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Price: EUR 4

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II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 803/2011

of 4 August 2011

repealing the countervailing duty on imports of certain broad spectrum antibiotics originating in India and terminating the proceeding in respect of such imports, following review pursuant to Article 18(2) of Council Regulation (EC) No 597/2009

THE COUNCIL OF THE EUROPEAN UNION,

1.2. Request for an expiry review

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾, (the basic Regulation), and in particular Article 18 thereof,

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

Whereas:

1. PROCEDURE

1.1. Measures in force

- (1) In May 2005, following a combined expiry and interim review (the combined review), the Council, by Regulation (EC) No 713/2005 ⁽²⁾, imposed a definitive countervailing duty on imports of certain broad spectrum antibiotics, namely amoxicillin trihydrate, ampicillin trihydrate and cefalexin not put up in measured doses or in forms or packing for retail sale (the product concerned) currently falling within CN codes ex 2941 10 00 and ex 2941 90 00 originating in India. The measures took the form of an *ad valorem* duty ranging from 17,3 % to 32 %. The original measures had been imposed by Regulation (EC) No 2164/98 ⁽³⁾.
- (2) Following a partial interim review, the Council, by Regulation (EC) No 1176/2008 ⁽⁴⁾, amended the countervailing duty rate applicable to one Indian exporter.

- (3) Following the publication of a notice of impending expiry ⁽⁵⁾ of the definitive measures in force, the Commission received a request for the initiation of an expiry review of Council Regulation (EC) No 713/2005 pursuant to Articles 18(2) of the basic Regulation, from two Union producers: DSM and Sandoz (the applicants), representing a major proportion, in this case more than 50 % of the total Union production of certain broad spectrum antibiotics.

- (4) The request was based on the grounds that the expiry of the measures would be likely to lead to a continuation or recurrence of subsidisation and injury to the Union industry.

- (5) Prior to the initiation of the expiry review, and in accordance with Articles 10(9) and 22(1) of the basic Regulation, the Commission notified the Government of India (the GOI) that it had received a properly documented review request. The GOI was invited for consultations with the aim of clarifying the situation as regards the contents of the request and arriving at a mutually agreed solution. The GOI responded only very late to this invitation and, therefore, no such consultations have taken place.

1.3. Initiation of an expiry review

- (6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 12 May 2010, by a notice published in the *Official Journal of the European Union* ⁽⁶⁾ (the Notice of initiation), the initiation of an expiry review pursuant to Article 18 of the basic Regulation.

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ OJ L 121, 13.5.2005, p. 1.

⁽³⁾ OJ L 273, 9.10.1998, p. 1.

⁽⁴⁾ OJ L 319, 29.11.2008, p. 1.

⁽⁵⁾ OJ C 21, 28.1.2010, p. 40.

⁽⁶⁾ OJ C 123, 12.5.2010, p. 11.

1.4. Investigation

1.4.1. Investigation period

- (7) The investigation of continuation or recurrence of subsidisation covered the period from 1 April 2009 to 31 March 2010 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2007 to the end of the review investigation period (the period considered).

1.4.2. Parties concerned by the investigation

- (8) The Commission officially advised the applicants, other known Union producers, exporting producers, importers, up-stream suppliers, users known to be concerned, and the GOI of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation.
- (9) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (10) In view of the apparent large number of exporting producers of the product concerned in India which were named in the request, it was considered appropriate, in accordance with Article 27 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 27 of the basic Regulation, to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the Notice of initiation. Only three exporting producers came forward. Therefore, no sampling was applied.
- (11) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from three Union producers, three exporting producers and the GOI. None of the other producers replied to the questionnaire or supplied any information. None of the importers came forward during the sampling exercise and no other importers supplied the Commission with any information or made themselves known in the course of the investigation.
- (12) One of the producers claimed that the assessment of the situation of the Union industry should also include data from another alleged Union producer. However, as it was found that this latter company was not a producer of the product under investigation, this claim was rejected.

- (13) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of subsidisation and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:

(a) Union producers:

- DSM Anti-Infectives B.V., Delft (The Netherlands), which also replied to the Commission's questionnaire on behalf of DSM Anti-Infectives Chemferm S.A., Santa Perpetua de Mogoda, (Spain). These two companies are hereafter jointly referred to as 'DSM',
- Deretil S.A. (formerly DSM Anti-Infectives Deretil S.A.), Almeria, Spain, referred to as 'Deretil', and
- Sandoz GmbH, Kundl (Austria), which also replied to the Commission's questionnaire on behalf of Sandoz Industrial Products S.A., Barcelona (Spain). Both companies are hereafter jointly referred to as 'Sandoz';

(b) Exporting producers in India:

- Lupin Limited, Mumbai,
- M/s Surya Pharmaceuticals Ltd, Chandigarh and Baddi, and
- Ranbaxy Laboratories Limited, Gurgaon;

(c) Government of India (GOI):

- Ministry of Commerce, New Delhi.

2. PRODUCT CONCERNED AND LIKE PRODUCT

- (14) The product covered by this review is the same product as the one concerned by Council Regulation (EC) No 713/2005, namely amoxicillin trihydrate, ampicillin trihydrate and cefalexin not put up in measured doses or in forms or packing for retail sale currently falling within CN codes ex 2941 10 00 and ex 2941 90 00 originating in India (the product concerned).
- (15) The investigation confirmed that, as in the previous review investigation, the product concerned and the products manufactured and sold by the exporting producers on the domestic market in India, as well as those manufactured and sold in the Union by the Union producers, have the same basic physical and technical characteristics as well as the same uses and are, therefore, considered to be like products within the meaning of Article 2(c) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION

3.1. Introduction

- (16) As mentioned in recital 11, three exporting producers came forward and completed a questionnaire reply. However, only two of these three exporting producers reported to have sales of the product concerned to the Union during the RIP.
- (17) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

Nationwide schemes:

- (a) Advance Authorisation Scheme (AAS);
- (b) Duty Entitlement Passbook Scheme (DEPBS);
- (c) Export Promotion Capital Goods Scheme (EPCGS);
- (d) Focus Market Scheme (FMS);
- (e) Duty Free Import Authorisation (DFIA);
- (f) Export Oriented Units (EOU)/Export Processing Zones (EPZ)/Special Economic Zones (SEZ);
- (g) Export Credit Scheme (ECS); and
- (h) Income Tax Exemption Scheme (ITES);

Regional schemes:

- (i) Punjab Industrial Incentive Scheme; and
 - (j) Gujarat Industrial Incentive Scheme.
- (18) The schemes (a) to (f) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in Foreign Trade Policy (FTP) documents, which are issued by the Ministry of Commerce every 5 years and updated regularly. Two FTP documents are relevant to the RIP of this case, i.e. FTP 04-09 and FTP 09-14. The latter

entered into force in August 2009. In addition, the GOI also sets out the procedures governing FTP 04-09 and FTP 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 04-09' and 'HOP I 09-14' respectively). The Handbook of Procedures is also updated on a regular basis.

- (19) Scheme (g) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India (RBI) to direct commercial banks in the field of export credits.
- (20) Scheme (h) is based on the Income Tax Act of 1961, which is amended by the yearly Finance Act.
- (21) Scheme (i) is administered by the Government of Punjab and is based on the industrial policy and incentives code of the Government of Punjab.
- (22) Scheme (j) is administered by the Government of Gujarat and is based on Gujarat's industrial incentive policy.

3.2. Advance Authorisation Scheme (AAS)

(a) *Legal basis*

- (23) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of FTP 04-09 and FTP 09-14 and paragraphs 4.1 to 4.30 A of HOP I 04-09 and HOP I 09-14.

(b) *Eligibility*

- (24) The AAS consists of six sub-schemes, as described in more detail in recital 25. Those sub-schemes differ, inter alia, in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of FTP 04-09 and FTP 09-14, such as suppliers of an export oriented unit (EOU), are eligible for AAS deemed export. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order (ARO) and back-to-back inland letter of credit.

(c) *Practical implementation*

- (25) Advance authorisations can be issued for:
- (i) physical exports: this is the main sub-scheme. It allows for duty free import of input materials for the production of a specific resultant export product. 'Physical' in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the advance authorisation;

- (ii) annual requirement: such an advance authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The advance authorisation holder can — up to a certain value threshold set by its past export performance — import duty free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resultant product falling under the product group using such duty-exempt material;
 - (iii) intermediate supplies: this sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter who produces the intermediate product can import duty free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product;
 - (iv) deemed exports: this sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of FTP 04-09 and FTP 09-14. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an EOU or to a company situated in a SEZ;
 - (v) ARO: the advance authorisation holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases, the advance authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of FTP 04-09 and FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;
 - (vi) back-to-back inland letter of credit: this sub-scheme again covers indigenous supplies to an Advance Authorisation holder. The advance authorisation holder can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The advance authorisation will be invalidated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to the forecast export benefits as set out in paragraph 8.3 of FTP 04-09 and FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).
- (26) During the RIP, one of the two cooperating exporters obtained concessions under AAS. The subschemes that this company used was (i) physical exports. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.
 - (27) Imported input materials are not transferable and have to be used to produce the resulting export product. The export obligation must be fulfilled within a prescribed time-frame after issuance of the advance authorisation. Since the combined review, it has been extended to 36 months (24 months with two extensions of 6 months each).
 - (28) For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain an actual consumption register (true and proper account) of duty free imported/domestically procured goods against each advance authorisation, as per prescribed format (paragraphs 4.26, 4.30 and Appendix 23 HOP I 04-09 and HOP I 09-14). This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects.
 - (29) With regard to the use of AAS for physical exports during the RIP, both the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the advance authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by government officials on the advance authorisation. The volume of imports allowed under this scheme is determined by the GOI on the basis of standard input-output norms (SIONs). SIONs exist for most products including the product concerned and are issued by the GOI. Since the combined review, the SIONs have been revised downwards and during the RIP they were, for the main raw material input and depending on the product and route, 2,3 % to 16,1 % lower than during the combined review.

- (30) In spite of this lowering of the SIONs, it was found that for one of the product types concerned, the actual consumption was still below the SIONs. Furthermore, it was found that, although mandatory, the company did not keep the consumption register referred to in recital 28 (Appendix 23), verifiable by an external accountant. In spite of the breach of this requirement, the company did avail the benefits under AAS which were moreover, in view of the found overestimation of the SIONs, in excess of the legal provisions therefore.

(d) *Disclosure comments*

- (31) The GOI and one exporting producer submitted comments on AAS.
- (32) The GOI claimed that AAS operates as a permitted drawback or substitution drawback system with a verification system in conformity with the provisions of Annexes I, II and III to the basic Regulation in place to monitor the nexus between duty free imported inputs and the resultant export products. The GOI further contended that, according to the basic Regulation, only the remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of exported products can be countervailed. With regard to a verification system, they insisted that an adequate verification system was in place. In this context they referred to a number of verification elements which were available to the GOI for such verification, including SIONs, quantity information on import and export documents and redemption verification after fulfilment of importation and exportation. The GOI also recalled that the scheme prescribes that, if there is any unutilised material, full duty is to be paid along with interest.
- (33) The exporting producer which had used AAS for its Union sales had no comments on the findings as concerns description and practical implementation, as summarised under sections (a) to (c), but it contested a number of figures in the calculation of the subsidy amount. Whilst the calculation was checked and no corrections needed to be made, these issues were clarified to the company concerned.

(e) *Conclusion*

- (34) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, i.e. a financial contribution of the GOI which conferred a benefit upon the investigated exporter.
- (35) In addition, AAS for physical exports is clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable

under Article 4(4), first subparagraph, point (a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under this scheme.

- (36) This expiry review has, therefore, confirmed that the main sub-scheme used in the present case cannot be considered as permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annexes I (item (i)), II (definition and rules for drawback) and III (definition and rules for substitution drawback) to the basic Regulation. Although a verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) to the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) to the basic Regulation) does exist, the GOI did not effectively apply it. The SIONs themselves cannot be considered a verification system of actual consumption, since they have been found to be overgenerous and it was established that benefits received in excess are not reclaimed by the GOI. Indeed, an effective control done by the GOI based on a correctly kept actual consumption register did not take place. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation). Finally, it has been confirmed that, although mandatory by law, the involvement of chartered accountants in the verification process is, in practice, not guaranteed.
- (37) AAS for physical exports is therefore countervailable.

(f) *Calculation of the subsidy amount*

- (38) In the absence of permitted duty drawback system or substitution drawback system, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect and as to the claim of the GOI in recital 32, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 3(1)(a)(ii) and Annex I(i) to the basic Regulation only an excess remission of duties can be countervailed, provided the conditions of Annexes II and III to the basic Regulation are met. However, these conditions were not fulfilled in the present case. Thus, if an absence of an adequate monitoring process is established, the above exception for drawback schemes is not applicable and the normal rule for countervailing the amount of (revenue forgone) unpaid duties, rather than any purported excess remission, applies. As set out in Annexes II(II) and III(II) to the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary,

according to Article 3(1)(a)(ii) of the basic Regulation it only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

- (39) The subsidy amount for the exporter which used the AAS was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the sub-scheme used for the product concerned during the RIP (nominator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount has been allocated over the export turnover generated by the product concerned during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.
- (40) The subsidy rate established in respect of this scheme during the RIP for the sole cooperating producer using it amounts to 12,3 %.

3.3. Duty Entitlement Passbook Scheme (DEPBS)

(a) Legal Basis

- (41) The detailed description of the DEPBS is contained in paragraphs 4.3 of FTP 04-09 and FTP 09-14 as well as in Chapter 4 of HOP I 04-09 and HOP I 09-14.

(b) Eligibility

- (42) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) Practical implementation

- (43) An eligible exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of SIONs (see recital 29) and the customs duty incidence on the presumed import content, regardless of whether import duties have actually been paid or not. The DEPBS rates for the product concerned during the RIP of the current investigation were 8 % for amoxicillin trihydrate and 7 % for ampicillin trihydrate and cefalexin, and therefore in all cases higher than during the combined review.
- (44) To be eligible for benefits under this scheme, a company must export. At the point in time of the export transaction, a declaration must be made by the exporter to the

authorities in India indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue, during the dispatch procedure, an export shipping bill. This document shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration was made. Therefore, there is no possibility for a retroactive amendment to the level of the benefit.

- (45) It was found that in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 24 months from the date of issue.
- (46) Applications for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. De facto, no strict deadlines to apply for DEPBS credits exist. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the deadline submission periods mentioned in paragraph 4.47 of HOP I 04-09 and HOP I 09-14. Furthermore, as clearly provided in paragraph 9.3 of the HOP I 04-09 and HOP I 09-14, applications received after the expiry of submission deadlines can always be considered with the imposition of a minor penalty fee (i.e. 10 % of the entitlement).
- (47) It was found that one cooperating Indian exporting producer used this scheme during the RIP.

(d) Disclosure comments

- (48) The GOI submitted that 'benefit to the recipient' can be measured and the countervailability of the subsidy can be determined only when DEPBS licenses are sold in the market as they would only confer a benefit if and when they are sold on the market. In other words, DEPBS credits would not be countervailable when they are used for payment of customs duty on the imported goods which are used as inputs for the production of exported goods.

(e) Conclusions on DEPBS

- (49) The DEPBS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A DEPBS credit is a financial contribution by the GOI,

since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the DEPBS credit confers a benefit upon the exporter, because it improves its liquidity not only if a license is sold on the market, as was claimed by the GOI, but also if it is used for payment of customs duty on imported goods.

- (50) Furthermore, the DEPBS is contingent in law upon export performance, and is therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

- (51) This scheme cannot be considered as permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I and Annexes II and III to the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS.

(f) Calculation of the subsidy amount

- (52) In accordance with Articles 3(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the review investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At this moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation.
- (53) In light of the above, it is considered appropriate to assess the benefit under the DEPBS as being the sum of the credits earned on all export transactions made under this scheme during the RIP.
- (54) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amounts as numerator, pursuant to Article 7(1)(a) of the basic Regulation.

- (55) In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

- (56) Based on the above, the subsidy rate established in respect of this scheme for the cooperating exporting producer using it during the RIP amounts to 6,9 %.

3.4. Export Promotion Capital Goods scheme (EPCGS)

(a) Legal basis

- (57) The detailed description of EPCGS is contained in Chapter 5 of FTP 04-09 and FTP 09-14 as well as in Chapter 5 of HOP I 04-09 and HOP I 09-14.

(b) Eligibility

- (58) Manufacturer-exporters, merchant-exporters 'tied to' supporting manufacturers and service providers are eligible for this scheme.

(c) Practical implementation

- (59) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate of 5 % applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period. Under FTP 09-14 the capital goods can be imported with 0 % duty rate under EPCGS but in such case the time period for fulfilment of the export obligation is shorter.

- (60) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail himself of the benefit for duty free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS licence holder.

- (61) It was found that both cooperating exporting producers used this scheme during the RIP.

(d) Disclosure comments

- (62) Upon disclosure the GOI contested the countervailability of EPCGS. In particular, it claimed that EPCGS subsidies with regard to the purchase of capital goods where the

export obligation was already fulfilled before the RIP, should not anymore be treated as contingent upon export performance. One exporting producer which was found to have received EPCGS subsidies claimed that these subsidies should not have been taken into account as they would not have been used for purchasing capital goods used for the production of the product concerned.

(e) Conclusion on EPCGS

(63) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI, since this concession decreases the GOI's duty revenue which would be otherwise due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve the company's liquidity.

(64) The claim that EPCGS subsidies with regard to the purchase of capital goods where the export obligation was already fulfilled before the RIP would not anymore be contingent upon export performance has to be rejected. Indeed, it is not contested that EPCGS is contingent in law upon export performance, since such EPCGS licences cannot be obtained without a commitment to export. Therefore it is deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. The moment in time where the export obligation would actually be fulfilled is irrelevant in that respect. As concerns the issue as to whether or not the capital goods are used for the production of the product concerned, according to Chapter 5.2 of FTP 09-14, the EPCGS allows imports of capital goods for pre production, production and post production (including complete knock-down (CKD)/semi knock-down (SKD) thereof as well as computer software systems). It is therefore clear that also goods not used for the production of the product concerned can benefit from EPCGS. In addition, it was established that the export obligation under EPCGS was fulfilled using exports of the product concerned. The claim is therefore rejected.

(65) EPCGS cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I, item (i), of the basic Regulation, because they are not consumed in the production of the exported products.

(f) Calculation of the subsidy amount

(66) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation

period of such capital goods in the industry concerned. Interests were added to this amount in order to reflect the full value of the benefit over time. The commercial interest rate for local currency loans during the review investigation period in India was considered appropriate for this purpose.

(67) In accordance with Article 7(2) and 7(3) of the basic Regulation this subsidy amount has been allocated over the export turnover during the RIP as appropriate denominator, because the subsidy is contingent upon export performance.

(68) The subsidy rate established in respect of this scheme for the cooperating exporting producers during the RIP amounts to 0,1 % — 0,5 %.

3.5. Focus Market Scheme (FMS)

(a) Legal basis

(69) The detailed description of FMS is contained in paragraphs 3.9.1 to 3.9.2.2 of FTP 04-09 and paragraphs 3.14.1 to 3.14.3 of FTP 09-14 and in paragraphs 3.20 to 3.20.3 of HOP I 04-09 and paragraphs 3.8 to 3.8.2 of HOP I 09-14.

(b) Eligibility

(70) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) Practical implementation

(71) Under this scheme exports of all products to countries notified under Appendix 37(C) of HOP I 04-09 and HOP I 09-14 are entitled to duty credit equivalent to 2,5 % of the FOB value of products exported under this scheme. Certain type of export activities are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units. Also excluded from the scheme are certain types of products, e.g. diamonds, precious metals, ores, cereals, sugar and petroleum products.

(72) The duty credits under FMS are freely transferable and valid for a period of 24 months from the date of issue of the relevant credit entitlement certificate. They can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods.

(73) The credit entitlement certificate is issued from the port from which the exports have been made and after realisation of exports or shipment of goods. As long as the applicant provides to the authorities copies of all relevant export documentation (e.g. export order, invoices, shipping bills, bank realisation certificates), the GOI has no discretion over the granting of the duty credits.

(d) *Disclosure comments*

- (74) After disclosure the GOI submitted that until the credit entitlement certificate is sold on the market, it would confer no benefit whatsoever to the recipient and, therefore, it would not be countervailable. It was claimed that FMS duty credits would not be countervailable when they are used for payment of customs duty on the imported goods which are used as inputs for the production of exported goods. The cooperating exporting producer which had availed benefits under FMS argued that the scheme is geographically related to other countries and, therefore, cannot be countervailed by the Union.

(e) *Conclusion on FMS*

- (75) The FMS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A FMS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, regardless as to whether the credit entitlement certificate is used for offsetting import duties or sold on the market, the FMS duty credit confers a benefit upon the exporter, because it improves its liquidity.
- (76) Furthermore, FMS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. The fact that Union countries are not covered under FMS does not contradict either the practical implementations of the scheme nor the way the FMS benefit is used, as stated under recitals 72 to 74. Therefore, this claim had to be rejected.
- (77) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I, point (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. There is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of Annex I, point (i), and Annexes II and III to the basic Regulation. An exporter is eligible for FMS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from FMS. Moreover, an exporter can use FMS duty credits in

order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I, point (i), to the basic Regulation, because they are not consumed in the production of the exported products.

(f) *Calculation of the subsidy amount*

- (78) The amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the RIP as booked by the cooperating exporting producer using the scheme on an accrual basis as income at the stage of export transaction. In accordance with Article 7(2) and 7(3) of the basic Regulation this subsidy amount (nominator) has been allocated over the export turnover during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (79) The subsidy rate established with regard to this scheme during the RIP for the cooperating exporting producer using the scheme amounts to < 0,1 %.

3.6. Duty Free Import Authorisation (DFIA)

- (80) In the course of the investigation it was found that the cooperating Indian producers did not obtain any benefits under DFIA during the RIP. It was therefore not necessary to further analyse this scheme in this investigation.

3.7. Export Oriented Units (EOU)/Export Processing Zones (EPZ)/Special Economic Zones (SEZ)

- (81) In the course of the investigation it was found that the cooperating Indian producers did not obtain any benefits under EOU/EPZ/SEZ during the RIP. It was therefore not necessary to further analyse these schemes in this investigation.

3.8. Export Credit Scheme (ECS)(a) *Legal basis*

- (82) The details of the scheme are set by in Master Circular on Rupee/Foreign Currency Export Credit & Customer Services to Exporters DBOD No DIR.(Exp). BC 07/04.02.02/2009-10 of the RBI, which is addressed to all commercial banks in India.

(b) *Eligibility*

- (83) Manufacturing exporters and merchant exporters are eligible for this scheme.

(c) *Practical implementation*

- (84) Under this scheme, the RBI mandatorily sets maximum ceiling interest rates applicable to export credits, both in Indian rupees or in foreign currency, which commercial banks can charge an exporter. The ECS consists of two sub-schemes, the Pre-Shipment Export Credit Scheme (packing credit), which covers credits provided to an exporter for financing the purchase, processing, manufacturing, packing and/or shipping of goods prior to export, and the Post-Shipment Export Credit Scheme, which provides for working capital loans with the purpose of financing export receivables. The RBI also directs the banks to provide a certain amount of their net bank credit towards export finance.
- (85) As a result of the RBI Master Circular, exporters can obtain export credits at preferential interest rates compared with the interest rates for ordinary commercial credits (cash credits), which are set purely under market conditions. The difference in rates might decrease for companies with good credit ratings. In fact, high rating companies might be in a position to obtain export credits and cash credits at the same conditions.

(d) *Conclusion on ECS*

- (86) The preferential interest rates of an ECS credit set by the RBI Master Circular mentioned in recital 85 can decrease interest costs of an exporter as compared with credit costs purely set by market conditions and confer in this case a benefit in the meaning of Article 3(2) of the basic Regulation on such exporter. Export financing is not per se more secure than domestic financing. In fact, it is usually perceived as being more risky and the extent of security required for a certain credit, regardless of the finance object, is a purely commercial decision of a given commercial bank. Rate differences with regard to different banks are the result of the methodology of the RBI to set maximum lending rates for each commercial bank individually. In addition, commercial banks would not be obliged to pass through to borrowers of export financing any more advantageous interest rates for export credits in foreign currency.
- (87) Despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is a financial contribution by a government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. In this context, it should be noted that neither Article 3(1)(a)(iv) of the basic Regulation nor the ASCM require a charge on the public accounts, e.g. reimbursement of the commercial banks by the GOI, to establish a subsidy, but only government direction to carry out functions illustrated in points (i), (ii) or (iii)

of Article 3(1)(a) of the basic Regulation. The RBI is a public body and falls therefore under the definition of a 'government' as set out in Article 2(b) of the basic Regulation. It is 100 % government-owned, pursues public policy objectives, e.g. monetary policy, and its management is appointed by the GOI. The RBI directs private bodies, within the meaning of the second indent of Article 3(1)(a)(iv) of the basic Regulation, since the commercial banks are bound by the conditions it imposes, inter alia, with regard to the maximum ceilings for interest rates on export credits mandated in the RBI Master Circular and the RBI provisions that commercial banks have to provide a certain amount of their net bank credit towards export finance. This direction obliges commercial banks to carry out functions mentioned in Article 3(1)(a)(i) of the basic Regulation, in this case loans in the form of preferential export financing. Such direct transfer of funds in the form of loans under certain conditions would normally be vested in the government, and the practice, in no real sense, differs from practices normally followed by governments, within the meaning of Article 3(1)(a)(iv) of the basic Regulation. This subsidy is deemed to be specific and countervailable since the preferential interest rates are only available in relation to the financing of export transactions and are therefore contingent upon export performance, pursuant to Article 4(4)(a) of the basic Regulation.

(e) *Calculation of the subsidy amount*

- (88) The subsidy amount has been calculated on the basis of the difference between the interest paid for export credits used during the RIP and the interest rate that would have been payable for ordinary commercial credits used by the sole cooperating exporting producer using the scheme. This subsidy amount (numerator) has been allocated over the total export turnover during the RIP as appropriate denominator in accordance with Article 7(2) of the basic Regulation, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (89) The subsidy rate established with regard to this scheme for the RIP for the cooperating exporting producer using the scheme was negligible.

3.9. Income Tax Exemption Scheme (ITES)

- (90) In the course of the investigation it was found that the cooperating Indian producers did not obtain any benefits under ITES during the RIP. It was therefore not necessary to further analyse this scheme in this investigation.

3.10. Punjab Industrial Incentive Scheme

- (91) In the course of the investigation it was found that the cooperating Indian producers did not obtain any benefits under the Punjab Industrial Incentive Scheme during the RIP. It was therefore not necessary to further analyse this scheme in this investigation.

3.11. Gujarat Industrial Incentive Scheme

- (92) In the course of the investigation it was found that the cooperating Indian producers did not obtain any benefits under the Gujarat Industrial Incentive Scheme during the RIP. It was therefore not necessary to further analyse this scheme in this investigation.

3.12. Amount of countervailable subsidies

- (93) The amount of countervailable subsidies determined in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers range between 7,5 % and 12,4 %. These amounts of subsidisation exceed the *de minimis* threshold mentioned under Article 14(5) of the basic Regulation.
- (94) It is therefore considered that, pursuant to Article 18 of the basic Regulation, subsidisation continued during the RIP.

3.13. Conclusions on the likelihood of continuation or recurrence of subsidisation

- (95) In accordance with Article 18(2) of the basic Regulation, it was examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of subsidisation.
- (96) In this respect, it is recalled that only two known exporting producers of the product concerned cooperated. From the available Indian and Union statistical information the share of these exporters in the total Union sales of Indian exporting producers of the product concerned cannot be established. However, those statistical data would suggest that there are other producers which could sell the product concerned to the Union.
- (97) It was established that during the RIP, the cooperating exporting producers continued to benefit from countervailable subsidisation by the Indian government. The subsidy schemes analysed above give recurring benefits and there are no indications that these programmes would be phased out or modified in the foreseeable future or that the cooperating exporting producers would stop obtaining benefits under these schemes.
- (98) There is no information available which would indicate that the other exporting producers would not continue to benefit from the subsidy schemes analysed above. It is therefore concluded that the subsidisation at the country-wide level continued.
- (99) In view of the findings described above it is concluded that subsidisation continued during the RIP and would be likely to continue in the future.

4. UNION PRODUCTION

- (100) During the review investigation period, the like product was manufactured in the Union by the following Union producers: Sandoz, DSM, Deretil, ACS Dobfar SpA and Antibioticos S.A.. The applicants requested an expiry review of the anti-subsidy measures in force. All available information concerning Union producers, including information provided in the request and data collected from Union producers before and after the initiation of the review investigation, was used in order to establish the total Union production. On that basis, the estimated total Union production during the RIP was 7 093 tonnes.
- (101) The Union producers accounting for the total Union production constitute the Union industry within the meaning of Article 9(1) of the basic Regulation and are hereafter referred to as the 'Union industry'. Since the like product produced by the three Union producers who submitted a questionnaire response during the RIP represented up to 95 % of the total Union production of the like product, these producers' data are considered to be representative of the entire Union industry.

5. SITUATION ON THE UNION MARKET

5.1. Preliminary remark

- (102) To analyse the import volumes and price trends, the Eurostat import statistics for TARIC codes 2941 10 10 10, 2941 10 20 10 and 2941 90 00 30 for the years 2007 and 2008 and TARIC codes 2941 10 00 10 and 2941 90 00 30 for the year 2009 and onwards, as applicable during the period considered, were used.
- (103) Taking into account the number of Union producers and the fact that one Union producer was producing the like product under a tolling agreement with another one, the information concerning the Union industry, where necessary, has been shown in indices or in ranges only, in order to protect confidentiality of data.

5.2. Consumption in the Union market

- (104) The like product is sold by the Union industry to unrelated customers and sold/transferred to related companies for further downstream processing.
- (105) Sales to unrelated entities were considered to form the 'free market'. Sales/transfers to related entities were considered as 'captive use'.
- (106) In calculating the apparent Union consumption of the product concerned and the like product, the Commission added:
- the volume of total imports of the product under investigation into the Union as reported by Eurostat,
 - the volume of sales of the like product in the Union produced by the Union industry,

- the volume of captive use of the like product by the Union industry, and
- the estimated sales of the like product in the Union by other known Union producers.

- (107) It should be noted that, in order to avoid double-counting of sales volumes, the sales made under a tolling agreement between two Union producers were excluded from the above calculation.
- (108) On the above basis, the Union consumption of the product concerned and the like product gradually increased by 28 % during the period considered:

Consumption (in tonnes)	2007	2008	2009	RIP
Product concerned and like product	6 601	7 021	7 783	8 423
Index	100	106	118	128

5.3. Imports from India

5.3.1. Volume, market share and prices of imports from India

Imports (in tonnes)	2007	2008	2009	RIP
Product concerned imports for free circulation	32,6	16,1	1,9	1,4
Index	100	49	6	4
Product concerned imports under inward processing regime	45,5	3,7	15,5	14,5
Index	100	8	34	32

- (109) According to Eurostat data, the volume of imports of the product concerned from India for free circulation has decreased by 96 % during the period considered. A considerable drop by 51 percentage points has been observed in 2008 then followed by a further decrease by 43 percentage points in 2009 and two percentage points in the RIP.
- (110) A slightly different trend could be observed for imports under inward processing regime which are free from countervailing and custom duties. After an initial fall in imports by 92 % between 2007 and 2008, imports increased in 2009 and remained relatively stable in the RIP.

Average import price (EUR/tonne)	2007	2008	2009	RIP
Product concerned imports for free circulation	25 863	28 934	34 758	19 200
Index	100	112	134	74

Average import price (EUR/tonne)	2007	2008	2009	RIP
Product concerned imports under inward processing regime	35 616	37 443	30 894	30 044
Index	100	105	87	84

- (111) The average import price of the product concerned from India for free circulation increased by 34 % between 2007 and 2009, then sharply dropped in the RIP, to reach a level 26 % lower than in 2007. Also prices of imports under inward processing regime followed a downward trend and decreased by 16 % over the period considered. The different price trends between the two import regimes can be explained by the different type of the product concerned that was mainly imported, i.e. cefalexin, which is comparatively more expensive than other types.

Market share of imports from India	2007	2008	2009	RIP
Product concerned, imports for free circulation	0,5 %	0,2 %	0,0 %	0,0 %
Index	100	46	5	3
Product concerned imports under inward processing regime	0,7 %	0,1 %	0,2 %	0,2 %
Index	100	8	29	25

- (112) The market share of imports from India for free circulation or made under inward processing regime was very low over the period considered and decreased in both cases.
- (113) One Union producer indicated that Indian imports, which were based on Eurostat data, had been wrongly estimated as Indian export statistics show higher export volumes than those stated by Eurostat. In this regard, it should be noted that it is the Commission's standard practice to use Eurostat as a basis for import statistics. It is further noted that Indian export statistics do not indicate the final destination of the exports and whether they will actually enter the Union. This claim had therefore to be rejected.

5.3.2. Price undercutting

- (114) In view of the extremely low quantity of imports from India that entered the Union market for free circulation, no meaningful conclusion could be drawn in regard to price undercutting. In regard to the imports under the inward processing regime, the undercutting margin found was negative. However, these imports amounted to less than 10 tonnes and concerned only one product type (cefalexin), which is also the most expensive and less represented product type on the market. Therefore, it was concluded that the transaction data concerning imports under the inward processing regime were not representative for the purpose of a meaningful undercutting calculation and not suitable for further analysis.

(115) One Union producer indicated that a segregated analysis of the two categories of imports, i.e. for free circulation and under the inward processing regime, was not in line with the approach of the previous review proceeding and was also contrary to consistent Commission practice.

(116) In this regard, it should be noted that as concluded in recital 115, quantities imported either under the inward processing regime or for free circulation were not sufficient to allow meaningful conclusions to be drawn. Considering the low level of the aggregated volume, this conclusion equally applies to that volume.

5.4. Imports from other third countries

Third country imports	2007	2008	2009	RIP
Volume (tonnes)				
Singapore	1 557,7	1 448,2	2 030,5	2 425,3
Index	100	93	130	156
China	487,6	622,5	1 176,9	1 234,7
Index	100	128	241	253
Oman	373,4	438,5	301,7	287,9
Index	100	117	81	77
Other third countries	67,8	327,5	74,2	73,2
Index	100	483	109	108
Total	2 486,5	2 836,7	3 583,3	4 021,1
Index	100	114	144	162

(117) Imports of the product under review from countries other than India increased by 62 % during the period considered, with market share surging by more than 10 percentage points from 37,6 % to 47,7 %, which coincided with the increased consumption on the Union market. Among exporting countries, Singapore, China and Oman have been the major suppliers on the Union market.

Average import price per tonne (EUR)	2007	2008	2009	RIP
Singapore	44 218	36 590	27 007	22 485
Index	100	83	61	51
China	29 515	26 622	21 224	20 683
Index	100	90	72	70
Oman	29 875	27 665	23 440	22 597
Index	100	93	78	76

Average import price per tonne (EUR)	2007	2008	2009	RIP
Other third countries	38 324	35 987	45 628	46 938
Index	100	94	119	122
Total	39 020	32 953	25 193	22 385
Index	100	84	65	57

(118) Average import prices from third countries have decreased significantly by 43 % over the period considered. Although the prices of the main exporting countries (Singapore, China and Oman) undercut the Union prices by around 20 % in the RIP on a product per product basis and the import volumes can be regarded as significant, such low priced imports did apparently not affect the profitability of the Union industry.

(119) One Union producer claimed that the analysis of the average import price trends should have taken account of the various product types. In this regard, it should be noted that, in line with standard practice, the analysis of, inter alia, price trends has to be made on the basis of the product concerned regardless of the share of each product type. It is further noted that, in this case, no conclusion was drawn from the trend in import prices from third countries over the period considered. The above claim therefore had to be rejected.

(120) All Union producers claimed that imports from, inter alia, China and Oman are mainly of amoxicillin trihydrate for veterinary use and this should have been taken into account in the analysis of the above prices. In this regard, it is noted that the product under review covers antibiotics for both human and veterinary consumption. Furthermore, the information provided in support of this allegation was not substantiated. Therefore, the above claim had to be rejected.

(121) One Union producer questioned the basis on which price comparisons for amoxicillin trihydrate and ampicillin trihydrate were made in the RIP given the fact that Eurostat data does not distinguish between these two product types. In this regard, as it was found that the Union industry's prices of these two product types were similar, it was not unreasonable to make an aggregate price comparison.

(122) As far as imports from Singapore are concerned, all Union producers claimed that they were made at transfer price between related parties. In these circumstances, to include these imports would distort the average prices from other third countries. It is noted that, if these imports were to be excluded from the price comparison, the above mentioned finding with regard to the undercutting margin would not change significantly and the conclusion that the low priced imports did not affect the profitability of the Union industry would remain valid.

5.5. Economic situation of the Union industry

(123) For the following economic indicators relating to the Union industry, it was found that a meaningful analysis and evaluation had to focus on the situation prevailing on the free market: sales volume and sales prices on the Union market, market share and profitability. Where possible and justified, these findings were subsequently compared with the data for the captive market, in order to provide a full picture of the situation of the Union industry.

(124) As regards other economic indicators, however, it was found on the basis of the investigation, that they could reasonably be examined only by referring to the whole activity. Indeed, production (for both the captive and the free market), capacity, capacity utilisation, inventories, investments, stocks, employment, productivity, wages, growth, ability to raise capital depend upon the whole activity, whether the production is captive or sold on the free market.

(125) Following comments received from one Union producer on the final disclosure of the facts and considerations on the basis of which it was proposed to terminate the proceeding, some of the economic indicators in the following recitals have been corrected. These changes were not of a nature to change the conclusion with regard to the situation of the Union industry.

5.5.1. Production, capacity and capacity utilisation

	2007	2008	2009	RIP
Index capacity	100	100	104	107
Index production	100	95	96	98
Index capacity utilisation	100	95	92	91

(126) The Union industry's production capacity was stable between 2007 and 2008 before increasing by 4 % from 2008 to 2009 and by a further 3 percentage points in the RIP.

(127) However, the production volume did not follow this increase due to unforeseen technical difficulties of one Union producer in 2008, when production volume dropped by 5 % and recovered gradually until the RIP.

(128) As a result of the increase in production capacity combined with a small fall in production, the capacity utilisation rate continually dropped in the period considered and reached a level in the RIP that was 9 % below that in 2007.

5.5.2. Sales volume, sales price, market share

5.5.2.1. Free market sales

Sales to unrelated parties in the Union	2007	2008	2009	RIP
Index volume	100	97	93	99
Index average sales price	100	121	104	104
Index market share	100	90	79	78

(129) The Union industry's sales volume to unrelated parties in the RIP was slightly below the level of 2007, dropping by 7 % in 2009 and then increasing by six percentage points during the RIP.

(130) The average sales price of the Union industry on the Union market increased by 4 % over the period considered. Prices first increased sharply by 21 % in 2008 before dropping by 17 percentage points in 2009 and remaining stable in the RIP.

(131) One Union producer claimed that the price impact of imports from India on the Union industry was not correctly assessed. In this regard, it is first of all noted that no undercutting was found as mentioned in recital 115. Additionally, as indicated in the preceding recital, Union industry prices increased by 4 % over the period considered. In these circumstances it is considered that imports from India did not have any negative effect on the situation of the Union industry.

(132) Decreasing sales on the Union market to unrelated parties were reflected in the development of the market share which dropped by 22 percentage points in the RIP compared to 2007.

5.5.2.2. Captive market

Captive market in the Union	2007	2008	2009	RIP
Index volume	100	115	122	128
Index average sales price of captive sales	100	100	111	110
Index market share	100	109	104	100

(133) While Union industry's sales volume to unrelated parties was decreasing despite increasing demand during the period considered, captive sales increased by 28 %.

(134) The market share of the captive market of the Union industry increased by 9 percentage points in 2008 before decreasing progressively to the 2007 level.

5.5.2.3. Market share of the Union industry/Growth

Sales to unrelated parties, captive sales and captive use	2007	2008	2009	RIP
Index volume	100	107	108	114
Index market share	100	100	92	90

- (135) Market share of the Union industry as a whole was measured by adding free and captive market volumes in the Union. Although this volume increased over the period considered by 14 %, the market share of the Union industry decreased by 10 percentage points as market consumption increased by 28 % over the same period. This indicates that the Union industry did not benefit from the growth in consumption.

5.5.3. Inventories

Stocks	2007	2008	2009	RIP
Index volume	100	74	63	46

- (136) The stock level dropped by 54 % from 2007 to the end of the RIP, which is mainly explained by the increased captive demand.

5.5.4. Profitability

5.5.4.1. Profitability on the free market

Profitability on the free market	2007	2008	2009	RIP
Index	100	447	218	253

- (137) The profitability of Union industry's sales to unrelated parties on the Union market improved significantly by 153 percentage points during the RIP. This development can be explained by an average increase in prices of 2 % and a decrease in production cost. As compared to the profit margin achieved in the review investigation period of the last expiry investigation, the profit has increased by more than 400 percentage points.

- (138) It should be noted that, with the exception of year 2007, Union industry profit level was above the target profit margin established in the previous expiry review investigation; i.e. 10 % (target profit), over the period considered.

- (139) Two Union producers claimed that profitability had not been assessed properly as the profit achieved by related upstream suppliers were deducted from their costs. In this regard, it is consistent practice to deduct the profits achieved by related parties involved in the production of raw materials. In these circumstances, this argument had to be rejected.

5.5.4.2. Profitability of captive sales

Profitability of captive sales	2007	2008	2009	RIP
Index	100	55	153	151

- (140) The profitability of Union industry's captive sales on the Union market improved by 51 % during the RIP. This development is largely explained by an average increase in prices of 10 %. However, since this price trend is based on transfer prices, no meaningful conclusion should be drawn from the above.

5.5.5. Investments, return on investment, cash flow and the ability to raise capital

	2007	2008	2009	RIP
Index investments	100	246	342	129
Index return on investment	100	233	52	62
Index cash flow	100	236	83	107

- (141) Investments increased during the period considered. The investments related to increases in production capacity with the aim to deliver both the captive and the free markets.

- (142) The investigation also showed that the return on investments, i.e. pre-tax net profit of the product expressed as a percentage of the net book value of fixed assets allocated to the product, decreased during the period considered.

- (143) Cash flow increased by 7 % over the period considered as the decrease in profitability could be compensated by a decrease in inventory in the second half of the period considered.

5.5.6. Employment, productivity and wages

	2007	2008	2009	RIP
Index employment	100	106	111	109
Index productivity	100	89	87	89
Index wages	100	104	106	106

- (144) Employment increased by 9 % during the period considered in line with the investments in production capacity, while average wages increased by only 6 %. Productivity decreased by 11 % overall following the unexpected technical difficulties faced by one Union producer.

5.5.7. *Magnitude of the amount of countervailable subsidies and recovery from past subsidisation*

- (145) Given the volume of the subsidised imports from India, the impact of the actual amount of subsidisation cannot be considered to be significant.
- (146) The situation of the Union industry improved significantly since the last review investigation and in the period considered. It can therefore be assessed that the Union industry managed to recover fully from past subsidisation.

5.6. **Conclusion on the economic situation of the Union industry**

- (147) Between 2007 and the review investigation period, the volume of subsidised imports of the product concerned was negligible. With the exception of certain injury indicators such as market share, production volume and return on investment, most injury indicators including profitability (+ 153 %), sales price (+ 4 %), sales volume (+ 14 %), employment (+ 10 %) and investments (+ 29 %) developed positively during the period considered. The profit levels achieved in the Union market were, with the exception of year 2007, above the target profit margin established in the previous expiry review investigation; i.e. 10 %. The positive trend shown by the vast majority of indicators is mainly due to the reliability of the Union industry and the long standing customer relationship that it has developed over the past years, but also to the price level that it managed to achieve on the market.
- (148) One Union producer claimed that the analysis of the price and profit trends should take account of the shortages in raw materials in 2007 and 2008. It was claimed that these shortages led to exceptional increases in prices and profits in 2008 and to a limited extent in 2009. In this regard, as can be seen in Tables 5.5.2.1 and 5.5.4.1, the exceptional price and profit levels only pertain to 2008. The profit levels achieved in 2009 and the RIP appear no longer to be affected by the raw material shortages. The conclusion in recital 139, that profits throughout the period considered were above the target profit, remain valid.
- (149) Regarding captive sales, the option for the Union industry to sell part of its production on the captive market ensured high levels of capacity utilisation and enabled the Union industry to dilute fixed costs and to remain cost competitive.
- (150) In conclusion, in view of the positive development of the indicators pertaining to the Union industry, it is

considered that the Union industry did not suffer material injury during the period considered.

5.7. **Effect of subsidised imports**

- (151) Given the low volumes of the product concerned that were imported in the Union over the period considered, the subsidised imports did not adversely affect the performance of the Union industry. Indeed, as stated above, it is considered that the industry did not suffer material injury during the period considered.

6. **LIKELIHOOD OF RECURRENCE OF INJURY**

- (152) It is recalled that the Union industry did not suffer material injury during the period considered as most injury indicators showed positive trends over this period. In accordance with Article 18(2) of the basic Regulation, it was therefore examined whether the expiry of the measures in force would be likely to result in a recurrence of injury.

6.1. **Spare capacity in the country concerned**

- (153) The investigation showed that the capacity utilisation of the three cooperating Indian producers had reached very high levels in the RIP. On that basis, spare capacities, which could be directed to the Union market in the absence of measures, would appear to be limited.
- (154) After disclosure it was claimed by several Union producers that the spare capacities in India were high and that the capacity utilisation rate of the cooperating Indian exporting producers was not representative for the Indian sector as a whole. One Union producer even claimed that the spare capacities of seven leading Indian exporters would represent volumes largely above the Union free market consumption.
- (155) In this respect it should first be underlined that the capacity utilisation rate of the three cooperating exporting producers was a weighted average calculation based on verified data and specifically relating to the product concerned. Moreover, the three cooperating exporting producers concerned were large producers and among the seven Indian exporters referred to, by the claimant, as 'leading'. On the contrary, the data presented by the Union producers on these seven Indian producers' spare capacity were mainly based on 'market knowledge' and, although this was specifically requested, they could not be substantiated by solid factual evidence. Therefore, that information had to be disregarded and it was confirmed that, based on the verified data on the file, Indian spare capacities appear to be limited.

6.2. Export behaviour of the Indian exporting producers

(156) On the basis of data from Indian official statistics, it was established that the prices of export sales to India's ten main export markets were around 20 % on average lower than the prices of the Union industry sales on the Union market in the RIP. These Indian export prices were in line with the prices of the other main players on the Union market as set out in recital 119. It was found that low priced imports during the period considered from these other countries did not have a negative effect on the performance of the Union industry. In these circumstances, it is considered that, should measures be allowed to lapse, Indian export prices would likely not be harmful to the Union industry as it is already facing competition from other exporting countries with the same pricing behaviour without suffering any material injury.

(157) Two Union producers also submitted that, if measures were to lapse, Indian producers would redirect exports currently sold on other markets to the Union on account of the attractiveness of the Union market in terms of prices. First of all it is noted that, if Indian producers were to re-direct their exports to the Union, they would enter in competition with other third countries that are already exporting significant quantities to the Union. Furthermore, as mentioned in recital 119, it has been concluded that imports from third countries, at prices similar to Indian export prices to other markets, have not affected the performance of the Union industry. On this basis, it is considered that if Indian export quantities to the Union increase at prices similar to those on other export markets, the Union industry would not suffer any material injury.

(158) Two Union producers also claimed that the fact that there were import bans in place in the US against certain antibiotic production plants in India would lead to the re-direction of additional quantities to the Union market. However, in this regard, the conclusions in the preceding recital on the possible re-direction of exports remain valid.

6.3. Captive market

(159) While the captive market accounted for 50 to 60 % of the free and captive markets of the Union industry in the period considered, consumption in the Union industry captive market increased by more than 20 % over the same period. Considering the characteristics and size of this market, it is believed that, should measures be allowed to lapse, the captive market would not be affected by the likely increase in Indian exports and would therefore continue to ensure high capacity utilisation rates and economies of scale for the Union industry.

6.4. Conclusion on the likelihood of recurrence of injury

(160) On the basis of the above, it was concluded that, should measures be allowed to lapse, subsidised imports from India are not likely to cause material injury to the Union industry as most injury indicators developed positively over the period considered in spite of significant and increasing imports from other countries that were priced similarly to Indian exports to other countries. It was therefore concluded that material injury was not likely to recur, should measures be allowed to lapse.

7. UNION INTEREST

(161) One Union producer claimed that a Union interest test analysis should have been carried out. In this regard, as it has been concluded that there is no likelihood of recurrence of injury, a Union interest test serves no purpose. In these circumstances, this claim was rejected.

8. SPECIAL MONITORING

(162) In view of the finding on the likelihood of continuation of subsidisation as mentioned in recital 100 and the impact it might have on future trade flows, the Commission will monitor the import volumes of the product concerned. Should there be a significant change in these quantities, the Commission will give consideration to what action, if any, is to be taken.

(163) The monitoring will be limited to a period of 2 years after the publication of this Regulation.

9. TERMINATION

(164) In the light of the results of this review investigation, it is considered appropriate to repeal the countervailing duty on imports of certain broad spectrum antibiotics originating in India.

(165) Interested parties were informed of the essential facts and considerations on the basis of which it was proposed to terminate the investigation and were given the opportunity to comment. The comments received were addressed under the relevant sections above and were not of a nature to change the above conclusions.

HAS ADOPTED THIS REGULATION:

Article 1

The expiry review of the countervailing measures applicable to imports of certain broad spectrum antibiotics, currently falling within CN codes ex 2941 10 00 and ex 2941 90 00 originating in India, initiated pursuant to Article 18(2) of Regulation (EC) No 597/2009, is hereby terminated and the measures in force on imports originating in India are repealed.

Article 2

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

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

Done at Brussels, 4 August 2011.

For the Council
The President
M. DOWGIELEWICZ

COUNCIL IMPLEMENTING REGULATION (EU) No 804/2011**of 10 August 2011****implementing Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya ⁽¹⁾, and in particular Article 16(2) thereof,

Whereas:

(1) On 2 March 2011, the Council adopted Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya.

(2) In view of the gravity of the situation in Libya and in accordance with Council Implementing Decision 2011/500/CFSP of 10 August 2011 implementing Decision 2011/137/CFSP concerning restrictive

measures in view of the situation in Libya ⁽²⁾, two additional entities should be included in the list of natural and legal persons, entities or bodies subject to restrictive measures set out in Annex III to Regulation (EU) No 204/2011,

HAS ADOPTED THIS REGULATION:

Article 1

The entities listed in the Annex to this Regulation shall be added to the list set out in Annex III to Regulation (EU) No 204/2011.

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, 10 August 2011.

For the Council

The President

M. DOWGIELEWICZ

⁽¹⁾ OJ L 58, 3.3.2011, p. 1.

⁽²⁾ See page 53 of this Official Journal.

ANNEX

Entities referred to in Article 1

	Name	Identifying information	Reasons	Date of listing
1.	Al-Sharara Oil Services Company (a.k.a.: Al Sharara, Al-shahara oil service company, Sharara Oil Service Company, Sharara, Al-Sharara al-Dhahabiya Oil Service Company)	Al-Saqa District, Beside al-Saqa Mosque, Tripoli, Libya Tel: +218 21362 2163 Fax: +218 21362 2161	Entity acting on behalf of or at the direction of the Qadhafi Regime.	10.8.2011
2.	Organisation for Development of Administrative Centres (ODAC)	www.odac-libya.com	Entity acting on behalf of or at the direction of the Qadhafi Regime and a potential source of funding for the regime. ODAC has facilitated thousands of government funded infrastructure projects.	10.8.2011

COMMISSION REGULATION (EU) No 805/2011**of 10 August 2011****laying down detailed rules for air traffic controllers' licences and certain certificates pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

training should be certified or licensed once they have been found to comply with the essential requirements.

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

Having regard to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC⁽¹⁾, and in particular Article 8c(10) thereof,

Whereas:

(1) Regulation (EC) No 216/2008 aims at establishing and maintaining a high uniform level of civil aviation safety in Europe. That Regulation provides for the means of achieving that objective and other objectives in the field of civil aviation safety.

(2) The implementation of Regulation (EC) No 216/2008, as well as the new Single European Sky II legislation⁽²⁾ requires the establishment of more detailed implementing rules, in particular concerning the licensing of air traffic controllers, in order to maintain a high uniform level of civil aviation safety in Europe, to achieve the highest standards of responsibility and competence, to improve the availability of air traffic controllers and to promote the mutual recognition of licences while pursuing the objective of an overall improvement in air traffic safety and competence of personnel.

(3) Air traffic controllers as well as persons and organisations involved in the training, testing, checking or medical assessment of those air traffic controllers, have to comply with the relevant essential requirements set out in Annex Vb to Regulation (EC) No 216/2008. According to that Regulation air traffic controllers as well as persons and organisations involved in their

(4) The licence introduced by Directive 2006/23/EC of the European Parliament and of the Council of 5 April 2006 on a Community air traffic controller licence⁽³⁾ has proved to be as a successful tool for recognising the specific role which air traffic controllers play in the safe provision of air traffic control. The establishment of Union-wide competence standards has reduced fragmentation in this field, making for more efficient organisation of work in the framework of growing regional collaboration between air navigation service providers. Therefore, maintaining and enhancing the common licensing scheme for air traffic controllers in the Union is an essential element of the European air traffic control system.

(5) Directive 2006/23/EC has been repealed by Regulation (EC) No 1108/2009 of the European Parliament and of the Council⁽⁴⁾. However, the provisions of Directive 2006/23/EC continue to apply until the date of application of the measures referred to in Article 8c(10) of Regulation (EC) No 216/2008. This Regulation provides for those measures.

(6) The provisions of this Regulation reflect the state of the art, including best practices and scientific and technical progress, in the field of air traffic controller training. They have been developed on the basis of Directive 2006/23/EC and provide for the Member States a common transposition of the Standards and Recommended Practices set by the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 and the Safety Regulatory Requirements adopted by the European Organisation for the Safety of Air Navigation (Eurocontrol) set up by the International Convention of 13 December 1960.

(7) In order to ensure uniformity in the application of common air traffic controller licensing and medical certification requirements common procedures should be followed by the competent authorities of the Member States and, where applicable, the European Aviation Safety Agency, 'the Agency', to assess compliance with these requirements; the Agency should develop certification specifications, acceptable means of compliance and guidance material to facilitate the necessary regulatory uniformity.

⁽¹⁾ OJ L 79, 19.3.2008, p. 1.

⁽²⁾ Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system (OJ L 300, 14.11.2009, p. 34).

⁽³⁾ OJ L 114, 27.4.2006, p. 22.

⁽⁴⁾ OJ L 309, 24.11.2009, p. 51

- (8) The particular characteristics of air traffic in the Union call for the introduction and effective application of common competence standards for air traffic controllers employed by air navigation service providers providing air traffic management and air navigation services (ATM/ANS) to the public.
- (9) Member States should however, as far as practicable, ensure that services provided or made available by military personnel to the public offer a level of safety that is at least equivalent to the level required by the essential requirements set out in Annex Vb of the Basic Regulation. Therefore, Member States may also decide to apply this Regulation to their military personnel providing services to the public referred to in Article 1(2)(c) of that Regulation.
- (10) Authorities performing supervision and verification of compliance should be sufficiently independent of air navigation service providers and training providers. The authorities must also remain capable of performing their tasks efficiently. The competent authority designated for the purpose of this Regulation may be the same body or bodies nominated or established in accordance with Article 4 of Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky⁽¹⁾, as amended by Regulation (EC) No 1070/2009. The Agency should act as a competent authority for the purpose of this Regulation to issue and renew the certificates of air traffic controller training organisations located outside the territory of the Member States and where relevant, their personnel.
- (11) The provision of air navigation services requires highly skilled personnel whose competence can be demonstrated by several means. For air traffic control the appropriate means is to maintain a common licensing scheme for air traffic controllers in the Union, to be seen as a kind of diploma, for each individual air traffic controller. The rating on a licence should indicate the type of air traffic service an air traffic controller is competent to provide. At the same time, the endorsements included on the licence reflect both the specific skills of the controller and the authorisation by the competent authorities to provide services for a particular sector or group of sectors. That is why the authorities should be in a position to evaluate the competence of air traffic controllers when issuing licences or extending the validity of the endorsements. The competent authorities should also be in a position to suspend a licence, ratings or endorsements when competence is in doubt.
- (12) Acknowledging the need to strengthen further the safety culture especially by integrating reliable incident reporting and Just Culture in order to learn from incidents, this Regulation should not establish an automatic link between an incident and the suspension of a licence, rating or endorsement. Revocation of a licence should be considered as the last resort for extreme cases.
- (13) In order to enhance the confidence of Member States in each other's air traffic controller' licensing systems, common rules for obtaining and maintaining licences are indispensable. It is therefore important, with a view to ensuring the highest level of safety, to introduce uniform requirements as regards training, qualifications, competence and access to the profession of air traffic controller. This should lead to the provision of safe, high-quality air traffic control services and contribute to the recognition of licences throughout the Union, thereby increasing freedom of movement and improving the availability of air traffic controllers.
- (14) This Regulation should not lead to circumvention of existing national provisions governing the rights and obligations applicable to the employment relationship between an employer and applicant air traffic controllers.
- (15) In order to make skills comparable throughout the Union, they need to become structured in a clear and generally accepted way. This will help to guarantee safety not only within the airspace under the control of one air navigation service provider, but especially at the interface between different service providers.
- (16) In many incidents and accidents, communication plays a significant role. Therefore, this Regulation lays down detailed language knowledge requirements for air traffic controllers. Those requirements are based on the requirements adopted by the International Civil Aviation Organisation (ICAO) and provide a means of enforcing these internationally accepted standards. There is a need for observance of the principles of non-discrimination, transparency and proportionality in language requirements, so as to encourage free movement while ensuring safety.

⁽¹⁾ OJ L 96, 31.3.2004, p. 10.

- (17) The objectives of initial training are described in Eurocontrol's 'Specification for the ATCO Common Core Content Initial Training' developed at the request of the members of Eurocontrol and are considered the appropriate standards. For unit training the lack of generally accepted standards needs to be offset by a range of measures, including the approval of examiners and competence assessors, which should guarantee high standards of competence. This is all the more important as unit training is very costly and decisive in terms of safety. ICAO has developed standards also in areas where there are no common European training requirements. In the absence of European training requirements Member States may rely on such ICAO standards.
- (18) Medical requirements have been developed at the request of Eurocontrol Member States and are considered as appropriate standards for the purpose of ensuring compliance with this Regulation. In particular the issue of medical certificates should be consistent with the Requirements for European Class 3 Medical Certification of Air Traffic Controllers laid down by Eurocontrol.
- (19) The certification of training organisations should be considered, in terms of safety, as one of the decisive factors contributing to the quality of air traffic controller training. Therefore it is necessary to lay down the requirements for training organisations. Training should be seen as a service similar to air navigation services, also subject to a certification process. This Regulation should make it possible to certify training by type of training, by package of training services or by package of training and air navigation services, without losing sight of the particular characteristics of training.
- (20) This Regulation confirms long-standing case-law of the Court of Justice of the European Union in the field of mutual recognition of diplomas and freedom of movement of workers. The principle of proportionality, reasoned justifications for the imposition of compensation measures and the provision of appropriate appeal procedures constitute basic principles which need to become applicable to the air traffic management sector in a more visible manner. Member States should be entitled to refuse to recognise licences not issued in accordance with this Regulation. Since this Regulation is aimed at ensuring the mutual recognition of licences, it does not regulate the conditions concerning access to employment.
- (21) The profession of air traffic controller is subject to technical innovations which call for such controllers' skills to be regularly updated. The necessary adaptations of this Regulation to the technical developments and scientific progress should follow the appropriate procedure with scrutiny provided for in Article 5a of Council Decision 1999/468/EC⁽¹⁾.
- (22) This Regulation may have an impact on the daily working practices of air traffic controllers. The social partners should be informed and consulted in an appropriate way on all measures having significant social implications.
- Therefore, the social partners have been consulted within the 'fast-track' procedure of the Agency. The Sectoral Dialogue Committee set up under Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level⁽²⁾ should be consulted in an appropriate way on further implementing measures taken by the Commission.
- (23) The general conditions for obtaining a licence, insofar as they relate to age, medical requirements, educational requirements and initial training, should not affect the holders of existing licences. Licences and medical certificates issued by Member States in accordance with Directive 2006/23/EC should be considered as having been issued in accordance with this Regulation in order to guarantee continuation of existing licence privileges and a smooth transition for all licence holders and for the competent authorities.
- (24) Derogations should be provided for in order to allow for the continued application of diverging national practices with regard to issues where common rules were not yet established during the accelerated procedure applied for these first phase implementing measures.
- (25) The Agency should make an evaluation of the European air traffic controller licensing system and of further improvements necessary towards a 'total aviation system approach' and to establish full compliance with the essential requirements as described in Annex Vb of Regulation (EC) No 216/2008, with a view to submitting an opinion to the Commission, including possible amendments to this Regulation.
- (26) This opinion should also address those issues where, in first stage, under the accelerated procedure there was no possibility to establish common rules instead of the diverging national varieties and thus it is proposed to maintain the applicability of Member States' national legislation, where applicable, on a transitional basis.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 225, 12.8.1998, p. 27.

(27) The measures provided for in this Regulation are based on the Opinion issued by the Agency in accordance with Articles 17(2)(b) and 19(1) of Regulation (EC) No 216/2008.

(28) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 65 of the Regulation (EC) No 216/2008,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Objective

The objective of this Regulation is to increase safety standards and to improve the operation of the air traffic control system within the Union through the issuing of an air traffic controller licence based on common licensing requirements.

Article 2

Subject matter and scope

1. This Regulation lays down detailed rules for the issue, suspension, and revocation of licences of air traffic controllers and student air traffic controllers, of associated ratings, endorsements, medical certificates and of certificates of training organisations and the conditions of their validity, renewal, revalidation and use.

2. This Regulation shall apply to:

- (a) student air traffic controllers,
- (b) air traffic controllers exercising their functions within the scope of Regulation (EC) No 216/2008, and
- (c) persons and organisations involved in the licensing, training, testing, checking or medical assessment of applicants in accordance with this Regulation.

3. Subject to Article 1(3) of Regulation (EC) No 216/2008, Member States shall, as far as practicable, ensure that services provided or made available by military personnel to the public referred to in Article 1(2)(c) of that Regulation offer a level of safety that is at least equivalent to the level required by the essential requirements as defined in Annex Vb of that Regulation.

4. With the objective to achieve a harmonised level of safety within the European airspace, Member States may decide to apply this Regulation to their military personnel providing services to the public referred to in Article 1(2)(c) of that Regulation.

5. Air traffic control services within the scope of Regulation (EC) No 216/2008 shall only be provided by air traffic controllers licensed in accordance with this Regulation.

Article 3

Definitions

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

- 1. 'air traffic control service' means a service provided for the purpose of preventing collisions between aircraft, and, on the manoeuvring area, between aircraft and obstructions, and expediting and maintaining an orderly flow of air traffic;
- 2. 'air navigation service providers' means any public or private entity providing air navigation services for general air traffic;
- 3. 'general air traffic' means all movements of civil aircraft, as well as all movements of State aircraft (including military, customs and police aircraft) when these movements are carried out in conformity with the procedures of the ICAO;
- 4. 'licence' means a certificate, by whatever name it may be known, issued and endorsed in accordance with this Regulation and entitling its lawful holder to provide air traffic control services in accordance with the ratings and endorsements contained therein;
- 5. 'rating' means the authorisation entered on or associated with a licence and forming part thereof, stating specific conditions, privileges or limitations pertaining to such licence;
- 6. 'rating endorsement' means the authorisation entered on and forming part of a licence, indicating the specific conditions, privileges or limitations pertaining to the relevant rating;
- 7. 'unit endorsement' means the authorisation entered on and forming part of a licence, indicating the ICAO location indicator and the sectors and/or working positions where the holder of the licence is competent to work;
- 8. 'language endorsement' means the authorisation entered on and forming part of a licence, indicating the language proficiency of the holder;
- 9. 'instructor endorsement' means the authorisation entered on and forming part of a licence, indicating the competence of the holder to give on-the-job training instruction;

10. 'ICAO location indicator' means the four-letter code group formulated in accordance with rules prescribed by ICAO in its manual DOC 7910 and assigned to the location of an aeronautical fixed station;
11. 'sector' means a part of a control area and/or part of a flight information region/upper region;
12. 'training' means the entirety of theoretical courses, practical exercises, including simulation, and on-the-job training required in order to acquire and maintain the skills to deliver safe, high quality air traffic control services; it consists of:
- (a) initial training, providing basic and rating training, leading to the grant of a student licence,
 - (b) unit training, including transitional training prior to on-the-job training and on-the-job training, leading to the grant of an air traffic controller licence,
 - (c) continuation training, keeping the endorsements of the licence valid,
 - (d) training of on-the-job training instructors, leading to the grant of the instructor endorsement,
 - (e) training of licence holders entitled to act as competence examiners and/or competence assessors in accordance with Article 24;
13. 'training organisation' means an organisation which has been certified by the competent authority to provide one or more types of training;
14. 'Unit Competence Scheme' means an approved scheme indicating the method by which the unit maintains the competence of its licence holders;
15. 'Unit Training Plan' means an approved plan detailing the processes and timing required to allow the unit procedures to be applied to the local area under the supervision of an on-the-job-training instructor.

Article 4

Competent authority

For the purpose of this Regulation, the competent authority shall be the authority nominated or established by each Member State as their national supervisory authority in order

to assume the tasks assigned to such authority under this Regulation with the exception of the certification of training organisations referred to in Article 27, where the competent authority shall be:

- (a) the authority nominated or established by the Member State where the applicant has its principal place of operation or, if any, its registered office, unless provided otherwise in bi-or multilateral agreements between Member States or competent authorities;
- (b) the Agency if the applicant has its principle place of operation or, if any, its registered office, outside the territory of the Member States.

CHAPTER II

LICENCES, RATINGS AND ENDORSEMENTS

Article 5

Application for and issue of licences, ratings and endorsements

1. An application for the issue, revalidation or renewal of licences, associated ratings and/or endorsements shall be submitted to the competent authority in accordance with the procedure established by that authority.

2. The application shall be accompanied by evidence that the applicant is competent to act as an air traffic controller or as a student air traffic controller in accordance with the requirements established in this Regulation. The evidence demonstrating the applicant's competence shall relate to knowledge, experience, skills and linguistic proficiency.

3. The licence shall contain all relevant information related to the privileges granted by such document and shall comply with the specifications set out in Annex I.

4. The licence shall remain the property of the person to whom it is granted and who shall sign it.

Article 6

Suspension and revocation of licences, ratings and endorsements

In accordance with Article 22(2):

- (a) a licence, rating or endorsement may be suspended when the competence of the air traffic controller is in doubt or in cases of misconduct;
- (b) a licence may be revoked in cases of gross negligence or abuse.

*Article 7***Exercise of the privileges of licences**

The exercise of the privileges granted by a licence shall be dependent on the validity of the ratings, endorsements and of the medical certificate.

*Article 8***Student air traffic controller licence**

1. Holders of a student air traffic controller licence shall be authorised to provide air traffic control services under the supervision of an on-the-job-training instructor in accordance with the rating(s) and rating endorsement(s) contained in their licence.

2. Applicants for the issue of a student air traffic controller licence shall:

- (a) be at least 18 years old;
 - (b) hold at least a diploma granting access to university or equivalent, or any other secondary education qualification, which enables them to complete air traffic controller training;
 - (c) have successfully completed approved initial training relevant to the rating, and if applicable, to the rating endorsement, as set out in Part A of Annex II;
 - (d) hold a valid medical certificate;
 - (e) have demonstrated an adequate level of language proficiency in accordance with the requirements set out in Article 13.
3. The student air traffic controller licence shall contain the language endorsement(s) and at least one rating and if applicable, one rating endorsement.

*Article 9***Air traffic controller licence**

1. Holders of an air traffic controller licence shall be authorised to provide air traffic control services in accordance with the ratings and endorsements in their licence.

2. The privileges of an air traffic controller licence shall include the privileges of a student air traffic controller licence as set out in Article 8(1).

3. Applicants for the issue of an air traffic controller licence shall:

- (a) be at least 21 years old. However, Member States may provide a lower age limit in duly justified cases;
 - (b) hold a student air traffic controller licence;
 - (c) have completed an approved unit training plan and successfully passed the appropriate examinations or assessments in accordance with the requirements set out in Part B of Annex II;
 - (d) hold a valid medical certificate;
 - (e) have demonstrated an adequate level of language proficiency in accordance with the requirements set out in Article 13.
4. The air traffic controller licence shall be validated by the inclusion of one or more ratings and the relevant rating, unit and language endorsements for which training was successfully completed.

*Article 10***Air traffic controller ratings**

1. Licences shall contain one or more of the following ratings in order to indicate the type of service which the licence holder is authorised to provide:

- (a) the Aerodrome Control Visual (ADV) rating, which shall indicate that the holder of the licence is competent to provide an air traffic control service to aerodrome traffic at an aerodrome that has no published instrument approach or departure procedures;
- (b) the Aerodrome Control Instrument (ADI) rating, which shall indicate that the holder of the licence is competent to provide an air traffic control service to aerodrome traffic at an aerodrome that has published instrument approach or departure procedures and shall be accompanied by at least one of the rating endorsements described in Article 11(1);
- (c) the Approach Control Procedural (APP) rating, which shall indicate that the holder of the licence is competent to provide an air traffic control service to arriving, departing or transiting aircraft without the use of surveillance equipment;
- (d) the Approach Control Surveillance (APS) rating, which shall indicate that the holder of the licence is competent to provide an air traffic control service to arriving, departing or transiting aircraft with the use of surveillance equipment and shall be accompanied by at least one of the rating endorsements described in Article 11(2);

- (e) the Area Control Procedural (ACP) rating, which shall indicate that the holder of the licence is competent to provide an air traffic control service to aircraft without the use of surveillance equipment;
- (f) the Area Control Surveillance (ACS) rating, which shall indicate that the holder of the licence is competent to provide an air traffic control service to aircraft with the use of surveillance equipment and shall be accompanied by at least one of the rating endorsements described in Article 11(3).

2. The holder of a rating who has not exercised the privileges associated with that rating for any period of four consecutive years may only commence unit training in that rating after appropriate assessment as to whether the person concerned continues to satisfy the conditions of that rating, and after satisfying any training requirements that result from this assessment.

Article 11

Rating endorsements

1. The Aerodrome Control Instrument (ADI) rating shall bear at least one of the following endorsements:

- (a) the Tower Control (TWR) endorsement, which shall indicate that the holder is competent to provide control services where aerodrome control is provided from one working position;
- (b) the Ground Movement Control (GMC) endorsement, which shall indicate that the holder of the licence is competent to provide ground movement control;
- (c) the Ground Movement Surveillance (GMS) endorsement, granted in addition to the Ground Movement Control endorsement or Tower Control endorsement, which shall indicate that the holder is competent to provide ground movement control with the help of aerodrome surface movement guidance systems;
- (d) the Air Control (AIR) endorsement, which shall indicate that the holder of the licence is competent to provide air control;

- (e) the Aerodrome Radar Control (RAD) endorsement, granted in addition to the Air Control endorsement or Tower Control endorsement, which shall indicate that the holder of the licence is competent to provide aerodrome control with the help of surveillance radar equipment.

2. The Approach Control Surveillance (APS) rating shall bear at least one of the following endorsements:

- (a) the Radar (RAD) endorsement, which shall indicate that the holder of the licence is competent to provide an approach control service with the use of primary and/or secondary radar equipment;
- (b) the Precision Approach Radar (PAR) endorsement, granted in addition to the Radar endorsement, which shall indicate that the holder of the licence is competent to provide ground-controlled precision approaches with the use of precision approach radar equipment to aircraft on the final approach to the runway;
- (c) the Surveillance Radar Approach (SRA) endorsement, granted in addition to the Radar endorsement, which shall indicate that the holder is competent to provide ground-controlled non-precision approaches with the use of surveillance equipment to aircraft on the final approach to the runway;
- (d) the Automatic Dependent Surveillance (ADS) endorsement, which shall indicate that the holder is competent to provide an approach control service with the use of automatic dependent surveillance;
- (e) the Terminal Control (TCL) endorsement, granted in addition to the Radar or Automatic Dependent Surveillance endorsements, which shall indicate that the holder is competent to provide air traffic control services with the use of any surveillance equipment to aircraft operating in a specified terminal area and/or adjacent sectors.

3. The Area Control Surveillance (ACS) rating shall bear at least one of the following endorsements:

- (a) the Radar (RAD) endorsement, which shall indicate that the holder is competent to provide area control services with the use of surveillance radar equipment;

- (b) the Automatic Dependent Surveillance (ADS) endorsement, which shall indicate that the holder is competent to provide area control services with the use of automatic dependent surveillance;
- (c) the Terminal Control (TCL) endorsement, granted in addition to the Radar or Automatic Dependent Surveillance endorsements, which shall indicate that the holder is competent to provide air traffic control services with the use of any surveillance equipment to aircraft operating in a specified terminal area and/or adjacent sectors;
- (d) the Oceanic Control (OCN) endorsement, which shall indicate that the holder is competent to provide air traffic control services to aircraft operating in an Oceanic Control Area.

4. The holder of a rating endorsement who has not exercised the privileges associated with that rating endorsement for any period of four consecutive years may only commence unit training in that rating endorsement after appropriate assessment as to whether the person concerned continues to satisfy the conditions of that rating endorsement, and after satisfying any training requirements that result from this assessment.

Article 12

Unit endorsements

1. The unit endorsement shall indicate that the licence holder is competent to provide air traffic control services for a particular sector, group of sectors or working positions under the responsibility of an air traffic services unit.
2. Unit endorsements shall be valid for an initial period of 12 months.
3. The validity of unit endorsements shall be extended for a subsequent period of 12 months beyond the period provided for in paragraph 2 if the air navigation service provider demonstrates to the competent authority that:
 - (a) the applicant has been exercising the privileges of the licence for a minimum number of hours, as indicated in the approved unit competence scheme, throughout the previous 12 months.
 - (b) the applicant's competence has been assessed in accordance with Part C of Annex II and
 - (c) the applicant holds a valid medical certificate.

For the application of point (a) of the first subparagraph, operational units within air navigation service providers shall keep records of the hours effectively worked in the sectors, group of sectors or in the working positions for every licence holder working in the unit and shall provide that data to the competent authorities and to the licence holder on request.

4. The minimum number of working hours, leaving aside instruction tasks, required to maintain the validity of the unit endorsement may be reduced for on-the-job training instructors in proportion to the time spent instructing on the working positions for which the extension is applied, as indicated in the approved unit competence scheme.

5. Where unit endorsements cease to be valid, a unit training plan shall be successfully completed so as to revalidate the endorsement.

Article 13

Language endorsement

1. Air traffic controllers and student air traffic controllers shall not exercise the privileges of their licence unless they have an English language endorsement.

2. Member States may impose local language requirements when deemed necessary for reasons of safety.

Such requirements shall be non-discriminatory, proportionate and transparent and shall be notified to the Agency without delay.

3. For the purpose of paragraphs 1 and 2 the applicant for a language endorsement shall demonstrate at least an operational level (level four) of language proficiency both in the use of phraseology and plain language.

To do so, the applicant shall:

- (a) communicate effectively in voice-only (telephone/radio-telephone) and in face-to-face situations;
- (b) communicate on common, concrete and work-related topics with accuracy and clarity;
- (c) use appropriate communicative strategies to exchange messages and to recognise and resolve misunderstandings in a general or work-related context;

(d) handle successfully and with relative ease the linguistic challenges presented by a complication or unexpected turn of events that occurs within the context of a routine work situation or communicative task with which they are otherwise familiar and

(e) use a dialect or accent which is intelligible to the aeronautical community.

4. The language proficiency level shall be determined in accordance with the rating scale set out in Annex III.

5. Notwithstanding paragraph 3, extended level (level five) of the language proficiency rating scale set out in Annex III in application of paragraphs 1 and 2 may be required by the air navigation service provider, where the operational circumstances of the particular rating or endorsement warrant a higher level for imperative reasons of safety. Such a requirement shall be non-discriminatory, proportionate, transparent and objectively justified by the air navigation service provider wishing to apply the higher level of proficiency and approved by the competent authority.

6. The language proficiency of the applicant shall be formally evaluated at regular intervals.

Except for applicants that have demonstrated language proficiency at an expert level (level six) in accordance with Annex III, the language endorsement shall be valid for a renewable period of:

(a) three years if the level demonstrated is operational level (level four) in accordance with Annex III or

(b) six years if the level demonstrated is extended level (level five) in accordance with Annex III.

7. Language proficiency shall be demonstrated by a certificate issued after a transparent and objective assessment procedure approved by the competent authority.

Article 14

Instructor endorsement

1. Holders of an instructor endorsement shall be authorised to provide on-the-job training and supervision at a working position for areas covered by a valid unit endorsement.

2. Applicants for the issue of an instructor endorsement shall:

(a) hold an air traffic controller licence;

(b) have exercised the privileges of an air traffic controller licence for an immediately preceding period of at least one year, or such longer duration as is fixed by the competent authority having regard to the ratings and endorsements for which instruction is given and

(c) have successfully completed an approved on-the-job training instructor course during which the required knowledge and pedagogical skills were assessed through appropriate examinations.

3. The instructor endorsement shall be valid for a renewable period of three years.

CHAPTER III

MEDICAL CERTIFICATION

Article 15

Application for and issue of medical certificates

1. Applications for the issue, revalidation or renewal of medical certificates shall be submitted to the competent authority in accordance with the procedure established by that authority.

2. Medical certificates shall be issued by a competent medical body of the competent authority or by aero medical examiners or aero medical centres approved by that authority.

3. The issuing of medical certificates shall be consistent with the provisions of Annex I to the Chicago Convention on International Civil Aviation and the Requirements for European Class 3 Medical Certification of Air Traffic Controllers laid down by Eurocontrol.

4. Competent authorities shall ensure that effective review or appeal procedures are put in place with the appropriate involvement of independent medical advisors.

Article 16

Validity of medical certificates

1. Medical certificates shall be valid for a period of:

(a) 24 months until the air traffic controller reaches the age of 40;

(b) 12 months after the age of 40.

2. The periods referred to in paragraph 1 shall be calculated from the date of the medical examination in the case of initial issue and renewal of a medical certificate, and from the expiry date of the previous medical certificate in the case of revalidation.

3. Examinations for the revalidation of a medical certificate may be undertaken up to 45 days prior to the expiry date of the medical certificate.

4. If the air traffic controller does not undergo an examination for the revalidation by the date on which the certificate expires, a renewal examination shall be required.

5. The medical certificate may be limited, suspended or revoked at any time if the medical condition of the holder so requires.

Article 17

Reduced medical fitness

1. Licence holders shall:

- (a) not exercise the privileges of their licence at any time when they are aware of any decrease in their medical fitness which might render them unable to safely exercise the privileges of the licence;
- (b) notify the relevant air navigation service provider that they are becoming aware of any decrease in medical fitness or are under the influence of any psychoactive substance or medicines which might render them unable to safely exercise the privileges of the licence.

2. Air navigation service providers shall establish procedures to manage the operational impact of cases of reduced medical fitness and inform the competent authority when a licence holder has been assessed as medically unfit.

3. The procedures referred to in paragraph (2) shall be approved by the competent authority.

CHAPTER IV

REQUIREMENTS FOR TRAINING ORGANISATIONS

Article 18

Certification of training organisations

1. Applications for training organisation certification shall be submitted to the competent authority in accordance with the procedure established by that authority.

2. Training organisations shall demonstrate by evidence that they are adequately staffed and equipped and operate in an environment suitable for the provision of the training necessary to obtain or maintain student air traffic controller licences and air traffic controller licences.

3. Training organisations shall grant access to any person authorised by the competent authority to the relevant premises in order to examine the relevant records, data, procedures and any other material relevant to the execution of the tasks of the competent authority.

Article 19

Management system of training organisations

Training organisations shall:

- (a) have an efficient management system and sufficient staff with adequate qualifications and experience to provide training according to this Regulation;

- (b) clearly define lines of safety accountability throughout the approved training organisation, including a direct accountability for safety on the part of senior management;

- (c) have available the necessary facilities, equipment and accommodation appropriate for the type of training offered;

- (d) furnish proof of the quality management system as part of the management system in place to monitor compliance with and the adequacy of the systems and procedures which ensure that the training services provided satisfy the requirements set out in this Regulation;

- (e) include a system of record-keeping that allows adequate storage and reliable traceability of the relevant activities;

- (f) demonstrate that sufficient funding is available to conduct the training according to this Regulation and that the activities have sufficient insurance cover in accordance with the nature of the training provided.

Article 20

Requirements for training courses, initial and unit training plans and unit competence schemes

1. Training organisations shall provide to the competent authority the methodology they will use to establish details of the content, organisation and duration of training courses and where applicable unit training plans and unit competence schemes.

2. This shall include the way examinations or assessments are organised. For examinations related to initial training, including simulation training, the qualifications of the examiners and assessors shall be indicated in detail.

CHAPTER V

REQUIREMENTS FOR COMPETENT AUTHORITIES

Article 21

Independence of the competent authority

1. The competent authorities shall be independent of air navigation service providers and training organisations. This independence shall be achieved through adequate separation, at the functional level at least, between the competent authorities and such providers. Member States shall ensure that competent authorities exercise their powers impartially and transparently.

2. Member States shall notify the Agency of the names and addresses of the competent authorities, as well as any changes thereof.

*Article 22***Tasks of the competent authorities**

1. In order to ensure the levels of competence indispensable for air traffic controllers in order for them to perform their work to high safety standards, the competent authorities shall supervise and monitor their training.
2. The tasks of competent authorities shall include:
 - (a) the issue and revocation of licences, ratings and endorsements for which the relevant training and assessment was completed under the area of responsibility of the competent authority;
 - (b) the revalidation, renewal and suspension of ratings and endorsements, the privileges of which are exercised under the responsibility of the competent authority;
 - (c) the certification of training organisations;
 - (d) the approval of training courses, unit training plans and unit competence schemes;
 - (e) the approval of examiners or competence assessors;
 - (f) the monitoring and auditing of training systems;
 - (g) the establishment of appropriate appeal and notification mechanisms;
 - (h) the approval of the need for extended level (level five) language proficiency in accordance with Article 13(5);
 - (i) the approval of the procedures related to reduced medical fitness in accordance with Article 17(3).

*Article 23***Issue and maintaining licences, ratings, endorsements and certificates**

1. The competent authority shall establish procedures for the application and issue, renewal and revalidation of licences, associated ratings, endorsements and medical certificates.
2. Upon receipt of an application the competent authority shall verify whether the applicant meets the requirements of this Regulation.
3. When satisfied that the applicant meets the requirements of this Regulation, the competent authority shall issue, renew or revalidate the relevant licence, associated rating, endorsement or medical certificate.
4. The license issued by the competent authority shall include the items set out in Annex I.
5. When a license is issued in a language other than English, it shall include an English translation of the items set out in Annex I.

*Article 24***Competence assessment**

1. Competent authorities shall approve the licence holders who are entitled to act as competence examiners or competence assessors for unit and continuation training.
2. The approval shall be valid for a renewable period of three years.

*Article 25***Record-keeping**

Competent authorities shall ensure that a database is maintained listing the competencies of all licence holders under their responsibility and the validity dates of their endorsements.

*Article 26***Exchange of information**

With due respect to the principles of confidentiality set out in Article 15(3) of Regulation (EC) No 216/2008, competent authorities shall exchange appropriate information and shall assist each other so as to ensure the effective application of this Regulation, particularly in cases involving the free movement of air traffic controllers within the Union.

*Article 27***Certification procedure for training organisations**

1. Competent authorities shall establish procedures for the application, issuance and maintaining the validity of training organisations' certificates.
2. Competent authorities shall issue certificates when the applicant training organisation fulfils the requirements laid down in Chapter IV.
3. The certificate may be issued for each type of training or in combination with other air navigation services, whereby the type of training and the type of air navigation service shall be certified as a package of services
4. The certificate shall specify the information in Annex IV.

*Article 28***Monitoring of training organisations activities and enforcement**

1. Competent authorities shall monitor compliance with the requirements and conditions attached to the training organisation's certificate.
2. Competent authorities shall audit the training organisations on a regular basis with a view to guaranteeing effective compliance with the standards laid down in this Regulation.

3. In addition to the regular audit, competent authorities may make unannounced inspections to check compliance with the requirements contained in this Regulation.

4. If a competent authority finds that the holder of a training organisation's certificate no longer satisfies the requirements or conditions attached to its certificate, it shall take appropriate enforcement measures, which may include withdrawal of the certificate.

5. Certificates issued in accordance with the provisions of this Regulation shall be mutually recognised.

Article 29

Recognition of licences

1. Member States shall recognise air traffic controller and student air traffic controller licences and their associated ratings, rating endorsements and language endorsements as well as associated medical certificates issued by other Member States in accordance with this Regulation.

However, where a Member State has provided for a lower age limit than 21 pursuant to Article 9(3), the right to exercise of the privileges of the air traffic controller licence holder shall be limited to the territory of the Member State that has issued the licence until the holder reaches the age of 21.

In cases where a licence holder exercises the privileges of the licence in a Member State other than that in which the licence was issued, the licence holder shall have the right to exchange his or her licence for a licence issued in the Member State where the privileges are exercised, without additional conditions being imposed.

In order to grant a unit endorsement, the competent authority shall require the applicant to fulfil the particular conditions associated with this endorsement, specifying the unit, sector or working position. When establishing the unit training plan, the training organisation shall take due account of the acquired competencies and the experience of the applicant.

2. The competent authority shall approve or reject the unit training plan containing the proposed training for the applicant not later than six weeks after presentation of the evidence, without prejudice to the delay resulting from any appeal that may be made. The competent authority shall ensure that the principles of non-discrimination and proportionality are respected.

CHAPTER VI

FINAL PROVISIONS

Article 30

Compliance with the essential requirements

The Agency shall make an evaluation of the air traffic controller licensing system established by this Regulation and of further

improvements necessary towards a 'total aviation system approach' and to establish full compliance with the essential requirements as described in Annex Vb of Regulation (EC) No 216/2008 with a view to submitting an opinion to the Commission, including possible amendments to this Regulation.

Article 31

Derogations

1. By way of derogation from Article 11 of this Regulation, Member States who have developed national rating endorsements referred to in Article 7(4) of Directive 2006/23/EC may continue to apply the relevant provisions of their national legislation in force at the date of entry into force of this Regulation.

2. By way of derogation from Article 12 of this Regulation, Member States who have provided in accordance with Article 10 of Directive 2006/23/EC that the privileges of a unit endorsement are only to be exercised by licence holders below a given age may continue to apply the relevant provisions of their national legislation in force at the date of entry into force of this Regulation.

3. Where a Member State decides to apply the derogations provided for in paragraphs 1 and 2 it shall notify the Commission and the Agency.

Article 32

Transitional arrangements

1. By way of derogation from Annex II Part A of this Regulation, training organisations may continue to apply training plans based on edition of 10 December 2004 of the Euro-control's 'Guidelines for air traffic controllers Common Core Content Initial Training' for a period of one year after the entry into force of this Regulation.

2. Licences, ratings, endorsements, medical certificates and certificates for training organisations issued in accordance with the relevant provisions of national legislation based on Directive 2006/23/EC at the date of entry into force of this Regulation shall be deemed to be issued in accordance with this Regulation.

3. Applicants for a licence, rating, endorsement, medical certificate or training organisation certificate, who submit their application before the date of entry into force of this Regulation and have not already been issued with a licence, rating, endorsement, medical certificate or training organisation certificate, shall demonstrate compliance with the provisions of this Regulation before the licence, rating, endorsement, medical certificate or training organisation certificate is issued.

4. The competent authority of a Member State to which training organisations having the Agency as the competent authority in accordance with Article 4 have applied for the issue of a certificate before the date of entry into force of this Regulation shall finalise the certification process in coordination with the Agency and transfer the file to the Agency upon the issue of the certificate.

5. The competent authority of a Member State which has had the responsibility for the safety oversight of training organisations having the Agency as the competent authority in

accordance with Article 4 shall transfer the safety oversight function of those organisations to the Agency six months after the date of entry into force of this Regulation.

Article 33

Entry into force

This Regulation shall enter into force on the twentieth day following that 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, 10 August 2011.

For the Commission

The President

José Manuel BARROSO

ANNEX I

SPECIFICATIONS FOR LICENCES

Licences issued in accordance with this Regulation shall conform to the following specifications:

1. Details

1.1. The following details must appear on the licence, an asterisk indicating those items which must be translated into English:

- (a) *name of State or Authority issuing the licence (in bold type);
- (b) *title of licence (in very bold type);
- (c) serial number of the licence, in arabic numerals, given by the authority issuing the licence;
- (d) name of holder in full (in roman alphabet also if script of national language is other than roman);
- (e) date of birth;
- (f) nationality of holder;
- (g) signature of holder;
- (h) *Certification concerning validity and authorisation for holder to exercise privileges appropriate to the licence, indicating:
 - (i) the ratings, rating endorsements, language endorsements, instructor endorsements and unit endorsements,
 - (ii) the dates when they were first issued,
 - (iii) the dates on which their validity expires;
- (i) signature of officer issuing the licence and the date of such issue;
- (j) seal or stamp of authority issuing the licence.

1.2. The licence must be accompanied by a valid medical certificate.

2. Material

First quality paper or other suitable material must be used and the items mentioned under point 1 must appear clearly thereon.

3. Colour

3.1. Where the same coloured material is used for all aviation-related licences issued by a Member State, that colour must be white.

3.2. Where aviation-related licences issued by a Member State carry a distinguishing colour marking, the colour of the air traffic controller licence must be yellow.

ANNEX II

TRAINING REQUIREMENTS

PART A

Initial training requirements for air traffic controllers

The initial training shall ensure that student air traffic controllers satisfy at least the objectives for basic and rating training, as described in Eurocontrol's 'Specification for the ATCO Common Core Content Initial Training', edition of 21 October 2008 ⁽¹⁾, so that air traffic controllers are capable of handling air traffic in a safe, quick and efficient way.

Initial training shall cover the following subjects: aviation law, air traffic management, including procedures for civil-military cooperation, meteorology, navigation, aircraft and principles of flight, including an understanding between air traffic controller and pilot, human factors, equipment and systems, professional environment, safety and safety culture, safety management systems, unusual/emergency situations, degraded systems and linguistic knowledge, including radio-telephony phraseology.

The subjects shall be taught in such a way that they prepare the applicants for the different types of air traffic services and highlight safety aspects. The initial training shall consist of theoretical and practical courses, including simulation, and its duration will be determined in the approved initial training plans. Acquired skills shall ensure that the candidate can be considered competent to handle complex and dense traffic situations, facilitating the transition to unit training.

The competence of the candidate after initial training shall be assessed through appropriate examinations or a system of continuous assessment.

PART B

Unit training requirements for air traffic controllers

Unit training plans shall detail the processes and timing required to allow the application of the unit procedures to the local area under the supervision of an on-the-job training instructor. The approved plan shall include indications of all elements of the competence assessment system, including work arrangements, progress assessment and examination, together with procedures for notifying the competent authority. Unit training may contain certain elements of the initial training which are specific to national conditions.

During unit training air traffic controllers shall be sufficiently trained in safety, security and crisis management.

The duration of unit training shall be determined in the unit training plan. The required skills shall be assessed through appropriate examinations or a system of continuous assessment, by approved competence examiners or assessors who shall be neutral and objective in their judgment. To this end, the competent authorities shall put in place appeal mechanisms to ensure fair treatment of candidates.

PART C

Continuation training requirements for air traffic controllers

Rating and unit endorsements on air traffic controllers' licences shall be kept valid through approved continuation training, which consists of training to maintain the skills of air traffic controllers, refresher courses, emergency training and, where appropriate, linguistic training.

During continuation training air traffic controllers shall be sufficiently trained in safety, security and crisis management.

Continuation training shall consist of theoretical and practical courses, together with simulation. For this purpose, the training organisation shall establish unit competence schemes detailing the processes, manning and timing necessary to provide for the appropriate continuation training and to demonstrate competence. These schemes shall be reviewed and approved at least every three years. The duration of the continuation training shall be decided in accordance with the functional needs of the air traffic controllers working in the unit, in particular in the light of changes or planned changes in procedures or equipment, or in the light of the overall safety management requirements. The competence of each air traffic controller shall be appropriately assessed at least every three years. The air navigation service provider shall ensure that mechanisms are applied to guarantee fair treatment of licence holders where the validity of their endorsements cannot be extended.

⁽¹⁾ Edition 1.0, Edition date: 21.10.2008, Reference nr: EUROCONTROL-SPEC-0113.

ANNEX III

REQUIREMENTS FOR PROFICIENCY IN LANGUAGES

Language proficiency rating scale: expert, extended and operational levels

Level	Pronunciation Uses a dialect and/or accent intelligible to the aeronautical community.	Structure Relevant grammatical structures and sentence patterns are determined by language functions appropriate to the task.	Vocabulary	Fluency	Comprehension	Interactions
Expert 6	Pronunciation, stress, rhythm and intonation, though possibly influenced by the first language or regional variation, almost never interfere with ease of understanding.	Both basic and complex grammatical structures and sentence patterns are consistently well controlled.	Vocabulary range and accuracy are sufficient to communicate effectively on a wide variety of familiar and unfamiliar topics. Vocabulary is idiomatic, nuanced, and sensitive to register.	Able to speak at length with a natural, effortless flow. Varies speech flow for stylistic effect, e.g. to emphasise a point. Uses appropriate discourse markers and connectors spontaneously	Comprehension is consistently accurate in nearly all contexts and includes comprehension of linguistic and cultural subtleties.	Interacts with ease in nearly all situations. Is sensitive to verbal and non-verbal cues, and responds to them appropriately.
Extended 5	Pronunciation, stress, rhythm and intonation, though influenced by the first language or regional variation, rarely interfere with ease of understanding.	Basic grammatical structures and sentence patterns are consistently well controlled. Complex structures are attempted but with errors which sometimes interfere with meaning.	Vocabulary range and accuracy are sufficient to communicate effectively on common, concrete, and work-related topics. Paraphrases consistently and successfully. Vocabulary is sometimes idiomatic.	Able to speak at length with relative ease on familiar topics, but may not vary speech flow as a stylistic device. Can make use of appropriate discourse markers or connectors.	Comprehension is accurate on common, concrete, and work-related topics and mostly accurate when the speaker is confronted with a linguistic or situational complication or an unexpected turn of events. Is able to comprehend a range of speech varieties (dialect and/or accent) or registers.	Responses are immediate, appropriate, and informative. Manages the speaker/listener relationship effectively.
Operational 4	Pronunciation, stress, rhythm and intonation are influenced by the first language or regional variation but only sometimes interfere with ease of understanding.	Basic grammatical structures and sentence patterns are used creatively and are usually well controlled. Errors may occur, particularly in unusual or unexpected circumstances, but rarely interfere with meaning.	Vocabulary range and accuracy are usually sufficient to communicate effectively on common, concrete, and work-related topics. Can often paraphrase successfully when lacking vocabulary in unusual or unexpected circumstances.	Produces stretches of language at an appropriate tempo. There may be occasional loss of fluency on transition from rehearsed or formulaic speech to spontaneous interaction, but this does not prevent effective communication. Can make limited use of discourse markers or connectors. Fillers are not distracting.	Comprehension is mostly accurate on common, concrete, and work-related topics when the accent or variety used is sufficiently intelligible for an international community of users. When the speaker is confronted with a linguistic or situational complication or an unexpected turn of events, comprehension may be slower or require clarification strategies.	Responses are usually immediate, appropriate, and informative. Initiates and maintains exchanges even when dealing with an unexpected turn of events. Deals adequately with apparent misunderstandings by checking, confirming, or clarifying.

ANNEX IV

Specifications for the certificates of training organisations

Certificates of training organisations issued by a competent authority in accordance with this Regulation shall specify:

- (a) the competent authority issuing the certificate;
 - (b) the applicant (name and address);
 - (c) the type of training and/or services provided which are certified, as applicable;
 - (d) a statement of the applicant's conformity with the requirements defined in Chapter V;
 - (e) the date of issue and the period of validity of the certificate.
-

COMMISSION IMPLEMENTING REGULATION (EU) No 806/2011**of 10 August 2011****approving the active substance fluquinconazole, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 and Commission Decision 2008/934/EC****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular Article 13(2) and Article 78(2) thereof,

Whereas:

- (1) In accordance with Article 80(1)(c) of Regulation (EC) No 1107/2009, Council Directive 91/414/EEC ⁽²⁾ is to apply to active substances for which completeness has been established in accordance with Article 16 of Commission Regulation (EC) No 33/2008 ⁽³⁾, with respect to the procedure and the conditions for approval. Fluquinconazole is an active substance for which completeness has been established in accordance with that Regulation.
- (2) Commission Regulations (EC) No 451/2000 ⁽⁴⁾ and (EC) No 1490/2002 ⁽⁵⁾ lay down the detailed rules for the implementation of the second and third stages of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed, with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list included fluquinconazole.
- (3) In accordance with Article 3(2) of Commission Regulation (EC) No 1095/2007 of 20 September 2007 amending Regulation (EC) No 1490/2002 laying down further detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC and Regulation (EC) No 2229/2004 laying down further detailed rules for the implementation of the fourth stage of the programme of work referred to in Article 8(2) of Council

Directive 91/414/EEC ⁽⁶⁾ the notifier withdrew its support of the inclusion of that active substance in Annex I to Directive 91/414/EEC within 2 months from entry into force of that Regulation. Consequently, Commission Decision 2008/934/EC of 5 December 2008 concerning the non-inclusion of certain active substances in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing these substances ⁽⁷⁾ was adopted on the non-inclusion of fluquinconazole.

- (4) Pursuant to Article 6(2) of Directive 91/414/EEC the original notifier (hereinafter 'the applicant') submitted a new application requesting the accelerated procedure to be applied, as provided for in Articles 14 to 19 of Regulation (EC) No 33/2008 laying down detailed rules for the application of Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I.
- (5) The application was submitted to Ireland, which had been designated rapporteur Member State by Regulation (EC) No 1490/2002. The time period for the accelerated procedure was respected. The specification of the active substance and the supported uses are the same as were the subject of Decision 2008/934/EC. That application also complies with the remaining substantive and procedural requirements of Article 15 of Regulation (EC) No 33/2008.
- (6) Ireland evaluated the additional data submitted by the applicant and prepared an additional report. It communicated that report to the European Food Safety Authority (hereinafter 'the Authority') and to the Commission on 13 April 2010. The Authority communicated the additional report to the other Member States and the applicant for comments and forwarded the comments it had received to the Commission. In accordance with Article 20(1) of Regulation (EC) No 33/2008 and at the request of the Commission, the Authority presented its conclusion on fluquinconazole to the Commission on 25 February 2011 ⁽⁸⁾. The draft assessment report, the additional

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ OJ L 230, 19.8.1991, p. 1.

⁽³⁾ OJ L 15, 18.1.2008, p. 5.

⁽⁴⁾ OJ L 55, 29.2.2000, p. 25.

⁽⁵⁾ OJ L 224, 21.8.2002, p. 23.

⁽⁶⁾ OJ L 246, 21.9.2007, p. 19.

⁽⁷⁾ OJ L 333, 11.12.2008, p. 11.

⁽⁸⁾ European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance fluquinconazole. EFSA Journal 2011;9(5):2096. [112 pp.]. doi:10.2903/j.efsa.2011.2096. Available online: www.efsa.europa.eu

report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 17 June 2011 in the format of the Commission review report for fluquinconazole.

- (7) It has appeared from the various examinations made that plant protection products containing fluquinconazole may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC, in particular as regards the uses which were examined and detailed in the Commission review report. It is therefore appropriate to approve fluquinconazole in accordance with Regulation (EC) No 1107/2009.
- (8) In accordance with Article 13(2) of Regulation (EC) No 1107/2009 in conjunction with Article 6 thereof and in the light of current scientific and technical knowledge, it is, however, necessary to include certain conditions and restrictions.
- (9) Without prejudice to the conclusion that fluquinconazole should be approved, it is, in particular, appropriate to require further confirmatory information.
- (10) A reasonable period should be allowed to elapse before approval in order to permit Member States and the interested parties to prepare themselves to meet the new requirements resulting from the approval.
- (11) Without prejudice to the obligations defined by Regulation (EC) No 1107/2009 as a consequence of the approval, taking into account the specific situation created by the transition from Directive 91/414/EEC to Regulation (EC) No 1107/2009 the following should, however, apply. Member States should be allowed a period of 6 months after approval to review authorisations of plant protection products containing fluquinconazole. Member States should, as appropriate, vary, replace or withdraw existing authorisations. By way of derogation from the above deadline, a longer period should be provided for the submission and assessment of the update of the complete Annex III dossier, as set out in Directive 91/414/EEC, of each plant protection product for each intended use in accordance with the uniform principles.
- (12) The experience gained from inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market ⁽¹⁾ has shown

that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the directives which have been adopted until now amending Annex I to that Directive or the Regulations approving active substances.

- (13) In accordance with Article 13(4) of Regulation (EC) No 1107/2009 the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽²⁾ should be amended accordingly.
- (14) Decision 2008/934/EC provides for the non-inclusion of fluquinconazole and the withdrawal of authorisations for plant protection products containing that substance by 31 December 2011. It is necessary to delete the line concerning fluquinconazole in the Annex to that Decision. It is therefore appropriate to amend Decision 2008/934/EC accordingly.
- (15) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Approval of active substance

The active substance fluquinconazole, as specified in Annex I, is approved subject to the conditions laid down in that Annex.

Article 2

Re-evaluation of plant protection products

1. Member States shall in accordance with Regulation (EC) No 1107/2009, where necessary, amend or withdraw existing authorisations for plant protection products containing fluquinconazole as an active substance by 30 June 2012.

By that date they shall in particular verify that the conditions in Annex I to this Regulation are met, with the exception of those identified in Part B of the column on specific provisions of that Annex, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to Directive 91/414/EEC in accordance with the conditions of Article 13(1) to (4) of that Directive and Article 62 of Regulation (EC) No 1107/2009.

⁽¹⁾ OJ L 366, 15.12.1992, p. 10.

⁽²⁾ OJ L 153, 11.6.2011, p. 1.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing fluquinconazole as either the only active substance or as one of several active substances all of which were listed in the Annex to Implementing Regulation (EU) No 540/2011 by 31 December 2011 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, on the basis of a dossier satisfying the requirements of Annex III to Directive 91/414/EEC and taking into account Part B of the column on specific provisions of Annex I to this Regulation. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 29(1) of Regulation (EC) No 1107/2009. Following that determination Member States shall:

- (a) in the case of a product containing fluquinconazole as the only active substance, where necessary, amend or withdraw the authorisation by 31 December 2015 at the latest; or
- (b) in the case of a product containing fluquinconazole as one of several active substances, where necessary, amend or withdraw the authorisation by 31 December 2015 or by the date fixed for such an amendment or withdrawal in the respective act or acts which added the relevant substance or

substances to Annex I to Directive 91/414/EEC or approved that substance or substances, whichever is the latest.

Article 3

Amendments to Implementing Regulation (EU) No 540/2011

The Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

Article 4

Amendments to Decision 2008/934/EC

The line concerning fluquinconazole in the Annex to Decision 2008/934/EC is deleted.

Article 5

Entry into force and date of application

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

It shall apply from 1 January 2012.

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

Done at Brussels, 10 August 2011.

For the Commission

The President

José Manuel BARROSO

ANNEX I

Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
Fluquinconazole CAS No 136426-54-5 CIPAC No 474	3-(2,4-dichlorophenyl)-6-fluoro-2-(1H-1,2,4-triazol-1-yl)quinazolin-4(3H)-one	≥ 955 g/kg	1 January 2012	31 December 2021	PART A Only uses as fungicide may be authorised PART B For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on fluquinconazole, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 17 June 2011 shall be taken into account. In this overall assessment Member States: (a) shall pay particular attention to the risk to operators and workers and shall ensure that conditions of use include the application of adequate personal protective equipment, where appropriate; (b) shall pay particular attention to the dietary exposure of consumers to the residues of triazole derivative metabolites (TDMs); (c) shall pay particular attention to the risk to birds and mammals. Conditions of use shall include risk mitigation measures, where appropriate. The applicant shall submit confirmatory information as regards: (1) residues of triazole derivative metabolites (TDMs) in primary crops, rotational crops and products of animal origin; (2) the contribution of the potential residues of the metabolite dione in rotational crops to the overall consumer exposure; (3) the acute risk to insectivorous mammals; (4) the long-term risk to insectivorous and herbivorous birds and mammals; (5) the risk to earthworm-eating mammals; (6) the endocrine disruption potential in aquatic organisms (fish full life cycle study). The applicant shall submit to the Commission, the Member States and the Authority such information by 31 December 2013.

⁽¹⁾ Further details on identity and specification of active substance are provided in the review report.

ANNEX II

In Part B of the Annex to Implementing Regulation (EU) No 540/2011, the following entry is added:

Number	Common Name, Identification Numbers	IUPAC Name	Purity (*)	Date of approval	Expiration of approval	Specific provisions
'14	Fluquinconazole CAS No 136426-54-5 CIPAC No 474	3-(2,4-dichlorophenyl)-6-fluoro-2-(1 <i>H</i> -1,2,4-triazol-1-yl)quinazolin-4(3 <i>H</i>)-one	≥ 955 g/kg	1 January 2012	31 December 2021	PART A Only uses as fungicide may be authorised PART B For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on fluquinconazole, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 17 June 2011 shall be taken into account. In this overall assessment Member States: (a) shall pay particular attention to the risk to operators and workers and shall ensure that conditions of use include the application of adequate personal protective equipment, where appropriate; (b) shall pay particular attention to the dietary exposure of consumers to the residues of triazole derivative metabolites (TDMs); (c) shall pay particular attention to the risk to birds and mammals. Conditions of use shall include risk mitigation measures, where appropriate. The applicant shall submit confirmatory information as regards: (1) residues of triazole derivative metabolites (TDMs) in primary crops, rotational crops and products of animal origin; (2) the contribution of the potential residues of the metabolite dione in rotational crops to the overall consumer exposure; (3) the acute risk to insectivorous mammals; (4) the long-term risk to insectivorous and herbivorous birds and mammals; (5) the risk to earthworm-eating mammals; (6) the endocrine disruption potential in aquatic organisms (fish full life cycle study). The applicant shall submit to the Commission, the Member States and the Authority such information by 31 December 2013.'

(*) Further details on identity and specification of active substance are provided in the review report.

COMMISSION IMPLEMENTING REGULATION (EU) No 807/2011

of 10 August 2011

approving the active substance triazoxide, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular Articles 13(2) and 78(3) thereof,

Whereas:

- (1) In accordance with Article 80(1)(c) of Regulation (EC) No 1107/2009, Council Directive 91/414/EEC ⁽²⁾ is to apply to active substances for which completeness has been established in accordance with Article 16 of Commission Regulation (EC) No 33/2008 ⁽³⁾, with respect to the procedure and the conditions for approval. Triazoxide is an active substance for which completeness has been established in accordance with that Regulation.
- (2) Commission Regulations (EC) No 451/2000 ⁽⁴⁾ and (EC) No 1490/2002 ⁽⁵⁾ lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed, with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list included triazoxide. By Commission Decision 2009/860/EC ⁽⁶⁾ it was decided not to include triazoxide in Annex I to Directive 91/414/EEC.
- (3) Pursuant to Article 6(2) of Directive 91/414/EEC the original notifier (hereinafter 'the applicant') submitted a new application requesting the application of the accelerated procedure to be applied, as provided for in Articles 14 to 19 of Regulation (EC) No 33/2008 laying down detailed rules for the application of Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances

which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I.

- (4) The application was submitted to the United Kingdom, which had been designated rapporteur Member State by Regulation (EC) No 1490/2002. The time period for the accelerated procedure was respected. The specification of the active substance and the supported uses are the same as those that were the subject of Decision 2009/860/EC. That application also complies with the remaining substantive and procedural requirements of Article 15 of Regulation (EC) No 33/2008.
- (5) The United Kingdom evaluated the new information and data submitted by the applicant and prepared an additional report. It communicated that report to the European Food Safety Authority (hereinafter 'the Authority') and to the Commission on 10 June 2010.
- (6) The Authority communicated the additional report to the other Member States and the applicant for comments and forwarded the comments it had received to the Commission. In accordance with Article 20(1) of Regulation (EC) No 33/2008 and at the request of the Commission, the additional report was peer reviewed by the Member States and the Authority. The Authority then presented its conclusion on triazoxide to the Commission on 15 February 2011 ⁽⁷⁾. The draft assessment report, the additional report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 17 June 2011 in the format of the Commission review report for triazoxide.
- (7) The additional report by the rapporteur Member State and the new conclusion by the Authority concentrate on the concerns that led to the non-inclusion. Those concerns were in particular that it was not possible to perform a reliable consumer risk assessment as data were missing to determine the nature of residues in plant commodities and the possible transfer of residues in animal products.

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ OJ L 230, 19.8.1991, p. 1.

⁽³⁾ OJ L 15, 18.1.2008, p. 5.

⁽⁴⁾ OJ L 55, 29.2.2000, p. 25.

⁽⁵⁾ OJ L 224, 21.8.2002, p. 23.

⁽⁶⁾ OJ L 314, 1.12.2009, p. 81.

⁽⁷⁾ European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance triazoxide. EFSA Journal 2011;9(3): [86 pp.] doi:10.2903/j.efsa.2011.2018. Available online: www.efsa.europa.eu/efsajournal.htm

- (8) The new information submitted by the applicant shows that the exposure of consumers may be considered as acceptable.
- (9) Consequently, the additional information provided by the applicant permit to eliminate the specific concerns that led to the non-inclusion. No other open scientific questions have arisen.
- (10) It has appeared from the various examinations made that plant protection products containing triazoxide may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC, in particular as regards the uses which were examined and detailed in the Commission review report. It is therefore appropriate to approve triazoxide in accordance with Regulation (EC) No 1107/2009.
- (11) In accordance with Article 13(2) of Regulation (EC) No 1107/2009 in conjunction with Article 6 thereof and in the light of current scientific and technical knowledge, it is, however, necessary to include certain conditions and restrictions.
- (12) Without prejudice to the conclusion that triazoxide should be approved, it is, in particular, appropriate to require further confirmatory information.
- (13) In accordance with Article 13(4) of Regulation (EC) No 1107/2009 the Annex to Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European

Parliament and of the Council as regards the list of approved active substances⁽¹⁾, should be amended accordingly.

- (14) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Approval of active substance

The active substance triazoxide, as specified in Annex I, is approved subject to the conditions laid down in that Annex.

Article 2

**Amendments to Implementing Regulation (EU)
No 540/2011**

The Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

Article 3

Entry into force and date of application

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

It shall apply from 1 October 2011.

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

Done at Brussels, 10 August 2011.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 153, 11.6.2011, p. 1.

ANNEX I

Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
Triazoxide CAS No 72459-58-6 CIPAC No 729	7-chloro-3-imidazol-1-yl-1,2,4-benzotriazine 1-oxide	≥ 970 g/kg Impurities: toluene: not more than 3 g/kg	1 October 2011	30 September 2021	PART A Only uses as fungicide for seed treatment may be authorised. PART B For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on triazoxide, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 17 June 2011, shall be taken into account. In this overall assessment Member States: (a) shall pay particular attention to the protection of operators and workers and shall ensure that conditions of use include the application of adequate personal protective equipment, where appropriate; (b) shall pay particular attention to the risk to granivorous birds and shall ensure that conditions of authorisation include risk mitigation measures. The applicant shall submit to the Commission, the Member States and the Authority confirmatory information as regards the long-term risk to granivorous mammals by 30 September 2013.

⁽¹⁾ Further details on identity and specification of active substance are provided in the review report.

ANNEX II

In Part B of the Annex to Implementing Regulation (EU) No 540/2011, the following entry is added:

No	Common Name, Identification Numbers	IUPAC Name	Purity (*)	Date of approval	Expiration of approval	Specific provisions
'17	Triazoxide CAS No 72459-58-6 CIPAC No 729	7-chloro-3-imidazol- 1-yl-1,2,4-benzo- triazine 1-oxide	≥ 970 g/kg Impurities: toluene: not more than 3 g/kg	1 October 2011	30 September 2021	PART A Only uses as fungicide for use as seed treatment may be authorised. PART B For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on triazoxide, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 17 June 2011, shall be taken into account. In this overall assessment Member States: (a) shall pay particular attention to the protection of operators and workers and shall ensure that conditions of use include the application of adequate personal protective equipment, where appropriate; (b) shall pay particular attention to the risk to granivorous birds and shall ensure that conditions of authorisation include risk mitigation measures. The applicant shall submit to the Commission, the Member States and the Authority confirmatory information as regards the long-term risk to granivorous mammals by 30 September 2013.'

(*) Further details on identity and specification of active substance are provided in the review report.

COMMISSION IMPLEMENTING REGULATION (EU) No 808/2011**of 10 August 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 Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

Implementing Regulation (EU) No 543/2011 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 XVI, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 August 2011.

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

Done at Brussels, 10 August 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 157, 15.6.2011, 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
0707 00 05	TR	105,8
	ZZ	105,8
0709 90 70	TR	128,9
	ZZ	128,9
0805 50 10	AR	73,7
	TR	63,0
	UY	98,8
	ZA	72,4
	ZZ	77,0
0806 10 10	EG	150,8
	MA	187,2
	TR	166,4
	ZZ	168,1
0808 10 80	AR	114,4
	BR	63,1
	CL	86,0
	CN	56,0
	NZ	102,2
	US	121,3
	ZA	88,7
	ZZ	90,2
0808 20 50	AR	95,9
	CL	75,1
	CN	49,3
	NZ	108,0
	ZA	96,2
0809 30	TR	126,5
	ZZ	126,5
0809 40 05	BA	50,1
	XS	57,7
	ZZ	53,9

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

DECISIONS

COUNCIL DECISION 2011/499/CFSP

of 1 August 2011

amending and extending Decision 2010/450/CFSP appointing the European Union Special Representative for Sudan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 28, 31(2) and 33 thereof,

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

Whereas:

- (1) On 11 August 2010, the Council adopted Decision 2010/450/CFSP⁽¹⁾ appointing Mrs Rosalind MARSDEN as European Union Special Representative (EUSR) for Sudan from 1 September 2010 to 31 August 2011.
- (2) On 9 July 2011, the Republic of South Sudan declared its independence and the EUSR henceforth covers two independent countries.
- (3) Mrs Rosalind MARSDEN should be appointed as EUSR for the Republic of Sudan and the Republic of South Sudan from 9 July 2011 to 30 June 2012. Decision 2010/450/CFSP should therefore be amended and extended.
- (4) The EUSR will implement her mandate in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2010/450/CFSP is hereby amended as follows:

- (1) the title is replaced by the following:

'Council Decision 2010/450/CFSP appointing the European Union Special Representative for the Republic of Sudan and the Republic of South Sudan';

- (2) Articles 1, 2 and 3 are replaced by the following:

*'Article 1***European Union Special Representative**

Mrs Rosalind MARSDEN is hereby appointed as the European Union Special Representative (EUSR) for the

Republic of Sudan (Sudan) and the Republic of South Sudan (South Sudan) from 9 July 2011 until 30 June 2012. The mandate of the EUSR may be terminated earlier, if the Council so decides, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy (HR).

*Article 2***Policy objectives**

The mandate of the EUSR shall be based on the policy objectives of the European Union ('the EU' or 'the Union') in relation to Sudan and South Sudan, working with the Sudanese parties, the African Union (AU) and the United Nations (UN) and other national, regional and international stakeholders, to achieve a peaceful co-existence between Sudan and South Sudan following the expiry of the Comprehensive Peace Agreement (CPA) and South Sudan's independence on 9 July 2011. The Union's policy objectives include actively contributing to the resolution of any outstanding CPA and post-CPA issues and helping the parties to implement what has been agreed; supporting efforts to stabilise the volatile north-south border area; promoting institution building and fostering stability, security and development in South Sudan; facilitating a political solution to the conflict in Darfur; promoting democratic governance, accountability and respect for human rights, including cooperation with the International Criminal Court; maintaining engagement in eastern Sudan; and improving humanitarian access throughout Sudan and South Sudan.

In addition, the mandate of the EUSR shall be based on the Union's policy objective to contribute to the mitigation and elimination of threats to the stability of South Sudan and the wider region posed by the Lords Resistance Army (LRA).

*Article 3***Mandate**

1. In order to achieve the policy objectives, the EUSR's mandate shall be to:

- (a) liaise with the Government of Sudan, the Government of South Sudan, Sudanese and South Sudanese political parties, the Darfur armed movements, civil society and non-governmental organisations, with the aim of pursuing the Union's policy objectives;

⁽¹⁾ OJ L 211, 12.8.2010, p. 42.

- (b) maintain close cooperation with the UN, the AU and in particular the AU High-Level Implementation Panel for Sudan (AUHIP), the League of Arab States, the Inter-Governmental Agency for Development and other leading regional and international stakeholders including the US Special Envoy;
 - (c) participate in relevant international and public forums to promote the Union's policy objectives and the coherence of international efforts towards Sudan;
 - (d) contribute to international efforts to facilitate a comprehensive, inclusive and durable peace agreement for Darfur working closely with the UN, the AU, the Governments of Qatar and other international stakeholders;
 - (e) promote respect for human rights by maintaining regular contacts with the relevant authorities in Sudan and South Sudan, the Office of the Prosecutor of the International Criminal Court, the Office of the High Commissioner for Human Rights and the human rights observers active in the region;
 - (f) contribute to the implementation of the Union's human rights policy, including the Union Guidelines on human rights, in particular the EU Guidelines on Children and Armed Conflict as well as on violence against women and girls and combating all forms of discrimination against them, and the Union policy regarding UN Security Council Resolution (UNSCR) 1325 (2000) on Women, Peace and Security, including by monitoring and reporting on developments as well as formulating recommendations in this regard;
 - (g) actively contribute to the implementation of a comprehensive Union approach to Sudan and South Sudan as agreed by the Foreign Affairs Council on 20 June 2011;
 - (h) have oversight of and coordinate Union engagement with all relevant stakeholders to support efforts to mitigate and eliminate the threat to civilians and stability in South Sudan and the wider region posed by the LRA.
2. For the purpose of the fulfilment of her mandate, the EUSR shall, inter alia:
- (a) advise and report on the definition of Union positions in international forums in order to proactively promote and strengthen a consistent Union policy approach towards Sudan and South Sudan;
 - (b) maintain an overview of all activities of the Union and cooperate closely with the Union delegations in Khartoum, Juba and the Union delegations to the AU in Addis Ababa and to the UN in New York;
 - (c) contribute to the political process and activities relating to the resolution of any outstanding CPA and post-CPA issues and help the parties to implement what has been agreed as well as support efforts in the area of institution-building in South Sudan;
 - (d) contribute to the implementation of the Union's human rights policy, including the Union Guidelines on Human Rights, in particular the EU Guidelines on Children and Armed Conflict as well as on violence against women and girls and combating all forms of discrimination against them, and the Union policy regarding UNSCR 1325 (2000) on Women, Peace and Security, including by monitoring and reporting on developments in this regard; and
 - (e) follow up and report on compliance by the Sudanese and South Sudanese parties with the relevant UNSCRs, in particular 1556 (2004), 1564 (2004), 1590 (2005), 1591 (2005), 1593 (2005), 1612 (2005), 1663 (2006), 1672 (2006), 1679 (2006), 1769 (2007), 1778 (2007), 1881 (2009), 1882 (2009), 1891 (2009), 1919 (2010).;
- (3) in Article 4 the following paragraph is added:
- '3. The EUSR shall work in close coordination with the European External Action Service (EEAS).';
- (4) Article 5(1) is replaced by the following:
- '1. The financial reference amount of EUR 1 820 000 shall be increased by EUR 955 000 to cover the expenditure related to the mandate of the EUSR for the period from 1 September 2010 to 30 June 2012.';
- (5) Article 6 is replaced by the following:
- 'Article 6**
- Constitution and composition of the team**
1. Within the limits of her mandate and the corresponding financial means made available, the EUSR shall be responsible for constituting her team. The team shall include the expertise on specific policy issues as required by the mandate. The EUSR shall keep the Council and the Commission promptly informed of the composition of her team.
2. Member States, institutions of the Union and the EEAS may propose the secondment of staff to work with the EUSR. The salary of personnel who are seconded by a Member State or an institution of the Union to the EUSR shall be covered by the Member State, the institution of the Union concerned or the EEAS, respectively. Experts seconded by Member States to the institutions of the Union or the EEAS may also be posted to the EUSR. International contracted staff shall have the nationality of a Member State.
3. All seconded personnel shall remain under the administrative authority of the sending Member State, institution of the Union or the EEAS and shall carry out their duties and act in the interest of the mandate of the EUSR.

4. Offices of the EUSR shall be maintained in Brussels, Khartoum and Juba with the necessary political, administrative and logistic support staff.;

(6) Article 8 is replaced by the following:

'Article 8

Security of EU classified information

The EUSR and the members of her team shall respect the security principles and minimum standards established by Council Decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information (*).

(*) OJ L 141, 27.5.2011, p. 17.;

(7) Article 10 is replaced by the following:

'Article 10

Security

In accordance with the Union's policy on the security of personnel deployed outside the Union in an operational capacity under Title V of the Treaty, the EUSR shall take all reasonably practicable measures, in conformity with her mandate and the security situation in her geographical area of responsibility, for the security of all personnel under her direct authority, in particular by:

- (a) establishing a mission-specific security plan, including physical, organisational and procedural security measures, governing management of the secure movement of personnel to, and within, the mission area, as well as management of security incidents and including a mission contingency and evacuation plan;
- (b) ensuring that all personnel deployed outside the Union are covered by high risk insurance as required by the conditions in the mission area;
- (c) ensuring that all members of her team to be deployed outside the Union, including locally contracted personnel, have received appropriate security training before or upon arriving in the mission area, based on the risk ratings assigned to the mission area;

(d) ensuring that all agreed recommendations made following regular security assessments are implemented and providing the Council, the HR and the Commission with written reports on their implementation and on other security issues within the framework of the mid-term and mandate implementation reports.;

(8) Article 11(2) is replaced by the following:

'2. The EUSR shall regularly report to the PSC on the situation in Darfur and on the situation in Sudan and South Sudan.;

(9) Article 12(2) is replaced by the following:

'2. In the field, close liaison shall be maintained with the Heads of the Union delegations, including in Khartoum, Juba, Addis Ababa and New York and with Member States' Heads of Mission. They shall make best efforts to assist the EUSR in the implementation of the mandate. The EUSR shall also liaise with other international and regional actors in the field.;

(10) Article 13 is replaced by the following:

'Article 13

Review

The implementation of this Decision and its consistency with other contributions from the Union to the region shall be kept under regular review. The EUSR shall present the Council, the HR and the Commission with a progress report before the end of January 2012 and a comprehensive mandate implementation report at the end of the mandate.;

Article 2

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

It shall apply from 9 July 2011.

Done at Brussels, 1 August 2011.

For the Council

The President

M. DOWGIELEWICZ

COUNCIL IMPLEMENTING DECISION 2011/500/CFSP
of 10 August 2011
implementing Decision 2011/137/CFSP concerning restrictive measures in view of the situation in
Libya

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on European Union, and in particular Article 31(2) thereof,

Article 1

The entities listed in the Annex to this Decision shall be added to the list set out in Annex IV to Decision 2011/137/CFSP.

Having regard to Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya ⁽¹⁾, and in particular Article 8(2) thereof,

Article 2

Whereas:

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

(1) On 28 February 2011, the Council adopted Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya.

Done at Brussels, 10 August 2011.

(2) In view of the gravity of the situation in Libya, two additional entities should be included in the list of persons and entities subject to restrictive measures set out in Annex IV to Decision 2011/137/CFSP,

For the Council
The President
M. DOWGIELEWICZ

⁽¹⁾ OJ L 58, 3.3.2011, p. 53.

ANNEX

Entities referred to in Article 1

	Name	Identifying information	Reasons	Date of listing
1.	Al-Sharara Oil Services Company (a.k.a.: Al Sharara, Al-shahara oil service company, Sharara Oil Service Company, Sharara, Al-Sharara al-Dhahabiya Oil Service Company)	Al-Saqa District, Beside al-Saqa Mosque, Tripoli, Libya Tel: +218 21362 2163 Fax: +218 21362 2161	Entity acting on behalf of or at the direction of the Qadhafi Regime.	10.8.2011
2.	Organisation for Development of Administrative Centres (ODAC)	www.odac-libya.com	Entity acting on behalf of or at the direction of the Qadhafi Regime and a potential source of funding for the regime. ODAC has facilitated thousands of government funded infrastructure projects.	10.8.2011

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