

Official Journal

of the European Union

L 254



English edition

Legislation

Volume 53

29 September 2010

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II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 855/2010

of 27 September 2010

amending Regulation (EC) No 1631/2005 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating, inter alia, 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 Article 9(4), and Article 11(3),(5) and (6) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) In October 2005, the Council, by Regulation (EC) No 1631/2005⁽²⁾ (the 'original Regulation'), imposed definitive anti-dumping measures on imports of trichloroisocyanuric acid ('TCCA') originating in the People's Republic of China ('PRC'). The duty rates ranged from 7,3 % to 42,6 %.

2. Request for a review

- (2) In 2009, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. The request, limited in scope to the examination of dumping, was lodged by a Chinese exporting producer Heze Huayi Chemical Co., Ltd ('Heze' or 'the applicant'). The rate of the definitive anti-dumping duty applicable to the applicant is 14,1 %.
- (3) In its request, the applicant claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting

nature. The applicant provided *prima facie* evidence that the continued imposition of the measure at its current level is no longer necessary to offset dumping.

- (4) In particular, the request was based on the claim that the TCCA unit cost of the applicant have significantly decreased since the original investigation as:

- the applicant produces the main raw material needed to produce the product under investigation; and,
- the applicant has increased its production capacity,

3. Initiation of a review

- (5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission, on 2 July 2009, initiated an investigation⁽³⁾ pursuant to Article 11(3) of the basic Regulation, limited in scope to the examination of dumping in respect of the applicant.

4. Product concerned and like product

- (6) The product concerned by the current review is the same as that described in the original Regulation, trichloroisocyanuric acid and preparations thereof, also referred to as 'symclosene' under the international non-proprietary name (INN), originating in the People's Republic of China ('the product concerned'), currently falling within CN codes ex 2933 69 80 and ex 3808 94 20.
- (7) The product produced and sold on the Chinese domestic market and that exported to the Union have the same basic physical, technical and chemical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 261, 7.10.2005, p. 1.

⁽³⁾ OJ C 150, 2.7.2009, p. 14 ('Notice of Initiation').

5. Parties concerned

- (8) The Commission officially advised the applicant, the Union industry, as well as the representatives of the government of the exporting country, of the initiation of the review.
- (9) 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.
- (10) In order to obtain the information deemed necessary for its investigation, the Commission sent a market economy treatment (MET) claim form and a questionnaire to the applicant and received replies within the deadlines set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping, and a verification visit was carried out at the premises of the applicant.

6. Investigation period

- (11) The investigation of dumping covered the period from 1 July 2008 to 30 June 2009 ('IP').

B. RESULTS OF THE INVESTIGATION

1. Market economy treatment ('MET')

- (12) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2 of the basic Regulation for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. These criteria are set out in summarised form below:
 - business decisions are made in response to market signals, without significant State interference, and costs reflect market values,
 - firms have one clear set of accounting records which are independently audited in line with international accounting standards (IAS) and applied for all purposes,
 - there are no significant distortions carried over from a former non-market economy system,
 - bankruptcy and property laws guarantee stability and legal certainty,
 - currency exchanges are carried out at market rate.
- (13) The investigation found that the applicant met all five MET criteria. It was found that during the IP, Heze made its business decisions without any State interference or distortions related to non-market economy conditions. Heze is subject to Chinese bankruptcy and property

laws without any derogation. The company has one set of independently audited accounting records and accounting system and its practice was found to be in line with internationally accepted general accounting principles and IAS. Costs and prices were found to reflect market values and exchange rate conversions were carried out at market rates.

- (14) Based on the above facts and considerations, the applicant could be granted MET.

2. Normal value

- (15) For the determination of normal value it was first established whether Heze's total volume of domestic sales of the like product was representative in comparison with its total volume of export sales to the Union. In accordance with Article 2(2) of the basic Regulation, domestic sales are considered representative when the total domestic sales volume is at least 5 % of the total volume of corresponding export sales to the Union. The Commission established that TCCA was sold domestically by the applicant in overall representative volumes.
- (16) Subsequently, those types of the like product sold on the domestic market by the applicant that were identical and directly comparable to the types sold for export to the Union, were identified.
- (17) For each type sold by Heze on the domestic market and found to be directly comparable with the type sold for export to the Union, it was established whether domestic sales were sold in representative volume for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type exported to the Union.
- (18) It was also examined whether the domestic sales of each type could be regarded as having been made in the ordinary course of trade, pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable sales to independent customers on the domestic market of each exported type of the product concerned during the IP.
- (19) Where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the unit cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.

- (20) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as the weighted average price of only the profitable domestic sales of the type in question made during the IP.
- (21) Wherever domestic prices of a particular product type sold by Heze could not be used in order to establish the normal value, another method had to be applied. In this regard, the Commission used constructed normal value. In accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types a reasonable amount for selling, general and administrative expenses ('SG&A') and a reasonable margin of profit. Pursuant to Article 2(6) of the basic Regulation, the amounts for SG&A and profit margin were based on the average SG&A and profit margin of Heze sales in the ordinary course of trade of the like product.
- (22) In line with the methodology used in the original investigation, the cost of manufacturing was calculated for two types of products. Taking into account the information provided by the applicant, one cost of manufacturing was calculated for granules and tablets and a second one for powder.

3. Export price

- (23) As the product concerned was exported directly to independent customers in the Union, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of export prices actually paid or payable for the product when sold for export to the Union.

4. Comparison

- (24) The average normal value and the average export price for each type of the product concerned were compared on an ex-works basis and at the same level of trade. In order to ensure a fair comparison between normal value and export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. For this purpose, adjustments for transport costs, ocean freight and insurance costs, handling, credit costs, and bank charges were made where applicable and justified. Furthermore, it was found that VAT was partially refunded when the product concerned was sold for export to the Union. Consequently, the VAT payable on domestic sales was adjusted accordingly pursuant to Article 2(10)(b) of the basic Regulation.
- (25) With regard to the packing cost allowance, the applicant claimed an allowance in respect of packing expenses for sales in both the Chinese and the Union markets. The verification showed that those costs were equally

included in the cost of production of the product regardless of whether it was to be sold domestically or for export. Therefore, the allowance claimed was not accepted either in the domestic or in the export market.

5. Dumping Margin

- (26) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison showed the existence of dumping.
- (27) The dumping margin of Heze expressed as a percentage of the net, free-at-Union-frontier price was found to be 3,2 %.

C. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (28) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances which were found to exist could reasonably be considered to be of a lasting nature.
- (29) The applicant provided full cooperation in this interim review and the data collected and verified allowed for the establishment of a dumping margin based on its individual export prices to the Union. The result of this calculation indicates that the continued application of the measure at its current level is no longer justified.
- (30) Evidence obtained and verified during the investigation showed a reduction in the level of dumping explained by the reduction of the company cost structure. The main factors to trigger the reduction in the applicant's cost structure are the in-house production of the main raw material and the expansion in the applicant's production capacity.
- (31) It was also found that since the original investigation, Heze's export prices to all markets increased. In particular, export prices to the Union are in line with the company's export prices to other third countries. Evidence collected on spot showed that the company has many Union customers with similar price levels. The consistent market behaviour of the applicant shows that the changes in circumstances are of a lasting nature.
- (32) In the light of the above, it is therefore considered that the circumstances that led to the initiation of this review are unlikely to change in the foreseeable future in a manner that would affect the findings of the current review. Therefore it is concluded that the changes are considered to be of a lasting nature and that the application of the measure at its current level is no longer justified.

D. ANTI-DUMPING MEASURES

- (33) In the light of the results of this review investigation, it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned from Heze to 3,2 %,.

HAS ADOPTED THIS REGULATION:

Article 1

The entry concerning Heze Huayi Chemical Co. Limited, in the table in Article 1(2) of Regulation (EC) No 1631/2005, shall be replaced by the following:

'PRC	Heze Huayi Chemical Co. Limited	3,2 %	A629'
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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, 27 September 2010.

For the Council
The President
K. PEETERS

COUNCIL IMPLEMENTING REGULATION (EU) No 856/2010**of 27 September 2010****terminating the partial interim review of Regulation (EC) No 661/2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia**

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 8, 9(4) and 11(3) thereof,

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

Whereas:

A. PREVIOUS PROCEDURE

- (1) By Regulation (EC) No 2022/1995⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate ('AN') originating in Russia, falling within CN codes 3102 30 90 and 3102 40 90. Pursuant to a further investigation in accordance with Article 12 of the basic Regulation, which established that the duty was being absorbed, the measures were amended by Regulation (EC) No 663/1998⁽³⁾. Following a request for an expiry and an interim review pursuant to Articles 11(2) and 11(3) of the basic Regulation, the Council, by Regulation (EC) No 658/2002⁽⁴⁾, imposed a definitive anti-dumping duty of EUR 47,07 per tonne on imports of ammonium nitrate falling within CN codes 3102 30 90 and 3102 40 90 and originating in Russia. Finally, a product scope interim review pursuant to Article 11(3) of the basic Regulation was carried out and, by Regulation (EC) No 945/2005⁽⁵⁾, a definitive anti-dumping duty ranging between EUR 41,42 per tonne and EUR 47,07 per tonne was imposed on imports of solid fertilisers originating in Russia with an ammonium nitrate content exceeding 80 % by weight, falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91.

- (2) Following a request for an expiry and an interim review ('the last expiry review') pursuant to Articles 11(2) and 11(3) of the basic Regulation, the Council, by Regulation (EC) No 661/2008⁽⁶⁾, imposed a definitive anti-dumping duty ranging between EUR 28,88 per tonne and EUR 47,07 per tonne for a further five years.

- (3) Following the decision of the Court of First Instance of the European Communities to partially annul Regulation (EC) No 945/2005, the Council, by Regulation (EC) No 989/2009⁽⁷⁾, amended the definitive anti-dumping duty in so far as it concerned JSC Kirovo-Chepetsky Khimichesky Kombinat.

- (4) By Decision 2008/577/EC of 4 July 2008⁽⁸⁾, the Commission accepted undertaking offers submitted by several exporting producers, including the related Russian exporting producers Joint Stock Company Acron and Joint Stock Company Dorogobuzh ('Acron' Holding Company), in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia and Ukraine.

B. PRESENT PROCEDURE**1. Request for a review**

- (5) A request for a partial interim review ('the present review') pursuant to Article 11(3) of the basic Regulation was lodged by JSC Acron, JSC Dorogobuzh and their related trading company Agronova International Inc., members of 'Acron' Holding Company ('the applicant'). The request was limited in scope to the examination of the form of the measure and in particular to the inclusion of Agronova International Inc. into the price undertaking of JSC Acron and JSC Dorogobuzh.
- (6) The applicant alleged that the circumstances under which the price undertaking was granted changed, in particular that Agronova International Inc., a newly established trader in the USA, was incorporated into the 'Acron' Holding Company. The applicant further alleged that these changes were of a lasting nature.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 198, 23.8.1995, p. 1.

⁽³⁾ OJ L 93, 26.3.1998, p. 1.

⁽⁴⁾ OJ L 102, 18.4.2002, p. 1.

⁽⁵⁾ OJ L 160, 23.6.2005, p. 1.

⁽⁶⁾ OJ L 185, 12.7.2008, p. 1.

⁽⁷⁾ OJ L 278, 23.10.2009, p. 1.

⁽⁸⁾ OJ L 185, 12.7.2008, p. 43.

2. Initiation of a review

- (7) The Commission examined the prima facie evidence submitted by the applicant and considered it sufficient to justify the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation. After consulting the Advisory Committee, the Commission initiated⁽¹⁾ a review of the anti-dumping measures imposed by Regulation (EC) No 661/2008 ('measures in force') limited in scope to the examination of the form of the measures, in particular the potential effect of the inclusion of Agronova International Inc. into the price undertaking of JSC Acron and JSC Dorogobuzh.

3. Product concerned

- (8) The product concerned by the present review is the same as in the last expiry review, i.e. solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, originating in Russia ('the product concerned'), currently falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91.

4. Parties concerned

- (9) The Commission officially informed the applicant, the representatives of the exporting country and the association of Union producers of the initiation of the review. 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. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (10) The Commission sent questionnaires to the applicant and received replies within the deadlines set for that purpose. The Commission sought and verified all information deemed necessary. The Commission carried out a verification visit at the premises of Agronova International Inc., Hallandale, USA ('Agronova').

5. Review investigation period

- (11) The review investigation period covered the period from 1 July 2008 to 30 June 2009 ('RIP').

C. RESULTS OF THE INVESTIGATION

- (12) The investigation confirmed that Agronova was a newly established trading company belonging to 'Acron' Holding company.

1. Workability of the undertaking

- (13) The main considerations as to the inclusion of a trading company in the current undertaking were the practicability of the undertaking, i.e. the effectiveness of its monitoring and in particular assessing the risks of cross-compensation and circumvention through different sales channels and/or through the pricing of different products sold to potentially the same customers.

1.1. High risk of cross-compensation through an undisclosed trading company

- (14) The investigation revealed that Agronova had strong interpersonal and operational links to at least one other undisclosed company active in the trading and marketing of fertiliser products. It was found that the same and only persons operating Agronova were in fact also involved in the activities of this trading company. In particular, the evidence available showed that both companies shared a common manager and a common officer during most of the RIP, while a third person (who was at the same time found to be the President of the trading company in question), although not formally employed by Agronova, was in fact carrying out its daily trading business including the conduct during the verification visit on behalf of Agronova where he was presented as an advisor of Agronova. In addition to the strong interpersonal links, it was found that both companies were operating from the same office, employing the same secretary and using the same computers and office equipment during almost the entirety of the RIP. Agronova did not reveal the existence and operations of this other trading company neither in its response to the questionnaire nor at the time of the verification visit. The Commission's request for additional information in order to clarify the situation was only partly satisfied by the applicant since it did not, inter alia, disclose the precise ownership of the trading company nor its detailed activities. The information provided was therefore considered insufficient.

- (15) On the basis of the above, the Commission considered that the trading company referred to above was related to Agronova within the meaning of Article 143 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 ('IPCCC')⁽²⁾ and should have been reported in the applicant's reply to the questionnaire. The Commission notified the applicant in accordance with Article 18(1) of the basic Regulation of its intention to base these findings on facts available and invited the applicant to comment thereon in accordance with Article 18(4) of the basic Regulation.

⁽¹⁾ OJ C 152, 4.7.2009, p. 40.

⁽²⁾ OJ L 253, 11.10.1993, p. 1.

- (16) The applicant contested that Agronova is related to the above trading company or any other company. Furthermore, on the Commission's further enquiry request, it did not provide any detailed and verifiable information on the ownership and activities of the trading company in question within the deadline set.
- (17) Upon disclosure of the Commission's proposal to base findings on Article 18 of the basic Regulation, the applicant further denied any relationship between Agronova and the trading company in the sense of Article 143 of the IPCCC. As far as the precise roles of the persons involved in both companies, the applicant contested that both companies shared directors or officers. The applicant even withdrew information given before, claiming that it was wrong or imprecise. The new information given was, however, not sufficiently supported by evidence. Overall, the information and evidence provided in this regard was unclear and in some instances contradictory and therefore in general cast doubts on the reliability of the information provided.
- (18) By way of example, while the applicant originally stated that the president of Agronova was also the manager of the trading company in question, this statement was later qualified by explaining that the tasks carried out in the trading company by the president of Agronova did not include any control and decision-making functions. Likewise, while the evidence provided (annual accounts) showed that another person was an 'officer' in both companies, it was later claimed that the real functions of this person were those of a legal secretary.
- (19) In conclusion, the applicant did not submit any sufficiently reliable information or evidence which could show that the roles and responsibilities of each actor were defined and exercised in a way which would have excluded the existence of a relationship.
- (20) The applicant also contested that the trading company in question should be considered as a trading company since it was mainly involved in marketing rather than the sale of fertiliser products. However, besides the fact that this statement was not supported by any evidence, the company also claimed at several instances to be indeed involved in the sale of fertiliser as a trader, but only for small quantities destined to markets other than Europe. The company had therefore to be considered as a trader and this argument had to be rejected.
- (21) The Commission considered that the applicant impeded the investigation in the sense of Article 18(1) of the basic Regulation by having provided relevant information only gradually upon request, and the information provided in most cases was subsequently corrected, modified or contradicted. In this regard, given Agronova's unsatisfactory cooperation, a relationship of trust between the Commission and the company, which, as a general policy, is a necessary precondition for the acceptance of an undertaking, could not be established.
- (22) It is reminded that in the analysis of the risk of cross-compensation, the knowledge of different sales channels and the flow of products through these channels is indispensable information. Given the very close interpersonal and operational links between Agronova and the other trading company, it was concluded that the risk of cross-compensation and circumvention through different sales channels was too high and that therefore Agronova should not be included in the current undertaking.
- (23) Subsequent to disclosure, the applicant claimed that there would be a risk of cross compensation only where companies are related by shares. First, it should be noted that the risk of cross-compensation is not limited to situations where companies are related by shares, since there are various different ways of cross-compensation. Thus, in this particular case and for reasons explained in the above recital, it was considered that there is a high risk of cross-compensation even if the applicant and Agronova are not related by shares. In addition, the applicant did not outline any legal or factual basis or present evidence to support its claim. This argument had therefore to be rejected.
- 1.2. *Considerable risk of cross-compensation through the pricing of different products*
- (24) The current undertaking not only covers ammonium nitrate but it also imposes a price regime for other products traded by the group in order to avoid the risk of cross-compensation. The applicant stated in its questionnaire reply that it intended to sell through Agronova, inter alia, products that are not included in this price regime and even fertiliser products produced by other producers, located in Russia as well as in other countries. Therefore, a risk of cross-compensation through exports of different products to the same customers was considered as high.
- (25) Some of the products that Agronova intended to sell do not have a quoted market price that could serve as a benchmark for monitoring purposes. For this reason the monitoring of the undertaking would also be impracticable.

- (26) Following disclosure, the applicant claimed that the Commission disregarded the applicant's offer to drop its business plans related to blending and other products in case the Commission found it necessary. In this respect it is noted that the Commission received those amended offers only later during the proceeding. The Commission considered that the applicant's continuous changing of its business plan to fit whatever it considered as the Commission's expectations cast doubts on the credibility of the applicant's offer. In this regard, the Commission also considered the insufficient level of cooperation by Agronova in this investigation as an impediment to establishing a relationship of trust between the Commission and Agronova. Therefore, the Commission was not satisfied that such commitment would indeed be respected.
- (27) It was therefore concluded that the inclusion of Agronova in the sales channels of 'Acron' Holding Company would seriously increase the risks of cross-compensation and circumvention and affect the workability and the effective monitoring of the undertaking.

2. Lasting nature of the changed circumstances

- (28) During the investigation, the 'Acron' Holding Company established another trading company, namely Agronova Europe AG ('Agronova Europe') which it claimed would take over most of the trading with European clients and thereby gradually replace Agronova. At a certain stage of the proceeding, the applicant requested that this new trader also be included in the current review with a view to having the two traders included in the existing price undertaking or, alternatively, that a new review be initiated to include this new trader also in the sales channel of the undertaking. This shows that the changed circumstances on the basis of which the present review was requested are not of a lasting nature.
- (29) Following disclosure, the applicant claimed that an analysis whether the changed circumstances on the basis of which the present review was initiated were of a lasting nature, would not be relevant in the context of the present interim review limited in scope to the form of measures. The applicant claimed that such analysis would only be required in case dumping and/or injury would be assessed.
- (30) The applicant also claimed that it would no longer intend to channel sales of ammonium nitrate through Agronova Europe.
- (31) With regard to the applicant's argument that an analysis as to whether the changed circumstances were of a

lasting nature would be irrelevant in the present review, the applicant did not provide any legal reasoning that would have supported this view. In the present review it was considered that the stability of the sales channel(s) was an important factor in deciding to accept the inclusion of a newly established trader in an undertaking given that with every new trader included in a price undertaking the risk of cross-compensation and circumvention increases. This also needs to be addressed through adequate monitoring activities. Therefore, it was concluded that the lasting nature of the changed circumstances was indeed a relevant factor and the argument of the applicant had to be rejected.

- (32) As regards the applicant's claim that Agronova Europe would not be used for sales of ammonium nitrate to the European Union market, this was provided at a very late stage of the investigation (after final disclosure) and contradicted the information submitted previously. The applicant could furthermore not give sufficient assurances as to the respect of this commitment. The Commission again considered that the applicant's continuous changing of its business plan to fit whatever it considered as the Commission's expectations cast doubts on the credibility of the applicant's offer. As outlined in recital 26, the Commission also considered Agronova's behaviour in impeding the investigation as an impediment to the establishment of a relationship of trust between the parties to the undertaking. The applicant's argument had therefore to be rejected.

D. TERMINATION OF THE REVIEW

- (33) In view of the conclusions reached with regards to the workability of the undertaking and the lasting nature of the changed circumstances, the investigation should be terminated without changing the existing undertaking of the applicant.

E. DISCLOSURE

- (34) The applicant and interested parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the investigation. All parties were given an opportunity to comment.
- (35) The applicant stated that its rights of defence and to a fair hearing have been impaired in the proceeding. The applicant was given and has indeed used numerous occasions to introduce submissions and was given sufficient time to provide information and evidence during the proceeding. The applicant was also given the possibility to request a hearing on several occasions. Therefore its claims in this respect are unwarranted,

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review concerning imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, currently falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and

ex 3105 90 91 and originating in Russia produced by Joint Stock Company Acron and Joint Stock Company Dorogobuzh is hereby terminated without changing the form of the measure.

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, 27 September 2010.

For the Council

The President

K. PEETERS

COUNCIL IMPLEMENTING REGULATION (EU) No 857/2010**of 27 September 2010****imposing a definitive countervailing duty and collecting definitely the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates**

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 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (the 'basic Regulation') ⁽¹⁾, and in particular Article 15(1) thereof,

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

Whereas:

1. PROCEDURE**1.1. Provisional measures**

- (1) The Commission, by Regulation (EU) No 473/2010 ⁽²⁾ ('the provisional Regulation'), imposed a provisional countervailing duty on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates ('the countries concerned').
- (2) The proceeding was initiated following a complaint lodged on 20 July 2009 by the Polyethylene Terephthalate Committee of Plastics Europe ('the complainant') on behalf of producers representing a major proportion, in this case more than 50 %, of the total Union production of certain polyethylene terephthalate.
- (3) As set out in recital (15) of the provisional Regulation, the investigation of subsidisation and injury covered the period from 1 July 2008 to 30 June 2009 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the IP ('period considered').
- (4) In the parallel anti-dumping proceeding, the Commission by Regulation (EU) No 472/2010 ⁽³⁾, imposed a provisional anti-dumping duty on imports of certain polyethylene terephthalate originating in Iran and the United Arab Emirates.

1.2. Subsequent procedure

- (5) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional countervailing measures ('provisional disclosure'), several interested parties made written

submissions making their views known on the provisional findings. The parties who so requested were also granted the opportunity to be heard.

- (6) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties following the provisional disclosure were considered and, where appropriate, the provisional findings were modified accordingly.
- (7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). They were also granted a period within which they could make representations subsequent to this disclosure.
- (8) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings were modified accordingly.

1.3. Parties concerned by the proceeding

- (9) Some interested parties claimed that the sample of EU producers was not representative and inconsistent and that therefore the injury analysis was deficient. In particular, it was claimed that sampling was not necessary since the number of producers was not large. In addition, it was claimed that by 'artificially' splitting company groups into individual legal entities, the sample would not contain some of the market leaders (Artenius, M&G Polimeri) and that the methodology for the selection of the sample is inconsistent since the sample also included two groups of companies. It was also claimed that the sample was not representative since it did not contain any producer that is selling to a related PET processor in sufficient quantities. As a result, the institutions allegedly could not assess the real supply capability of the Union industry and did not take into account the Union industry's conflict of interest. Moreover, as one company did not provide all necessary information and was excluded from the sample, the representativity allegedly dropped to 28 % of EU production. The same parties claimed that the selected sample was not statistically valid.
- (10) With regard to the argument that sampling was not necessary since the number of producers was not large, it is reiterated that in the sampling exercise 14 Union

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ OJ L 134, 1.6.2010, p. 25.

⁽³⁾ OJ L 134, 1.6.2010, p. 4.

producers belonging to eight groups of companies came forward. Given the objectively high number of EU producers that cooperated, i.e. 14, sampling was applied in accordance with Article 27(1) of the basic Regulation on the basis of the largest representative volume of sales that could reasonably be investigated within the time available. The sample selected consisted of five individual companies (with six producing locations).

(11) With regard to the first claim concerning the representativity of the sample, it should be noted that the institutions can include individual companies which are part of a company group within the sample as long as they are representative and have separate financial accounts. Otherwise, investigating all fourteen EU producers belonging to the eight groups of companies would have prevented the timely completion of the investigation. However, the fact that two company groups have been included in the sample is not inconsistent with the sampling methodology applied in this case, i.e. the largest representative volumes of sales to EU clients.

(12) As regards Indorama, this group had two different production plants in the IP – one in the Netherlands and the other one in UK. Including this group in the sample is in line with the sampling methodology applied since those plants formed one entity from the legal and financial perspective. As regards Equipolymers, which had two separate entities producing PET in the IP (one in Italy and another one in Germany), the company reported consolidated figures for both locations. Given that the verification of these consolidated figures was possible during one visit at the company's headquarters, it was decided to treat Equipolymers PET producing companies as one entity for the purpose of this proceeding. With regard to the claim that Artenius and M&G Polimeri had to be included in the sample because they were the market leaders, it is noted that none of their individual entities belonged to the companies with the highest volumes of sales to EU clients.

(13) As regards the claim that the sample was not representative because it did not include one producer who produces mainly for internal consumption, it should be noted that the capability to supply can be examined in the framework of the Union interest analysis if such a claim is made and for that purpose the captive consumption can be deducted from the production volume. Thus, there is no need to have such a producer in the sample for the examination of certain injury factors. Secondly, any double interest resulting from the position of a company as EU producer and processor at the same time can also be assessed in the Union interest analysis. The position of a company as EU producer and processor is not linked with the performance of the Union industry where sales to unrelated customers in the EU are taken as a benchmark. The claim is thus rejected.

(14) With regard to the claim concerning the overall representativity of the sample, it is reiterated that the reduction of the sample to four companies lowered the representativity from 65 % to 47 % of the sales by all cooperating producers. The same four companies accounted for 52 % of the Union production. This is considered to be a representative sample of the EU producers in terms of sales to independent customers in the EU.

(15) As regards the claim that the sample selected was not statistically valid, it is noted that Article 27(1) of the basic Regulation clearly allows for a sample to be based on the largest representative volume of the sales that can reasonably be investigated in the time available, as an alternative for a 'statistically valid' sample.

(16) In the absence of any other comments concerning the sampling, the findings in recitals (5) to (14) of the provisional Regulation are hereby confirmed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

(17) It is recalled that, in recital (16) of the provisional Regulation, the product concerned was defined as polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, originating in the countries concerned and currently falling within CN code 3907 60 20.

(18) Moreover, in recital (18) of the provisional Regulation, it was stated that the investigation showed that PET produced and sold in the Union by the Union industry, and the PET produced and sold on the domestic markets of the countries concerned, and exported to the Union were like products.

(19) Since the product under investigation was considered a homogeneous product, it was not further subdivided into different product types for calculating the injury margins.

(20) One exporting producer claimed that PET should be subdivided into different product types according to their different viscosity numbers since the viscosity number is essential to determine the different possible applications of the PET type produced. It was considered that the claim should be accepted and the methodology for calculating injury margins was adapted accordingly.

3. SUBSIDISATION

3.1. Iran

3.1.1. Introduction

(21) The Government of Iran and the cooperating exporting producer submitted comments on the following schemes, countervailed in the provisional Regulation:

(I) Measures connected to Special Economic Zones ('SEZs') – Petrochemical SEZ

(II) Financing from National Petrochemical Company to the PET exporting producer

3.1.2. *Specific Schemes*

(I) Measures connected to Special Economic Zones (SEZs) – Petrochemical SEZ

- (22) The Government of Iran (GOI) disputed that duty-free imports in Free Trade Zones of raw materials and capital goods can be countervailed. Free Trade Zone and Special Economic Zones are by definition duty-free zones for import and export, compatible with the WTO. Besides, the GOI as well as the cooperating exporting producer asserted that the import of duty-free capital goods is not contingent in law on export performance because this exemption exists also for the companies established in the rest of the Iranian territory.
- (23) With respect to the compliance of SEZs with WTO rules, it is noted that the general argument submitted cannot dispute the established facts that the subsidies in question are countervailable as no elaborated analysis was provided to rebut the one presented in the provisional Regulation. With regards to the duty-free importation of capital goods in Iran, the information at the time submitting comments on the provisional disclosure suggests that this possibility exists only for companies that are modernizing their infrastructure, i.e. it is not an automatic provision applicable to all parties. Therefore, the above claims had to be rejected.
- (24) The cooperating exporting producer argued that the Commission disregarded the principle of non-discrimination given that similar rules and regimes are also applied in other countries. The company also claimed that the Commission did not correctly inform it of the scope of the verification visit and the corresponding information requirements before such verification.
- (25) As regards the general allegation of violation of the principle of non-discrimination, it is recalled that the Commission initiated this anti-subsidy investigation against the three countries mentioned in the complaint in line with the provisions of Article 10 of the basic Regulation. Thus the Commission's recommendation could only be based on the findings of this investigation. As to the alleged lack of advance information on the points to be investigated, it is noted that the Commission informed the cooperating exporting producer well in advance of the verification visit that it would seek information during the verification visit on the relationship between the exporting producer and its shareholder. Therefore, these claims had to be rejected.
- (26) The cooperating exporting producer brought to the attention of the institutions two clerical mistakes in the calculation of the duty exemption on imports of one raw

material of the production process and in the total import value of capital goods exempted. Those errors are herein corrected. The revised subsidy rates are 0,14 % for the duty-free import of input products and 0,72 % for the duty-free import of capital goods. The revised total subsidy rate for this scheme is 0,86 %.

- (27) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (20) to (44) of the provisional Regulation, as modified by recital (26) of this Regulation, are hereby confirmed.

(II) Financing from National Petrochemical Company to the PET exporting producer

- (28) The cooperating exporting producer (Shahid Tondguyan Petrochemical Co. or STPC) claimed that its main shareholder, National Petrochemical Company (NPC), is not a public body and that the GOI neither entrusted nor directed NPC to make payments to STPC. In addition, it was submitted that the NPC financing to the STPC has to be considered as repayable and thus not a subsidy.
- (29) In addressing these claims, it should be recalled that, in order to assess whether an entity should be considered as a public body for purposes of anti-subsidy investigations, the following factors are relevant: 1) government ownership; 2) the government's presence on the entity's board of directors; 3) the government's control over the entity's activities and the entity's pursuit of governmental policies or interests; and 4) whether the entity is created by statute. All these requirements have been analysed as reported in recital (52) of the provisional Regulation. The NPC, as a government body, does not need entrustment or delegation, concepts that refer to private entities. In fact the investigation has established that NPC's role is to develop and operate the country's petrochemical sector and that the company has received from the GOI the additional task of managing as a state administrative authority the Petrochemical Special Economic Zone. Thus any claim disputing NPC's public body role has to be rejected.
- (30) With regards to the claim that the financing to STPC is repayable, it is pertinent to note that the investigation has established that the repayment of this funding is only a hypothetical allegation as no evidence was provided at any stage of the proceeding that such repayment has materialized. Indeed, as explained in the recital (51) of the provisional Regulation, the fact that the non-repayable funds have been accumulated since at least 2004 confirms that this is a recurring subsidy, the purpose of which is to keep in operation the sole cooperating Iranian exporting producer. Account taken of the above, the relevant claim has to be rejected.
- (31) The cooperating exporting producer also argued that the subsidy amount was overstated. To this respect it was claimed that it is a perfectly normal business practice

in Iran not to add interest between a parent company (in this case NPC) and its subsidiary (in this case STPC). It was also argued that when calculating the subsidy rate the amounts used on total funding provided by NPC and total turnover of STPC were not correct as the turnover figure was understated and that another amount should have been used while the total funding provided was overstated as certain amounts should not be attributed to the funds provided from NPC to STPC.

- (32) The above claims had to be rejected. With respect to the former claim concerning the interest rate calculations, it is noted that evidence gathered does not uphold the company's claim that the normal business practice in Iran is that no interest is added between a parent company and its subsidiary in their funding transactions. Moreover, any such practice is clearly inconsistent with the usual economic practice of private investors.
- (33) As regards the latter argument, it is pertinent to note that the subsidy amount has been calculated by using the financing and turnover figures provided by the cooperating exporting producer and verified during the verification visit.
- (34) With respect to the alleged new total turnover it is recalled that the figure provided at the time of submitting comments on the provisional Regulation is not substantiated by any verifiable evidence and does not tally with what the company has reported prior to and during the verification visit.
- (35) With respect to the total funding figure, the cooperating exporting producer argued that certain amounts should not be considered as forming part of NPC's funding to STPC. Nevertheless the information provided could not corroborate this claim as no evidence was provided to prove that the amounts in question were not relevant to NPC's funding to STPC. In fact part of the explanations given reconfirmed that NPC was acting as a public body taking up obligations for financing the cooperating exporting producer without charging any interest that should have been honoured by another public body. Therefore, no deduction from the total financing amount can be granted since no verifiable evidence was provided.
- (36) The GOI claimed that pursuant to Article 14 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), 'government provision of equity capital ... [and] loan by government shall not be considered as conferring a benefit ...', so the NPC financing to STPC should not be considered a subsidy. This claim has to be rejected since the same abovementioned Article 14 concludes that 'the government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice of private investors in the territory of that

Member'. This practice is indeed inconsistent with the usual investment practice of private investors since no commercial organisation in any WTO Member would conceivably continue to provide such non-repayable funding. In any event it should be noted that Iran is not a WTO member.

- (37) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (45) to (57) of the provisional Regulation are hereby confirmed.

3.1.3. Amount of countervailable subsidies

- (38) Account taken of recitals (21) to (37) above, the definitive amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the sole cooperating Iranian exporting producer is 51,88 %.

3.2. Pakistan

3.2.1. Introduction

- (39) The Government of Pakistan (GOP) and the cooperating exporting producer submitted comments on the following schemes, countervailed in the provisional Regulation:

(I) Manufacturing Bond Scheme

(II) Imports of plant, machinery and equipment in Manufacturing Bond

(III) Tariff protection on purchases of PTA in the domestic market

(IV) Final Tax Regime (FTR)

(V) Export Long-Term Fixed Rate Financing Scheme (LTF-EOP)

(VI) Export Finance Scheme from the State Bank of Pakistan (EFS)

(VII) Finance under F.E. Circular No 25 of the State Bank of Pakistan.

- (40) The GOP as a preliminary remark submitted that the Commission has failed to grasp or overlooked its past submissions on the subsidy schemes. The cooperating exporting producer as a preliminary remark argued that the past submissions of the GOP provided a reasoned legal analysis demonstrating that the schemes should not be considered as 'prohibited' subsidies. It was also argued by this party that the Commission based its findings in the provisional Regulation not only on an incorrect appraisal of factual elements but rather on an incorrect legal analysis as well. It was further claimed that the correct legal analysis was the one presented by the GOP.

- (41) With respect to submissions prior to the provisional Regulation, it is noted that the Commission has fully taken them into consideration during the process of the investigation as they formed part, together with the relevant questionnaire replies of the parties and subsequent data provided, of the information on the basis of which the provisional determination was made.
- (42) Furthermore, it is noted that the Commission has accurately listed the legal provisions of the relevant schemes and the practical implementations derived from them. No evidence was provided that the legal provisions listed were not accurate. As to the Commission's legal analysis, this was based on the relevant provisions of the basic Regulation and reinforced by the long-standing legal analysis used by the EU in past anti-subsidy investigation when analysing for example duty drawback schemes, export credit schemes and income tax schemes ⁽¹⁾. The fact that a party does not agree with the presented legal analysis does not imply that this analysis is incorrect, especially when no evidence is provided to corroborate this claim. This is even more obvious since the GOP expressed with its submission to provisional Regulation its willingness to amend to the extent possible a number of schemes. Account taken of the above the claims presented in recital (40) had to be rejected.
- (44) In regard to this scheme, as stated in recital (70) of the provisional Regulation, the relevant record of input goods received, manufactured and exported was not kept on the basis of actual consumption. Only the theoretical consumption was registered, according to an Analysis Certificate, with input-output ratios of all the raw materials for producing 1 000 kg of outputs. These input-output norms are set out by the authorities and periodically reviewed on the basis of information derived from the cooperating exporting producer but there are no clear rules and no evidence of how these reviews are performed. In addition, following the revisions made on the Analysis Certificate which indicated the existence of excess remission no follow-up action was taken by the authorities to verify the totality of the previous actual consumption and to request payments made for the previous years. In other words no control of any excess remission on the duties foregone was performed. The cooperating exporting producer alleged that the excess raw materials accounted in the previous period was added back to update the stock-in register, thus obtaining the actual stock. It is worth noting that this practice relies on the fact that it is the exporting producer that, by its own initiative, proceeds to show to the relevant authority the excess remission accumulated in the previous period. More interestingly, this practice was not in any way foreseen in the legislative provisions disciplining this scheme. All the above confirms that no effective implementation and monitoring system exist for this scheme. In these circumstances, all the relevant claims had to be rejected.

3.2.2. Specific Schemes

(I) Manufacturing Bond Scheme

- (43) The GOP and the cooperating exporting producer reiterated their views that the Manufacturing Bond scheme is properly managed thanks to the existence of an effective implementation and monitoring system that records consumption/deduction and controls duty-free raw materials and the company's actual consumption as per its total production records. It was also submitted that the input/output ratio is based on actual consumption of the relevant company availing the benefits of the scheme and that the record on input is subject to verification. According to these claims the input/output ratio was established with a verified benchmarking system that was regularly updated on the basis of company's actual consumption. After any change in the ratio, the excess remission of the previous period was added back to update the stock-in register, thus obtaining the actual stock, and it is on the basis of such actual stock that the company availing benefits under the scheme must demonstrate the export of finished products. Furthermore, the cooperating exporting producer submitted two letters in which it disclosed to the Customs authorities the materials saved in the Manufacturing Bond showing that the company was allowed to utilise the resultant excess input materials for the manufacturing of goods for export in the future.
- (45) Both parties argued also that the customs duty under the normal import regime was zero during the IP and thus no government revenue is foregone on imports of PTA under Manufacturing Bond.
- (46) This claim had to be rejected. It is clear from the information submitted by parties that the normal customs duty on imports of PTA is 7,5 %. By derogation and under certain conditions parties may avail of a zero duty rate. The fact that the GOP has established the Manufacturing Bond scheme or the scheme on Tariff protection on purchases of PTA does not in any way imply that the customs duty rate for all imports of PTA is zero. In fact, the existence of the aforesaid schemes confirms that there is revenue foregone for the government and this is the reason why special derogation schemes with specific rules and eligible users have been implemented.
- (47) The cooperating exporting producer also claimed that there was no breach of Article 349 of Chapter XV of the Pakistani Customs Rules 2001. In this respect it was submitted that the Manufacturing Bond covers all the company's factory and thus the premises of the
- ⁽¹⁾ See for example Council Regulations (EC) No 713/2005 (OJ L 121, 13.5.2005, p. 1) and (EC) No 1176/2008 (OJ L 319, 29.11.2008, p. 1).

warehouse fulfilled the relevant rules requesting an independent area having an independent entry or exit from a public area and having no other entry or exit with the manufacturing area and separate stores of finished goods, rejects and waste clearly ear-marked in the premises.

- (48) With regards to the above comments, it has to be reiterated that the verification visit revealed that only the raw materials imported duty-free were separated from locally procured input goods. The premises of the warehouse, that is the bonded warehouse and the manufacturing bond, were not in an independent area having an independent entry or exit from a public area and having no other entry or exit, as prescribed in Article 349 mentioned above. Furthermore the party's claim that its entire factory is under Manufacturing Bond is not based on any verifiable evidence (e.g. an explicit permit on the surface of the Manufacturing Bond) apart from an analysis of the wording of Article 349. Thus, the relevant claims had to be rejected.

- (49) The GOP provided very recent administrative changes in relation to this scheme. It has introduced a more detailed definition of the Manufacturing Bond in the legislation and has taken steps to enhance the relevant authority's control on the scheme.

- (50) With respect to the control exercised by the authority on the Manufacturing Bond, the changes introduced do not address the most critical flaws of the system as identified by the current investigation i.e.: (i) the lack of reporting of the actual consumption of raw materials imported and (ii) the lack of a verification system that focuses on the actual results rather than the historically set standards. Furthermore, as the implementation of any change made with respect to this scheme needs to be properly verified (the problems identified refer also to the management of the scheme) a certain period of time would be necessary before making any conclusive ruling on the amendments made to the scheme and the way the authorities have implemented these amendments and ensured a properly managed verification system.

- (51) The GOP expressed also its willingness to provide the Commission with an undertaking concerning the concrete implementation of the rules applicable to the Manufacturing Bond. It was proposed that this would take the form of providing evidence that the cooperating exporting producer complies with the new rules (e.g. changes in the premises, revision of input/output ratios, remission of duties), providing periodical reports and allowing for verifications visits by the Commission.

- (52) As regards the above it is noted that by this undertaking proposal the GOP indirectly confirms all the flaws highlighted by the provisional Regulation with respect to this scheme. In addition, as it is stated at recital (50) above it is not possible to accept an undertaking referring to the management of a scheme on the basis of evidence that would materialise only in the future. Finally, such an undertaking is not practical because the necessary monitoring would effectively require repeating important parts of the investigation on a regular basis. In this respect it should be highlighted that the GOP and/or the cooperating exporting producer may request, should the relevant provisions of Article 19 of the basic Regulation be fulfilled, an interim review of the measures.

- (53) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (60) to (80) of the provisional Regulation, as modified in recitals (44) to (52) above, are hereby confirmed.

(II) Imports of plant, machinery and equipment in Manufacturing Bond

- (54) Concerning this scheme both parties claimed that the interest rate used to calculate the subsidy margin has to be the interest rate available to the concerned exporter during the IP. Further, the parties argued that as the plant, machinery and equipment were used for the production of PET meant for exports as well as domestic sales, the subsidy margin should be determined on the basis of the total turnover of the exporting producer.

- (55) In replying to these claims it should be noted that the interest rate used in the calculation is the commercial interest rate applied during the IP in Pakistan, as sourced from the website of the State Bank of Pakistan. This rate represents the normal credit rate prevailing in the market. With regards to the denominator in the subsidy calculation, it has to be recalled that the precondition to avail of the scheme is to install the imported machinery in the Manufacturing Bond which is a system of duty-free import of raw materials used only for subsequent export of the production under the Manufacturing Bond. Thus, the subsidy amount (nominator) has to be allocated over the total export turnover during the IP because the subsidy is contingent upon export performance. Consequently, all the above claims had to be rejected.

- (56) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme, as set out in recitals (81) to (92) of the provisional Regulation, are hereby confirmed.

(III) Tariff protection on purchases of PTA in the domestic market

- (57) The GOP argued that the price of locally produced PTA is not reduced by 7,5 % over the international price and that the refund is not only given for domestically-produced PTA but also for imported PTA. The cooperating exporting producer argued that the scheme allows refund of customs duties for both locally-procured as well as imported PTA and thus the scheme does not favour procurement of domestically-produced PTA. It was also argued that the legislation does not limit access to this scheme.
- (58) The above arguments had to be rejected. In this regard it is noted that this scheme provides a financial contribution in the form of a direct transfer of funds that confers a clear benefit upon the recipient company. By analyzing the information submitted by the GOP, it is clear that an eligible company may: (i) buy in the domestic market PTA and receive a compensatory support of a portion equal to 7,5 % of the price paid for PTA purchases manufactured locally or (ii) import PTA and receive a refund of the applicable customs duty (7,5 %) paid on imports of PTA. Nevertheless, the latter option is not permitted if the eligible company uses a duty drawback scheme (e.g. Manufacture Bond) on imports of PTA. It is clear from the above that the cooperating exporting producer was de jure forced to use this scheme only for its purchases of domestically-procured PTA as it was using in parallel the Manufacturing Bond scheme for its imported PTA.

Furthermore it is obvious that even in cases where one eligible company makes use of both available options of the scheme (i.e. by denouncing the possibility to use the drawback scheme of Manufacturing Bond) it is clear that the refunds that one would expect to receive would have been different as in one case the rate is calculated on a full domestic invoice price while on the other case it is calculated on the declared value at customs that is not necessarily the full invoice price. No verifiable evidence was provided that could undermine the aforesaid conclusions. Finally, with respect to the argument that there are no restrictions in the access of the scheme, the investigation has established that the relevant legislation clearly listed by name the eligible parties. In any event, domestically-produced PTA is not subject to any duty and therefore the 7,5 % 'refund' is a direct transfer of funds, or a pure grant. The only way for a producer of PET to obtain this subsidy, i.e. the grant, is to purchase domestically-produced PTA. On the other hand, any 'refund' of customs duty on imported PTA is an exemption of a payment normally due, not a direct transfer of funds; therefore, there is no equivalence between the two situations.

- (59) Consequently, the scheme confers a clear benefit to the domestic buyer i.e. the producer of PET by means of a direct transfer of funds and it is specific, within the

meaning of Article 4(4)(b) of the basic Regulation, given that the subsidy is contingent upon the use of domestic over imported goods, since only domestic goods are eligible for the direct grant. Furthermore, this subsidy can also be considered specific within the meaning of Article 4(4)(a) of the basic Regulation, given that the legislation itself explicitly limits access to this scheme to certain enterprises belonging to the polyester industry.

- (60) In relation to this scheme, the GOP provided with its comments on the provisional Regulation a Government Order issued on 28 June 2010 stating that the SRO No 1045(I)/2008 has been repealed with effect from 1 July 2010. The GOP submitted that this development will ensure that no refund on domestically procured or imported PTA is allowed or will be allowed anymore to the users of PTA.
- (61) Furthermore, a press clipping submitted on the same matter from the cooperating exporting producer appears to suggest that the GOP decided to withdraw the regulation relevant to this scheme in order for Pakistan to meet international standards in this regard. The cooperating exporting producer corroborated the information provided by GOP by data confirming that starting from 1 July 2010 it is not possible anymore to receive the relevant grant when purchasing domestically-produced PTA. In this respect it is recalled that in line with Article 15 of the basic Regulation no measure shall be imposed if the subsidy is withdrawn or it has been demonstrated that the subsidy no longer confers any benefit on the exporters involved. It is obvious from the above information that Pakistan in substance accepts that the points highlighted by the provisional Regulation with respect to this scheme called for corrective action from its side, that the GOP has terminated the scheme and that the cooperating exporting producer is not receiving any benefits related to this scheme. Under these circumstances it is considered that the conditions set out by Article 15 of the basic Regulation are met and thus this scheme should not be countervailed.
- (62) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (93) to (105) of the provisional Regulation, as modified in recitals (58) to (61) above, are hereby confirmed.

(IV) Final Tax Regime (FTR)

- (63) Both parties claimed that this scheme constitutes a different taxation system and should not be countervailed given that Pakistan has sovereignty of taxation and is free to apply the taxation system it wishes. It was also argued that the FTR does not imply any financial contribution to any company and it is a generalised rule of taxation in Pakistan (a withholding tax of 1 % at the time of the realisation of foreign exchange proceeds) that operates under a different concept and on a different basis as compared to the Normal Tax Regime (NTR) which provides for a taxation at 35 % on the domestic income. According to these parties it is not possible to determine which of the two systems is more favourable

and thus the FTR does not result in revenue foregone or not collecting government revenue that is otherwise due.

- (64) With respect to these claims, it should be noted that it is not Pakistan's sovereignty that is questioned, but the alleged subsidies granted to certain exporting producers. Moreover, it should be recalled that profits from exports are taxed in a different way from those earned on domestic sales. To the extent that this tax regime results in profits from exports being taxed at a lower rate than those earned on domestic sales, this scheme is considered to be a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of forgone government revenue that confers a benefit upon the recipient company. It is also a specific subsidy under Article 4(4)(a) given that it is contingent upon export performance.
- (65) In addition, the cooperating exporting producer provided a set of calculations made in excel format for the years 2008 and 2009 and a notice of tax demand and assessment order issued by the Deputy Commissioner of Income Tax which revised a set of figures of the company's 2008 income tax return statement. The GOP corroborated the claims of the cooperating exporting producer by arguing that the provided calculations show that the cooperating exporting producer has paid more tax under the FTR regime compared to what it would have paid in case of application of the NTR regime.
- (66) These arguments had to be rejected. Firstly, the calculations provided do not form part of the company's income tax return statement or any other official tax authority document. Thus there is no verifiable evidence that they accurately picture the income tax obligations of the cooperating exporting producer.
- (67) Secondly, an analysis of the submitted official tax documents (notice of tax demand and assessment order) does not in any way confirm the claims made by parties on the levels of tax due under the different tax regimes.
- (68) With respect to the submitted documentation referring to 2008, the parties have failed to show how the amounts presented can accurately tally with the company's 2008 income tax return statement and the two documents issued subsequently by the relevant tax authorities. With respect to the latter documents they appear to confirm that the company is requested to pay an income tax amount on its domestic income. Nevertheless, it is not at all clear from the submitted information that this tax amount (or any other tax amount) was actually paid or if the company has

appealed the above-mentioned tax notice. It is also not clear how the amounts submitted in the excel calculations could tally either with the company's income tax return statement or with the tax authority's assessment order. In any event even if one was to accept that the amount set in the notice of tax demand was paid, this would not alter the conclusion that the cooperating exporting producer paid less tax than it would have paid if the 35 % rate was applied to export income.

- (69) With respect to the submitted documentation relating to 2009 it is noted that the parties have not provided the cooperating exporting producer's 2009 income tax return statement. Instead of providing the official tax declarations and return statements, an Excel calculation was provided as evidence. Such kind of information is clearly non verifiable and cannot corroborate any claim made for post IP income tax developments. In this respect it should be highlighted that the GOP and/or the cooperating exporting producer may request, should the relevant provisions of Article 19 of the basic Regulation be fulfilled, an interim review of the measures.
- (70) However, when calculating the subsidy amount under the FTR, a clerical error referring to the cooperating exporting producer's export income as stated in the company's 2008 income tax return statement was discovered. This was corrected accordingly. The subsidy rate established with regards to this scheme during the IP for the exporting producer amounts to 1,97 % (instead of 1,95 %).
- (71) In the light of the above, and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (106) to (116) of the provisional Regulation, as modified in recital (70) above, are hereby confirmed.

(V) Export Long-Term Fixed Rate Financing Scheme (LTF-EOP)

- (72) Both parties claimed that the interest rate used to calculate the subsidy margin of this financing scheme has to be the interest rate available at the time the exporting producer was negotiating the fixed rate financing, namely the rate in the year 2004-2005. Furthermore, the denominator used to calculate the provisional subsidy margin should be the total company turnover rather than the total export turnover, given that the same manufacturing facilities which are financed under the LTF-EOP are used to produce both domestic and exported goods.

(73) These claims had to be rejected. First of all, it should be clarified that the rate used in the calculation is the commercial interest rate which prevailed during the IP in Pakistan, as sourced from the website of the State Bank of Pakistan. The financing negotiated in 2004/2005 was drawn down in tranches by the exporter concerned. When calculating the subsidy amount the amount of credit drawn down for the IP, as reported by the cooperating exporting producer, was used. When examining the benefit received by a party during a specific IP the applicable commercial credit rate prevailing in the market during the IP is normally compared to the rate paid on the loan received during the IP, and this was done here. With regards to the denominator in the subsidy calculation, it has to be recalled that a precondition to benefit from the scheme is that the company has to export directly or indirectly at least 50 % of its annual production. Thus, the subsidy amount (nominator) has to be allocated over the export turnover of the product concerned during the IP because the subsidy is contingent upon export performance.

(74) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (117) to (133) of the provisional Regulation are hereby confirmed.

(VI) Export Finance Scheme from the State Bank of Pakistan (EFS)

(75) The Government of Pakistan submitted that the PET sector was excluded from this scheme by a decision taken by the State Bank of Pakistan on 28 June 2010. It was thus argued that this scheme is in line with the provisions of Article 15 of the basic Regulation and that the Commission should not countervail since it is demonstrated that the subsidy is withdrawn. To this matter the cooperating exporting producer argued that pursuant to the State Bank of Pakistan (SBP) Circular No 09 of 2010, dated 28 June 2010 the company has repaid the entire amounts of EFS financing and there is no amount outstanding on 30 June 2010 with respect to the EFS.

(76) With respect to this claim it is recalled that Article 15 of the basic Regulation states that no measures shall be imposed if the subsidy is withdrawn or it is demonstrated that the subsidy no longer confers a benefit on the exporter involved. With respect to the submitted documentation relevant to the EFS facility it is noted that indeed the decision of the State Bank of Pakistan states that banks may not allow financing facilities for PET under this scheme. The relevant text also states that existing facilities granted to exporters will remain valid up to the maturity date of the respective loans while the export performance of companies will be taken into account for the companies' borrowing during 2009-2010 and for entitlements up to 2011.

As regards these points the GOP clarified, by providing the necessary documentation, that companies which do not hold short-term loans under this scheme within the Pakistani Financial Year 2009-2010 (i.e. up to 30 June 2010) are not entitled to any benefit in the transitional period up to 2011. As to the claim that the cooperating exporting producer has no outstanding financing under the EFS it is noted that this claim has been substantiated with a set of evidence provided by the relevant banks and complemented by the company's chartered accountant. Account taken of the above, it is concluded that the parties were in a position to demonstrate that the EFS scheme no longer confers any benefit on the exporter involved. Thus the conditions lay down in Article 15 of the basic Regulation are fulfilled and the claims made were considered warranted. It was therefore concluded that this scheme should not be countervailed.

(77) The cooperating exporting producer also claimed that the interest rate used to calculate the subsidy margin has to be the short-term interest rate available to the company during the IP. It was also argued that the finance obtained is used to meet the overall financing needs of the company's current assets for both domestic and export sales and thus the denominator in the subsidy margin calculation should be the total company's turnover.

(78) These claims had to be rejected. It is recalled that the rate used in the calculation is the commercial interest rate applied during the IP in Pakistan, as sourced from the website of the State Bank of Pakistan. This rate represents the normal credit rate prevailing in the market. With regards to the denominator in the subsidy calculation, it is noted that the precondition to avail of the scheme is either the fulfilment of specific export transactions or the overall export performance. Thus, the subsidy amount (nominator) has to be allocated over the total export turnover during the IP because the subsidy is contingent upon export performance.

(79) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (134) to (148) of the provisional Regulation, as modified in recitals (75) to (78) above, are hereby confirmed.

(VII) Finance under F.E. Circular No 25 of the State Bank of Pakistan

(80) Both parties submitted that there is no intervention of the State Bank of Pakistan in this scheme, that commercial banks provide financing in foreign currency without preferential interest rates and that the scheme is not contingent upon export performance since both exporters and importers may use it.

(81) The arguments provided were analysed in the light of the relevant legal provisions and practical implementation of the scheme and they were found warranted. It was therefore concluded that this scheme should not be countervailed. Since the scheme under F.E. Circular No 25 of the State Bank of Pakistan will not be countervailed, it is not necessary to respond to the corresponding disclosure comments.

3.2.3. Amount of countervailable subsidies

(82) Account taken the above, the definitive amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the sole cooperating Pakistani exporting producer is 5,15 %.

3.3. United Arab Emirates (UAE)

3.3.1. Introduction

(83) The Government of the UAE (GUAEE) and the cooperating exporting producer submitted comments on the following schemes, countervailed in the provisional Regulation:

(I) Federal Law No 1 of 1979

(II) Free Trade Zone (FTZ).

3.3.2. Specific Schemes

(I) Federal Law No 1 of 1979

(84) The GUAEE submitted that the scheme under Federal Law No 1 of 1979 is broadly and horizontally available to all industrial sectors and enterprises in the UAE and is granted without any exemption. The cooperating exporting producer submitted that the licence issued under the Federal Law No 1 of 1979 constitutes the precondition to exist and operate in the UAE.

(85) With respect to the above it is noted that the investigation established that industrial undertakings in the UAE could operate under various types of licences. Indeed, apart from the licence granted under Federal Law No 1 of 1979, an industrial undertaking may operate under a licence issued by the regional authorities in the specific emirate where it is established. This was the case for the cooperating exporting producer who holds a licence issued by the Government of the Ras al Khaimah Emirate. Furthermore, an industrial undertaking could operate under a Free Trade Zone where no licence is required under the aforementioned law. Thus, it is not correct to say that all industrial undertakings in the UAE operate under Federal Law No 1 of 1979. Thus it is not proved that the allocation of the scheme is automatic and the relevant claim has to be rejected.

(86) Both parties argued that the requirements provided in the law are just the necessary preconditions for any industrial project to operate in the country and not to obtain the exemptions from payment of customs duties and thus the Commission's analysis in the provisional Regulation of Articles 12, 13 and 21 of the Federal Law No 1 is erroneous. The GUAEE also submitted that with respect to Article 13 the term 'considered' has no mandatory meaning in the Arabic version of the law. The GUAEE also argued that Articles 11 and 12 of the aforesaid law were never applied in practice as the Technical Committee responsible for recommending to the Minister on the applications has never been established. It was also submitted that the role of the Industrial Development Department is set out in the User Manual of the Electronic Industrial System issued by the Ministry, as mentioned in recital (173) of the provisional Regulation.

(87) These claims had to be rejected. It is noted that Articles 13 and 21 of the law form part of the step-by-step process foreseen in the analysis for the Industrial Licence under Federal Law No 1 of 1979. With respect to Articles 11 and 12 it is noted that these articles set out the role and responsibilities of the various bodies of the state authority issuing the Industrial Licence under Federal Law No 1 of 1979. The fact that a body has never been established although it is foreseen by the law and it is responsible for: (i) assessing the input provided by the Industrial Development Department and (ii) recommending to the Minister the approval or rejection of applications, confirms that the legislation pursuant to which the granting authority operates is in practice not followed and thus there is no legal certainty on the way the subsidy is granted. Moreover, in fact the claim of the GUAEE with respect to the Technical Committee is contradictory to previous claims according to which the Minister requested this committee to provide comments on a possible revision of the law. With respect to the definition of the word 'considered' in Article 13 of the Federal Law it is noted that the English version was the only text provided by the GUAEE during the investigation. Moreover, it only submitted subsequent to the provisional disclosure that there may be differences in definitions between English and Arabic texts. The fact that the two versions of the text raise doubts on certain parts of the eligibility criteria is again a clear indication that there is no legal clarity on the criteria and conditions governing the eligibility of the subsidy. With respect to the role of the Industrial Development Department it is noted that no new information was submitted that could undermine the findings of the investigation.

(88) The GUAEE submitted that its industrial statistics prove that there are more than 4 000 industrial firms registered under Federal Law No 1 of 1979. Both parties argued that the Commission failed to provide positive evidence that the UAE authorities have exercised discretion in granting or rejecting applications to the scheme.

- (89) These claims had to be rejected. It is noted that the investigation has established that the granting of Industrial Licence under Federal Law No 1 of 1979 is not automatic and that the rules governing the granting process for choosing recipients are not objective. Account taken of the fact that the scheme was found to be specific in line with the provisions of Article 4(2)(a) and 4(2)(b) of the basic Regulation, it was up to the GUAЕ to prove, in line with the provisions of Article 4(2)(c) of the basic Regulation, its claim that the requests from all parties that have submitted applications for Industrial Licence under Federal Law No 1 of 1979 since the enactment of the law have been approved. No such verifiable information was ever provided.
- (90) Both parties claimed that all industrial undertakings in the UAE obtain customs duty exemptions for their production. The cooperating exporting producer also claimed that the WTO Trade Policy Review on the UAE, published in 2006, has analysed the Federal Law No 1 of 1979 and found that custom duties exemptions are granted to all industrial concerns. It was also argued that there are controls of the system as Industrial Licences are renewed every year, companies under the scheme report the imported duty-free materials and authorities reject duty-free imports if inputs are not related to production.
- (91) These claims had to be rejected. It is pertinent to note that customs duty exemptions are granted to companies availing of the scheme under Federal Law No 1 of 1979 and the normal customs duty rate for the raw materials is not zero. The cooperating exporting producer has failed to demonstrate how a general statement in the WTO Trade Policy Review document is more accurate than the detailed analysis, based on the verification visit, provided in the provisional Regulation explicitly on the eligibility and practical implementations of the Federal Law No 1 of 1979. Even more importantly, the investigation has established that the authorities act in a discriminatory way when managing the importation of duty-free materials under the scheme. Indeed since there are no rules on the way requests to duty-free imports are accepted or rejected and in view of the absence of an effective verification system on the management of the scheme, it is unclear why one party at a certain time may be allowed to import duty-free while at some other date it may be refused to import duty-free. In fact this was the case for the cooperating exporting producer who was requested from time to time to pay duties without any justification provided by the granting authority. Therefore the two parties have failed to provide any evidence to corroborate their claims on the management of the scheme and allocation of duty-free imports.
- (92) It was also submitted that the scheme is governed by objective criteria, namely the requirement that the duty exemption can only concern imported goods used for the industrial undertaking's production. This claim had to be rejected since, as it is explained under recitals (89) and (91) above, no such objective criteria have been demonstrated to exist.
- (93) The GUAЕ submitted that the Federal Law No 1 of 1979 is under revision and that this information was provided to the Commission. It was also argued that the Commission has disregarded the information and documents submitted by GUAЕ and did not provide arguments and positive evidence on the facts and law which led to its conclusions.
- (94) With respect to the above it is noted that the Commission has closely evaluated and analysed all information provided by the parties. With respect to the revision of the Federal Law No 1 of 1979 it is pertinent to note that the text provided by GUAЕ is an internal draft document of the Ministry of Finance and Industry. As such it has no legal value. The investigating authority is bound to analyze the actual legal provisions and the way these are implemented and not a non-binding draft that has not been approved by the administrative and legislative branches of the UAE and has not been enacted. Even more importantly, the fact that the GUAЕ is currently working on a possible revision of the Federal Law No 1 of 1979 confirms that the authorities have realised that there is a need, as the GUAЕ has stated, to remove any inconsistency with the WTO Agreement on Subsidy and Countervailing Measures.
- (95) In the light of the above, the findings in relation to this scheme as set out in recitals (166) to (183) of the provisional Regulation are hereby confirmed.
- (II) Free Trade Zone (FTZ)
- (96) Both parties submitted that all enterprises in the UAE are granted duty-free imports of capital goods.
- (97) In this respect it is noted that the investigation has established that companies established in the FTZ receive duty-free imports of capital goods. The fact that one party may avail of the same benefit by using another scheme (namely the Federal Law No 1 of 1979) does not imply that the subsidy in question is not considered countervailable. Furthermore, the parties were not in a position to provide any factual evidence to rebut the findings of the investigation with respect to the FTZ. Account taken of the above, the submitted claim had to be rejected.
- (98) In the light of the above, the findings in relation to this scheme as set out in recital (184) to (199) of the provisional Regulation are hereby confirmed.

3.3.3. Amount of countervailable subsidies

- (99) Account taken the above, the definitive amount of countervailable subsidies in accordance with the provisions of the basic Regulation expressed *ad valorem*, for the sole cooperating United Arab Emirates exporting producer is 5,13 %.

3.4. Comments on final disclosure

- (100) It is recalled that all interested parties were given an opportunity to comment and make representations subsequent to final disclosure. Their comments were considered and taken into account where appropriate but they were not of a nature as to change the above findings.
- (101) The Iranian cooperating exporting producer presented again its analysis of the facts of the case but did not provide any new conclusive evidence which would undermine the findings of the investigation.
- (102) The Government of Pakistan expressed dissatisfaction with the rejection of its undertaking with respect to the Manufacturing Bond scheme and repeated comments on the LTF-EOP scheme and FTR. It also submitted a new decision of the Federal Board of Revenue issued on 27 July 2010 setting the customs duty on imports of PTA (raw material used for PET) at the rate of 3 % and argued that the institutions were bound by law to recalculate the subsidy margin established for the Manufacturing Bond scheme. This had to be rejected because there is no indication that the subsidy does not continue to exist. The Government of Pakistan claims that it is reduced. Nevertheless, as per Manufacturing Bond scheme rules, input material may be used at least up to two years after importation. In other words something that was imported up to July 2010 (when the duty rate was 7,5 %) may be used up to July 2012. The institutions have made a determination of the amount of subsidy on the basis of data pertaining to the IP and in accordance with the scheme rules there may still be an impact of the previous customs rate up to 2012. Thus, subsidisation is clearly present at the time of the definitive duty imposition. Furthermore, the customs duty is just one element of the data set and, as demonstrated under recitals (43) to (53) above, if the duty rate had been lower, import volumes may have been higher.

noted that the information provided is inconclusive and non-verifiable and thus it cannot be taken into consideration.

- (104) The Government of the United Arab Emirates presented again its analysis of the facts of the case and argued that the institutions based their findings on an unclear interpretation of the Federal Law 1 of 1979 and failed to provide any positive evidence. In this respect it is recalled that specificity has been established in accordance with Articles 4(2)(a) and 4(2)(b) of the basic Regulation, that the interpretation of the Federal Law 1 of 1979 by the institutions was based on the submitted information, evidence and data and no conclusive evidence was found that could alter the findings of the investigation. GUAE clarified that the amendment process of the Federal Law 1 of 1979 has been advanced and it is reaching its final steps for promulgation. In this respect it is noted that the Commission welcomes the efforts made by UAE to amend its relevant legal provisions but the aforesaid developments bear no impact on the findings of the investigation, as there is no clear timetable for the conclusion of the amendment process and the enactment of the new law.

- (105) The UAE cooperating exporting producer repeated its claims concerning the Federal Law 1 of 1979. It also submitted that there are errors in the calculation of the subsidy margin. It was argued that the company realised following definitive disclosure that procurements of raw material made from Saudi Arabia bear no customs duty because UAE and Saudi Arabia form part of the customs union of the Gulf Cooperation Council and provided a set of documentation related to its claims. In this respect it is noted that these representations form part of a totally new set of information that should already have been presented in the questionnaire reply or in the verification visit at the latest so that the Commission would have been able to verify the veracity of these claims. Thus the data provided cannot be verified at this late stage of the investigation. Moreover, there is also no conclusive evidence to corroborate these claims. Furthermore it was argued that the benefit should be calculated on the basis of raw materials consumed during the IP and not on the basis of raw materials purchased. In this respect it is noted that the split between raw materials consumed and purchased is irrelevant as the amount countervailed is the total amount attributable to the IP as explained in recitals (84) to (95) above.

4. INJURY

4.1. Union production, Union industry and Union consumption

- (103) The Pakistani cooperating exporting producer disagreed with the analysis concerning FTR but the elements provided could not alter the findings of the investigation. It also submitted that there is verifiable evidence picturing accurately its income tax obligations and provided a set of documents to prove that the findings of the Commission are not accurate. In this respect it is

- (106) No comments have been received with regard to Union production, Union industry and Union consumption. Consequently, recitals (201) to (206) of the provisional Regulation are hereby confirmed.

4.2. Imports from the countries concerned

- (107) No comments have been received with regard to the cumulative assessment of the effects of the imports concerned, the volume of imports from the countries concerned and their respective market share. Consequently, recitals (207) to (213) of the provisional Regulation are hereby confirmed.

Prices and price undercutting

- (108) Given that, as mentioned above at recital (20), it was decided to divide the product under investigation into several product types a new undercutting calculation reflecting that change was performed.
- (109) For the purpose of analysing price undercutting, the weighted average sales prices of the Union industry to unrelated customers on the Union market per product type, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports from the countries concerned to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for post-importation costs and differences in the level of trade.
- (110) The comparison showed that, during the IP, the subsidised imports originating in the UAE sold in the Union undercut the Union industry's prices by 3,2 %. The subsidised imports originating in Iran sold in the Union undercut the prices of the Union industry by 3,0 %. The subsidised imports originating in Pakistan sold in the Union undercut the prices of the Union industry by 0,5 %. The weighted average undercutting margin of the countries concerned during the IP is 2,5 %.
- (111) The Iranian exporter commented that its injury margin was overstated since the weighted average unit sales price established was understated due to an incorrect calculation of the amount of level of trade adjustment. As regards this claim it must be noted that the amount for the level of trade used in the provisional calculation was a fixed amount per tonne which is the commission charged by the cooperating importing agent and which represents around 1 % of the average CIF price. However, since no alternative quantification of the level of trade adjustment was proposed and no other information is available for such an adjustment, the claim is thus rejected.
- (112) The same party also claimed that the 2 % rate taken for post-importation costs appeared to be understated.
- (113) It is reiterated in this regard that no importer cooperated in this investigation and it was not possible to verify the actual post-importation cost. Thus, in absence of any other information available, the rate used in previous proceedings was applied.

4.3. Situation of the Union industry

- (114) Some interested parties claimed that injury did not exist since the sample was wrongly chosen and as a result no results could be extrapolated for the total Union industry. It was claimed that since one company (not in the sample) had indicated that it was using over 100 % of its capacity, this would be a clear sign of no injury. It is

noted that the information submitted is an extract of this company's submission to the stock exchange authorities in a third country and is not verified. This information also does not square with the information on the file. Moreover, and in any event, the capacity utilisation of one EU producer alone cannot alter the findings of injury for the sampled EU producers and the other EU producers.

- (115) In the absence of any other claims or comments, recitals (218) to (237) of the provisional Regulation are hereby confirmed.

4.4. Conclusion on injury

- (116) In the absence of any specific comments, the conclusion on injury laid down in recitals (238) to (240) of the provisional Regulation is hereby confirmed.

5. CAUSATION

5.1. Effect of the subsidised imports

- (117) In the absence of any specific comments, recitals (241) to (245) of the provisional Regulation are hereby confirmed.

5.2. Effect of other factors

- (118) Some interested parties claimed that any injury found would not be due to the subsidised imports, but that the low prices for PET in the EU reflect the worldwide cycle of the industry and that from September 2008 until June 2009 the PET prices in the EU followed the low prices of crude oil. As regards this argument, it is acknowledged that the prices of PET depend to some extent on the prices of crude oil, its derivatives being the main raw material to produce PET. However, prices for crude oil were not low during the whole IP but very volatile, starting with a huge decrease and followed by a recovery. This volatility of world prices of crude oil cannot explain why imports of PET were subsidised and therefore undercut the Union producers' prices. It was precisely this undercutting, made possible due to the subsidies received, that depressed the prices of the Union industry, forcing EU producers to sell at a loss in order not to lose their clients.
- (119) The Iranian exporter claimed that financial and technical problems of some EU producers were not properly separated from the injury analysis and wrongly attributed to Iranian imports since it only entered the market after 2006. In this respect it is noted that imports from Iran were present already in 2006 and 2007 in quantities below 1 % of the market share. Since 2008, they were above 1 % and contributed with their low prices to the price suppression in the EU. Moreover, the conditions for cumulative assessment were fulfilled in this case and the effects of subsidised imports from all countries concerned could be assessed cumulatively. In addition, only one of the companies mentioned by the Iranian exporter was in the sample and the technical problems of this EU

producer, limited from September to mid-October 2008, did not significantly influence the overall injury picture.

(120) The same party reiterated that any injury found would be linked to the contraction in demand, especially during the IP which was marked by the global financial and economic crisis. However this party did not rebut the arguments given in recitals (254) to (256) of the provisional Regulation: that the economic downturn starting in the last quarter of 2008 cannot in any way diminish the damaging injurious effects of low priced subsidised imports in the EU market over the whole period considered and that, even though the shrinking demand was a factor contributing to the injury suffered, it did not break the causal link. It is further noted that those subsidised imports even increased their market share when demand contracted, i.e. from 7,6 % to 10,2 %, to the detriment of the EU producers.

(121) Some interested parties claimed that any injury was due to lack of investment by the EU PET producers and their consequent cost disadvantage vis-à-vis the exporters.

(122) It is recognised that PET is a capital intensive industry and that a certain level of investment is necessary to remain competitive in the mid-to-long term perspective. It is recalled that, as mentioned in recital (237) of the provisional Regulation, some of the sampled companies made important investments in 2006 and 2007, but there was only a minimal level of investment in 2008 and in the IP.

(123) It is noted in this regard that given the decreasing production and capacity utilisation rates in 2008 and in the IP combined with the sharply dropping market share of the Union producers, it would be unreasonable to expect any major investment in new capacities in the same period.

(124) It is also reiterated that, as mentioned in recitals (233) and (234) of the provisional Regulation, the financial situation of the sampled Union producers was very bad during the whole period considered and that they experienced significant losses between 2006 and the IP. Again, in such a situation, it would be unreasonable to expect any major investment by the Union producers.

(125) Consequently, it is concluded that the limited investment in 2008 and the IP did not materially contribute to the injury suffered by the Union industry but was rather a result thereof.

5.3. Conclusion on causation

(126) In the absence of any further comments on causation, recitals (246) to (264) of the provisional Regulation are hereby confirmed.

6. UNION INTEREST

(127) Following the provisional disclosure a significant number of EU converters and/or bottlers came forward and claimed that the Union interest analysis would not correctly reflect the arguments of the great number of cooperating users and that the findings contradicted the current economic environment. There was, however, no further substantiation or explanation. The companies all requested a hearing, but only two companies of this group of users and one association of Italian bottlers actually came to the hearing. More substantive comments were received from one cooperating EU converter (ALPLA), a group of processors (Caiba SA, Coca-Cola group, Danone Waters, Logoplaste, MFS Commodities, PepsiCO, Novara International and Silico Polymers), the cooperating import agent (GSI) and the association of plastic converters (EuPC). All these parties strongly opposed the imposition of any measures.

6.1. Interest of the Union industry and other Union producers

(128) Some interested parties claimed that the EU producers would (mis-)use trade defence instruments to shield the Union market and to set artificially high prices in the EU. These parties point to the existing anti-dumping and/or countervailing measures in place against India, Indonesia, South Korea, Malaysia, Taiwan, Thailand and the People's Republic of China. However, it is noted that any company producing in the EU has a right to complain and to seek remedies in case it can demonstrate the existence of injurious subsidisation practices. The fact that subsidisation and dumping practices have been found concerning numerous countries can possibly be explained by the fact that demand for this product increased tremendously since the '90s with usually double digit annual growth rates. This attracted significant investments worldwide, leading to a structural worldwide oversupply for PET. It is also noted that some third countries have measures in place against several of the above-mentioned countries, underlining the existing structural problem.

(129) Several interested parties reiterated that the Union producers would not be able to improve their performance in the long term since new investments in other third countries would come on-stream soon and decrease the artificially high prices in the EU.

(130) The investigation showed that a new investment that only recently came on-stream in Oman has increased its import volumes considerably in 2009 and it cannot be excluded that it might cause problems to the Union industry in the future. However, as already indicated in recital (270) of the provisional Regulation, new investments that might come on-stream and might cause injury to the Union industry are no valid reason to deny legitimate protection in this proceeding.

(131) One interested party claimed that that the increase in the PET prices in the EU would allow only the EU producers with investment in third countries not subject to measures (Thailand, US, Russia) or other PET producers in third countries (South Korea) to improve their performance. Thus, the party argued, the short-term benefit for the EU producers would clearly be outweighed by the transfer of wealth to producers outside the EU.

(132) In this respect it is noted that there is no evidence on file supporting the statement that any financial benefit that might be shifted to producers in third countries not subject to trade defence measures or to companies with a zero duty would outweigh the benefits to the Union industry.

(133) It was also claimed that Union producers only employ some 2 000 people whereas PET processors and bottlers that would be highly affected by any duty employ around 20 000 and 60 000 people respectively.

(134) It is noted that the employment created by PET producers is not marginal and the question whether the imposition of measures is against the Union interest as a whole cannot be reduced to a simple question of the number of people employed. In this regard it is also particularly relevant that the relevant users would likely not significantly be affected by the measures, taking into account the level of the duty as well as alternative sources of supply, as set out below in recitals (141) to (156).

6.2. Interest of unrelated importers in the Union

(135) It is reiterated that no unrelated importer cooperated in this investigation.

(136) The cooperating agent strongly contested that the imposition of duties would not have a considerable impact on its business. The company claimed that while it was indeed working on a commission basis, the impact would be important since an important part of its business was linked to the countries concerned. Should definitive measures be imposed, the commission obtained from the producers in the countries concerned would be affected given that the PET from the countries concerned could no longer compete with PET produced by other producers.

(137) In view of the overall moderate duty level, it is not likely that PET sales from the countries concerned will be affected substantially. Moreover, the agent can in the medium term most probably switch to other sources of supply, namely to imports from Oman, US, Brazil,

Mexico and the companies with a zero anti-dumping duty rate in South Korea. Sales of these exporting producers should put the agent in a position to compensate for any loss that may be incurred due to the imposition of measures. Consequently, the claim is rejected.

6.3. Interest of the raw material suppliers in the Union

(138) One interested party claimed that it is not legitimate to protect the raw material suppliers of the EU PET producers at the expense of the packaging industry, the bottlers and the final consumers.

(139) It is noted that the analysis of the impact of measures on the supplying industry is in conformity with Article 31 of the basic Regulation. It is a standard practice to carry out such an analysis, in particular when there is a strong dependency between raw material suppliers and Union producers.

(140) In the absence of any other comments in this regard, recitals (265) to (279) of the provisional Regulation are hereby definitively confirmed.

6.4. Interest of users

(141) It is reiterated that PET used in the production of bottle pre-forms amounts to between 70 % and 80 % of the total cost of production for converters. It is therefore a critical cost component for these companies.

(142) Some interested parties indicated that the EU packaging industry is constantly challenged by the requirements of the bottle fillers for new designs and more environmental friendly packaging. To that end, some of the converters appear to invest constantly in R & D to invent new products and design in order to remain competitive and to add more value in the chain.

(143) Some interested parties claimed that the impact on the EU converting industry will be very heavy and will lead to the erosion of their resources to invest in new, environmental friendly packaging and possibly even to the closure of hundreds of smaller companies as their margins are even narrower due to the small volumes processed and limited negotiation power.

(144) Indeed, should the converters absorb the whole price increase due to the measures, the impact on them could be sizeable, depending on their sources of supply, given that the cost of PET constitutes the majority of their costs and that many of the small and medium-sized companies operate on low margins.

(145) In this regard, a verification visit was carried out to a small plastic converter in Italy in order to gain a better insight about the impact of duties on this user group. The investigation showed that, although limited, processors normally have some ability to pass on their price increase, especially if the price increase is not

marginal and can be anticipated. Moreover, some PET processors have adaptation clauses in their contracts for raw material prices and this might help EU converters to pass on some price increase to bottlers.

(146) Consequently, and against the background of the rather moderate duty level, it is concluded that the imposition of countervailing duties would likely not have a devastating effect on converters.

(147) Some interested parties reiterated the argument that the risk of delocalisation of PET processors/converters would increase if definitive measures were imposed. These parties also claimed that due to the delocalisation of EU processors there would be no long-term benefit to EU producers. One of the cooperating PET converters stated that the process of delocalisation is already ongoing and that any imposition of countervailing duties would further accelerate this development. This party claimed that a substantial part of EU converters would be located in areas which are close to EU borders (Switzerland, Croatia, Bosnia, Serbia, Turkey, Russia and Ukraine) and that some converters would be much more flexible to move their production to these areas than suggested in the provisional Regulation.

(148) Based on the information on file, the delocalisation is indeed already an ongoing process and it is thus considered that the imposition of countervailing duties might be one factor out of many other considerations influencing such a company decision. It was not found that, without the imposition of measures in this case, those companies would be ready to stay within the EU given that such a decision is normally a result of an analysis taking into account a number of aspects other than trade defence measures, such as being close to the client, having access to skilled workers for R & D, general cost structure, etc.

(149) It is also noted that the information on the file shows that the EU converter industry is facing a number of important challenges due to inherent structural deficiencies that are becoming more and more apparent in the fast changing and increasingly competitive environment. It is evident that size matters in that business and that the consolidation of the market is already ongoing, including closures and delocalisation. Consequently, it is considered that any price increase for PET due to countervailing measures is not the reason for the feared closures of the smaller converters.

(150) Consequently, it is concluded that the imposition of countervailing duties is not going to be a determinative factor in the eventual decision about delocalising for the companies in the PET processing industry.

(151) Several interested parties stated that any measures would have a sizeable effect on many bottlers as due to

contractual arrangements any increase in PET resin prices would be (at least partially) passed on to them. It was also claimed that some bottle fillers might not be in a position to pass on price increases to their clients, being the supermarket/retail chains, and that they might not survive any increased cost.

(152) These parties claimed that the range of products that will be affected by duties was underestimated as they will not only affect bottled water, soft drinks and edible oil, but also beer, milk and dairy products, juice producers, ketchup and spices, cosmetic and personal care products, drugs, vitamins and supplements, household cleaning products and oil and lubricants for cars.

(153) It is acknowledged that PET packaging is manifold. It is noted, however that the provisional Regulation focused on the impact on bottlers, as it based on the data submitted by the companies cooperating in this investigation, being mainly water, soft-drink or juice producers. No other detailed data was available showing an even higher impact on the other applications mentioned above.

(154) Consequently, it is considered that the provisional findings described in recital (291) of the provisional Regulation can be definitively confirmed. In addition, given the moderate level of the proposed measures, they may result in a cost increase of not more than 1 % (in the worst case scenario – i.e. full impact of the measures to be born by the bottling companies) and thus will only have a limited impact on the overall situation of the bottling companies, even if, as claimed, they would not be in a position to pass on the increased cost to their customers.

(155) Several interested parties claimed that any trade defence measures will exacerbate the shortage of supply in the Union market which will be particularly problematic in the summer months given the higher demand for water/drinks. It was claimed that up to 900 000 tonnes of imports would be needed in 2010. This problem would be notably reinforced by the fact that some EU producers are also PET processors and would only sell to the free market once their internal demand is satisfied and at premium prices.

(156) In this regard no new information was submitted and the arguments provided in recitals (294) and (295) of the provisional Regulation were not refuted. It is also noted that given the moderate level of duties imposed on imports from UAE and Pakistan, the impact on trade volumes from those countries might not be significantly affected. Consequently, the findings set out in recitals (294) and (295) are definitively confirmed.

6.5. Impact on consumers

- (157) Several interested parties claimed that the provisional Regulation failed to properly address the impact on consumers which would buy, on a daily basis, products containing PET resins. These claims were not substantiated further than stating that an increase of 50 EUR/t applied to a consumption of 3 million tonnes would lead to EUR 150 million to be borne by the final consumer per year.
- (158) It is noted that the proposed estimate is unrealistic given that most parties agreed that some impact will be borne by the PET processors, the bottlers and supermarkets/retail chains, i.e. that some of the increased costs will be diluted in the sales chain.
- (159) The impact on the final consumer, in the worst case scenario (i.e. the unrealistic scenario where the customer would bear all the impact of the price increase), given the moderate level of measures proposed, would not exceed 0,5 eurocent per bottle consumed, and is highly likely to be much less.

6.6. Conclusion on Union interest

- (160) Given the above and after analysing in detail all the interests at stake, it is definitively concluded that, on balance, no compelling reasons exist for not imposing measures in the present case. In the absence of any other comments in this regard, recitals (280) to (298) of the provisional Regulation are hereby definitively confirmed.

6.7. Comments on final disclosure

- (161) Following disclosure of the essential facts and considerations on the basis of which the Commission has proposed the imposition of definitive countervailing duty some interested parties submitted further comments. Considering that the majority of these comments were a repetition of the observations already submitted and addressed, they did not change the above findings.
- (162) With regard to the reiterated argument that the recent change in the exchange rate between USD and EUR led to a significant increase in the price of the imported PET and consequently the Union industry allegedly does not need to be granted protection by trade defence measures, it is noted that any anti-subsidy investigation normally does not take into account the post IP developments; unless, in extraordinary situations, it can be shown, inter alia, that they are of a lasting nature and would significantly alter the findings of the case. Any changes in the exchange rate between USD and EUR cannot be considered to be of such nature.

7. DEFINITIVE MEASURES

7.1. Injury elimination level

- (163) One interested party claimed that a target profit of 5 % was overstated for the second quarter of the IP given that in this quarter (4th quarter of 2008) not only the demand was lower (winter season), but the global economic crisis also affected the PET producers heavily. Thus, it is claimed that a correct application of the principle developed in Case T-210/95 ⁽¹⁾ must lead to a 0 % margin in the absence of subsidised imports. Moreover, the party claimed, since all quarters of the IP were affected by the crisis, also in the other quarters, a 5 % profit margin would appear as unrealistic given that even without an economic crisis, i.e. in 2006/2007, the Union industry did not come close to the 5 % profit.
- (164) It is acknowledged that in line with the jurisprudence, the target profit to be used should be the profit which the Union industry could reasonably achieve under normal conditions of competition, in the absence of subsidised imports. It is recalled that in previous investigations for the same product a target profit of 7 % and above was used instead of the 5 % provisionally used in the current investigation. The 5 % target profit is considered to be the profit that the Union industry could expect in the absence of subsidised imports. Consequently, the claim for reducing the target profit is rejected.
- (165) Given the adjusted undercutting calculation mentioned in recitals (108) to (110) above, the corresponding injury elimination levels are as follows:

Country	Injury elimination level
Iran	16,7 %
Pakistan	14,1 %
UAE	17,5 %

7.2. Definitive measures

- (166) In view of the definitive conclusions reached with regard to subsidisation, injury, causation and Union interest, and in accordance with Article 15(1) of the basic Regulation, it is considered that a definitive countervailing duty should be imposed on imports of the product concerned originating in Iran, Pakistan and the United Arab Emirates at the level of the lowest of the subsidisation and injury elimination level found, in accordance with the lesser duty rule.
- (167) In the light of the foregoing, and in accordance with Article 12(1) of the basic Regulation, it is considered

⁽¹⁾ Case T-210/95 European Fertilizer Manufacturers' Association (EFMA) v Council of the European Union, ECR 1999, p. II-3291.

that the definitive countervailing duty rate should be imposed on imports originating in Iran at the level of the injury margin found while for imports originating in Pakistan and the United Arab Emirates, the definitive countervailing duty rate should be imposed at the level of the subsidy margin found.

- (168) It is recalled that costs and prices of PET are subject to considerable fluctuations in relatively short periods of

time. It was therefore considered appropriate to impose duties in the form of a specific amount per tonne. This amount results from the application of the countervailing rate to the CIF export prices used for the calculations in the parallel anti-dumping proceeding.

- (169) On the basis of the above, the proposed countervailing duty amounts, expressed on the CIF Union border price, customs duty unpaid, are as follows:

Country	Total subsidy margin	Injury margin	Definitive countervailing duty rate	
			%	Amount (EUR/tonne)
Iran	51,8 %	16,7 %	16,7 %	139,70
Pakistan	5,1 %	14,1 %	5,1 %	44,02
UAE	5,1 %	17,5 %	5,1 %	42,34

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

least one additional producer of PET in Iran. In view of the above sales structure, this situation casts serious doubts on whether the institutions and customs authorities can ensure that only PET from the cooperating exporting producer is sold according to the provisions of the undertaking as the product is a commodity product and easily interchangeable in the sense that in such commodity products it is not at all clear to physically recognise the producer.

- (174) On the basis of the above, it was concluded that such undertaking was impractical and therefore it cannot be accepted. The party was informed accordingly and given an opportunity to comment. However, its comments have not altered the above conclusion.

7.3. Undertakings

- (171) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-subsidy measures, the Iranian exporting producer offered a price undertaking in accordance with Article 13(1) of the basic Regulation.

- (172) The offer was examined and in view of the fact that the prices for the individual product types differ significantly, it was found that the sole minimum import price (MIP) offered would not guarantee the elimination of the injurious subsidisation for all products.

- (173) It was also established that the Iranian cooperating exporting producer sells the product concerned and other products to the EU exclusively through a related trading company which exports a multitude of products manufactured by various companies. This sales structure bears a very high risk of cross-compensation as PET subject to an undertaking could be sold together with other products to the same customers and prices set for a variety of products sold to the same client could be very easily compensated or off-set. Finally, it also appears from publicly available sources that there is at

8. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

- (175) In view of the magnitude of the countervailable subsidies found and in the light of the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of provisional duty imposed by the provisional Regulation be definitively collected to the extent of the amount of definitive duties imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in Iran, Pakistan and the United Arab Emirates.

2. The rate of the definitive countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 shall be as follows:

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Office N105 04/092, 1049 Brussels, BELGIUM.

Country	Definitive countervailing duty rate (EUR/tonne)
Iran: all companies	139,70
Pakistan: all companies	44,02
United Arab Emirates: all companies	42,34

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 definitive countervailing duty, calculated on the amounts set above, 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

The amounts secured by way of provisional countervailing duty pursuant to Commission Regulation (EU) No 473/2010 on imports of polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in Iran, Pakistan and the United Arab Emirates, shall be definitively collected at the rate of the definitive countervailing duty imposed pursuant to Article 1. The amounts secured in excess of the rate of the definitive countervailing duty shall be released.

Article 3

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

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

Done at Brussels, 27 September 2010.

For the Council
The President
K. PEETERS

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

COMMISSION REGULATION (EU) No 858/2010**of 28 September 2010****amending Regulation (EC) No 951/2006 as regards out-of-quota exports and export licences**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾ and in particular Articles 134 and 161(3), in conjunction with Article 4 thereof,

Whereas:

(1) 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⁾, establishes detailed rules for out-of-quota exports in the sugar sector.

(2) Article 4c of Regulation (EC) No 951/2006 provides for documents constituting proofs of arrival at destination, which must be furnished in case certain destinations are not eligible for exports of out-of-quota sugar and/or isoglucose. However, the risks of eventual trade frauds are rather limited where the quantity of sugar is small. To simplify the necessary administrative work it is therefore appropriate to provide for derogation from this rule in the case of quantities not exceeding 25 tonnes.

(3) Article 7c of Regulation (EC) No 951/2006 lays down provisions for communication on out-of-quota exports. In order to improve the management of the out-of-quota export regime it is appropriate to clarify that the communication of Member States on the applied quantities should be broken down by applicants as well.

(4) For the 2010/2011 marketing year Article 1(1) of Commission Regulation (EU) No 397/2010 of 7 May 2010 fixing the quantitative limit for exports of out-of-quota sugar and isoglucose until the end of the

2010/2011 marketing year ⁽³⁾ fixed the quantitative limit at 650 000 tonnes for white sugar falling within CN code 1701 99, i.e. for 6-digit code. In the case where demand is strong for the export licences and the annual quantitative limit is rapidly used, operators who export white sugar under different CN codes might not be able to obtain sufficient licences to cover their traditional markets. In order to improve the flexibility of the out-of-quota regime it is appropriate to allow that export licences issued for a white sugar product falling within CN code 1701 99 can also be used for the exports of a different white sugar product falling within the same CN code.

(5) According to Article 8a(b) of Regulation (EC) No 951/2006 export licences for out-of-quota sugar or isoglucose issued as from 1 April 2010 are valid as of their date of issue until the end of the fifth month thereafter. However, that may cause serious difficulties for certain exporters, namely the ones that supply their traditional markets throughout the marketing year. It is therefore appropriate that the provisions for the marketing year 2009/2010 apply on a permanent basis.

(6) In accordance with Article 1(2)(b)(i) of Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products ⁽⁴⁾ export licences shall be presented in the case of exports of sugar products falling under CN code 1701. Pursuant to Part II of Annex II to that Regulation the amount of security to be lodged is fixed at EUR 110 per tonne. For reasons of legal certainty and to ensure equal treatment of operators in each Member State it is appropriate to clarify in Article 12a(1) of Regulation (EC) No 951/2006 that the security shall be lodged also in case of out-of-quota sugar exports.

(7) Regulation (EC) No 951/2006 should therefore be amended accordingly.

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 115, 8.5.2010, p. 26.

⁽⁴⁾ OJ L 114, 26.4.2008, p. 3.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 951/2006 is amended as follows:

1. in Article 4c of Chapter IIa the following paragraph 4 is added:

‘4. In case of export declarations concerning a maximum quantity of 25 tonnes of sugar, and when the conditions referred to in Article 24(2)(a) and (b) of Commission Regulation (EC) No 612/2009 (*) are met, Member States shall exempt exporters from furnishing the proof provided in paragraph 1 and 2(b) and (c) of this Article. The transport document or its electronic equivalent as referred to in Article 17(3) of Regulation (EC) No 612/2009 shall be presented in any event.

(*) OJ L 186, 17.7.2009, p. 1’;

2. Chapter III is amended as follows:

- (a) the second subparagraph of Article 7c(1) is replaced by the following:

‘The quantities applied for shall be broken down by applicant and by eight-digit CN code without indicating the name of the applicant. The Member States shall also inform the Commission if no applications for export licences have been submitted.’;

- (b) the following Article 7f is inserted:

‘Article 7f

Use of export licences for out-of-quota sugar

Export licences issued for out-of-quota white sugar falling within CN code 1701 99 shall indicate CN codes 1701 99 10 and 1701 99 90 and shall be valid for any of them.’;

- (c) Article 8a is replaced by the following:

‘Article 8a

Validity of export licences for out-of-quota exports

By way of derogation from the provisions of Article 5 of this Regulation, export licences issued in respect of the quantitative limit fixed pursuant to Article 61, first paragraph, point (d) of Regulation (EC) No 1234/2007 shall be valid as follows:

- (a) licences issued between 1 October and 30 April of the marketing year concerned shall be valid as of their date of issue until 30 September of the marketing year in question;
- (b) licences issued between 1 May and 30 September of the marketing year concerned shall be valid as of their date of issue until the end of the fifth month thereafter.’;

3. in Chapter V Article 12a is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. The applicant shall lodge a security of EUR 110 per tonne of out-of-quota sugar and EUR 42 per tonne of net dry matter in case of out-of-quota isoglucose.’;

- (b) paragraph 4 is replaced by the following:

‘4. Where certain destinations are excluded from exports of out-of-quota sugar and/or isoglucose, the security referred to in paragraph 1 shall be released once the requirements of paragraph 3 of this Article and the requirements of Article 4c of this Regulation are met.’

Article 2

Entry into force

This Regulation shall enter into force on 1 October 2010.

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

Done at Brussels, 28 September 2010.

For the Commission

The President

José Manuel BARROSO

COMMISSION REGULATION (EU) No 859/2010**of 28 September 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 29 September 2010.

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

Done at Brussels, 28 September 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	84,4
	MK	50,2
	TR	50,2
	ZZ	61,6
0707 00 05	TR	111,6
	ZZ	111,6
0709 90 70	TR	110,4
	ZZ	110,4
0805 50 10	AR	107,5
	CL	79,2
	EG	66,3
	IL	120,5
	MA	157,0
	TR	103,4
	UY	128,7
	ZA	101,5
	ZZ	108,0
0806 10 10	TR	120,1
	ZA	56,9
	ZZ	88,5
0808 10 80	AR	56,1
	AU	217,4
	BR	59,6
	CL	93,8
	CN	82,6
	NZ	97,6
	US	85,0
	ZA	84,7
	ZZ	97,1
0808 20 50	CN	85,9
	ZA	80,8
	ZZ	83,4
0809 30	TR	149,8
	ZZ	149,8
0809 40 05	BA	53,5
	MK	45,0
	ZZ	49,3

⁽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'.

DECISIONS

COUNCIL DECISION 2010/576/CFSP

of 23 September 2010

on the European Union police mission undertaken in the framework of reform of the security sector (SSR) and its interface with the system of justice in the Democratic Republic of the Congo (EUPOL RD Congo)

THE COUNCIL OF THE EUROPEAN UNION,

(5) EUPOL RD Congo should be continued for a further year until 30 September 2011.

Having regard to the Treaty on European Union, and in particular Articles 28 and 43(2) thereof,

(6) The command and control structure of the Mission should be without prejudice to the contractual responsibility of the Head of Mission towards the Commission for implementing the budget of the Mission.

Whereas:

(7) The Watch-Keeping Capability established within the General Secretariat of the Council should be activated for the Mission.

(1) On 12 June 2007, the Council adopted Joint Action 2007/405/CFSP ⁽¹⁾ establishing a European Union police mission undertaken in the framework of reform of the security sector (SSR) and its interface with the system of justice in the Democratic Republic of the Congo (EUPOL RD Congo) (hereinafter referred to as 'EUPOL RD Congo' or 'the Mission').

(8) The Mission will be conducted in the context of a situation which may deteriorate and could harm the objectives of the Common Foreign and Security Policy (CFSP) as set out in Article 21 of the Treaty,

(2) On 23 June 2008, the Council adopted Joint Action 2008/485/CFSP ⁽²⁾ amending and extending Joint Action 2007/405/CFSP until 30 June 2009.

HAS ADOPTED THIS DECISION:

Article 1

The Mission

(3) On 15 June 2009, the Council adopted Joint Action 2009/466/CFSP ⁽³⁾ amending and extending Joint Action 2007/405/CFSP until 30 June 2010.

1. The European Union police mission undertaken in the framework of reform of the security sector (SSR) and its interface with the system of justice in the Democratic Republic of the Congo (hereinafter referred to as 'EUPOL RD Congo' or 'the Mission'), established by Joint Action 2007/405/CFSP, shall be extended for the period from 1 October 2010 to 30 September 2011.

(4) On 14 June 2010, the Council adopted Council Decision 2010/329/CFSP ⁽⁴⁾ amending and extending Joint Action 2007/405/CFSP until 30 September 2010.

2. EUPOL RD Congo shall operate in accordance with the Mission statement set out in Article 2 and shall carry out the tasks set out in Article 3. It shall operate without prejudice to DRC ownership of SSR.

⁽¹⁾ OJ L 151, 13.6.2007, p. 46.

⁽²⁾ OJ L 164, 25.6.2008, p. 44.

⁽³⁾ OJ L 151, 16.6.2009, p. 40.

⁽⁴⁾ OJ L 149, 15.6.2010, p. 11.

Article 2

Mission statement

1. In order to improve the maturity and sustainability of the reform process of the Congolese National Police (PNC), EUPOL RD Congo shall assist the Congolese authorities in the implementation of the Police Action Plan, covering the priorities of the Police Reform process for the period 2010-2012, and building on the guidelines of the Strategic Framework. EUPOL RD Congo shall focus on concrete activities and projects to underpin its action at the strategic level of the reform process, on capacity building and on enhancement of the interaction between the PNC and the wider criminal justice system with a view to better supporting the fight against sexual violence and impunity. EUPOL RD Congo shall work in close coordination and cooperation with other Union, international and bilateral donors, with a view to avoiding duplication of efforts.

2. The particular objectives of the Mission shall be:

- (a) to support the overall SSR process at the strategic level in the Democratic Republic of the Congo (DRC) with a particular emphasis on the reform of the PNC and its interaction with the judiciary;
- (b) to support the implementation of the Police Reform and the improvement of the PNC operational capacity and accountability through mentoring, monitoring and advising (MMA) activities;
- (c) to enhance the knowledge and capacity of senior PNC officials, trainers and training systems, including through the provision of strategic training courses;
- (d) to support the fight against impunity in the field of human rights and sexual violence.

3. The Mission shall have a Project Cell for identifying and implementing projects. The Mission shall advise the Member States and third States and shall coordinate and facilitate, under their responsibility, the implementation of their projects in fields which are of interest to the Mission and in furtherance of its objectives.

Article 3

Mission tasks

In order to achieve its objectives, the tasks of EUPOL RD Congo shall be as follows:

- 1. to support the overall SSR process at the strategic level in DRC with a particular emphasis on the reform of the PNC and its interaction with the judiciary:
 - by supporting the work and evolution of the Police Reform Monitoring Committee (CSRP) and its Working Groups, including by providing assistance in the preparation of the relevant legal and sub-legal framework of the Police Reform in order to contribute to the finalisation of the conception work,
 - by contributing to and advising on the establishment and development of the bodies to be created for the Police Reform, contributing to their activities by providing specialist expertise in the most relevant domains for the implementation of Police Reform,
 - by contributing to the enhancement of the links between the Ministry of Interior and the Ministry of Justice with a view to increasing levels of cooperation and understanding between the two Ministries,
 - by participating in the activities of the Joint Justice Committee (*Comité Mixte de Suivi du Programme Cadre de la Justice*) and assisting, as appropriate, in the review of the criminal legal framework, while supporting, as appropriate, the Joint Defence Committee, with a view to supporting coherence and consistency among the different pillars of SSR,
 - by joining wider Union efforts and activities to support inter-ministerial coordination and coherence;
- 2. to support the implementation of the Police Reform and the improvement of the PNC operational capacity and accountability through MMA activities:
 - by advising on the design and implementation of an adequate organisational structure for the PNC and supporting data collection activities in order to establish a complete census of police officers,
 - by mentoring, monitoring and advising personnel, including by co-location if appropriate, in the technical directorates within the PNC Inspectorate and at Headquarters (HQ) to advise and assist in the implementation of the reform process and in the integration of all police services within one single institution. This task needs to be closely coordinated with the UN MONUSCO operation, taking into account their deployment across the Congolese territory,

- by supporting the integration of the crime police (*Police Judiciaire des Parquets*) into the PNC, in order to help to establish an effective interface between the crime police and the prosecution service. The Mission will work towards this by advising as appropriate key actors in the field of criminal justice, in close coordination with the Commission and partners' programmes,
 - by supporting the newly created police audit service (*Inspection Générale d'Audit*) through efforts to strengthen its institutional and operational capacity in order to provide the citizens and authorities with a key instrument of democratic control over the police force,
 - by mentoring and advising the crime police in Kinshasa, especially through the *Police de Recherche et d'Intervention*, in improving its standards and its capability to effectively prevent and investigate crimes,
 - by supporting the implementation of the Police Action Plan in order to enable the PNC to have at its disposal, to the largest extent possible, the instruments, decision-making processes and means to guarantee a proper keeping of public order, while fully respecting the fundamental freedoms granted in the Constitution as well as the international human rights standards,
 - by helping the PNC to upgrade the coordination, coherence and flexibility of its decision-making process by supporting the reinforcement of the Command and Control Centre as well as the Operations Centre in Kinshasa, in close cooperation with other partners already working in this area,
 - by contributing to the finalisation of a Community Policing (*Police de proximité*) concept and by participating in the pilot project of the *Commissariat de Référence*, with the aim of strengthening a confidence between the population and the police and of enhancing security both in objective terms and in the public perception;
3. to enhance the knowledge and capacity of senior PNC officials, trainers and training systems, including through the provision of strategic training courses:
- by assisting in the enhancement of training capabilities at the School for Crime Police Officers in Kinshasa,
 - by supporting the establishment and operation of the Police Academy in Kasapa, Lubumbashi, including logistics and equipment,
 - by supporting the professional development of senior PNC officials with a view to improving the leadership and management skills,
 - by undertaking an assessment of current PNC training needs and resources,
 - by contributing to the definition of the regulatory and educational framework for the start-up and operation of the Police Academy,
 - by developing and introducing PNC training manuals for basic and specific training,
 - by contributing to the institutionalisation of the Community Policing (*Police de proximité*) concept with training,
 - by participating in the selection and training of trainers for police,
 - by providing specialist training in areas that support the achievement of the objectives of the Mission;
4. to support the fight against impunity in the field of human rights and sexual violence:
- by assisting the relevant groups of the CSRP and of the implementation bodies of Police Reform,
 - by supporting the development of a coherent policy for the PNC and the *Inspection Générale d'Audit* against sexual violence,
 - by helping to create, and by monitoring and mentoring specialised units within the police to fight against sexual violence and crimes related to children as well as impunity, and increase their operationalisation through MMA activities,

— by supporting the organisation of actions aimed at increasing the awareness of police officers of the problem of sexual violence and impunity,

— by monitoring and following up PNC and judicial activities in this field, advising, as appropriate, relevant representatives of prosecution services, of military courts and of the crime police, in coordination with the other national and international key players;

5. Other tasks/Project Cell:

— to support the Commission as required, especially in its projects for an integrated system for human resources management and for the police census,

— to identify and implement projects through the Project Cell to ensure proper use of designated funds from the CFSP budget for their implementation. The Project Cell personnel may also support Member States and third States at their request, within the Mission's means and capabilities, by providing reinforced coordination and technical assistance for their own projects and under their own responsibility. All activities of the Project Cell are to be carried out within the Mission mandate and to complete the activities carried out by EUPOL RD Congo.

Article 4

Structure of the Mission

1. EUPOL RD Congo shall be structured as follows:

(a) HQ in Kinshasa. The HQ shall consist of the Office of the Head of Mission and of the HQ Staff, providing all necessary functions of advice at strategic and operational level, command and control, as well as mission and administrative support;

(b) Field Office. A Field Office shall be established in Goma. The nation-wide implications of the Mission mandate may also require in-country actions and possibly temporary presence (also for a longer term) of experts in other locations, still subject to security considerations.

2. The elements referred to in paragraph 1 shall be subject to further detailed arrangements in the Operation Plan (OPLAN).

Article 5

Civilian Operation Commander

1. The Director of the Civilian Planning and Conduct Capability (CPCC) shall be the Civilian Operation Commander for EUPOL RD Congo.

2. The Civilian Operation Commander, under the political control and strategic direction of the Political and Security Committee (PSC) and the overall authority of the High Representative of the Union for Foreign Affairs and Security Policy (HR), shall exercise command and control of EUPOL RD Congo at the strategic level.

3. The Civilian Operation Commander shall ensure proper and effective implementation of the Council decisions as well as the PSC decisions, including by issuing instructions at the strategic level as required to the Head of Mission and providing him with advice and technical support.

4. All seconded staff shall remain under the full command of the national authorities of the seconding State or Union institution concerned. National authorities shall transfer Operational Control (OPCON) of their personnel to the Civilian Operation Commander.

5. The Civilian Operation Commander shall have overall responsibility for ensuring that the Union duty of care is properly discharged.

6. The Civilian Operation Commander and the EU Special Representative (EUSR) shall consult each other on SSR issues and support at Region-wide level as required.

Article 6

Head of Mission

1. The Head of Mission shall assume responsibility for and exercise command and control of the Mission at theatre level.

2. The Head of Mission shall exercise OPCON over personnel from contributing States as assigned by the Civilian Operation Commander together with administrative and logistic responsibility, including over assets, resources and information placed at the disposal of the Mission.

3. The Head of Mission shall issue instructions to all Mission staff for the effective conduct of EUPOL RD Congo in theatre, assuming its coordination and day-to-day management, and following the instructions at the strategic level of the Civilian Operation Commander.

4. The Head of Mission shall be responsible for the implementation of the Mission budget. For this purpose, the Head of Mission shall sign a contract with the Commission.

5. The Head of Mission shall be responsible for disciplinary control over the staff. For seconded staff, disciplinary action shall be exercised by the national or Union authority concerned.

6. The Head of Mission shall represent EUPOL RD Congo in the operations area and shall ensure appropriate visibility of the Mission.

7. The Head of Mission shall coordinate, as appropriate, the actions of EUPOL RD Congo with other Union actors on the ground. The Head of Mission shall, without prejudice to the chain of command, receive local political guidance on SSR issues and support at Region-wide level from the EUSR.

Article 7

Staff

1. EUPOL RD Congo shall consist primarily of staff seconded by Member States or Union institutions. Each Member State or Union institution shall bear the costs related to any member of the staff seconded by it, including travel expenses to and from the place of deployment, salaries, medical coverage and allowances other than applicable daily allowances, as well as hardship and risk allowances.

2. International civilian staff and local staff shall be recruited on a contractual basis by the Mission if the functions required are not provided by personnel seconded by Member States. Exceptionally, in duly justified cases, where no qualified applications from Member States are available, nationals from participating third States may be recruited on a contractual basis, as appropriate.

3. All staff shall abide by the Mission-specific minimum security operating standards and the Mission security plan supporting the Union field security policy. As regards the protection of EU classified information with which members

of staff are entrusted in the course of their duties, all staff shall respect the principles and minimum standards of security established by security regulations of the Council ⁽¹⁾.

Article 8

Status of the Mission and its staff

1. The status of the Mission and its staff, including where appropriate the privileges, immunities and further guarantees necessary for the completion and smooth functioning of the Mission, shall be agreed in accordance with the procedure laid down in Article 37 of the Treaty.

2. The State or Union institution having seconded a member of staff shall be responsible for answering any claims linked to the secondment, from or concerning the member of staff. The State or Union institution concerned shall be responsible for bringing any action against the seconded person.

3. The conditions of employment and the rights and obligations of international and local civilian staff shall be laid down in the contracts between the Head of Mission and the members of staff.

Article 9

Chain of command

1. EUPOL RD Congo shall have a unified chain of command, as a crisis management operation.

2. Under the responsibility of the Council and of the HR, the PSC shall exercise political control and strategic direction of EUPOL RD Congo.

3. The Civilian Operation Commander, under the political control and strategic direction of the PSC and the overall authority of the HR, shall exercise command and control of EUPOL RD Congo at the strategic level and, as such, shall issue instructions to the Head of Mission and provide him with advice and technical support.

4. The Civilian Operation Commander shall report to the Council through the HR.

5. The Head of Mission shall exercise command and control of EUPOL RD Congo at theatre level and shall be directly responsible to the Civilian Operation Commander.

⁽¹⁾ Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations (OJ L 101, 11.4.2001, p. 1).

*Article 10***Political control and strategic direction**

1. The PSC shall exercise, under the responsibility of the Council and of the HR, political control and strategic direction of the Mission. The Council hereby authorises the PSC to take the relevant decisions in accordance with the third paragraph of Article 38 of the Treaty. This authorisation shall include the powers to appoint a Head of Mission, upon a proposal of the HR, and to amend the CONOPS and the OPLAN. The powers of decision with respect to the objectives and termination of the Mission shall remain vested in the Council.
2. The PSC shall report to the Council at regular intervals.
3. The PSC shall receive, on a regular basis and as required, reports by the Civilian Operation Commander and the Head of Mission on issues within their areas of responsibility.

*Article 11***Participation of third States**

1. Without prejudice to the decision-making autonomy of the Union and its single institutional framework, third States may be invited to contribute to the Mission, provided that they bear the cost of the staff seconded by them, including salaries, all risk insurance cover, daily subsistence allowances and travel expenses to and from DRC, and that they contribute to the running costs of the Mission, as appropriate.
2. Third States contributing to the Mission shall have the same rights and obligations in terms of day-to-day management of the Mission as Member States.
3. The Council hereby authorises the PSC to take the relevant decisions on acceptance of the proposed contributions and to establish a Committee of Contributors.
4. Detailed arrangements regarding the participation of third States shall be covered by agreements concluded in accordance with Article 37 of the Treaty and additional technical arrangements as necessary. Where the Union and a third State conclude an agreement establishing a framework for the participation of that third State in Union crisis-management operations, the provisions of that agreement shall apply in the context of the Mission.

*Article 12***Security**

1. The Civilian Operation Commander, in coordination with the Council Security Office, shall direct the Head of Mission planning of security measures and ensure their proper and effective implementation for EUPOL RD Congo in accordance with Articles 5 and 9.
2. The Head of Mission shall be responsible for the security of the Mission and for ensuring compliance with minimum security requirements applicable to the Mission, in line with the Union policy on the security of personnel deployed outside the Union in an operational capacity under Title V of the Treaty, and its supporting instruments.
3. The Head of Mission shall be assisted by a Senior Mission Security Officer (SMSO), who shall report to the Head of Mission and also maintain a close functional relationship with the Council Security Office.
4. EUPOL RD Congo staff shall undergo mandatory security training before taking up their duties, in accordance with the OPLAN. They shall also receive regular in-theatre refresher training organised by the SMSO.
5. The Head of Mission shall ensure the protection of EU classified information in accordance with the Council security regulations.

*Article 13***Watch-Keeping Capability**

The Watch-Keeping Capability shall be activated for EUPOL RD Congo.

*Article 14***Financial arrangements**

1. The financial reference amount intended to cover expenditure related to the Mission for the period from 1 October 2010 to 30 September 2011 shall be EUR 6 430 000.
2. All expenditure shall be managed in accordance with the rules and procedures applicable to the general budget of the Union.
3. The Head of Mission shall report fully to, and be supervised by, the Commission regarding the activities undertaken in the framework of his contract.

4. Nationals of third States shall be allowed to tender for contracts. Subject to the Commission's approval, the Head of Mission may conclude technical arrangements with Member States, participating third States and other international actors regarding the provision of equipment, services and premises to EUPOL RD Congo.

5. The financial arrangements shall respect the operational requirements of the Mission, including compatibility of equipment and interoperability of teams of the Mission.

6. The expenditure shall be eligible as of the date of adoption of this Decision.

Article 15

Coordination

1. Without prejudice to the chain of command, the Head of Mission shall act in close coordination with the Union Delegation and EUSEC RD Congo to ensure the consistency of Union action in support of DRC.

2. The Head of Mission shall coordinate closely with Heads of the diplomatic missions of Member States.

3. The Head of Mission shall cooperate with other international actors present in the country, and work in close coordination with the UN MONUSCO.

Article 16

Release of classified information

1. The HR shall be authorised to release to the third States associated with this Decision, as appropriate and in accordance with the needs of the Mission, EU classified information and documents up to 'CONFIDENTIEL UE' level which are generated for the purposes of the Mission, in accordance with the security regulations of the Council.

2. The HR shall be authorised to release to the UN and OSCE, in accordance with the operational needs of the

Mission, EU classified information and documents up to 'RESTREINT UE' level which are generated for the purposes of the Mission, in accordance with the security regulations of the Council. Local arrangements shall be drawn up for this purpose.

3. In the event of a specific and immediate operational need, the HR shall be authorised to release to the host State any EU classified information and documents up to 'RESTREINT UE' level which are generated for the purposes of the Mission, in accordance with the security regulations of the Council. In all other cases, such information and documents shall be released to the host State in accordance with the appropriate procedures for cooperation by the host State with the Union.

4. The HR shall be authorised to release to the third States and international organisations referred to in paragraphs 1, 2 and 3, EU non-classified documents connected with the deliberations of the Council relating to the Mission and covered by the obligation of professional secrecy pursuant to Article 6(1) of the Rules of Procedure of the Council⁽¹⁾.

Article 17

Review of the Mission

A review of the Mission shall be presented to the PSC every six months, on the basis of a report by the Head of Mission.

Article 18

Entry into force and duration

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

It shall apply from 1 October 2010 to 30 September 2011.

Done at Brussels, 23 September 2010.

For the Council

The President

S. VANACKERE

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

COMMISSION DECISION

of 28 September 2010

terminating the anti-dumping proceeding concerning imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates and releasing the amounts secured by way of the provisional duties imposed

(2010/577/EU)

THE EUROPEAN COMMISSION,

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 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Provisional measures

- (1) On 3 September 2009, the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽²⁾, the initiation of an anti-dumping proceeding with regard to imports into the Union of certain polyethylene terephthalate (PET) originating in Iran, Pakistan and the United Arab Emirates (the countries concerned). On 1 June 2010, the Commission, by Regulation (EU) No 472/2010 ⁽³⁾ (the provisional Regulation) imposed a provisional anti-dumping duty on imports of certain polyethylene terephthalate originating in Iran and the United Arab Emirates.
- (2) The proceeding was initiated following a complaint lodged on 20 July 2009 by the Polyethylene Terephthalate Committee of Plastics Europe (the complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Union production of certain polyethylene terephthalate.

- (3) As set out in recital 11 of the provisional Regulation, the investigation of dumping and injury covered the period

from 1 July 2008 to 30 June 2009 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the IP (period considered).

- (4) In the parallel anti-subsidy proceeding, the Commission by Regulation (EU) No 473/2010 ⁽⁴⁾ imposed a provisional countervailing duty on imports of certain polyethylene terephthalate originating in Iran and the United Arab Emirates.

2. Subsequent procedure

- (5) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures (provisional disclosure), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were also granted the opportunity to be heard.
- (6) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties following the provisional disclosure were considered and, where appropriate, the provisional findings were modified accordingly.
- (7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the termination of the proceeding and the release of amounts secured by way of provisional duties imposed (final disclosure). They were also granted a period within which they could make representations subsequent to this disclosure.
- (8) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings were modified accordingly.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 208, 3.9.2009, p. 12.

⁽³⁾ OJ L 134, 1.6.2010, p. 4.

⁽⁴⁾ OJ L 134, 1.6.2010, p. 25.

3. Parties concerned by the proceeding

- (9) Some interested parties claimed that the sample of EU producers was not representative and inconsistent and that therefore the injury analysis was deficient. In particular, it was claimed that sampling was not necessary since the number of producers was not large. In addition, it was claimed that by 'artificially' splitting company groups into individual legal entities, the sample would not contain some of the market leaders (Artenius, M&G Polimeri) and that the methodology for the selection of the sample is inconsistent since the sample also included two groups of companies. It was also claimed that the sample was not representative since it did not contain any producer that is selling to a related PET processor in sufficient quantities. As a result, the institutions allegedly could not assess the real supply capability of the Union industry and did not take into account the Union industry's conflict of interest. Moreover, as one company did not provide all necessary information and was excluded from the sample, the representativity allegedly dropped to 28 % of EU production. The same parties claimed that the selected sample was not statistically valid.
- (10) With regard to the argument that sampling was not necessary since the number of producers was not large, it is reiterated that in the sampling exercise 14 Union producers belonging to eight groups of companies came forward. Given the objectively high number of EU producers that cooperated, i.e. 14, sampling was applied in accordance with Article 17(1) of the basic Regulation on the basis of the largest representative volume of sales that could reasonably be investigated within the time available. The sample selected consisted of five individual companies (with six producing locations).
- (11) With regard to the first claim concerning the representativity of the sample, it should be noted that the institutions can include individual companies which are part of a company group within the sample as long as they are representative and have separate financial accounts. Otherwise, investigating all 14 EU producers belonging to the eight groups of companies would have prevented the timely completion of the investigation. However, the fact that two company groups have been included in the sample is not inconsistent with the sampling methodology applied in this case, i.e. the largest representative volumes of sales to EU clients.
- (12) As regards Indorama, this group had two different production plants in the IP — one in the Netherlands and the other one in UK. Including this group in the sample is in line with the sampling methodology applied since those plants formed one entity from the legal and financial perspective. As regards Equipolymers, which had two separate entities producing PET in the IP (one in Italy and another one in Germany), the company reported consolidated figures for both locations. Given that the verification of these consolidated figures was possible during one visit at the company's headquarters, it was decided to accept this consolidated reporting and to treat Equipolymers PET producing companies as one entity for the purpose of this proceeding. With regard to the claim that Artenius and M&G Polimeri had to be included in the sample because they were the market leaders, it is noted that none of their individual entities belonged to the companies with the highest volumes of sales to EU clients.
- (13) As regards the claim that the sample was not representative because it did not include one producer who produces mainly for internal consumption, it should be noted that the capability to supply can be examined in the framework of the Union interest analysis if such a claim is made and for that purpose the captive consumption can be deducted from the production volume. Thus, there is no need to have such a producer in the sample for the examination of certain injury factors. Secondly, any double interest resulting from the position of a company as EU producer and processor at the same time can also be assessed in the Union interest analysis. The position of a company as EU producer and processor is not linked with the performance of the Union industry where sales to unrelated customers in the EU are taken as a benchmark. The claim is thus rejected.
- (14) With regard to the claim concerning the overall representativity of the sample, it is reiterated that the reduction of the sample to four companies lowered the representativity from 65 % to 47 % of the sales by all cooperating producers. The same four companies accounted for 52 % of the Union production. This is considered to be a representative sample of the EU producers in terms of sales to independent customers in the EU.
- (15) As regards the claim that the sample selected was not statistically valid, it is noted that Article 17(1) of the basic Regulation clearly allows for a sample to be based on the largest representative volume of the sales that can reasonably be investigated in the time available, as an alternative for a 'statistically valid' sample.
- (16) In the absence of any other comments concerning the findings, recitals 3 to 10 of the provisional Regulation are hereby confirmed.

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (17) It is recalled that, in recital 12 of the provisional Regulation, the product concerned was defined as polyethylene terephthalate having a viscosity number of 78 ml/g or higher according to the ISO Standard 1628-5, originating in the countries concerned and currently falling within CN code 3907 60 20.
- (18) Moreover, in recital 14 of the provisional Regulation, it was stated that the investigation showed that PET produced and sold in the Union by the Union industry, and the PET produced and sold on the domestic markets of the countries concerned, and exported to the Union were like products.
- (19) Since the product under investigation was considered a homogeneous product, it was not further subdivided into different product types for calculating the dumping and the injury margins.
- (20) One exporting producer claimed that PET should be subdivided into different product types according to their different viscosity numbers since the viscosity number is essential to determine the different applications for the PET types produced. It was considered that the claim should be accepted and the methodology for calculating the dumping and injury margins was adapted accordingly.

C. DUMPING

- (21) As explained in recital 20, the methodology for the calculation of the dumping margin was adapted and the dumping margin for each country concerned is now calculated for each product type separately.

1. Iran*1.1. Normal value*

- (22) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recitals 16 to 18 of the provisional Regulation is confirmed.

1.2. Export price

- (23) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recital 19 of the provisional Regulation is confirmed.

1.3. Comparison

- (24) In recital 23 of the provisional Regulation it was stated that the Iranian exporter was not able to quantify the

alleged impact of the sanctions against Iran in a way that could be supported by any evidence. In its comments to the provisional Regulation, the company claimed that it would be upon the investigating authority to ensure a fair comparison, not the exporter. However, in accordance with Article 2(10)(k) of the basic Regulation, an adjustment may be made for differences in other factors if it is demonstrated that they affect the price comparability, in particular that customers consistently pay different prices on the domestic market because of the differences in such factors. As it is for the exporting producer to demonstrate the existence of any other factor, the claim is rejected and the methodology explained in recitals 20 to 23 of the provisional Regulation is confirmed.

1.4. Dumping margin

- (25) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recitals 24 to 25 of the provisional Regulation is confirmed.
- (26) The definitive dumping margin for Iran, expressed as a percentage of the cif Union frontier price, duty unpaid, is 26,8 %.

2. Pakistan*2.1. Normal value*

- (27) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recitals 27 to 29 of the provisional Regulation is confirmed.

2.2. Export price

- (28) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recital 30 of the provisional Regulation is confirmed.

2.3. Comparison

- (29) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recitals 31 to 32 of the provisional Regulation is confirmed.

2.4. Dumping margin

- (30) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recital 33 of the provisional Regulation is confirmed.

(31) The definitive dumping margin for the sole Pakistani exporting producer, Novatex Limited, expressed as a percentage of the cif Union frontier price, duty unpaid, is 0,6 %, i.e. below *de minimis* in the sense of Article 9(3) of the basic Regulation.

(32) Since there are no other producers of the product concerned in Pakistan, no definitive measures should be imposed.

3. United Arab Emirates

3.1. Normal value

(33) Following the change in methodology explained in recitals 20 and 21, the results of the ordinary course of trade test as described in recitals 37 and 38 of the provisional Regulation changed with regard to some product types. Thus, where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only.

(34) Where there were no profitable sales of a certain product type, it was considered that this product type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(35) Wherever domestic prices of a particular product type sold by the exporting producers could not be used in order to establish normal value, the normal value was constructed in accordance with Article 2(3) of the basic Regulation.

(36) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs and for profits have been based, pursuant to Article 2(6) of the basic Regulation, on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation.

3.2. Export price

(37) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recital 39 of the provisional Regulation is confirmed.

3.3. Comparison

(38) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recitals 40 to 41 of the provisional Regulation is confirmed.

3.4. Dumping margin

(39) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recital 42 of the provisional Regulation is confirmed.

(40) The definitive dumping margin for the sole UAE exporting producer, JBF RAK LLC, expressed as a percentage of the cif Union frontier price, duty unpaid, is 0,6 %, i.e. below *de minimis* in the sense of Article 9(3) of the basic Regulation.

(41) Since there are no other producers of the product concerned in the UAE, no definitive measures should be imposed.

D. INJURY

1. Union production, Union industry and Union consumption

(42) No comments have been received with regard to Union production, Union industry and Union consumption. Consequently, the recitals 45 to 50 of the provisional Regulation are hereby confirmed.

2. Imports from the countries concerned

2.1. Cumulative assessment of the effects of the imports concerned

(43) It is reiterated that in recital 52 of the provisional Regulation, it was considered that as the dumping margin found for Pakistan was *de minimis*, the effect of those imports could not be assessed together with imports provisionally found to be dumped from Iran and the UAE.

(44) Given that the further investigation showed that the dumping margin for the UAE is also *de minimis*, it is considered that the effect of those imports cannot be assessed together with dumped imports from Iran. Consequently, no cumulative assessment of the imports is made.

2.2. Volume of the imports concerned

(45) The volume of dumped imports of the product concerned into the EU started from a relatively low level in 2006, but increased gradually until the IP, reaching 55 500 tonnes in the IP. More specifically, imports from Iran more than doubled between 2006 and 2007, before further increasing by over 100 percentage points in 2008 compared to 2007 and almost another 130 percentage points between 2008 and the IP.

Table 1

	2006	2007	2008	IP
Volume of dumped imports from Iran (tonnes)	11 752	26 624	40 101	55 500
Index (2006 = 100)	100	227	341	472
Market share of dumped imports from Iran	0,4 %	0,9 %	1,4 %	1,9 %

Source: Eurostat.

2.3. Market share of the imports concerned

- (46) The market share held by dumped imports from Iran stood at 0,4 % during 2006 and increased steadily by 1,5 percentage points throughout the period considered. More specifically, it rose by 0,5 percentage points between 2006 and 2007, by further 0,5 percentage points between 2007 and 2008 and by 0,5 percentage points between 2008 and the IP. In the IP, the market share of dumped imports from Iran was 1,9 %.

2.4. Prices

(i) Price evolution

- (47) The average import price decreased by 11 % in the period considered with the sharpest decline between 2008 and the IP. More specifically, the average price remained stable in 2007 and decreased by 2 percentage points in 2008, before dropping by further 9 percentage points in the IP.

Table 2

	2006	2007	2008	IP
Price of imports from the Iran (EUR/tonne)	1 033	1 034	1 008	920
Index	100	100	98	89

Source: Eurostat.

(ii) Price undercutting

- (48) Following the provisional disclosure, the Iranian exporter commented that its injury margin was overstated since the weighted average unit sales price established was understated, incorrectly calculating the amount of level of trade adjustment; however, no alternative quantification of the level of trade adjustment was proposed. Indeed, the basis for the level of trade used for the provisional calculation was a fixed amount per tonne

that is a commission charged by the cooperating importing agent and represent around 1 % of the average cif price. No other information is available for such adjustment and the claim is thus rejected. The same party also claimed that the 2 % rate taken for post-importation costs appeared to be understated. It is reiterated in this regard that no importer cooperated in this investigation and it was not possible to verify the actual post-importation cost. Thus, in absence of any other information available, the rate used in previous proceedings was applied.

- (49) Given the above, it is definitively confirmed that the dumped products originating in Iran sold in the Union undercut the prices of the Union industry by 3,2 %.

3. Situation of the Union industry

- (50) Some interested parties claimed that injury did not exist as given the alleged wrong sample no results could be extrapolated for the total Union industry. As an example it was claimed that since one company (not in the sample) had indicated that it was using over 100 % of its capacity it would be a clear sign of no injury. It is noted that the information submitted is an extract of this company's submission to the stock exchange authorities and not verified. This information does not square with the information on the file. Moreover, and in any event, the capacity utilisation of one EU producer alone cannot alter the findings of injury concerning almost all other injury indicators for the sampled EU producers and the other EU producers.

- (51) In the absence of any other claims or comments, recitals 63 to 82 of the provisional Regulation are hereby confirmed.

4. Conclusion on injury

- (52) In the absence of any specific comments, the conclusion on injury laid down in recitals 83 to 85 of the provisional Regulation is hereby confirmed.

E. CAUSATION

1. Effect of the dumped imports

- (53) The increase in the volume of the dumped imports from Iran by almost five times between 2006 and the IP, and of its corresponding share of the Union market, i.e. by 1,5 percentage points, as well as the undercutting found (3,2 % during the IP) generally coincided with the deterioration of the economic situation of the Union industry. Therefore, it can be concluded that dumped imports from Iran had an impact on the injury found to the Union industry.

(54) It is important to stress that in the parallel anti-subsidy proceeding, the cumulated subsidised imports from Pakistan, the UAE and Iran were found to cause material injury to the Union industry.

(55) On the other hand, given the considerable volumes and the low prices of imports from Korea and Pakistan, it is also confirmed, as stated in recitals 94 and 96 of the provisional Regulation, that those imports contributed to a certain extent to the injury suffered by the Union industry.

(56) Additionally, in this proceeding, considerable imports from the UAE (around 150 000 t) were also undercutting the Union industry prices.

(57) At the same time, the market share of the Iranian imports was below 1 % in 2006 and in 2007 and in the IP it was only close to 2 %, corresponding to 55 000 t.

(58) It also has to be noted that the undercutting established for the Iranian producer was lower than in the case of non-dumped imports from the UAE.

2. Conclusion on causation

(59) In conclusion, while the above analysis showed that dumped imports originating in Iran have had some negative impact on the situation of the Union industry, this impact, taken in isolation, did not exist to a degree that could be considered material as required by Article 3(6) of the basic Regulation.

F. TERMINATION OF THE PROCEEDING

(60) The investigation has shown that imports of the product concerned from Pakistan and from the UAE were not sold at dumped prices. Consequently the proceeding with regard to Pakistan and the UAE shall be terminated without the imposition of measures.

(61) The investigation has shown that imports of the product concerned from Iran were made at dumped prices and contributed to some extent to the injury suffered by the Union industry.

(62) However, as indicated in recital 59, it was established that the negative impact of the Iranian imports on the situation of the Union industry did not exist to a degree that would enable it to be classified as material.

(63) In light of the above, considering the lack of material injury caused by the dumped imports originating in Iran, it is concluded that the proceeding should be terminated without the imposition of measures also with regard to Iran.

(64) The amounts secured by way of the provisional anti-dumping duty imposed pursuant to Regulation (EU) No 472/2010 should be released,

HAS ADOPTED THIS DECISION:

Article 1

The anti-dumping proceeding concerning imports of polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in Iran, Pakistan and the United Arab Emirates is hereby terminated.

Article 2

Regulation (EU) No 472/2010 is hereby repealed. The amounts secured by way of the provisional anti-dumping duty imposed pursuant to Regulation (EU) No 472/2010 on imports of polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in Iran and the United Arab Emirates shall be released.

Article 3

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

Done at Brussels, 28 September 2010.

For the Commission

The President

José Manuel BARROSO

COMMISSION DECISION

of 28 September 2010

on the recognition of the legal and supervisory framework of Japan as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies

*(notified under document C(2010) 6418)***(Text with EEA relevance)**

(2010/578/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies⁽¹⁾, and in particular Article 5(6) thereof,

Whereas:

- (1) On 12 June 2009 the Commission granted a mandate to the Committee of European Securities Regulators (CESR) requesting their technical advice with regard to the technical assessment of the legal and supervisory framework of Japan in respect of credit rating agencies.
- (2) In its advice delivered on 21 May 2010, CESR suggested that the Japanese legal and supervisory framework in respect of credit rating agencies be considered equivalent to the Regulation.
- (3) Pursuant to the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009, the fulfilment of three conditions needs to be assessed in order to consider a third country legal and supervisory framework equivalent to Regulation (EC) No 1060/2009.
- (4) According to the first condition, credit rating agencies in the third country must be subject to authorisation or registration and are subject to effective supervision and enforcement on an ongoing basis. The Japanese legal and supervisory framework for credit rating agencies consists of the Financial Instruments and Exchange Act (Act No 25 of 1948) related to the Regulation of Credit Ratings Agencies; the Cabinet Office Ordinance on Financial Instruments Business (Ordinance No 52 of 2007)

related to the Regulation of Credit Rating Agencies; the Cabinet Office Ordinance on Definitions under Article 2 of the and Exchange Act (Ordinance of the Ministry of Finance No 14 of 1993) related to the Regulation of Credit Rating Agencies, as well as the Comprehensive Guidelines for Supervision of Financial Instruments Business Operators (Supplement) and the Guidelines for Supervision of Credit Rating Agencies. In June 2009, the Japanese Parliament (the Diet) passed legislation introducing a new regulatory framework for credit rating agencies, which was followed by the release in December 2009 of Cabinet Orders and Cabinet Office Ordinances laying out the details of the terms and conditions of this framework. The framework, which became effective in April 2010, requires a credit rating agency to be registered with the Financial Services Agency of Japan (JFSA) in order for its credit ratings to be used for regulatory purposes in Japan and imposes legally binding obligations on credit rating agencies and their supervision on an ongoing basis. The JFSA is endowed with a wide and comprehensive range of powers and is able to take a number of measures, including sanctions, against credit rating agencies for breach of the provisions of the Financial Instruments and Exchange Act related to the Regulation of Credit Ratings Agencies.

- (5) According to the second condition, credit rating agencies in the third country must be subject to legally binding rules which are equivalent to those set out in Articles 6 to 12 and Annex I of Regulation (EC) No 1060/2009. The Japanese regime is based on: the duty of good faith, the obligation of a credit rating agency to establish operational control systems for the fair and appropriate performance of the credit rating business through a large number of detailed and prescriptive requirements, extensive provisions in relation to avoidance, management and disclosure of conflicts of interests, and the duty to record and disclose information both to the JFSA and the public. The Japanese framework meets the objectives of Regulation (EC) No 1060/2009 in respect of the management of conflicts of interest, the organisational processes and procedures that a credit rating agency needs to have in place, the quality of ratings and of rating methodologies, the disclosure of credit ratings and the general and periodic disclosure of credit rating activities. Therefore, the Japanese framework provides for equivalent protections in terms of integrity, transparency, good governance of credit rating agencies and reliability of the credit rating activities.

⁽¹⁾ OJ L 302, 17.11.2009, p. 1.

- (6) According to the third condition, the regulatory regime in the third country must prevent interference by the supervisory authorities and other public authorities of that third country with the content of credit ratings and methodologies. In this respect, the JFSA is prohibited by law from interfering with the substance of credit ratings and credit rating methodologies.
- (7) In view of the factors examined, the conditions laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009 can be considered to be met by the Japanese legal and supervisory framework for credit rating agencies. Therefore, the Japanese legal and supervisory framework for credit rating agencies should be considered equivalent to the legal and supervisory framework established by Regulation (EC) No 1060/2009.
- (8) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 5 of Regulation (EC) No 1060/2009, the Japanese legal and supervisory framework for credit rating agencies shall be considered as equivalent to the requirements of Regulation (EC) No 1060/2009.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 28 September 2010.

For the Commission

Michel BARNIER

Member of the Commission

CORRIGENDA

Corrigendum to Commission Decision 2010/571/EU of 24 September 2010 amending, for the purposes of adapting to scientific and technical progress, the Annex to Directive 2002/95/EC of the European Parliament and of the Council as regards exemptions for applications containing lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers

(Official Journal of the European Union L 251 of 25 September 2010)

On page 30 to 31, Annex, the following entries should read:

Exemption		Scope and dates of applicability
1(c)	For general lighting purposes ≥ 50 W and < 150 W: 5 mg	
1(e)	For general lighting purposes with circular or square structural shape and tube diameter ≤ 17 mm	No limitation of use until 31 December 2011; 7 mg may be used per burner after 31 December 2011
2(a)(1)	Tri-band phosphor with normal lifetime and a tube diameter < 9 mm (e.g. T2): 5 mg	Expires on 31 December 2011; 4 mg may be used per lamp after 31 December 2011
2(a)(2)	Tri-band phosphor with normal lifetime and a tube diameter ≥ 9 mm and ≤ 17 mm (e.g. T5): 5 mg	Expires on 31 December 2011; 3 mg may be used per lamp after 31 December 2011
2(a)(3)	Tri-band phosphor with normal lifetime and a tube diameter > 17 mm and ≤ 28 mm (e.g. T8): 5 mg	Expires on 31 December 2011; 3,5 mg may be used per lamp after 31 December 2011
3(a)	Short length (≤ 500 mm)	No limitation of use until 31 December 2011; 3,5 mg may be used per lamp after 31 December 2011
3(b)	Medium length (> 500 mm and $\leq 1\,500$ mm)	No limitation of use until 31 December 2011; 5 mg may be used per lamp after 31 December 2011
4(b)-I	$P \leq 155$ W	No limitation of use until 31 December 2011; 30 mg may be used per burner after 31 December 2011
4(b)-II	155 W $< P \leq 405$ W	No limitation of use until 31 December 2011; 40 mg may be used per burner after 31 December 2011
4(c)-I	$P \leq 155$ W	No limitation of use until 31 December 2011; 25 mg may be used per burner after 31 December 2011
4(c)-II	155 W $< P \leq 405$ W	No limitation of use until 31 December 2011; 30 mg may be used per burner after 31 December 2011'

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