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EN

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

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II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 38/2011

of 18 January 2011

amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India

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 (Commission) after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Previous investigations and existing anti-dumping measures

- (1) In August 2001, by Regulation (EC) No 1676/2001⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, *inter alia*, in India. The measures consisted of an *ad valorem* anti-dumping duty ranging between 0 % and 62,6 % imposed on imports from individually named exporting producers, with a residual duty rate of 53,3 % on imports from all other companies.
- (2) In March 2006, by Regulation (EC) No 366/2006⁽³⁾, the Council amended the measures imposed by Regulation (EC) No 1676/2001. The anti-dumping duty imposed ranged between 0 % and 18 %, taking into account the findings of the expiry review of the definitive countervailing duties (Council Regulation (EC) No 367/2006⁽⁴⁾).

- (3) In August 2006, by Regulation (EC) No 1288/2006⁽⁵⁾, the Council, following an interim review concerning the subsidisation of an Indian PET film producer, Garware Polyester Limited, amended the definitive anti-dumping duty imposed on that company by Regulation (EC) No 1676/2001.

- (4) In September 2006, by Regulation (EC) No 1424/2006⁽⁶⁾, the Council, following a new exporting producer request, amended Regulation (EC) No 1676/2001 in respect of one Indian exporter. The amended Regulation established a dumping margin of 15,5 % and a anti-dumping duty rate of 3,5 % for the company concerned taking into account the company's export subsidy margin as ascertained in the anti-subsidy investigation which led to the adoption of Regulation (EC) No 367/2006. Since the company did not have an individual countervailing duty, the rate established for all other companies was applied.

- (5) In November 2007, by Regulation (EC) No 1292/2007⁽⁷⁾, the Council imposed a definitive anti-dumping duty on imports of PET film originating in India following an expiry review pursuant to Article 11(2) of the basic Regulation. By the same Regulation a partial interim review pursuant to Article 11(3) of the basic Regulation, limited in scope to the examination of dumping in respect of one Indian exporting producer, was terminated.

- (6) In January 2009, by Regulation (EC) No 15/2009⁽⁸⁾, the Council, following a partial interim review initiated by the Commission on its own initiative concerning the subsidisation of five Indian PET film producers, amended the definitive anti-dumping duties imposed on these companies by Regulation (EC) No 1292/2007 and the definitive countervailing duties imposed on these companies by Regulation (EC) No 367/2006.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 227, 23.8.2001, p. 1.

⁽³⁾ OJ L 68, 8.3.2006, p. 6.

⁽⁴⁾ OJ L 68, 8.3.2006, p. 15.

⁽⁵⁾ OJ L 236, 31.8.2006, p. 1.

⁽⁶⁾ OJ L 270, 29.9.2006, p. 1.

⁽⁷⁾ OJ L 288, 6.11.2007, p. 1.

⁽⁸⁾ OJ L 6, 10.1.2009, p. 1.

(7) Regulation (EC) No 1292/2007 also maintained the extension of the measures to Brazil and Israel with certain companies being exempted. The last amendment to Regulation (EC) No 1292/2007 in this regard was made by Council Regulation (EC) No 806/2010 ⁽¹⁾.

(8) Applicant of this interim review — Garware Polyester Limited is currently subject to a definitive anti-dumping duty of 14,7 %.

2. Existing countervailing measures

(9) It should also be noted that Garware Polyester Limited is subject to a countervailing duty of 5,4 % on the basis of Regulation (EC) No 15/2009.

3. Request for a partial interim review

(10) In August 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 Garware Polyester Limited, an exporting producer from India ('Garware' or 'the applicant'). 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. Initiation of a review

(11) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced by a 'Notice of Initiation' published on 1 December 2009 in the *Official Journal of the European Union* ⁽²⁾ the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation limited in scope to the examination of dumping in respect of the applicant.

(12) The partial interim review investigation was also to assess the need, depending on the review findings, to amend the rate of duty currently applicable to imports of the product concerned from exporting producers in the country concerned not individually mentioned in Article 2(2) of Regulation (EC) No 1292/2007, i.e. the anti-dumping duty rate as applying to 'all other companies' in India.

5. Investigation

(13) The investigation of the level of dumping covered the period from 1 October 2008 to 30 September 2009 ('review investigation period' or 'RIP').

(14) The Commission officially informed the applicant, the authorities of the exporting country, and the Union industry, of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.

(15) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose.

(16) The Commission sought and verified all information it deemed necessary for the determination of dumping. A verification visit was carried out at the premises of the applicant.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(17) The product concerned by this review is the same as that defined in Regulation (EC) No 1292/2007 imposing the measures in force, namely polyethylene terephthalate (PET) film, originating in India, currently falling within CN codes ex 3920 62 19 and ex 3920 62 90.

2. Like product

(18) As in previous investigations, this investigation has shown that PET film produced in India and exported to the Union and the PET film produced and sold domestically on the Indian market, as well as the PET film produced and sold in the EU by the Union producers, have the same basic physical and chemical characteristics and the same basic uses.

(19) These products are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

(a) Normal value

(20) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the applicant's domestic sales of the like product to independent customers were representative, i.e. whether the total volume of such sales was equal to at least 5 % of the total volume of the corresponding export sales to the Union.

(21) The Commission subsequently identified those types of the like product sold domestically by the company that were identical or directly comparable to the types sold for export to the Union.

⁽¹⁾ OJ L 242, 15.9.2010, p. 6.

⁽²⁾ OJ C 291, 1.12.2009, p. 28.

(22) It was further examined whether the domestic sales of the applicant were representative for each product type, i.e. whether domestic sales of each product type constituted at least 5 % of the sales volume of the same product type to the Union. For the product types sold in representative quantities it was then examined whether such sales were made in the ordinary course of trade, in accordance with Article 2(4) of the basic Regulation.

(23) The examination as to whether the domestic sales of each product type, sold domestically in representative quantities, could be regarded as having been made in the ordinary course of trade was made by establishing the proportion of the profitable sales to independent customers of the type in question. In all cases where the domestic sales of the particular product type were made in sufficient quantities and in the ordinary course of trade, normal value was based on the actual domestic price, calculated as a weighted average of all the domestic sales of that type made during the RIP.

(24) For the remaining product types where domestic sales were not representative or not sold in the ordinary course of trade, normal value was constructed in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses and a reasonable margin for profit, on the basis of actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.

(b) *Export price*

(25) Since all export sales of the cooperating Indian exporting producer to the Union were made directly to independent customers, the export price was established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

(c) *Comparison*

(26) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade. In order to ensure a fair comparison between normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were demonstrated to affect prices and price comparability. For this purpose, due allowance in

the form of adjustments was made for differences in transport, insurance, handling, loading and ancillary costs, commissions, financial costs and packing costs paid by the applicant where applicable and justified.

(d) *Dumping margin*

(27) 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 did not show the existence of dumping.

D. LASTING NATURE OF CHANGED CIRCUMSTANCES

(28) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.

(29) In this regard the investigation showed that after the previous investigation, i.e. the expiry review referred to in recital 5, Garware has made significant changes in its production process and technology. The company has shifted from dimethyl terephthalate (DMT) to purified terephthalic acid (PTA) as the main raw material. During the investigation period of that expiry review Garware was the only Indian exporting producer which was still using the old technology based on DMT. This change of technology as well as the investment in a new plant for manufacturing chips has resulted in a significant reduction of costs of manufacturing between the previous expiry review and the current review. This cost reduction has a direct impact on the dumping margin. This change in circumstances can therefore be considered to be of a lasting nature.

(30) It should be also noted that an indicative dumping margin calculated for export sales of the applicant to third countries in the RIP was negative. In terms of volume these sales were several times higher than the export sales to the Union.

(31) It was therefore considered that the circumstances that led to the initiation of this interim review are unlikely to change in the foreseeable future in a manner that would affect the findings of the interim review. Therefore it was concluded that the changed circumstances are of a lasting nature and that the application of the measure at its current level is no longer justified.

E. ANTI-DUMPING MEASURES

(32) 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 Garware to 0 %.

- (33) Pursuant to 14(1) of the basic Regulation and Article 24(1), second subparagraph of Council Regulation (EC) No 597/2009 ⁽¹⁾, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation. As mentioned in recital 9 above, the applicant is subject to a countervailing duty. Since the anti-dumping duty established for the applicant is 0 % with regard to the product concerned, this situation does not arise in the present case.
- (34) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to propose to amend the duty rate applicable to the applicant and were given opportunity to comment. No comments were received,

HAS ADOPTED THIS REGULATION:

Article 1

The entry concerning Garware Polyester Limited, in the table in Article 2(2) of Regulation (EC) No 1292/2007, shall be replaced by the following:

'Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	0,0	A028'
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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, 18 January 2011.

For the Council
The President
G. MATOLCSY

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

COMMISSION REGULATION (EU) No 39/2011**of 19 January 2011****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 20 January 2011.

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

Done at Brussels, 19 January 2011.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 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	65,3
	TN	120,5
	TR	109,9
	ZZ	98,6
0707 00 05	EG	158,2
	JO	87,5
	TR	93,6
	ZZ	113,1
0709 90 70	MA	35,5
	TR	113,3
	ZZ	74,4
0709 90 80	EG	219,6
	ZZ	219,6
0805 10 20	AR	41,5
	BR	41,5
	EG	57,5
	MA	58,1
	TR	67,4
	ZA	41,5
	ZZ	51,3
0805 20 10	MA	68,6
	TR	79,6
	ZZ	74,1
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	69,6
	HR	46,1
	IL	67,1
	JM	101,1
	MA	103,8
	PK	69,0
	TR	70,3
	ZZ	75,3
0805 50 10	AR	45,3
	TR	56,0
	UY	45,3
	ZZ	48,9
0808 10 80	AR	78,5
	CA	117,8
	CL	82,5
	CN	101,3
	MK	50,7
	US	139,1
	ZZ	95,0
0808 20 50	CN	79,5
	NZ	97,8
	US	128,0
	ZZ	101,8

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

COMMISSION REGULATION (EU) No 40/2011**of 19 January 2011****on the issue of import licences for applications submitted in the first seven days of January 2011
under the tariff quota for high-quality beef administered by Regulation (EC) No 620/2009**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

- (1) Commission Regulation (EC) No 620/2009 of 13 July 2009 providing for the administration of an import tariff quota for high-quality beef ⁽³⁾ sets out detailed rules for the submission and issue of import licences.
- (2) Article 7(2) of Regulation (EC) No 1301/2006 provides that in cases where quantities covered by licence appli-

cations exceed the quantities available for the quota period, allocation coefficients should be fixed for the quantities covered by each licence application. The applications for import licences submitted pursuant to Article 3 of Regulation (EC) No 620/2009 between 1 and 7 January 2011 exceed the quantities available. Therefore, the extent to which import licences may be issued and the allocation coefficient should be determined,

HAS ADOPTED THIS REGULATION:

Article 1

Import licence applications covered by the quota with order number 09.4449 and submitted between 1 and 7 January 2011 in accordance with Article 3 of Regulation (EC) No 620/2009, shall be multiplied by an allocation coefficient of 84,156557 %.

Article 2

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

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

Done at Brussels, 19 January 2011.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 182, 15.7.2009, p. 25.

COMMISSION REGULATION (EU) No 41/2011**of 19 January 2011****on the issue of import licences for applications lodged during the first seven days of January 2011
under tariff quotas opened by Regulation (EC) No 616/2007 for poultrymeat**

THE EUROPEAN COMMISSION

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

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

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

Having regard to Commission Regulation (EC) No 616/2007 of 4 June 2007 opening and providing for the administration of Community tariff quotas for poultrymeat originating in Brazil, Thailand and other third countries ⁽³⁾, and in particular Article 5(5) thereof,

Whereas:

- (1) Regulation (EC) No 616/2007 opened tariff quotas for imports of products in the poultrymeat sector.
- (2) The applications for import licences lodged during the first seven days of January 2011 for the subperiod 1 April to 30 June 2011 relate, for some quotas, to quantities exceeding those available. The extent to which licences may be issued should therefore be determined and an allocation coefficient

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications have been lodged pursuant to Regulation (EC) No 616/2007 for the subperiod 1 April to 30 June 2011 shall be multiplied by the allocation coefficients set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 20 January 2011.

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

Done at Brussels, 19 January 2011.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 142, 5.6.2007, p. 3.

ANNEX

Group No	Order No	Allocation coefficient for import licence applications lodged for the subperiod from 1.4.2011-30.6.2011 (%)
1	09.4211	0,317153
5	09.4215	0,296808
6	09.4216	0,430733

COMMISSION REGULATION (EU) No 42/2011**of 19 January 2011****suspending submission of applications for import licences for sugar products under certain tariff quotas**

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 891/2009 of 25 September 2009 opening and providing for the administration of certain Community tariff quotas in the sugar sector ⁽²⁾, and in particular Article 5(2) thereof,

Whereas:

- (1) Quantities covered by applications for import licences submitted to the competent authorities from 1 to 7 January 2011 in accordance with Regulation (EC) No

891/2009, are equal to the quantity available under order numbers 09.4317 and 09.4318.

- (2) Submission of further applications for licences for order numbers 09.4317 and 09.4318 should be suspended until the end of the marketing year, in accordance with Regulation (EC) No 891/2009,

HAS ADOPTED THIS REGULATION:

Article 1

Submission of further applications for licences, which correspond to the order numbers indicated in the Annex, shall be suspended until the end of the marketing year 2010/11.

Article 2

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

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

Done at Brussels, 19 January 2011.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 254, 26.9.2009, p. 82.

ANNEX

CXL Concessions Sugar**2010/2011 marketing year****Applications lodged from 1.1.2011 to 7.1.2011**

Order No	Country	Allocation coefficient (%)	Further applications
09.4317	Australia	(¹)	Suspended
09.4318	Brazil	(¹)	Suspended
09.4319	Cuba	—	
09.4320	Any third countries	—	Suspended
09.4321	India	—	Suspended

‘—’: Not applicable: no licence application has been sent to the Commission.

(¹) Not applicable: the applications do not exceed the quantities available and are fully granted.

Balkans Sugar**2010/2011 marketing year****Applications lodged from 1.1.2011 to 7.1.2011**

Order No	Country	Allocation coefficient (%)	Further applications
09.4324	Albania	—	
09.4325	Bosnia and Herzegovina	(¹)	
09.4326	Serbia	(¹)	
09.4327	Former Yugoslav Republic of Macedonia	—	
09.4328	Croatia	(¹)	

‘—’: Not applicable: no licence application has been sent to the Commission.

(¹) Not applicable: the applications do not exceed the quantities available and are fully granted.

Exceptional import sugar and industrial import sugar**2010/2011 marketing year****Applications lodged from 1.1.2011 to 7.1.2011**

Order No	Type	Allocation coefficient (%)	Further applications
09.4380	Exceptional	—	
09.4390	Industrial	—	

‘—’: Not applicable: no licence application has been sent to the Commission.

DECISIONS

COMMISSION DECISION

of 19 January 2011

on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third country auditors and audit entities in the European Union

(notified under document C(2011) 117)

(Text with EEA relevance)

(2011/30/EU)

THE EUROPEAN COMMISSION,

relation to audit reports concerning the annual or consolidated accounts for financial years starting during the period from 29 June 2008 to 1 July 2010.

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

Having regard to Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC ⁽¹⁾, and in particular Article 46(2) thereof,

Whereas:

(1) Under Article 45(1) of Directive 2006/43/EC the competent authorities of the Member States are required to register all auditors and audit entities that provide audit reports concerning the annual or consolidated accounts of certain companies incorporated outwith the Community whose transferable securities are admitted to trading on a regulated market within the Community. Article 45(3) of Directive 2006/43/EC requires Member States to subject such auditors and audit entities to their systems of public oversight, quality assurance, investigations and penalties.

(2) Commission Decision 2008/627/EC of 29 July 2008 concerning a transitional period for audit activities of certain third country auditors and audit entities ⁽²⁾ allowed the auditors and audit entities from the third countries listed in the Annex to that Decision to continue their activities in the European Union in

(3) The Commission has carried out assessments of the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the third countries and territories listed in the Annex to Decision 2008/627/EC. The assessments were carried out with the assistance of the European Group of Auditors' Oversight Bodies. The principles governing the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of those third countries and territories were assessed in the light of the criteria set out in Articles 29, 30 and 32 of Directive 2006/43/EC which govern the public oversight, quality assurance, investigation and penalty systems for auditors and audit firms of the Member States. The ultimate objective of cooperation between Member States and third country systems of public oversight, quality assurance, investigation and penalty for auditors and audit entities should be to reach mutual reliance on each other's oversight systems based on the equivalence of the systems.

(4) Following such assessments, it appears that Australia, Canada, China, Croatia, Japan, Singapore, South Africa, South Korea and Switzerland have public oversight, quality assurance, investigation and penalty systems for auditors and audit entities that operate under similar rules to those set out in Articles 29, 30 and 32 of Directive 2006/43/EC. Therefore, it is appropriate to consider the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of those third countries as equivalent to the public oversight, quality assurance, investigation and penalty systems for auditors and audit firms of the Member States.

⁽¹⁾ OJ L 157, 9.6.2006, p. 87.

⁽²⁾ OJ L 202, 31.7.2008, p. 70.

- (5) With regard to South Africa, its legislation requires the prior consent of the auditor or audit firm for the transfer of information from the competent authorities in South Africa to the competent authorities in Member States. That requirement for prior consent may present difficulties in the effective implementation of Article 46(1) of Directive 2006/43/EC. Therefore, until the necessary changes are made in South Africa's legislation, the competent authorities of Member States should require that auditors and audit entities waive their right to prior consent when registering auditors and audit entities that provide audit reports of companies incorporated in South Africa.
- (6) The United States of America have a public oversight, quality assurance, investigation and penalty system for auditors and audit entities that operates under similar rules to those set out in Articles 29, 30 and 32 of Directive 2006/43/EC. However, the competent authorities in the United States of America do not consider that the ultimate objective of cooperation with Member States is to reach mutual reliance with the competent authorities for public oversight, quality assurance, investigation and penalty systems for auditors and audit firms of the Member States. As long as there is no mutual reliance, the provisions of Article 46(1) cannot be fully applied on a permanent basis by Member States for the auditors and audit entities that provide audit reports concerning the annual or consolidated accounts of companies incorporated in the United States of America. Therefore, the public oversight, quality assurance, investigation and penalty system for auditors and audit entities of the United States of America should be reviewed for the purpose of assessing the progress made towards reaching mutual reliance. For those reasons, this Decision should be limited in time and cease to apply on 31 July 2013 in respect of the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the United States of America.
- (7) Once the Commission has taken a decision recognising that the public oversight, quality assurance, investigation and penalty system for auditors and audit entities of a third country or territory is equivalent for the purpose of Article 46(1) of Directive 2006/43/EC, Member States may disapply or modify on the basis of reciprocity the requirements of Article 45(1) and (3) in relation to the auditors and audit entities of that third country or territory. The conditions under which the requirements of Article 45(1) and (3) will be disapplied or modified must be set in a cooperative arrangement as referred to in Article 46(3) of the Directive 2006/43/EC between the Member State and the relevant third country or territory and communicated to the Commission.
- (8) Abu Dhabi, Brazil, the Dubai International Financial Centre, Guernsey, Hong Kong, India, Indonesia, Isle of Man, Jersey, Malaysia, Mauritius, Russia, Taiwan, Thailand, and Turkey have established or are in the process of establishing public oversight, quality assurance, investigation and penalty systems for auditors and audit entities. However, information about the functioning and the rules governing such systems is not sufficient. In order to carry out a further assessment for the purpose of taking a final equivalence decision in respect of such systems, there is a need to obtain additional information from those third countries and territories. Therefore, it is appropriate to extend the transitional period granted by Decision 2008/627/EC in respect of the auditors and audit entities that provide audit reports concerning the annual or consolidated accounts of companies incorporated in those third countries and territories.
- (9) Although Egypt was not included in Decision 2008/627/EC, since then it has established a system of public oversight, quality assurance, investigation and penalties for auditors and audit entities. In order to carry out a further assessment for the purpose of taking a final equivalence decision in respect of Egypt, there is a need to obtain additional information from that third country. Therefore, it is appropriate to include in the transitional period the auditors and audit firms that provide audit reports concerning the annual or consolidated accounts of companies incorporated in Egypt.
- (10) Bermuda, Cayman Islands, Israel and New Zealand do not have a public oversight, quality assurance, investigation and penalty system for auditors and audit entities in place yet. However, those third countries and territories made a clear public commitment to the Commission with a concrete action plan to establish a public oversight, quality assurance, investigation and penalty system for auditors and audit entities under equivalent rules to those set out in Articles 29, 30 and 32 of Directive 2006/43/EC. Therefore, it is appropriate to extend the transitional period granted by Decision 2008/627/EC in respect of the auditors and audit entities that provide audit reports concerning the annual or consolidated accounts of companies incorporated in those third countries and territories. Nevertheless, the Commission should review the progress made in 2011 by those countries and territories in enacting legislation to establish a public oversight, quality assurance, investigation and penalty system for auditors and audit entities and assess the need to shorten the transitional period as regards those third countries and territories.

- (11) The auditors and audit entities that provide audit reports concerning the annual or consolidated accounts of companies incorporated in Argentina, Bahamas, Chile, Kazakhstan, Morocco, Mexico, Pakistan and Ukraine benefited from the transitional period granted by Decision 2008/627/EC. Since then, they did not provide information regarding their audit regulatory and oversight systems. Under these circumstances, it appears that those third countries are not willing to continue towards having their audit regulation recognised by the Commission as equivalent to the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the Member States. Therefore, the transitional period granted to them by Decision 2008/627/EC should not be extended in respect of the auditors and audit entities that provide audit reports concerning the annual or consolidated accounts of companies incorporated in those third countries.
- (12) In order to protect investors, auditors and audit entities that provide audit reports concerning the annual or consolidated accounts of companies incorporated in the third countries listed in the Annex to this Decision should be able to continue their audit activities during the transitional period in the European Union without being registered under Article 45 of Directive 2006/43/EC only if they provide the required information. Provided they give the information, those auditors and audit entities should be able to continue their activities in relation to audit reports concerning annual or consolidated accounts for financial years starting during the period from 2 July 2010 to 31 July 2012. This Decision should not affect Member States' rights to apply their investigation and penalty systems in respect of such auditors and audit entities.
- (13) Where a company incorporated in one of the third countries or territories listed in Article 1 of this Decision whose transferable securities are admitted to trading on a regulated market of a Member State, but which is not admitted to trading in the third country or territory where it is incorporated, Member States should ensure that all the audit engagements related to the financial statements of such a company are covered by the cooperative arrangements concluded with the third country or territory concerned to determine which public oversight, quality assurance, investigations and penalties system will apply to the auditors of such companies. In a case where such audit engagements are undertaken by an auditor or audit entity of another Member State, Member States should cooperate to ensure that the audit engagement is included in the scope of one of their public oversight, quality assurance, investigations and penalty systems.
- (14) Where a company incorporated in one of the third countries or territories listed in the Annex to this Decision whose transferable securities are admitted to trading on a regulated market of a Member State, but which is not admitted to trading in the third country or territory where it is incorporated, Member States should cooperate with the third country or territory concerned to ensure that all the audit engagements related to the financial statements of such a company are covered by a public oversight, quality assurance, investigations and penalties system. In a case where such audit engagements are undertaken by an auditor or audit entity of another Member State, Member States should cooperate to ensure that the audit engagement is included in the scope of one of their public oversight, quality assurance, investigations and penalty systems.
- (15) During the transitional period, equivalence decisions should not be taken by Member States at national level. The fact that auditors and audit entities that provide audit reports concerning the annual or consolidated accounts of companies incorporated in the third countries and territories listed in the Annex to this Decision may, under this Decision, continue their audit activities with regard to companies referred to in Article 45 of Directive 2006/43/EC, should not prevent Member States from establishing cooperative arrangements on individual quality assurance reviews between the competent authorities of a Member State and the competent authorities of a third country or territory.
- (16) The Commission should monitor the operation of the transitional arrangements and examine the progress made by the third countries and territories to which a transitional period was granted or extended. At the end of the transitional period, the Commission may decide on the equivalence of the public oversight, quality assurance, investigations and penalties systems for auditors and audit entities of the third countries and territories concerned. The Commission should review whether the Member States encountered difficulties in obtaining recognition as equivalent by the third countries and territories concerned by this Decision in relation to the public oversight, quality assurance and investigation and penalty systems for auditors and audit firms of the Member States.
- (17) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 48(1) of Directive 2006/43/EC,
- HAS ADOPTED THIS DECISION:
- Article 1*
- For the purpose of Article 46(1) of Directive 2006/43/EC, the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the following third countries shall be considered equivalent to the public oversight,

quality assurance, investigation and penalty systems for auditors and audit firms of the Member States in relation to audit activities concerning the annual or consolidated accounts for financial years starting from 2 July 2010:

1. Australia
2. Canada
3. China
4. Croatia
5. Japan
6. Singapore
7. South Africa
8. South Korea
9. Switzerland
10. The United States of America.

Article 2

1. Member States shall not apply Article 45 of Directive 2006/43/EC in relation to auditors and audit entities that provide audit reports concerning the annual or consolidated accounts of companies incorporated in the third countries and territories listed in the Annex to this Decision, as referred to in Article 45(1) of that Directive, for financial years starting during the period from 2 July 2010 to 31 July 2012, in cases where the auditor or audit entity concerned provides the competent authorities of the Member State with all of the following:

- (a) the name and address of the auditor or audit entity concerned and information about its legal structure;
- (b) where the auditor or the audit entity belongs to a network, a description of the network;
- (c) the auditing standards and independence requirements which have been applied to the audit concerned;
- (d) a description of the internal quality control system of the audit entity;
- (e) an indication of whether and when the last quality assurance review of the auditor or audit entity was carried out and, unless this information is being provided by the third country competent authority, the necessary information about the outcome of the review. Where the necessary information about the outcome of the last quality assurance review is not public, the competent authorities of Member States shall treat such information on a confidential basis.

2. Member States shall ensure that the public is informed about the name and address of auditors and audit entities that provide audit reports concerning the annual or consolidated accounts of companies incorporated in the third countries and territories listed in the Annex to this Decision and about the fact that the public oversight, quality assurance, investigation and penalty systems of those countries and territories are not yet recognised as equivalent under Article 46(2) of Directive 2006/43/EC. For these purposes, the competent authorities of Member States referred to in Article 45 of Directive 2006/43/EC may also register the auditors and audit entities that carry out audits of the annual or consolidated accounts of companies incorporated in the third countries and territories listed in the Annex to this Decision.

3. Notwithstanding paragraph 1, Member States may apply their investigation and penalty systems to the auditors and audit entities that carry out audits of the annual or consolidated accounts of companies incorporated in third countries and territories listed in the Annex.

4. Paragraph 1 shall be without prejudice to cooperative arrangements on quality assurance reviews between the competent authorities of a Member State and the competent authorities of a third country or territory listed in the Annex provided that such an arrangement meets all the following criteria:

- (a) it includes carrying out quality assurance reviews on the basis of equality of treatment;
- (b) it has been communicated in advance to the Commission;
- (c) it does not pre-empt any Commission decision under Article 47 of Directive 2006/43/EC.

Article 3

The Commission shall monitor the situation of the third countries and territories listed in the Annex. In particular, the Commission shall monitor whether the competent administrative authorities of those third countries and territories listed in the Annex that made a public commitment to the Commission to establish public oversight, quality assurance, investigation and penalty systems for auditors and audit entities have established such systems, on the basis of the following principles:

- (a) the systems are independent from the audit profession;
- (b) they ensure adequate oversight for audits of listed companies;
- (c) their operation is transparent and ensures that the outcome of quality assurance reviews is reliable;
- (d) they are supported by investigations and penalties in an effective way.

With regard to Bermuda, Cayman Islands, Israel and New Zealand, the Commission shall, in particular, review the progress made in enacting legislation to establish a public oversight, quality assurance, investigation and penalty system for auditors and audit entities in 2011. Where necessary, the Commission shall amend the Annex to this Decision accordingly.

Article 4

Point 10 of Article 1 shall cease to apply on 31 July 2013.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 19 January 2011.

For the Commission

Michel BARNIER

Member of the Commission

ANNEX

LIST OF THIRD COUNTRIES AND TERRITORIES

Abu Dhabi
Bermuda
Brazil
Cayman Islands
The Dubai International Financial Centre
Egypt
Guernsey
Hong Kong
India
Indonesia
Isle of Man
Israel
Jersey
Malaysia
Mauritius
New Zealand
Russia
Taiwan
Thailand
Turkey

COMMISSION DECISION

of 19 January 2011

terminating the anti-subsidy proceeding concerning imports of purified terephthalic acid and its salts originating in Thailand

(2011/31/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 14 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 22 December 2009, the European Commission (the 'Commission') announced by a notice published in the *Official Journal of the European Union* ⁽²⁾ ('Notice of initiation'), the initiation of an anti-subsidy proceeding concerning imports into the Union of purified terephthalic acid and its salts ('PTA') originating in Thailand ('the country concerned').
- (2) The anti-subsidy proceeding was initiated following a complaint lodged on 13 November 2009 by BP Aromatics Limited NV and CEPESA Química S.A. ('the complainants') representing a major proportion, in this case more than 50 %, of the total Union production of PTA. The complaint contained *prima facie* evidence of subsidisation of the product concerned originating in the country concerned and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.
- (3) On the same day, the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽³⁾, the initiation of an anti-dumping proceeding with regard to imports into the Union of PTA originating in Thailand. This investigation has been terminated by means of Commission Decision 2011/32/EU ⁽⁴⁾.
- (4) Prior to the initiation of the proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of Thailand that it had received a properly documented complaint alleging that subsidised imports of PTA originating in Thailand were causing material injury to the Union industry. The Government of Thailand was invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a

mutually agreed solution. The Government of Thailand accepted the offer of consultations and consultations were subsequently held. During the consultations, no mutually agreed solution could be arrived at. However, due note was taken of comments made by the authorities of Thailand in regard to the allegations contained in the complaint regarding the lack of countervailability of the schemes. During the consultations, submissions were received from the Government of Thailand.

1.2. Parties concerned by the proceeding

- (5) The Commission officially advised the complainants, other known producers in the Union, the known exporting producers in Thailand, the representatives of the exporting country concerned and known importers and users of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.
- (6) The Commission sent questionnaires to the authorities of the exporting country, the complainants, other known producers in the Union, the known exporting producers in Thailand and to the known importers and users of product concerned and to all other parties that requested a questionnaire within the deadlines set out in the Notice of initiation.
- (7) Questionnaire replies were received from the authorities of Thailand, from the three known Thai exporting producers, from three Union producers, from one Union importer, and from five Union users.
- (8) The Commission sought and verified all the information deemed necessary for the determination of subsidisation, resulting injury and Union interest.
- (9) Verification visits were carried out at the premises of the following State authorities:

Office of Board of Investment, Bangkok, Thailand.
- (10) Verification visits were carried out at the premises of the following companies:

(a) Union producers:
 - BP Aromatics Limited NV, Geel, Belgium,
 - CEPESA Química, S.A., Madrid, Spain,
 - Lotte Chemical UK Ltd (formerly Artenius), Wilton, Redcar, United Kingdom;

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ OJ C 313, 22.12.2009, p. 22.

⁽³⁾ OJ C 313, 22.12.2009, p. 17.

⁽⁴⁾ See page 22 of this Official Journal.

(b) Union importers:

- Mitsui & Co. Benelux NV, Brussels, Belgium;

(c) Union users:

- DSM Powder Coating Resins B.V., Zwolle, Netherlands,
- M&G Polimeri Italia SPA, Patrica (Frosinone), Italy,
- NOVAPET S.A., Barbastro (Huesca), Spain,
- UAB NEO Group, Klaipeda, Lithuania;

(d) Exporting producers in Thailand:

- TPT Petrochemicals Public Company Ltd, Bangkok, Thailand (hereinafter 'TPT'),
- TPT Petrochemicals Public Company Ltd, Rayong, Thailand (hereinafter 'TPT'),
- Indorama Petrochem Ltd, Rayong, Thailand (hereinafter 'Indorama'),
- Siam Mitsui PTA Company Ltd, Rayong, Thailand (hereinafter 'SMPC').

- (11) Given that both TPT and Indorama are owned by the same holding company, they will be referred to in this document as the 'Indorama group'.

1.3. Investigation period and period considered

- (12) The investigation of subsidisation and injury covered the period from 1 December 2008 to 30 November 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 investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (13) The product concerned is terephthalic acid and its salts of a purity by weight of 99,5 % or more, currently falling within CN code ex 2917 36 00 ('the product concerned').
- (14) PTA is obtained by the purification of crude terephthalic acid, which is a result of making paraxylene (PX) react with a solvent and a catalyst solution.

2.2. Like product

- (15) The product concerned and the PTA produced and sold on the domestic market of Thailand, as well as the PTA produced and sold in the Union by the Union industry were found to have the same basic physical and chemical

characteristics and uses. They are therefore considered to be alike within the meaning of Article 2(c) of the basic Regulation.

3. SUBSIDISATION

3.1. Introduction

- (16) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by a Governmental authority, were investigated:

- exemption or reduction on duties on imports of machinery,
- exemption from corporate income tax,
- exemption of import duties on raw and essential materials used in the manufacturing of export products,
- double deduction from taxable income of transportation, electricity and water costs for 10 years from the date of first revenue derived from the promoted activity,
- deduction from net profit of 25 % of the project's infrastructure installation or construction costs in addition to normal depreciation,
- tax and duty compensation of the exported goods produced in Thailand.

3.2. General

- (17) Investment Promotion Act B.E. 2544 ('IPA') provides incentives to promote development of the Thai economy. The IPA, which is administered by the Board of Investment of Thailand ('BOI'), grants the benefits resulting from the schemes mentioned in section 3.1. above with respect to the qualifying projects. In order to receive IPA benefits, each company makes an application to the BOI for a 'Certificate of promotion', which specifies the goods to be produced and benefits granted.
- (18) Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act B.E.2524 (1981) prescribes the criteria and conditions for the participation in tax and duty compensation of exported merchandise scheme. This scheme is administered by the Thai Ministry of Finance.
- (19) The sum of all calculated subsidies for each individual company is under the *de minimis* threshold, i.e. less than 2 % ad valorem. Therefore, in accordance with Article 14(3) and 14(5) of the basic anti-subsidy Regulation, even if all the subsidies in question were counter-avoidable, no anti-subsidy duties could be imposed on the Thai exporters. Because of the *de minimis* subsidisation the specificity of the subsidy schemes mentioned in recital 16 was not examined.

- (20) However, for the purpose of clarity, details of the schemes and the corresponding subsidy rates for individual companies are set out below, without prejudice to whether or not the subsidies are considered to be countervailable.

3.3. Individual Schemes

3.3.1. *Exemption or reduction on duties on imports of machinery*

(a) Legal Basis

- (21) Article 28 of the IPA provides the legal basis for an exemption from duties on machinery imports. Under this scheme companies are entitled to the full exemption from payment of import duty on machinery as approved by the BOI, providing that no such machinery comparable in quality is being produced or assembled within Thailand. Article 29 of IPA provides the legal basis for the 50 % reduction on import duties on imported machinery.

(b) Practical implementation

- (22) In order to benefit from this scheme, the company must possess a Certificate of promotion which specifies that it is entitled to an exemption or reduction on duties on imports of machinery pursuant to Articles 28 and 29 of the IPA. The Customs Department will receive a copy of the licence and the so-called 'Master list of Machinery', previously approved by the BOI, and will, on importation of the machinery, release this machinery without import duty being paid.

(c) Calculation of the subsidy amount

- (23) The benefit to the exporters was calculated on the basis of the amount of unpaid customs duty due on imported capital goods, by spreading this amount across a period which reflects the normal depreciation of such capital goods in the industry of the product concerned. This period has been established to be 15 years, which is in line with the depreciation periods used by the majority of the companies producing product concerned, both in Thailand and in the EU. The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period, in order to establish the full benefit to the recipient under this scheme, the commercial interest rate in Thailand during the investigation period being considered appropriate. This amount has then been allocated over total sales during the investigation period.

(d) Conclusion

- (24) Indorama Group received a benefit of 0,3 %, and Siam Mitsui PTA Co., Ltd received a benefit of 0,19 %.

3.3.2. *Exemption from corporate income tax*

(a) Legal Basis

- (25) Article 31 of the IPA provides the legal basis for corporate income tax exemption. Normal corporate income tax in Thailand is 30 %.

(b) Conclusion

- (26) None of the investigated companies benefited from this scheme during the investigation period. All of the Thai exporting producers offset the profits generated during the investigation period against losses they were carrying forward from previous accounting periods. This practice is allowed by the Thai Revenue Code for all companies, both promoted by BOI and non-promoted by BOI, and does not constitute a subsidy. Due to this fact investigated companies did not use the corporate income tax exemption scheme.

3.3.3. *Double deduction from taxable income of transportation, electricity and water costs for 10 years from the date of first revenue derived from the promoted activity*

(a) Legal Basis

- (27) Article 35(2) of the IPA provides the legal basis for the double deduction from taxable income of transportation, electricity and water costs for 10 years from the date of first revenue derived from the promoted activity.

(b) Practical implementation

- (28) In order to benefit from this scheme, the company must possess a Certificate of promotion which specifies that it is entitled to double deduction from taxable income of transportation, electricity, and water costs pursuant to Article 35(2) of the IPA. In addition to the usual deduction of the abovementioned costs, the BOI-promoted companies are allowed to deduct the same amount a second time from their profit on the tax return certificate. The company must fill out a special column in its annual tax return designated for the promoted activity. Consequently the taxable net profit is decreased by this amount; or the net loss is increased by this amount.

(c) Calculation of the subsidy amount

- (29) The benefit of this scheme should be calculated on the basis of the amount deducted a second time from the net profit as recorded on the tax return in the special column for promoted activities. For non-promoted activities this amount would be part of the net profit liable for corporate income tax, therefore 30 % of this amount (normal corporate tax rate in Thailand) forms the benefit for the companies. This amount has then been allocated over total sales during the investigation period.

(d) Conclusion

- (30) Indorama Group received a benefit of 0,55 %, and Siam Mitsui PTA Co., Ltd received a benefit of 0,57 %.

3.3.4. Deduction from net profit of 25 % of the project's infrastructure, installation or construction costs in addition to normal depreciation

(a) Legal Basis

- (31) Article 35(3) of the IPA provides the legal basis for this scheme. The scheme involves a permission to deduct from the net profit, in addition to normal depreciation, an amount not exceeding 25 % of the project's cost of installation or construction of facilities used in the promoted activity. The beneficiary should avail himself of the benefit within 10 years from the date the income is derived from the promoted activity.

(b) Conclusion

- (32) None of the investigated companies benefited from this scheme during the investigation period. In the periods before the investigation period all of the exporting producers either did not benefit from the income tax exemption scheme (since they were netting of profits against cumulated losses from the past) or were making losses. For these reasons they could not obtain benefits from this scheme.

3.3.5. Exemption of import duties on raw and essential materials used in the manufacturing of export products

(a) Legal Basis

- (33) Article 36(1) of the IPA provides the legal basis for this scheme. Under this scheme the BOI is authorised to grant the exemption of import duties on raw materials and essential materials used in the manufacture of goods for export. Companies in any zone are eligible for this scheme provided that they are promoted.

(b) Conclusion

- (34) None of the investigated companies benefited from this scheme during the investigation period. The import duty on the main raw materials used in production of PTA is zero. Therefore there was no benefit from this scheme for the investigated Thai exporters.

3.3.6. Tax and duty compensation of the exported goods produced in Thailand

(a) Legal Basis

- (35) 'Notification of the Compensation of Tax of Export Merchandise Produced in the Kingdom 1/2547 – Rate of Compensation' provides for the benefit from this scheme.

(b) Practical implementation

- (36) Companies receive refund in the value of 0,38 % of the FOB value of exported goods. The benefit is calculated per export transaction, but companies usually submit several applications for refund at the same time. The companies submit applications for refunds to the relevant authority and receive the refund.

(c) Calculation of the subsidy amount

- (37) The benefit for this scheme is the actual amount received as a refund and consequently recorded in companies' accounts as income. This amount has then been allocated over export sales during the investigation period.

(d) Conclusion

- (38) Indorama Group received a benefit of 0,36 % and Siam Mitsui PTA Co., Ltd also received a benefit of 0,36 %.

3.4. Amount of subsidies

- (39) The provisional amounts of subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the Thai exporting producers are:

— Indorama Petrochem Limited: 1,3 %,

— TPT Petrochemical Public Company Limited: 1 %,

— Siam Mitsui PTA Co., Ltd: 1,1 %.

- (40) Due to the fact that Indorama Petrochem Limited and TPT Petrochemical Public Company Limited are part of the same group, a common anti-subsidy duty rate was established for them. The final rate for Indorama/TPT group is 1,2 %.

Summary table

	Import duty exemption or reduction on machinery Scheme	Double deduction from taxable income Scheme	Export Tax compensation Scheme	Total subsidy margin
Siam Mitsui	0,19 %	0,57 %	0,36 %	1,1 %
Indorama	0,18 %	0,78 %	0,35 %	1,3 %
TPT	0,47 %	0,23 %	0,36 %	1 %
Indorama/TPT Group	0,3 %	0,55 %	0,36 %	1,2 %

- (41) In view of the *de minimis* amounts of countervailable subsidies for the Thai exporting producers, provisional measures on imports of PTA originating in Thailand should not be imposed.

4. INJURY, CAUSATION AND UNION INTEREST

- (42) In view of the above findings with respect to subsidies it is not considered necessary to present any analysis on injury, causation and Union interest.

5. TERMINATION OF THE PROCEEDING

- (43) The proceeding should therefore be terminated as the amounts of countervailable subsidies for the Thai exporting producers are less than 2 % *ad valorem*. Interested parties were informed accordingly and were given the opportunity to comment.
- (44) With respect to subsidy aspects comments were received from the Government of Thailand ('GOT') and one of the complainants.
- (45) The GOT argued that the schemes investigated cannot be considered as specific subsidy schemes since they form part of the country's decentralisation policy, they are not export contingent and do not limit access to certain business sectors or regions. In this respect it is noted that the investigation has established clearly that the investigated schemes that the exporting producers used during the IP (import duty exemption on machinery, double deduction from taxable income, and export tax compensation) are countervailable subsidies in line with the provisions of the basic anti-subsidy Regulation. Therefore, the claims of the GOT have to be rejected.
- (46) One of the complainants argued that some subsidies, in particular the income tax exemption scheme, should have been spread on a shorter period. This had to be rejected because none of the exporting producers benefited from this scheme during the IP.

- (47) As far as injury aspects are concerned no representations were submitted by any interested party.
- (48) In conclusion, no comments from any interested party undermine the findings that protective measures are unnecessary.
- (49) In light of all the above, the Commission therefore concludes that the anti-subsidy proceeding concerning imports into the Union of purified terephthalic acid and its salts originating in Thailand should be terminated without the imposition of anti-subsidy measures,

HAS ADOPTED THIS DECISION:

Sole Article

The anti-subsidy proceeding concerning imports of terephthalic acid and its salts of a purity by weight of 99,5 % or more, currently falling within CN code ex 2917 36 00, originating in Thailand, is hereby terminated.

Done at Brussels, 19 January 2011.

For the Commission

The President

José Manuel BARROSO

COMMISSION DECISION

of 19 January 2011

terminating the anti-dumping proceeding concerning imports of purified terephthalic acid and its salts originating in Thailand

(2011/32/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:

1. PROCEDURE

1.1. Initiation

- (1) On 22 December 2009, the European Commission (the 'Commission') announced by a notice published in the *Official Journal of the European Union*⁽²⁾ (Notice of initiation), the initiation of an anti-dumping proceeding concerning imports into the Union of purified terephthalic acid and its salts (PTA) originating in Thailand (the country concerned).
- (2) The anti-dumping proceeding was initiated following a complaint lodged on 13 November 2009 by BP Aromatics Limited NV and CEPESA Quimica S.A. (the complainants) representing a major proportion, in this case more than 50 %, of the total Union production of PTA. The complaint contained *prima facie* evidence of dumping of the product concerned originating in the country concerned and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.
- (3) On the same day, the Commission announced, by a notice published in the *Official Journal of the European Union*⁽³⁾, the initiation of an anti-subsidy proceeding with regard to imports into the Union of PTA originating in Thailand. This investigation has been terminated by means of Commission Decision 2011/31/EU⁽⁴⁾.

1.2. Parties concerned by the proceeding

- (4) The Commission officially advised the complainants, other known producers in the Union, the known exporting producers in Thailand, the representatives of the exporting country concerned and known importers and users of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the

time limit set out in the Notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

- (5) The Commission sent questionnaires to the complainants, other known producers in the Union, the known exporting producers in Thailand and to the known importers and users of the product concerned and to all other parties that requested a questionnaire within the deadlines set out in the Notice of initiation.
- (6) Questionnaire replies were received from the three known Thai exporting producers, from three Union producers, from one Union importer and from five Union users.
- (7) The Commission sought and verified all the information deemed necessary for the determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:
 - (a) Union producers:
 - BP Aromatics Limited NV, Geel, Belgium
 - CEPESA Quimica, S.A., Madrid, Spain
 - Lotte Chemical UK Ltd (formerly Artenius), Wilton, Redcar, United Kingdom
 - (b) Union importers:
 - Mitsui & Co. Benelux NV, Brussels, Belgium
 - (c) Union users:
 - DSM Powder Coating Resins BV, Zwolle, Holland
 - M&G Polimeri Italia SpA, Patrica (Frosinone), Italy
 - NOVAPET S.A., Barbastro (Huesca), Spain
 - UAB NEO Group, Klaipeda, Lithuania
 - (d) Exporting producers in Thailand:
 - TPT Petrochemicals Public Company Ltd, Bangkok, Thailand (hereinafter 'TPT')
 - Indorama Petrochem Ltd, Bangkok, Thailand (hereinafter 'Indorama')
 - Siam Mitsui PTA Company Ltd, Bangkok, Thailand (hereinafter 'SMPC')

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 313, 22.12.2009, p. 17.

⁽³⁾ OJ C 313, 22.12.2009, p. 22.

⁽⁴⁾ See page 17 of this Official Journal.

(e) Related exporter:

- Mitsui Chemicals Inc, Tokyo, Japan (hereinafter 'MCI') — export sales representative and shareholder of SMPC.

- (8) Given that both TPT and Indorama are owned by the same holding company, they will be referred to in this document as the 'Indorama group'.

1.3. Investigation period and period considered

- (9) The investigation of dumping and injury covered the period from 1 December 2008 to 30 November 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 investigation period (the period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (10) The product concerned is terephthalic acid and its salts of a purity by weight of 99,5 % or more, currently falling within CN code ex 2917 36 00 (the product concerned).
- (11) PTA is obtained by the purification of crude terephthalic acid, which is a result of making paraxylene (PX) react with a solvent and a catalyst solution.

2.2. Like product

- (12) The product concerned and the PTA produced and sold on the domestic market of Thailand, as well as the PTA produced and sold in the Union by the Union industry were found to have the same basic physical and chemical characteristics and uses. They were therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Preliminary remarks

- (13) All three Thai exporting producers named in the complaint submitted questionnaires responses. The investigation revealed that no other Thai exporting producers of PTA exist and that the responses covered 100 % of Thai exports to the EU market.
- (14) The three companies requested dumping calculations to be performed on the basis of monthly data on the grounds that costs of the main raw material and consequently prices for the product concerned varied significantly through the IP. For the reasons shown in recital 26 below, the use of the requested methodology was not considered warranted.
- (15) It should be noted that sales on the domestic and EU markets were based on either spot prices or contracts based on the PX cost (the main raw material) or a

formula based on a PTA pricing index in China. In the latter case, there was a significant time lag in a number of instances after which the final index was available. In order to implement the formula, an invoicing arrangement had to be operated whereby the final price could be settled some months after the initial provisional invoice was issued. Debit/credit notes were issued to correct the final price agreed in the contract.

- (16) The general methodology set out below has been applied to all the cooperating exporting producers in Thailand.

3.2. Normal value

- (17) In accordance with Article 2(2) of the basic Regulation, the Commission first established whether the domestic sales of the Thai producers were sufficiently representative, i.e. whether the total volume of such sales represented at least 5 % of their total volume of export sales of the product concerned to the Union. The domestic sales of the Thai producers were considered sufficiently representative during the investigation period.
- (18) The Commission subsequently examined whether the domestic sales of the like product could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for the like product sold on the domestic market the proportion of profitable domestic sales to independent customers during the IP.
- (19) Since the volume of profitable sales of the like product represented more than 80 % of the total domestic sales volume of the like product for all 3 producers, normal value was based on the actual domestic price, calculated as a weighted average of all domestic sales.

3.3. Export price

- (20) This investigation showed that one of the cooperating exporting producers (SMPC) sold to the EU market via its largest shareholder (MCI, a company located in Japan), which then resold to a series of Japanese traders, which ultimately sold to parties on the EU market. It was investigated whether MCI and the largest Japanese trader were related and if such a relationship had an impact on prices.
- (21) It was found that the most important relationship concerned common shareholdings at a very low percentage held by Japanese banks on behalf of numerous trustees. It was, therefore, established that the relationship was not of such a nature to impact price levels. Indeed, given (i) the pricing/contractual arrangements outlined above which are typical for this industry and (ii) the nature of the relationship between the companies described above, prices are at arm's length. It was therefore determined that the export price of the product concerned could be established on the basis of MCI's sales to the Japanese traders.

- (22) A letter was sent to MCI informing it of the consequences of non-cooperation because during the verification in Tokyo the case handlers involved were not granted full access to accounting information relating to certain allowances.
- (23) It was therefore decided to calculate the allowances on the basis of facts available, in accordance with Article 18 of the basic Regulation. As a result the following methodology was used. For freight costs the allowance was adjusted upwards on the basis of information gathered on spot. For the remaining allowances the amounts reported as well as the net sales prices were also checked by reference to other independent sources, in this case information established for the other two Thai exporting producers and were found to be in line for the same type of sales. An alternative method of using Eurostat prices as a substitute was considered but not used because for this product the value in Eurostat was the cif price at the date of importation and not the adjusted final price established in accordance with the sales contract and the invoicing systems outlined above. This approach was exceptionally appropriate given the structure of the market as explained in recital 15 above. Note that the vast majority of allowances had already been verified in Thailand.

3.4. Comparison

- (24) The comparison between normal value and export price was made on an ex-works basis.
- (25) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments for differences in transport, insurance, packing, credit, handling and commission costs were made where applicable and justified.
- (26) The comparison between export price and normal value was made on an annual basis. The request of the exporting producers to make comparisons on a monthly basis was considered but not pursued since it was obvious that it would not have changed the overall conclusion with respect to dumping, i.e. the countrywide *de minimis* dumping.

3.5. Dumping margin

- (27) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margin for the cooperating exporting producers in Thailand were established on the basis of a comparison of a weighted average normal value with a weighted average export price as established above.
- (28) On the basis of the above methodology the dumping margins, expressed as a percentage of the cif Union frontier price, duty unpaid, were set as follows:

	Dumping Margin
Indorama group	3,7 %
SMPC	No dumping

- (29) The three exporting producers (the two of the Indorama group and SMPC) represent the entirety of exports originating in Thailand when compared to the Eurostat data. In order to assess whether, on a countrywide basis, the dumping margin was below *de minimis*, a weighted average countrywide dumping margin was established. It was found that this margin was below *de minimis*, i.e. 1,8 %.
- (30) In view of the countrywide *de minimis* dumping margin, provisional measures on imports of PTA originating in Thailand should not be imposed.

4. INJURY, CAUSATION AND UNION INTEREST

- (31) In view of the above findings with respect to dumping it is not considered necessary to present any analysis on injury, causation and Union interest.

5. TERMINATION OF THE PROCEEDING

- (32) The proceeding should therefore be terminated as the dumping margin determined for Thailand is less than 2 %. Interested parties were informed accordingly and were given the opportunity to comment.
- (33) As to dumping issues, comments were received from one of the complainants which considered that the Commission should have imputed to SMPC the dumping margin established for the other two exporting producers (3,7 %) as a consequence of facts available. In such a case it was argued that there would have been a *de minimis* dumping margin. This had to be rejected. The Commission did apply facts available with respect to the Japanese related company by using the company's available data, adjusting it upwards and comparing it to other verifiable sources. To impute in these circumstances the dumping margin of the other exporters would not have been in line with the provisions of Article 18.
- (34) The same complainant also argued that other governments take a different view on investigations concerning PTA for a similar IP. This had to be rejected. In this respect it is noted that the evidence provided by the party refers to an anti-dumping duty imposed by the People's Republic of China on imports of PTA from Korea and Thailand. The information provided cannot corroborate the party's claim since no evidence exists on how normal value and export price were established in this Chinese anti-dumping investigation. Furthermore, in the investigation by the Chinese authorities, the IP runs from 1 October 2007 to 30 September 2008, while the IP used in the current

EU investigation runs from 1 December 2008 to 30 November 2009. Therefore the periods taken into consideration in the EU and the Chinese investigations were very different.

- (35) As far as injury aspects are concerned no representations were submitted by any interested party.
- (36) In conclusion, no comments from any interested party undermine the finding that protective measures are unnecessary.
- (37) In light of all the above, the Commission therefore concludes that the anti-dumping proceeding concerning imports into the Union of purified terephthalic acid and its salts originating in Thailand should be terminated without the imposition of anti-dumping measures,

HAS ADOPTED THIS DECISION:

Sole Article

The anti-dumping proceeding concerning imports of terephthalic acid and its salts of a purity by weight of 99,5 % or more, currently falling within CN code ex 2917 36 00, originating in Thailand, is hereby terminated.

Done at Brussels, 19 January 2011.

For the Commission

The President

José Manuel BARROSO

IV

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

EFTA SURVEILLANCE AUTHORITY DECISION

No 190/09/COL

of 22 April 2009

amending, for the sixty-ninth time, the procedural and substantive rules in the field of State aid by introducing a revised chapter on the temporary framework for State aid measures to support access to finance in the current financial and economic crisis

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,a Communication amending the temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis ⁽⁵⁾,HAVING REGARD to the Agreement on the European Economic Area ⁽²⁾, in particular to Articles 61 to 63 and Protocol 26 thereof,

WHEREAS this Communication is also of relevance for the European Economic Area,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ⁽³⁾, in particular to Article 24 and Article 5(2)(b) thereof,

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

WHEREAS under Article 24 of the Surveillance and Court Agreement, the Authority shall give effect to the provisions of the EEA Agreement concerning state aid,

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

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

HAVING CONSULTED the European Commission,

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

RECALLING that the Authority has consulted the EFTA States on the subject by letter dated 31 March 2009,

HAS ADOPTED THIS DECISION:

WHEREAS, on 25 February 2009, the Commission of the European Communities (hereinafter EC Commission) adopted

Article 1

The Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis (hereinafter the 'Temporary Framework') applies from 29 January 2009 until 31 December 2010.

The Temporary Framework foresees in its final provisions that where this would be helpful, the Authority may also provide further clarifications on its approach to particular issues.

⁽¹⁾ Hereinafter referred to as 'the Authority'.

⁽²⁾ Hereinafter referred to as 'the EEA Agreement'.

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

⁽⁴⁾ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in the *Official Journal of the European Union* (hereinafter referred to as 'OJ') L 231, 3.9.1994, p. 1 and the EEA Supplement No 32 of 3.9.1994, p. 1. The Guidelines were last amended on 29 January 2009. Hereinafter referred to as 'the State Aid Guidelines'. The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/fieldsofwork/fieldstateaid/guidelines/>

⁽⁵⁾ The consolidated version was published in OJ C 83, 7.4.2009, p. 1.

The application of the Temporary Framework has shown the necessity of introducing additional clarifications as regards the applicability of Article 61(3)(b) of the EEA Agreement, the existing framework for setting the reference and discount rates and the application of the aid in the form of guarantees.

The State Aid Guidelines shall be amended by introducing amendments to the Chapter of the Guidelines entitled Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis.

The following amendments to the Temporary Framework will take effect from the date of adoption of this Decision:

1. In point 4.1, the following paragraph is added:

- a. 'Therefore EFTA States have to show that the State aid measures notified to the Authority under this framework are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of an EFTA State and that all the conditions are fully respected.'

2. Point 4.3.2 is amended as follows:

- (a) Letters (a) and (b) are replaced by the following:

'(a) for SMEs, EFTA States grant a reduction of up to 25 % of the annual premium to be paid for new guarantees granted in accordance with the safe-harbour provisions as set out in the Annex (*).

- (b) for large companies, EFTA States also grant a reduction of up to 15 % of the annual premium for new guarantees calculated on the basis of the same safe-harbour provisions set out in the Annex.

(*) The premiums in the Annex refine the safe-harbour provisions of the Guidelines on State aid in the form of guarantees by taking account of different levels of collateralisation. They may also be used as a benchmark to calculate the compatible aid element for guarantee measures falling under point 4.2 of this framework.

The calculation of the safe-harbour premiums is based on the margins provided by the Guidelines on reference and discount rates, taking account of an additional reduction of 20 basis points (see footnote 12 of the above Guidelines). For each rating category, however, the safe-harbour premium as set out in the Guidelines on State aid in the form of guarantees remained the upper premium limit for each rating category. As to the definition of the different levels of collateralisation see footnote 2, page 1 of the Guidelines on reference and discount rates.'

- (b) Letter (f) is replaced by the following:

'(f) The guarantee does not exceed 90 % of the loan for the duration of the loan.'

- (c) Letter (h) is replaced by the following:

'(h) The reduction of the guarantee premium is applied during a maximum period of two years following the granting of the guarantee. If the duration of the underlying loan exceeds two years, EFTA States may apply for an additional maximum period of eight years the safe-harbour premiums set out in the Annex without reduction.'

3. Point 4.4.1. is replaced by the following:

'4.4.1 The Guidelines on reference and discount rates establish a method for calculation of the reference rate, based on the one-year inter-bank offered rate (IBOR) increased by margins ranging from 60 to 1 000 base points, depending on the creditworthiness of the company and the level of collateral offered. The method for calculation of the reference and discount rates may be amended by the Authority, in order to reflect the prevailing market conditions. If EFTA States apply the calculation method of the reference and discount rates established in the Guidelines in force at the moment of the grant of the loan and comply with the conditions set out in these Guidelines, the interest rate does, in principle, not contain State aid.'

4. Point 4.5.1. is replaced by the following:

'4.5.1 The Authority's Guidelines on reference and discount rates establish a method for calculation of the reference rate, based on the one-year inter-bank offered rate (IBOR) increased by margins ranging from 60 to 1 000 base points, depending on the creditworthiness of the company and the level of collateral offered. The method for calculation of the reference and discount rates may be amended by the Authority in order to reflect the prevailing market conditions. If EFTA States apply the calculation method of the reference and discount rates established in the Guidelines in force at the moment of the grant of the loan and comply with the conditions set out in these Guidelines, the interest rate does, in principle, not contain State aid.'

5. The following Annex is added:

'ANNEX

Safe-harbours Temporary Framework in basis points (*)			
Rating category (Standard & Poor's)	Collateralisation		
	High	Normal	Low
AAA	40	40	40
AA+ AA AA-	40	40	40
A+ A A-	40	55	55
BBB+ BBB BBB-	55	80	80
BB+ BB	80	200	200
BB- B+	200	380	380
B B-	200	380	630
CCC and below	380	630	980

(*) For companies which do not have a credit history or a rating based on a balance sheet approach (such as certain special purpose companies or start-up companies), EFTA States may grant a reduction of up to 15 % (25 % for SMEs) on the specific safe-harbour premium set at 3,8 % in the Guidelines on State aid in the form of guarantees. However, the premium can never be lower than the premium which would be applicable to the parent company or companies.'

The new chapter is contained in Annex to this Decision.

Article 2

This Decision is addressed to the Republic of Iceland, the Principality of Liechtenstein and the Kingdom of Norway.

Article 3

Only the English version is authentic.

Done at Brussels, 22 April 2009.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kurt JÄGER
College Member

ANNEX

Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis**1. THE FINANCIAL CRISIS, ITS IMPACT ON THE REAL ECONOMY AND THE NEED FOR TEMPORARY MEASURES****1.1. *The financial crisis and its impact on the real economy***

- (1) On 26 November 2008, the European Commission (hereinafter '*the Commission*') adopted the Communication 'A European Economic Recovery Plan' (the 'Recovery Plan') to drive Europe's recovery from the current financial crisis ⁽¹⁾. The Recovery Plan is based on two mutually reinforcing main elements. Firstly, short-term measures to boost demand, save jobs and help restore confidence and secondly, 'smart investment' to yield higher growth and sustainable prosperity in the longer term. The Recovery Plan will intensify and accelerate reforms already underway under the Lisbon Strategy.
- (2) In this context, the challenge is to avoid public intervention which would undermine the objective of less and better targeted State aid. Nevertheless, under certain conditions, there is a need for new temporary State aid.
- (3) The EFTA Surveillance Authority (hereinafter '*the Authority*') takes the view that new instruments must be put in place to enable the application of State aid rules in a way that achieves maximum flexibility for tackling the crisis while maintaining a level playing field and avoiding undue restrictions of competition. These Guidelines give details of a number of additional temporary openings for EFTA States to grant State aid.
- (4) First, the financial crisis has had a hard impact on the banking sector in the EEA and of unprecedented magnitude in Iceland. The European Council has stressed that although public intervention has to be decided at national level, this needs to be done within a coordinated framework and on the basis of a number of common Community principles ⁽²⁾. The Commission reacted immediately with various measures including the adoption of the Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis ⁽³⁾ and of a number of decisions authorising rescue aid to financial institutions. The Authority has adopted corresponding measures ⁽⁴⁾.
- (5) Sufficient and affordable access to finance is a precondition for investment, growth and job creation by the private sector. EFTA States need to use the leverage they have acquired as a result of providing substantial financial support to the banking sector to ensure that this support does not lead merely to an improvement in the financial situation of the banks without any benefit to the economy at large. Support for the financial sector should therefore be well targeted to guarantee that banks resume their normal lending activities. The Authority will take this into account when reviewing State aid to banks.
- (6) While the situation on financial markets appears to be improving, the full impact of the financial crisis on the real economy is now being felt. A very serious downturn is affecting the wider economy and hitting households, businesses and jobs. In particular, as a consequence of the crisis on financial markets, banks are deleveraging and becoming much more risk-averse than in previous years, leading to a credit squeeze. This financial crisis could trigger credit rationing, a drop in demand and recession.
- (7) Such difficulties could affect not only weak companies without solvency buffers, but also healthy companies which will find themselves facing a sudden shortage or even unavailability of credit. This will be particularly true for small and medium-sized enterprises (SMEs), which in any event face greater difficulties with access to finance than larger companies. This situation could not only seriously affect the economic situation of many healthy companies and their employees in the short and medium term but also have longer-lasting negative effects since all EEA investments in the future — in particular, towards sustainable growth and other objectives of the Lisbon Strategy — could be delayed or even abandoned.

1.2. *The need for close EEA coordination of national aid measures*

- (8) In the current financial situation, EFTA States could be tempted to go it alone and, in particular, to wage a subsidy race to support their companies. Past experience shows that individual action of this kind cannot be effective and could seriously damage the internal market. When granting support, taking fully into consideration the specific

⁽¹⁾ Communication from the Commission to the European Council, COM(2008) 800.

⁽²⁾ Conclusions of ECOFIN Council of 7 October 2008.

⁽³⁾ OJ C 270, 25.10.2008, p. 8.

⁽⁴⁾ See chapters of the Guidelines on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis and on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition, adopted on 29 January 2009.

prevailing economic situation, it is crucial to ensure a level playing field for EEA companies and to avoid EFTA States engaging in subsidy races which would be unsustainable and detrimental to the EEA as a whole. Competition policy is there to ensure this.

1.3. *The need for temporary State aid measures*

- (9) The temporary additional measures provided for in these Guidelines pursue two objectives: first, in the light of the exceptional and transitory financing problems linked to the banking crisis, to unblock bank lending to companies and thereby guarantee continuity in their access to finance. In this respect, SMEs are particularly important for the whole economy in the EEA and improving their financial situation will also have positive effects for large companies, thereby supporting overall economic growth and modernisation in the longer term.
- (10) The second objective is to encourage companies to continue investing in the future, in particular in a sustainable growth economy. There could indeed possibly be dramatic consequences, if, as a result of the current crisis, the significant progress that has been achieved in the environmental field were to be halted or even reversed. For this reason, it is necessary to provide temporary support to companies for investing in environmental projects (which could, *inter alia*, give a technological edge to EEA industry), thereby combining urgent and necessary financial support with long-term benefits for the EEA.
- (11) These Guidelines first recall the manifold opportunities for public support which are already at the disposal of EFTA States under existing State aid rules, before setting out additional State aid measures that EFTA States may grant temporarily in order to remedy the difficulties which some companies are currently encountering with access to finance and to promote investment pursuing environmental objectives.
- (12) The Authority considers that the proposed aid instruments are the most appropriate ones to achieve those objectives.

2. GENERAL ECONOMIC POLICY MEASURES

- (13) The Recovery Plan was adopted in response to the current economic situation. Given the scale of the crisis, the Community needs a coordinated approach, big enough and bold enough to restore consumer and business confidence. The same is true for recovery in the EFTA States.
- (14) The strategic aims of the Recovery Plan are to:
- swiftly stimulate demand and boost consumer confidence,
 - lessen the human cost of the economic downturn and its impact on the most vulnerable. Many workers and their families are or will be hit by the crisis. Action can be taken to help stem the loss of jobs and then to help people return rapidly to the labour market, rather than face long-term unemployment,
 - help Europe to prepare to capitalise when growth returns, so that the European economy is in tune with the demands for competitiveness and sustainability and the needs of the future, as outlined in the Lisbon Strategy. That means supporting innovation, building a knowledge economy and speeding up the shift towards a low-carbon and resource efficient economy.
- (15) To achieve those objectives, EFTA States already have at their disposal a number of instruments which are not considered State aid. For instance, some companies may be experiencing even more acute difficulties with access to finance than others, thereby delaying or even jeopardising the financing necessary for their growth and the implementation of investments envisaged. For this purpose, EFTA States could adopt a series of general policy measures, applicable to all companies on their territories and, consequently, falling outside the State aid rules, with the aim of temporarily alleviating financing problems in the short and medium term. For example, payment deadlines for social security and similar charges, or even taxes, could be extended or measures for employees could be introduced. If such measures are open to all undertakings, in principle they do not constitute State aid.

- (16) EFTA States may also grant financial support directly to consumers, for instance for scrapping old products and/or buying green products. If such aid is granted without discrimination based on the origin of the product, it does not constitute State aid.
- (17) Moreover, general Community programmes, like the Competitiveness and Innovation Framework Programme (2007 to 2013) established by Decision No 1639/2006/EC of the European Parliament and of the Council ⁽⁵⁾ and the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) established by Decision No 1982/2006/EC of the European Parliament and of the Council ⁽⁶⁾ may be used to best effect to deliver support to SMEs, but also to large undertakings.

3. STATE AID POSSIBLE UNDER EXISTING INSTRUMENTS

- (18) Over the last few years, the Authority has significantly modernised the State aid rules in order to encourage EFTA States to target public support better on sustainable investments, thus contributing to the Lisbon Strategy. In this context, particular emphasis has been given to SMEs, accompanied by more openings for granting State aid. In addition, the State aid rules have been greatly simplified and streamlined by the recently adopted General Block Exemption Regulation ⁽⁷⁾ which now offers EFTA States a wide panoply of aid measures with minimum administrative burden. In the current economic situation, the following existing State aid instruments are of particular importance
- (19) The *de minimis* Regulation ⁽⁸⁾ as adapted to the EEA Agreement specifies that support measures worth up to EUR 200 000 per company over any three year period do not constitute State aid within the meaning of the EEA Agreement. The same Regulation also states that guarantees of up to EUR 1,5 million do not exceed the *de minimis* threshold and therefore do not constitute State aid. Consequently, EFTA States can grant such guarantees without calculation of the corresponding aid equivalent and without administrative burdens.
- (20) The above-mentioned General Block Exemption Regulation (GBER) forms a central element of the State aid rules by simplifying the State aid procedure for certain important aid measures and fostering redirection of State aid to priority EEA objectives. All previously existing block exemptions, along with new areas (innovation, environment, research and development for large companies and risk capital measures for SMEs) have been brought under a single instrument. In all the cases covered by the GBER, EFTA States can grant aid without prior notification to the Authority. Therefore, the speed of the process lies fully in the hands of the EFTA States. The GBER is particularly important for SMEs, in that it provides for special rules on investment and employment aid exclusively for SMEs. In addition, all the 26 measures covered are open to SMEs, allowing EFTA States to accompany SMEs during the different stages in their development, assisting them in areas ranging from access to finance to research and development, innovation, training, employment, environmental measures, etc.
- (21) New Guidelines on State aid for environmental protection ⁽⁹⁾ provide that EFTA States may grant State aid, inter alia, as follows:
- aid for companies which improve their environmental performance beyond Community standards, or in the absence of Community standards, of up to 70 % of the extra investment costs (up to 80 % in the field of eco-innovation) for small undertakings and of up to 100 % of the extra investment costs if the aid is granted following a genuinely competitive bidding process, even for large companies; aid for early adaptation to future Community standards and aid for environmental studies is also allowed,
 - in the field of renewable energies and cogeneration, EFTA States may grant operating aid to cover all extra production costs,
 - in order to attain environmental targets for energy saving and for reductions in greenhouse gas emissions, EFTA States may grant aid enabling undertakings to achieve energy savings and aid for renewable energy sources and cogeneration of up to 80 % of the extra investment costs for small undertakings and of up to 100 % of the extra investment costs if the aid is granted following a genuinely competitive bidding process.

⁽⁵⁾ OJ L 310, 9.11.2006, p. 15.

⁽⁶⁾ OJ L 412, 30.12.2006, p. 1.

⁽⁷⁾ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation) (OJ L 214, 9.8.2008, p. 3) incorporated into the EEA Agreement at point 1j of Annex XV to the Agreement by Decision No 120/2008 of 7 November 2008 (OJ L 339, 18.12.2008, p. 111, and EEA Supplement No 79, 18.12.2008), e.i.f. 8.11.2008.

⁽⁸⁾ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5) incorporated into the EEA Agreement at point 1ea of Annex XV to the Agreement by Decision No 29/2007 (OJ L 209, 9.8.2007, p. 52, and EEA Supplement No 38, 9.8.2007, p. 34), e.i.f. 28.4.2007.

⁽⁹⁾ The updated version of the State Aid Guidelines is published on the Authority's website: http://www.eftasurv.int/fieldsOfWork/fieldstateaid/state_aid_guidelines/

- (22) On 7 February 2007, the Authority adopted new Guidelines for State aid for research and development and innovation. That text contains new provisions on innovation, specially targeted at SMEs and also corresponding to better targeting of aid on job and growth creation along the lines set out in the Lisbon Strategy. In particular, EFTA States may grant State aid, *inter alia*, as follows:
- aid for R&D projects, in particular aid for fundamental research, of up to 100 % of the eligible costs and aid for industrial research of up to 80 % for small enterprises,
 - aid for young innovative enterprises of up to EUR 1 million and even more in assisted regions, aid for innovation clusters, aid for innovation advisory services and aid for innovation support services,
 - aid for the loan of highly qualified personnel, aid for technical feasibility studies, aid for process and organisational innovation in services and aid for industrial property rights costs for SMEs.
- (23) Training is another key element for competitiveness. It is critically important to maintain investment in training, even at a time of rising unemployment, in order to develop new skills. Under the new GBER, EFTA States may grant both general and specific training aid to companies totalling up to 80 % of the eligible costs.
- (24) In 2008, the Authority adopted new Guidelines on State aid in the form of guarantees, which specify the conditions under which public guarantees for loans do not constitute State aid. In accordance with those Guidelines, guarantees are not considered State aid, in particular, when a market price is paid for them. Besides clarifying the conditions which determine whether or not aid in the form of guarantees is present, the new Guidelines also introduce, for the first time, specific safe-harbour premiums for SMEs, allowing easier but safe use of guarantees in order to foster the financing of SMEs.
- (25) New Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises were adopted by the Authority on 25 October 2006. These are aimed at innovative and fast growing SMEs — a key focus of the Lisbon Strategy. The Authority put in place a new safe-harbour threshold of EUR 1,5 million per target SME, a 50 % increase. Beneath that ceiling the Authority accepts that, as a rule, alternative means of funding from financial markets are lacking (that is to say, that a market failure exists). In addition, aid for risk capital has been included in the GBER.
- (26) In disadvantaged regions, EFTA States can grant investment aid for setting up a new establishment, extending an existing establishment or diversifying into new products under the Guidelines on national regional aid 2007-2013, which have applied since January 2007.
- (27) The Guidelines on national regional aid 2007-2013 also introduce a new form of aid to provide incentives to support business start-ups and the early stage development of small enterprises in assisted areas.
- (28) Under the existing Guidelines on State aid for rescuing and restructuring firms in difficulty, EFTA States can also grant aid to companies requiring public support. For that purpose, EFTA States may notify rescue and/or restructuring aid schemes for SMEs.
4. APPLICABILITY OF ARTICLE 61(3)(b)
- 4.1. *General principles*
- (29) Pursuant to Article 61(3)(b) of the EEA Agreement the Authority may declare compatible with the functioning of the EEA Agreement aid 'to remedy a serious disturbance in the economy of an EFTA State'. This provision is identical to Article 87(3)(b) EC, in relation to which the European Court of First Instance has ruled that the disturbance must affect the whole of the economy of the Member State concerned, and not merely that of one of its regions or parts of its territory. This, moreover, is in line with the need to interpret strictly any derogating provision such as Article 61(3)(b) of the EEA Agreement ⁽¹⁰⁾.
- (30) This strict interpretation has been consistently applied by the Commission in its decision-making ⁽¹¹⁾. The Authority has also adopted a strict interpretation of Article 61(3)(b) EEA ⁽¹²⁾.
- (31) In this context, the Authority considers that, beyond emergency support for the financial system, the current global crisis requires exceptional policy responses.

⁽¹⁰⁾ Joined cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen AG v Commission* [1999] ECR II-3663, paragraph 167.

⁽¹¹⁾ Commission Decision 98/490/EC in case 47/96 *Crédit Lyonnais* (OJ L 221, 8.8.1998, p. 28), point 10.1; Commission Decision 2005/345/EC in case 28/02 *Bankgesellschaft Berlin* (OJ L 116, 4.5.2005, p. 1), points 153 et seq.; and Commission Decision 2008/263/EC in case C 50/06 *BAWAG* (OJ L 83, 26.3.2008, p. 7), point 166. See also Commission Decision in case NN 70/07 *Northern Rock* (OJ C 43, 16.2.2008, p. 1) and Commission Decision of 4 June 2008 in case C 9/08 *SachsenLB*, not yet published.

⁽¹²⁾ The Authority has never approved an aid measure on the basis of Article 61(3)(b) EEA.

- (32) All EFTA States will be affected by this crisis, albeit in different ways and to different degrees, and it is likely that unemployment will increase, demand fall and fiscal positions deteriorate.
- (33) In the light of the seriousness of the current financial crisis and its impact on the overall economy of the EFTA States, the Authority considers that certain categories of State aid are justified, for a limited period, to remedy those difficulties and that they may be declared compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(b) thereof.
- (34) Therefore EFTA States have to show that the State aid measures notified to the Authority under this framework are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of an EFTA State and that all the conditions are fully respected.

4.2. *Compatible limited amount of aid*

4.2.1. Existing framework

- (35) Article 2 of the *de minimis* Regulation ⁽¹³⁾ as adapted to the EEA Agreement states that:

'Aid measures shall be deemed not to meet all the criteria of Article 61(1) of the EEA Agreement and shall therefore be exempt from the notification requirement of Article 2 of Part II of Protocol 3 to the Surveillance and Court Agreement, if they fulfil the conditions laid down in paragraphs 2 to 5 of this Article.

The total *de minimis* aid granted to any one undertaking shall not exceed EUR 200 000 over any period of three fiscal years. The total *de minimis* aid granted to any one undertaking active in the road transport sector shall not exceed EUR 100 000 over any period of three fiscal years. These ceilings shall apply irrespective of the form of the *de minimis* aid or the objective pursued and regardless of whether the aid granted by the EFTA State is financed entirely or partly by resources of Community origin. The period shall be determined by reference to the fiscal years used by the undertaking in the EFTA State concerned'.

4.2.2. New measure

- (36) The financial crisis is affecting not only structurally weak companies but also companies which will find themselves facing a sudden shortage or even unavailability of credit. An improvement in the financial situation of those companies will have positive effects for the whole EEA economy.
- (37) Therefore, in view of the current economic situation, it is considered necessary to temporarily allow the granting of a limited amount of aid that will nevertheless fall within the scope of Article 61(1) of the EEA Agreement, since it exceeds the threshold indicated in the *de minimis* Regulation.
- (38) The Authority will consider such State aid compatible with the common market on the basis of Article 61(3)(b) of the EEA Agreement, provided all the following conditions are met:
- (a) the aid does not exceed a cash grant of EUR 500 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge; where aid is awarded in a form other than a grant, the aid amount is the gross grant equivalent of the aid;
 - (b) the aid is granted in the form of a scheme;
 - (c) the aid is granted to firms which were not in difficulty ⁽¹⁴⁾ on 1 July 2008; it may be granted to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis; the aid scheme does not apply to firms active in the fisheries sector;
 - (d) the aid is not export aid or aid favouring domestic over imported products;

⁽¹³⁾ See footnote 3 above.

⁽¹⁴⁾ For large companies, see point 2.1 of the Guidelines on State aid for restructuring firms in difficulty. For SMEs, see Article 1(7) on the definition of the General Block Exemption Regulation.

- (e) the aid is granted no later than 31 December 2010;
- (f) prior to granting the aid, the EFTA State obtains a declaration from the undertaking concerned, in written or electronic form, about any other *de minimis* aid and aid pursuant to this measure, received during the current fiscal year and checks that the aid will not raise the total amount of aid received by the undertaking during the period 1 January 2008 to 31 December 2010 to a level above the ceiling of EUR 500 000;
- (g) the aid scheme does not apply to undertakings active in the primary production of agricultural products; it may apply to undertakings active in the processing and marketing of agricultural products⁽¹⁵⁾ unless the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned, or the aid is conditional on being partly or entirely passed on to primary producers⁽¹⁶⁾.

4.3. Aid in the form of guarantees

4.3.1. Existing framework

- (39) The Guidelines on State aid in the form of guarantees aim at giving EFTA States detailed guidance about the principles on which the Authority intends to base its interpretation of Articles 61 and 62 of the EEA Agreement and the application thereof to State guarantees. In particular, the Guidelines specify the conditions under which State aid can be considered not to be present. It does not provide compatibility criteria for assessment of guarantees.

4.3.2. New measure

- (40) In order to further encourage access to finance and to reduce the current high risk aversion on the part of banks, subsidised loan guarantees for a limited period can be an appropriate and well targeted solution to give firms easier access to finance.
- (41) The Authority will consider such State aid compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(b) thereof, provided all the following conditions are met:
 - (a) for SMEs, EFTA States grant a reduction of up to 25 % of the annual premium to be paid for new guarantees granted in accordance with the safe-harbour provisions as set out in the Annex⁽¹⁷⁾;
 - (b) for large companies, EFTA States also grant a reduction of up to 15 % of the annual premium for new guarantees calculated on the basis of the same safe-harbour provisions set out in the Annex;
 - (c) when the aid element in guarantee schemes is calculated through methodologies already accepted by the Authority following their notification under a regulation incorporated into the EEA Agreement in the field of State aid⁽¹⁸⁾, EFTA States may also grant a similar reduction of up to 25 % of the annual premium to be paid for new guarantees for SMEs and up to 15 % for large companies;
 - (d) the maximum loan does not exceed the total annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the company site but formally in the payroll of subcontractors) for 2008. In the case of companies created on or after 1 January 2008, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation;

⁽¹⁵⁾ As defined in Article 2.3 and 2.4 of Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001 (OJ L 358, 16.12.2006, p. 3).

⁽¹⁶⁾ For the State aid provisions in Articles 61 to 63 of the EEA Agreement to apply, State aid must be granted to undertakings involved in the production of goods which fall within the product scope of the EEA Agreement. Article 8(3) of the Agreement provides that 'unless otherwise specified, the provisions of this Agreement shall apply only to: (a) products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System, excluding the products listed in Protocol 2; (b) products specified in Protocol 3, subject to the specific arrangements set out in that Protocol'. Agricultural products, in so far as they do not fall under Chapters 25 to 97 of the Harmonized Commodity Description and Coding System or are specified in Protocol 3, fall outside the scope of application of the EEA Agreement.

⁽¹⁷⁾ The premiums in the Annex refine the safe-harbour provisions of the Guidelines on State aid in the form of guarantees by taking account of different levels of collateralisation. They may also be used as benchmark to calculate the compatible aid element for guarantee measures falling under point 4.2 of this framework.

The calculation of the safe-harbour premiums is based on the margins provided by the Guidelines on reference and discount rates, taking account of an additional reduction of 20 basis points (see footnote 12 (11 for the EU text) of the Guidelines on State aid in the form of guarantees). For each rating category, however, the safe-harbour premium as set out in the Guidelines on State aid in the form of guarantees remained the upper premium limit for each rating category. As to the definition of the different levels of collateralisation see footnote 2, page 1 of the Guidelines on reference and discount rates.

⁽¹⁸⁾ Such as the General Block Exemption Regulation or Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (OJ L 302, 1.11.2006, p. 29) incorporated into the EEA Agreement at point 1i of Annex XV to the Agreement by Decision No 157/2006 (OJ L 89, 29.3.2007, p. 33 and EEA Supplement No 15, 29.3.2007, p. 26), provided that the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions at stake.

- (e) guarantees are granted until 31 December 2010 at the latest;
- (f) the guarantee does not exceed 90 % of the loan for the duration of the loan;
- (g) the guarantee may relate to both investment and working capital loans;
- (h) the reduction of the guarantee premium is applied during a maximum period of two years following the granting of the guarantee. If the duration of the underlying loan exceeds two years, EFTA States may apply for an additional maximum period of eight years the safe-harbour premiums set out in the Annex without reduction.
- (i) the aid is granted to firms which were not in difficulty ⁽¹⁹⁾ on 1 July 2008; it may be granted to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis.

4.4. *Aid in the form of a subsidised interest rate*

4.4.1. Existing framework

- (42) The Guidelines on reference and discount rates establish a method for calculation of the reference rate, based on the one-year inter-bank offered rate (IBOR) increased by margins ranging from 60 to 1 000 base points, depending on the creditworthiness of the company and the level of collateral offered. The method for calculation of the reference and discount rates may be amended by the Authority, in order to reflect the prevailing market conditions. If EFTA States apply the calculation method of the reference and discount rates established in the Guidelines in force at the moment of the grant of the loan and comply with the conditions set out in these Guidelines, the interest rate does, in principle, not contain State aid.

4.4.2. New measure

- (43) Companies may have difficulties in finding finance in the current market circumstances. Therefore the Authority will accept that public or private loans are granted at an interest rate which is at least equal to the central bank overnight rate plus a premium equal to the difference between the average one year interbank rate and the average of the central bank overnight rate over the period from 1 January 2007 to 30 June 2008, plus the credit risk premium corresponding to the risk profile of the recipient, as stipulated by the Authority's Guidelines on reference and discount rates.
- (44) The aid element contained in the difference between this interest rate and the reference rate defined by the Guidelines on reference and discount rates will be considered, on a temporary basis, to be compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(b) thereof, provided the following conditions are met:
 - (a) this method applies to all contracts concluded on 31 December 2010 at the latest; it may cover loans of any duration: the reduced interest rates may be applied for interest payments before 31 December 2012 ⁽²⁰⁾; an interest rate at least equal to the rate defined in the Guidelines on reference and discount rates must apply to loans after that date;
 - (b) the aid is granted to firms which were not in difficulty on 1 July 2008 ⁽²¹⁾; it may be granted to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis.

4.5. *Aid for the production of green products*

4.5.1. Existing framework

- (45) The Authority's Guidelines on reference and discount rates establish a method for calculation of the reference rate, based on the one-year inter-bank offered rate (IBOR) increased by margins ranging from 60 to 1 000 base points, depending on the creditworthiness of the company and the level of collateral offered. The method for calculation of the reference and discount rates may be amended by the Authority in order to reflect the prevailing market conditions. If EFTA States apply the calculation method of the reference and discount rates established in the Guidelines in force at the moment of the grant of the loan and comply with the conditions set out in these Guidelines, the interest rate does, in principle, not contain State aid.

4.5.2. New measure

- (46) Because of the current financial crisis, companies are also finding it more difficult to gain access to finance for production of more environmentally friendly products. Aid in the form of guarantees may not be sufficient to finance costly projects aiming at increasing environmental protection by adapting earlier to future standards not yet in force or by going beyond such standards.

⁽¹⁹⁾ See footnote 9 above.

⁽²⁰⁾ EFTA States wishing to use this facility have to publish the daily overnight rates online and make them available to the Authority.

⁽²¹⁾ See footnote 9 above.

- (47) The Authority considers that environmental goals should remain a priority despite the financial crisis. Production of more environmentally friendly, including energy-efficient products, is in the EEA's common interest and it is important that the financial crisis should not impede this objective.
- (48) Therefore, additional measures in the form of subsidised loans could encourage production of 'green products'. However, subsidised loans may cause serious distortions of competition and should be strictly limited to specific situations and targeted investment.
- (49) The Authority considers that, for a limited period, EFTA States should be given the possibility of granting aid in the form of an interest-rate reduction.
- (50) On the basis of Article 61(3)(b) of the EEA Agreement, the Authority will consider compatible with the functioning of the EEA Agreement any interest-rate subsidy for investment loans that meets all the following conditions:
- (a) the aid relates to investment loans for financing projects consisting of production of new products which significantly improve environmental protection;
 - (b) the aid is necessary for launching a new project; in the case of existing projects, aid may be granted if it becomes necessary, due to the new economic situation, in order to pursue the project;
 - (c) the aid is granted only for projects consisting of production of products involving early adaptation to or going beyond future Community product standards ⁽²²⁾ which increase the level of environmental protection and are not yet in force;
 - (d) for products involving early adaptation to or going beyond future Community environmental standards, the investment starts on 31 December 2010 at the latest with the objective of putting the product on the market at least two years before the standard enters into force;
 - (e) the loans may cover the costs of investment in tangible and intangible assets ⁽²³⁾ with the exception of loans for investments which account for production capacities of more than 3 % on product markets ⁽²⁴⁾ where the average annual growth rate, over the last five years before the start of the investment, of the apparent consumption on the EEA market, measured in value data, remained below the average annual growth rate of the EEA's GDP over the same five year reference period;
 - (f) the loans are granted on 31 December 2010 at the latest;
 - (g) for calculation of the aid, the starting point should be the individual rate of the beneficiary as calculated on the basis of the methodology contained in point 4.4.2 of these Guidelines. On the basis of that methodology, the company may benefit from an interest-rate reduction of:
 - 25 % for large companies,
 - 50 % for SMEs;
 - (h) the subsidised interest rate applies during a maximum period of two years following the granting of the loan;
 - (i) the reduction in the interest rate may be applied to loans granted by the State or public finance institutions and to loans granted by private financial institutions. Non-discrimination between public and private entities should be ensured;
 - (j) the aid is granted to firms which were not in difficulty ⁽²⁵⁾ on 1 July 2008; it may be granted to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis;
 - (k) EFTA States ensure that the aid is not directly or indirectly transferred to financial entities.

4.6. Risk capital measures

4.6.1. Existing framework

- (51) The Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises set out the conditions under which State aid supporting risk capital investment may be considered compatible with the functioning of the EEA Agreement in accordance with Article 61(3) of the EEA Agreement.

⁽²²⁾ Future Community product standard means a mandatory Community standard setting environmental levels to be attained for products sold in the European Union which has been adopted but is not yet in force.

⁽²³⁾ As defined in point 70 of the Guidelines on State aid for environmental protection.

⁽²⁴⁾ Defined according to point 58 of the Regional aid Guidelines.

⁽²⁵⁾ See footnote 9 above.

- (52) Based on the experience gained from applying the Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises, the Authority considers that there is no general risk capital market failure in the EEA. It does, however, accept that there are market gaps for some types of investment at certain stages of enterprises' development which are the result of imperfect matching of supply of and demand for risk capital and can generally be described as an equity gap.
- (53) Point 4.3 of the above-mentioned Guidelines states that for tranches of finance not exceeding EUR 1,5 million per target SME over each period of twelve months, under certain conditions market failure is presumed and does not need to be demonstrated by EFTA States.
- (54) Point 5.1(a) of the same Guidelines states that 'the Authority is aware of the constant fluctuation of the risk capital market and of the equity gap over time, as well as of the different degree by which enterprises are affected by the market failure depending on their size, on their stage of business development, and on their economic sector. Therefore, the Authority is prepared to consider declaring risk capital measures providing for investment tranches exceeding the threshold of EUR 1,5 million per enterprise per year compatible with the functioning of the EEA Agreement, provided the necessary evidence of the market failure is submitted'.

4.6.2. Temporary adaptation of the existing rules

- (55) The turmoil on the financial market has had a negative effect on the risk capital market for early growth SMEs by tightening the availability of risk capital. Due to the currently greatly increased risk perception associated with risk capital linked with uncertainties resulting from possibly lower yield expectations, investors are currently tending to invest in safer assets the risks of which are easier to assess as compared to those associated with risk capital investments. Furthermore the illiquid nature of risk capital investments has proven to be a further disincentive for investors. There is evidence that the resulting restricted liquidity under current market circumstances has widened the equity gap for SMEs. It is therefore considered appropriate to temporarily raise the safe-harbour threshold for risk capital investments to meet the increased equity gap and to temporarily lower the percentage of minimum private investor participation to 30 % also in the case of measures targeting SMEs in non assisted areas.
- (56) Accordingly, on the basis of Article 61(3)(b) of the EEA Agreement, certain limits set out in the Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises are temporarily adapted until 31 December 2010 as follows:
 - (a) for the purposes of point 4.3.1, the maximum permitted tranches of finance are increased to EUR 2,5 million from EUR 1,5 million per target SME over each period of twelve months;
 - (b) for the purposes of point 4.3.4, the minimum amount of funding to be provided by private investors is 30 % both in and outside assisted areas;
 - (c) other conditions laid down in the Guidelines remain applicable;
 - (d) this temporary adaptation of the guidelines does not apply to risk capital measures covered by the GBER;
 - (e) EFTA States may adapt approved schemes to reflect the temporary adaptation of the guidelines.

4.7. Cumulation

- (57) The aid ceilings fixed under these Guidelines will be applied regardless of whether the support for the aided project is financed entirely from state resources or partly financed by the Community.
- (58) The temporary aid measures foreseen by these Guidelines may not be cumulated with aid falling within the scope of the *de minimis* Regulation for the same eligible costs. If the undertaking has already received *de minimis* aid prior to the entry into force of this temporary framework the sum of the aid received under the measures covered by point 4.2 of these Guidelines and the *de minimis* aid received must not exceed EUR 500 000 between 1 January 2008 and 31 December 2010. The amount of *de minimis* aid received from 1 January 2008 must be deducted from the amount of compatible aid granted for the same purpose under points 4.3, 4.4, 4.5 or 4.6.
- (59) The temporary aid measures may be cumulated with other compatible aid or with other forms of Community financing provided that the maximum aid intensities indicated in the relevant Guidelines or Block Exemption Regulations are respected.

5. SIMPLIFICATION MEASURES

5.1. Short-term export credit insurance

- (60) The Guidelines on short-term export-credit insurance stipulate that marketable risks cannot be covered by export-credit insurance with the support of EFTA States. Marketable risks are commercial and political risks on public and non-public debtors established in countries listed in the Annex to the Guidelines, with a maximum risk period

of less than two years. Risks concerning debtors established in the EU Member States and the EFTA States together with six further OECD members are considered marketable.

- (61) The Authority considers that, as a consequence of the current financial crisis, a lack of insurance or reinsurance capacity does not exist in every EFTA State, but it cannot be excluded that, in certain countries, cover for marketable risks could be temporarily unavailable.
- (62) Point 4, paragraphs 9 to 13, of the above-mentioned Guidelines states that: 'in such circumstances, those temporarily non-marketable risks may be taken on to the account of a public or publicly supported export-credit insurer for non-marketable risks insured for the account of or with the guarantee of the State. The insurer should, as far as possible, align its premium rates for such risks with the rates charged elsewhere by private export-credit insurers for the type of risk in question.

An EFTA State intending to use the escape clause should immediately notify the EFTA Surveillance Authority of its draft decision. That notification should contain a market report demonstrating the unavailability of cover for the risks in the private insurance market by producing evidence thereof from two large, well-known international private export-credit insurers as well as a national credit insurer, thus justifying the use of the escape clause. Alternatively, evidence of unavailability of cover in the private insurance market may possibly be demonstrated by means of a market report by an independent consultant which the Authority considers reliable and impartial. The notification should moreover contain a description of the conditions which the public or publicly supported export-credit insurer intends to apply in respect of such risks.

Within two months of the receipt of such notification, the Authority will examine whether the use of the escape clause is in conformity with the above conditions and compatible with the EEA Agreement.

If the Authority finds that the conditions for the use of the escape clause are fulfilled, its decision on compatibility is limited to two years from the date of the decision, provided that the market conditions justifying the use of the escape clause do not change during that period.

Furthermore, the Authority may, in consultation with the other EFTA States, revise the conditions for the use of the escape clause; it may also decide to discontinue it or replace it with another appropriate system'.

- (63) Those provisions, applicable to large companies and SMEs, are an appropriate instrument in the current economic situation if EFTA States consider that cover is unavailable on the private insurance market for certain marketable credit risks and/or for certain buyers of risk protection.
- (64) In this context, in order to speed up the procedure for EFTA States, the Authority considers that, until 31 December 2010, EFTA States may demonstrate the lack of market by providing sufficient evidence of the unavailability of cover for the risk in the private insurance market. Use of the escape clause will in any case be considered justified if:
 - a large well-known international private export credit insurer and a national credit insurer produce evidence of the unavailability of such cover, or
 - at least four well-established exporters in the EFTA State produce evidence of refusal of cover from insurers for specific operations.

- (65) The Authority, in close cooperation with the EFTA States concerned, will ensure swift adoption of decisions concerning the application of the escape clause.

5.2. *Simplification of procedures*

- (66) State aid measures referred to in these Guidelines must be notified to the Authority. Beyond the substantive measures set out in these Guidelines, the Authority is committed to ensuring the swift authorisation of aid measures that address the current crisis in accordance with these Guidelines provided close cooperation and full information is provided by the EFTA States concerned.
- (67) This commitment will complement the on-going process, whereby the Commission is currently drafting a number of improvements to its general State aid procedures, particularly to allow quicker and more effective decision-making in close cooperation with Member States. This general simplification package should, in particular, enshrine joint commitments by the Commission and Member States to more streamlined and predictable procedures at each step of a State aid investigation and allow faster approval of straightforward cases.

6. MONITORING AND REPORTING

- (68) Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Surveillance and Court Agreement laying down detailed rules for the application of Article 1 of Part I of Protocol 3 to the Surveillance and Court Agreement requires EFTA States to submit annual reports to the Authority.

- (69) By 31 July 2009, EFTA States must provide the Authority with a list of schemes put in place on the basis of the present Guidelines.
- (70) EFTA States must ensure that detailed records regarding the granting of aid provided for by these Guidelines are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for ten years and be provided to the Authority upon request. In particular, EFTA States must have obtained information demonstrating that the aid beneficiaries under the measures provided for in points 4.2, 4.3, 4.4 and 4.5 were not companies in difficulty on 1 July 2008.
- (71) In addition, a report on the measures put in place on the basis of these Guidelines should be provided to the Authority by EFTA States by 31 October 2009. In particular, the report should provide elements indicating the need for the Authority to maintain the measures provided for by these Guidelines after 31 December 2009, as well as detailed information on the environmental benefits of the subsidised loans. EFTA States must also provide this information for any subsequent year during which these Guidelines are applied, before 31 October of each year.
- (72) The Authority may request additional information regarding the aid granted, to check whether the conditions laid down in the Authority's decision approving the aid measure have been met.

7. FINAL PROVISIONS

- (73) The Authority applies these Guidelines from the date of their adoption. These Guidelines are justified by the current exceptional and transitory financing problems related to the banking crisis and will not be applied after 31 December 2010. After consulting the EFTA States, the Authority may review them before that date on the basis of important competition policy or economic considerations. Where this would be helpful, the Authority may also provide further clarifications of its approach to particular issues.
 - (74) The Authority applies the provisions of these Guidelines to all notified risk capital measures on which it must take a decision after these Guidelines are adopted, even if the measures were notified prior to adoption of these Guidelines.
 - (75) In accordance with the Guidelines on the applicable rules for the assessment of unlawful State aid, the Authority will apply the following in respect of non-notified aid:
 - (a) these Guidelines, if the aid was granted after adoption of these Guidelines;
 - (b) the guidelines applicable when the aid was granted in all other cases.
 - (76) The Authority, in close cooperation with the EFTA States concerned, ensures swift adoption of the decisions upon complete notification of measures covered by this document. EFTA States should inform the Authority of their intentions and notify plans to introduce such measures as early and comprehensively as possible.
 - (77) The Authority wishes to recall that any procedural improvement depends entirely on submission of clear and complete notifications.
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ANNEX

Safe-harbours Temporary Framework in basis points (*)			
Rating category (Standard & Poor's)	Collateralisation		
	High	Normal	Low
AAA	40	40	40
AA+	40	40	40
AA			
AA-			
A+	40	55	55
A			
A-			
BBB+	55	80	80
BBB			
BBB-			
BB+	80	200	200
BB			
BB-	200	380	380
B+			
B	200	380	630
B-			
CCC and below	380	630	980

(*) For companies which do not have a credit history or a rating based on a balance sheet approach (such as certain special purpose companies or start-up companies), EFTA States may grant a reduction of up to 15 % (25 % for SMEs) on the specific safe-harbour premium set at 3,8 % in the Guidelines on State aid in the form of guarantees. However, the premium can never be lower than the premium which would be applicable to the parent company or companies.

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