

Official Journal

of the European Union

L 310



English edition

Legislation

Volume 55

9 November 2012

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Price: EUR 4

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⁽¹⁾ Text with EEA relevance

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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 1039/2012

of 29 October 2012

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aluminium radiators originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

- (1) The Commission, by Regulation (EU) No 402/2012 ⁽²⁾ ('the provisional Regulation'), imposed a provisional anti-dumping duty on imports of aluminium radiators originating in the People's Republic of China ('PRC' or 'the country concerned').
- (2) The proceeding was initiated on 12 August 2011 ⁽³⁾, following a complaint lodged by the International Association of Aluminium Radiator Manufacturers Limited Liability Consortium (AIRAL S.c.r.l. - 'the complainant') on behalf of producers representing more than 25 % of total Union production of aluminium radiators.
- (3) As set out in recital (14) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2010 to 30 June 2011 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2008 to the end of the IP ('the period considered').

1.2. Subsequent procedure

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose a provisional anti-dumping duty ('provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.
- (5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.
- (6) As already mentioned in recital (12) of the provisional Regulation, one group of related exporting producers claimed individual examination in accordance with Article 17(3) of the basic Regulation. The examination of those claims at the provisional stage was too burdensome to be carried out and was deferred to the definitive stage. It was thus decided to grant an individual examination to the group claiming it, i.e. the Sira Group. In respect of its operations in the PRC, the Sira Group is composed of Sira (Tianjin) Aluminium Products Co. Ltd and Sira Group (Tianjin) Heating Radiators Co. Ltd
- (7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of aluminium radiators originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). All parties were granted a period within which they could make comments on this final disclosure.
- (8) The oral and written comments submitted by the interested parties were considered and taken into account where appropriate.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 124, 11.5.2012, p. 17.

⁽³⁾ OJ C 236, 12.8.2011, p. 18.

2. PRODUCT CONCERNED AND LIKE PRODUCT

- (9) As set out in recital (15) of the provisional Regulation, the product concerned is aluminium radiators and elements or sections of which such radiator is composed, whether or not such elements are assembled in blocks, excluding radiators and elements and sections thereof of the electrical type ('the product concerned'). The product concerned currently falls within CN codes, ex 7615 10 10, ex 7615 10 90, ex 7616 99 10 and ex 7616 99 90.
- (10) After publication of provisional measures, one party claimed that steel radiators are interchangeable with the product concerned and the like product and asked the Commission to analyse and include the steel radiator market trend to compare it in particular with the market of aluminium radiators.
- (11) Based on information available, it appears that aluminium radiators have different technical characteristics, especially as concerning the basic raw material (steel in one case and aluminium on the other), the weight, the thermal inertia and the heat conductivity. Furthermore, the information collected did not point to direct competition and interchangeability between the two products. Finally, the party did not provide any evidence to support its allegations. Based on the above, the claim was rejected.
- (12) In the absence of other comments regarding the product concerned and the like product, recitals (15) and (23) of the provisional Regulation are hereby confirmed.

3. DUMPING

3.1. Market Economy Treatment ('MET') and Individual Treatment ('IT')

3.1.1. Preliminary Remark

- (13) As already mentioned in recital (6) above, it was decided to grant an individual examination to the Sira Group. In respect of its operations in the PRC, the Sira Group is composed of Sira (Tianjin) Aluminium Products Co. Ltd and Sira Group (Tianjin) Heating Radiators Co. Ltd. The Sira Group also claimed market economy treatment or individual treatment.

3.1.2. MET

- (14) It is recalled that, as mentioned in recitals (30) to (31) of the provisional Regulation, none of the sampled parties had claimed MET.
- (15) As mentioned above in recital (13), the Sira Group, which was granted individual examination after the imposition of provisional measures, claimed MET and submitted MET claim forms for the two companies involved in the production and commercialisation of the product concerned.

- (16) Pursuant to Article 2(7)(b) of the basic Regulation, normal value for imports originating in the PRC shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation. Briefly and for ease of reference only, these criteria are set out in summarised form below:

- business decisions are made in response to market signals, without significant State interference, and costs reflect market values,
- firms have one clear set of independently audited accounting records,
- there are no distortions carried over from the non-market economy system,
- bankruptcy and property laws guarantee stability and legal certainty, and
- exchange rate conversions are carried out at market rates.

- (17) The information provided by the two companies belonging to the Sira Group in the MET claim forms was duly analysed and further information was requested and obtained. In view of the findings it was not considered necessary to conduct a verification visit at the premises of the companies.

- (18) The MET investigation demonstrated that the Sira Group failed to meet the requirements of criterion 1 because of State interference in decisions concerning the main raw material, aluminium. The cost of aluminium represents ca. 70 % of the cost of production of the product concerned. The investigation demonstrated that both producers in the Sira Group acquired the aluminium used for the production of the product concerned on the Chinese domestic market. Prices are based on the quotation of aluminium in the State-controlled Shanghai Non-ferrous Metal Exchange market ('the Exchange' or 'SHFE'). The SHFE is a closed exchange for Chinese-registered companies and Chinese citizens and it is controlled by the State Securities Regulatory Commission. Several rules governing the functioning of the Exchange contribute to low volatility and depressed prices at the SHFE: daily price fluctuations are limited to 4 % above or below the settlement price of the previous trading day, trading happens at a low frequency (until the 15th day of each month), futures contracts are limited to a duration of up to 12 months, and transaction fees are charged by both the Exchange and brokers.

- (19) Moreover, as concerns SHFE transactions, physical deliveries can only take place in an approved

warehouse within the PRC, unlike international exchanges, where delivery can take place worldwide. Moreover, as the SHFE is a platform for physical exchanges only (no derivatives are sold), this completely insulates the Chinese aluminium market. As a consequence, arbitrage with the worldwide benchmark, the London Metals Exchange ('LME') or other markets is practically not possible and the exchange works in isolation from other world markets. Therefore, an equalization among these markets cannot take place. Aluminium price quotation at the LME was on a monthly average basis 14 % higher than at the SHFE during the IP.

- (20) The State also interferes with the price setting mechanisms in the SHFE as it is both a seller and a purchaser, via the State Reserve Bureau and other State Bodies, of primary aluminium. In addition, the State sets daily price limits via the rules of the SHFE which have been approved by the State Regulator, the China Securities Regulatory Commission ('the CSRC').
- (21) In addition, the investigation demonstrated that primary aluminium for export is subject to a 17 % VAT and is not refundable on export whereas VAT for domestically sold aluminium and on finished goods is refundable at 13 %. Moreover, primary aluminium for export is subject to a 17 % export tax. As a result, the vast majority of primary aluminium production is sold on the Chinese market causing a price depression of the domestic primary aluminium price and an important cost advantage for producers of aluminium radiators in the PRC. The Chinese State further interfered in the market during the IP as it eliminated the 5 % import duty on metals during the financial crisis.
- (22) A further distortion by the Chinese State is in the form of interventions in the market by the State Reserves Bureau ('SRB') which is part of the National Development Reform Commission ('NDRC'). At the end of 2008 and the beginning of 2009 the SRB started buying up stocks of primary aluminium from smelters. This was a stimulus package aimed at limiting the effects of the global financial and economic crisis which cut demand. Those State-backed purchases absorbed most of the stocks in the domestic market in March and April 2009, driving up prices during the first half of 2009. The SRB sold primary aluminium back onto the market such as at the start of November 2010 when the SRB sold 96 000 tonnes by auction as reported by Bloomberg ⁽¹⁾. The Xinhua News Agency reported the stockpiling measures in December 2008, explaining that it was planned to accumulate 300 000 tonnes of aluminium at prices which were 10 % higher than the market price in a measure designed to prop up prices ⁽²⁾. The SRB stock-
- piling plan involved buying from several Chinese smelters although around half was to be bought from the Aluminium Corporation of China Ltd. Furthermore, the Minister in charge of the NDRC explained that other parts of the stimulus package included relaxed export controls, electricity subsidies, reduced electricity prices and raising loan ceilings. The package is reported to have had an immediate effect on prices. The above demonstrates that the Chinese State has a primary role in the setting of prices of primary aluminium and that it interferes in the market.
- (23) That the significant State interference, as described above, is clearly targeted is, *inter alia*, corroborated by the 12th 5 Year Development Plan for Aluminium (2011-15) in which the Government of China explicitly states its intention of 'adjusting tax and export tax rebates and other economic levers, and strictly control the total amount of expansion and exports of primary products'. This plan continues the policy which existed in the previous Aluminium Plan. Furthermore these plans have been implemented over many years and, as demonstrated above, during the IP several implementing measures were in operation.
- (24) Thus, the multiple State-induced distortions in the Chinese primary aluminium prices affect the raw material prices. In addition, the producers enjoy an advantage from these distortions, in the sense that they normally make their purchases in the Chinese market from local suppliers using Chinese spot markets prices (or SHFE) as a benchmark. During the IP, these prices were around 15 % lower than the world market prices. In theory, Chinese companies can also buy certain quantities at LME prices when prices in the Chinese market are higher as a result of State intervention – whilst the opposite is impossible for non-Chinese operators.
- (25) An examination of the questionnaire responses of both Sira (Tianjin) Aluminium Products Co. Ltd and Sira Group (Tianjin) Heating Radiators Co. Ltd showed that they purchased primary aluminium products at prices linked to the SHFE price in the IP and that their purchase prices had followed the SHFE index over a longer period.
- (26) In addition, the investigation showed that one of the two companies concerned benefited from the 'two free three half' Business Income Tax rebate. This rebate system of the Chinese State means that once a company starts to realise a profit it pays no Business Income Tax for two years and then only pays half for the next three years. Such distortions are recorded as negative costs in the profit and loss account thereby increasing profitability.

⁽¹⁾ www.bloomberg.com

⁽²⁾ http://news.xinhuanet.com/english/2008-12/26/content_10564812.htm

- (27) Under such circumstances, neither of the companies has been in a position to prove that their business decisions regarding acquisition of raw materials are not subject to significant State interference and that costs of major inputs substantially reflect market values. Therefore, they could not demonstrate that they fulfil criterion 1.
- (28) In view of the above findings on criterion 1, it was considered, after consultation of the Advisory Committee, that MET should be rejected for the Sira Group.
- (29) In view of the above, the other MET criteria set out in Article 2(7)(b) of the basic Regulation were not further analysed.
- (30) The Commission officially disclosed the results of the MET findings to the group of related companies concerned in the PRC and to the complainant. They were also given an opportunity to make their views known in writing and to request a hearing if there were particular reasons to be heard.
- (31) Following the MET disclosure, the Sira Group commented on the proposed MET findings. However, since the Sira Group labelled its comments as limited by nature, the Commission dealt with the issues raised on a bilateral basis by means of a specific disclosure document. The comments did not lead to changes in the findings concerning criterion 1.
- (32) Further to the above and in the absence of any comments, recitals (30) to (31) of the provisional Regulation are hereby confirmed.
- (36) On 28 July 2011, the Dispute Settlement Body of the WTO ('DSB') adopted an Appellate Body report and a Panel report as modified by the Appellate Body report on the case 'European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China' ⁽¹⁾ ('reports').
- (37) In the reports, it was found, inter alia, that Article 9(5) of the basic Regulation was inconsistent with Articles 6.10, 9.2 and 18.4 of the WTO Anti-Dumping Agreement and Article XVI:4 of the WTO Agreement. Article 9(5) of the basic Regulation provides that individual exporting producers in non-market economy countries which do not receive market economy treatment pursuant to Article 2(7)(c) of the basic Regulation will be subject to a countrywide duty rate unless such exporters can demonstrate that they meet the conditions for individual treatment laid out in Article 9(5) of the basic Regulation ('the DSB finding on Article 9(5) of the basic Regulation').
- (38) Any exporting producer in the PRC which considers that this Regulation should be reviewed in the light of the legal interpretations regarding Article 9(5) contained in the reports is invited to request a review on the basis of Article 2 of Council Regulation (EC) No 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters ⁽²⁾ ('the WTO enabling Regulation').
- (39) The relevant Union institution may repeal, amend or maintain the measures reviewed in order to reflect the review findings. Parties requesting a review should be aware that if the findings relating to them require an amendment of the measures, such amendment may result in a decrease or an increase in the level of the measures.

3.1.3. IT

- (33) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation. Briefly, and for ease of reference only, these criteria were set out in recital (32) of the provisional Regulation.
- (34) Both related exporting producers of the Sira Group claimed IT in case MET would not be granted. These claims were examined. The investigation showed that they fulfilled all the conditions of Article 9(5) of the basic Regulation.
- (35) The Sira Group was therefore granted IT.
- (40) Further to the above, no comments were received concerning the granting of IT and recitals (32) to (34) of the provisional Regulation are hereby confirmed.
- 3.2. Analogue country**
- (41) In the absence of any comments regarding analogue country, recitals (35) to (41) of the provisional Regulation are hereby confirmed.

⁽¹⁾ WTO, report of the Appellate Body, AB-2011-2, WT/DS397/AB/R, 15 July 2011. WTO, report of the Panel, WT/DS397/R, 29 September 2010. The reports can be downloaded from the WTO's website (http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds397_e.htm).

⁽²⁾ OJ L 201, 26.7.2001, p. 10.

3.3. Normal value

- (42) The same methodology was used for establishing normal value for the Sira Group as the one described in recitals (42) to (46) of the provisional Regulation. In the absence of any comments regarding normal value, recitals (42) to (46) of the provisional Regulation are hereby confirmed.

3.4. Export price

- (43) The Sira Group export price was calculated in line with Article 2(9) of the basic Regulation because exports were made at transfer prices which were deemed unreliable. Export prices were therefore calculated on the basis of the resale prices to the first independent customers on the Union market, with appropriate deductions for costs and profit being made to adjust the export price to an ex works level. Adjustments were made to the resale price to the first independent buyer in the Union for all costs including duties and taxes, incurred between importation and resale, as well as a reasonable margin for SG&A and profits. With respect to the profit margin, the profit realised by the cooperating unrelated importer of the product concerned was used since the actual profit of the related importer was not considered reliable because of the relationship between the exporting producer and the related importer.

- (44) In respect of the sampled exporters, in the absence of any comments regarding export price, recital (47) of the provisional Regulation is hereby confirmed.

3.5. Comparison

- (45) Certain comments were made concerning the comparison between the normal value and the export price.
- (46) Metal Group Ltd contested the comparison between the normal value and the export price on the grounds that the comparison made was not fair because of the matching methodology used and the company claimed differences in physical characteristics.
- (47) Regarding the comparison made, Metal Group suggested an alternative method based simply on weight. This methodology was rejected because it ignores other important fields included in the product type comparison system, e.g. power, which therefore ensures better comparability.
- (48) The claim for physical differences made by Metal Group Ltd was threefold and submitted after the deadline for submitting comments had passed. None of the three claims in this respect had been mentioned in the questionnaire response (which specifically asked for such claims to be made). Furthermore, these claims were not raised during the verification visit which would have given the investigation team the opportunity to verify their validity and magnitude.

- (49) The first claim involved the type of aluminium alloy used in production. In this respect, it was claimed that the Chinese standard of this alloy was not the same as the alloy of the same name used in the Union. Whilst it is clear that these alloys are not identical, no evidence was submitted to prove that any difference in cost existed.

- (50) The second claim involved the use of an alleged cheaper version of finishing powder. Again, no evidence was submitted to prove this claim and it must be stated that this finishing powder constituted such a low percentage of the full cost of production that it would have only a marginal impact.

- (51) The third claim was that no internal anti-corrosion coating was applied by the company in contrast to the product produced in the EU. As in the two cases above, no evidence was submitted to prove this claim.

- (52) In view of the above, the claim for differences in physical characteristics was rejected.

- (53) In the absence of any further comments, recitals (48) to (50) of the provisional Regulation are hereby confirmed.

3.6. Dumping margins

- (54) In respect of the Sira Group, the dumping margin was calculated on the basis of the methodology mentioned in recital (51) of the provisional Regulation and was set at 23,0 %.
- (55) In the absence of any further comments, recitals (51) to (54) of the provisional Regulation are hereby confirmed.

4. INJURY

4.1. Total Union production

- (56) In the absence of comments concerning the total Union production, recitals (55) to (57) of the provisional Regulation are hereby confirmed.

4.2. Union consumption

- (57) In the absence of comments concerning the Union consumption, recitals (58) to (61) of the provisional Regulation are hereby confirmed.

4.3. Imports from the country concerned

4.3.1. Prices of imports and price undercutting

- (58) After disclosure of the provisional findings, one party claimed that the price undercutting margin of 6,1 % found during the IP was low and could not have caused material injury to the Union industry.
- (59) The undercutting practiced by Chinese exporters should, however, be seen in the light of the pressure it has

exercised on the Union market and the impact it had on the Union industry price level. The investigation showed that price pressure due to low-priced dumped imports did not allow the Union industry to set prices at a level allowing it to cover for the costs and to achieve a reasonable margin of profit, in particular during the IP.

(60) As mentioned in recital (65) of the provisional Regulation, the investigation confirmed that the import prices from the PRC were dumped and were always below the sale prices of the Union industry during the period considered. The constant undercutting practised by the Chinese exporters allowed their sales volume and market share to expand in particular during the IP. Moreover, it was found that the price difference on certain types of radiators was considerably higher than the average undercutting found. Hence, the negative impact of the undercutting found on the Union market and the Union industry cannot be underestimated. The claim was thus rejected.

(61) The same party reiterated that the Chinese radiators were of inferior quality compared to the ones produced in the Union and that they therefore could not be the cause of any injury to the Union industry.

(62) This claim was, however, not substantiated and the investigation did not reveal facts which could support this claim. As stated in recital (23) of the provisional Regulation, the investigation showed that the aluminium radiators produced in and exported from the PRC and the aluminium radiators produced and sold in the Union by the Union producers have the same basic physical and technical characteristics as well as the same basic uses. Moreover, they are also completely interchangeable and look identical in particular to the public. They are therefore considered to be alike within the meaning of the Article 1(4) of the basic Regulation.

(63) It is noteworthy that the price undercutting and the injury elimination level are determined on the basis of a detailed comparison of Chinese and Union products types. Hence, any alleged difference between the various types of radiators is taken into account in the detailed price comparison. Based on the above, the claim was rejected.

(64) In the absence of any other comments concerning imports from the country concerned, recitals (62) to (67) of the provisional Regulation are hereby confirmed.

4.4. Economic situation of the Union industry

(65) In the absence of other comments concerning the preliminary remarks, recitals (68) to (71) of the provisional Regulation are hereby confirmed.

4.4.1. Production, production capacity and capacity utilisation

(66) In the absence of comments concerning production, production capacity and capacity utilisation, recitals (72) to (74) of the provisional Regulation are hereby confirmed.

4.4.2. Sales volume and market share

(67) In the absence of comments concerning the development of sales volume and market share of the Union industry, recital (75) of the provisional Regulation is hereby confirmed.

4.4.3. Growth

(68) In the absence of comments concerning growth, recital (76) of the provisional Regulation is hereby confirmed.

4.4.4. Employment

(69) In the absence of comments concerning employment, recitals (77) and (78) of the provisional Regulation are hereby confirmed.

4.4.5. Average unit prices in the Union and cost of production

(70) In the absence of comments concerning average unit prices in the Union and cost of production, recitals (79) and (80) of the provisional Regulation are hereby confirmed.

4.4.6. Profitability, cash flow, investments, return on investments and ability to raise capital

(71) In the absence of comments concerning profitability, cash flow, investments, return on investments and ability to raise capital, recitals (81) to (83) of the provisional Regulation are hereby confirmed.

4.4.7. Stocks

(72) In the absence of comments concerning stocks, recital (84) of the provisional Regulation is hereby confirmed.

4.4.8. Magnitude of the actual dumping margin

(73) In the absence of any comments concerning the magnitude of the actual dumping margin, recital (85) of the provisional Regulation is hereby confirmed.

4.4.9. Conclusion on injury

(74) The investigation confirmed that most of the injury indicators showed a declining trend during the period considered. Therefore, the conclusion reached in recitals (86) to (89) of the provisional Regulation that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation is confirmed.

5. CAUSATION

5.1. Introduction

- (75) In the absence of any comments to recital (90) of the provisional Regulation, that recital is hereby confirmed.

5.2. Effect of the dumped imports

- (76) In the absence of any comments concerning the effect of the dumped imports, recitals (91) to (95) of the provisional Regulation are hereby confirmed.

5.3. Effect of other factors

5.3.1. Imports from third countries

- (77) In the absence of any comments concerning imports from third countries, recital (96) of the provisional Regulation is hereby confirmed.

5.3.2. Economic crisis

- (78) One party claimed that the cause of the injury, if any, suffered by the Union industry was the economic crisis which prevailed in the construction and housing sector, and particularly in certain Member States such as Spain and Italy, considered by this party as the main sales markets for the Union industry.

- (79) The investigation, however, revealed that the Union industry also sold large volumes of radiators in other Member States than Spain and Italy. Furthermore, the market of the product concerned and the like product goes beyond the construction and housing markets of Spain and Italy. Nevertheless, even if it cannot be excluded that the economic crisis had an impact on the Union market, the presence of increasing volumes of low-priced Chinese dumped imports intensified any negative effects the economic downturn may have had during the period considered and prevented the Union industry from benefitting from the general economic recovery during the IP. The claim was therefore rejected.

- (80) In the absence of other comments concerning the economic crisis, recitals (97) to (100) of the provisional Regulation are hereby confirmed.

5.3.3. Development of the Union industry cost of production

- (81) It was claimed that the increase in the price of aluminium which constitutes a large share of the cost to produce the like product was the cause of the injury suffered by the Union industry.

- (82) However, it is rather considered that in a market governed by fair competition, prices can be set at a level as to cover costs and to achieve a reasonable profit margin. As confirmed in recital (60) above, the average import prices from the PRC were continuously undercutting the Union industry prices during the period considered. When costs increased, the Union industry

could not increase its prices accordingly in view of the continued price pressure. Hence, this claim was rejected.

- (83) In the absence of any other comments concerning the development of the Union industry cost of production, recitals (101) to (103) of the provisional Regulation are hereby confirmed.

5.3.4. Export performance of the sampled Union industry

- (84) One party claimed that the level and the decrease in the Union industry export sales had a major influence on its overall economic performance during the period considered.

- (85) The investigation showed, however, that although the Union industry export sales decreased during the period considered, they remained an important part, accounting for 51 % of the Union industry total sales in the EU in the IP and for 27 % of the Union industry total production in the IP. Thus, as stated in recital (106) of the provisional Regulation, export sales gave the Union industry the possibility to achieve economies of scale and could therefore not be considered to have caused the material injury suffered by the Union industry during the period considered. The trend and the level of the Union industry export sales are not such as to break the causal link between the injury and the low-priced dumped imports from the PRC. Therefore, the claim was rejected.

- (86) The same party has requested disclosure of the Union industry exports' values and thus prices, since only exports' volumes were published in the provisional Regulation. However, this data cannot be disclosed since they are considered confidential.

- (87) In the absence of other comments concerning the export performance of the sampled Union industry, recitals (104) to (106) of the provisional Regulation are hereby confirmed.

5.4. Conclusion on causation

- (88) One party claimed that the decision of the Union industry to increase production capacity in 2008 combined with the difficult economic situation which also prevailed in the following years are the main causes of the decrease of the Union industry's capacity utilisation and its negative profitability. It was thus claimed that injury was caused by various domestic factors, such as the economic crisis and the wrong investment decisions made by the Union industry.

- (89) However, an injury analysis is assessed taking into account all the injury factors together, of which capacity utilisation and profitability are only two. The investigation of injury showed in particular that the Union industry sales volume decreased by 16 % over the period considered, while imports from the PRC

increased by 77 % over the period considered and the market share increased from 13 % to 24 % over the period considered. Even during the IP, when consumption increased compared to 2009, the Union industry market share kept shrinking. Notwithstanding the deterioration of other injury factors, another sign of the difficult economic situation suffered by the Union industry is illustrated by the Union industry stock levels which increased significantly over the period considered. Therefore, the increased production capacity of the Union industry in 2008 should be analysed together with all these other elements, in order to have a complete picture.

- (90) Although the economic crisis had a certain negative impact on the Union industry's situation, it cannot be ignored that the low-priced Chinese dumped imports increased significantly over the period considered and thus intensified any negative effects the economic downturn may have had during the period considered and prevented the Union industry from benefitting from the general economic recovery during the IP.
- (91) The investigation showed that there was a 9 % increase in consumption between 2009 and the IP, while the Union industry market share kept decreasing and even with a better general economic situation, the Union industry was unable to recover, because it was always under pressure of the low-priced dumped imports from the PRC. Based on the above, the claim was thus rejected.
- (92) In the absence of other comments concerning the conclusion on causation, recitals (107) to (110) of the provisional Regulation are hereby confirmed.

6. UNION INTEREST

- (93) There was no cooperation from users in this investigation and despite the efforts after publication of provisional findings no, users came forward.
- (94) Based on information available, it was found that the main purchasers of aluminium radiators are large building companies, distributors and wholesalers, which resale them to specialised chains or retailer shops for sales to smaller construction companies or end users. An assessment of the possible impact the imposition of definitive duties may have on the parties concerned revealed that even with a potential price increase per element of aluminium radiator imported of 61 %, which is the highest anti-dumping duty proposed, this price increase seems to be quite low, since the product concerned is usually part of large projects, where its price is only a small portion of the total business costs. Therefore, even taking into account the worst case

scenario, it seems that the resulted price increase could be easily absorbed in the chain of downstream sales.

- (95) In the absence of comments concerning the Union interest, recitals (111) to (118) of the provisional Regulation are hereby confirmed.

7. DEFINITIVE ANTI-DUMPING MEASURES

7.1. Injury elimination level

- (96) It was claimed that the profit margin used to calculate the amount of duty necessary to remove the effects of the injurious dumping was too high. It was argued that the margin of 7,4 %, achieved by the sampled Union producers in the year 2008, was exceptional and unrealistic. The economic crisis which hit the market in the following years made it impossible to reach such a level of profit.
- (97) It should be noted that this profit margin was verified during the investigation as the profit margin reached by the sampled companies under normal market conditions, namely in the absence of injurious dumping. It cannot be concluded that the economic crisis had no impact on the Union industry's situation, but the volume of low-priced dumped imports from the PRC undercutting the prices of the Union industry kept increasing over the whole period considered to the detriment of the Union industry prices and market share. It is therefore clear that the dumped imports from the PRC have intensified any effect of the economic downturn on the Union industry. Therefore, this claim was rejected.
- (98) It was also claimed that the post-importation cost used to calculate undercutting and injury margins (0,2 %, including all the costs necessary to release the goods for free circulation into the EU, such as the handling cost and customs clearance fee, but excluding the import duty) was underestimated. According to this party, the post-importation cost should include the handling cost, customs clearance fee and in-land freight estimated to 3,5 %. In order to calculate undercutting and underselling, the price at the EU border is compared with the ex-works price of Union industry producers. The price at EU border must include all the costs necessary to release the goods for free circulation into the EU, (i.e. customs clearance fee and handling costs), but not any in-land freight, as claimed by the party. Therefore, this claim was rejected.
- (99) In the absence of other comments concerning the injury elimination level, the methodology described in recitals (119) to (123) of the provisional Regulation is hereby confirmed.

7.2. Form and level of the duties

- (100) In the light of the foregoing, it is considered that, in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on imports of the product concerned at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule. Accordingly, all duty rates should be set at the level of the injury margins found.
- (101) The proposed definitive anti-dumping duties are the following:

Country	Company	Dumping margin	Injury margin	Definitive duty
PRC	Zhejiang Flyhigh Metal Products Co., Ltd.	23,0 %	12,6 %	12,6 %
	Metal Group Co., Ltd.	70,8 %	56,2 %	56,2 %
	Sira Group (Sira (Tianjin) Aluminium Products Co. Ltd. and Sira Group (Tianjin) Heating Radiators Co. Ltd.)	23,0 %	14,9 %	14,9 %
	Other cooperating companies	32,5 %	21,2 %	21,2 %
	All other companies (country-wide dumping margin)	76,6 %	61,4 %	61,4 %

- (102) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation in respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of the products originating in the PRC and produced by the companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (103) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the presentation to the Customs authorities of the Member States of a valid

commercial invoice, which shall conform to the requirements set out in the Annex II to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.

- (104) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty.
- (105) Any claim requesting the application of an individual anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, this Regulation will then be amended accordingly by updating the list of companies benefiting from individual anti-dumping duty rates.
- (106) In order to ensure a proper enforcement of the anti-dumping duty, the country-wide duty level should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the IP.

- (107) In order to ensure equal treatment between any new exporters and the cooperating companies not included in the sample, mentioned in Annex I to this Regulation, provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise be entitled to a review pursuant to Article 11(4) of the basic Regulation as that Article does not apply where sampling has been used.

7.3. Definitive collection of provisional anti-dumping duties

- (108) In view of the magnitude of the dumping margins found and given the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, be definitively collected to the extent of the amount of the definitive duties imposed,

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Office: NERV-105, 08/020, 1049 Bruxelles/Brussel BELGIQUE/BELGIË.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of aluminium radiators and elements or sections of which such radiator is composed, whether or not such elements are assembled in blocks, excluding radiators and elements and sections thereof of the electrical type, currently falling within CN codes ex 7615 10 10, ex 7615 10 90, ex 7616 99 10 and ex 7616 99 90 (TARIC codes 7615 10 10 10, 7615 10 90 10, 7616 99 10 91, 7616 99 90 01 and 7616 99 90 91) and originating in the People's Republic of China.

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

Company	Definitive duty	TARIC additional code
Zhejiang Flyhigh Metal Products Co., Ltd.	12,6 %	B272
Metal Group Co. Ltd.	56,2 %	B273
Sira (Tianjin) Aluminium Products Co. Ltd.	14,9 %	B279
Sira Group (Tianjin) Heating Radiators Co. Ltd.	14,9 %	B280
Companies listed in Annex I	21,2 %	
All other companies	61,4 %	B999

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

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

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EU) No 402/2012 on imports of aluminium radiators originating in the People's Republic of China, shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- it did not export to the Union the product described in Article 1(1) during the investigation period (1 July 2010 to 30 June 2011),
- it is not related to any of the exporters or producers in the People's Republic of China which are subject to the measures imposed by this Regulation,
- it has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 21,2 %.

Article 4

This Regulation shall enter into force on the 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 Luxembourg, 29 October 2012.

For the Council
The President
E. FLOURENTZOU

ANNEX I

PRC COOPERATING EXPORTING PRODUCERS NOT SAMPLED

Name	TARIC additional code
Jinyun Shengda Industry Co., Ltd.	B274
Ningbo Ephriam Radiator Equipment Co., Ltd.	B275
Ningbo Everfamily Radiator Co., Ltd.	B276
Ningbo Ningshing Kinhil Industrial Co., Ltd.	B277
Ningbo Ninhshing Kinhil International Co., Ltd.	B278
Yongkang Jinbiao Machine Electric Co., Ltd.	B281
Yongkang Sanghe Radiator Co., Ltd.	B282
Zhejiang Aishuibao Piping Systems Co., Ltd.	B283
Zhejiang Botai Tools Co., Ltd.	B284
Zhejiang East Industry Co., Ltd.	B285
Zhejiang Guangying Machinery Co., Ltd.	B286
Zhejiang Kangfa Industry & Trading Co., Ltd.	B287
Zhejiang Liwang Industrial and Trading Co., Ltd.	B288
Zhejiang Ningshuai Industry Co., Ltd.	B289
Zhejiang Rongrong Industrial Co., Ltd.	B290
Zhejiang Yuanda Machinery & Electrical Manufacturing Co., Ltd.	B291

ANNEX II

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

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

'I, the undersigned, certify that the (volume) of aluminium radiators and elements or sections of which such radiator is composed, sold for export to the European Union covered by this invoice, was manufactured by (company name and registered seat) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.

Date and signature'.

COUNCIL REGULATION (EU) No 1040/2012**of 7 November 2012****amending Regulation (EC) No 754/2009 as regards exclusion of certain groups of vessels from the fishing effort regime laid down in Regulation (EC) No 1342/2008 and amending Regulations (EU) No 43/2012 and (EU) No 44/2012 as regards certain fishing opportunities**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The 2011 stock assessment for herring in the Irish Sea was based on a trends only assessment and a reduced precautionary total allowable catch (TAC) was adopted. Subsequent benchmarking in 2012 of this stock has improved the assessment methodology and a catch forecast based on a maximum sustainable yield (MSY) approach can now be provided. The Scientific, Technical and Economic Committee for Fisheries (STECF) was asked to comment on a retroactive increase of fishing opportunities for this stock and to explain the impact of such an increase on the scientific advice for 2013. On the basis of the STECF analysis, an increase in the fishing opportunities set for 2012 can be adopted, on the condition that the necessary revision is made to the 2013 TAC to maintain fishing mortality at maximum sustainable yield (MSY) level. Council Regulation (EU) No 43/2012 of 17 January 2012 fixing for 2012 the fishing opportunities available to EU vessels for certain fish stocks and groups of fish stocks which are not subject to international negotiations or agreements ⁽¹⁾ should be amended accordingly.
- (2) France has provided information on cod catches for three fisheries and involving three groups of vessels: a group of bottom trawlers targeting saithe in the North Sea, a group of bottom trawlers targeting saithe and deep-sea species in the west of Scotland, and a group of vessels fishing with longlines targeting hake in the west of Scotland. On the basis of this information, as assessed by STECF, it can be established that the cod catches, including discards, of these three groups of vessels did not exceed 1,5 % of the total catches for each group of vessels in each of the three areas. Moreover, having regard to the measures in place to ensure the monitoring and control of the fishing activities of these groups of

vessels and considering that the inclusion of these groups would constitute an administrative burden disproportionate to their overall impact on cod stocks, it is appropriate to exclude the three groups of vessels from the application of the effort regime laid down in Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks ⁽²⁾. Council Regulation (EC) No 754/2009 of 27 July 2009 excluding certain groups of vessels from the fishing effort regime laid down in Chapter III of Regulation (EC) No 1342/2008 ⁽³⁾, Regulation (EU) No 43/2012, and Council Regulation (EU) No 44/2012 of 17 January 2012 fixing for 2012 the fishing opportunities available in EU waters and, to EU vessels, in certain non-EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements ⁽⁴⁾ should be amended accordingly.

- (3) In October 2012, the International Council for the Exploration of the Sea (ICES) published scientific advice on the stock of Norway pout in the North Sea, the Skagerrak and the Kattegat. ICES advice indicates that catches ought not to exceed 101 000 tonnes in 2012. As regards quotas, 75 % of the Norway pout TAC in this area corresponds to the Union quota, of which 5 000 tonnes should be allocated to Norway. The rest of the Union quota should be allocated among Member States.
- (4) The catch limits provided for by this Regulation should apply from 1 January 2012, except for the provisions concerning fishing effort limits, which should apply from 1 February 2012. Such retroactive application will be without prejudice to the principles of legal certainty and protection of legitimate expectations as regards the fishing opportunities concerned that have not yet been exhausted. Since catch limits have an influence on the economic activities and the planning of the fishing season of Union vessels, this Regulation should enter into force immediately after its publication.
- (5) Regulation (EC) No 754/2009, Regulation (EU) No 43/2012 and Regulation (EU) No 44/2012 should therefore be amended accordingly,

⁽¹⁾ OJ L 25, 27.1.2012, p. 1.

⁽²⁾ OJ L 348, 24.12.2008, p. 20.

⁽³⁾ OJ L 214, 19.8.2009, p. 16.

⁽⁴⁾ OJ L 25, 27.1.2012, p. 55.

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 754/2009

In Article 1 of Regulation (EC) No 754/2009, the following points are added:

- '(j) the group of vessels flying the flag of France identified in the request from France dated 8 June 2012, which participate in a fishery targeting saithe in the North Sea (ICES zone IV) using bottom trawls with a mesh size equal to or greater than 100 mm (gear category TR1);
- (k) the group of vessels flying the flag of France identified in the request from France dated 8 June 2012, which participate in a fishery targeting saithe and deep-sea species in the west of Scotland (ICES zone VI) using bottom trawls with a mesh size equal to or greater than 100 mm (gear category TR1);
- (l) the group of vessels flying the flag of France identified in the request from France dated 8 June 2012, which participate in a fishery targeting hake in the west of Scotland (ICES zone VI) using longlines (gear category LL).'

Article 2

Amendments to Regulation (EU) No 43/2012

Annexes I and IIA to Regulation (EU) No 43/2012 are amended in accordance with the text set out in Annex I to this Regulation.

Article 3

Amendments to Regulation (EU) No 44/2012

Annexes IA and IIA to Regulation (EU) No 44/2012 are amended in accordance with the text set out in Annex II to this Regulation.

Article 4

Entry into force

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

Point (1) of Annex I, and point (1) of Annex II shall apply from 1 January 2012.

Article 1, point (2) of Annex I, and point (2) of Annex II shall apply from 1 February 2012.

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

Done at Brussels, 7 November 2012.

For the Council

The President

A. D. MAVROYIANNIS

ANNEX I

- (1) In Part B of Annex I to Regulation (EU) No 43/2012, the entry for herring in VIIa is replaced by the following:

*Species: Herring <i>Clupea harengus</i>		Zone: VIIa ⁽¹⁾ (HER/07A/MM)
Ireland	1 374	
United Kingdom	3 906	
Union	5 280	
TAC	5 280	Analytical TAC

(¹) This zone is reduced by the area bounded:
 — to the north by latitude 52° 30' N,
 — to the south by latitude 52° 00' N,
 — to the west by the coast of Ireland,
 — to the east by the coast of the United Kingdom.'

- (2) in Appendix 1 of Annex IIA to Regulation (EU) No 43/2012, table (d), the column concerning France (FR) is replaced by the following:

FR
1 057 828
34 926
0
0
0
302 917
0
184 354'

ANNEX II

- (1) In Annex IA to Regulation (EU) No 44/2012, the entry for Norway pout and associated by-catches in IIIa; EU waters of IIa and IV is replaced by the following:

'Species: Norway pout and associated by-catches <i>Trisopterus esmarki</i>		Zone: IIIa; EU waters of IIa and IV (NOP/2A3A4.)
Denmark	70 684 ⁽¹⁾	
Germany	14 ⁽¹⁾ ⁽²⁾	
The Netherlands	52 ⁽¹⁾ ⁽²⁾	
Union	75 750 ⁽¹⁾ ⁽³⁾	
TAC	Not relevant	Analytical TAC Article 3 of Regulation (EC) No 847/96 does not apply. Article 4 of Regulation (EC) No 847/96 does not apply.

⁽¹⁾ At least 95 % of landings counted against this quota must be of Norway pout. By-catches of haddock and whiting to be counted against the remaining 5 % of the quota.

⁽²⁾ Quota may be fished in EU waters of ICES zones IIa, IIIa and IV only.

⁽³⁾ Of which 5 000 tonnes are allocated to Norway.'

- (2) in Appendix 1 of Annex IIA to Regulation (EU) No 44/2012 the column concerning France (FR) is replaced by the following:

FR
533 451
6 496 811
101 316
0
1 202 818
342 579
4 338 315
125 141'

COMMISSION IMPLEMENTING REGULATION (EU) No 1041/2012**of 26 October 2012****entering a name in the register of protected designations of origin and protected geographical indications (平谷大桃 (Pinggu Da Tao) (PDO))**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, China's application to register the name '平谷大桃 (Pinggu Da Tao)' was published in the *Official Journal of the European Union* ⁽²⁾.

- (2) As no statement of objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

Article 2

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, 26 October 2012.

*For the Commission,
On behalf of the President,
Dacian CIOLOŞ
Member of the Commission*

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 48, 18.2.2012, p. 28.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.6. Fruit, vegetables and cereals, fresh or processed

CHINA

平谷大桃 (Pinggu Da Tao) (PDO)

COMMISSION REGULATION (EU) No 1042/2012**of 7 November 2012****amending Regulation (EU) No 1031/2010 to list an auction platform to be appointed by the United Kingdom****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC⁽¹⁾, and in particular Articles 3d(3) and 10(4) thereof,

Whereas:

- (1) Members States not participating in the joint action as provided in Article 26(1) and (2) of Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community⁽²⁾, may appoint their own auction platform for the auctioning of their share of the volume of allowances covered by Chapters II and III of Directive 2003/87/EC. Pursuant to the third subparagraph of Article 30(5) of Regulation (EU) No 1031/2010 the appointment of such auction platforms is subject to listing of the auction platform concerned in Annex III to that Regulation.
- (2) In accordance with Article 30(4) of Regulation (EU) No 1031/2010, the United Kingdom informed the Commission of its decision not to participate in the joint action as provided in Article 26(1) and (2) of that Regulation, and to appoint its own auction platform.
- (3) On 30 April 2012, the United Kingdom notified the Commission of its intention to appoint ICE Futures Europe ('ICE') as an auction platform referred to in Article 30(1) of Regulation (EU) No 1031/2010.
- (4) On 25 April 2012, the United Kingdom presented the notification to the Climate Change Committee established under Article 9 of Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for imple-

menting the Kyoto Protocol⁽³⁾. In addition, the United Kingdom has provided further information and clarification to the Commission, supplementing the notification accordingly.

- (5) In order to ensure that the proposed appointment of ICE as an auction platform referred to in Article 30(1) of Regulation (EU) No 1031/2010 is compatible with the requirements of that Regulation and is in conformity with the objectives set out in Article 10(4) of Directive 2003/87/EC, it is necessary to impose a number of conditions and obligations on ICE.
- (6) In accordance with Articles 18 to 21 of Regulation (EU) No 1031/2010, an auction platform is charged with a series of tasks concerning the admission of persons to bid in the auctions which include applying customer due diligence measures to ensure that only eligible persons apply for admission to bid directly in the auctions. Its responsibilities also arise in the context of examining applicants' compliance with certain minimum requirements for admission to bid, in the submission and processing of applications for admission to bid and with regard to decisions to grant or refuse to grant admission to bid, to revoke or to suspend admissions to bid already granted. Under the cooperation model between ICE and its exchange members and their clients, ICE's exchange members and some of their clients will perform such admission functions with respect to their existing or prospective clients. Such cooperation model can be compatible with the provisions of Regulation (EU) No 1031/2010, provided that ICE ensures that compliance with the obligations incumbent upon the auction platform under Regulation (EU) No 1031/2010.
- (7) Furthermore, in accordance with point (b) of Article 35(3) of Regulation (EU) No 1031/2010, an appointed auction platform is required to provide full, fair and equitable access to bid in the auctions for small and medium enterprises (SMEs) and access to bid in the auctions for small emitters. To ensure this, ICE should provide such SMEs and small emitters with transparent, comprehensive and up-to-date information, on access possibilities to auctions conducted by ICE for the United Kingdom including all necessary practical guidance on how to make the most of such possibilities. Such information should be publicly available on ICE's webpage. In addition, ICE should report to the auction monitor appointed as provided for in Article 24(2) of Regulation (EU) No 1031/2010 on the coverage obtained under its cooperation model with exchange members and their clients, including on the level of geographic coverage obtained and take the

⁽¹⁾ OJ L 275, 25.10.2003, p. 32.

⁽²⁾ OJ L 302, 18.11.2010, p. 1.

⁽³⁾ OJ L 49, 19.2.2004, p. 1.

utmost account of the auction monitor's recommendations in this regard so as to ensure fulfilment of its obligations under Article 35(3)(a) and (b) of that Regulation.

- (8) In accordance with point (e) of Article 35(3) of Regulation (EU) No 1031/2010, when appointing an auction platform, Member States must take into account the extent to which a candidate auction platform is able to avoid distortions of competition in the internal market including the carbon market. In particular, an auction platform should not be able to use the contract appointing it to leverage the competitiveness of its other activities, notably the secondary market it organises. In addition, the listing of ICE as an auction platform should be conditional upon ICE, including any exchange members or clearing members admitted by ICE, providing the option to candidate bidders to be admitted to bid in the auctions without being required to become an exchange member or a participant in the secondary market organised by ICE or of any other trading place operated by ICE or by any third party.
- (9) In accordance with point (h) of Article 35(3) of Regulation (EU) No 1031/2010, when appointing an auction platform, the Member States have to take into account the extent to which adequate measures are provided to require an auction platform to hand over all tangible and intangible assets necessary for the conduct of the auctions by an auction platform's successor. Such measures have been laid down in an exit strategy that should be reviewed by the auction monitor. ICE should develop its exit strategy in a clear and timely manner taking into utmost account the auction monitor's opinion.
- (10) In accordance with Article 51(3) of Regulation (EU) No 1031/2010, all fees and conditions applied by an auction platform as well as those of the clearing system or settlement system must be clearly stated, easily understandable and publicly available. In view of the cooperation model foreseen by ICE, any additional fees and conditions applied by exchange members and clients thereof in relation to the admission functions they perform should be also clearly stated, easily understandable and publicly available on the webpages of those offering the services with direct references to those webpages available on ICE's webpage.
- (11) In accordance with Article 64(1) of Regulation (EU) No 1031/2010, a definitive auction platform has to ensure that it has an extra-judicial mechanism to deal with complaints from applicants for admission to bid, bidders admitted to bid, or whose admission to bid has been refused, revoked or suspended. Applicants for admission to bid, bidders admitted to bid or whose admission to bid has been refused, revoked or suspended should be able to avail themselves of their right to appeal under Article 64 of Regulation (EU) No 1031/2010, even when such decisions are taken by ICE's exchange members and their clients.

- (12) In addition to the changes to ICE's own exchange rules required to ensure full compliance with the condition and obligations set out in the Annex to this Regulation, ICE should also take any further steps as necessary to ensure that full compliance, which may involve adaptations to contractual arrangements between ICE and its exchange members, between exchange members and the clients, and between the clients down the chain.
- (13) Moreover, certain references in Article 25(2) of Regulation (EU) No 1031/2010 should be amended to eliminate gaps in the monitoring of the auction processes by the auction monitor and for reasons of consistency with other provisions of that Regulation.
- (14) Regulation (EU) No 1031/2010 should therefore be amended accordingly.
- (15) In order to ensure predictable and timely auctions by the auction platform to be appointed by the United Kingdom, this Regulation should enter into force as a matter of urgency.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1031/2010 is amended as follows:

- (1) Article 25, paragraph 2 is amended as follows:
 - (a) point (c) is replaced by the following:

'(c) any evidence of anti-competitive behaviour, market abuse, money laundering, terrorist financing or criminal activity';
 - (b) point (f) is replaced by the following:

'(f) information about the number, nature and status of any complaints made pursuant to Articles 59(4) or 64(1) as well as any complaints made against an auction platform to the national competent authorities supervising that auction platform, the courts or competent administrative bodies provided for in the national measures transposing Article 52(2) of Directive 2004/39/EC';
- (2) Annex III is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 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, 7 November 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX

In the table set out in Annex III to Regulation (EU) No 1031/2010, the following is added:

'Auction platforms appointed by the United Kingdom		
2	Auction platform	ICE Futures Europe (ICE)
	Term of appointment	From 10 November 2012 at the earliest until 9 November 2017 at the latest, without prejudice to the second subparagraph of Article 30(5).
	Definitions	For the purposes of the condition and obligations applying to ICE the following definitions shall apply: (a) "ICE exchange rules" — means ICE Regulations, including in particular contract rules and procedures relating to the ICE FUTURES EUA AUCTION CONTRACT and the ICE FUTURES EUAA AUCTION CONTRACT; (b) "exchange member" — means a member as defined in Section A.1 of ICE exchange rules; (c) "client" — means a client of an exchange member, as well as clients of their clients down the chain, who facilitate the admission of persons to bid and act on behalf of bidders.
	Conditions	Admission to the auctions shall not be dependent on becoming an exchange member of or a participant in the secondary market organised by ICE or of any other trading place operated by ICE or by any third party.
	Obligations	1. ICE shall require that any decisions that have been taken by ICE's exchange members or their clients with respect to granting admission to bid in the auctions, revoking or suspending such admission be communicated to ICE by the exchange members or their clients taking such decisions in the following way: (a) in case of decisions refusing to grant admission to bid and decisions revoking or suspending access to auctions, on an individual basis without delay; (b) in case of other decisions, upon request. ICE shall ensure that any such decisions may be subject to examination by ICE with regard to their compliance with the obligations incumbent upon the auction platform under this Regulation and that ICE's exchange members or their clients abide by the results of any such examination by ICE. This may include, but not be limited to, recourse to any applicable ICE exchange rules, including disciplinary procedures, or any other action as appropriate to facilitate admission to bid in the auctions. 2. ICE shall draw up and maintain on its webpage a comprehensive and up-to-date list of exchange members or their clients that are eligible to facilitate access to SMEs and small emitters to the United Kingdom's auctions on ICE together with readily comprehensible practical guidance informing SMEs and small emitters of the steps they need to take to access the auctions through such exchange members or their clients. 3. Within six months after the start of the auctions or two months from the appointment of the auction monitor whichever is the latest, ICE shall report to the auction monitor, on the coverage obtained under its cooperation model with exchange members and their clients, including the level of geographic coverage obtained and take the utmost account of the auction monitor's recommendations in this regard so as to ensure fulfilment of its obligations under Article 35(3)(a) and (b) of this Regulation. 4. All fees and conditions applied by ICE and its clearing system to persons admitted to bid or bidders shall be clearly stated, easily understandable and publicly available on ICE's webpage, which shall be kept up-to-date.

	ICE shall provide that where additional fees and conditions are applied by an exchange member or its client, for admission to bid, such fees and conditions shall also be clearly stated, easily understandable and publicly available on the webpages of those offering the services with direct references to those webpages available on ICE's webpage. 5. Without prejudice to other legal remedies, ICE shall provide for the availability of the ICE Complaints Resolution Procedures to decide on complaints which may arise in connection with decisions on granting admission to bid in the auctions, refusing to grant admission to bid in the auctions, revoking or suspending admissions to bid in the auctions already granted as more specifically referred to in point 1, taken by ICE's exchange members or their clients. 6. ICE shall amend its exchange rules to ensure full compliance with the condition and obligations for its listing which are set out in this Annex. In particular, the amended ICE exchange rules shall stipulate the obligations set out in points 1, 2, 4 and 5. 7. Within two months from 10 November 2012, ICE shall submit its detailed exit strategy to the United Kingdom for consultation of the auction monitor. Within two months from receiving the auction monitor's opinion, ICE shall review its exit strategy, taking the utmost account of that opinion. 8. The United Kingdom shall notify the Commission of any substantive changes in the contractual arrangements with ICE notified to the Commission on 30 April, 4 May and 14 June 2012 and communicated to the Climate Change Committee on 15 May and 3 July 2012.'
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COMMISSION IMPLEMENTING REGULATION (EU) No 1043/2012**of 8 November 2012****approving the active substance phosphane, 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 Article 13(2) and Article 78(2) thereof,

Whereas:

- (1) In accordance with Article 80(1)(a) of Regulation (EC) No 1107/2009, Council Directive 91/414/EEC ⁽²⁾ is to apply, with respect to the procedure and the conditions for approval, to active substances for which a decision has been adopted in accordance with Article 6(3) of that Directive before 14 June 2011. For phosphane the conditions of Article 80(1)(a) of Regulation (EC) No 1107/2009 are fulfilled by Commission Decision 2008/566/EC ⁽³⁾.
- (2) In accordance with Article 6(2) of Directive 91/414/EEC Germany received on 11 November 2007 an application from S&A Service- und Anwendungstechnik GmbH for the inclusion of the active substance phosphane in Annex I to Directive 91/414/EEC. Decision 2008/566/EC confirmed that the dossier was 'complete' in the sense that it could be considered as satisfying, in principle, the data and information requirements of Annexes II and III to Directive 91/414/EEC.
- (3) For that active substance, the effects on human and animal health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of Directive 91/414/EEC, for the uses proposed by the applicant. The designated rapporteur Member State submitted a draft assessment report on 24 February 2010.
- (4) The draft assessment report was reviewed by the Member States and the European Food Safety Authority (hereinafter 'the Authority'). The Authority presented to the Commission its conclusion on the review of the pesticide risk assessment of the active substance phosphane ⁽⁴⁾ on 22 February 2012. The draft assessment report was

reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and was finalised on 28 September 2012 in the format of the Commission review report for phosphane.

- (5) It has appeared from the various examinations made that plant protection products containing phosphane may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) and Article 5(3) of Directive 91/414/EEC, in particular with regard to the uses which were examined and detailed in the Commission review report. It is therefore appropriate to approve phosphane.
- (6) 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.
- (7) Without prejudice to the obligations provided for in Regulation (EC) No 1107/2009 as a consequence of 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 six months after approval to review authorisations of plant protection products containing phosphane. Member States should, as appropriate, vary, replace or withdraw authorisations. By way of derogation from that 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.
- (8) 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 ⁽⁵⁾ 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

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.⁽²⁾ OJ L 230, 19.8.1991, p. 1.⁽³⁾ OJ L 181, 10.7.2008, p. 52.⁽⁴⁾ EFSA Journal 2012; 10(3):2595. Available online: <http://www.efsa.europa.eu>⁽⁵⁾ OJ L 366, 15.12.1992, p. 10.

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.

- (9) 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.
- (10) 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 phosphane, 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 phosphane as an active substance by 30 September 2013.

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 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.

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

Done at Brussels, 8 November 2012.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing phosphane 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 March 2013 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 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 phosphane as the only active substance, where necessary, amend or withdraw the authorisation by 30 September 2014 at the latest; or
- (b) in the case of a product containing phosphane as one of several active substances, where necessary, amend or withdraw the authorisation by 30 September 2014 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

Entry into force and date of application

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

It shall apply from 1 April 2013.

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
Phosphane CAS No 7803-51-2 CIPAC No 127	Phosphane	≥ 994 g/kg The relevant impurity arsane must not exceed 0,023 g/kg in the technical material	1 April 2013	31 March 2023	Authorisations shall be limited to professional users. 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 phosphane, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 28 September 2012 shall be taken into account. In this overall assessment Member States shall pay particular attention to: — the protection of operators in and around the treated premises during the treatment as well as during and after the aeration; — the protection of workers in and around the treated premises during the treatment as well as during and after the aeration; — the protection of bystanders around the treated premises during the treatment as well as during and after the aeration. Conditions of use shall include risk mitigation measures, like permanent monitoring of the phosphane concentration by automatic devices, the use of personal protection equipment and setting-up an area around the treated premise where bystanders are denied, where appropriate.

⁽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 ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
'28	Phosphane CAS No 7803-51-2 CIPAC No 127	Phosphane	≥ 994 g/kg The relevant impurity arsane must not exceed 0,023 g/kg in the technical material	1 April 2013	31 March 2023	Authorisations shall be limited to professional users. 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 phosphane, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 28 September 2012 shall be taken into account. In this overall assessment Member States shall pay particular attention to: — the protection of operators in and around the treated premises during the treatment as well as during and after the aeration; — the protection of workers in and around the treated premises during the treatment as well as during and after the aeration; — the protection of bystanders around the treated premises during the treatment as well as during and after the aeration. Conditions of use shall include risk mitigation measures, like permanent monitoring of the phosphane concentration by automatic devices, the use of personal protection equipment and setting-up an area around the treated premise where bystanders are denied, where appropriate.'

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

COMMISSION IMPLEMENTING REGULATION (EU) No 1044/2012

of 8 November 2012

on a derogation from Regulation (EEC) No 2454/93 as regards the rules of origin used for the purposes of the scheme of generalised tariff preferences to take account of the special situation of Guatemala regarding exports of certain fisheries products to the Union

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, and in particular Article 247 thereof,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽²⁾, and in particular Article 89(1)(b) thereof,

Whereas:

- (1) By Council Regulation (EC) No 732/2008 ⁽³⁾ applying a scheme of generalised tariff preferences from 1 January 2009, the Union granted generalised tariff preferences to Guatemala.
- (2) Regulation (EEC) No 2454/93 establishes the definition of the concept of originating products to be used for the purpose of the scheme of generalised tariff preferences ('GSP'). Article 89 of that Regulation provides for a derogation from that definition in favour of beneficiary countries benefiting from GSP.
- (3) By letter dated 24 January 2012, Guatemala submitted a request for a derogation from the GSP rules of origin in accordance with Article 89 of Regulation (EEC) No 2454/93. By letters dated 28 March 2012, 21 June 2012 and 27 June 2012, Guatemala submitted additional information in support of this request.
- (4) The request concerns a total annual quantity of 4 000 tonnes of cooked, frozen and vacuum-packed tuna fillets known as 'loins' (hereafter 'tuna loins') of CN code 1604 14 16 for a period from 1 April 2012 until 31 December 2013.
- (5) The request demonstrates that, without the derogation, the ability of the Guatemalan fish processing industry to continue to export tuna loins eligible for preferential tariff treatment to the Union would be significantly affected.
- (6) The derogation is therefore required in order to give Guatemala sufficient time to prepare its fish processing industry to comply with the rules for the acquisition of preferential origin of tuna loins. This sufficient time is

needed in order to secure adequate flows of originating tuna to the country by the government and the processing industries of Guatemala.

- (7) Given the existing supply flows and production patterns, the derogation should be granted in respect of yearly quantities of 1 975 tonnes for tuna loins of CN code ex 1604 14 16. In order to ensure that the temporary derogation be limited to the time needed for Guatemala to achieve compliance with the rules for the acquisition of preferential origin of tuna loins, the derogation should be granted from 1 January 2012 until 30 June 2013. The quota amount for 2013 should be defined on a pro-rata basis to the period of the derogation granted. Consequently, the quota amounts should be set out at 1 975 tonnes for 2012, and 987,5 tonnes for 2013.
- (8) In order to ensure the continuity of exports of the processed fish eligible for preferential tariff treatment from Guatemala to the Union, the derogation should be granted with retroactive effect from 1 January 2012.
- (9) For the sake of clarity and in order for tuna loins of CN code ex 1604 14 16 to benefit from the derogation, it is appropriate to set out explicitly that the only non-originating materials to be used for the manufacture of the said tuna loins should be tuna of HS heading 0302 or 0303.
- (10) Regulation (EEC) No 2454/93 lays down rules relating to the management of tariff quotas. In order to ensure efficient management conducted in close cooperation between the authorities of Guatemala, the customs authorities of the Union and the Commission, those rules should apply *mutatis mutandis* to the quantities imported under the derogation granted by this Regulation.
- (11) In order to allow efficient monitoring of the operation of the derogation, it is necessary to lay down the obligation for the authorities of Guatemala to communicate regularly to the Commission details of the certificates of origin Form A which have been issued.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from Articles 72, 73 and 75 to 79 of Regulation (EEC) No 2454/93, cooked, frozen and vacuum-packed tuna fillets known as 'loins' of CN code ex 1604 14 16 produced in Guatemala from non-originating tuna of HS

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 253, 11.10.1993, p. 1.

⁽³⁾ OJ L 211, 6.8.2008, p. 1.

heading 0302 or 0303 shall be regarded as originating in Guatemala in accordance with the terms set out in Articles 2, 3 and 4 of this Regulation.

Article 2

The derogation provided for in Article 1 shall apply to products exported from Guatemala and declared for release for free circulation in the Union during the period from 1 January 2012 to 30 June 2013 and up to the quantities set out in the Annex to this Regulation.

Article 3

The quantities set out in the Annex to this Regulation shall be managed in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 4

The customs authorities of Guatemala shall take the necessary steps to carry out quantitative checks on exports of the products referred to in Article 1.

Box 4 of certificates of origin Form A issued by the competent authorities of Guatemala pursuant to this Regulation shall bear one of the following endorsements:

— 'Derogation — Commission Implementing Regulation (EU) No 1044/2012',

— 'Excepción — Reglamento de Ejecución (UE) n° 1044/2012 de la Comisión'.

The competent authorities of Guatemala shall forward to the Commission, by the end of the month following each civil quarter, a quarterly statement of the quantities in respect of which certificates of origin Form A have been issued pursuant to this Regulation and the serial numbers of those certificates.

Article 5

This Regulation shall enter into force on the third day following that of 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, 8 November 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX

Order No	CN code	Description of goods	Period	Quantities (in tonnes net weight)
09.1627	ex 1604 14 16	Cooked, frozen and vacuum-packed tuna fillets known as 'loins'	1.1.2012 to 31.12.2012	1 975
			1.1.2013 to 30.6.2013	987,5

COMMISSION IMPLEMENTING REGULATION (EU) No 1045/2012

of 8 November 2012

on a derogation from Regulation (EEC) No 2454/93 as regards the rules of origin used for the purposes of the scheme of generalised tariff preferences to take account of the special situation of El Salvador regarding exports of certain fisheries products to the Union

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, and in particular Article 247 thereof,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽²⁾, and in particular Article 89(1)(b) thereof,

Whereas:

- (1) By Council Regulation (EC) No 732/2008 ⁽³⁾ applying a scheme of generalised tariff preferences from 1 January 2009, the Union granted generalised tariff preferences to El Salvador.
- (2) Regulation (EEC) No 2454/93 establishes the definition of the concept of originating products to be used for the purpose of the scheme of generalised tariff preferences (GSP). Article 89 of that Regulation provides for a derogation from that definition in favour of beneficiary countries benefiting from GSP.
- (3) By letter dated 30 March 2012, El Salvador submitted a request for a derogation from the GSP rules of origin in accordance with Article 89 of Regulation (EEC) No 2454/93. By letters dated 20 June 2012 and 30 July 2012, El Salvador submitted additional information in support of this request.
- (4) The request concerns a total annual quantity of 4 000 tonnes of cooked, frozen and vacuum-packed tuna fillets known as 'loins' (hereafter 'tuna loins') of CN code 1604 14 16 for a period from 1 July until 31 December 2012.
- (5) The request demonstrates that, without the derogation, the ability of the Salvadorian fish processing industry to continue to export tuna loins eligible for preferential tariff treatment to the Union would be significantly affected.
- (6) The derogation is therefore required in order to give El Salvador sufficient time to prepare its fish processing industry to comply with the rules for the acquisition of preferential origin of tuna loins. This sufficient time is

needed in order to secure adequate flows of originating tuna to the country by the government and the processing industries of El Salvador.

- (7) Given the existing supply flows and production patterns, the derogation should be granted in respect of yearly quantities of 1 975 tonnes for tuna loins of CN code ex 1604 14 16. In order to ensure that the temporary derogation be limited to the time needed for El Salvador to achieve compliance with the rules for the acquisition of preferential origin of tuna loins, the derogation should be granted from 1 January 2012 until 30 June 2013. The quota amount for 2013 should be defined on a pro rata basis to the period of the derogation granted. Consequently, the quota amounts should be set out at 1 975 tonnes for 2012, and 987,5 tonnes for 2013.
- (8) In order to ensure the continuity of exports of the processed fish eligible for preferential tariff treatment from El Salvador to the Union, the derogation should be granted with retroactive effect from 1 January 2012.
- (9) For the sake of clarity and in order for tuna loins of CN code ex 1604 14 16 to benefit from the derogation, it is appropriate to set out explicitly that the only non-originating materials to be used for the manufacture of the said tuna loins should be tuna of HS headings 0302 or 0303.
- (10) Regulation (EEC) No 2454/93 lays down rules relating to the management of tariff quotas. In order to ensure efficient management conducted in close cooperation between the authorities of El Salvador, the customs authorities of the Union and the Commission, those rules should apply *mutatis mutandis* to the quantities imported under the derogation granted by this Regulation.
- (11) In order to allow efficient monitoring of the operation of the derogation, it is necessary to lay down the obligation for the authorities of El Salvador to communicate regularly to the Commission details of the certificates of origin Form A which have been issued.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from Articles 72, 73 and 75 to 79 of Regulation (EEC) No 2454/93, cooked, frozen and vacuum-packed tuna fillets known as 'loins' of CN code ex 1604 14 16 produced in El Salvador from non-originating tuna of HS

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 253, 11.10.1993, p. 1.

⁽³⁾ OJ L 211, 6.8.2008, p. 1.

headings 0302 or 0303 shall be regarded as originating in El Salvador in accordance with the terms set out in Articles 2, 3 and 4 of this Regulation.

Article 2

The derogation provided for in Article 1 shall apply to products exported from El Salvador and declared for release for free circulation in the Union during the period from 1 January 2012 until 30 June 2013 and up to the quantities set out in the Annex to this Regulation.

Article 3

The quantities set out in the Annex to this Regulation shall be managed in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 4

The customs authorities of El Salvador shall take the necessary steps to carry out quantitative checks on exports of the products referred to in Article 1.

Box 4 of certificates of origin Form A issued by the competent authorities of El Salvador pursuant to this Regulation shall bear one of the following endorsements:

— ‘Derogation — Commission Implementing Regulation (EU) No .../2012’,

— ‘Excepción — Reglamento de Ejecución (UE) n° .../2012 de la Comisión’.

The competent authorities of El Salvador shall forward to the Commission, by the end of the month following each civil quarter, a quarterly statement of the quantities in respect of which certificates of origin Form A have been issued pursuant to this Regulation and the serial numbers of those certificates.

Article 5

This Regulation shall enter into force on the third day following that of 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, 8 November 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX

Order No	CN code	Description of goods	Period	Quantities (in tonnes net weight)
09.1629	ex 1604 14 16	Cooked, frozen and vacuum-packed tuna fillets known as 'loins'	1.1.2012 to 31.12.2012	1 975
			1.1.2013 to 30.6.2013	987,5

COMMISSION REGULATION (EU) No 1046/2012**of 8 November 2012****implementing Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS), as regards the transmission of the time series for the new regional breakdown**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) ⁽¹⁾, and in particular Article 5(5) thereof,

Whereas:

- (1) Regulation (EC) No 1059/2003 constitutes the legal framework for the regional classification in order to enable the collection, compilation and dissemination of harmonised regional statistics in the Union.
- (2) According to Article 5(5) of Regulation (EC) No 1059/2003, when an amendment is made to the NUTS classification, the Member State concerned should transmit to the Commission the time series for the new regional breakdown to replace data already transmitted. The list of the time series and their length should be specified by the Commission taking into account the

feasibility of providing them. These time series are to be supplied within two years of the amendment to the NUTS classification.

- (3) The NUTS classification has been amended by Commission Regulation (EU) No 31/2011 ⁽²⁾ with effect from 1 January 2012.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the European Statistical System Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Member States shall transmit to the Commission the time series for the new regional breakdown in accordance with the list specified in the Annex.

Article 2

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, 8 November 2012.

For the Commission
The President

José Manuel BARROSO

⁽¹⁾ OJ L 154, 21.6.2003, p. 1.

⁽²⁾ OJ L 13, 18.1.2011, p. 3.

ANNEX

Required starting year by statistical domain

Domain	NUTS level 2	NUTS level 3
Agriculture — agricultural accounts	2007 ⁽¹⁾	
Agriculture — animal populations	2007	
Agriculture — crop production	2007	
Agriculture — milk production	2010	
Agriculture — structure of agricultural holdings	2007	
Demography	1990 ⁽¹⁾	1990 ⁽¹⁾
Employment, unemployment	2005	2005 ⁽¹⁾
Environment — solid waste	2004	
Health — causes of death	1994 ⁽¹⁾	
Health — infrastructure	1993 ⁽¹⁾	
Health — patients	2000 ⁽¹⁾	
Household accounts	2000	
Information society	2007 ⁽¹⁾	
Regional accounts	2000	2000
Science and technology — R & D expenditure and staff	2009	
Tourism	2004	2004

⁽¹⁾ The transmission is not mandatory.

COMMISSION REGULATION (EU) No 1047/2012**of 8 November 2012****amending Regulation (EC) No 1924/2006 with regard to the list of nutrition claims****(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 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods ⁽¹⁾, and in particular Article 8(2) thereof,

Whereas:

- (1) Article 8(1) of Regulation (EC) No 1924/2006 provides that nutrition claims made on foods shall only be permitted if they are listed in the Annex to that Regulation, which also sets out the conditions of use of such claims.
- (2) After consulting the Member States and the stakeholders, in particular food business operators and consumer groups, it was concluded that it is necessary to add new nutrition claims to the list of permitted nutrition claims and to modify the conditions of use of the claims already permitted by Regulation (EC) No 1924/2006.
- (3) Salt has been used as a preservative and a taste enhancer. As new technology has developed and scientific advice on salt has become generally accepted, manufacturers are making efforts to produce more and more products without addition of salt where technologically feasible. However, the claim stating that salt/sodium has not been added to a particular food product is currently not permitted. Given the particular interest from the health point of view to encourage such innovation, it would be appropriate to enable manufacturers to inform consumers of this particular aspect of the production process. To avoid use of such a claim on food naturally high in sodium, its use should be limited to food low in sodium.
- (4) The European Parliament in its Resolution of 2 February 2012 on the draft Commission Regulation amending Regulation (EC) No 1924/2006 with regard to the list of nutrition claims estimated that a new nutrition claim allowing the communication of more modest reductions

than the one allowed by the claim 'light', would run counter to the purpose and content of the basic instrument.

- (5) Reduction in saturated fat is only beneficial when it is not substituted or when it is substituted by unsaturated fat. Substitution of saturated fat by trans-fatty acids is not beneficial for health and therefore the conditions of use of the nutrition claim referring to the reduction of saturated fat should be designed to avoid substitution by trans-fatty acids.
- (6) Under current conditions, sugars reduction can be claimed even when sugars are replaced by fat, leading to a reformulated product higher in energy. The claim stating that sugars have been reduced should therefore be permitted only when the energy of the food does not increase after reformulation. Stricter conditions requesting an energy decrease corresponding to the sugars reduction would only be achievable for a very limited number of products and would thus severely restrict the use of the claim.
- (7) The Annex to Regulation (EC) No 1924/2006 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health, and neither the European Parliament nor the Council have opposed them,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1924/2006 is amended in accordance with the Annex to this Regulation.

Article 2

Products placed on the market prior to 1 June 2014 which do not comply with the requirements of Regulation (EC) No 1924/2006 as amended by this Regulation may be marketed until the stocks are exhausted.

Article 3

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

⁽¹⁾ OJ L 404, 30.12.2006, p. 9.

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

Done at Brussels, 8 November 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX

The Annex to Regulation (EC) No 1924/2006 is amended as follows:

- (1) after the entry concerning the claim 'SODIUM-FREE or SALT-FREE', the following entry is inserted:

'NO ADDED SODIUM/SALT'

A claim stating that sodium/salt has not been added to a food and any claim likely to have the same meaning for the consumer may only be made where the product does not contain any added sodium/salt or any other ingredient containing added sodium/salt and the product contains no more than 0,12 g sodium, or the equivalent value for salt, per 100 g or 100 ml.;

- (2) in the entry concerning the claim 'REDUCED [NAME OF THE NUTRIENT]', the following paragraphs are added:

The claim "reduced saturated fat", and any claim likely to have the same meaning for the consumer, may only be made:

- (a) if the sum of saturated fatty acids and of trans-fatty acids in the product bearing the claim is at least 30 % less than the sum of saturated fatty acids and of trans-fatty acids in a similar product; and
- (b) if the content in trans-fatty acids in the product bearing the claim is equal to or less than in a similar product.

The claim "reduced sugars", and any claim likely to have the same meaning for the consumer, may only be made if the amount of energy of the product bearing the claim is equal to or less than the amount of energy in a similar product.;

COMMISSION REGULATION (EU) No 1048/2012**of 8 November 2012****on the authorisation of a health claim made on foods and referring to the reduction of disease risk****(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 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods ⁽¹⁾, and in particular Article 17(3) thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 1924/2006 health claims made on foods are prohibited unless they are authorised by the Commission in accordance with that Regulation and included in a list of permitted claims.
- (2) Regulation (EC) No 1924/2006 also provides that applications for authorisations of health claims may be submitted by food business operators to the national competent authority of a Member State. The national competent authority is to forward valid applications to the European Food Safety Authority (EFSA), hereinafter referred to as 'the Authority'.
- (3) Following receipt of an application the Authority is to inform without delay the other Member States and the Commission thereof, and to deliver an opinion on the health claim concerned.
- (4) The Commission is to decide on the authorisation of health claims taking into account the opinion delivered by the Authority.
- (5) Following an application from Cargill Incorporated, submitted pursuant to Article 14(1)(a) of Regulation (EC) No 1924/2006 and requesting the protection of proprietary data for one meta-analysis ⁽²⁾ and for information pertaining to the production process of barley 'betafiber' (BarlivTM), the Authority was required to deliver an opinion on a health claim related to the effects of barley beta-glucans on lowering of blood cholesterol and reduced risk of (coronary) heart disease (Question No EFSA-Q-2011-00798) ⁽³⁾. The claim

proposed by the applicant was worded as follows: 'Barley beta-glucan has been shown to lower/reduce blood cholesterol. Blood cholesterol lowering may reduce the risk of (coronary) heart disease'.

- (6) On the basis of the data presented, the Authority concluded in its opinion received by the Commission and the Member States on 8 December 2011 that a cause and effect relationship had been established between the consumption of barley beta-glucans and lowering of blood LDL-cholesterol concentrations. Accordingly, a health claim reflecting this conclusion should be considered as complying with the requirements of Regulation (EC) No 1924/2006, and should be included in the Union list of permitted claims. The meta-analysis and information pertaining to the production process of barley 'betafiber' (BarlivTM), claimed by the applicant as proprietary, were not considered necessary by the Authority for reaching its conclusion. It is therefore considered that the requirement laid down in point (c) of Article 21(1) of Regulation (EC) No 1924/2006 is not fulfilled and accordingly, protection of proprietary data should not be granted.
- (7) Following an application from Valens Int. d.o.o., submitted pursuant to Article 14(1)(a) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to the effects of barley beta-glucans on lowering of blood cholesterol and reduced risk of (coronary) heart disease (Question No EFSA-Q-2011-00799) ⁽⁴⁾. The claim proposed by the applicant was worded as follows: 'Barley beta-glucan has been shown to reduce blood cholesterol. Blood cholesterol lowering may reduce the risk of heart disease'.
- (8) On the basis of the data presented, the Authority concluded in its opinion received by the Commission and the Member States on 8 December 2011 that a cause and effect relationship had been established between the consumption of barley beta-glucans and lowering of blood LDL-cholesterol concentrations. Accordingly, a health claim reflecting this conclusion should be considered as complying with the requirements of Regulation (EC) No 1924/2006, and should be included in the Union list of permitted claims.
- (9) Article 16(4) of Regulation (EC) No 1924/2006 provides that an opinion in favour of authorising a health claim should include certain particulars. Accordingly, those particulars should be set out in the Annex to this Regulation as regards the authorised claim and include, as the case may be, the revised wording of the claim, specific

⁽¹⁾ OJ L 404, 30.12.2006, p. 9.

⁽²⁾ Harland JI, 2011 (unpublished); Meta-analysis of the effects of barley beta-glucan on blood lipids.

⁽³⁾ The EFSA Journal (2011); 9(12):2470.

⁽⁴⁾ The EFSA Journal (2011); 9(12):2471.

conditions of use of the claim, and, where applicable, conditions or restrictions of use of the food and/or an additional statement or warning, in accordance with the rules laid down in Regulation (EC) No 1924/2006 and in line with the opinions of the Authority.

- (10) One of the objectives of Regulation (EC) No 1924/2006 is to ensure that health claims are truthful, clear and reliable and useful to the consumer, and that wording and presentation are taken into account in that respect. Therefore where the wording of claims has the same meaning for consumers as that of an authorised health claim, because they demonstrate the same relationship that exists between a food category, a food or one of its constituents and health, they should be subject to the same conditions of use indicated in the Annex to this Regulation.
- (11) The comments from the applicants and the members of the public received by the Commission pursuant to Article 16(6) of Regulation (EC) No 1924/2006 have been considered when setting the measures provided for in this Regulation.

- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health and neither the European Parliament nor the Council have opposed them,

HAS ADOPTED THIS REGULATION:

Article 1

1. The health claim listed in the Annex to this Regulation may be made on foods on the European Union market in compliance with the conditions laid down in that Annex.
2. The health claim referred to in paragraph 1 shall be included in the Union list of permitted claims as provided for in Article 14(1) of Regulation (EC) No 1924/2006.

Article 2

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, 8 November 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX

Permitted health claim

Application — Relevant provisions of Regulation (EC) No 1924/2006	Applicant — Address	Nutrient, substance, food or food category	Claim	Conditions of use of the claim	Conditions and/or restrictions of use of the food and/or additional statement or warning	EFSA opinion reference
Article 14(1)(a) health claim referring to a reduction of a disease risk	Cargill Incorporated, acting through Cargill Health and Nutrition, c/o Cargill R & D Centre Europe, Havenstraat 84, 1800 Vilvoorde, Belgium	Barley beta-glucan	Barley beta-glucan has been shown to lower/reduce blood cholesterol. High cholesterol is a risk factor in the development of coronary heart disease.	Information shall be given to the consumer that the beneficial effect is obtained with a daily intake of 3 g of barley beta-glucan. The claim can be used for foods which provide at least 1 g of barley beta-glucan per quantified portion.		Q-2011-00798
	Valens Int. d.o.o., Kidričeva ulica 24b, SI-3000 Celje, Slovenia					Q-2011-00799

COMMISSION REGULATION (EU) No 1049/2012**of 8 November 2012****amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of polyglycitol syrup in several food categories****(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 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives ⁽¹⁾, and in particular Article 10(3) and Article 30(5) thereof,

Whereas:

- (1) Annex II to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in foods and their conditions of use.
- (2) That list may be amended in accordance with the procedure referred to in Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings ⁽²⁾.
- (3) Pursuant to Article 3(1) of Regulation (EC) No 1331/2008, the Union list of food additives may be updated either on the initiative of the Commission or following an application.
- (4) An application for authorisation of the use of polyglycitol syrup in several food categories was submitted and was made available to the Member States.
- (5) The European Food Safety Authority evaluated the safety of polyglycitol syrup when used as a food additive ⁽³⁾. It considers that the chemical and toxicological data available for polyglycitol syrup are insufficient to establish an acceptable daily intake. However, it concludes, on the basis of the available data, that there are no indications of a safety concern for the proposed uses and use levels.

- (6) There is a technological need for the use of polyglycitol syrup as an alternative polyol for the other already authorised polyols. Polyglycitol syrup is less sweet and provides more bulk, opacity, binding and stability in energy-reduced or sugar-free products. It is therefore appropriate to authorise the use of polyglycitol syrup in the food categories applied for and to assign E 964 as E-number to that food additive.
- (7) Pursuant to the transitional provisions of Commission Regulation (EU) No 1129/2011 of 11 November 2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council by establishing a Union list of food additives ⁽⁴⁾, Annex II establishing the Union list of food additives approved for use in foods and conditions of use applies from 1 June 2013. In order to allow the use of polyglycitol syrup in the food categories concerned before that date, it is necessary to specify an earlier date of application with regard to that food additive.
- (8) Therefore, Annex II to Regulation (EC) No 1333/2008 should be amended accordingly.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health and neither the European Parliament nor the Council has opposed them,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1333/2008 is amended in accordance with the Annex to this Regulation.

Article 2

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

⁽¹⁾ OJ L 354, 31.12.2008, p. 16.

⁽²⁾ OJ L 354, 31.12.2008, p. 1.

⁽³⁾ EFSA Journal 2009;7(12):1413.

⁽⁴⁾ OJ L 295, 12.11.2011, p. 1.

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

Done at Brussels, 8 November 2012.

For the Commission

The President

José Manuel BARROSO

Annex II to Regulation (EC) No 1333/2008 is amended as follows:

(1) in point 2 of Part B the following entry for E 964 is inserted after the entry for E 962:

E 964	Polyglycitol syrup
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(2) in Part E the following entries for E 964 are inserted in numerical order in the relevant food categories:

03.	Edible ices					
	E 964	Polyglycitol syrup	200 000		only energy-reduced or with no added sugar	Period of application: From 29 November 2012
04.2.5.1	Extra jam and extra jelly as defined by Directive 2001/113/EC					
	E 964	Polyglycitol syrup	500 000		only energy-reduced or with no added sugar	Period of application: From 29 November 2012
04.2.5.2	Jam, jellies and marmalades and sweetened chestnut puree as defined by Directive 2001/113/EC					
	E 964	Polyglycitol syrup	500 000		only energy-reduced or with no added sugar	Period of application: From 29 November 2012
04.2.5.3	Other similar fruit or vegetable spreads					
	E 964	Polyglycitol syrup	500 000		only energy-reduced or with no added sugar	Period of application: From 29 November 2012
05.1	Cocoa and Chocolate products as covered by Directive 2000/36/EC					
	E 964	Polyglycitol syrup	200 000		only energy-reduced or with no added sugar	Period of application: From 29 November 2012
05.2	Other confectionery including breath refreshing microsweets					
	E 964	Polyglycitol syrup	200 000		only cocoa based energy-reduced or with no added sugar	Period of application: From 29 November 2012
	E 964	Polyglycitol syrup	600 000		only starch based confectionery energy-reduced or with no added sugar	Period of application: From 29 November 2012

	E 964	Polyglycitol syrup	800 000		only chewy candy with no added sugar	Period of application: From 29 November 2012
	E 964	Polyglycitol syrup	990 000		only hard candy with no added sugar	Period of application: From 29 November 2012
05.3	Chewing gum					
	E 964	Polyglycitol syrup	200 000		Only with no added sugar	Period of application: From 29 November 2012
06.3	Breakfast cereals					
	E 964	Polyglycitol syrup	200 000		only breakfast cereals or cereal-based products, energy-reduced or with no added sugar	Period of application: From 29 November 2012
07.2	Fine bakery wares					
	E 964	Polyglycitol syrup	300 000		only energy-reduced or with no added sugar	Period of application: From 29 November 2012
16.	Desserts excluding products covered in category 1, 3 and 4					
	E 964	Polyglycitol syrup	300 000		only energy-reduced or with no added sugar	Period of application: From 29 November 2012'

COMMISSION REGULATION (EU) No 1050/2012**of 8 November 2012****amending Regulation (EU) No 231/2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards Polyglycitol syrup****(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 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives ⁽¹⁾, and in particular Article 14 thereof,

Having regard to Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings ⁽²⁾, and in particular Article 7(5) thereof,

Whereas:

- (1) Commission Regulation (EU) No 231/2012 ⁽³⁾ lays down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008.
- (2) The European Food Safety Authority ('the Authority') expressed its opinion on the safety of Polyglycitol syrup by considering the specifications proposed by the applicant on 24 November 2009 as a food additive ⁽⁴⁾. That food additive has subsequently been authorised on the basis of specific uses and has been allocated the number E 964 by Commission Regulation (EU) No 1049/2012 of 8 November 2012 amending Annex

II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council with regard to the use of polyglycitol syrup in several food categories ⁽⁵⁾. Therefore specifications should be adopted for that food additive.

- (3) It is necessary to take into account the specifications and analytical techniques for additives as proposed by the Joint FAO/WHO Expert Committee on Food Additives.
- (4) Regulation (EU) No 231/2012 should therefore be amended accordingly.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health, and neither the European Parliament nor the Council has opposed them,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EU) No 231/2012 is amended in accordance with the Annex to this Regulation.

Article 2

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 the Member States.

Done at Brussels, 8 November 2012.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 354, 31.12.2008, p. 16.

⁽²⁾ OJ L 354, 31.12.2008, p. 1.

⁽³⁾ OJ L 83, 22.3.2012, p. 1.

⁽⁴⁾ EFSA Panel on Food Additives and Nutrient Sources added to Food (ANS); Scientific Opinion on the use of Polyglycitol Syrup as a food additive on request from the European Commission. *EFSA Journal* 2009; 7(12):1413.

⁽⁵⁾ See page 41 of this Official Journal.

ANNEX

In the Annex to Regulation (EU) No 231/2012 the following entry for E 964 is inserted after the entry for E 962:

E 964 POLYGLYCITOL SYRUP

Synonyms	Hydrogenated starch hydrolysate, hydrogenated glucose syrup and polyglucitol
Definition	A mixture consisting mainly of maltitol and sorbitol and lesser amounts of hydrogenated oligo- and polysaccharides and maltotriitol. It is manufactured by the catalytic hydrogenation of a mixture of starch hydrolysates consisting of glucose, maltose and higher glucose polymers, similar to the catalytic hydrogenation process used for the manufacture of maltitol syrup. The resulting syrup is desalted by ion exchange and concentrated to the desired level.
Einecs	
Chemical name	Sorbitol: D-glucitol Maltitol: (α)-D-Glucopyranosyl-1,4-D-glucitol
Chemical formula	Sorbitol: $C_6H_{14}O_6$ Maltitol: $C_{12}H_{24}O_{11}$
Molecular weight	Sorbitol: 182,2 Maltitol: 344,3
Assay	Content not less than 99 % of total hydrogenated saccharides on the anhydrous basis, not less than 50 % higher molecular weight polyols, not more than 50 % of maltitol and not more than 20 % of sorbitol on the anhydrous basis.
Description	Colourless and odourless clear viscous liquid
Identification	
Solubility	Very soluble in water and slightly soluble in ethanol
Test for maltitol	Passes test
Test for sorbitol	To 5 g of the sample add 7 ml of methanol, 1 ml of benzaldehyde and 1 ml of hydrochloric acid. Mix and shake in a mechanical shaker until crystals appear. Filter the crystals and dissolve in 20 ml of boiling water containing 1 g of sodium bicarbonate. Filter the crystals, wash with 5 ml of a water-methanol mixture (1 in 2) and dry in the air. The crystals of the monobenzylidene derivative of sorbitol so obtained melt between 173 and 179 °C.
Purity	
Water content	Not more than 31 % (Karl Fischer method)
Chlorides	Not more than 50 mg/kg
Sulphates	Not more than 100 mg/kg
Reducing sugars	Not more than 0,3 %
Nickel	Not more than 2 mg/kg
Lead	Not more than 1 mg/kg'

COMMISSION IMPLEMENTING REGULATION (EU) No 1051/2012**of 8 November 2012****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:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multi-lateral 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.

- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

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 to this Regulation.

Article 2

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

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

Done at Brussels, 8 November 2012.

*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
0702 00 00	AL	36,4
	MA	37,6
	MK	30,8
	TR	65,0
	ZZ	42,5
0707 00 05	AL	31,8
	TR	77,5
	ZZ	54,7
0709 93 10	TR	94,7
	ZZ	94,7
0805 20 10	PE	72,2
	ZA	152,8
	ZZ	112,5
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	AR	96,7
	HR	51,5
	PE	42,6
	TR	74,9
	UY	101,2
	ZA	174,3
	ZZ	90,2
0805 50 10	AR	60,7
	TR	89,1
	ZA	98,8
	ZZ	82,9
0806 10 10	BR	271,2
	PE	308,9
	TR	153,1
	US	264,9
	ZZ	249,5
0808 10 80	CL	151,5
	CN	83,7
	MK	34,4
	NZ	136,8
	ZA	141,9
0808 30 90	ZZ	109,7
	CN	90,7
	TR	112,8
	ZZ	101,8

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

DECISIONS

COUNCIL DECISION

of 7 November 2012

appointing a Danish member of the European Economic and Social Committee

(2012/693/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 302 thereof,

Article 1

Ms Rikke EDSJÖ, *Senior Consultant, Danish Agriculture and Food Council*, is hereby appointed as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2015.

Having regard to the proposal of the Danish Government,

Article 2

Having regard to the opinion of the European Commission,

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

Whereas:

Done at Brussels, 7 November 2012.

(1) On 13 September 2010 the Council adopted Decision 2010/570/EU, Euratom appointing the members of the European Economic and Social Committee for the period from 21 September 2010 to 20 September 2015 ⁽¹⁾.

(2) A member's seat on the European Economic and Social Committee has become vacant following the end of the term of office of Mr Nils Juhl ANDREASEN,

For the Council

The President

A. D. MAVROYIANNIS

⁽¹⁾ OJ L 251, 25.9.2010, p. 8.

COUNCIL DECISION
of 7 November 2012
appointing a Luxembourg member of the European Economic and Social Committee
(2012/694/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 302 thereof,

Having regard to the proposal of the Luxembourg Government,

Having regard to the opinion of the European Commission,

Whereas:

- (1) On 13 September 2010 the Council adopted Decision 2010/570/EU, Euratom appointing the members of the European Economic and Social Committee for the period from 21 September 2010 to 20 September 2015 ⁽¹⁾.
- (2) A member's seat on the European Economic and Social Committee has become vacant following the end of the term of office of Mr Christian ZEYEN,

Article 1

Mr Christophe ZEEB, *Conseiller à la Chambre de Commerce du Luxembourg*, is hereby appointed as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2015.

Article 2

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

Done at Brussels, 7 November 2012.

For the Council
The President
A. D. MAVROYIANNIS

⁽¹⁾ OJ L 251, 25.9.2010, p. 8.

COUNCIL DECISION
of 7 November 2012
appointing a United Kingdom member of the European Economic and Social Committee
(2012/695/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 302 thereof,

Having regard to the proposal of the United Kingdom Government,

Having regard to the opinion of the European Commission,

Whereas:

- (1) On 13 September 2010 the Council adopted Decision 2010/570/EU, Euratom appointing the members of the European Economic and Social Committee for the period from 21 September 2010 to 20 September 2015 ⁽¹⁾.
- (2) A member's seat on the European Economic and Social Committee has become vacant following the end of the term of office of Mr Sukhdev SHARMA,

HAS ADOPTED THIS DECISION:

Article 1

Mr Richard BALFE is hereby appointed as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2015.

Article 2

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

Done at Brussels, 7 November 2012.

For the Council
The President
A. D. MAVROYIANNIS

⁽¹⁾ OJ L 251, 25.9.2010, p. 8.

2012/694/EU:

★ Council Decision of 7 November 2012 appointing a Luxembourg member of the European Economic and Social Committee	50
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2012/695/EU:

★ Council Decision of 7 November 2012 appointing a United Kingdom member of the European Economic and Social Committee	51
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