February 2010****terminating the anti-dumping proceeding concerning imports of certain ring binder mechanisms originating in Thailand**

(2010/116/EU)

THE EUROPEAN COMMISSION,

Union of certain ring binder mechanisms, currently classifiable within CN code ex 8305 10 00 and originating in Thailand.

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

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

After consulting the Advisory Committee,

Whereas:

(5) The Commission sent questionnaires to the Union industry and to any known association of producers in the European Union, to the exporters/producers in Thailand, to any association of exporters/producers, to the importers, to any known association of importers, and to the authorities of the exporting country concerned. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(6) Given the need to further examine certain aspects of the investigation, it was decided to continue the investigation without the imposition of provisional measures. On 16 September 2009, all interested parties were provided with an information document detailing the preliminary findings at that stage of the investigation and inviting the parties to comment on those findings.

A. PROCEDURE

(1) On 11 November 2008, the Commission received a complaint concerning the alleged injurious dumping of imports of certain ring binder mechanisms originating in Thailand.

(2) The complaint was lodged by Union producer Ring Alliance Ringbuchtechnik GmbH representing a major proportion, in this case more than 50 %, of the total Union production of certain ring binder mechanisms pursuant to Articles 4(1) and 5(4) of Council Regulation (EC) No 384/96 ⁽²⁾ (the basic Regulation).

(3) The complaint contained prima facie evidence of the existence of dumping and of material injury resulting therefrom which was considered sufficient to justify the initiation of an anti-dumping proceeding.

(4) The Commission, after consultation, by a notice published in the *Official Journal of the European Union* ⁽³⁾, accordingly initiated an anti-dumping proceeding concerning imports into the European

B. WITHDRAWAL OF THE COMPLAINT AND TERMINATION OF THE PROCEEDING

(7) By a letter of 18 December 2009 to the Commission, Ring Alliance Ringbuchtechnik GmbH formally withdrew its complaint.

(8) In accordance with Article 9(1) of the basic Regulation, the proceeding may be terminated where the complaint is withdrawn, unless such termination would not be in the Union interest.

(9) The Commission considered that the present proceeding should be terminated since the investigation had not brought to light any considerations showing that such termination would not be in the Union interest. Interested parties were informed accordingly and were given the opportunity to comment. No comments were received indicating that such termination would not be in the Union interest.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 56, 6.3.1996, p. 1.

⁽³⁾ OJ C 322, 17.12.2008, p. 13.

- (10) The Commission therefore concludes that the anti-dumping proceeding concerning imports into the European Union of certain ring binder mechanisms originating in Thailand should be terminated,

Article 2

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

HAS ADOPTED THIS DECISION:

Done at Brussels, 24 February 2010.

Article 1

The anti-dumping proceeding concerning imports of certain ring binder mechanisms, currently classifiable within CN code ex 8305 10 00 and originating in Thailand, is hereby terminated.

For the Commission

The President

José Manuel BARROSO

IV

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

EFTA SURVEILLANCE AUTHORITY DECISION

No 660/07/COL

of 12 December 2007

**on compensation to the ‘Hurtigruten companies’ for increased social security contributions
(Norway)**

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,

HAVING REGARD to the Authority’s Decision 172/02/COL of 25 September 2002 to propose appropriate measures to Norway with regard to State aid in the form of regionally differentiated social security taxation on employers,

HAVING REGARD to the Agreement on the European Economic Area ⁽²⁾, in particular to Articles 59(2) and 61 to 63, and to Protocol 26 thereof,

HAVING REGARD to the Authority’s Decision 218/03/COL of 12 November 2003 on a 3-year transition period in Zones 3 and 4 for the regionally differentiated social security contributions,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ⁽³⁾, in particular to Article 24 thereof,

HAVING REGARD to the Decision of the Standing Committee of the EFTA States No 2/2003/SC of 1 July 2003 whereby it was decided that the regionally differentiated social security contributions in Zone 5 were compatible with the EEA Agreement due to exceptional circumstances in that zone,

HAVING REGARD to Article 1(2) in Part I and Article 14 in Part II of Protocol 3 to the Surveillance and Court Agreement,

HAVING REGARD to the Authority’s Decision 215/05/COL of 5 July 2006 to open the formal investigation procedure provided for in Article 6 in Part II of Protocol 3 to the Surveillance and Court Agreement,

HAVING REGARD to the Authority’s Guidelines ⁽⁴⁾ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular the chapter on aid to maritime transport,

HAVING CALLED on interested parties to submit their comments pursuant to those provisions ⁽⁶⁾,

Whereas:

HAVING REGARD to the Authority’s Decision 417/01/COL of 19 December 2001 on compensation for maritime transport services under the ‘Hurtigruten Agreement’ ⁽⁵⁾,

I. FACTS

1. Procedure

On 2 August 2004, the Authority sent an information request to the Norwegian authorities regarding a payment to Ofotens og Vesteraalens Dampskibsselskab ASA and Troms Fylkes Dampskibsselskap ASA ⁽⁷⁾ as compensation due to the changes in the Norwegian differentiated social security system (Event No 289240).

⁽¹⁾ Hereinafter referred to as the ‘Authority’.

⁽²⁾ Hereinafter referred to as the ‘EEA Agreement’.

⁽³⁾ Hereinafter referred to as the ‘Surveillance and Court Agreement’.

⁽⁴⁾ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ L 231, 3.9.1994, p. 1, and in EEA Supplement No 32 of 3.9.1994. The Guidelines were last amended on 3 May 2007. Hereinafter referred to as the ‘State Aid Guidelines’.

⁽⁵⁾ The Authority’s decisions are available on <http://www.eftasurv.int/>

⁽⁶⁾ OJ C 314, 21.12.2006, p. 115, and EEA Supplement No 63/2006, p. 33.

⁽⁷⁾ Hereinafter referred to as the ‘Hurtigruten companies’.

The Norwegian authorities replied by letter from the Ministry of Trade and Industry dated 1 September 2004, forwarding a letter from the Ministry of Transport and Communications of the same date, received and registered by the Authority on 1 September 2004 (Event No 291435).

By letter dated 12 October 2004, the Authority asked for further information (Event No 294990). In this letter, the Authority's Competition and State Aid Directorate stated its view that as the measure had not been notified to the Authority but had apparently already been put into effect, the payment would have to be considered as unlawful aid within the meaning of Article 1(f) in Part II of Protocol 3 to the Surveillance and Court Agreement.

The Norwegian authorities replied by letter from the Norwegian Mission to the EU dated 18 November 2004, forwarding letters from the Ministry of Modernisation, dated 17 November 2004, and the Ministry of Transport and Communications, dated 16 November 2004. The letter was received and registered by the Authority on 22 November 2004 (Event No 300326).

By letter dated 26 October 2005, the Authority's Competition and State Aid Directorate informed the Norwegian authorities that it had doubts concerning the compatibility of the payment to the Hurtigruten companies with the functioning of the EEA Agreement (Event No 329347).

The Norwegian authorities replied by letter from the Norwegian Mission to the EU dated 22 December 2005, forwarding letters from the Ministry of Modernisation and the Ministry of Transport and Communications, both dated 15 December 2005, received and registered by the Authority on 3 January 2006 (Event No 355950).

By letter dated 9 March 2006, the Authority commented on the Norwegian reply (Event No 364024). The Norwegian authorities responded by letter from the Norwegian Mission to the EU dated 29 March 2006, forwarding letters from the Ministry of Government Administration and Reform, dated 27 March 2006, and the Ministry of Transport and Communications, dated 24 March 2006. The letter was received and registered by the Authority on 30 March 2006 (Event No 368446).

By Decision 215/06/COL of 5 July 2006, the Authority decided to open the formal investigation procedure provided for in Article 6 in Part II of Protocol 3 to the Surveillance and Court Agreement. The Government of Norway was invited to comment on the decision. By letter dated 12 October 2006, the Norwegian authorities submitted their comments. The letter was received and registered by the Authority on 13 October 2006 (Event No 393258).

The Authority's decision to initiate the procedure was published in the *Official Journal of the European Union* and the EEA Supplement thereto⁽⁸⁾. The Authority called on interested parties to submit their comments. The Authority did not receive any comments from interested parties.

By letter dated 3 December 2007, received and registered by the Authority on the same date (Event No 455223) the Norwegian authorities submitted additional information.

2. Background

The Hurtigruten companies operated maritime transport services along the Norwegian coastal line from Bergen to Kirkenes.

From 1 January 2002 until 31 December 2004, the 'Hurtigruten service' was covered by the agreement between the Norwegian authorities and the Hurtigruten companies concerning operation of maritime services along the Norwegian coast⁽⁹⁾. The Hurtigruten Agreement was notified by the Norwegian authorities to the Authority in July 2000 and approved by the Authority on 19 December 2001⁽¹⁰⁾.

According to the Hurtigruten Agreement, the Hurtigruten companies were under an obligation to maintain daily transport services consisting of the combined transport of persons and goods between Bergen and Kirkenes according to a fixed route plan. This obligation implied that the Hurtigruten companies operated with 11 ships and stopped daily at 34 ports along the coast. In 2004, approximately 8 % of the turnover related to transport of goods, whereas 92 % related to transport of passengers.

The Hurtigruten companies were also engaged in commercial business activities which were not part of the Hurtigruten service, such as operating high-speed ferries. The routes which comprise the Hurtigruten service are themselves partly commercially viable, notably during the summer season. However, it is accepted that these routes, served at the frequency required by the Hurtigruten Agreement, are not commercially viable during the winter season.

In its 2001 Decision, the Authority considered that the compensation granted under the Hurtigruten Agreement could be regarded as compatible with the functioning of the EEA Agreement as the services covered by it were considered to be services of general economic interest and the conditions laid down in Article 59(2) of the EEA Agreement had been respected.

⁽⁸⁾ See footnote 6.

⁽⁹⁾ Hereinafter referred to as the 'Hurtigruten Agreement'.

⁽¹⁰⁾ Decision 417/01/COL, hereinafter referred to as the '2001 Decision'.

On 25 September 2002, the Authority decided to propose appropriate measures to Norway with regard to the Norwegian system concerning regionally differentiated social security contributions⁽¹¹⁾. In that letter, the Authority proposed that Norway should take any legislative, administrative and other measures necessary to eliminate State aid resulting from the system of regionally differentiated social security contributions or render such aid compatible with the EEA Agreement with effect from 1 January 2004. However, the appropriate measures also stated that the Authority might agree to a later date should that be considered objectively necessary and justified by the Authority in order to allow an appropriate transition for the undertakings in question to the adjusted situation. The proposal to adopt appropriate measures was accepted by Norway on 31 October 2002.

On 12 November 2003, the Authority authorised a 3-year transitional period for the regionally differentiated social security contributions in Zones 3 and 4 in order to achieve a smooth phasing out of the system⁽¹²⁾.

During the Autumn of 2003, the Norwegian Parliament adopted changes to the differentiated social security system which entered into force on 1 January 2004. The changes led to higher social security costs for the Hurtigruten companies. Part, but not all, of the increase in costs was covered by the Authority's Decision of 12 November 2003.

Section 10 of the Hurtigruten Agreement contained a clause whereby both parties to the Agreement could set in motion a re-negotiation procedure in the event of substantial changes in the premises upon which the Hurtigruten Agreement was based. The Hurtigruten Agreement ended as foreseen on 31 December 2004. The operation of the service for the period 1 January 2005 to 31 December 2012 was the subject of a tender procedure in June 2004. The Hurtigruten companies won that tender and merged in March 2006 to form the entity now operating the service, Hurtigruten ASA.

3. Description of the measure

The present case concerns a payment to the Hurtigruten companies contained in Post 70, Chapter 1330 (*Særskilte transporttiltak*) of the Norwegian 2004 State Budget, whereby the Hurtigruten companies would be granted up to NOK 8,5

million (approximately EUR 1,1 million) as compensation due to the changes in the differentiated social security system⁽¹³⁾.

The payment would compensate the Hurtigruten companies for that part of the increased social security contributions which was not already compensated for as a result of the scheme concerning a 3-year transitional period, approved by the Authority in its Decision of 12 November 2003.

The compensation payment granted to the Hurtigruten companies was intended to compensate fully the increase in social security costs in 2004. No distinction was made between the part of the social security costs pertaining to the commercial activities of the companies and those activities which might be considered a public service within the meaning of Article 59(2) of the EEA Agreement.

In this respect, an amount of NOK 7,352 million (approximately EUR 900 000) was in fact paid out to the Hurtigruten companies in 2004. This corresponds to the increased costs incurred by the companies due to the changes in the differentiated social security system.

4. The decision to open the formal investigation procedure

In its Decision 215/06/COL to open the formal investigation procedure, the Authority came to the preliminary conclusion that compensation for increased social security contributions constituted State aid within the meaning of Article 61(1) of the EEA Agreement.

The Authority expressed its doubts as to whether the Norwegian State's support measure could be declared compatible with the functioning of the EEA Agreement, and more specifically, whether the aid measure was compatible with Article 59(2) of the EEA Agreement. These doubts concerned, in particular, the question of whether the aid granted was necessary for the Hurtigruten companies to be able to fulfil their public service obligations.

⁽¹¹⁾ Decision 172/02/COL.

⁽¹²⁾ Decision 218/03/COL. The transitional period did not apply to the very northernmost part of Norway (Zone 5 in the social security tax system), as the EFTA States by decision No 2/2003/SC of 1 July 2003 decided that the regionally differentiated social security contributions in this area were compatible with the EEA Agreement due to exceptional circumstances in this zone.

⁽¹³⁾ The comments to Post 70 read as follows: 'Av budsjettforslaget på 200,8 mill. kr for 2004, er 192,3 mill. kr direkte relatert til den gjeldende avtalen med hurtigruterederiene. Restbeløpet på 8,5 mill. kr er knyttet til ev. kompensasjon som følge av endringer i ordningen med differensiert arbeidsgiveravgift. Endelig kompensasjonsbeløp vil bli bestemt når forhandlingene mellom hurtigruteselskapene og departementet er avsluttet.' [Unofficial translation by the Authority: Of the budget proposal of NOK 200,8 million for 2004, NOK 192,3 million are directly related to the current agreement with the Hurtigruten companies. The remainder of NOK 8,5 million is related to possible compensation as a consequence of amendments to the system concerning differentiated social security contributions. The final compensation will be determined when the negotiations between the Hurtigruten companies and the Ministry are finished].

5. Comments by the Norwegian authorities

The Norwegian authorities are of the opinion that the compensation was within the limits of the compensation authorised by the Authority in its 2001 Decision, and should therefore be classified as 'existing aid' in line with the definition of Article 1(b)(ii) in Part II of Protocol 3 to the Surveillance and Court Agreement.

The Norwegian authorities consider the payment to be covered by the Hurtigruten Agreement in force at the time when the payment was granted. They rely, in this respect, on Section 10 of the Hurtigruten Agreement, a clause whereby both parties to the Hurtigruten Agreement may demand a re-negotiation in the event of substantial changes in the premises upon which the Hurtigruten Agreement was based. The Norwegian authorities state that they regard the changes in the differentiated social security system to fulfil this criterion. They could not have been foreseen by the Hurtigruten companies. As a result of the negotiations with the companies, the compensation for these costs was set at NOK 7,352 million for 2004, i.e. the actual increase in costs as a result of the changes to the social security system. The purpose of compensating for the amendments to the social security scheme was, according to the Norwegian authorities, to ensure the status quo with regard to the agreed level of transport along the Norwegian coastline, by enabling the Hurtigruten companies to continue to carry out the public service obligation entrusted to them in the Agreement.

The Norwegian authorities take the position that Section 10 of the Hurtigruten Agreement constitutes a legal basis for the re-negotiation of the Agreement and that the clause was recognised by the Authority in its 2001 Decision. On this basis, the compensation for increased social security contributions would, according to the Norwegian authorities, not constitute new aid provided that the compensation was compatible with the State aid provisions of the EEA Agreement.

Concerning the compatibility of the aid, the Norwegian authorities claim that the compensation for the changes in the social security scheme was granted to the Hurtigruten companies in order to maintain the transport standard fixed by the Norwegian Parliament. Without the compensation, the standard of the public service obligations entrusted to the companies would have declined; either by the application of higher fares or by reduced frequency of the services. Against this background, the Norwegian authorities consider the compensation to be necessary.

The Norwegian authorities refer to Section 1 of the Hurtigruten Agreement whereby a substantial part of the profits generated by the Hurtigruten companies in the summer season should be used to finance the unprofitable activity in the winter season. The public service compensation should then be calculated on the basis of the profitability throughout the year. The

Norwegian authorities are of the opinion that the Authority, by accepting the principle laid down in Section 1 of the Hurtigruten Agreement, has accepted the fact that no clear separation of the commercial and non-commercial services of the Hurtigruten companies is made. According to the Norwegian authorities, the system of transferring profits from the profitable to the non-profitable season gave the Hurtigruten Companies a disadvantage compared to other undertakings providing maritime services, as it increased the risk of 'cream-skimming' by other companies in the profitable season. This risk was increased further as a result of the changes to the social security scheme, and the Norwegian authorities consider it legitimate to counteract this by increasing the compensation.

The Norwegian authorities furthermore take the view that separation between profitable and non-profitable services is not decisive when the cross-subsidisation is so clearly in support of the non-profitable services, as in this case. In this regard, the Norwegian authorities refer to the annual report of the Hurtigruten companies for 2004 and the monthly results, where the winter months, after the public service compensation had been included, had a deficit of approximately NOK 211 million. The total deficit was of approximately NOK 45 million. Moreover, the Norwegian authorities stress that the compensation granted for 2004 does not alter the fact that the commercial services covered by the Hurtigruten Agreement support the activities linked to the public service obligation of the Hurtigruten companies.

Finally, the Norwegian authorities refer to the fact that, following the tender procedure in 2004, the annual average compensation for the period 1 January 2005-31 December 2012 is NOK 237,5 million, and thus significantly higher than it was for the period from 1 January 2002 until 31 December 2004. According to the Norwegian authorities this demonstrates that the level of compensation in 2004 was necessary and not disproportionate.

As an additional argument, the Norwegian authorities claim that NOK 4,29 million of the compensation granted relates to increased social security contributions for the winter season whereas the remaining NOK 3,06 million constitutes additional public service compensation for the same season as the public service obligation turned out to entail higher costs for the Hurtigruten companies than expected by both parties to the Hurtigruten Agreement. The Ministry of Transport and Communications maintains this view, despite the fact that the State Budget for 2004 referred to the compensation as 'possible compensation as a consequence of amendments to the system concerning differentiated social security contributions' ⁽¹⁴⁾. According to the Norwegian authorities, the name given to the contributions in the State Budget should not be decisive when assessing the legality of the compensation.

⁽¹⁴⁾ Translation by the Authority, cf. footnote 13.

II. ASSESSMENT

1. The presence of State aid within the meaning of Article 61(1) of the EEA Agreement

Article 61(1) of the EEA Agreement reads as follows:

'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.'

The compensation granted to the Hurtigruten companies for the increase in social security contributions is financed directly through a budgetary allocation and is thus granted by the State. Furthermore, the compensation relieves the companies of social security charges which they would normally have to bear in the ordinary course of business, and thus strengthens the position of these undertakings compared with other undertakings engaged in intra-EEA trade. Moreover, the Hurtigruten companies are active on the markets for passenger and cargo transport and on the tourism market, in particular by offering cruises/round trips along the Norwegian coast. The Hurtigruten service, to a large extent, attracts foreign tourists, and the Hurtigruten companies thus compete with other undertakings offering similar services in attracting these customers. The compensation granted to the Hurtigruten companies may therefore have an effect on competition on these markets and is liable to affect trade between the Contracting Parties to the EEA Agreement.

The Authority thus considers the payment of NOK 7,352 million (approximately EUR 900 000) to the Hurtigruten companies to constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

2. New or existing aid

According to Article 1(c) in Part II of Protocol 3 to the Surveillance and Court Agreement, 'new aid' shall mean 'all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid'.

In its 2001 Decision, the Authority considered that the compensation granted to the Hurtigruten companies under the Hurtigruten Agreement could be regarded as compatible with the functioning of the EEA Agreement as the services covered by it were considered to be services of general economic interest and the conditions laid down in Article 59(2) EEA had been respected.

Aid which has been approved by the Authority is existing aid. However, in 2004, the Norwegian authorities granted an additional NOK 7,352 million to the Hurtigruten companies. The aid was granted in order to compensate the companies for

increased social security contributions in 2004, and was not part of the aid to the Hurtigruten companies authorised by the Authority's 2001 Decision.

The Norwegian authorities argue that the compensation was in line with the Authority's 2001 Decision, since Section 10 of the Hurtigruten Agreement contained a clause whereby both parties to the Hurtigruten Agreement may initiate a re-negotiation procedure in the event of substantial changes in the premises upon which the Hurtigruten Agreement was based. The Norwegian authorities have stated that they regard the changes in the differentiated social security system to constitute a substantial change. According to the Norwegian authorities, the compensation should thus be regarded as existing aid.

The Authority would like to point out that annual compensation of NOK 170 million, expressed in 1999-prices, under the Hurtigruten Agreement had been approved by the Authority. In contrast, the Authority's decision did not deal with Section 10 of the Hurtigruten Agreement as such, and nothing in the Authority's decision suggested that any future amendments of the Hurtigruten Agreement based on this clause would, as argued by the Norwegian authorities, automatically be considered to be in compliance with the State aid provisions of the EEA Agreement.

Section 10 of the Agreement merely allows for the possibility of amending the contract due to unforeseen substantial changes of circumstances. It does not prescribe an automatic increase in the compensation to the Hurtigruten companies in the event of raised costs, but merely opens up the possibility for both parties to the Hurtigruten Agreement to request a re-negotiation procedure without prescribing the result of such re-negotiations. Furthermore, the provision does not explicitly mention augmentation of costs as a result of a tax increase as a reason for renegotiation, let alone as a fact that would require an automatic adjustment of the agreement by the exact amount flowing from the tax increase. A change in the tax situation of one contracting party is normally not a factor that the other party is obliged to bear. Hence, even if the original Hurtigruten Agreement in its entirety was notified to the Authority in 2000 and approved in 2001, the Authority could not reasonably have been expected to foresee all possible effects of the provision, and the Authority's silence about the provision in its 2001 Decision cannot be held to imply that all uses of the provision were hereinafter automatically acceptable from a State aid point of view.

It is the view of the Authority that the existence of the contractual provision needs to be distinguished from the separate question of whether the chosen re-adaptation complies with the EEA Agreement, and in particular with the State aid provisions. Each question needs to be assessed on its own merits for each case of re-adaptation and only the first question relates to whether the aid is new or existing.

The Authority observes that as a result of the increase in social security costs, an additional NOK 7,352 million was paid out to the Hurtigruten companies in 2004. This represented an increase, and therefore also an alteration, to the State aid to the Hurtigruten companies authorised in the Authority's 2001 Decision. The Authority thus considers the aid to be new aid within the meaning of Article 1(c) in Part II of Protocol 3 to the Surveillance and Court Agreement.

3. Procedural requirements

Pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, 'the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid (...). The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision'.

As stated above, the Authority considers the aid to the Hurtigruten companies to be new aid within the meaning of Article 1(c) in Part II of Protocol 3 to the Surveillance and Court Agreement. This implies that the compensation should have been notified to the Authority, according to Article 1(3) in Part I and Article 2 in Part II of Protocol 3 to the Surveillance and Court Agreement, and should not have been put into effect unless and until the Authority approved the compensation. The Norwegian authorities, however, decided to grant the compensation in disregard of that obligation. The compensation is therefore considered as 'unlawful aid' within the meaning of Article 1(f) in Part II of Protocol 3 to the Surveillance and Court Agreement.

4. Compatibility of the aid

4.1. Introduction

Direct aid aimed at covering operating losses is, in general, not compatible with the functioning of the EEA Agreement. Since the increased compensation granted to the Hurtigruten companies covers costs concerning the day-to-day operation of the Hurtigruten service, this payment is to be regarded as operating aid. Such operating aid may be approved, exceptionally, if the conditions set out in derogation provisions of the EEA Agreement are fulfilled.

In the 2001 Decision, the Authority took the view that the aid to the Hurtigruten companies did not qualify for an exemption from the general prohibition of State aid in Article 61(1) of the EEA Agreement on the basis of Article 61(2) or (3) of the EEA Agreement. However, the Authority concluded that the aid was compatible with the functioning of the EEA Agreement on the basis that the conditions laid down in Article 59(2) of the EEA Agreement had been respected.

In the decision to open the formal investigation procedure in the present case, the Authority expressed doubts as to the compatibility of the increased aid granted to the Hurtigruten companies with Article 59(2) of the EEA Agreement.

During the course of the investigation, the Authority has reached the conclusion that the compatibility of the aid granted to the Hurtigruten companies as compensation for the additional costs resulting from the changes to the social security system must first be assessed on the basis of Article 61(3)(c) of the EEA Agreement.

4.2. Legal basis for the compatibility assessment

Article 61(3)(c) of the EEA Agreement provides that aid may be considered as compatible with the functioning of the EEA Agreement if its purpose is to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions between the Contracting Parties to an extent contrary to the common interest. The Authority has issued guidelines for the application of Article 61(3)(c) of the EEA Agreement with regard to State aid to maritime transport (hereinafter 'the Maritime Transport Guidelines').

Section 3.2 of the Maritime Transport Guidelines deals with State aid for labour related costs. According to paragraph 1 of Section 3.2, support measures for the maritime sector should aim primarily at reducing fiscal and other costs and burdens borne by EEA shipowners and EEA seafarers towards levels in line with world norms.

According to paragraph 2 of that Section, the following action on employment costs should be allowed for EEA shipping:

- reduced rates of contributions for the social protection of EEA seafarers employed on board ships registered in an EEA State,
- reduced rates of income tax for EEA seafarers on board ships registered in an EEA State.

For the purposes of the above, 'EEA seafarers' is defined as:

- citizens of the EEA States, in the case of seafarers working on board vessels (including ro-ro ferries⁽¹⁵⁾) providing scheduled passenger services between the ports of the EEA,
- all seafarers liable to taxation and/or social security contributions in an EEA State, in all other cases.

⁽¹⁵⁾ Ro-ro ferries are defined as 'seagoing passenger vessel[s] with facilities to enable road or rail vehicles to roll on and off the vessel, and carrying more than 12 passengers', cf. footnote 22 of the Guidelines which refers to Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (OJ L 138, 1.6.1999, p. 1), as incorporated at point 56 ca) in Annex XIII to the EEA Agreement.

Paragraph 3 goes on to clarify that some EEA States may, for internal fiscal reasons, prefer not to apply reduced rates as mentioned above, but instead reimburse shipowners — partially or wholly — for the costs arising from these levies. Such an approach may generally be considered equivalent to the reduced-rate system as described above, provided that there is a clear link to these levies, no element of over-compensation, and that the system is transparent and not open to abuse.

4.3. Assessment

As described in Section I.3 above, NOK 7,352 million (approximately EUR 900 000) was granted to the Hurtigruten companies in order to compensate for their increased costs in relation to social security contributions for the year 2004. According to the State Budget for 2004, this grant to the Hurtigruten companies consisted of compensation 'as a consequence of amendments to the system concerning differentiated social security contributions' ⁽¹⁶⁾.

It follows from the above that the aid was granted to the Hurtigruten companies in order to reimburse them for increased social security contributions made by them in 2004. Thus the aid granted must be considered as reimbursement of contributions for social protection of seafarers in accordance with paragraphs 2 and 3 of Section 3.2 of the Maritime Transport Guidelines.

Paragraph 2 of Section 3.2 of the Maritime Guidelines only allows for aid in the form of reduced rates of contributions for the social protection of EEA seafarers employed on board ships registered in an EEA State.

The Norwegian authorities have confirmed that all ships used for the Hurtigruten service in 2004 were registered in Norway. The Authority therefore considers the registration condition to be fulfilled.

Concerning the condition that the social protection must be for 'EEA seafarers', this expression is defined as either citizens of the EEA States, in the case of seafarers working on board vessels (including ro-ro ferries) providing scheduled passenger services between the ports of the EEA or all seafarers liable to taxation and/or social security contributions in an EEA State, in all other cases.

In the Hurtigruten Agreement, the Hurtigruten service was described as services of combined transport of passengers and goods between Bergen and Kirkenes. According to the information submitted by the Norwegian authorities, approximately 92 % of the Hurtigruten companies' turnover for 2004 was related to passenger transport, whereas

approximately 8 % was related to transport of goods. Some of the Hurtigruten ships had facilities to enable passenger cars to roll-on and roll-off the vessel. However, it was not possible for commercial vehicles (lorries, trailers, etc.) to roll-on and roll-off the ships. Furthermore, the Hurtigruten service, as explained in Section I.2 above, provided scheduled transport services along the Norwegian coast, and thus within the EEA.

On this basis, the Authority considers that the ships of the Hurtigruten companies must be considered to fall under the first alternative definition above i.e. vessels providing scheduled passenger services between the ports of the EEA. This implies that the compensation for increased social security contributions granted to the Hurtigruten companies is only compatible with Section 3.2 of the Maritime Transport Guidelines insofar as the compensation was granted with regard to seafarers who were citizens of an EEA State.

The Norwegian authorities have provided information to the effect that all employees on the ships used for the Hurtigruten service in 2004 were citizens of an EEA State.

It was explicitly stated in the State Budget that the additional aid to the Hurtigruten companies was granted in order to cover additional social security costs for the companies. Therefore, there was a clear link between the grant and the social security charges. Furthermore, the size of the grant corresponded exactly to the increase in social security costs of the companies. As will be shown below in Section II.4.4, the grant did not imply any over-compensation. Finally, the aid was a one-off payment which was announced in the State Budget. Hence, the aid was granted in a way which was transparent and not open to abuse. It follows that the conditions for considering reimbursement of social security charges as equivalent to a system of reduced rates for contributions are fulfilled.

On this basis, the Authority concludes that the aid granted to the Hurtigruten companies for increased social security contributions in 2004 is in line with Section 3.2 of the Maritime Transport Guidelines.

4.4. Over-compensation and cumulation

According to paragraph 2 of Section 11 of the Maritime Transport Guidelines, a reduction of contributions for the social protection of EEA seafarers may be granted up to a ceiling of 100 %, i.e. a reduction to zero social charges. In the present case, the Hurtigruten companies had been charged increased social security contributions in 2004 compared to the rate applied in previous years.

⁽¹⁶⁾ Translation by the Authority, cf. footnote 13.

The Authority considers that the amount of aid granted under Sections 3 to 6 of the Maritime Transport Guidelines did not exceed the total amount of taxes and social security contributions collected from shipping activities and seafarers and that the criterion contained in Section 11, paragraph 2, of those Guidelines has been fulfilled.

In addition to the aid for labour-related costs granted to the Hurtigruten companies on the basis of the Maritime Transport Guidelines, the Hurtigruten companies also received aid according to the Hurtigruten Agreement on purchase of transport services and according to the Authority's Decision of 12 November 2003 to approve the transitional period for the differentiated social security contribution on employers. To ensure that no over-compensation took place, it is necessary to verify that the Hurtigruten companies were not compensated for the same costs under each of these measures.

In this regard, the Authority notes that the increase in the companies' social security costs arose as a result of the Authority's Decision 172/02/COL to propose appropriate measures to Norway regarding the Norwegian system of differentiated social security contributions. The Norwegian State notified a plan for managing the transition to non-differentiated social security contributions. This plan was approved by the Authority by decision of 12 November 2003 and implied that the Hurtigruten companies' social security costs increased in 2004 compared to what was the case when the Hurtigruten Agreement was negotiated. Thus, it is clear that the extra social security costs incurred by the Hurtigruten companies in 2004 were not covered by the Hurtigruten Agreement, i.e. the compensation paid out on the basis of the Hurtigruten Agreement did not cover those additional costs. Moreover, the transfer of additional funds in 2004 would only compensate the Hurtigruten companies for that part of the increased social security contributions which was not already compensated for as a result of the scheme concerning a 3-year transitional period. Hence, the compensation for the increase in social security costs for 2004 granted on the basis of the Maritime Transport Guidelines did not result in any over-compensation.

On the basis of the above, the Authority concludes that the compensation for additional social security costs granted to the Hurtigruten companies for 2004 is compatible with Article 61(3)(c) of the EEA Agreement read in conjunction with the Maritime Transport Guidelines.

5. Conclusion

In light of the foregoing considerations, the Authority concludes that the compensation of NOK 7,352 million (approximately EUR 900 000) granted to the Hurtigruten companies is compatible with Article 61(3)(c) of the EEA Agreement.

The Authority regrets, however, that the Norwegian authorities did not respect their obligations pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement to notify the measure and to refrain from putting it into effect until it was approved by the Authority,

HAS ADOPTED THIS DECISION:

Article 1

The compensation amounting to NOK 7,352 million granted to the Hurtigruten companies constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. The aid was awarded in contravention of the procedural requirements of Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement. The aid is compatible with Article 61(3)(c) of the EEA Agreement read in conjunction with the Maritime Transport Guidelines.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

This Decision is authentic in the English language.

Done at Brussels, 12 December 2007.

For the EFTA Surveillance Authority

Kristján A. STEFÁNSSON
College Member

Kurt JÄGER
College Member

EFTA SURVEILLANCE AUTHORITY DECISION

No 433/09/COL

of 30 October 2009

amending for the seventy-third time the procedural and substantive rules in the field of State aid

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD to the Agreement on the European Economic Area ⁽¹⁾, in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ⁽²⁾, in particular to Article 24 and Article 5(2)(b) thereof,

Whereas under Article 24 of the Surveillance and Court Agreement, the EFTA Surveillance Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

Whereas under Article 5(2)(b) of the Surveillance and Court Agreement, the EFTA Surveillance Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the EFTA Surveillance Authority considers it necessary,

Recalling the Procedural and Substantive Rules in the Field of State Aid ⁽³⁾ adopted on 19 January 1994 by the EFTA Surveillance Authority ⁽⁴⁾,

Whereas the Chapter in the EFTA Surveillance Authority's State Aid Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽⁵⁾ will expire on 30 November 2009 ⁽⁶⁾,

Whereas that Chapter corresponds to the European Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty ⁽⁷⁾, which are due to expire on 9 October 2009 ⁽⁸⁾,

Whereas on 9 July 2009 the European Commission adopted a Communication concerning the prolongation, until 9 October 2012, of the Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty, which was published in the *Official Journal of the European Union* on 9 July 2009,

Whereas the European Commission Communication concerning the prolongation of the Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty is also of relevance for the European Economic Area,

Whereas uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area,

Whereas, according to point II under the heading 'GENERAL', at the end of Annex XV to the EEA Agreement, the EFTA Surveillance Authority is to adopt, after consultation with the Commission, acts corresponding to those adopted by the European Commission,

Whereas the current Chapter on State aid for rescuing and restructuring firms in difficulty will expire on 30 November 2009, there is, therefore, a need to prolong that Chapter,

Having consulted the European Commission,

Having consulted the EFTA States,

HAS ADOPTED THIS DECISION:

Article 1

The validity of the Chapter in the EFTA Surveillance Authority's State Aid Guidelines on State aid for rescuing and restructuring firms in difficulty is prolonged until 30 November 2012.

⁽¹⁾ Hereinafter referred to as the 'EEA Agreement'.

⁽²⁾ Hereinafter referred to as the 'Surveillance and Court Agreement'.

⁽³⁾ Hereinafter referred to as the 'State Aid Guidelines'.

⁽⁴⁾ Initially published in OJ L 231, 3.9.1994, p. 1, and in the EEA Supplement No 32, 3.9.1994, p. 1.

⁽⁵⁾ EFTA Surveillance Authority Decision No 305/04/COL, published in OJ L 107, 28.4.2005, p. 28, EEA Supplement No 21, 28.4.2005, p. 1.

⁽⁶⁾ Paragraph 89 of Decision No 305/04/COL, see reference in footnote 5.

⁽⁷⁾ OJ C 244, 1.10.2004, p. 2.

⁽⁸⁾ Paragraph 102 in document referred to in footnote 7.

Article 2

Only the English text is authentic.

Done at Brussels, 30 October 2009.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kristján Andri STEFÁNSSON
College Member

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