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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Information concerning the date of entry into force of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007

The Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾, signed in Lugano on 30 October 2007, entered into force between the European Union and Norway and Denmark on 1 January 2010 in accordance with Article 69(4) and (5) of the Convention.

⁽¹⁾ OJ L 147, 10.6.2009, p. 5. The explanatory report to the Convention was published in OJ C 319, 23.12.2009, p. 1.

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 492/2010

of 3 June 2010

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

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas:

A. PROCEDURE

1. MEASURES IN FORCE

- (1) By Regulation (EC) No 435/2004 ⁽²⁾, the Council imposed, following an anti-dumping investigation ('the original investigation'), a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China ('China') and Indonesia (together 'the countries concerned').

2. PRESENT INVESTIGATION

2.1. REQUEST FOR REVIEW

- (2) A request for an expiry review was lodged on 11 December 2008 by Productos Aditivos S.A., the sole Union producer of sodium cyclamate.
- (3) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

2.2. INITIATION

- (4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated

an investigation pursuant to Article 11(2) of the basic Regulation on 10 March 2009 by a notice published in the *Official Journal of the European Union* ⁽³⁾ ('the notice of initiation').

2.3. INVESTIGATION PERIOD

- (5) The investigation of likelihood or recurrence of dumping and injury covered the period from 1 January 2008 to 31 December 2008 ('review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2005 to the end of the RIP ('period considered').

3. PARTIES CONCERNED BY THIS INVESTIGATION

- (6) The Commission officially advised the applicant Union producer, known importers, suppliers and users, the known exporting producers in China and Indonesia and the authorities of the countries concerned of the initiation of the expiry review.
- (7) Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limits set in the notice of initiation, but no one submitted such a request to the Commission.
- (8) The Commission sent questionnaires to all known exporting producers in China and in Indonesia. Two companies from China, both belonging to the Hong Kong-based group Rainbow Rich Industrial Ltd, and two companies from Indonesia indicated their willingness to cooperate and replied to the dumping questionnaire.
- (9) Two additional Chinese producers, Fang Da Food Additive (Shenzhen) Limited and Fang Da Food Additive (Yan Quan) Limited, made themselves known. The original investigation found that those companies were not dumping in the Union market. As a consequence, Fang Da Food Additive (Shenzhen) and Fang Da Food Additive (Yan Quan) are not subject to the present expiry review.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 72, 11.3.2004, p. 1.

⁽³⁾ OJ C 56, 10.3.2009, p. 42.

4. VERIFICATION OF INFORMATION RECEIVED

- (10) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the continuation or likelihood of recurrence of dumping and injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

4.1. EXPORTING PRODUCERS IN CHINA:

- Golden Time Enterprises (Shenzhen) Co., Ltd, Shenzhen,
- Jintian Enterprises (Nanjing) Co., Ltd, Nanjing,
- and the related company Rainbow Rich Industrial Ltd (Hong Kong).

4.2. EXPORTING PRODUCERS IN INDONESIA:

- PT Golden Sari (Chemical Industry), Bandar Lampung,
- PT Tunggak Waru Semi, Solo.

4.3. UNION INDUSTRY PRODUCER

- Productos Aditivos S.A., Spain.

4.4. UNRELATED IMPORTER/TRADER

- Beneo Palatinit GmbH, Germany.

4.5. USER

- Schweppes International Ltd, the Netherlands.

5. DISCLOSURE

- (11) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of anti-dumping duties on imports of sodium cyclamate originating from China and Indonesia.
- (12) In accordance with the provisions of the basic Regulation, parties were granted a period in which they could make representation subsequent to this disclosure.
- (13) The oral and written comments submitted by the parties were considered and, when appropriate, the definitive findings have been modified accordingly.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. PRODUCT CONCERNED

- (14) The product concerned by this review is the same as the one in the original investigation, i.e. sodium cyclamate ('SC') originating in China and Indonesia ('the product

concerned'), currently falling within CN code ex 2929 90 00.

- (15) As established in the original investigation and confirmed in the current review, SC is a commodity product used as a food additive, permitted in the European Union and in many other countries as a sweetener for low-calorie and dietetic food and beverages. It is widely used as an additive by the food industry, as well as by the producers of low-calorie and dietetic table-top sweeteners. Small volumes are also used by the pharmaceutical industry.

2. LIKE PRODUCT

- (16) As in the original investigation, it was shown that the product concerned produced in China and Indonesia and sold to the Union is identical in terms of physical and chemical characteristics and uses to the product produced and sold by the applicant on the Union market, or to the one produced and sold on the domestic market in Indonesia, which also served as an analogue country for the purpose of establishing the normal value with respect to China.

- (17) Consequently, all those products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

1. PRELIMINARY REMARKS

- (18) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the measures would be likely to lead to a continuation or recurrence of dumping. It is recalled that in the context of investigations under that Article, market economy treatment ('MET') is not reconsidered.

- (19) In accordance with Article 11(9) of the basic Regulation, the same general methodology was used as in the original investigation, provided that circumstances had not changed. In order to establish the likelihood of continuation or recurrence of dumping, in accordance with standard practice, a sampling of transactions was carried out by taking data from four months, each being the last of one quarter, of the RIP. The outcome was verified by also analysing a number of other transactions. No operator contested this approach.

- (20) Eurostat data showed that during the RIP, between 3 000 and 5 000 tonnes of product concerned were imported into the Union. Among them, more than 90 % came from China and the rest from Indonesia. Practically no imports were registered from other countries.

2. DUMPING OF IMPORTS DURING THE INVESTIGATION PERIOD

2.1. CHINA

2.1.1. *Analogue country*

- (21) Except for companies that were granted MET in the original investigation, the normal value for China was established in accordance with Article 2(7)(a) of the basic Regulation.
- (22) In the previous investigation, Indonesia was used as an appropriate market economy country for the purpose of establishing normal value in respect of China.
- (23) This choice has been proposed by the Commission in the notice of initiation, and no interested party has opposed this choice within the time limits.
- (24) Prices in Indonesia have been considered a reasonable surrogate for prices in China because Indonesia has a competitive domestic market, with increasing imports from China and where at least six producers operate. In addition, it appears that the product under investigation is produced only in the Union, China and Indonesia. No evidence to the contrary has been presented in the current investigation.
- (25) Therefore, Indonesia has been used as an analogue market economy country for the purpose of this review.

2.1.2. *Cooperating Chinese exporting producers*

2.1.2.1. *Preliminary remarks*

- (26) As set out in recital 8, two producers belonging to the same Hong Kong-based group, 'Rainbow Rich Industries', cooperated in this review. They represent more than half of the exports to the Union during the RIP. Not taking into account the production and sales volumes of the companies not subject to the proceedings, the cooperating producers represented more than three-quarters of total Chinese production and almost half of its capacity. The representativeness in terms of exports to the Union was more than 80 %. Given this level of cooperation, detailed information obtained from the cooperating exporters was used as a source for the assessment of the likelihood of continuation or recurrence of injurious dumping from China.
- (27) One of the cooperators, Golden Time Enterprises (Shenzhen), exported significant quantities to the Union during the RIP, while its sister company, Jintian Enterprises (Nanjing), did not export to the EU since the imposition of the measures. The data gathered during

the on-the-spot verification visit of the company that did not export, Jintian Enterprises (Nanjing), did however allow for a more detailed insight into the Chinese domestic market, where the company holds a significant part of the market share and of the installed capacity.

- (28) During the investigation, one Chinese company alleged that regular meetings were held between major domestic producers to fix a reference price for the Chinese domestic market. Given the dominant position of those producers, this arrangement appears to successfully keep Chinese domestic prices at a relatively high level.

2.1.2.2. *Normal value*

- (29) The normal value for Golden Time Enterprises (Shenzhen) was calculated as the weighted average price of all domestic sales made during the RIP, paid or payable by independent customers, of the type in question.

2.1.2.3. *Export price*

- (30) The export price to the Union of Golden Time Enterprises (Shenzhen) was the duly adjusted price actually paid or payable for the product when sold for export to the EU.

2.1.2.4. *Price comparison*

- (31) The weighted average normal value was compared with the weighted average export price for each type of product concerned, on an ex-works basis and at the same level of trade. In accordance with Article 2(10) of the basic Regulation, and for the purpose of ensuring a fair comparison, differences in factors which were claimed and demonstrated to affect price and price comparability were taken into account. Adjustments were made for ocean and domestic freight, insurance, credit, handling and packaging costs.

2.1.2.5. *Dumping margin*

- (32) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established per product type on the basis of a comparison of the weighted average normal value with the weighted average export prices at the same level of trade. This comparison showed the existence of dumping during the RIP at a significantly higher level than in the original investigation. The weighted average dumping margin expressed as a percentage of the CIF value at the Union frontier was over 30 % for Golden Time Enterprises.

2.1.3. *Other Chinese exporting producers*

2.1.3.1. **Preliminary remarks**

- (33) The residual imports from China accounted for less than 5 % of the consumption in the Union.

- (34) The Commission based its conclusions about the remaining Chinese exporting producers on the data collected from the investigation and on official Eurostat statistics.

2.1.3.2. **Normal value**

- (35) Normal value for non-cooperating Chinese exporters was established as the weighted average domestic sales prices of the cooperating Indonesian producers to independent customers.

2.1.3.3. **Export price**

- (36) The export price for non-cooperating Chinese exporters was determined on the basis of facts available in accordance with Article 18 of the basic Regulation. In the absence of other more reliable information, this was done by reference to the average CIF Union border import price obtained from the Eurostat import statistics during the RIP.

2.1.3.4. **Price comparison**

- (37) The weighted average export price found for the remaining Chinese exporters was compared with the weighted average normal value of the verified Indonesian producers, on an ex-works basis and at the same level of trade.

- (38) In order to ensure a fair comparison between normal value and export price, due allowance in the form of adjustments was made for differences affecting the price and price comparability in accordance with Article 2(10) of the basic Regulation. In this respect, adjustments were made for ocean and domestic freight, insurance, handling and packaging costs. In the absence of more reliable information, the adjustments were based on verified costs of the Chinese cooperating exporter.

2.1.3.5. **Dumping margin**

- (39) The dumping margin was calculated as the amount by which the normal value, as calculated in recital 35, exceeded the export price, as established in recital 36. The results so obtained point to a clear continuation of dumping practices over the period of validity of the measures, with a dumping margin of over 5 %.

2.1.4. *Conclusions on dumping from China*

- (40) In view of the above, it is concluded that dumping continued from China during the period of application of the measures.

2.2. INDONESIA

2.2.1. **Preliminary remarks**

- (41) As set out in recital 8, two producers cooperated in this review, PT Golden Sari and PT Tunggak Waru Semi. Their representativeness in terms of exports to the Union was between 40 % and 60 % during RIP ⁽¹⁾.

- (42) The data collected by the Commission revealed that there are at least four more producers of the product concerned in Indonesia. According to those data, the cooperating producers accounted for circa one-third of total Indonesian production and capacity. Therefore, cooperation from Indonesia in this review has been low.

- (43) In view of the above, and according to Article 18 of the Basic Regulation, information on domestic prices, export prices to other countries, production and capacity in Indonesia for the non-cooperating Indonesian exporting producers has been based on best facts available, including the complaint and publicly available information. The relevant Indonesian authorities were notified of the application of Article 18 and the reasons thereof. No comments were submitted by the Indonesian authorities in this respect.

- (44) Among the two cooperators, only one, PT Golden Sari, exported to the Union during the RIP. While a dumping margin could not be established for PT Tunggak Waru Semi, since this company did not export to the Union in the RIP, its data was nevertheless used to obtain information, *inter alia*, on production, capacities and exports to third markets allowing for a more detailed insight into the Indonesian domestic and export markets.

2.2.2. **Cooperating Indonesian exporting producers**

2.2.2.1. **Normal value**

- (45) The normal value was calculated for PT Golden Sari as the weighted average price of all domestic sales made during the RIP, paid or payable by independent customers, of the type in question.

⁽¹⁾ Since only one Indonesian cooperator exported to the Union during the RIP, this figure is expressed as a range, for reasons of confidentiality.

2.2.2.2. Export price

- (46) The export price for PT Golden Sari was established on the basis of export prices actually paid or payable during the RIP to independent customers in the Union.

2.2.2.3. Price comparison

- (47) The weighted average normal value was compared with the weighted average export price into the Union of the product concerned, on an ex-works basis and at the same level of trade.
- (48) In order to ensure a fair comparison between normal value and export price, due allowance in the form of adjustments was made for differences affecting the price and price comparability in accordance with Article 2(10) of the basic Regulation. In this respect, adjustments were made for international freight, insurance, domestic freight, packaging and credit costs.

2.2.2.4. Dumping margin

- (49) The result of the comparison of normal value and export price showed that no dumping had taken place in the RIP from the company PT Golden Sari.

2.2.3. Other Indonesian exporting producers

2.2.3.1. Preliminary remarks

- (50) As mentioned in recital 43, due to the low level of cooperation for Indonesia, the dumping margin of non-cooperating exporters was determined in accordance with Article 18 of the basic Regulation, i.e. on the basis of facts available.

2.2.3.2. Normal value

- (51) The normal value was calculated as the weighted average normal value which has been calculated for the two cooperating producers.

2.2.3.3. Export price

- (52) In the absence of other more reliable information, the export price for non-cooperating Indonesian exporters was determined on the basis of the average CIF Union border import price obtained from the Eurostat import statistics during the RIP.

2.2.3.4. Price comparison

- (53) The weighted average export price into the Union for Indonesia thus obtained, was compared at ex-works level to the weighted average normal value established for the cooperating Indonesian producers.

- (54) In order to ensure a fair comparison between normal value and export price, due allowance in the form of adjustments was made for differences affecting the price and price comparability in accordance with Article 2(10) of the basic Regulation. In this respect, adjustments were made for international freight, insurance, domestic freight, handling, packaging and credit costs.

2.2.3.5. Dumping margin

- (55) The comparison of normal value and export price, as established above, showed the existence of dumping. The dumping margin found, as a percentage of the CIF Union-frontier import price, was close to 30 %.

2.2.4. Conclusions on dumping from Indonesia

- (56) In view of the above, it is concluded that dumping continued for a significant part of Indonesian producers during the period of application of the measures.

3. DEVELOPMENT OF IMPORTS SHOULD MEASURES BE REPEALED

- (57) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping would be likely to recur upon a possible expiry of the measures in force against China and Indonesia.

- (58) In order to establish whether dumping would be likely to recur should the measures be repealed, the Commission examined the available information on the circumstances of the exporters and market conditions. The analysis was primarily based on information provided in the questionnaire replies of the cooperating producers and verified during the on-the-spot verification visits. Other sources of information have also been used, such as Eurostat import statistics and official export and market statistics from the countries concerned.

3.1. CHINA

3.1.1. Preliminary remarks

- (59) As set out in recital 26, the cooperating producers represented more than three quarters of Chinese production during the RIP. Since the level of cooperation is high, it was determined that reliable information on exports of the product concerned to the Union during the RIP could be gathered directly from the exporting producer. More generally, data concerning the Chinese domestic market has been gathered from both verified producers.

- (60) It is recalled that the investigation showed that dumping from the Chinese companies concerned by this review has continued at a level which is considerably higher than that established in the original investigation.

3.1.2. *Unused capacity and stocks*

- (61) According to the data collected by the Commission during the investigation, the freely available production capacity of the companies concerned by this review in China is many times the size of the Union market. The investigation has shown that domestic consumption in China is not likely to absorb to any significant extent this extra capacity.
- (62) One Chinese producer argued that it had the intention to considerably reduce its production capacity after the RIP. However, no tangible evidence in this regard was provided. Even if this could theoretically lead to a decrease in Chinese capacity, it would nevertheless create an incentive for the rest of Chinese producers to increase the utilisation of their freely available capacity in order to fill the gap that would arise in China's exports.
- (63) Furthermore, the ability of other third country markets to absorb significant additional volumes of Chinese imports is limited. To start with, several large countries do not import the product concerned for regulatory reasons (inter alia, the United States, India, Japan, Mexico, South Korea and the entire Middle East). In addition, according to information gathered during the investigation, the remaining sizeable markets for SC (South America, South Africa and Asia) are not likely to grow significantly in the coming years. Therefore, the Union market would remain a key outlet for the product, attractive not only because of its size, but also due to the existence of well known, well established distribution channels for importing the product.
- (64) It was finally considered whether the excess capacity could be channelled into the manufacturing of other products within the companies involved. This would not, however, be likely as the verified producers do not manufacture any other product in significant quantities and there is no evidence that other Chinese producers of SC could easily switch to other products.
- (65) The foregoing point to a likely continuation of large export volumes from China to the Union, should the measures be repealed.

3.1.3. *Relationship between prices in the Union and prices in the Chinese domestic market*

- (66) The Commission found that the high volumes of imports from China were made at prices in the Union that were lower than the prices in the Chinese domestic market. The sale prices of those imports, given their level and market share of the Chinese dumped imports, must be considered as the reference price in the Union: other Chinese exporters wishing to enter the market in significant quantities would in all likelihood align themselves to these low prices, thus engaging in dumping.

3.1.4. *Relationship between export prices to third countries and prices in the Chinese domestic market*

- (67) The Commission compared verified Chinese export prices to third countries with verified Chinese domestic prices, to further examine the price behaviour of Chinese exporters, should the measures be terminated.
- (68) It was found that export prices to third countries were consistently lower than the domestic prices and in line with export prices to the EU, underlining a pattern of dumping behaviour which appears to be structural in this sector in China.

3.1.5. *Relationship between export prices to third countries and the price level in the Union*

- (69) The Commission compared the Chinese export prices to third countries with prices prevailing in the Union, so as to establish whether there would be an incentive to shift exports to the Union should the measures be terminated.
- (70) Chinese export prices to third countries were generally in line with the price level in the Union. This confirms that Chinese exporters are not likely to shift exports away from the EU to other markets.

3.1.6. *Conclusions on China*

- (71) The assessment of the abovementioned factors showed that the exporters concerned by the review have continued to export very significant volumes of the product concerned to the Union, at dumped prices. Chinese exports to other third countries are also made at dumped prices, underlining a structural pattern of dumping behaviour. Chinese domestic prices are high and there are no indications that they will decrease in the foreseeable future. Given the large freely available capacity of Chinese exporters, the lack of other sizeable outlets for such capacity, and the attractiveness of the EU market, there is therefore an incentive for Chinese exporting producers to direct even larger volumes at dumped prices to the Union market, should the measures be repealed.
- (72) Having considered the data and information above, it is concluded that dumping from China is likely to continue or recur if the measures were allowed to lapse.

3.2. INDONESIA

3.2.1. *Preliminary remarks*

- (73) As explained in recital 42, the cooperating producers represented a minority of the Indonesian production and capacity and, therefore, Article 18 has been applied.

- (74) It is also recalled that the investigation concluded that dumping from Indonesia continued in the RIP for the non-cooperating producers.

3.2.2. *Unused capacity and stocks*

- (75) During the review, it was established that the total freely available capacity in Indonesia is more than three fourths of the size of the Union market. Even if the cooperating exporter were to be excluded, the remaining free capacity would still account for almost half of the Union market. Official Indonesian statistics show that Indonesian producers appear to be losing market shares to the aggressive pricing policy of Chinese competitors, both in the domestic and international market. It is, therefore, likely that Indonesia's freely available capacity will grow even further in the near future.

- (76) It was examined whether the total freely available capacity in Indonesia could be absorbed by sales to third countries, but as concluded in recital 63, third countries' markets are not foreseen to significantly absorb the excess capacity at hand. It was also examined whether the excess capacity could be absorbed by sales in the domestic market. However, as stated above, according to Indonesian official data, the market share of Indonesian producers in the domestic market is shrinking under the pressure of Chinese imports. Finally, the possibility of a switch of production to other similar products was considered; for the same reason as that set out in recital 64, it is not likely that excess capacity could be utilised in such a way.

- (77) In conclusion, the large (and increasing) available capacity in Indonesia would, to a significant extent, be directed towards the Union should measures be repealed.

3.2.3. *Relationship between prices in the Union and prices in the Indonesian domestic market*

- (78) The prices in the Indonesian domestic market are higher than the prices in the Union market, notwithstanding the increasing pressure exerted by Chinese exports in the Indonesian market. Given the low price levels of Chinese imports into the Union for such a rather homogeneous product, those prices would be the reference price to which Indonesian exporters would in all likelihood align themselves, thus engaging in dumping, should the measures lapse. This consideration is applicable to both cooperating and non-cooperating exporters.

- (79) If measures were to lapse only for Indonesia and not for China, this would render the Union market even more attractive for Indonesian producers from a price

perspective. Indeed, without anti-dumping duties, they would be able to increase their prices to take advantage of the anti-dumping duty still payable by Chinese exporters. It should be added that under the similar scenario as regards price levels and price differentials of Chinese and Indonesian exporters witnessed in the original investigation, the latter exported significant volumes to the EU.

- (80) Finally, it should also be noted that Indonesian exports to the EU have consistently decreased after the imposition of the measures which would reinforce the conclusion that Indonesian exporters are not able or willing to sell significant quantities in the EU market at non-dumped prices.

3.2.4. *Relationship between export prices to third countries and prices in the Indonesian domestic market*

- (81) As regards the cooperating exporting producers, their verified export prices to third countries have been found to be higher than Indonesian domestic prices.

- (82) As for non-cooperating exporters, it was not possible to obtain individual data during the investigation. Available official Indonesian statistics on average export prices of all Indonesian exports appear to be inaccurate in absolute terms, overstating export prices by very significant amounts. Nonetheless, from the same statistics it can be inferred that export prices to third countries appear to be lower than export prices to the Union. This would indicate that, for at least a significant part of Indonesian exports to third countries, these would also be dumped. In any event, Indonesian export statistics point to a sharp decrease of exported volumes, underlining that, at the current price levels, Indonesian exporters are suffering from Chinese competition.

3.2.5. *Relationship between export prices to third countries and prices in the Union*

- (83) For the cooperating producer, export prices to third countries were found to be generally higher than price levels in the Union. However, regarding the rest of Indonesian producers, the available official Indonesian statistics suggest an opposed picture. This indicates that for a significant part of Indonesian exporters, dumping would exist also when exporting to third countries.

- (84) This price differential between export prices to the Union and export prices to the rest of the world underlines the Indonesian exporters' incentive to divert exports to the Union. This conclusion is reinforced were measures on imports originating in China allowed to lapse.

3.2.6. *Conclusions on Indonesia*

(85) The assessment of the above factors showed that Indonesian exports have to a significant extent been made at dumped prices in the Union and in third country markets, underlining a structural pattern of dumping behaviour. Given the large freely available capacity of Indonesian exporters, the lack of other sizeable outlets for such capacity, and the attractiveness of the EU market, there is therefore an incentive for Indonesian exporting producers to direct large volumes at dumped prices to the Union market, should measures be repealed.

(86) Having considered the data and information above, it is concluded that dumping from Indonesia is likely to continue or recur if the measures were allowed to lapse.

4. COMMENTS FOLLOWING DISCLOSURE

(87) The Indonesian authorities did not provide any reaction within the specified time limit to the notification that Article 18 may be applied to the non-cooperating producers. However, following disclosure, the Indonesian authorities as well as one of the Indonesian cooperating producers claimed that the two cooperating Indonesian producers represent a considerable segment of the Indonesian industry. The parties claimed that as a result, the degree of cooperation of Indonesia should be considered as being significant and Article 18 should not be applied. Furthermore, the abovementioned parties have claimed that since several Indonesian producers did not export to the Union during RIP, they were not in a position to cooperate. Finally, it was claimed that, since one of the cooperating producers represents an extremely large part of Indonesian exports, those cooperating producers should be considered as being representative thereof and the fact that dumping was not found for this company should lead to the lapse of measures for Indonesia.

(88) It should be clarified that Article 18 has *not* been applied to the cooperating producers, whose data have been fully taken into consideration during the investigation. As to the application of Article 18 to the rest of the Indonesian producers, it follows that, in the absence of information from these parties, the Commission services have no choice but to rely on the best facts available. It should be recalled that in order to assess the likelihood of continuation and/or recurrence of dumping in expiry reviews, the Commission services have also to assess elements concerning the state of the totality of the exporting country's industry, such as domestic capacity, production and prices, and exports to third countries.

(89) As the Indonesian producing companies which did not cooperate represent a large part of the Indonesian

industry in terms of exports to the Union as well as in terms of production and exports to third countries, the Commission confirms the application of Article 18 with reference to the non-cooperating Indonesian producers as set out in recital 43.

(90) As for the request to lift measures on Indonesian exports, it should be noted that the Indonesian authorities did not provide data that could change the Commission's conclusion on the representativeness of the cooperating exporter, which corresponds to between 40 % and 60 % of the total Indonesian exports during RIP, as set out in recital 41. Therefore, the cooperating exporter found not to be dumping could not be considered as being representative of the entire Indonesian exports. The rest of Indonesian exports have been made at dumped prices, as set out in recital 55. Therefore, the conclusion that dumping continued from that part of Indonesian exports is confirmed. Furthermore, the lack of continuation of dumping is not, per se, a sufficient reason to discontinue anti-dumping measures, if the likelihood of recurrence is established, as it is the case in this expiry review. To conclude, the request to discontinue measures on the basis of the lack of dumping from the cooperating Indonesian exporter could not be accepted.

(91) The Indonesian authorities and one Indonesian cooperating producer have also asked that the figures of total Indonesian exports to the Union be fully disclosed. It is however recalled that the indexation of those data (see note to recital 41) was necessary to protect the Indonesian exporting producer from disclosure of business sensitive data. The small size of the market and the limited number of interested parties justify the indexation of those figures. In sum, there is good cause to maintain confidentiality and the request to disclose the figures of total Indonesian exports to the Union can therefore not be accepted.

5. CONCLUSION ON THE LIKELIHOOD OF A CONTINUATION AND/OR RECURRENCE OF DUMPING

(92) On the basis of the above, it is concluded that dumping from both countries concerned by this review is likely to continue, should measures be repealed.

D. SITUATION ON THE UNION MARKET

1. DEFINITION OF THE UNION INDUSTRY

(93) SC is manufactured in the Union only by the applicant producer, Productos Aditivos S.A. This company was therefore deemed to constitute the Union industry within the meaning of Article 4(1) of the basic Regulation.

2. UNION CONSUMPTION

- (94) Data on Union consumption was based on the cumulated volumes of imports of the product concerned into the Union based on Eurostat statistics and on the total verified sales of the Union industry on the Union market. Taking into account that these data are derived from two sources and that sales by the applicant should be kept confidential, the development of consumption is reported below in indexes.
- (95) Union consumption of SC ranged between 5 000 and 7 000 tonnes during the period considered. It increased by 6 % between 2005 and 2006 and by 15 % between 2006 and 2007. It dropped by 18 % between 2007 and the RIP.

Table 1

Union consumption

	2005	2006	2007	2008 (RIP)
<i>Index</i>	100	106	122	103

3. IMPORTS FROM THE COUNTRIES CONCERNED

3.1. CUMULATION

- (96) The Commission considered whether the effects of dumped imports from the countries concerned should be assessed cumulatively, on the basis of the criteria set out in Article 3(4) of the basic Regulation. That Article provides that the effects of imports from two or more countries simultaneously subject to anti-dumping investigations are to be assessed cumulatively only if it is determined that: (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) of the basic Regulation and that the volume of imports of each country is not negligible; and (b) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Union product.
- (97) In this respect, it was firstly found that the dumping margins established for each of the countries concerned were more than *de minimis*. In addition, the volume of the dumped imports from each of those countries was not negligible in the sense of Article 5(7) of the basic Regulation. Indeed, the import volume represented for China and Indonesia around 50 % of the Union consumption during the RIP. In calculating the import volume, non-dumped imports have been excluded.
- (98) The investigation further showed that the conditions of competition both between the dumped imports and

between the dumped imports and the like Union product were similar. It was found that, irrespective of their origin, SC produced/sold by the countries concerned and the one produced/sold by the Union industry compete against each other since they are alike in terms of their basic characteristics, largely interchangeable from the user's point of view and distributed via the same distribution channels. The prices relating to imports from China subject to measures and dumped imports from Indonesia were also in the same range of magnitude. In addition, when comparing the prices at the same level of trade, these prices were found to undercut the Union industry's prices.

- (99) In the light of the above, it was considered that all the criteria set out in Article 3(4) of the basic Regulation were met regarding imports from China subject to measures and dumped imports from Indonesia and that the effect of these imports should be assessed cumulatively.

3.2. VOLUME AND MARKET SHARE OF DUMPED IMPORTS

- (100) The evolution of dumped imports from China and Indonesia and their market shares during the period considered was as follows:

Table 2

Total dumped imports	2005	2006	2007	2008 (RIP)
<i>Index</i>	100	109	198	195

Table 3

Market share of dumped imports	2005	2006	2007	2008 (RIP)
<i>Index</i>	100	103	161	189

- (101) Volumes of dumped imports as well as market share of dumped imports have nearly doubled during the period considered.

3.3. PRICE EVOLUTION AND PRICE BEHAVIOUR OF THE IMPORTS OF THE PRODUCT CONCERNED

3.3.1. Evolution of prices

- (102) The average price of dumped imports from the countries concerned developed as follows over the period under consideration:

Table 4

Average prices of dumped imports	2005	2006	2007	2008 (RIP)
Index	100	103	104	99

- (103) Table 4 was sourced from the available statistical data, including Eurostat. The general trend of the import prices into the Union shows an increase until 2007 and then a decrease in the RIP below the 2005 level.

3.3.2. Price undercutting

- (104) For the determination of price undercutting, the Commission based its analysis on the information submitted in the course of the investigation by the cooperating exporting producer in China. For other companies from both China and Indonesia that did not cooperate in the case, price undercutting was established by reference to Eurostat data.

- (105) The approach to calculate the price undercutting follows that of the original investigation. The import prices, including the anti-dumping duties, of the exporting producer were compared with the Union industry prices, on the basis of weighted averages for the same product qualities during the RIP. The Union industry prices were adjusted to an ex-works level and compared to CIF Union border import prices, adding anti-dumping and customs duties. This price comparison was made at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts.

Table 5

Price undercutting	2008 (RIP)
China:	
— Golden Time	21,6 %
— other companies	3,2 %
Indonesia:	
— other companies	18,7 %

4. IMPORTS FROM OTHER COUNTRIES

Imports from other third countries were negligible (less than 50 tonnes yearly) during the period considered and therefore could not have had any impact on the situation of the Union industry.

5. ECONOMIC SITUATION OF THE UNION INDUSTRY

- (106) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors

and indices having a bearing on the state of the Union industry from 2005 to the RIP.

- (107) In order to respect confidential business information, it has been necessary to present information concerning the Union industry in indexed form.

5.1. PRODUCTION, PRODUCTION CAPACITY AND CAPACITY UTILISATION

- (108) The production of the Union industry decreased by 13 % from 2005 to the RIP. As production capacity remained unchanged during the same period, the capacity utilisation decreased by 10 % in line with the development in production.

Table 6

In indexes	2005	2006	2007	2008 (RIP)
Production capacity	100	100	100	100
Production volume	100	106	88	87
Capacity utilisation	100	106	88	87

5.2. SALES IN THE UNION

- (109) The data in table 7 indicates a clear decrease in sales volumes of the Union industry. This situation is exacerbated by the fact that the overall consumption, as shown in Table 1, increased by 3 % over the same period. The market share of the Union industry dropped significantly between 2005 and the RIP. This is in contrast to the continuously increasing market shares (see recital 100) of cumulated dumped imports from China and Indonesia throughout the period considered. The Union industry did increase its unit selling prices against a background of falling volumes. On balance, despite the increase in unit prices, the Union industry still generated losses on its SC sales in the RIP.

Table 7

In indexes	2005	2006	2007	2008 (RIP)
Volume of sales	100	93	81	72
Market share	100	88	66	70
Unit selling prices	100	100	108	123

5.3. STOCKS

- (110) The stock level of the Union producer fluctuated significantly between 2005 and the RIP, dropping nearly by half over the period considered.

Table 8

Index	2005	2006	2007	2008 (RIP)
Stock (tonnes)	100	113	29	53

5.4. PROFITABILITY

- (111) Despite an overall slight improvement, the Union industry's profitability remained consistently negative throughout the period considered.

5.5. EMPLOYMENT, PRODUCTIVITY AND WAGES

- (112) Employment of the Union industry decreased by 19 % during the period under consideration. The productivity per employee (established on the basis of the number of tonnes produced divided by the number of employees) increased. The average employment cost per employee increased by 5 % over the period considered.

Table 9

In indexes	2005	2006	2007	2008 (RIP)
Employment	100	88	91	81
Employment cost per employee	100	99	81	105
Productivity (per employee)	100	121	97	107

5.6. INVESTMENTS, RETURN ON INVESTMENT

- (113) During the period considered, investments declined by almost half, mirroring the overall negative state of the Union producer. The level of the return on investment expressed as the relation between the net profit of the sole Union producer and the gross book value of its fixed assets mirrors the profitability trend. It sharply declined by almost 80 % over the period considered.

Table 10

In indexes	2005	2006	2007	2008 (RIP)
Investment	100	44	7	53
Return on investment	100	54	20	21

5.7. CASH FLOW AND ABILITY TO RAISE CAPITAL

- (114) The Union industry's cash flow could only be assessed in relation to the total activity of the Union industry. It

remained slightly positive in 2005 but deteriorated in the subsequent period and became negative in the rest of the period considered. It also became more difficult for the Union industry to raise capital because of the losses suffered during the period considered.

5.8. MAGNITUDE OF DUMPING

- (115) Dumping from both countries concerned continued during the RIP, with the exception of the cooperating Indonesian exporting producer. Given the total volume exported and the prices of the dumped imports from the countries concerned, this impact cannot be considered negligible.

5.9. RECOVERY FROM PAST DUMPING

- (116) Anti-dumping measures against imports of SC originating in China and Indonesia were imposed in March 2004. In this period only a partial recovery of the situation of the Union producers has been observed as detailed above.

5.10. CONCLUSION ON INJURY

- (117) The presence of low-priced imports from China and Indonesia significantly increased on the Union market. Some injury indicators for the Union industry show signs of recovery while others indicate a negative development.
- (118) Taking into account the overall worsening situation of the only Union producer as well as the magnitude of dumped imported volumes from China and Indonesia and the significant price undercutting found, it is considered that the Union industry has suffered material injury.

6. IMPACT OF DUMPED IMPORTS FROM THE COUNTRIES CONCERNED AND IMPACT OF OTHER FACTORS

6.1. IMPACT OF THE DUMPED IMPORTS FROM THE COUNTRIES CONCERNED

- (119) As set out in recital 100, the cumulated volume and market share of dumped imports from the countries concerned have almost doubled in the period considered. Significant price undercutting was also found for both countries concerned. Taking into account the clear coincidence in time between the deterioration of the situation of the Union industry and the significant increase of cumulated dumped imports from China and Indonesia, these imports have caused injury to the Union industry. Indeed, dumped imports from China and Indonesia have increased their penetration of the EU market and have taken over significant market shares previously held by the Union producer.

6.2. IMPACT OF OTHER FACTORS

- (120) The Commission analysed whether any other known factors than the dumped imports could have had a bearing on the continued injury suffered by the Union producer in order to ensure that possible injury caused by any such factors was not attributed to the dumped imports.

6.2.1. *Impact of non-dumped imports from China and Indonesia*

- (121) The volume of non-dumped imports from China and Indonesia continuously decreased in the period considered. Corresponding prices of these imports were consistently higher than those of the dumped imports. On these grounds, the non-dumped imports from China and Indonesia have not contributed to the injury suffered by the Union industry.

6.2.2. *Performance on export markets*

- (122) Export sales of the Union's producer outside the EU represented less than 25 % of its total sales. Contrary to sales in the Union, export sales profitability has improved over the period considered and therefore it could not have contributed to the injury suffered by the Union industry.

6.2.3. *Fluctuation of raw material prices*

- (123) Price fluctuations of raw materials of SC may have had some negative effect on the performance of the Union industry. This factor however is not sufficient to break the causal link between the injury suffered and the dumped imports. The latter should have been affected by raw materials price changes in similar proportion as the costs of the Union producer, since they are closely linked to oil and urea prices.

6.2.4. *Changes in consumption patterns*

- (124) Changes in consumption patterns with the emergence of new products on the market did not have a noticeable impact on consumption of SC. Indeed, it appears that there is no direct product substitution between SC and these new products.

6.3. CONCLUSION

- (125) On these grounds, it is concluded that dumped imports from China and Indonesia have caused material injury to the Union industry and that no other factor broke this causal link.

E. LIKELIHOOD OF CONTINUATION OF INJURY

1. IMPACT OF THE PROJECTED VOLUME AND PRICE EFFECTS ON THE STATE OF THE UNION INDUSTRY IN CASE OF REPEAL OF MEASURES

- (126) In accordance with Article 11(2) of the basic Regulation, imports from the countries currently being reviewed

were assessed in order to establish if there was a likelihood of continuation of injury.

- (127) With regard to the likely effect on the Union industry of the expiry of the measures in force, the following factors were considered in line with the elements summarised above in respect of the likelihood of continuation of dumping.

1.1. CHINA

- (128) As concluded in recital 40, exports from China made by the exporters concerned by this review continue to be made at dumped prices. Chinese exports to other third countries also appear to be dumped, indicating a structural pattern of dumping behaviour.

- (129) An analysis of available capacities in China has shown that the freely available production capacity of the companies concerned by the review in China is many times the size of the Union market (see recital 61). The ability of other third country markets to absorb significant additional volumes of Chinese imports is also limited (see recital 63). There is therefore an incentive for Chinese exporting producers to direct large export volumes at dumped prices to the Union market, should measures be repealed (see recital 65).

- (130) The significant levels of dumping and undercutting observed indicate that the export volumes to the Union mentioned above would be made at dumped prices which would lie significantly below the prices and costs of the Union producer.

- (131) The combined effect of such volumes and prices would as such be capable of leading to a deterioration of the Union industry's already precarious situation. Such a scenario would in all likelihood lead to further depressed prices and/or lower production and sales by the Union industry. The financial position of the Union industry would further deteriorate, leading to increased injury. Such developments are likely to put an end to the existence of the only Union producer.

1.2. INDONESIA

- (132) The investigation has shown that dumping from Indonesia has continued in the RIP. The investigation has also shown that the total freely available capacity in Indonesia is more than three fourths of the size of the Union market and is likely to grow even further in the near future (see recital 75). As there is no indication that other third markets or the domestic market could absorb this excess capacity, this could cause an increase of exports at a lower price to the Union, should measures be allowed to lapse.

- (133) As in the case of China, the significant level of dumping and undercutting observed indicates that the export volumes from Indonesia to the Union would be made at dumped prices which would lie significantly below the prices and costs of the Union producer. Similarly, the combined effect of such volumes and prices would as such be capable of leading to a further deterioration of the already precarious situation of Union producers and would probably put an end to the existence of the only Union producer. As in the case of China, Indonesian exports to other third countries also appear to be indicatively dumped as far as they are below the prices relating to exports to the European Union, showing also a structural pattern of dumping behaviour.

2. CONCLUSION ON THE LIKELIHOOD OF CONTINUATION OF INJURY

- (134) The Union industry has been suffering from the effects of the dumped imports for several years and is still currently in a precarious economic situation.
- (135) As established above, the investigation has shown that the injurious situation of the Union industry has continued in the RIP. The continuation of injury is, according to Article 11(2) of the basic Regulation, in itself a strong indicator that injury is likely to continue in the future which would suggest that the measures should be maintained.
- (136) The findings pertaining to imports show that imports of large volumes at dumped prices are likely to continue and that price pressure is likely to intensify the competition between dumped imports and the Union-produced SC. The investigation has not identified any factors that would break the strong link between the dumped imports and the injury the Union industry would suffer.
- (137) Should measures be terminated, the situation of the Union industry would deteriorate and the very existence of the only Union producer would be jeopardised.
- (138) Therefore, it is concluded that there is, due to dumped imports from China and Indonesia, a clear likelihood of continuation of injury to the Union industry.

F. UNION INTEREST

1. INTRODUCTION

- (139) Pursuant to Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various

interests involved, i.e. those of the applicant Union producer, of importers, of suppliers and of users.

2. INTEREST OF THE APPLICANT UNION PRODUCER

- (140) As far as the only Union producer is concerned, it should be noted that its loss-making situation has resulted from its difficulties to compete with low-priced dumped imports, which held a significant market share already at the beginning of the period considered and which have increased their market share considerably during that.
- (141) It is considered that the continuation of measures would benefit the Union producer which should then, at least, be able to increase volumes and, perhaps, its sales prices thereby generating the necessary return level which would enable it to continue to invest in its production facilities. By contrast, the discontinuation of the measures would halt recovery and lead to a continuation and even an exacerbation of the injury suffered by the Union producer. It would seriously threaten the viability of the Union producer and, as a consequence, it may even cease to exist, thus reducing supply and competition on the market.

3. INTEREST OF IMPORTERS

- (142) On initiation, a questionnaire was sent to twenty unrelated importers. Three replied that they were no longer active on the market of the product concerned. Two other importers replied to the questionnaire. The cooperating unrelated importers represented 7 % of total imports concerned.
- (143) The investigation found that having a diversity of SC suppliers is essential. Importers have to rely on both Asian and European sources of supply because of quality and food security reasons.

4. INTEREST OF USERS

- (144) On initiation, a questionnaire was sent to thirteen potential users but only two of them replied to the Commission.
- (145) The main users of the product concerned in the Union are in the food, beverage and pharmaceutical industries. The demand for the product concerned is therefore dependent upon the situation of these industries.

- (146) The users that came forward showed robust profit margins on downstream products using SC. Indeed, the effect of the anti-dumping duties on their total costs was so minimal (less than 1 %) that they were not disproportionately affected by the existing measures.

5. INTEREST OF SUPPLIERS

- (147) A questionnaire was sent to eight potential suppliers but none replied to the Commission. From information available, it appears that their SC business-related portfolio is rather negligible. In any event, further deterioration of the sole Union producer may have some negative, even though limited, knock-on effects on the sole producer's suppliers of raw materials. On these grounds it is not unreasonable to assume that the measures would also benefit the supplier industry as they would help to keep in place one of their customers.

6. CONCLUSION ON UNION INTEREST

- (148) Taking into account all of the above factors, it is concluded that there are no compelling reasons against the imposition of anti-dumping measures.

G. DEFINITIVE ANTI-DUMPING MEASURES

- (149) In view of the conclusions reached above, the measures in force applicable to imports of the product concerned originating in China and Indonesia should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of sodium cyclamate, currently falling within CN code ex 2929 90 00 (TARIC code 2929 90 00 10), originating in the People's Republic of China and Indonesia.

2. The rate of the definitive anti-dumping duty for the products described in paragraph 1 and produced by the companies below shall be as follows:

Country	Company	Rate of duty (EUR per kilogramme)	TARIC additional code
The People's Republic of China:	Fang Da Food Additive (Shen Zhen) Limited, Gong Le Industrial Estate, Xixian County, Bao An, Shenzhen, 518102, People's Republic of China	0	A471
	Fang Da Food Additive (Yang Quan) Limited, Da Lian Dong Lu, Economic and Technology Zone, Yangquan City, Shanxi 045000, People's Republic of China	0	A472
	Golden Time Enterprise (Shenzhen) Co. Ltd, Shanglilang, Cha Shan Industrial Area, Buji Town, Shenzhen City, Guangdong Province, People's Republic of China	0,11	A473
	All other companies	0,26	A999
Indonesia:	PT. Golden Sari (Chemical Industry), Mitra Bahari Blok D1-D2, Jalan Pakin No 1, Sunda Kelapa, Jakarta 14440, Indonesia.	0,24	A502
	All other companies	0,27	A999

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽¹⁾, the amount of anti-dumping duty, calculated on the basis of paragraph 2 of this Article, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

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

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

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

Done at Luxembourg, 3 June 2010.

For the Council
The President
A. PÉREZ RUBALCABA

COUNCIL REGULATION (EU) No 493/2010**of 7 June 2010****amending Regulation (EC) No 234/2004 concerning certain restrictive measures in respect of Liberia**

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 2010/129/CFSP of 1 March 2010 amending Common Position 2008/109/CFSP concerning restrictive measures imposed against Liberia ⁽¹⁾,

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

Whereas:

- (1) Council Common Position 2004/137/CFSP of 10 February 2004 concerning restrictive measures against Liberia ⁽²⁾ provided for the implementation of the measures set out in UN Security Council Resolution 1521 (2003), including a ban on technical assistance related to military activities. It also provided for a ban on financial assistance related to military activities. Pursuant to that Common Position, Council Regulation (EC) No 234/2004 ⁽³⁾ imposes a general ban on the provision of technical assistance, financing or financial assistance related to military activities, to any person, entity or body in, or for use in, Liberia.
- (2) On 12 February 2008, the Council adopted Common Position 2008/109/CFSP ⁽⁴⁾ which confirmed those measures, and consolidated them with other relevant measures into a single legal act.
- (3) On 17 December 2009, the UN Security Council adopted Resolution 1903 (2009) which amended the UN restrictive measures on arms and related materiel and the provision of assistance, advice and training related to military activities by confining the effect of those restrictive measures to non-governmental entities and individuals operating in the territory of Liberia. Pursuant to that Resolution, Common Position 2008/109/CFSP was amended by Decision 2010/129/CFSP.
- (4) Regulation (EC) No 234/2004 should be amended accordingly.

- (5) Any processing of personal data of natural persons under this Regulation should respect Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽⁵⁾ and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽⁶⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 234/2004 is hereby amended as follows:

1. Article 1 is replaced by the following:

'Article 1

For the purposes of this Regulation, the following definitions shall apply:

- (a) "technical assistance" means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services. Technical assistance includes verbal forms of assistance;
- (b) "Sanctions Committee" means the Committee established by paragraph 21 of UN Security Council Resolution 1521 (2003).;

2. Article 2 is replaced by the following:

'Article 2

It shall be prohibited:

- (a) to provide technical assistance related to military activities, including to the provision, manufacture, maintenance and use of arms and of related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly to any non-governmental person, entity or body in or for use in Liberia;

⁽¹⁾ OJ L 51, 2.3.2010, p. 23.

⁽²⁾ OJ L 40, 12.2.2004, p. 35.

⁽³⁾ OJ L 40, 12.2.2004, p. 1.

⁽⁴⁾ OJ L 38, 13.2.2008, p. 26.

⁽⁵⁾ OJ L 8, 12.1.2001, p. 1.

⁽⁶⁾ OJ L 281, 23.11.1995, p. 31.

- (b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance for any sale, supply, transfer or export of arms and related materiel, or for the provision of related technical assistance, directly or indirectly to any non-governmental person, entity or body in or for use in Liberia; or
- (c) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a) or (b).;

3. Article 3 is replaced by the following:

'Article 3

1. By way of derogation from Article 2, the competent authorities, as indicated in the websites listed in Annex I, in the Member State where the service provider is established, may authorise the provision of:

- (a) technical assistance intended solely for support of or use by the United Nations Mission in Liberia; or
- (b) technical assistance related to non-lethal equipment which is intended solely for humanitarian or protective use, provided that the Member State concerned has notified in advance the provision of such technical assistance to the Sanctions Committee. Such notifications shall contain all relevant information, including, where appropriate, the end-user, the proposed date of delivery and the itinerary of shipments.

2. Decisions on requests for authorisation shall be taken by competent authorities on a case-by-case basis, taking account of all relevant considerations including the criteria set out in the Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (*). Competent authorities shall require safeguards against misuse of such authorisations and shall, where appropriate, make provisions for the repatriation of the delivered arms and related materiel.

3. No authorisations shall be granted for activities that have already taken place.

(*) OJ L 335, 13.12.2008, p. 99.;

4. Article 4 is replaced by the following:

'Article 4

Natural and legal persons, entities and bodies that intend to provide any assistance related to military activities to the Government of Liberia, as specified in Article 1, shall inform in advance the competent authority, as indicated in the websites listed in Annex I, in the Member State where they are resident or located. Such information shall contain all relevant information, including, where appropriate, the end-user, the proposed date of delivery and the itinerary of shipments. The Member State concerned shall immediately upon receipt of the relevant information notify the Sanctions Committee thereof.'

Article 2

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

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

Done at Luxembourg, 7 June 2010.

For the Council
The President
C. CORBACHO

COMMISSION REGULATION (EU) No 494/2010**of 25 May 2010****amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff**

THE EUROPEAN COMMISSION,

reduction of the rate of duty to EUR 148/1 000 kg/net and to provide that that rate is to apply retroactively from 15 December 2009 until 31 December 2010.

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)(d) thereof,

(6) Annex I to Regulation (EEC) No 2658/87, as amended by Commission Regulation (EC) No 1031/2008⁽²⁾ and Commission Regulation (EC) No 948/2009⁽³⁾ should therefore be amended accordingly upon signature of the Agreement.

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

Whereas:

(1) On 15 December 2009 the European Union initialled the Geneva Agreement on Trade in Bananas between the European Union and Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Venezuela regarding the structure and operation of the Union's trading regime for bananas of CN code 0803 00 19 (hereinafter 'the Agreement'). The Agreement sets out the conditions for the final settlement of pending disputes and claims in the WTO regarding the bananas import regime in the Union.

HAS ADOPTED THIS REGULATION:

Article 1

In Annex I to Regulation (EEC) No 2658/87, as amended by Regulation (EC) No 1031/2008, in the row for CN code 0803 00 19 for 'Bananas, other than plantains, fresh', the entry in column 3 (Conventional rate of duty) is replaced by '148 €/1 000 kg/net'.

(2) In accordance with paragraph 3(a) of the Agreement, the Union is to gradually reduce its tariff duty on bananas from EUR 176/1 000 kg/net to EUR 114/1 000 kg/net.

Article 2

In Annex I to Regulation (EEC) No 2658/87, as amended by Regulation (EC) No 948/2009, in the row for CN code 0803 00 19 for 'Bananas, other than plantains, fresh' the entry in column 3 (Conventional rate of duty) is replaced by '148 €/1 000 kg/net'.

(3) Pending the entry into force of the Agreement, and in accordance with paragraph 8(b) of the Agreement, those tariff cuts are to be applied provisionally and retroactively, from the day of signature of the Agreement, provided that the other Parties to the Agreement comply with their respective obligations.

Article 3

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

(4) The Council adopted its Decision on the signature and provisional application of the Agreement on 10 May 2010.

Article 1 shall apply from 15 December 2009.

(5) It is therefore necessary to implement the first tariff cut provided for in the Agreement, which consists of a

Article 2 shall apply from 1 January 2010.

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

⁽²⁾ OJ L 291, 31.10.2008, p. 1.

⁽³⁾ OJ L 287, 31.10.2009, p. 1.

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

Done at Brussels, 25 May 2010.

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

COMMISSION REGULATION (EU) No 495/2010**of 7 June 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 8 June 2010.

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

Done at Brussels, 7 June 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	MA	44,4
	MK	61,5
	TN	92,7
	TR	78,2
	ZZ	69,2
0707 00 05	MA	37,3
	MK	33,9
	TR	123,5
	ZZ	64,9
0709 90 70	TR	106,2
	ZZ	106,2
0805 50 10	AR	88,8
	BR	112,1
	TR	96,8
	ZA	101,5
	ZZ	99,8
0808 10 80	AR	119,5
	BR	81,2
	CA	103,3
	CL	87,5
	CN	87,6
	IL	49,0
	NZ	115,5
	US	124,4
	UY	116,3
	ZA	85,2
	ZZ	97,0
0809 10 00	TN	380,0
	TR	190,9
	ZZ	285,5
0809 20 95	TR	499,6
	US	573,0
	ZZ	536,3

⁽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 496/2010**of 7 June 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 488/2010 ⁽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 8 June 2010.

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

Done at Brussels, 7 June 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 138, 4.6.2010, p. 7.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 8 June 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⁾	39,44	0,00
1701 11 90 ⁽¹⁾	39,44	3,07
1701 12 10 ⁽¹⁾	39,44	0,00
1701 12 90 ⁽¹⁾	39,44	2,78
1701 91 00 ⁽²⁾	39,00	5,77
1701 99 10 ⁽²⁾	39,00	2,64
1701 99 90 ⁽²⁾	39,00	2,64
1702 90 95 ⁽³⁾	0,39	0,29

⁽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.

DECISIONS

COUNCIL DECISION

of 3 June 2010

appointing one Polish member of the Committee of the Regions

(2010/310/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal of the Polish Government,

Whereas:

- (1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU and 2010/29/EU appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015 ⁽¹⁾.
- (2) A member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Jan KOZŁOWSKI, member of the Committee of the Regions,

HAS ADOPTED THIS DECISION:

Article 1

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

Mr Mieczysław STRUK, Marszałek Województwa Pomorskiego.

Article 2

This Decision shall take effect on the day of its adoption.

Done at Luxembourg, 3 June 2010.

For the Council

The President

A. PÉREZ RUBALCABA

⁽¹⁾ OJ L 348, 29.12.2009, p. 22 and OJ L 12, 19.1.2010, p. 11.

COUNCIL DECISION**of 3 June 2010****appointing six Italian members and four Italian alternate members of the Committee of the Regions**

(2010/311/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal of the Italian Government,

Whereas:

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

(2) Six members' seats on the Committee of the Regions have become vacant following the end of the term of office of Mr Agazio LOIERO, Mr Antonio BASSOLINO, Mr Massimo PINESCHI, Ms Mercedes BRESSO, Mr Claudio BURLANDO and Mr Claudio MARTINI. Three alternate members' seats have become vacant following the end of the term of office of Ms Maria Giuseppina MUZZARELLI, Mr Sante ZUFFADA and Ms Maria Rita LORENZETTI. An alternate member's seat has become vacant following the appointment of Mr Gianfranco VITAGLIANO as a member of the Committee of the Regions,

HAS ADOPTED THIS DECISION:

Article 1

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

(a) as members:

— Mr Giuseppe SCOPELLITI, Presidente Regione Calabria,

— Mr Gianfranco VITAGLIANO, Assessore Regione Molise,

— Ms Renata POLVERINI, Presidente Regione Lazio,

— Mr Roberto COTA, Presidente Regione Piemonte,

— Ms Mercedes BRESSO, Consigliere Regione Piemonte,

— Ms Catiuscia MARINI, Presidente Regione Umbria;

and

(b) as alternate members:

— Ms Simonetta SALIERA, Vice Presidente Regione Emilia Romagna,

— Mr Paolo Valentini PUCCITELLI, Consigliere Regione Lombardia,

— Mr Stefano CALDORO, Presidente Regione Campania,

— Mr Enrico ROSSI, Presidente Regione Toscana.

Article 2

This Decision shall take effect on the day of its adoption.

Done at Luxembourg, 3 June 2010.

*For the Council**The President*

A. PÉREZ RUBALCABA

⁽¹⁾ OJ L 348, 29.12.2009, p. 22 and OJ L 12, 19.1.2010, p. 11.

COUNCIL DECISION
of 3 June 2010
appointing three Danish alternate members of the Committee of the Regions
(2010/312/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Article 1

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

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

Having regard to the proposal of the Danish Government,

— Mr Lasse KRULL, Regionsrådsmedlem,

Whereas:

— Ms Bente LAURIDSEN, Regionsrådsmedlem,

— Mr Ole B. SØRENSEN, Regionsrådsmedlem.

Article 2

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

This Decision shall take effect on the day of its adoption.

Done at Luxembourg, 3 June 2010.

(2) Three alternate members' seats on the Committee of the Regions have become vacant following the end of the term of office of Mr Bent HANSEN, Mr Carl HOLST and Mr Bent LARSEN,

For the Council
The President
A. PÉREZ RUBALCABA

⁽¹⁾ OJ L 348, 29.12.2009, p. 22 and OJ L 12, 19.1.2010, p. 11.

COMMISSION DECISION

of 7 June 2010

authorising physical checks pursuant to Regulation (EC) No 669/2009 to be carried out at approved premises of feed and food business operators in Cyprus*(notified under document C(2010) 3525)***(Only the Greek text is authentic)****(Text with EEA relevance)**

(2010/313/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin ⁽¹⁾, and in particular Article 9(1) thereof,

Whereas:

- (1) Regulation (EC) No 669/2009 lays down rules concerning those controls, including the physical checks to be carried out at designated points of entry into the European Union. It also lays down minimum requirements for such points of entry and provides for a list of those points of entry to be made publicly available by the Member States on the Internet.
- (2) Article 9(1) of Regulation (EC) No 669/2009 foresees that the Commission, upon a request of a Member State, may authorise the competent authorities of certain designated points of entry, operating under specific geographical constraints, to carry out the physical checks at the premises of a feed or a food business operator, subject to certain conditions.
- (3) By letter dated 26 October 2009, Cyprus referred to the specific geographical situation of the designated points of entry of Larnaca Airport and Limassol Port, as well as to the small size of the island, and requested the Commission to authorise the competent authorities of those points of entry to carry out the physical checks pursuant to Regulation (EC) No 669/2009 at the premises of certain feed and food business operators.
- (4) By letter dated 9 February 2010, Cyprus provided the Commission with assurances to the effect that: only the premises of feed and food business operators fulfilling the minimum requirements for designated points of

entry laid down in Regulation (EC) No 669/2009 would be approved for the performance of the physical checks; the level of resources allocated to the competent authorities of Larnaca Airport and Limassol Port would be such that the control activities carried out at those designated points of entry would not be disrupted or adversely affected by the possibility that physical checks would be carried out away from their premises; and consignments selected for physical checks at the premises of a feed or a food business operators would remain under continuous control of the competent authorities of the concerned designated point of entry from the moment of their arrival at such point of entry and in such a way that they cannot be tampered with in any manner throughout all checks.

- (5) Therefore, taking into account the specific geographical constraints of the designated points of entry of Larnaca Airport and Limassol Port and the confirmation from Cyprus of the fulfilment of the conditions laid down in Article 9(1) of Regulation (EC) No 669/2009, it is appropriate to authorise that physical checks may be carried out at the premises of certain feed and food business operators approved by that Member State for such checks.
- (6) In order to ensure adequate publicity to the authorisation provided for in this Decision, it is appropriate that a list of the premises of feed and food business operators, approved for physical checks pursuant Regulation (EC) No 669/2009, is made publicly available on the Internet through the national link provided for in Article 5 of that Regulation,

HAS ADOPTED THIS DECISION:

Article 1

1. The competent authorities of the designated points of entry of Larnaca Airport and Limassol Port in Cyprus are hereby authorised, in accordance with Article 9(1) of Regulation (EC) No 669/2009, to carry out the physical checks provided for in Article 8(1)(b) of that Regulation on imports of feed and food of non-animal origin listed in Annex I thereto, at the premises of a feed or food business operator approved by Cyprus for such checks, provided that the conditions set out in points (a), (b) and (c) of Article 9(1) of that Regulation are met.

⁽¹⁾ OJ L 194, 25.7.2009, p. 11.

2. The list of feed and food business operators whose premises are approved by Cyprus, as referred to in paragraph 1 of this Article, shall be made publicly available on the Internet through the national link provided for in Article 5 of Regulation (EC) No 669/2009.

Article 2

This Decision is addressed to the Republic of Cyprus.

Done at Brussels, 7 June 2010.

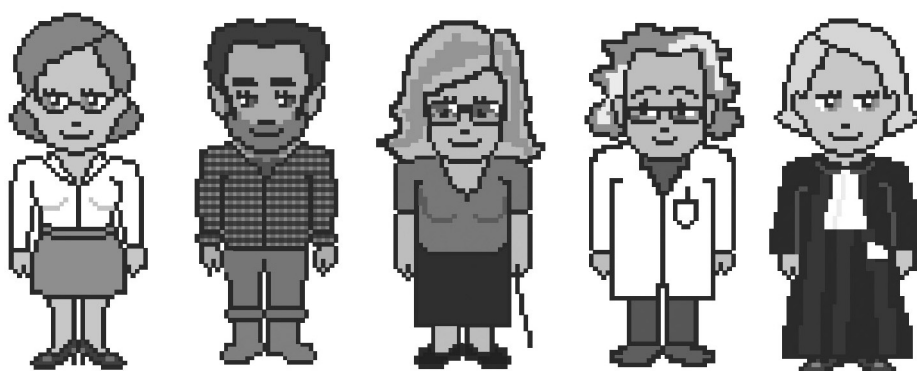
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