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II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 257/2011

of 16 March 2011

amending Regulation (EC) No 616/2007 opening and providing for the administration of Community tariff quotas in the sector of poultrymeat originating in Brazil, Thailand and other third countries

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 144(1) and Article 148, in conjunction with Article 4, thereof,

Having regard to Council Decision 2007/360/EC of 29 May 2007 on the conclusion of Agreements in the form of Agreed Minutes between the European Community and the Federal Republic of Brazil, and between the European Community and the Kingdom of Thailand pursuant to Article XXVIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) relating to the modification of concessions with respect to poultry meat ⁽²⁾, and in particular Article 2 thereof,

Whereas:

(1) Pursuant to Article 130(2) of Regulation (EC) No 1234/2007, imports into the Union should be managed using import licences. However, in order to avoid speculative actions distorting the imports flow, it is appropriate to manage the quota opened by Commission Regulation (EC) No 616/2007 ⁽³⁾ under order number 09.4215 and Group No 5 allocated to Thailand, by attributing import rights as a first step and issuing import licences as a second, as provided

for in Article 6(3) of 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 ⁽⁴⁾.

(2) The new conditions for attributing the import rights and issuing the subsequent import licences for the quota at issue should be established, as regards the eligibility of the applicants and the repartition of the imported volumes for the quota period as set out in Article 1(1) of Regulation (EC) No 616/2007.

(3) In order to avoid speculative activity and ensure that import rights are attributed to genuine importers, it is essential to set the historical reference quantity of poultrymeat imported established as a condition for the application for import rights at an appropriate level.

(4) In view of the new conditions applicable to imports of products originating in Thailand, the amount of the security relating to the import rights and licences should be set at an appropriate level to ensure proper management of the tariff quotas and satisfactory access to them for operators.

(5) To oblige operators to apply for import licences for all the import rights allocated, it should be established that such obligation constitutes a primary requirement within the meaning of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products ⁽⁵⁾.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 138, 30.5.2007, p. 10.

⁽³⁾ OJ L 142, 5.6.2007, p. 3.

⁽⁴⁾ OJ L 238, 1.9.2006, p. 13.

⁽⁵⁾ OJ L 205, 3.8.1985, p. 5.

- (6) The notification period established in Regulation (EC) No 616/2007 for the national authorities to notify the Commission of the quantities covered by issued licences is scheduled at a late stage compared to the moment of issuing. For a good management of the quota, it is therefore advisable to advance this notification period in time.
- (7) To allow operators and competent authorities to get used to the new management of Group No 5, it is appropriate to postpone the time period for submission of applications for import rights for the first subperiod commencing on 1 July 2011, from April 2011 to May 2011.
- (8) Regulation (EC) No 616/2007 should therefore be amended accordingly.
- (9) Since the next quota period begins on 1 July 2011, this Regulation should apply as from that period.
- (10) The Management Committee for the Common Organisation of the Agricultural Markets has not delivered an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 616/2007 is amended as follows:

- 1. in Article 3, the following paragraph is added:

‘3. The annual quantities established for Group No 5 shall be managed by attributing import rights as a first step and issuing import licences as a second.’;

- 2. Articles 4, 5 and 6 are replaced by the following:

‘Article 4

1. For the purposes of applying Article 5 of Regulation (EC) No 1301/2006 as regards groups other than Group No 5, import licence applicants shall, when presenting their first application as regards a given quota period, furnish proof that they imported, during each of the two periods referred to in Article 5 of Regulation (EC) 1301/2006, at least 50 tonnes of products covered by Annex I Part XX to Council Regulation (EC) No 1234/2007 (*) or preparation of CN code 0210 99 39.

For the purposes of applying Article 5 of Regulation (EC) No 1301/2006 as regards Group No 5, import rights applicants shall, when presenting their first application for a given quota year, furnish proof that they imported a quantity of at least 250 tonnes of products covered by

Annex I Part XX to Regulation (EC) No 1234/2007 or preparations of CN code 0210 99 39 during each of the two periods referred to in Article 5 of Regulation (EC) No 1301/2006.

Licence applications shall mention only one of the order-numbers indicated in Annex I to this Regulation.

2. By way of derogation from Article 5 of Regulation (EC) No 1301/2006 and from the first sub-paragraph of paragraph 1 of this Article, import licences applicants may, when presenting their first application as regards a given quota period furnish proof that they processed, during each of the two periods referred to in Article 5 of Regulation (EC) No 1301/2006, at least 1 000 tonnes of poultrymeat of CN codes 0207 or 0210 to produce preparations of poultrymeat of CN code 1602 covered by Regulation (EC) No 1234/2007 or homogenised preparations of CN code 1602 10 00 containing no other meat than poultrymeat.

For the purposes of this paragraph, a “processor” shall be any person entered on the national VAT register of the Member State in which he is established, who provides proof of processing activity, in the form of any commercial document, to the satisfaction of the Member State concerned.

3. A company formed by a merger of companies each having imported reference quantities may use those reference quantities as basis for its applications.

4. By way of derogation from Article 6(1) of Regulation (EC) No 1301/2006, as regards Groups Nos 3, 6 and 8, each applicant may lodge more than one application for import licences for products in one group where such products originate in more than one country. Separate applications for each country of origin must be submitted simultaneously to the competent authority of a Member State. They shall be regarded as a single application, for the purposes of the maximum quantity referred to in paragraph 5 of this Article.

5. For groups other than Group No 5, licence applications must be for a minimum of 100 tonnes and a maximum of 10 % of the quantity available for the quota concerned in the period or subperiod in question.

However:

- (a) for Groups Nos 2 and 3, the maximum quantity for licence or import rights applications shall be 5 % of the quantity available for the quota concerned in the period or subperiod in question;

- (b) for Groups Nos 3, 6 and 8 the minimum quantity for licence applications shall be reduced to 10 tonnes.

For Group No 5 import rights applications must be for a minimum of 100 tonnes and a maximum of 10 % of the quantity available for the quota concerned in the subperiod in question.

6. Except for Groups Nos 3, 6 and 8, licences carry an obligation to import from the country that is specified. For the groups concerned by this obligation, the country of origin shall be entered in box 8 of the application and of the licence itself, and the word "yes" shall be marked with a cross.

7. Box 20 of the licence application and the licence shall contain one of the entries given in Annex II, Part A.

Box 24 of the licences shall contain one of the entries listed in Annex II, Part B.

For Groups Nos 3 and 6 products, box 24 of the licence shall contain one of the entries given in Annex II, Part C.

For Group No 8 products, box 24 of the licence shall contain one of the entries given in Annex II, Part D.

Article 5

1. Applications for import rights for Group No 5 and for import licences for the other groups may be submitted only in the first seven days of the third month preceding each subperiod or, for Group No 3, in the first seven days of the third month preceding the quota period.

However, applications for import rights for Group No 5 for the subperiod commencing on 1 July 2011 may be submitted only in the first seven days of May 2011.

2. A security of EUR 50 per 100 kilograms shall be lodged at the time of submission of the licence application for groups other than Group No 5. However, for licence applications concerning Groups Nos 1, 4 and 7, the security shall be set at EUR 10 per 100 kilograms and for import rights applications for Group No 5 the security shall be set at EUR 6 per 100 kilograms.

3. Member States shall notify the Commission, by the 14th day of the month in which applications are submitted, of the total quantities in kilograms requested, broken down by group and origin.

4. Import rights shall be awarded and licences shall be issued from the 23rd day of the month in which applications are submitted and at the latest by the last day of that month. Import rights shall be valid from the first day of the subperiod for which the application has been lodged, and until 30 June of the same import period and they are not transferable.

5. For Group No 5, import licence applications may be lodged solely in the Member State where the applicant has applied and obtained the import rights. For this group, licences shall be issued on application by and in the name of the operator who has obtained the import rights.

For Group No 5 a security of EUR 75 per 100 kilograms shall be lodged by the operator at the issuing of the import licence. Each issuing of import licence shall result in a corresponding reduction of the import rights obtained and the security lodged for import rights in accordance with paragraph 2 shall be released proportionally without delay.

6. Import licences applications shall cover the total quantity of import rights allocated. This obligation shall constitute a primary requirement within the meaning of Article 20(2) of Commission Regulation (EEC) No 2220/85 (**).

Article 6

1. By way of derogation from the second subparagraph of Article 11(1) of Regulation (EC) No 1301/2006, Member States shall notify the Commission:

(a) for all Groups except No 5 and not later than the 10th day of the month following the month in which applications were submitted, of the quantities covered by licences they have issued;

(b) for Group No 5 and not later than the 10th day of the month following each subperiod, of the quantities covered by licences they have issued during that subperiod.

2. Member States shall notify the Commission, by the end of the fourth month following the end of each annual period, of the quantities actually released for free circulation under this Regulation during the period concerned.

3. By way of derogation from the second subparagraph of Article 11(1) of Regulation (EC) No 1301/2006, Member States shall notify the Commission of the quantities covered by unused or partially used import licences and corresponding to the difference between the quantities entered on the back of the import licences and the quantities for which they were issued:

- (a) a first time together with the notifications referred to in Article 5(3) of this Regulation regarding the applications submitted for the last subperiod of the annual quota period;
- (b) a second and last time by the end of the fourth month following the end of each annual period for quantities not yet notified at the time of the first notification provided for in point (a).

For Group No 3, the notification referred to in point (a) of the first subparagraph shall not apply.

4. The quantities covered by paragraphs 1 and 3 shall be expressed in kilograms and broken down by group. The quantities covered by paragraph 2 shall be expressed in kilograms and broken down by group and origin.

(*) OJ L 299, 16.11.2007, p. 1.

(**) OJ L 205, 3.8.1985, p. 5.;

3. in Article 7, paragraph 1 is amended as follows:

- (a) the second subparagraph is deleted;
- (b) the following subparagraph is added:

‘However, for Group No 5 licences shall be valid for 15 working days from the actual date of issuing of the licence, in accordance with Article 22(2) of Commission Regulation (EC) No 376/2008 (*). Import rights shall be valid from the first day of the subperiod for which the application has been lodged, and until 30 June of the same quota period.

(*) OJ L 114, 26.4.2008, p. 3.’

Article 2

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

It shall apply as from the quota period commencing on 1 July 2011.

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

Done at Brussels, 16 March 2011.

For the Commission
The President
José Manuel BARROSO

COMMISSION REGULATION (EU) No 258/2011**of 16 March 2011****imposing a provisional anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('the 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 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE**1. Initiation**

- (1) On 19 June 2010, 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 with regard to imports into the Union of ceramic tiles originating in the People's Republic of China ('China' or 'the country concerned').
- (2) The anti-dumping proceeding was initiated following a complaint lodged by the European Ceramic Tile Manufacturers' Federation (CET) ('the complainants') on behalf of 69 producers representing more than 30 % of the total Union production of ceramic tiles. The complaint contained prima facie evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. Parties concerned by the proceeding

- (3) The Commission officially advised the complainants, other known Union producers, the known exporting producers in China, the representatives of China, and

known importers and users of the initiation of the proceeding. The Commission also advised producers in the United States ('the USA'), Nigeria, Brazil, Turkey, Indonesia and Thailand, as these countries were envisaged as a possible analogue country. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

- (4) In view of the apparent high number of exporting producers in China, unrelated importers and Union producers, sampling was envisaged in the Notice of initiation for the determination of dumping and injury in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary, and if so to select a sample, all known exporting producers in China, importers and Union producers were asked to make themselves known to the Commission and to provide, as specified in the Notice of initiation, basic information on their activities related to the product concerned during the period from 1 April 2009 to 1 March 2010. The authorities of China were also consulted.

2.1. Sampling of Chinese exporting producers

- (5) One hundred and five valid responses were received to the sampling exercise from exporting producers in China, covering 47 % of imports during the investigation period, as defined in recital 24 below. Therefore, the cooperation is considered to be low.
- (6) In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of exporting producers based on the largest representative volume of exports of the product concerned to the Union which could reasonably be investigated within the time available. The sample selected consisted of three groups, representing 10 individual producers, which accounted for 14,4 % of the total volume of exports from China to the Union and 31,3 % of the total volume of the cooperating exporters during the IP. In accordance with Article 17(2) of the basic Regulation, the parties concerned and the Chinese authorities were consulted on the selection of sample. A number of comments were received in relation to the proposed sample. Comments considered appropriate were taken into account in the selection of the final sample.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 160, 19.6.2010, p. 20.

2.2. Sampling of Union producers

- (7) The European Ceramic Tile Manufacturers' Federation (CET) confirmed in a letter sent to the Commission that all complaining companies agreed to be considered for the inclusion in the sample. Including other companies which came forward, the Commission was thus provided with information from 73 Union producers.
- (8) In the sampling exercise the high fragmentation of the ceramic tiles sector has been taken into consideration. In order to ensure that the results of large companies did not dominate the injury analysis but that the situation of the small companies, collectively accounting for the largest share of the Union production, was properly reflected, it was considered that all segments, i.e. small, medium-sized and large companies should be represented in the sample.
- (9) Three segments have been distinguished based on the volume of yearly production:
- Segment 1: large companies – production in excess of 10 million m²,
 - Segment 2: medium-sized companies – production between 5 and 10 million m²,
 - Segment 3: small companies – production below 5 million m².
- (10) In the analysis of micro-economic indicators, the results of the sampled companies in the specific segment have been weighted in accordance with the share of that segment in the total Union production (using the specific weight of each segment in the total ceramic tile sector). According to the information collected during the investigation, the producers in Segments 1 and 2 account each for around one quarter of total Union production while in segment 3, producers account for around half of the total Union production. More than 350 companies belong to the segment of small companies. More than 40 companies belong to the medium-sized segment and more than 20 to the segment of large companies.
- (11) Ten companies were sampled. They are the largest of each of the three segments, taking into account sales, production and geographical location. One sampled company belongs to the segment of large companies, four to the segment of medium-sized companies and five to the segment of small companies. The selected

companies are based in six Member States (Italy, Spain, Poland, Portugal, Germany and France) which together account for over 90 % of the total Union production. This sample represented 24 % of total production by the cooperating producers and 7 % of the total Union production.

- (12) During the investigation, one sampled company from Poland decided to discontinue its cooperation with the investigation. The Commission could not obtain cooperation from any other producer based in Poland.
- (13) Notwithstanding the withdrawal of the Polish producer, the representativeness of the sample remained high according to all the criteria mentioned in recitals 8 and 10. It has been thus decided that the proceeding could continue with a sample of nine producers from five Member States.
- (14) Complainants requested their names to be kept confidential. The Commission accepted the request.

2.3. Sampling for importers

- (15) The Commission received 24 replies from importers. Three large importers were excluded from the sampling exercise: two related to Chinese exporters and one related to a Union producer (the imports are marginal compared to the total sales of that producer).
- (16) The unrelated cooperating importers represent around 6 % of the total imports from China.
- (17) Seven companies were sampled, representing 95 % of the imports made by the unrelated cooperating companies. One of these companies was as well a user of the product concerned. The sample was also representative in terms of geographical spread. The sample thus covers Member States which account for more than 49 % of the imports into the Union, which corroborated its representativeness.

2.4. Questionnaires replies and verifications

- (18) In order to allow sampled exporting producers in China to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to the sampled exporting producers. One group of exporting producers requested MET pursuant to Article 2(7) of the basic Regulation or IT should the investigation establish that they did not meet the conditions for MET. The other groups of exporting producers only requested IT.

(19) Claims for individual examination were received from eight non-sampled companies or groups of related companies. The examination of these claims at provisional stage would have been too burdensome to be carried out. A decision whether individual examination will be granted to any of these companies will be taken at definitive stage.

(20) The Commission sent questionnaires to the sampled exporting producers, as well as to the non-sampled exporting producers that had stated their intention to request individual examination as per Article 17(3) of the basic Regulation, to the sampled Union producers, the cooperating unrelated importers and to all known users in the Union.

(21) Questionnaire replies were received from three sampled groups of exporting producers, from eight non-sampled exporting producers or groups of exporting producers, from nine sampled Union producers and from five importers not related to an exporting producer. Submissions were also received from the European association of producers (Cerame-Unie), national associations of producers, importers, associations of importers and users.

(22) The Commission sought and verified all the information deemed necessary for the purpose of analysis of MET/IT and for a provisional determination of dumping, resulting injury and Union interest and carried out verifications at the premises of nine Union sampled producers and the following companies:

(a) *Exporting producers in China*

- Becarry Group, composed of:
 - Foshan Becarry Ceramics Co., Ltd
 - Heyuan Becarry Ceramics Co., Ltd
 - Heyuan Hairi Ceramic Co., Ltd
 - Shandong Yadi Ceramics Co., Ltd
- Xinruncheng Group, composed of:
 - Guangdong Xinruncheng Ceramics Co. Ltd
 - Foshan City Nanhai Chongfa Ceramics Co. Ltd
- Wonderful Group, composed of:
 - Dongguan City Wonderful Ceramics Industrial Park Co., Ltd
 - Guangdong Jiamei Ceramics Co., Ltd

- Qingyuan Gani Ceramics Co. Ltd
- Foshan Gani Ceramics Co. Ltd
- Giavelli S.r.l., a related Italian importer

(b) *Traders in China*

- Foshan Changwei Enterprise Co., Ltd

(c) *Traders in Hong Kong*

- Cayenne Trading International Ltd
- Great Prosperity Development Ltd
- Good East Development Ltd

(d) *Unrelated importers*

- Enmon GmbH, Germany

(e) *National associations of producers*

- Confindustria Ceramica (Italy)
- Spanish Ceramic Tile Manufacturer's Association (ASCER)
- APICER (Portugal).

(23) In view of the need to establish a normal value for the exporting producers in China to which MET might not be granted, a verification to establish normal value on the basis of data from the USA as analogue country took place at the premises of two producers. These producers claimed confidentiality regarding their identity.

3. Investigation period

(24) The investigation of dumping and injury covered the period from 1 April 2009 to 31 March 2010 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2007 to the end of the investigation period ('period considered').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(25) The product concerned is glazed and unglazed ceramic flags and paving, hearth or wall tiles; glazed and unglazed ceramic mosaic cubes and the like, whether or not on a backing ('ceramic tiles' or the 'product concerned'), currently falling within CN codes 6907 10 00, 6907 90 20, 6907 90 80, 6908 10 00, 6908 90 11, 6908 90 20, 6908 90 31, 6908 90 51, 6908 90 91, 6908 90 93 and 6908 90 99.

- (26) Ceramic tiles are mainly used in the construction industry to cover walls and floors.

2. Like product

- (27) One party claimed that the product imported from China and that produced by the Union industry were not comparable.
- (28) It is recalled that the Commission based the price comparisons on product types distinguished on the basis of product control numbers ('PCN') based on eight characteristics.
- (29) The party in question presented its arguments during a hearing before the Hearing Officer. According to the arguments the lack of comparability was due to different technology, material, polishing and design used for production of Union and Chinese tiles. Technologically advanced lines produced high quality tiles with screen printing and several colours. The company explained that there were different printing technologies for screen printing, roto-printing and inkjet printing.
- (30) Despite requests for detailed submission elaborating on all these aspects of product comparability, the party failed to substantiate its claims. Also the argument on improving the comparability has not been supported by any evidence. Further, the party itself acknowledged that the product types that would be covered by adding the four suggested criteria, would represent only 0,5 % of the tiles' market. As stated in the report produced by the Hearing Officer, which summarized the position of the company concerned, the remaining 99,5 % products falling under the same PCNs were similar.
- (31) As mentioned above the party did not substantiate the need to introduce the additional criteria nor their potential impact on prices. Hence, in view of the negligible market share of the product types concerned and the explicit acknowledgment by the party that 99,5 % of the tiles were comparable under the PCN concerned, the claim to add additional criteria to the PCN structure had to be provisionally rejected.
- (32) It is concluded that the product concerned, the product produced and sold on the domestic market of China and on the domestic market of the USA, which served provisionally as the analogue country, as well as the product manufactured and sold in the Union by the Union producers were found to have the same basic physical and technical characteristics as well as the same basic

uses. They are therefore provisionally considered as alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Market Economy Treatment ('MET')

- (33) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in China, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation. Briefly and for ease of reference only, these criteria are set out in summarised form below:
- 1) business decisions are made in response to market signals, without significant State interference, and costs reflect market values;
 - 2) firms have one clear set of basic accounting records, which are independently audited in line with international accounting standards and are applied for all purposes;
 - 3) there are no significant distortions carried over from the former non-market economy system;
 - 4) bankruptcy and property laws guarantee stability and legal certainty; and
 - 5) exchange rate conversions are carried out at market rates.
- (34) Two groups of exporting producers in China requested MET in accordance with Article 2(7) of the basic Regulation.
- (35) It was found that the parties (two producers; one Chinese trader and one Hong Kong trader) allegedly forming one of these groups were not in fact related. In these circumstances, the MET claims of the two Chinese producers (Becarry Group and Shandong Yadi Ceramics Co. Ltd) were treated separately.
- (36) Regarding the other group of companies, namely the Wonderful Group, which consisted of two producer groups related to each other through ownership by the same holding company, only one of the related groups requested MET, while the second one requested only individual treatment (IT). Since MET criteria must, however, be requested and fulfilled for all companies within the same group, this MET claim was incomplete and was therefore not considered. MET could thus not be granted to the group.

- (37) Concerning the Becarry Group, as far as criterion 1 is concerned the investigation established that the producer had an export sales restriction in its business licence which was applied in practice. It was therefore considered that sales decisions were not taken freely but were subject to significant State interference. Furthermore, for several companies within the group, it could not establish whether and who paid the initial capital into the company. With regard to criterion 2, the accounting showed several serious shortcomings which were not mentioned in the audit report. Finally, regarding criterion 3 it was also found that there were several distortions carried over from the non-market economy system as major assets were not correctly recorded or depreciated in the accounts and no proof of payment could be provided that the company had paid for its land use right.
- (38) Regarding Shandong Yadi Ceramics Co. Ltd, with respect to criterion 1 the investigation found that the company could not demonstrate whether and who paid the initial capital into the company when it was established. It could thus not be excluded that some funds were provided by the State. As far as criterion 2 is concerned, the accounting records showed serious shortcomings not mentioned in the audit report and therefore the accounts were not considered to be audited in line with international accounting standards. Finally, with regard to criterion 3 there were also several distortions carried over from the non-market economy system as no proof of payment could be provided that the company paid for its land use rights or proof of payment for certain assets.
- (39) The Commission disclosed the results of the MET findings to the exporting producers concerned, to the Chinese authorities and the complainants, and invited them to submit comments.
- (40) Following the disclosure of the MET findings, comments were received from the two sampled exporting producers which were not granted MET. However, these comments were not such as to change the findings in this regard as they only attempted to rebut part of the findings, and did not submit any additional evidence in support of the comments.
- export prices and quantities, and conditions and terms of sale are freely determined,
- the majority of the shares belong to private persons. State officials appearing on the Boards of Directors or holding key management positions shall either be in minority or it must be demonstrated that the company is none the less sufficiently independent from State interference,
- exchange rate conversions are carried out at the market rate, and
- State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.
- (42) The sampled exporting producers which requested MET – Becarry Group and Shandong Yadi Ceramics Co. Ltd – also claimed IT in the event they would not be granted MET. The Wonderful Group and the Xinruncheng Group also claimed IT.
- (43) Regarding Becarry Group, it was found that sales were not freely determined due to the export sales restriction mentioned in recital (37) above, and its IT claim was therefore rejected.
- (44) The other exporting producers were found to meet the conditions of Article 9(5) of the basic Regulation and thus could be granted IT. Thus, on the basis of the information available, it was provisionally established that the following Chinese exporting producers which were included in the sample meet all the requirements for IT as set forth in Article 9(5) of the basic Regulation:
- Shandong Yadi Ceramics Co., Ltd
- Xinruncheng Group
- Wonderful Group.

2. Individual Treatment ('IT')

- (41) Pursuant to Article 2(7)(a) of the basic Regulation a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet the criteria set out in Article 9(5) of the basic Regulation. Briefly, and for ease of reference only, these criteria are set out below:

- in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits,

3. Normal value

(a) Choice of the analogue country

- (45) According to Article 2(7)(a) of the basic Regulation, normal value for exporting producers not granted MET shall be established on the basis of the domestic prices or constructed normal value in an analogue country.

- (46) In the Notice of initiation, the Commission indicated its intention to use the USA as an appropriate analogue country for the purpose of establishing normal value for China, and invited interested parties to comment thereon.
- (47) A number of comments were received and several other countries were proposed to serve as an alternative, in particular Brazil, Turkey, Nigeria, Thailand, and finally Indonesia.
- (48) The Commission therefore decided to seek cooperation from known producers in these countries including the USA. However, only two producers of the product concerned in the USA replied to the questionnaires. A Thai producer also submitted an incomplete reply to the questionnaire; and in any case its product range was not fully comparable to the cooperating Chinese producers.
- (49) The investigation revealed that the USA was a competitive market for the product concerned. Several producers were active on the US domestic market and the import volumes were high. The investigation has further shown that the ceramic tiles originating in China and in the USA have basically the same physical characteristics and uses and that production processes were similar.
- (50) It was argued that since the US market is mainly characterized by imports, the ceramic tiles manufactured in the USA and those manufactured in China cover different segments of the market. Therefore, the domestically produced product types which would serve as a basis to establish normal value would not be comparable to the product types exported by China to the Union. However the investigation has shown that the US production covers a wide range of product types comparable to the ones produced in and exported from China, as mentioned above in recital 49.
- (51) It was also argued that the USA would be a relatively minor player in the worldwide ceramic tiles market. However, circa 600 million m² were produced domestically in 2009 which is considered significant. For comparison, China, the world's major producer, manufactured 2 000 million m² in the same period.
- (52) One party argued that the USA had strict quality standards and effectively created non-tariff barriers for Chinese imports. However, the investigation revealed that as mentioned above import volumes from China in the USA were high and constituted the major share of the US domestic consumption. Therefore, the argument that non-tariff barriers in the USA affect imports and thus competition was rejected.
- (53) The data submitted in their reply by the two cooperating US producers were verified on spot. Only data from one producer visited was finally considered, as it was found to be reliable information on which a normal value could be based. The data from the second producer visited were found not to be reliable and had to be discarded, as this producer only reported part of its domestic sales and costs could not be fully reconciled with the accounts.
- (54) It is therefore provisionally concluded that the USA is an appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.
- (b) *Determination of normal value*
- (55) Pursuant to Article 2(7)(a) of the basic Regulation normal value was established on the basis of verified information received from the producer in the analogue country as set out below.
- (56) The domestic sales of the US producer of the like product were found to be representative in terms of volume compared to the volume of the product concerned exported to the Union by the cooperating exporting producers.
- (57) During the investigation period, sales on the domestic market to unrelated customers were found to be made in the ordinary course of trade for all types of the like product manufactured by the US producer. However, because of differences in quality between the like product produced and sold in the USA and the product concerned exported from China to the Union, for certain product types it was considered more appropriate to construct normal value in order to be able to take into account these differences and ensure fair comparison as described in recital 61.
- (58) Normal value was constructed by adding to the cost of manufacturing of the US producer its SG&A and profit. Pursuant to Article 2(6) of the basic Regulation, the amounts for SG&A and profit were established on the basis of the actual data pertaining to production and sales in the ordinary course of trade of the like product of the US producer.

(c) *Export prices for the exporting producers*

- (59) The export prices of the sampled Chinese exporters were based on the export prices actually paid or payable, to the first independent customer. Where sales were made via a related importer in the Union, prices were constructed pursuant to Article 2(9) of the basic Regulation. Adjustments were made for all costs incurred between importation and resale including sales, general and administrative expenses and profit. With respect to profit margin, the profit realised by an unrelated importer of the product concerned was used since the actual profit of the related importer was not considered reliable because of the relationship between the exporting producer and the related importer.

(d) *Comparison*

- (60) The dumping margins were established by comparing the individual ex-works export prices of the sampled exporters to the domestic sales prices or to the constructed normal value (CNV) as appropriate.
- (61) 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. The normal value was adjusted for differences in characteristics - mainly due to OEM branding and for quality differences for certain types not produced by the analogue country producer - for the lower cost of non-porcelain tiles. Further adjustments were made, where appropriate, in respect of ocean freight, insurance, handling and ancillary costs, packing, credit, bank charges and commissions in all cases where they were found to be reasonable, accurate and supported by verified evidence.

4. Dumping margins

(a) *For the cooperating sampled exporting producers granted IT*

- (62) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margins for the sampled cooperating exporting producers granted IT were established on the basis of a comparison of a weighted average normal value established for the analogue country with each company's weighted average export price of the product concerned to the Union as established above.

- (63) On this basis, the provisional dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are:

	Provisional dumping margin
Group Xinruncheng	35,5 %
Shandong Yadi Ceramics Co., Ltd	36,6 %
Wonderful Group	26,2 %

(b) *For all other cooperating exporting producers*

- (64) The dumping margin for other cooperating exporting producers in China, not included in the sample, was calculated as a weighted average of the sampled exporting producers' dumping margins, in accordance with Article 9(6) of the basic Regulation.
- (65) The dumping margin for the cooperating exporting producer in China, included in the sample but not granted IT (Heyuan Becarry Ceramics Co. Ltd), was also calculated as described above in recital 64.

(c) *All other (non-cooperating) exporting producers*

- (66) The country-wide dumping margin applicable to all other non-cooperating exporting producers in China was established by using the highest of the dumping margins found for a representative product type from a cooperating exporting producer.
- (67) On this basis the provisional sample weighted average dumping margin and the country-wide level of dumping as a percentage of the CIF Union frontier price, duty unpaid are:

Sample Weighted Average for the cooperating exporting producers not included in the sample or not granted IT (see Annex I)	32,3 %
Residual for non-cooperating exporting producers	73,0 %

D. INJURY

1. Union production and Union industry

- (68) As mentioned in recital (8) the Union ceramic tiles industry is highly fragmented. Ceramic tiles are produced by more than 500 producers.
- (69) As mentioned above, the Union industry was divided into three segments: small, medium-sized and large companies. Small companies make up half of the total Union production.

- (70) Data provided by the national and European associations is estimated to cover around 75 % of Union production. These data have been cross-checked with data provided by individual producers and national associations but also with statistical sources, like Prodcum. The volume and value of remaining production has been extrapolated on the basis of the same sources of information. On that basis, the total Union production was found to amount to 895 million m² in the IP. All Union producers (accounting for the total Union production) constitute the Union industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation and will be thereafter referred to as the 'Union industry'.

2. Union consumption

- (71) The Union consumption was established by adding imports based on Eurostat data to the sales of Union producers on the Union market. Data concerning total Union sales of the product concerned has been based on verified data provided by both national and European associations of producers. The extrapolations were made on the basis of the associations' and Prodcum data to arrive to total Union sales.
- (72) Over the period considered, i.e. between 2007 and the IP, the Union consumption decreased by 29 %, with the main decrease by 13 % between 2007 and 2008. In the IP, consumption decreased by 8 % as compared to 2009.

Table 1

Consumption

Volume (thousand m ²)	2007	2008	2009	IP
+ Total imports	157 232	140 715	115 676	119 689
+ Union production sold on the Union market	1 275 486	1 099 092	992 204	895 140
<i>Index (2007 = 100)</i>	100	86	78	70
= Consumption	1 432 718	1 239 807	1 107 880	1 014 829
<i>Index (2007 = 100)</i>	100	87	77	71
year-on-year decrease		- 13 %	- 11 %	- 8 %

3. Imports from China

3.1. Volume, market share and prices of imports of the product concerned

- (73) The volume, market share and average prices of imports from China developed as set out below. The following quantity and price trends are based on Eurostat data.

Table 2

Imports from China

Volume (thousand m ²)	2007	2008	2009	IP
Volume of imports from the country concerned	68 081	65 122	62 120	66 023
<i>Index (2007 = 100)</i>	100	96	91	97
Year-on-year basis		- 4 %	- 5 %	+ 6 %
Market share of imports from the country concerned	4,8 %	5,3 %	5,6 %	6,5 %
Price of imports from the country concerned (EUR/m ²)	4,7	4,9	4,4	4,5
<i>Index (2007 = 100)</i>	100	105	95	97
Year-on-year basis		+ 4 %	- 10 %	+ 2 %

- (74) The volume of total imports from China decreased by 3 % over the period considered and amounted to around 66 million m² during the IP. The decreasing trend as such is in line with the decreasing trend of consumption but it is far less pronounced and occurred between 2007 and 2009. Between 2009 and the IP, the volumes of imports from China increased by 6 %. Also, when analysed from the perspective of the whole period considered, the market share of Chinese imports increased by 35 %, from 4,8 % in 2007 to 6,5 % in the IP.
- (75) Prices of Chinese imports decreased by 4 % during the period considered, from 4,7 EUR/m² to 4,5 EUR/m².

3.2. Price undercutting

- (76) For the purposes of analyzing price undercutting, the weighted average sales prices of the Union producers to unrelated customers on the Union market, adjusted to an ex-works level, were compared per product type to the corresponding weighted average prices of the imports from China to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for the existing customs duties, post-importation costs and level of trade.
- (77) The comparison showed that during the IP, imports of the product concerned were sold in the Union at prices which undercut those of the Union industry. When expressed as a percentage of the latter the level of undercutting ranged from 44 % to 57 %. The calculations were based on the data submitted by the sampled Union producers and sampled exporting producers from China.

4. Imports from third countries other than China

- (78) The volume of imports from other third countries during the period considered is shown in the table below. The quantity and price trends are based on Eurostat.

Table 3

Imports from other third countries

	2007	2008	2009	IP
Imports from other countries (thousand m ²)	89 151	75 593	53 557	53 665
<i>Index (2007 = 100)</i>	100	85	60	60
Market share of imports from other countries	6,2 %	6,1 %	4,8 %	5,3 %
Average price (EUR/m ²)	4,38	4,94	5,35	5,35
<i>Index (2007 = 100)</i>	100	113	122	122
Imports from Turkey (thousand m ²)	50 210	44 590	30 930	31 343
Turkey Market share	3,5 %	3,6 %	2,8 %	3,1 %
Average price (EUR/m ²)	4,35	4,75	5,25	5,32
Imports from countries other than China & Turkey	38 941	31 002	22 627	22 322
<i>Index (2007 = 100)</i>	100	80	58	57
Average price (EUR/m ²)	4,43	5,21	5,49	5,38

- (79) The imports from third countries decreased by 40 % over the period considered. Thereby the market share of these imports decreased by 14 %, from 6,2 % to 5,3 %.

- (80) It should be noted that average import prices from other third countries increased by 22 % during the period considered, remaining consistently higher than the average selling price of Chinese export sales (by 19 % during the IP).

5. Situation of the Union industry

5.1. General

- (81) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry.
- (82) The macroeconomic indicators (production, capacity, capacity utilization, sales volume, market share, growth and magnitude of dumping margins) were assessed at the level of the whole Union industry. The assessment was based on the information provided by the European and national associations, cross-checked with data provided by the producers and available official statistics.
- (83) The analysis of microeconomic indicators (average unit prices, employment, wages, productivity, stocks, profitability, cash flow, investments, return on investments, ability to raise capital) was carried out at the level of the sampled Union producers. The assessment was based on their information, duly verified.

5.2. Macro-economic indicators

5.2.1. Production, production capacity and capacity utilisation

- (84) Production of the Union industry decreased substantially by 32 % over the period considered. The reduction in overall terms (over the period considered) reflected the substantial decrease in consumption (by 29 % over the period considered, see recital 72 above). However, it followed a different trend. It decreased between 2007 and 2009 by 32 %, with the largest drop of 23 % between 2008 and 2009. It then stabilized between 2009 and the IP.

Table 4

Total Union production

	2007	2008	2009	IP
Volume (thousand m ²)				
Production	1 614 668	1 434 844	1 100 052	1 094 660
Index (2007 = 100)	100	89	68	68

- (85) The Union industry's production capacity decreased by 5 % between 2007 and 2008, and 2 % between 2008 and the IP. The resulting capacity utilisation showed an overall decrease of 27 % between 2007 and the IP.

Table 5

Production capacity and capacity utilisation

	2007	2008	2009	IP
Volume (thousand m ²)				
Production capacity	1 849 252	1 760 720	1 720 180	1 718 023
Index (2007 = 100)	100	95	93	93
Capacity utilisation	87 %	81 %	64 %	64 %
Index (2007 = 100)	100	93	73	73

5.2.2. Sales volumes and market share

- (86) In line with the development of the production volumes, the sales of the Union industry on the Union market to unrelated customers fell at a rate comparable to that of decrease in consumption, i.e. by 30 % during the period considered. The sales of the Union industry have been following a similar trend as consumption in terms of yearly decreases.

Table 6

Sales volume to unrelated customers

	2007	2008	2009	IP
Volume (thousand m ²)				
Sales in the Union	1 275 486	1 099 092	992 204	895 140
<i>Index (2007 = 100)</i>	100	86	78	70

- (87) The market share held by the Union industry decreased by 1 percentage point over the period considered.

Table 7

EU Market share

	2007	2008	2009	IP
Union Market share	89 %	89 %	90 %	88 %
<i>Index (2007 = 100)</i>	100	100	101	99

5.2.3. Employment and productivity

- (88) The employment decreased by 11 % between 2007 and 2008. During the period considered it fell by 16 %.

Table 8

Employment

	2007	2008	2009	IP
Average period				
Total employment	92 588	82 214	79 518	77 458
<i>Index (2007 = 100)</i>	100	89	86	84

- (89) Productivity of the Union industry's workforce, measured as output per person employed per year, was stable between 2007 and 2008. However, from 2008 to the IP there was a decline in productivity of 19 % linked to the fall in production.

Table 9

Productivity

	2007	2008	2009	IP
Productivity (m ² per year/employee)	17 439	17 453	13 834	14 132
<i>Index (2007 = 100)</i>	100	100	79	81

5.2.4. Magnitude of the dumping margin

- (90) The dumping margins are specified above in the dumping section. All margins established are significantly above the *de minimis* level. Furthermore, given the volumes and the prices of dumped imports, the impact of the actual margin of dumping cannot be considered negligible.

5.3. Micro-economic indicators

- (91) The analysis of microeconomic elements (stocks, sales prices, cash flow, profitability, return on investments, ability to raise capital, investments and wages) was carried out for the individual companies, i.e. at the level of those Union producers that were included in the sample.

5.3.1. General remark

- (92) For some micro-economic indicators (sales price, cost of production, profitability and return on investments, i.e. indicators expressed in other than absolute values, i.e. only values expressed in percentages) the results of the sampled companies in the specific segment have been weighted in accordance with the share of that segment in the total Union production (using the specific weight of each segment in the total ceramic tile sector – 52 % for small companies, 24 % each for the medium-sized and large companies). As a consequence it has been ensured that the results of large companies did not dominate the injury analysis but that the situation of the small companies, collectively accounting for the largest share of the Union production, was properly reflected.

5.3.2. Stocks

- (93) Although the level of closing stocks of the Union industry decreased in absolute terms by 14 % over the period considered, when expressed as percentage of production it substantially increased (by 37 %).

Table 10

	2007	2008	2009	IP
Stocks (thousand m ²)	48 554	50 871	39 689	41 887
<i>Index (2007 = 100)</i>	100	105	82	86
Stocks as percentage of production	43 %	49 %	55 %	59 %
<i>Index (2007 = 100)</i>	100	114	128	137

- (94) The increase in stocks is a telling injury factor. Companies in the sector normally keep stocks of three months of production but the pressure of the Chinese dumped imports has forced them to increase their stocks up to six months of production. Indeed an even and steady yearly increase of stocks from 43 % in 2007 to 59 % in the IP was observed.
- (95) This increase of stocks is explained by the fact that Chinese exporting producers focused on sales of large batches of homogenous product whereas the Union industry offered a much larger variety of products in terms of types, colours, sizes. In order to react within a very short time to very specific orders the Union industry had to increase stocks.

5.3.3. Sales prices

- (96) Unit sales prices of the Union industry increased by 10 % during the period considered.

Table 11

Unit price EU market

	2007	2008	2009	IP
Unit prices of Union sales (EUR/m ²)	8,0	8,4	8,7	8,8
<i>Index (2007 = 100)</i>	100	104	108	110

- (97) The price increase was due to a variety of factors. First it was the need to recover increases in costs of production that during the same period increased by 14 % (see recital 106). The price increase was further due to the increasing stocks (see above recital 95) and to the changed product mix offered by the Union industry. The imports from China concentrated on large batches of homogeneous product. The Union industry had to thus focus on small batches of the product concerned where demand was more fragmented with lower quantities and a larger variety in terms of types, colours, and sizes.
- (98) However, despite the increase in unit prices, the Union industry operated below target profit. In fact, the segment of small companies was loss-making.
- (99) The development of prices of imports from China has been outlined in recital 75. As can be seen, these prices followed a different trend to that of the Union industry and were consistently lower. During the IP, prices from China were half of the Union industry prices.

5.3.4. Profitability, cash flow, return on investment, ability to raise capital, investments and wages

- (100) As mentioned above, the increase in cost of production was higher than the increase in sales prices. With an increase in costs of 14 % occurring over the period considered, the Union industry managed to increase its prices by only 9 %. Profitability then decreased from 3,9 % in 2007 to 0,4 % in the IP. The industry achieved the lowest profit in 2009, when it was unable to cover its cost with a loss of 1,2 %. Out of three segments, the most affected segment was the one of small companies which has been registering a loss since 2008. Large and medium-sized companies, despite substantial decreases in profitability, managed to sell at modest albeit not sustainable profits.
- (101) Profits achieved by the large and medium-sized companies cannot be disclosed due to confidentiality reasons. In the segment of large companies calculation of profits has been based on data of one company, while disclosure of results of medium-sized companies would allow other companies to calculate the profits of other segments since the overall weighted profits are known.

Table 12

Profitability, cash flow, ROI, investments and wages

	2007	2008	2009	IP
Net Profit of Union sales to unrelated customers (% of net sales)	3,9 %	0,6 %	– 1,2 %	0,4 %
Cash flow (thousand EUR)	86 663	55 131	41 599	40 256
<i>Index (2007 = 100)</i>	100	64	48	46
ROI (net profit in % of net book value of investments)	8,3 %	4,0 %	– 0,5 %	1,1 %
Net investments (thousand EUR)	15 733	15 673	11 005	11 283
<i>Index (2007 = 100)</i>	100	100	70	72
Annual labour cost per employee	38 910	39 714	37 366	37 242
<i>Index (2007 = 100)</i>	100	102	96	96

- (102) The trend of cash-flow, which is the ability of an industry to self-finance its activities, remained positive during the period considered. However, between 2007 and the IP, it decreased by around 54 %.

- (103) The return on investments ('ROI') broadly followed the profitability trend over the whole period considered.
- (104) Between 2007 and the IP, the annual flow of investments in the product concerned made by the Union industry decreased by 28 %.
- (105) Between 2007 and the IP, the average wage per employee decreased by 4 %.

5.3.5. Cost of production

Table 13

Cost of production

	2007	2008	2009	IP
Cost of production EUR/m ²	7,7	8,3	8,8	8,8
<i>Index</i>	100	108	114	114

- (106) As indicated above, the cost of production increased over the period considered by 14 %. This increase was due to the increase in stocks (see above recital 95) and to the changed product mix offered by the Union industry (more variety of products in terms of types, colours, sizes) whereas the Chinese imports concentrated on large batches of homogeneous product. The Union industry had to increase its stocks in order to be able to react in a short time to very specific orders and also has to provide a larger variety of product.

6. Conclusion on injury

- (107) The investigation has shown that the injury indicators such as production volume, capacity utilization, sales to unrelated customers and employment deteriorated during the period considered. Although it cannot be disregarded that the negative evolution of consumption has had a negative effect on the Union industry, it is noteworthy that the Chinese imports managed to increase their market share, through price pressure.
- (108) In addition, the injury indicators related to the financial performance of the Union producers – such as profitability, return on investments and cash-flow were seriously negatively affected during the period considered. A telling injury factor is the substantial increase in stocks (by 37 %) over the period considered. This increase is explained by the fact that Chinese exporting producers focused on sales of large batches of homogenous product whereas the Union industry offered a much larger variety of products in terms of types, colours, sizes. The Union industry had to increase its stocks in order to be able to react in a short time to very specific orders and to provide a larger variety of products.
- (109) Although the selling prices of the Union industry increased over the period considered, this is mainly due to the increase in cost of production. Overall, the profitability deteriorated over the period considered. In fact, the segment of small companies which constituted half of the Union industry was loss making since 2008. Hence, even despite the increase in sales prices, the industry was unable to reach a sufficient profit. The industry was not in a position to increase their sales prices to a level that would have profitability rates necessary for long-term viability.
- (110) The analysis of price trends based on Eurostat figures showed that the price differential between the dumped imports from China and the Union industry prices increased from around 40 % in 2007 and 2008 to around 50 % in 2009 and the IP.
- (111) Considering the above, it is provisionally concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

E. CAUSATION

1. Introduction

- (112) In accordance with Article 3(6) and (7) of the basic Regulation it was examined whether the material injury suffered by the Union industry was caused by the dumped imports from the country concerned. Furthermore, known factors other than dumped imports, which might have caused injury to the Union industry, were examined to ensure that any injury caused by those factors was not attributed to dumped imports.

2. Impact of the imports from China

- (113) The increasing market share of Chinese exporting producers over the period considered coincided in time with a decrease of the Union industry's profits and a substantial increase of its stocks.
- (114) This also coincided with a decrease in Union consumption. However, while the Chinese imports decreased in volume by 9 percentage points between 2007 and 2009, in line with the shrinking consumption (although not at the same pace - consumption shrank by 23 percentage points over the same period), since 2007 the Chinese market share was steadily growing. Moreover, between 2009 and the IP, despite further decrease in consumption by 6 percentage points, Chinese imports increased by 6 percentage points.
- (115) The price differential (based on Eurostat average figures) between Chinese imports and the prices of the Union industry was very significant during the whole period considered. The fact that already in 2007 it amounted to over 40 % suggests that the price strategy by the Chinese exporting producers started before the economic crisis. Also, this differential increased post-crisis reaching 50 % in the IP.
- (116) The increasing market share of the Chinese imports combined with decreasing prices and the increasing price differential between Union and Chinese prices coincided in time with the deterioration of the situation of the Union industry.

3. Effects of other factors

3.1. *Impact of imports from third countries other than China*

- (117) The volume of imports from third countries other than China decreased by 40 % over the period considered. The

market share of those imports also slightly decreased over the same period (around 1 %). Whereas the prices of those imports were comparable with Chinese prices in 2007, the price differential increased to 18 % in 2009 and 16 % in the IP.

- (118) Turkey is the second largest exporter to the Union with a market share of 3 % in the IP. This market share remained stable (decreased slightly by 0,4 %) over the period considered. The volume of imports from Turkey decreased by 37 % over the period considered. Although the prices of Turkish imports were below those of the Union industry (by about 40 % over the period considered), the price differential between Turkish and Chinese imports increased to 16 % in 2009 and the IP following a 22 % increase in Turkish prices. On these grounds it cannot be excluded that imports from third countries other than China might have contributed to a very limited extent to the material injury suffered by the Union industry. However, they did not break the causal link established with the dumped imports from China.

4. Impact of the high fragmentation of the Union industry

- (119) The Union tile industry is highly fragmented. However, the overall number of companies decreased during the period considered due to a consolidation process which has been ongoing over the past two decades. Most importantly, however, in those Member States with the largest share of production, where at the same time the fragmentation is more pronounced, the investigation showed that companies operate in clusters. This structure guarantees efficient allocation of resources. In fact fragmentation allows large companies to subcontract to small companies the production of certain types of products (in terms of colours, sizes, etc). With the help of the small companies the industry is able to supply many types of products in a short time. This became particularly important in light of the Chinese competition selling large batches of the homogeneous product where there is no space for flexibility in design, colours etc. In these circumstances, a causal link between fragmentation and the deterioration of the situation of the Union industry in the period considered cannot be established.

4.1. *Impact of the economic crisis*

- (120) The investigation showed that the economic crisis undoubtedly impacted on the situation of the Union industry.

- (121) The impact was mainly related to the downturn in the construction industry, which has been reflected in the decreasing consumption of ceramic tiles. Generally, in 2009 the decline in the overall EU construction activity amounted to 7,5 % ⁽¹⁾. The more precise impact of the general economic climate on the construction industry would differ depending on the specific segment within that industry ⁽²⁾. In 2009 the decrease in construction activity has largely been concentrated in the new-house building and private non-residential building segments. In contrast, civil engineering has been affected less and the public non-residential segment even grew by 1,1 % in 2009. According to the European Construction Industry Federation these trends reflected governmental actions to uphold or even increase expenditure on public buildings and infrastructure, as part of the national stimulus packages. Similarly fiscal incentives for energy efficient solutions mitigated the impact of economic downturn on renovation and maintenance activities.
- (122) The aforementioned developments had a positive effect on renovations and maintenance segments (positive implications for the production, sales and profitability of the down-stream industry as profit margins are higher in the retail segment). In any case those segments were affected less by the economic downturn.
- (123) The following analysis demonstrates that, although the economic downturn might have impacted on the situation of the Union industry, the material injury suffered by the Union industry was indeed caused by the dumped imports from China.
- (124) Firstly, the investigation showed that the construction industry started to recover from the effects of the economic downturn in the IP, whereas the indicators of the Union industry continued to show a downward trend.
- (125) Secondly, an important element is the development of stocks, which in this case serves as a telling injury indicator (see above recital 93). A rather steady yearly increase in stocks has been observed. This type of even and steady increase suggests that the Union industry was in fact mainly under the constant pressure by the Chinese exporting producers. If the increase of stocks were to be attributed to the economic downturn a substantial increase in the years of the crisis would have probably been observed rather than a steady trend over the whole period considered.
- (126) Finally, the analysis of the profitability figures, especially of the small companies, which accounted for almost 50 % of the Union production during the IP, shows that those companies achieved only a very modest profit of 0,3 % already in 2007 and were loss-making ever since. This suggested that their situation started to deteriorate already before the crisis.
- (127) In the light of the above, it is considered that the deterioration of the economic situation of the Union industry was mainly caused by the dumped imports from China. Even though the economic crisis, and the resulting contraction in demand, might have contributed to the injury suffered by the Union industry, its impact was not such as to break the causal link established between the dumped imports from China and the material injury suffered by the Union industry.
- 4.2. *Claims with regard to self-inflicted injury*
- (128) One importer claimed that the main cause of injury were low-priced sales by Polish tiles producers. In this respect it has to be noted that the injury analysis should be conducted at the level of the Union industry as a whole and not in relation to a part of it. The Commission nevertheless analysed the situation of the Polish market on the basis of the information available (it is recalled that the sampled Polish company decided to discontinue its cooperation and no other Polish company agreed to cooperate).
- (129) Firstly it was found that, in terms of volumes, the Polish sales onto the rest of the Union market represented a market share of less than 3 % during the IP.
- (130) Secondly, had the Polish companies cooperated in the investigation and their prices were taken into account in the undercutting analysis, this would have had a very limited weight on the overall undercutting calculation. Due to the lack of cooperation on the part of the Polish company, detailed price information per PCN was not available. But even under a 'maximum impact' approach, assuming that all Polish sales would have been included in the calculation, the impact would have been marginal and would have not changed the overall picture in view of the relative low sales volumes ⁽³⁾.
- (131) On this basis the impact of the Polish sales on the injury suffered by the Union industry, if any, was limited.

⁽¹⁾ Source: www.fiec.org

⁽²⁾ Ibid.

⁽³⁾ In order to check volumes and prices of Polish EU sales, due to lack of cooperation from Polish producers, the Commission used a combination of available sources (i.e. Eurostat, Prodcorn, standing and sampling returns from three Polish companies).

- (132) Another claim alleging self-inflicted injury was that some Union producers would have completed their catalogues with imports of Chinese tiles and re-sold them under their own brand names. This claim was however not substantiated and in addition evidence collected during the investigation showed that those imports were marginal. Hence, it cannot be concluded that those imports by the EU producers, contributed to the injury suffered by the Union industry.

5. Export performance for the Union industry

- (133) Export performance was also examined as one of the known factors other than the dumped imports, which could have injured the Union industry, to ensure that possible injury caused by these other factors was not attributed to the dumped imports. The analysis of Eurostat data showed that indeed the exports from the Union decreased by 44 %. However the prices of those exports increased by 32 %. For the cooperating sampled producers the decrease was less pronounced (– 24 %). The investigation also showed that the share of exports expressed as percentage of total sales of the Union industry increased from 17 % in 2007 to 19 % in 2009. Further, even though exports volumes for the cooperating Union producers decreased, that decrease was less pronounced than the fall of sales on the Union market (– 24 % for exports as compared with – 30 % for Union sales). Hence, it is considered that the decrease in export volume cannot explain the level of injury suffered by the Union industry.
- (134) On the basis of the above, it is provisionally concluded that the export performance of the Union industry did not contribute to the material injury suffered by it.

6. Conclusion on causation

- (135) It was thus concluded that there is a causal link between the injury suffered by the Union industry and the dumped imports from China. The economic crisis and imports from third countries other than China had an impact on the situation of the Union industry but it was not such as to break the causal link established between the dumped imports from China and the material injury suffered by the Union industry.
- (136) Based on the above analysis of the effects of all known factors on the situation of the Union industry, it was therefore provisionally concluded that there is a causal link between the dumped imports from China and the material injury suffered by the Union industry during the IP.

F. UNION INTEREST

1. Interest of the Union industry

- (137) There was a high level of cooperation and support from the European Association (Cerase-Unie) and the major national associations of producers. Moreover, no Union producers have declared their opposition to the initiation of the investigation or the imposition of measures. This suggests that the imposition of measures is clearly in the interest of the Union producers.
- (138) The investigation showed that the Union industry is suffering material injury because of the effects of dumped imports which undercut its prices, as elaborated in recital 76 et seq.
- (139) It can be expected that the Union industry would benefit from the measures which would likely prevent a further surge of dumped, low-priced imports.
- (140) Should measures not be imposed, it can be expected that the increase of imports of dumped, low-priced ceramic tiles would continue, if not increase. The effect of depression of sales prices exerted by the dumped imports from China would continue to compress Union producers' sales prices and profits.
- (141) As the financial situation and profitability of the Union industry is not strong enough to withstand further price pressure exerted by dumped imports that considerably undercut their prices, this would lead very likely to the progressive demise of a large number of Union producers.

2. Interest of importers

- (142) The cooperation of unrelated importers and users accounted for around 6 % of the total volume of imports from China. In the sampling exercise (see recital 15), seven unrelated importers (one being a user) were selected. They accounted for around 5 % of total imports from China. The cooperating importers were mainly trading tiles, with an exception of one importer for whom tiles' trade represents a small fraction of its overall business. For those cooperating importers the share of imports from China of their total purchases was very significant (above 3/4). Although it appears that there is margin to absorb a price increase of Chinese imports, since the importers' mark-up on those imports is around 50 %, they normally report profits of around 5 %.
- (143) Consequently, from a simple cost perspective, should measures be imposed they would in all likelihood have an impact on the importers' business.

(144) However, the investigation revealed that it is possible for importers and users to switch to products sourced from third countries or from within the Union. This change can occur quite easily since the product under investigation is manufactured in several countries, both in the Union and outside (Turkey, United Arab Emirates, Egypt, Brazil, countries of South-East Asia, and others).

(145) One importer declared that it tried to switch suppliers, as a consequence of the initiation of the investigation, but its efforts were unsuccessful. On the other hand, another importer declared that this process was already ongoing at the time of the investigation and was successful. A third one claimed that it would expand its portfolio to non-Chinese producers and that this would be easily done.

(146) It is therefore provisionally concluded that the imposition of measures would not hamper Union importers from buying similar products from other sources. Further, the aim of the anti-dumping duties is not to seal off specific trade channels but to restore the level playing field and counter-act unfair trade practices.

(147) Finally, the rather low level of cooperation of unrelated importers could suggest that the imposition of measures would not have a significant impact on their activity.

3. Interest of users

(148) The Commission contacted two major users' association in the Union.

(149) The construction sector (represented by the European Construction Industry Federation) decided not to cooperate actively in the investigation. It replied to Commission's initial enquiry, but thereafter ceased to cooperate due to the lack of interest from its members.

(150) This low level of cooperation from users would suggest that the sector does not rely heavily on Chinese imports or that, in case of measures, it would not be harmed significantly. This seems particularly true in the construction sector, where, as declared by producers during verification visits, ceramic tiles have a marginal bearing on final costs. This would appear reasonable given the cost of other materials in new constructions or renovations. Also, as mentioned above, the sources of supply could be switched relatively easily.

(151) The European Do-It-Yourself Association (EDRA) contacted the Commission on behalf of its members. This association submitted its comments at the beginning of the investigation, claiming that duties

would lead to an increase in consumer prices and a switch to other sources of supply would trigger a high cost, both for distributors and customers. These claims have, however, not been substantiated.

4. Interest of final consumers

(152) The Commission contacted one association of consumers which replied that it was not interested in cooperating. No other consumers' association made itself known.

(153) The impact of anti-dumping duties on consumers is likely to be limited, since the mark-up applied by resellers is normally very high. Even in case of price increases, these would rather have a limited impact on consumers given that the cost increase would range between EUR 1,5 and EUR 3 per m² (based on average price of Chinese imports of EUR 4,5 in the IP). Individual consumers buy limited quantities of tiles and not too frequently. Further, short-term price increase might have beneficial long term effects for consumers in ensuring competition on the market. Lack of competition in the long run might lead to even higher price increase and disappearance of low priced imports.

5. Interest of suppliers

(154) Neither suppliers nor association of suppliers made themselves known during the investigation.

(155) The investigation revealed that the suppliers that could be mostly interested by the ongoing proceeding were the manufacturers of equipment for the production of tiles. The investigation showed that certain Chinese producers purchased such equipment from suppliers based in the Union. Nevertheless, it appeared from official data that sales from the Union to China followed a stable, slightly decreasing trend during the last decade, and that China represented a sizeable, but not an overwhelming part of their sales (around 10 %). Indeed the main customers of the suppliers were Union producers hence the suppliers are vitally interested in and depend upon the performance of the Union industry.

(156) Moreover, the lack of cooperation from this sector suggested that suppliers do not consider that anti-dumping measures against imports of the product concerned would significantly harm their situation.

6. Conclusion on Union interest

(157) In view of the above, it was provisionally concluded that overall there are no compelling reasons against the imposition of provisional measures on imports of ceramic tiles originating in China.

G. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

- (158) In view of the conclusions reached above with regard to dumping, resulting injury, causation and Union interest, provisional anti-dumping measures on imports of the product concerned from China should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.

2. Provisional measures

- (159) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping measures should be imposed in respect of imports originating in China at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.
- (160) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the People's Republic of China and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (161) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic

and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

- (162) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the IP.
- (163) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the following: The presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.
- (164) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, [a percentage may be introduced, depending on the case] such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (165) The following proposed duty rates are based on dumping margins established by the investigation since they were lower than injury margins. The provisional anti-dumping duties are established as follows:

Company	Dumping margin	Provisional duty
Guangdong Xinruncheng Ceramics Co. Ltd	35,5 %	35,5 %
Shandong Yadi Ceramics Co., Ltd	36,6 %	36,6 %
Dongguan City Wonderful Ceramics Industrial Park Co., Ltd; Guangdong Jiamei Ceramics Co., Ltd; Qingyuan Gani Ceramics Co. Ltd; Foshan Gani Ceramics Co. Ltd	26,2 %	26,2 %
All other cooperating producers	32,3 %	32,3 %
All other	73,0 %	73,0 %

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

H. FINAL PROVISION

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of glazed and unglazed ceramic flags and paving, hearth or wall tiles; glazed and unglazed ceramic mosaic cubes and the like, whether or not on a backing, currently falling within CN codes 6907 10 00, 6907 90 20, 6907 90 80, 6908 10 00, 6908 90 11, 6908 90 20, 6908 90 31, 6908 90 51, 6908 90 91, 6908 90 93 and 6908 90 99, and originating in the People's Republic of China.

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

Company	Duty	TARIC additional code
Guangdong Xinruncheng Ceramics Co. Ltd	35,5 %	B009
Shandong Yadi Ceramics Co. Ltd	36,6 %	B010
Dongguan City Wonderful Ceramics Industrial Park Co. Ltd; Guangdong Jiamei Ceramics Co. Ltd; Qingyuan Gani Ceramics Co. Ltd; Foshan Gani Ceramics Co. Ltd	26,2 %	B011
Companies listed in Annex I	32,3 %	B012
All other companies	73,0 %	B999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex II. If no such invoice is presented, the duty applicable to all other companies shall apply.

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

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

Article 2

1. Without prejudice to Article 20 of Council Regulation (EC) No 1225/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Council Regulation (EC) No 1225/2009, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

This Regulation shall enter into force on the day following 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, 16 March 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Chinese cooperating producers not sampled and not granted Individual Treatment (TARIC additional code B012):

- 1 Dongguan He Mei Ceramics Co. Ltd
- 2 Dongpeng Ceramic (Qingyuan) Co. Ltd
- 3 Eagle Brand Ceramics Industrial (Heyuan) Co. Ltd
- 4 Enping City Huachang Ceramic Co. Ltd
- 5 Enping Huiying Ceramics Industry Co. Ltd
- 6 Enping Yungo Ceramic Co. Ltd
- 7 Foshan Aoling Jinggong Ceramics Co. Ltd
- 8 Foshan ASGF Ceramics Co. Ltd
- 9 Foshan Bailifeng Building Materials Co. Ltd
- 10 Foshan Boli Import & Export Co. Ltd
- 11 Foshan Bragi Ceramic Co. Ltd
- 12 Foshan City Fangyuan Ceramic Co. Ltd
- 13 Foshan Dunhuang Building Materials Co. Ltd
- 14 Foshan Eminent Industry Development Co. Ltd
- 15 Foshan Everlasting Enterprise Co. Ltd
- 16 Foshan Gaoming Shuncheng Ceramic Co. Ltd
- 17 Foshan Gaoming Yaju Ceramics Co. Ltd
- 18 Foshan Guanzhu Ceramics Co. Ltd
- 19 Foshan Huashengchang Ceramic Co. Ltd
- 20 Foshan Huitao Economic & Trading Co. Ltd
- 21 Foshan Jiajun Ceramics Co. Ltd
- 22 Foshan Mingzhao Technology Development Co. Ltd
- 23 Foshan Nanhai Jingye Ceramics Co. Ltd
- 24 Foshan Nanhai Shengdige Decoration Material Co. Ltd
- 25 Foshan Nanhai Xiaotang Jinzun Border Factory Co. Ltd
- 26 Foshan Nanhai Yonghong Ceramic Co. Ltd
- 27 Foshan Oceanland Ceramics Co. Ltd
- 28 Foshan Oceano Ceramics Co. Ltd
- 29 Foshan Sanshui Hongyuan Ceramics Enterprise Co. Ltd

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- 30 Foshan Sanshui Huiwanjia Ceramics Co. Ltd
 - 31 Foshan Sanshui New Pearl Construction Ceramics Industrial Co. Ltd
 - 32 Foshan Sheng Tao Fang Ceramics Co. Ltd
 - 33 Foshan Shiwan Eagle Brand Ceramic Group Co. Ltd
 - 34 Foshan Shiwan Yulong Ceramics Co. Ltd
 - 35 Foshan Summit Ceramics Co. Ltd
 - 36 Foshan Tidiy Ceramics Co. Ltd
 - 37 Foshan VIGORBOOM Ceramic Co. Ltd
 - 38 Foshan Xingtai Ceramics Co. Ltd
 - 39 Foshan Yueyang Alumina Products Co. Ltd
 - 40 Foshan Zhuyangyang Ceramics Co. Ltd
 - 41 Fujian Fuzhou Zhongxin Ceramics Co. Ltd
 - 42 Fujian Jinjiang Lianxing Building Material Co. Ltd
 - 43 Fujian Mingqing Jiali Ceramics Co. Ltd
 - 44 Fujian Mingqing Ruimei Ceramics Co. Ltd
 - 45 Fujian Mingqing Shuangxing Ceramics Co. Ltd
 - 46 Gaoyao Yushan Ceramics Industry Co. Ltd
 - 47 Guangdong Bode Fine Building Materials Co. Ltd
 - 48 Guangdong Foshan Redpearl Building Material Co. Ltd
 - 49 Guangdong Gold Medal Ceramics Co. Ltd
 - 50 Guangdong Grifine Ceramics Co. Ltd
 - 51 Guangdong Homeway Ceramics Industry Co. Ltd
 - 52 Guangdong Huiya Ceramics Co. Ltd
 - 53 Guangdong Juimsi Ceramics Co. Ltd
 - 54 Guangdong Kaiping Tilee's Building Materials Co. Ltd
 - 55 Guangdong Kingdom Ceramics Co. Ltd
 - 56 Guangdong Kito Ceramics Co. Ltd
 - 57 Guangdong Monalisa Ceramics Co. Ltd
 - 58 Guangdong New Zhong Yuan Ceramics Co. Ltd Shunde Yuezhong Branch
 - 59 Guangdong Ouyai Ceramic Factory Co. Ltd
 - 60 Guangdong Overland Ceramics Co. Ltd
 - 61 Guangdong Qianghui (QHTC) Ceramics Co. Ltd

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- 62 Guangdong Sihui Kedi Ceramics Co. Ltd
 - 63 Guangdong Summit Ceramics Co. Ltd
 - 64 Guangdong Tianbi Ceramics Co. Ltd
 - 65 Guangdong Winto Ceramics Co. Ltd
 - 66 Guangdong Xinghui Ceramics Group Co. Ltd
 - 67 Guangning County Oudian Art Ceramic Co. Ltd
 - 68 Guangzhou Cowin Ceramics Co. Ltd
 - 69 Hangzhou Nabel Ceramics Co. Ltd
 - 70 Hangzhou Nabel Group Co. Ltd
 - 71 Hangzhou Venice Ceramics Co. Ltd
 - 72 Heyuan Wanfeng Ceramics Co. Ltd
 - 73 Hitom Ceramics Co. Ltd
 - 74 Heyuan Becarry Ceramics Co. Ltd
 - 75 Huiyang Kingtile Ceramics Co. Ltd
 - 76 Jiangxi Ouya Ceramics Co. Ltd
 - 77 Jingdezhen Kito Ceramics Co. Ltd
 - 78 Jingdezhen Lehua Ceramic Sanitary Ware Co. Ltd
 - 79 Jingdezhen Tidiy Ceramics Co. Ltd
 - 80 Kim Hin Ceramics (Shanghai) Co. Ltd
 - 81 Lixian Xinpeng Ceramic Co. Ltd
 - 82 Louis Valentino Ceramic Co. Ltd
 - 83 Louverenike (Foshan) Ceramics Co. Ltd
 - 84 Nabel Ceramics Co. Ltd
 - 85 Ordos Xinghui Ceramics Co. Ltd
 - 86 Qingdao Diya Ceramics Co. Ltd
 - 87 Qingyuan Guanxingwang Ceramics Co. Ltd
 - 88 Qingyuan Oudian Art Ceramic Co. Ltd
 - 89 Qingyuan Ouya Ceramics Co. Ltd
 - 90 RAK (Gaoyao) Ceramics Co. Ltd
 - 91 Shandong ASA Ceramic Co. Ltd
 - 92 Shandong Dongpeng Ceramic Co. Ltd
 - 93 Shandong Jialiya Ceramic Co. Ltd

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- 94 Shanghai Cimic Tile Co. Ltd
- 95 Shaoguan City Lehua Ceramic Sanitary Ware Co. Ltd
- 96 Shunde Area Foshan Lehua Ceramic Sanitary Ware Co. Ltd
- 97 Sinyih Ceramic (China) Co. Ltd
- 98 Sinyih Ceramics (Penglai) Co. Ltd
- 99 Southern building materials and Sanitary Co. Ltd of Qingyuan
- 100 Tangshan Huida Ceramic group Co. Ltd
- 101 Tangshan Huida Ceramic Group Huiquin Co. Ltd
- 102 Tegaote Ceramics Co. Ltd
- 103 Tianjin (TEDA) Honghui Industry & Trade Co. Ltd
- 104 Topbro Ceramics Co. Ltd
- 105 Xingning Christ Craftworks Co. Ltd
- 106 Zhao Qing City Shenghui Ceramics Co. Ltd
- 107 Zhaoqing Jin Ouya Ceramics Co. Ltd
- 108 Zhaoqing Lehua Ceramic Sanitary Ware Co. Ltd
- 109 ZhaoQing Zhongcheng Ceramics Co. Ltd
- 110 Zibo Hualiansheng Ceramics Co. Ltd
- 111 Zibo Huaruino Ceramics Co. Ltd
- 112 Zibo Tongyi Ceramics Co. Ltd
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ANNEX II

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

- (1) the name and function of the official of the entity issuing the commercial invoice;
- (2) the following declaration:

'I, the undersigned, certify that the (volume) of ceramic tiles sold for export to the European Union covered by this invoice was manufactured by (company name and registered seat) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.

Date and signature'.

COMMISSION REGULATION (EU) No 259/2011**of 16 March 2011****amending Regulation (EU) No 642/2010 on rules of application (cereal sector import duties) for
Council Regulation (EC) No 1234/2007**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 143, in conjunction with Article 4, thereof,

Whereas:

exchanges and reference varieties also for medium and low quality common wheat. For sake of consistency, it is appropriate to remove from that Annex quotations and varieties for medium and low quality common wheat.

(3) Regulation (EU) No 642/2010 should therefore be amended accordingly.

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

(1) Article 5 of Commission Regulation (EU) No 642/2010 of 20 July 2010 on rules of application (cereal sector import duties) for Council Regulation (EC) No 1234/2007 ⁽²⁾ lays down the components determining the representative cif import prices referred to in Article 136(2) of Regulation (EC) No 1234/2007 for the cereals referred to in Article 2(1) of Regulation (EU) No 642/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Annex III to Regulation (EU) No 642/2010 is replaced by the text set out in the Annex to this Regulation.

(2) Although Articles 2(1) and 5(1) of Regulation (EU) No 642/2010 refer to the common wheat of high quality, Annex III to that Regulation includes quotation

*Article 2*This Regulation shall enter into force on the third 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, 16 March 2011.

*For the Commission**The President*

José Manuel BARROSO

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.⁽²⁾ OJ L 187, 21.7.2010, p. 5.

ANNEX

‘ANNEX III

Quotation exchanges and reference varieties

Product	Common wheat	Durum wheat	Maize	Other feed grains
Standard quality	High			
Reference variety (type/grade) for exchange quotation	Hard Red Spring No 2	Hard Amber Durum No 2	Yellow Corn No 3	US Barley No 2
Quotation exchange	Minneapolis Grain Exchange	Minneapolis Grain Exchange ⁽¹⁾	Chicago Board of Trade	Minneapolis Grain Exchange ⁽²⁾

⁽¹⁾ Where no quotation is available that can be used to calculate a representative cif import price, fob quotations publicly available in the United States of America shall be used.

⁽²⁾ Where no quotation is available that can be used to calculate a representative cif import price, the most representative fob quotations publicly available in the United States of America shall be used.’

COMMISSION REGULATION (EU) No 260/2011**of 16 March 2011****amending for the 146th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan⁽¹⁾, and in particular Article 7(1)(a) and 7a(1) thereof,

Whereas:

- (1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.
- (2) On 10 March 2011 the Sanctions Committee of the United Nations Security Council decided to add one

natural person to its list of persons, groups and entities to whom the freezing of funds and economic resources should apply.

- (3) Annex I to Regulation (EC) No 881/2002 should therefore be updated accordingly.
- (4) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 881/2002 is hereby amended as set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 16 March 2011.

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

⁽¹⁾ OJ L 139, 29.5.2002, p. 9.

ANNEX

In Annex I to Regulation (EC) No 881/2002 the following entry shall be added under the heading 'Natural persons':

'Doku Khamatovich **Umarov** (*alias* Умаров Доку Хаматович). Date of birth: 12.5.1964. Place of birth: Kharsenoy Village, Shatoyskiy (Sovetskiy) District, Chechenskaya Respublika, Russian Federation Nationality: (a) Russian, (b) USSR (until 1991). Other information: (a) Resides in the Russian Federation as at November 2010; (b) International arrest warrant issued in the year 2000. Date of designation referred to in Article 2a(4)(b): 10.3.2011.'

COMMISSION IMPLEMENTING REGULATION (EU) No 261/2011**of 16 March 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 17 March 2011.

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

Done at Brussels, 16 March 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	JO	71,2
	MA	53,4
	TN	109,4
	TR	78,5
	ZZ	78,1
0707 00 05	JO	110,6
	TR	151,7
	ZZ	131,2
0709 90 70	MA	41,7
	TR	115,7
	ZZ	78,7
0805 10 20	EG	54,4
	IL	76,3
	JM	51,6
	MA	51,9
	TN	56,7
	TR	73,2
	ZZ	60,7
0805 50 10	EG	67,3
	TR	48,2
	ZZ	57,8
0808 10 80	AR	96,2
	BR	85,1
	CA	91,4
	CL	93,6
	CN	84,8
	MK	50,2
	US	120,8
0808 20 50	ZZ	88,9
	AR	109,9
	CL	62,8
	CN	53,6
	US	79,9
	ZA	89,8
	ZZ	79,2

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

COMMISSION IMPLEMENTING REGULATION (EU) No 262/2011**of 16 March 2011****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EU) No 867/2010 for the 2010/11 marketing year**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

for the 2010/11 marketing year are fixed by Commission Regulation (EU) No 867/2010 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EU) No 255/2011 ⁽⁴⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EU) No 867/2010 for the 2010/11, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 March 2011.

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

Done at Brussels, 16 March 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 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 259, 1.10.2010, p. 3.

⁽⁴⁾ OJ L 69, 16.3.2011, p. 15.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 17 March 2011

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 ⁽¹⁾	51,49	0,00
1701 11 90 ⁽¹⁾	51,49	0,00
1701 12 10 ⁽¹⁾	51,49	0,00
1701 12 90 ⁽¹⁾	51,49	0,00
1701 91 00 ⁽²⁾	48,04	3,06
1701 99 10 ⁽²⁾	48,04	0,00
1701 99 90 ⁽²⁾	48,04	0,00
1702 90 95 ⁽³⁾	0,48	0,23

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

DECISIONS

COUNCIL DECISION

of 14 March 2011

establishing the position to be taken by the European Union within the fifth meeting of the Conference of the Parties of the Rotterdam Convention as regards the amendments to Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade

(2011/162/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 192 and 207, in conjunction with Article 218(9), thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The European Union has approved the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade (the 'Rotterdam Convention') by Council Decision 2006/730/EC ⁽¹⁾.
- (2) Regulation (EC) No 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals ⁽²⁾ implements the Rotterdam Convention in the Union.
- (3) In order to ensure that importing countries benefit from the protection offered by the Rotterdam Convention, it is necessary and appropriate to support the recommendation from the Chemical Review Committee as regards the inclusion in Annex III to the Rotterdam Convention of chrysotile asbestos, endosulfan, alachlor and aldicarb. These four substances are already banned or severely

restricted in the Union and are therefore subject to export requirements which go beyond what is required under the Rotterdam Convention.

- (4) The fifth meeting of the Conference of the Parties of the Rotterdam Convention is expected to take decisions on the proposed amendments to Annex III. The Union should support the adoption of these amendments,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the Union at the fifth meeting of the Conference of the Parties of the Rotterdam Convention is that the Commission shall, on behalf of the Union, as regards matters falling within the Union's competence, support the adoption of the amendments to Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade ⁽³⁾ as regards the inclusion of chrysotile asbestos, endosulfan, alachlor and aldicarb.

Article 2

This Decision is addressed to the Commission.

Done at Brussels, 14 March 2011.

For the Council

The President

FELLEGI T.

⁽¹⁾ OJ L 299, 28.10.2006, p. 23.

⁽²⁾ OJ L 204, 31.7.2008, p. 1.

⁽³⁾ OJ L 63, 6.3.2003, p. 29.

COMMISSION DECISION

of 16 March 2011

on the approval of plans submitted by third countries in accordance with Article 29 of Council Directive 96/23/EC

(notified under document C(2011) 1630)

(Text with EEA relevance)

(2011/163/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC ⁽¹⁾, and in particular the fourth subparagraph of Article 29(1) and Article 29(2) thereof,

Whereas:

- (1) Directive 96/23/EC lays down measures to monitor the substances and groups of residues listed in Annex I thereto. Pursuant to Directive 96/23/EC, the inclusion and retention on the lists of third countries from which Member States are authorised to import animals and animal products covered by that Directive are subject to the submission by the third countries concerned of a plan setting out the guarantees which they offer as regards the monitoring of the groups of residues and substances listed in that Annex. Those plans are to be updated at the request of the Commission, particularly when certain checks render it necessary.
- (2) Commission Decision 2004/432/EC of 29 April 2004 on the approval of residue monitoring plans submitted by third countries in accordance with Council Directive 96/23/EC ⁽²⁾ approves the plans provided for in Article 29 of Directive 96/23/EC (the plans) submitted by certain third countries listed in the Annex thereto for the animals and animal products indicated in that list.
- (3) In the light of the recent plans submitted by certain third countries and additional information obtained by the Commission, it is necessary to update the list of third countries from which Member States are authorised to import certain animals and animal products, as provided for in Directive 96/23/EC and currently listed in the Annex to Decision 2004/432/EC (the list).
- (4) The United Arab Emirates has submitted a plan for camel milk to the Commission. That plan provides sufficient

guarantees and should be approved. Therefore, camel milk should be included in the entry for the United Arab Emirates in the list.

- (5) Brunei has submitted a plan for aquaculture to the Commission. That plan provides sufficient guarantees and should be approved. Therefore, Brunei should be included in the list as regards aquaculture.
- (6) The Commission requested that the former Yugoslav Republic of Macedonia provide information on the implementation of its plan for equidae for slaughter. In the absence of a reply from the former Yugoslav Republic of Macedonia there are not sufficient guarantees for approval. The entry for that third country concerning equidae for slaughter should therefore be deleted from the list. The former Yugoslav Republic of Macedonia has been informed accordingly.
- (7) The entry for Malaysia in the list includes poultry but the plan provided by Malaysia and the additional information obtained by the Commission do not provide sufficient guarantees in respect of poultry. However, the only establishment processing such raw material currently approved in accordance with Article 12 of Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ⁽³⁾ imports all its raw material from a Member State. In order to permit the continuation of that activity, the entry for Malaysia should include poultry but it should be restricted to raw material imported from other third countries included in the list for such material or from Member States. Malaysia has been informed accordingly. A footnote setting out this limitation should be included in the list for that third country.
- (8) The Commission requested that Russia provide information on the implementation of its plan for equidae for slaughter. In the absence of a reply from Russia there are not sufficient guarantees for approval. The entry for that third country concerning equidae for slaughter should be deleted from the list. Russia has been informed accordingly.
- (9) The Commission requested that Ukraine provide information on the implementation of its plan for equine animals and products. In the absence of a reply

⁽¹⁾ OJ L 125, 23.5.1996, p. 10.

⁽²⁾ OJ L 154, 30.4.2004, p. 44-50.

⁽³⁾ OJ L 139, 30.4.2004, p. 206.

from Ukraine there are not sufficient guarantees for approval. The entry for that third country concerning equine animals and products should be deleted from the list. Ukraine has been informed accordingly.

- (10) The United States has been asked to provide information on the implementation of its plan for equine animals and products. However, the United States did not provide the respective guarantees as the slaughter of equidae for export to the Union has ceased in that third country. The entry for that third country concerning equine animals and products should therefore be deleted from the list. The United States has been informed accordingly.
- (11) A Commission inspection to Uruguay has revealed serious shortcomings concerning the implementation of the plan for rabbit and farmed game. For rabbit, there was no residue monitoring plan in place and for farmed game, no sampling or testing was possible because of a cessation in production. The entries for Uruguay concerning rabbit and farmed game should therefore be deleted from the list. Uruguay has been informed accordingly.
- (12) Certain third countries export animal products derived from raw material originating from Member States or from other third countries that comply with the provisions of Directive 96/23/EC for such materials and which are therefore included in the list. In order to ensure that animal products imported into the Union are covered by an approved plan, third countries that import such raw material for subsequent export to the Union should include a statement in their plan to that effect.
- (13) In order to avoid any disruption to trade, a transitional period should be laid down to cover the relevant consignments from the former Yugoslav Republic of Macedonia, Russia, Ukraine and Uruguay, which were dispatched to the Union before the date of application of this Decision.
- (14) Decision 2004/432/EC has been amended several times. In the interests of clarity of Union legislation, it should be repealed and replaced by this Decision.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

The plans provided for in Article 29 of Directive 96/23/EC submitted to the Commission by the third countries listed in

the table set out in the Annex are approved for the animals and animal products that are intended for human consumption and marked with an 'X' in that table.

Article 2

1. Third countries using raw material imported from other third countries approved for production of food of animal origin in accordance with this Decision or from Member States to be exported to the European Union and which are unable to provide a residue monitoring plan equivalent to that required by Article 7 of Directive 96/23/EC for such raw material shall complement the plan with the following statement:

'The competent authority of [third country] ensures that animal products for human consumption exported to the European Union, in particular products produced from raw material imported into [third country], shall only come from establishments approved in accordance to Article 12 of Regulation (EC) No 854/2004 and having reliable procedures in place to guarantee that raw material of animal origin used in such food originates only from Member States of the European Union or third countries listed for the respective raw material in the Annex to Commission Decision 2011/163/EU without a restrictive footnote as provided for in Article 2(2) of the Decision.'

2. The entry in the Annex to this Decision of a third country exporting animal products for human consumption produced only with raw material of animal origin obtained from Member States of the Union or from third countries that provided a plan in accordance with Article 29 of Directive 96/23/EC shall be complemented with the following restrictive footnote:

'Third countries using only raw material either from other third countries approved for imports of such raw material to the Union or from Member States, in accordance with Article 2.'

Article 3

1. For a transitional period until 30 April 2011, Member States shall accept consignments from Uruguay of rabbit and farmed game and consignments of equine animal products from Ukraine provided that the importer can demonstrate that such consignments were certified and dispatched from Uruguay or Ukraine to the Union prior to 15 March 2011 in accordance with Decision 2004/432/EC.

2. For a transitional period until 25 March 2011, Member States shall accept consignments from former Yugoslav Republic of Macedonia, Russia or Ukraine of equidae for slaughter provided that the importer of such animals can demonstrate that they were certified and dispatched from former Yugoslav Republic of Macedonia, Russia and Ukraine to the Union prior to 15 March 2011 in accordance with Decision 2004/432/EC.

Article 4

Decision 2004/432/EC is repealed.

Article 5

This Decision is addressed to the Member States.

It shall apply from 15 March 2011.

Done at Brussels, 16 March 2011.

For the Commission

John DALLI

Member of the Commission

ANNEX

Code ISO2	Country	Bovine	Ovine/caprine	Porcine	Equine	Poultry	Aqua-culture	Milk	Eggs	Rabbit	Wild game	Farmed game	Honey
AD	Andorra	X	X		X								
AE	United Arab Emirates						X	X ⁽¹⁾					
AL	Albania		X				X		X				
AR	Argentina	X	X		X	X	X	X	X	X	X	X	X
AU	Australia	X	X		X		X	X			X	X	X
BA	Bosnia and Herzegovina						X						
BD	Bangladesh						X						
BN	Brunei						X						
BR	Brazil	X			X	X	X						X
BW	Botswana	X			X							X	
BY	Belarus				X ⁽³⁾		X	X	X				
BZ	Belize						X						X
CA	Canada	X	X	X	X	X	X	X	X	X	X	X	X
CH	Switzerland	X	X	X	X	X	X	X	X	X	X	X	X
CL	Chile	X	X ⁽⁴⁾	X		X	X	X			X		X
CM	Cameroon												X
CN	China					X	X		X	X			X
CO	Colombia						X						
CR	Costa Rica						X						
CU	Cuba						X						X
CW	Curaçao							X ⁽²⁾					

Code ISO2	Country	Bovine	Ovine/caprine	Porcine	Equine	Poultry	Aqua-culture	Milk	Eggs	Rabbit	Wild game	Farmed game	Honey
EC	Ecuador						X						
ET	Ethiopia												X
FK	Falklands Islands	X	X										
FO	Faeroe Islands						X						
GL	Greenland		X								X	X	
GT	Guatemala						X						X
HK	Hong Kong					X ⁽²⁾	X ⁽²⁾						
HN	Honduras						X						
HR	Croatia	X	X	X	X ⁽³⁾	X	X	X	X	X	X	X	X
ID	Indonesia						X						
IL	Israel					X	X	X	X			X	X
IN	India						X		X				
IS	Iceland	X	X	X	X		X	X				X ⁽²⁾	
IR	Iran						X						
JM	Jamaica						X						X
JP	Japan						X						
KG	Kyrgyzstan												X
KR	South Korea						X						
LK	Sri Lanka						X						
MA	Morocco						X						
MD	Moldova												X
ME	Montenegro	X	X	X		X	X		X				X
MG	Madagascar						X						

Code ISO2	Country	Bovine	Ovine/caprine	Porcine	Equine	Poultry	Aqua-culture	Milk	Eggs	Rabbit	Wild game	Farmed game	Honey
MK	former Yugoslav Republic of Macedonia ⁽⁵⁾	X	X	X		X	X	X	X		X		X
MU	Mauritius					X ⁽²⁾	X						
MX	Mexico				X		X		X				X
MY	Malaysia					X ⁽²⁾	X						
MZ	Mozambique						X						
NA	Namibia	X	X								X	X	
NC	New Caledonia	X					X				X	X	X
NI	Nicaragua						X						X
NZ	New Zealand	X	X		X		X	X			X	X	X
PA	Panama						X						
PE	Peru					X	X						
PF	French Polynesia												X
PH	Philippines						X						
PN	Pitcairn Islands												X
PY	Paraguay	X											
RS	Serbia ⁽⁶⁾	X	X	X	X ⁽³⁾	X	X	X	X		X		X
RU	Russia	X	X	X		X		X	X			X ⁽⁷⁾	X
SA	Saudi Arabia						X						
SG	Singapore	X ⁽²⁾	X ⁽²⁾	X ⁽²⁾		X ⁽²⁾	X ⁽²⁾	X ⁽²⁾					
SM	San Marino	X		X									X
SR	Suriname						X						
SV	El Salvador												X

Code ISO2	Country	Bovine	Ovine/caprine	Porcine	Equine	Poultry	Aqua-culture	Milk	Eggs	Rabbit	Wild game	Farmed game	Honey
SX	Sint Maarten							X ⁽²⁾					
SZ	Swaziland	X											
TH	Thailand					X	X						X
TN	Tunisia					X	X				X		
TR	Turkey					X	X	X					X
TW	Taiwan						X						X
TZ	Tanzania						X						X
UA	Ukraine					X	X	X	X				X
UG	Uganda						X						X
US	United States	X	X	X		X	X	X	X	X	X	X	X
UY	Uruguay	X	X		X		X	X			X		X
VE	Venezuela						X						
VN	Vietnam						X						
YT	Mayotte						X						
ZA	South Africa										X	X	
ZM	Zambia												X
ZW	Zimbabwe						X					X	

⁽¹⁾ Camel milk only.

⁽²⁾ Third countries using only raw material either from Member States or from other third countries approved for imports of such raw material to the Union, in accordance with Article 2.

⁽³⁾ Export to the Union of live equidae for slaughter (food producing animals only).

⁽⁴⁾ Only ovine animals.

⁽⁵⁾ The former Yugoslav Republic of Macedonia; the definitive nomenclature for this country will be agreed following current negotiations at UN level.

⁽⁶⁾ Not including Kosovo which is at present under international administration pursuant to United Nations Security Council Resolution 1244 of 10 June 1999.

⁽⁷⁾ Only for reindeer from the Murmansk and Yamalo-Nenets regions.

COMMISSION DECISION

of 16 March 2011

providing for the temporary marketing of certain seed of the species *Triticum aestivum* not satisfying the requirements of Council Directive 66/402/EEC

*(notified under document C(2011) 1634)***(Text with EEA relevance)**

(2011/164/EU)

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS DECISION:

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

Having regard to Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed ⁽¹⁾, and in particular Article 17(1) thereof,

Whereas:

- (1) In the Netherlands the quantity of available seed of spring wheat (*Triticum aestivum*) of the category 'certified seed' belonging to the varieties Baldus, Granny, KWS Aurum, Lavett, Minaret, Pasteur, Taifun, Thasos, Trappe, Tybalt and Zirrus which is suitable for the national environmental conditions and which satisfies the requirements of Directive 66/402/EEC related to field inspections is insufficient and is therefore not adequate to meet the needs of that Member State.
- (2) The demand for such seed cannot be satisfied by seed from other Member States or from third countries fulfilling all the requirements laid down in Directive 66/402/EEC.
- (3) Consequently, the Netherlands should be authorised to permit the marketing of seed of those varieties subject to less stringent requirements than apply to certified seed, for a period expiring on 30 April 2011 and up to a maximum quantity of 330 tonnes.
- (4) In addition, other Member States which are in a position to supply the Netherlands with seed of those varieties, irrespective of whether it was harvested in a Member State or in a third country, should be authorised to permit the marketing of such seed.
- (5) It is appropriate that the Netherlands act as a coordinator in order to ensure that the total amount of seed authorised pursuant to this Decision does not exceed the maximum quantity covered by this Decision.
- (6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

Article 1

1. The marketing in the Union of seed of spring wheat (*Triticum aestivum*) of the category 'certified seed' belonging to the varieties Baldus, Granny, KWS Aurum, Lavett, Minaret, Pasteur, Taifun, Thasos, Trappe, Tybalt and Zirrus which does not satisfy the requirements of point 7 of Annex I to Directive 66/402/EEC in respect of field inspections shall be permitted.

This permission shall be granted for a total quantity of up to 330 tonnes and for a period ending on 30 April 2011.

2. In addition to fulfilling the labelling requirements of Directive 66/402/EEC, the official label shall state that the seed does not satisfy the requirements of point 7 of Annex I to that Directive in respect of field inspections.

Article 2

1. Any supplier wishing to place on the market seed, as referred to in Article 1, shall apply for authorisation to the Member State in which it is established or importing. The application shall specify the quantity of seed that the supplier wishes to place on the market.

2. The Member State concerned shall authorise the supplier, in accordance with Article 1, to place on the market the seed unless:

- (a) there is sufficient evidence to doubt whether the supplier is able to place on the market the amount of the seed for which he has applied for authorisation; or
- (b) having regard to the information provided by the coordinating Member State, as referred to in the third subparagraph of Article 3, granting the authorisation would result in the total maximum quantity of seed referred to in Article 1(1) being exceeded.

As regard point (b), in case the total maximum quantity would only allow for authorisation of part of the quantity specified in the application, the Member State concerned may authorise the supplier to place that lesser quantity on the market.

⁽¹⁾ OJ L25, 11.7.1966, p. 2309/66.

Article 3

Member States shall assist each other administratively in the application of this Decision.

The Netherlands shall act as coordinating Member State in order to ensure that the quantity of seed authorised for marketing in the Union by the Member States pursuant to this Decision does not exceed the total maximum quantity of seed referred to in Article 1(1).

Any Member State receiving an application under Article 2 shall immediately notify the coordinating Member State of the amount covered by the application. The coordinating Member State shall immediately inform that Member State as to whether authorisation would result in the maximum quantity being exceeded.

Article 4

Member States shall immediately notify to the Commission and the other Member States the quantities in respect of which they have granted marketing authorisation pursuant to this Decision.

Article 5

This Decision shall expire on 30 April 2011.

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 16 March 2011.

For the Commission

John DALLI

Member of the Commission

IV

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

EFTA SURVEILLANCE AUTHORITY DECISION

No 329/09/COL

of 15 July 2009

on the Norwegian scheme on support for alternative, renewable heating and electricity savings in private households

(Norway)

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,

Whereas:

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

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

HAVING REGARD to Article 1(2) of Part I and Articles 4(4), 6 and 7(3) of Part II of Protocol 3 to the Surveillance and Court Agreement ⁽⁴⁾,

HAVING REGARD to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement ⁽⁵⁾,

HAVING REGARD to the Authority's Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 ⁽⁶⁾,

HAVING CALLED on interested parties to submit their comments pursuant to those provisions ⁽⁷⁾ and having regard to their comments,

I. FACTS

1. PROCEDURE

By letter dated 13 October 2006 (Event No 393383) the Norwegian Association of Heat Producers (*Varmeproducentenes Forening*) ⁽⁸⁾, filed a complaint alleging that state aid was granted in connection with the Norwegian scheme for alternative, renewable heating and electricity saving measures in private households ⁽⁹⁾. The Complainant is an independent organisation whose objective is to safeguard the interests of producers of wood burning stoves. The Complainant submitted supplementary information by letter dated 19 October 2006 (Event No 395451).

On 19 December 2007, after various exchanges of correspondence ⁽¹⁰⁾, the Authority decided to initiate the procedure laid down in Article 1(2) of Part I of Protocol 3. The Authority's Decision No 716/07/COL to initiate the procedure was published in the *Official Journal of the European Union* and the EEA Supplement thereto ⁽¹¹⁾. The Authority called on interested parties to submit their comments thereon.

On 4 February 2008, the Norwegian authorities submitted comments (Event No 463573).

The Authority also received comments from interested parties, which were forwarded to the Norwegian authorities on 21 May 2008, 26 May 2008 and 14 January 2009 (respectively Event Nos 477954, 477902 and 503830). The Norwegian authorities submitted their observations on these comments by letters dated 25 June 2008, 4 July 2008 and 6 March 2009 (respectively Event Nos 483303, 484722 and 511580).

⁽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⁾ Hereinafter referred to as Protocol 3.

⁽⁵⁾ 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 of 3.9.1994 p. 1 and EEA Supplement No 32 of 3.9.1994 p. 1. 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/fieldssofwork/fieldstateaid/guidelines/>

⁽⁶⁾ Decision No 195/04/COL of 14 July 2004 published in OJ L 139 of 25.5.2006 p. 37 and EEA Supplement No 26 of 25.5.2006 p. 1 as amended. The consolidated version of the Decision is published on the Authority's website: <http://www.eftasurv.int/fieldssofwork/fieldstateaid/legaltext/>.

⁽⁷⁾ Published in OJ C 96 of 17.4.2008 p. 14 and EEA Supplement No 20 of 17.4.2008 p. 58.

⁽⁸⁾ Hereinafter referred to as the Complainant.

⁽⁹⁾ Hereinafter referred to as the alternative heating scheme.

⁽¹⁰⁾ For more detailed information on the various correspondence between the Authority and the Norwegian authorities, reference is made to the Authority's Decision to open the formal investigation procedure, Decision No 716/07/COL.

⁽¹¹⁾ Published in OJ C 96 of 17.4.2008 p. 14 and EEA Supplement No 20 of 17.4.2008 p. 58.

By letter dated 2 April 2009, the Complainant supplied further information (Event No 514264), which was forwarded to the Norwegian authorities on 8 April 2009 (Event No 514886). By letter dated 7 May 2009, the Norwegian authorities presented further comments (Event No 517749).

On 21 April 2009, representatives of the Authority met with representatives from the Norwegian Bio Energy Association ⁽¹⁾, an independent association whose objective is to promote rational utilisation of bioenergy in Norway. NOBIO had submitted observations to the Authority's Decision on 21 May 2008 (Event No 477954).

2. DESCRIPTION OF THE PROPOSED MEASURE

2.1. THE ALTERNATIVE HEATING SCHEME

The alternative heating scheme was introduced in 2006 ⁽²⁾. The Norwegian authorities have explained that it is aimed at giving consumers an incentive to invest in certain environmentally friendly heating technologies which have a limited spread on the Norwegian market and which can contribute to the reduction the use of electricity in private households ⁽³⁾. The Norwegian authorities have explained that only technologies which are suitable replacements to electricity as a primary source of heating are included under the alternative heating scheme. The scheme covers pellet stoves and boilers, heat pumps connected to waterborne heating systems and control systems for reducing consumption of electricity. As of August 2008 ⁽⁴⁾, investments in solar heating collectors connected to waterborne heating systems are also included in the scheme.

Only households that invest in the relevant heating technologies after submitting an application are eligible for funding. The grants are disbursed *ex post*, after the recipient has submitted a proof of purchase. Private households can apply for a maximum refund of 20 % of documented and eligible costs. The grants are limited to NOK 4 000 for pellet stoves and electronic control systems. For heat pumps, pellet boilers and solar heating collectors the limit is NOK 10 000.

The aid scheme is administered by Enova SF, a public company (*statsforetak*) fully owned by the Ministry of Petroleum and Energy.

2.2. NATIONAL LEGAL BASIS FOR THE AID MEASURE

The legal basis for the scheme is the State budget. The scheme was proposed by the Norwegian Government in Parliamentary proposition no 82 (2005-2006), and adopted by Parliament in September 2006. The scheme's budget has been modified by the adopted suggestions in Parliamentary proposition no 22 (2006-2007), Parliamentary proposition no 59 (2007-2008) and Parliamentary proposition no 1 (2008-2009).

⁽¹⁾ Hereinafter referred to as NOBIO.

⁽²⁾ Further information about the scheme can be found on Enova SF's website: <http://www.minenergi.no/> and <http://www.minenergi.no/sitepageview.aspx?sitePageID=1062>

⁽³⁾ Parliamentary proposition no 82 (2005-2006), press release from the Ministry of Petroleum and Energy of 25 August 2006 nr. 98/06 and of 14 September 2006 nr. 107/06.

⁽⁴⁾ See Parliamentary proposition no 1 (2008-2009) p. 56.

2.3. BUDGET AND DURATION

The scheme was initiated in 2006 by Parliamentary proposition no 82 (2005-2006). The proposal was adopted by Parliament on 15 September 2006 with a budget of NOK 46 million. In accordance with Parliamentary proposition no 22 (2006-2007), the scheme's budget was later increased by NOK 25 million to a total of NOK 71 million in the last revision of the state budget for 2006.

Enova was not granted additional funding for the scheme for 2007, but as only NOK 2 million were disbursed during 2006, the Parliament decided to transfer the remaining NOK 69 million to the scheme's 2007 budget.

NOK 40 million were disbursed in 2007. The remaining NOK 29 million of undisbursed funding from the 2007 budget were transferred to the 2008 budget. In addition to this NOK 31 million were allocated over the state budget ⁽⁵⁾. Thus the total aid scheme budget for 2008 amounted to NOK 60 million.

NOK 30 million were disbursed in 2008. The remaining NOK 30 million were transferred to the 2009 budget. Together with NOK 40 million of a new budgetary allocation ⁽⁶⁾, the total budget for 2009 amounts to NOK 70 million.

Since its initiation a total of NOK 142 million have been allocated to the scheme over the state budget, of which NOK 72 million had been disbursed by the end of 2008; there is no defined timeframe for the scheme ⁽⁷⁾.

2.4. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

The Authority opened the formal investigation procedure on the basis that the alternative heating scheme could involve state aid. Although the direct beneficiaries of the scheme are final consumers, the scheme is aimed at promoting the use of specific heating technologies. Therefore, the Authority questioned whether indirect state aid is granted to producers, importers and/or sellers of the heating technologies covered by the scheme.

The Authority had doubts whether the scheme could be considered compatible with the functioning of the EEA Agreement. More specifically, the Authority had doubts as to whether the Environmental Aid Guidelines could be applicable as the indirect aid would not contribute to the reduction of the amount of energy used in the producers and/or importers production cycle. Furthermore, the Authority questioned whether the scheme could be considered compatible under Article 61(3)(c) EEA.

⁽⁵⁾ Parliamentary proposition no 59 (2007-2008) p. 123.

⁽⁶⁾ Parliamentary proposition no 1 (2008-2009) p. 56.

⁽⁷⁾ In Parliamentary proposition no 59 (2007-2008), the Norwegian authorities note that the scheme will be reviewed in light of the Authority's final decision.

3. COMMENTS BY THE NORWEGIAN AUTHORITIES

The Norwegian authorities argue that the only recipients of the alternative heating scheme are private households which are not undertakings within the meaning of the EEA competition rules, and that the measure, for that reason, cannot be considered to constitute state aid within the meaning of Article 61(1) EEA.

Furthermore, the Norwegian authorities argue that the scheme is not selective as the advantage conferred on the recipient is justified by the nature or general scheme of the system of which it is part and therefore cannot be considered as state aid within the meaning of Article 61(1) EEA. Additionally, the Norwegian authorities argue that the scheme does not distort or threaten to distort competition since wood burning stoves and the technologies entitled to support cannot be regarded as substitutable products and thus not within the same relevant product market. The Norwegian authorities consider the relevant market to be 'those technologies which can replace electric heating and provide the same level of heating comfort as electric heating during day and night, or in a more technical language, base load heating systems' ⁽¹⁾. In contrast, wood burning stoves should, according to the authorities, be classified as a supplementary heat source used in addition to the base load source. Wood burning stoves should therefore be characterised as so called 'peak load' heating systems.

Finally, in case the Authority were to find that the scheme constituted state aid within the meaning of Article 61(1) EEA, the Norwegian authorities argue that the scheme is justifiable under both Article 61(2)(a) and 61(3)(c) EEA on the basis of its respectively social and environmental objectives.

4. COMMENTS FROM THIRD PARTIES

The Authority has received comments from two third parties: the Norwegian Association of Heat Producers, which is the Complainant, and NOBIO.

4.1. COMMENTS FROM THE COMPLAINANT

The Complainant is of the opinion that the alternative heating scheme constitutes illegal state aid within the meaning of Article 61(1) EEA. It alleges that the support to private households must be regarded as constituting an indirect advantage for the producers and/or the importers of the heating technologies covered by the scheme. More specifically, according to the information supplied by the Complainant, the sales of pellet stoves have increased with the introduction of the scheme. The Complainant argues that the introduction of the support scheme has given the producers importers and retailers of pellet stoves the opportunity to increase sales and profits.

Furthermore, the Complainant argues that the measure distorts or threatens to distort competition because wood burning stoves, which are similar to pellet stoves, are not covered by the scheme.

⁽¹⁾ Letter from the Norwegian Ministry of Petroleum and Energy dated 15 January 2007 (Event no: 406849), p. 5.

Finally, the Complainant considers that neither Article 61(2)(a) nor 61(3)(c) EEA can justify the aid scheme in its current form.

4.2. COMMENTS FROM NOBIO

NOBIO supports the views of the Norwegian authorities and holds that the scheme only entails a direct financial support to private households, and not to undertakings, and that the scheme consequently does not involve state aid within the meaning of Article 61(1) EEA.

Furthermore, in case the Authority were to find that the scheme constituted state aid within the meaning of Article 61(1) EEA, NOBIO argues that the scheme is justifiable under both Article 61(2)(a) and 61(3)(c) EEA, on the basis of its respectively social and environmental objectives.

II. ASSESSMENT

1. THE PRESENCE OF STATE AID

Article 61(1) EEA reads as follows:

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

To be considered state aid within the meaning of Article 61(1) EEA, the following four cumulative conditions must be met: The measure must (i) be granted by the State or through state resources, (ii) confer a selective economic advantage on the recipients; (iii) distort or threaten to distort competition; and (iv) be liable to affect trade between the Contracting Parties to the EEA Agreement.

1.1. PRESENCE OF STATE RESOURCES

The alternative heating scheme is financed by the Norwegian State by means of allocations from the state budget. The measures in question are therefore granted by the State through state resources.

1.2. FAVOURING CERTAIN UNDERTAKINGS OR THE PRODUCTION OF CERTAIN GOODS

For state support to constitute state aid within the meaning of Article 61(1) EEA it must also confer an economic advantage on undertakings, and be selective in the sense that it favours 'certain undertakings or the production of certain goods'.

1.2.1. *Conferring an economic advantage on undertakings*

The first question to be analysed is therefore whether the scheme in question confers an economic advantage on undertakings ⁽¹⁾.

The direct recipients of the grants under the alternative heating scheme are private households which cannot generally be classified as undertakings within the meaning of Article 61(1) EEA. However, the grant of a subsidy to an individual or to consumers does not per definition exclude the existence of aid ⁽²⁾. Even if the first or direct beneficiaries of a measure are not undertakings, an indirect advantage may nonetheless be granted to undertakings. The wording of Article 61(1) EEA with its reference to 'aid granted (...) in any form whatsoever' covers direct as well as indirect grants of aid, as confirmed by the practice of the European Commission ⁽³⁾ and the case law ⁽⁴⁾ of the European Court of Justice ⁽⁵⁾. Therefore, the assessment of whether indirect aid is granted to undertakings must be carried out on a case-by-case basis.

The alternative heating scheme is aimed at promoting the sale of specific heating technologies ⁽⁶⁾. Therefore, in this case, the question of whether undertakings active in the sector of the technologies covered by the scheme benefit from an indirect economic advantage which may fall within the scope of Article 61(1) EEA must be assessed.

Article 61(1) EEA does not distinguish between measures of state intervention by reference to their causes or aims, but merely defines them in relation to their effects ⁽⁷⁾. The question is therefore whether the alternative heating scheme has the effect of granting an indirect economic advantage to the undertakings active in the sectors of the heating technologies covered by the scheme.

The Authority does not share the view of the Norwegian authorities according to which the existence of indirect aid depends on whether the ultimate and predominant aim is to provide aid to undertakings, so that only schemes that are constructed to circumvent the prohibition on state aid can constitute indirect aid.

In the case under assessment, the subsidy to private households for investments in specific alternative renewable heating technologies provides them with an economic incentive to purchase

these products. The measure creates an incentive for consumers to switch from traditional electric heating to alternative heating systems ⁽⁸⁾. A higher demand from consumers can result in higher profits for these kinds of technologies which provides an advantage to the undertakings active in the sector of the technologies covered by the scheme in comparison with other undertakings ⁽⁹⁾.

The fact that consumers can choose among the technologies covered by the scheme does not mean that the connection between the direct grant from the State to the consumer and the advantage given to the undertakings in question has been eliminated ⁽¹⁰⁾.

Although the advantage is of an indirect nature, the alternative heating scheme has been established in such a way that there is a direct link from the grant of aid to the consumer and the purchase of the relevant technology. In order to obtain the grant, a proof of purchase of one of the technologies covered by the alternative heating scheme must be submitted to Enova SF.

In light of the above, the Authority considers that the alternative heating scheme provides an indirect advantage to undertakings active in the sector of alternative, renewable heating systems.

1.2.2. *The criterion of selectivity*

The next question to be analysed is whether the measure is selective, i.e. whether it favours 'certain undertakings or the production of certain goods'.

The Authority considers that the alternative heating scheme is selective in that it only (indirectly) favours undertakings active in the sector of the alternative, renewable heating technologies covered (i.e. pellet stoves and boilers, heat pumps and solar heating collectors connected to waterborne heating systems and control systems for reducing consumption of electricity). No other undertakings, including those active on the sectors of other renewable heating technologies, can benefit from the grants disbursed under the scheme ⁽¹¹⁾.

The Norwegian authorities consider that the advantage granted under the alternative heating system is justified by the nature or general scheme of the system of which it is part. The Authority does not share this view.

⁽¹⁾ For the purpose of Community competition law, undertakings are defined as entities engaged in economic activity, regardless of their legal status, see for instance the judgment in Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21.

⁽²⁾ Case C-156/98 *Germany v Commission* [2000] ECR I-6857.

⁽³⁾ Hereinafter referred to as the Commission.

⁽⁴⁾ Case C-156/98 *Germany v Commission* [2000] ECR I-6857; C-382/99 *Netherlands v Commission* [2002] ECR I-5163; Case C-457/00 *Belgium v Commission* [2003] ECR I-6931, paragraph 57; see also the Opinion of AG Jacobs in Case C-457/00, paragraph 59.

⁽⁵⁾ Hereinafter referred to as the ECJ.

⁽⁶⁾ Parliamentary proposition no 82 (2005-2006) page 1.

⁽⁷⁾ Case C-382/99 *Netherlands v Commission*, paragraph 61; C-487/06 P, *British Aggregates Association v Commission*, judgment of 22 December 2008, paragraph 87.

⁽⁸⁾ For a similar line of reasoning, see Commission decision of 24 January 2007 C (2006) 6630, in case N 270/2006, paragraph 40.

⁽⁹⁾ See Commission decision of 26 April 2006 C (2006) 1519, in case N 142/2005, point 3.1.

⁽¹⁰⁾ See Commission decision of 24 January 2007 C (2006) 6630, in case N 270/2006, paragraph 43.

⁽¹¹⁾ *Ibid.* paragraph 46-47.

The ECJ and the EFTA Court have consistently held that measures granting advantages to certain recipients are not selective if they can be justified by the nature and general scheme of the system of which they are part⁽¹⁾. For a selective measure to be justified by the logic of a system there has to be a general system to which it relates. In addition, the case law has focused the assessment of whether a measure is justified by the nature and logic of the general system regarding schemes that in some form constitute a derogation from taxes, charges or other similar systems of more general application. The Norwegian authorities have not provided any argument with regard to the general system to which the aid measure relates. The alternative heating scheme indirectly confers advantages on certain undertakings active in the sector of the technologies covered by the scheme. In light of the above, the Authority must therefore conclude that the measure is selective within the meaning of Article 61(1) EEA.

1.3. DISTORTION OF COMPETITION AND AFFECTING TRADE BETWEEN CONTRACTING PARTIES

In order to constitute state aid, a measure must distort or threaten to distort competition and be liable to affect trade between the Contracting Parties to the EEA Agreement.

The Authority does not have to establish that an aid has a real effect on trade between EEA States and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and threaten to distort competition⁽²⁾. Any grant of aid to an undertaking exercising its activities in the EEA market is liable to cause distortion of competition and affect trade⁽³⁾.

The alternative heating scheme (indirectly) confers an advantage on undertakings active in the sector of alternative, renewable heating technologies. Stimulation of consumer demand for the technologies covered is an intrinsic component of the alternative heating scheme.

Further, according to the figures available to the Authority, by way of example, the sales of one of the technologies covered by the scheme, pellet stoves, have increased and stabilised after the introduction of the scheme in Norway. In comparison, the sales of wood burning stoves, a technology not covered by the scheme, have not experienced a similarly positive development during the same period.

⁽¹⁾ Case C-143/99 *Adria-Wien pipeline GmbH and Wietersdorfer & Peggauer Zementwerke GmbH* [2001] ECR I-8365, paragraph 42 and the judgment of the EFTA Court in the joined cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnjord and others v EFTA Surveillance Authority*, [2005] EFTA Court Report, page 117, paragraph 77.

⁽²⁾ See the judgment of the EFTA Court in the joined cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnjord and others v EFTA Surveillance Authority*, [2005] EFTA Court Report, page 117, paragraph 93, Case C-372/97 *Italy v Commission* [2004] ECR I-3679, paragraph 44, and Case C-66/02 *Italy v Commission* [2005] ECR I-10901, paragraph 112.

⁽³⁾ Joined Cases T-92/00 and T-103/00 *Diputación Foral de Álava and Others v Commission* [2002] ECR II-1385, paragraph 72.

For these reasons, it can be concluded that the aid threatens to distort competition.

As regards the condition relating to the effect on trade, when state aid strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, the latter must be regarded as affected by that aid⁽⁴⁾.

Undertakings active in the sector of heating technologies operate in a European market, therefore the alternative heating scheme affects trade between the Contracting Parties within the meaning of Article 61(1) EEA.

Thus, the conclusion must be drawn that the aid threatens to distort competition and is liable to affect trade between the Contracting Parties to the EEA.

1.4. CONCLUSION

The Authority considers that the Norwegian alternative heating scheme constitutes state aid within the meaning of Article 61(1) EEA.

2. PROCEDURAL REQUIREMENTS

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

The Norwegian authorities did not notify the alternative heating scheme to the Authority before it was put into effect. The Authority therefore concludes that the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3. COMPATIBILITY OF THE AID

The Norwegian authorities argue that the aid can be justified under Article 61(2)(a), or alternatively 61(3)(c) EEA in conjunction with the Authority's State Aid Guidelines on aid for environmental protection.

3.1. COMPATIBILITY UNDER ARTICLE 61(2)(A) EEA

According to Article 61(2)(a) EEA aid of 'a social character' is compatible with the functioning of the Agreement if it is 'granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned'.

⁽⁴⁾ Case E-6/98 *The Government of Norway v EFTA Surveillance Authority* Rec. 1999 p. 74, paragraph 58, and Case 730/79 *Philip Morris v Commission* [1980] ECR I-2671 paragraph 11. see also Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraph 47 and Case T-217/02 *Ter Lembeek v Commission*, [2006] ECR II-4483, paragraph 181.

The Authority notes that derogations from the prohibition on state aid shall be interpreted strictly. The Norwegian alternative heating scheme is targeted at all Norwegian private households. In the Authority's view, to be considered compatible under Article 61(2)(a) EEA, the scheme must have a social character in the sense that it must benefit a less privileged segment of the population⁽¹⁾. Since the measure is open to all private households on a 'first come/first serve'-basis, the scheme can not be considered as having a social character within the meaning of Article 61(2)(a) EEA.

3.2. COMPATIBILITY UNDER ARTICLE 61(3)(C) EEA

According to Article 61(3)(c) EEA, aid may be declared compatible with the functioning of the EEA Agreement if it 'facilitates the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.

3.2.1. *The Guidelines on environmental protection*

The Authority has issued guidelines laying down the criteria it will apply in the assessment of whether state aid measures intended to protect the environment can be considered compatible with the functioning of the EEA Agreement according to Article 61(3)(c) EEA. The alternative heating scheme was initiated in 2006. At that time, the Authority's Guidelines on environmental protection as last revised 23 May 2001 were applicable⁽²⁾. The Authority adopted new Guidelines on environmental protection 16 July 2008⁽³⁾, applicable from that date. Thus, a scheme covering these different periods in time must be assessed in light of both sets of guidelines in accordance with the principles laid down in paragraph 74 of the 2001 Guidelines and paragraph 205 of the 2008 Guidelines.

However, the situation where indirect aid benefits some producers, importers and/or sellers of certain heating technologies for private households, is neither covered by the 2001 Guidelines, nor the 2008 Guidelines.

3.2.2. *Compatibility directly under Article 61(3)(c) EEA*

As the 2001 and 2008 Guidelines are not directly applicable to the Norwegian alternative heating scheme, the Authority will assess the compatibility of the scheme directly under Article 61(3)(c) EEA⁽⁴⁾. Derogations within the meaning of Article 61(3)(c) EEA must be interpreted narrowly⁽⁵⁾ and may be granted only when it can be established that the aid will

contribute to the attainment of an objective of common interest, which could not be secured under normal market conditions alone. The so-called 'compensatory justification principle' was endorsed by the ECJ in the *Philip Morris* case⁽⁶⁾.

Appreciating the compatibility of state aid is fundamentally about balancing the negative effects of aid on competition with its positive effects in terms of common interest⁽⁷⁾. In order to be declared compatible under Article 61(3)(c) EEA, state aid scheme must:

- be aimed at a well-defined objective of common interest,
- be well-designed to deliver the objective of common interest, and in that regard, be an appropriate instrument, have an incentive effect, and be proportionate,
- not distort competition and trade in the EEA to an extent contrary to common interest⁽⁸⁾.

The Authority must assess whether the objective pursued by the measure is necessary, in line with objectives of common interest and, if so, whether this is the least distortive method of pursuing that objective.

Well-defined objective of common interest

The alternative heating scheme pursues an environmental objective by incentivising consumers' investments in environmentally friendly technologies with a limited spread on the Norwegian market. The Norwegian authorities argue that a wider spread of the alternative heating technologies covered by the scheme will reduce electricity consumption in Norwegian households. Reducing the amount of electricity used for heating private households and stimulating the use of alternative heating systems based on renewable energies, can be considered as an environmentally sensible objective.

Recital nine of the preamble to the EEA Agreement sets out the common goal of preserving, protecting and improving the quality of the environment and to ensure a prudent and rational utilisation of natural resources on the basis of the principle of sustainable development. In the Authority's view, an aid scheme with the aim of shifting energy consumption towards renewable sources is in line with objectives of common interest.

⁽¹⁾ See for example the Guidelines on Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector OJ C 350 10 December 1994 p. 7, section III.3.

⁽²⁾ Hereinafter referred to as the 2001 Guidelines.

⁽³⁾ Hereinafter referred to as the 2008 Guidelines.

⁽⁴⁾ See Case T-288/97, *Regione Autonoma Friuli Venezia Giulia v Commission* [2001] ECR II-1169, paragraph 72.

⁽⁵⁾ Case C-301/96 *Germany v Commission* [2003] ECR I-9919 paragraph 66 and 105.

⁽⁶⁾ Case 730/79 *Philip Morris v Commission* [1980] ECR I-2671.

⁽⁷⁾ See the Commission's State Aid Action Plan of 7 June 2005, COM (2005) 107, paragraph 11.

⁽⁸⁾ See Commission decision of 24 January 2007 C (2006) 6630, in case N 270/2006, paragraph 67.

Well-designed scheme

The criteria for the inclusion of a technology under the scheme are formulated on the basis of the technology's suitability to replace electric heating. The Norwegian authorities have explained that only technologies that can be categorised as so-called 'base load heating systems' are covered by the scheme. According to the Norwegian authorities 'base load heating systems' are 'those technologies which can replace electric heating and provide the same level of heating comfort as electric heating during day and night' ⁽¹⁾.

The Norwegian authorities have explained that the alternative renewable heating technologies covered by the scheme share three features: they must have had a limited spread on the Norwegian market, be capable of replacing electric heating and require a certain minimum of user intervention. The Authority notes that not all technologies covered by the alternative heating scheme are well-suited to fully replace electric heating ⁽²⁾. However, the Norwegian authorities have reasoned that technologies covered by the scheme are better designed to systematically reduce the amount of electricity utilised for the purpose of heating a normal household.

To give grants to consumers in order to promote a shift of demand away from electric heating towards alternative, renewable heating systems in households, seems to be an appropriate instrument to influence the consumers' behaviour directly. Without the support granted by the State under the alternative heating scheme, consumers' demand would not as likely have been changed towards renewable heating technologies within the same time frame.

Where certain environmentally friendly measures are not set in effect, state aid can in principle be considered compatible ⁽³⁾. The alternative heating scheme aims at providing a consumer incentive for investments in environmentally friendly technologies suitable for reducing electricity consumption that have a limited spread on the Norwegian market for heating in households.

Moreover, the Authority considers that the aid amount is limited to the minimum of what is necessary to give

consumers an incentive to shift from electric heating systems to the alternative renewable heating sources covered by the scheme. The alternative heating scheme involves a refund of up to 20 % of documented eligible costs with a maximum of either NOK 4 000 or NOK 10 000 depending on the type of technology. The maximum sum granted for the acquisition of an alternative heating technology is proportionate to the cost of the relevant technology.

For these reasons, the Authority finds that the scheme is well-designed to deliver the environmental objective of common interest.

No distortion of competition and trade in the EEA to an extent contrary to common interest

Finally, it must be assessed whether the potential to distort competition and trade in the European Economic Area is of a nature contrary to the common interest.

The grants are paid directly to the consumers, who can choose freely among the products that meet the objective criteria of the scheme independently of the undertaking offering the alternative heating technology. Thus, the scheme avoids unnecessary distortions of competition and trade in the EEA in the sector of the technologies covered by the scheme.

The Complainant argues that the scheme distorts competition since it covers pellet stoves but not wood burning stoves. According to the complainant, wood burning stoves represent a technology that closely resembles pellet stoves and should be covered by the scheme. Conversely, the Norwegian authorities argue that wood burning stoves do not fulfil the objective criteria established under the alternative heating scheme. The Authority takes the opinion that, although the complainant may be right in claiming a competitive relationship between wood burning stoves and all or at least some of those technologies covered by the aid scheme, it appears that wood burning stoves do not fulfil the requirements to qualify for grants under the scheme. In that regard, the Authority does not object to the objective criteria under the scheme and the Norwegian authorities' assessment of which heating technologies are better suited to fulfil the environmental aims pursued under the scheme. The alternative heating scheme is based on three objective criteria for eligibility (i.e. limited spread in the market, capability to replace electricity as a primary source of heating and minimum user intervention) all or some of which wood burning stoves appear not to fulfil. Moreover, the Authority acknowledges that wood burning stoves already represent a well-spread technology in Norway. The Authority thus considers that the criteria for eligibility under the aid scheme are objectively justified and that the scheme does not violate other provisions of the EEA Agreement, including the rules on

⁽¹⁾ Letter from the Norwegian Ministry of Petroleum and Energy dated 15 January 2007 (Event no: 406849), p. 5

⁽²⁾ For instance, according to the Enova SF buyers' guide for solar heating collectors connected to waterborne heating systems (a technology covered by the scheme), these systems are only able to satisfy up to 50 % of a households' total heating requirements. When provided with sufficient amounts of solar energy, solar heating collectors have the ability to run continuously without regular supervision, and when they are in operation, they provide the consumer with a convenient, albeit partial, source of alternative heating. The buyers' guide is available at the Enova SF webpage: <http://www.minenergi.no/sitepageview.aspx?sitePageID=1083>.

⁽³⁾ Both the 2001 and the 2008 Guidelines deal with aid for renewable energy sources where the aid is a form of compensation for the economic disadvantage renewable sources of energy face in competition with less environmentally friendly sources of energy, see 2001 Guidelines paragraphs 49-59 and 2008 Guidelines paragraphs 48-50.

non-discrimination on grounds of nationality or of equal treatment. Moreover, the Authority considers that the Norwegian authorities have further limited the negative effects on competition by establishing a relatively low aid intensity. Therefore, the Authority holds that the possible distortion of competition created towards wood burning stoves and other potentially competing technologies is not contrary to the common interest and seems justifiable on the basis of the balancing test carried out above.

For these reasons, the Authority considers that the scheme is aimed at a well-defined objective of common interest; is well-designed to deliver the objective of common interest, and in that regard, an appropriate instrument, which has an incentive effect and is proportionate; and, finally, that it does not distort competition and trade in the EEA to an extent contrary to the common interest. Accordingly, the Authority finds that the scheme is justified under Article 61(3)(c) EEA.

4. CONCLUSION

In light of the foregoing considerations, the Authority concludes that the Norwegian scheme on support for alternative, renewable heating and electricity savings in private households constitutes state aid within the meaning of Article 61(1) EEA compatible with Article 61(3)(c) EEA.

The Norwegian authorities are reminded of the obligation resulting from Article 21 of Part II of Protocol 3, read in conjunction with Article 6 of Decision No 195/04/COL, to provide annual reports on the implementation of the scheme.

The Norwegian authorities are also reminded that all plans to modify this scheme shall be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The Norwegian scheme on support for alternative, renewable heating and electricity savings in private households constitutes aid within the meaning of Article 61(1) EEA. The aid scheme is compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(c) EEA.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English version is authentic.

Done at Brussels, 15 July 2009.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kristján A. STEFÁNSSON
College Member

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