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II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 1241/2012

of 11 December 2012

amending Implementing Regulation (EU) No 1138/2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 9(4) thereof,

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

Whereas:

- (1) In August 2010, the Commission, by Notice of Initiation (NOI) published on 13 August 2010 ⁽²⁾, initiated a proceeding with regard to imports of certain fatty alcohols and their blends ('FOH') originating in India, Indonesia and Malaysia ('the countries concerned').
- (2) In May 2011, by Regulation (EU) No 446/2011 ⁽³⁾ ('the provisional Regulation'), the Commission imposed a provisional anti-dumping duty on imports of FOH originating in India, Indonesia and Malaysia, and in November 2011 a definitive anti-dumping duty was imposed on the same imports by Council Implementing Regulation (EU) No 1138/2011 ⁽⁴⁾ ('the definitive Regulation').
- (3) On 21 January 2012, PT Ecogreen Oleochemicals, an Indonesian exporting producer of FOH, Ecogreen Oleochemicals (Singapore) Pte. Ltd and Ecogreen Oleochemicals GmbH (herein jointly referred to as 'Ecogreen') lodged an application (Case T-28/12) before the General Court for the annulment of the definitive Regulation as

far as the anti-dumping duty with regard to Ecogreen was concerned. Ecogreen contested the adjustment made on the basis of Article 2(10)(i) of the basic Regulation to its export price for the purpose of comparing that export price with the company's normal value.

- (4) On 16 February 2012, the Court of Justice rendered its judgment in joined Cases C-191/09 P and C-200/09 P Council of the European Union and European Commission v Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT). The Court of Justice rejected the appeals and cross-appeals of the General Court's judgment in Case T-249/06 Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) v Council of the European Union. The General Court had annulled Article 1 of Council Regulation (EC) No 954/2006 ⁽⁵⁾ with regard to Interpipe NTRP VAT, inter alia, on the grounds of a manifest error of assessment in making the adjustment based on Article 2(10)(i), and on other grounds with regard to Interpipe Niko Tube ZAT.
- (5) Given that the factual circumstances for Ecogreen are similar to those of Interpipe NTRP VAT in respect of the adjustment made pursuant to Article 2(10)(i) of the basic Regulation, in particular the following factors in combination: volume of direct sales to third countries of less than 8 % (1-5 %) of all export sales; existence of common ownership/control of the trader and the exporting producer; the nature of functions of the

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 219, 13.8.2010, p. 12.

⁽³⁾ OJ L 122, 11.5.2011, p. 47.

⁽⁴⁾ OJ L 293, 11.11.2011, p. 1.

⁽⁵⁾ Council Regulation (EC) No 954/2006 of 27 June 2006 imposing definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine, repealing Council Regulations (EC) No 2320/97 and (EC) No 348/2000, terminating the interim and expiry reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and terminating the interim reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and in Croatia and Ukraine (OJ L 175, 29.6.2006, p. 4).

trader and the exporting producer, it is considered appropriate to recalculate the dumping margin of Ecogreen without making an adjustment pursuant to Article 2(10)(i) and to amend the definitive Regulation accordingly.

A. NEW ASSESSMENT OF THE FINDINGS BASED ON THE JUDGEMENT OF THE GENERAL COURT

- (6) On the basis of eliminating the adjustment pursuant to Article 2(10)(i), the dumping margin established for Ecogreen, expressed as a percentage of the CIF import price at the Union frontier, duty unpaid, is less than 2 % and is therefore considered *de minimis* in accordance with Article 9(3) of the basic Regulation. In the light of this, the investigation should be terminated in respect of Ecogreen without the imposition of measures.
- (7) The dumping margin for all companies in Indonesia, other than for the other exporting producer with an individual margin, which was based on that of the cooperating Indonesian exporting producer with the highest dumping margin, should be revised to take account of the recalculated dumping margin of Ecogreen.

B. DISCLOSURES

- (8) The interested parties concerned were informed of the proposal to revise the rates of anti-dumping duty in two disclosures, one sent on 13 June 2012 and a second disclosure sent on 25 September 2012. All parties were granted a period within which they could make representations subsequent to each disclosure in accordance with the provisions of the basic Regulation.
- (9) Comments on the disclosure sent on 13 June 2012 were received from P.T. Musim Mas (PTMM), the second exporting producer in Indonesia, from one producer in the Union, and from one exporting producer in Malaysia. PTMM also asked for an opportunity to be heard by the Commission services and was granted such a hearing.
- (10) PTMM, for which an adjustment under Article 2(10)(i) had also been made, argued that the Court judgment in joined Cases C-191/09 P and C-200/09 P should result in a recalculation of its dumping margin, similar to that made for Ecogreen, without an adjustment being made pursuant to Article 2(10)(i), as once a single economic entity made up of the exporting producer and the trader is established, no adjustments under Article 2(10)(i) can be made. The company also claimed that the burden of proving that an adjustment should be made rests with the Institutions, and that they have not proved it in the case of PTMM. It further alleged that its circumstances were identical to those of

Ecogreen, and any difference in treatment would therefore amount to discrimination.

- (11) As regards the comments made by PTMM, it should be noted that it does not follow from the Court judgment in joined Cases C-191/09 P and C-200/09 P that as soon as the existence of a single economic entity is established no adjustment under Article 2(10)(i) of the basic Regulation can be made. The adjustment under Article 2(10)(i) is considered to be justified in the case of PTMM as has been explained in the definitive regulation, in communication with the company and below.
- (12) There are a number of differences in the circumstances of the two Indonesian exporting producers, in particular the following in combination: the level of direct export sales made by the producer; the significance of the trader's activities and functions concerning products sourced from non-related companies; the existence of a contract between the trader and producer, which provided that the trader was to receive a commission for the export sales. Given the difference in the circumstances of the two companies the claim of discrimination has to be rejected.
- (13) It is noted that PTMM also lodged an application (Case T-26/12) before the General Court for the annulment of the definitive Regulation as far as the anti-dumping duty with regard to PTMM was concerned.
- (14) One exporting producer in Malaysia argued that the recalculation of the margin for Ecogreen, without making an adjustment pursuant to Article 2(10)(i), was not supported by the judgment in joined Cases C-191/09 P and C-200/09 P or the facts therein. It pointed out that the General Court, in Case T-249/06, had found a manifest error of assessment in applying Article 2(10)(i) of the basic Regulation in so far as the Council made an adjustment on the export price charged by Sepco in the context of transactions concerning pipes manufactured by Interpipe NTRP VAT, but not those manufactured by Interpipe Niko Tube ZAT. Ecogreen's factual circumstances thus could not simultaneously be similar to those of Interpipe NTRP VAT and of Interpipe Niko Tube ZAT due to a difference in the situation of those two companies.
- (15) This argument is accepted. Indeed, Ecogreen's situation is similar to that of Interpipe NTRP VAT. This finding justifies the need for taking the appropriate steps to recalculate the dumping margin for Ecogreen without the Article 2(10)(i) adjustment.

- (16) The exporting producer in Malaysia further argued that the situation of Ecogreen as described in the definitive Regulation is not even similar to that of Interpipe NTRP VAT. Upon reassessing the precise factual circumstances of Ecogreen, it is however considered that these are sufficiently similar to those of Interpipe NTRP VAT as such control as found by the General Court for Interpipe NTRP VAT when assessing whether the company carrying out the sales activities is under the control of the exporting producer or whether there is common control has been found for Ecogreen and together with several other factors, as indicated in recital 4, leads to the conclusion that the adjustment under Article 2(10)(i) of the basic Regulation should not have been made.
- (17) The same exporting producer in Malaysia, as an alternative to its argument regarding the similarities between the situation of Ecogreen and the circumstances of Case T-249/06, argued that the disclosure sent on 13 June 2012 was insufficient and that additional disclosure should be made of the essential facts and considerations on the basis of which the recalculation for Ecogreen is justified. One producer in the Union also commented that both disclosures referred to in recital 8 were insufficient, and argued that it was deprived of its rights of defence.
- (18) In this regard, it is recalled that certain details relating to specific companies which are confidential in nature cannot be disclosed to third parties. However, the nature of the factual circumstances of Ecogreen which are similar to those of Interpipe NTRP VAT, as indicated at recital 5, was disclosed to interested parties on 13 June and 25 September 2012, who were granted a period within which they could make representations subsequent to each disclosure in accordance with the provisions of the basic Regulation.
- (19) In response to the second disclosure sent on 25 September 2012, the parties mainly reiterated their claims in their responses to the first disclosure of 13 June 2012.
- (20) PTMM has developed its comments based on its main claim that the existence of a Single Economic Entity (SEE) of PTMM and its trader excludes an adjustment under Article 2(10)(i) of the basic Regulation claiming that the Institutions shift the SEE doctrine laid down by the Courts to a functional approach where an analysis of the functions of the related trader would be required.
- (21) It is noted that this issue turns on a point of law that is a subject matter of a pending case.
- (22) Furthermore, PTMM claimed that the arguments in recital 12 above are not convincing and do not suffice to differentiate between the circumstances of Ecogreen and PTMM respectively.
- (23) In that regard it is sufficient to note that it is settled case-law that different treatment of companies that are not in an identical situation does not amount to discrimination ⁽¹⁾. Against this background each individual case was assessed on its individual merits against the findings in the judgments of Case T-249/09 and joined Cases C-191/09 P and C-200/09 P.
- (24) First argument: *Level of direct export sales made by the producer*. PTMM submitted that it has no marketing and sales division and claimed that all the sales carried out directly by the producer in Indonesia (and not by the related trader) were only done so as to comply with legal requirements. The functions of marketing and sales were carried out by its trader in Singapore. For this reason, PTMM claimed that this argument does not justify the adjustment under Article 2(10)(i) of the basic Regulation nor the distinction drawn between PTMM on the one hand and Interpipe NTRP VAT on the other.
- (25) Article 2(10) of the basic Regulation stipulates that a fair comparison shall be made between the export price and the normal value at the same level of trade with due account taken of differences which affect price comparability. Where the normal value and the export price as established are not on such a comparable basis, due allowance in the form of adjustments shall be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect prices and price comparability.
- (26) On this basis, and as explained in recital 38 of the provisional Regulation, adjustments for, inter alia, differences in commissions between export sales prices and domestic sales prices during the original investigations were considered warranted due to the differences in the sales channels between export sales to the European Union and domestic sales.
- (27) The arguments put forward by PTMM do not contradict the first argument, namely that the level of direct export sales made by PTMM is higher than that of Interpipe NTRP VAT and that this fact distinguishes PTMM from Ecogreen. Indeed, given the level of direct export sales, it can only be concluded that PTMM's export sales are performed not only from its related trader in Singapore, but also from Indonesia.

⁽¹⁾ Case C-248/04, Koninklijke Cooperatie Cosun [2006] ECR I-10211, paragraph 72, and Case C-303/05 *Advocaten voor de Wereld* [2007] ECR I-3633, paragraph 56. Case C-372/06 *Asda Stores Ltd v Commissioners of Her Majesty's Revenue and Customs* [2007] ECR I-11223, point 62.

(28) Second argument: *Significance of the trader's activities and functions concerning products sourced from non-related companies.* PTMM claimed that, whereas it did not deny that its related trader was involved in a range of different palm oil-based products, PTMM claimed that this argument was flawed, since it was based on activities beyond the scope of original investigation.

(29) In order to assess whether the functions of a trader are not those of an internal sales department but comparable to those of an agent working on a commission basis within the meaning of the judgement of the General Court in Case T-249/06, the trader's activities have to be assessed against the economic reality. There are similarities as regards the functions of the trader with regard to the product concerned and the other products traded. This is confirmed by the fact that, as discussed below in recitals 30 and 31, the relationship between PTMM and its related trader, including the functions of the latter, for most if not all products — including the product concerned — is governed by one single contract without distinguishing among products. It should be noted that the trader's overall activities were based to a significant extent on supplies originating from unrelated companies. The trader's functions are therefore similar to those of an agent working on a commission basis.

(30) Third argument: *The existence of a contract between the trader and producer, which provided that the trader was to receive a commission for the export sales.* PTMM claimed that this contract was a master agreement to regulate transfer prices between related parties to comply with applicable Indonesian/Singapore tax guidelines and internationally accepted guidelines on transfer pricing.

(31) The fact that this agreement can also be used for calculating arm's length prices in accordance with applicable tax guidelines does not contradict the finding that pursuant to the agreement the trader received a commission in the form of a fixed mark-up only for its international and marketing sales activities. Indeed, the very name and the modalities of the agreement justify the finding that the contract was intended to govern the relationship between PTMM and the trader and was not limited to the transfer pricing or tax issues. The contract thus represents circumstantial evidence that the trader's functions are similar to those of an agent working on a commission basis.

(32) In the light of the arguments presented above the Institutions have met the standard of proof required by the settled case-law⁽¹⁾: they based their findings on direct or at least circumstantial evidence. As regards PTMM, and for reasons explained above, the adjustment made to the export prices pursuant to Article 2(10)(i) of the basic

Regulation is warranted and the present level of anti-dumping duty should therefore be kept.

C. CONCLUSION

(33) On the basis of the above the duty rates applicable to Ecogreen and to all other companies in Indonesia (except P.T. Musim Mas) should be amended. The amended rates should apply retroactively from the date of the entry into force of Implementing Regulation (EU) No 1138/2011 including to any imports subject to provisional duties between 12 May and 11 November 2011. Consequently, the definitive anti-dumping duty paid or entered into the accounts pursuant to Article 1 of Implementing Regulation (EU) No 1138/2011 in its initial version and the provisional anti-dumping duties definitively collected pursuant to Article 2 of the same Regulation in its initial version in excess of the duty rate specified in Article 1(2) of Implementing Regulation (EU) No 1138/2011 as amended by this Regulation should be repaid or remitted. Repayment or remission should be requested from national customs authorities in accordance with applicable customs legislation,

HAS ADOPTED THIS REGULATION:

Article 1

The entry for Indonesia in the table in Article 1(2) of Implementing Regulation (EU) No 1138/2011 is replaced by the following:

Country	Company	Definitive anti-dumping duty (EUR per tonne net)	TARIC Additional Code
Indonesia	P.T. Ecogreen Oleochemicals Batam, Kabil, Batam	0,00	B111
	P.T. Musim Mas, Tanjung Mulia, Medan, Sumatera Utara	45,63	B112
	All other companies	45,63	B999'

Article 2

The amounts of duties paid or entered into the accounts, pursuant to Article 1 of Implementing Regulation (EU) No 1138/2011 in its initial version and the amounts of provisional duties definitively collected pursuant to Article 2 of the same Regulation in its initial version, which exceed those established by Article 1 of this Regulation, shall be repaid or remitted. Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.

⁽¹⁾ T-249/06, paragraphs 180 and 181.

Article 3

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

It shall apply from 12 November 2011.

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

Done at Brussels, 11 December 2012.

For the Council

The President

A. D. MAVROYIANNIS

COUNCIL REGULATION (EU) No 1242/2012**of 18 December 2012****fixing for the 2013 fishing year the guide prices and Union producer prices for certain fishery products pursuant to Regulation (EC) No 104/2000**

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) Article 43(3) of the Treaty provides that the Council, on a proposal from the Commission, is to adopt measures on the fixing of prices.
- (2) Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products⁽¹⁾ requires that guide prices and Union producer prices for each fishing year be fixed in order to determine price levels for intervention on the market for certain fisheries products.
- (3) It is incumbent upon the Council to fix the guide prices for each of the products and groups of products listed in Annexes I and II to Regulation (EC) No 104/2000, and the Union producer prices for the products listed in Annex III to that Regulation.
- (4) On the basis of the data currently available on the prices for the products concerned and the criteria laid down in Article 18(2) of Regulation (EC) No 104/2000, the guide prices should be increased, maintained or reduced for the 2013 fishing year depending on the species.

- (5) It is appropriate to establish the Union producer price for one of the products listed in Annex III to Regulation (EC) No 104/2000 and to calculate the Union producer prices for the others by means of the conversion factors established by Commission Regulation (EC) No 802/2006 of 30 May 2006 fixing the conversion factors applicable to fish of the genera *Thunnus* and *Euthynnus*⁽²⁾.

- (6) On the basis of the criteria laid down in the first and second indents of Article 18(2) and in accordance with the procedure laid down in Article 26(1) of Regulation (EC) No 104/2000, the Union producer price for the 2013 fishing year should be fixed,

HAS ADOPTED THIS REGULATION:

Article 1

For the fishing year from 1 January to 31 December 2013, the guide prices as provided for in Article 18(1) of Regulation (EC) No 104/2000 shall be as set out in Annex I to this Regulation.

Article 2

For the fishing year from 1 January to 31 December 2013, the Union producer prices as provided for in Article 26(1) of Regulation (EC) No 104/2000 shall be as set out in Annex II to this Regulation.

Article 3

This Regulation shall enter into force on 1 January 2013.

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

Done at Brussels, 18 December 2012.

For the Council
The President
S. ALETRARIS

⁽¹⁾ OJ L 17, 21.1.2000, p. 22.

⁽²⁾ OJ L 144, 31.5.2006, p. 15.

ANNEX I

Products listed in Annexes I and II to Regulation (EC) No 104/2000

Annexes	Species	Commercial presentation	Guide price (EUR/tonne)
I	1. Herring of the species <i>Clupea harengus</i>	Whole fish	289
	2. Sardines of the species <i>Sardina pilchardus</i>	Whole fish	588
	3. Dogfish (<i>Squalus acanthias</i>)	Whole fish or Gutted fish with head	1 157
	4. Spotted dogfish (<i>Scyliorhinus</i> spp.)	Whole fish or Gutted fish with head	704
	5. Redfish (<i>Sebastes</i> spp.)	Whole fish	1 230
	6. Cod of the species <i>Gadus morhua</i>	Whole fish or gutted fish with head	1 613
	7. Saithe (<i>Pollachius virens</i>)	Whole fish or gutted fish with head	827
	8. Haddock (<i>Melanogrammus aeglefinus</i>)	Whole fish or gutted fish with head	975
	9. Whiting (<i>Merlangius merlangus</i>)	Whole fish or gutted fish with head	907
	10. Ling (<i>Molva</i> spp.)	Whole fish or gutted fish with head	1 176
	11. Mackerel of the species <i>Scomber scombrus</i>	Whole fish	336
	12. Mackerel of the species <i>Scomber japonicus</i>	Whole fish	294
	13. Anchovy (<i>Engraulis</i> spp.)	Whole fish	1 287
	14. Plaice (<i>Pleuronectes platessa</i>)	Whole fish or gutted fish with head from 1.1.2013 to 30.4.2013	1 016
		Whole fish or gutted fish with head from 1.5.2013 to 31.12.2013	1 404
	15. Hake of the species <i>Merluccius merluccius</i>	Whole fish or gutted fish with head	3 235
	16. Megrim (<i>Lepidorhombus</i> spp.)	Whole fish or gutted fish with head	2 389
	17. Dab (<i>Limanda limanda</i>)	Whole fish or gutted fish with head	795
	18. Common flounder (<i>Platichthys flesus</i>)	Whole fish or gutted fish with head	505
	19. Albacore or longfinned tunas (<i>Thunnus alalunga</i>)	Whole fish	2 343
		Gutted fish with head	2 388
	20. Cuttlefish (<i>Sepia officinalis</i> and <i>Rossia macrosoma</i>)	Whole	1 826
	21. Monkfish (<i>Lophius</i> spp.)	Whole fish or gutted fish with head	2 893
		Without head	6 015
	22. Shrimp of the species <i>Crangon crangon</i>	Simply boiled in water	2 446

Annexes	Species	Commercial presentation	Guide price (EUR/tonne)
	23. Northern prawn (<i>Pandalus borealis</i>)	Simply boiled in water	7 005
		Fresh or chilled	1 638
	24. Edible crab (<i>Cancer pagurus</i>)	Whole	1 718
	25. Norway lobster (<i>Nephrops norvegicus</i>)	Whole	5 222
		Tails	4 160
	26. Sole (<i>Solea</i> spp.)	Whole fish or gutted fish with head	6 911
II	1. Greenland halibut (<i>Reinhardtius hippoglossoides</i>)	Frozen, in original packages containing the same products	1 974
	2. Hake of the genus <i>Merluccius</i> spp.	Frozen, whole, in original packages containing the same products	1 270
		Frozen, filleted, in original packages containing the same products	1 513
	3. Sea bream (<i>Dentex dentex</i> and <i>Pagellus</i> spp.)	Frozen, in lots or in original packages containing the same products	1 461
	4. Swordfish (<i>Xiphias gladius</i>)	Frozen, whole, in original packages containing the same products	4 098
	5. Cuttlefish (<i>Sepia officinalis</i>) (<i>Rossia macrosoma</i>) (<i>Sepiola rondeletti</i>)	Frozen, in original packages containing the same products	2 002
	6. Octopus (<i>Octopus</i> spp.)	Frozen, in original packages containing the same products	2 293
	7. Squid (<i>Loligo</i> spp.)	Frozen, in original packages containing the same products	1 203
	8. Squid (<i>Ommastrephes sagittatus</i>)	Frozen, in original packages containing the same products	961
	9. <i>Illex argentinus</i>	Frozen, in original packages containing the same products	886
	10. Prawn of the family <i>Penaeidae</i>	Frozen, in original packages containing the same products	4 070
	— Prawn of the species <i>Parapenaeus longirostris</i> — Other species of the family <i>Penaeidae</i>	Frozen, in original packages containing the same products	7 813

ANNEX II

Products listed in Annex III to Regulation (EC) No 104/2000

Species	Weight	Commercial specifications	Community producer price (EUR/tonne)
Yellowfin tuna (<i>Thunnus albacares</i>)	weighing more than 10 kg each	Whole	1 248
		Gilled and gutted	
		Other	
	weighing not more than 10 kg each	Whole	
		Gilled and gutted	
		Other	
Albacore (<i>Thunnus alalunga</i>)	weighing more than 10 kg each	Whole	
		Gilled and gutted	
		Other	
	weighing not more than 10 kg each	Whole	
		Gilled and gutted	
		Other	
Skipjack (<i>Katsuwonus pelamis</i>)		Whole	
		Gilled and gutted	
		Other	
Bluefin tuna (<i>Thunnus thynnus</i>)		Whole	
		Gilled and gutted	
		Other	
Other species of the genera <i>Thunnus</i> and <i>Euthynnus</i>		Whole	
		Gilled and gutted	
		Other	

COUNCIL REGULATION (EU) No 1243/2012**of 19 December 2012****amending Regulation (EC) No 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks**

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) Council Regulation (EC) No 1342/2008 ⁽¹⁾ establishes a long-term plan for cod stocks in the Kattegat; the North Sea, the Skagerrak and the eastern Channel; the west of Scotland; and the Irish Sea, and the fisheries exploiting those stocks ('the Cod Plan'). The objective of the Cod Plan is to ensure the sustainable exploitation of those cod stocks on the basis of maximum sustainable yield. This objective is to be attained while maintaining a specific level of fishing mortality of cod on appropriate age groups.
- (2) Articles 7, 8 and 9 and Article 12 of the Cod Plan contain, for the purpose of attaining the objective of the Cod Plan, specific rules prescribing a detailed methodology for the annual fixing of, on the one hand, total allowable catches (TACs) and, on the other hand, fishing effort limitations.
- (3) The scientific evaluation of the performance of the Cod Plan carried out by the Scientific, Technical and Economic Committee for Fisheries (STECF) has shown a number of problems with the design and functioning of the Cod Plan. Without putting into question the objectives of the Cod Plan, the STECF concluded that those objectives are unlikely to be achieved within a time frame that would be in compliance with the conclusions of the World Summit on Sustainable Development held in Johannesburg in 2002 unless the flaws in the design of the Cod Plan, relating, inter alia, to the application of its Articles 9 and 12, are corrected.
- (4) Article 9 contains detailed rules for the fixing of the TACs in poor data conditions where the rules for the

fixing of the TAC established in Articles 7 and 8 cannot be applied due to lack of sufficiently accurate and representative information. Although the application of the automatic yearly TAC reductions of 25 % had been intended to apply in exceptional circumstances only, from 2009 until 2012, it became the rule. Consequently, since the entry into force of the Cod Plan, the TACs for the areas concerned have been reduced significantly and further automatic cuts would lead to the effective closure of the cod fisheries in the areas concerned. The scientific evaluation carried out by the STECF suggests that, for the purpose of attaining the objectives of the Cod Plan, it would be more appropriate in some cases to allow more flexibility to reflect the scientific advice on a case by case basis. As part of that flexibility, it is, therefore, appropriate to allow suspension, under certain conditions, of the annual reduction in the TAC or an alternative TAC level to be set, without jeopardising the objectives of the Cod Plan.

- (5) Article 12 contains detailed rules for the fixing of the allowable fishing effort. Given that the same percentage adjustments apply, in accordance with Article 12(4), to allowable fishing effort in line with the automatic annual reductions in fishing mortality (under Articles 7 and 8) and with the automatic annual reductions in the TAC (under Article 9), allowable fishing effort has been reduced by 25 % per year from 2009 to 2012 in the areas to which Article 9 has applied and significantly reduced in the areas to which Article 8 has applied. Consequently, since the entry into force of the Cod Plan, allocations of the maximum allowable fishing effort have been significantly reduced for the main cod catching gears. According to scientific advice, it cannot be demonstrated that such automatic annual reductions in the allowable fishing effort have led to the expected reductions in fishing mortality. In practice, the automatic annual effort reductions have also removed or reduced the incentives for fishermen to reduce fishing mortality by the other means foreseen in Article 13. The continued application of the automatic annual effort reductions would not lead to the achievement of the objectives of the Cod Plan, but would have a significant economic and social impact on the fleet segments that use the same gears, but that fish principally for species other than cod. It is, therefore, appropriate to enable a more flexible approach that would allow suspension of the automatic annual reduction in the fishing effort, without jeopardising the objectives of the Cod Plan.
- (6) In view of the above, it is essential that Articles 9 and 12 of the Cod Plan be amended urgently so as to enable the new rules to apply for the purpose of the fixing of fishing opportunities for 2013.

⁽¹⁾ OJ L 348, 24.12.2008, p. 20.

- (7) Article 43(2) TFEU provides that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, are to establish the common organisation of fisheries markets provided for in Article 40(1) thereof and the other provisions necessary for the pursuit of the objectives of the common fisheries policy. Article 43(3) TFEU provides that the Council, on a proposal from the Commission, is to adopt measures on the fixing and allocation of fishing opportunities.
- (8) Amendments to Articles 9 and 12 establish detailed specific rules for the purpose of fixing fishing opportunities expressed by means of the TAC and of fishing effort limitations. They adapt the currently applicable rules for the fixing of fishing opportunities without amending the objective of the Cod Plan. They are, consequently, measures on the fixing and allocation of the TACs and fishing effort limitations and cannot be considered either as provisions establishing the common organisation of fisheries markets, or as other provisions necessary for the pursuit of the objectives of the common fisheries policy.
- (9) Regulation (EC) No 1342/2008 should, therefore, be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1342/2008 is hereby amended as follows:

- (1) Article 9 is replaced by the following:

‘Article 9

Special procedure for setting TACs

1. Where there is insufficient information to set the TACs in accordance with Article 7, the TACs for cod stocks in the Kattegat, the west of Scotland and the Irish Sea shall be set at a level indicated by scientific advice. However, if the level indicated by scientific advice is more than 20 % greater than the TACs in the previous year, they shall be set at a level 20 % greater than the TACs in the previous year, or if the level indicated by scientific advice is more than 20 % less than the TACs in the previous year they shall be set at a level 20 % less than the TACs in the previous year.

2. By way of derogation from paragraph 1, where scientific advice indicates that there should be no directed fisheries and that:

- (a) bycatch should be minimised or reduced to the lowest possible level; and/or
- (b) the catches of cod should be reduced to the lowest possible level;

the Council may decide not to apply an annual adjustment to the TAC in the subsequent year or in subsequent years, on condition that the TAC set is for bycatch only.

3. Where there is insufficient information to set the TACs in accordance with Article 8, the TACs for the cod stock in the North Sea, the Skagerrak and the eastern Channel shall be set by applying paragraphs 1 and 2 of this Article *mutatis mutandis*, unless consultations with Norway result in a different level of the TAC.

4. When scientific advice indicates that the application of the rules set out in Article 8(1) to (4) is not appropriate to meet the objectives of the plan, the Council may, notwithstanding the above mentioned provisions, decide on an alternative TAC level.’

- (2) Article 12 is hereby amended as follows:

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

‘4. For aggregated effort groups where the percentage cumulative catch calculated according to paragraph 3(d) is equal to or exceeds 20 %, annual adjustments shall apply. The maximum allowable fishing effort of the groups concerned shall be calculated as follows:

- (a) where Articles 7 or 8 apply, by applying to the baseline the same percentage adjustment as that set out in those Articles for fishing mortality;
- (b) where Article 9 applies, by applying the same percentage adjustment in fishing effort as the adjustment of the TAC compared with the previous year.’;

- (b) the following paragraph is added:

‘6. By way of derogation from paragraph 4, the Council may, where the maximum allowable fishing effort has been reduced for four consecutive years, decide not to apply an annual adjustment to the maximum allowable fishing effort in the subsequent year or in subsequent years.’

Article 2

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

It shall apply from 1 January 2013.

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

Done at Brussels, 19 December 2012.

For the Council
The President
S. ALETRARIS

**COUNCIL IMPLEMENTING REGULATION (EU) No 1244/2012
of 20 December 2012**

**implementing Article 11(1) of Regulation (EU) No 753/2011 concerning restrictive measures
directed against certain individuals, groups, undertakings and entities in view of the situation in
Afghanistan**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 753/2011 of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan ⁽¹⁾, and in particular Article 11(1) thereof,

Whereas:

- (1) On 1 August 2011, the Council adopted Regulation (EU) No 753/2011.
- (2) On 20 November 2012, the United Nations Security Council Committee, established pursuant to paragraph

30 of Security Council Resolution 1988 (2011), amended the list of individuals, groups, undertakings and entities subject to restrictive measures.

- (3) Annex I to Regulation (EU) No 753/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) No 753/2011 is hereby amended as set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 20 December 2012.

For the Council

The President

E. FLOURENTZOU

⁽¹⁾ OJ L 199, 2.8.2011, p. 1.

ANNEX

I. The entries below shall be added to the list set out in Annex I to Regulation (EU) No 753/2011.**A. Individuals associated with the Taliban****1. Mohammed Qasim Sadozai Khudai Rahmin (alias Muhammad Qasim)**

Title: Haji Date of birth: Between 1975 and 1976 Place of birth: Minar village, Garmser District, Helmand Province, Afghanistan Nationality: Afghan National identification no.: (a) Afghan national identification card (tazkira) number 57388 issued in Lashkar Gah District, Helmand Province, Afghanistan (b) Residential card number 665, Ayno Maina, Kandahar Province, Afghanistan Address: (a) Wesh, Spin Boldak District, Kandahar Province, Afghanistan (b) Safaar Bazaar, Garmser District, Helmand Province, Afghanistan (c) Room number 33, 5th Floor Sarafi Market, Kandahar City, Kandahar Province, Afghanistan Other information: (a) Owner of Rahat Ltd Involved in the supply of weapons for Taliban, including improvised explosive devices (IED). (b) Father's name is Haji Mullah Wali. Alternative father's name is Haji Sadozai. Grandfather's name is Khudai Rahim. Date of UN designation: 21.11.2012.

B. Entities and other groups and undertakings associated with the Taliban**1. Rahat Ltd (alias (a) Rahat Trading Company (b) Haji Muhammad Qasim Sarafi (c) New Chagai Trading)**

Address: (a) Branch Office 1: Room number 33, 5th Floor, Sarafi Market, Kandahar city, Kandahar Province, Afghanistan (b) Branch Office 2: Shop number 4, Azizi Bank, Haji Muhammad Isa Market, Wesh, Spin Boldak, Kandahar Province, Afghanistan (c) Branch Office 3: Safaar Bazaar, Garmser District, Helmand Province, Afghanistan (d) Branch Office 4: Lashkar Gah, Helmand Province, Afghanistan (e) Branch Office 5: Gereshk District, Helmand Province, Afghanistan (f) Branch Office 6: Zaranj District, Nimroz Province, Afghanistan (g) Branch Office 7: i) Dr Barno Road, Quetta, Pakistan ii) Haji Mohammed Plaza, Tol Aram Road, near Jamaluddin Afghani Road, Quetta, Pakistan iii) Kandahari Bazaar, Quetta, Pakistan (h) Branch Office 8: Chaman, Baluchistan Province, Pakistan (i) Branch Office 9: Chaghi Bazaar, Chaghi, Baluchistan Province, Pakistan (j) Branch Office 10: Zahedan, Zabol Province, Iran. Other information: (a) Rahat Ltd was used by Taliban leadership to transfer funds originating from external donors and narcotics trafficking to finance Taliban activity as of 2011 and 2012. (b) Owned by Mohammed Qasim Sadozai Khudai Rahim. (c) Also associated Mohammad Naim Barich Khudaidad. Date of UN designation: 21.11.2012.

COUNCIL REGULATION (EU) No 1245/2012**of 20 December 2012****amending Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215(2) thereof,

Having regard to Council Decision 2011/235/CFSP of 12 April 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Iran ⁽¹⁾,

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

Whereas:

- (1) In response to the deterioration of the human rights situation in Iran, on 12 April 2011, the Council by Regulation (EU) No 359/2011 ⁽²⁾ imposed certain restrictive measures directed against certain persons, entities and bodies, in accordance with Decision 2011/235/CFSP.
- (2) On 20 December 2012 the Council adopted Decision 2012/810/CFSP ⁽³⁾ amending Decision 2011/235/CFSP as regards the scope of the measures related to equipment which might be used for internal repression.
- (3) Those measures fall within the scope of the Treaty and, therefore, regulatory action at the level of the Union is necessary in order to implement them, in particular with a view to ensuring their uniform application by economic operators in all Member States.

(4) Regulation (EU) No 359/2011 should therefore be amended accordingly.

(5) This Regulation should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1a of Regulation (EU) No 359/2011 is hereby amended as follows:

(1) the existing paragraph is numbered paragraph 1;

(2) the following paragraph is added:

‘2. By way of derogation from paragraph 1, the competent authorities of the Member States, as listed in Annex II, may authorise, under such conditions as they deem appropriate, the sale, supply, transfer or export of equipment which might be used for internal repression as listed in Annex III provided that it is intended solely for the protective use of the personnel of the Union and its Member States in Iran, or the provision of technical assistance or brokering services or of financing or financial assistance referred to in paragraph 1(b) and (c) related to such equipment.’

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, 20 December 2012.

For the Council

The President

E. FLOURENTZOU

⁽¹⁾ OJ L 100, 14.4.2011, p. 51.

⁽²⁾ OJ L 100, 14.4.2011, p. 1.

⁽³⁾ See page 49 of this Official Journal.

COMMISSION IMPLEMENTING REGULATION (EU) No 1246/2012**of 19 December 2012****amending Regulation (EC) No 616/2007 opening and providing for the administration of Community tariff quotas in the sector of poultrymeat originating in Brazil, Thailand and other third countries and derogating from that Regulation for 2012-2013**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) The Agreements in the form of an Exchange of Letters between the European Union and Brazil and between the European Union and Thailand, approved by Council Decision 2012/792/EU ⁽²⁾ provide for new quantities of processed poultry meat to be allocated to Brazil, Thailand and other third countries. It is therefore appropriate to amend Commission Regulation (EC) No 616/2007 ⁽³⁾ to take into account the new quantities.
- (2) Regulation (EC) No 616/2007 provides for a specific management method for the tariff quotas based on the origin of the products concerned. The new quotas should be managed in the same way.
- (3) Regulation (EC) No 616/2007 should therefore be amended accordingly.
- (4) The Agreements with Brazil and Thailand enter into force on 1 March 2013 while the quotas concerned are opened on an annual basis for the period from 1 July to 30 June. It is therefore appropriate to provide for derogations from certain provisions of Regulation (EC) No 616/2007 as to be amended by this Regulation. In particular, the annual quantity for the quota year 2012/2013 should be reduced on a pro rata basis. Furthermore, as it is not possible to lodge applications in advance for the new quotas to enter into force on 1 March 2013 a single quota period should apply from 1 March 2013 until 30 June 2013 and a derogation should be laid down to the normal application period provided in Article 5(1) of Regulation (EC) No 616/2007. The validity period of import licences should be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

*Article 1***Amendment of Regulation (EC) No 616/2007**

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

- (1) In Article 1, paragraph 1 is replaced by the following:

‘1. The tariff quotas in Annex I to this Regulation are hereby opened for imports of the products covered by the agreements between the Union and Brazil, and the Union and Thailand, as approved by Decision 2007/360/EC and Council Decision 2012/792/EU ^(*).

The tariff quotas are opened on an annual basis for the period from 1 July to 30 June.

^(*) OJ L 351, 21.12.2012, p. 47.’;

- (2) Article 3 is replaced by the following:

‘Article 3

1. With the exception of quotas in Groups Nos 3, 4B, 5B and 6B, the quantity established for the annual quota period shall be spread out over four subperiods, as follows:

- (a) 30 % from 1 July to 30 September;
- (b) 30 % from 1 October to 31 December;
- (c) 20 % from 1 January to 31 March;
- (d) 20 % from 1 April to 30 June.

2. The annual quantity established for quotas in Groups Nos 3, 4B, 5B and 6B shall not be divided into subperiods.

3. The annual quantities established for quotas in Groups Nos 5A and 5B shall be managed by attributing import rights as a first step and issuing import licences as a second.’;

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 351, 21.12.2012, p. 47.

⁽³⁾ OJ L 147, 5.6.2007, p. 3.

(3) Article 4 is amended as follows:

- (a) in paragraph 1, first and second subparagraphs, the terms 'Group No 5' are replaced by 'Groups Nos 5A and 5B';
- (b) in paragraph 4, the terms 'Groups Nos 3, 6 and 8' are replaced by 'Groups Nos 3, 6A, 6B and 8';
- (c) paragraph 5 is amended as follows:
 - (i) in the first subparagraph, the terms 'Group No 5' are replaced by 'Groups Nos 5A and 5B';
 - (ii) in the second subparagraph, point (b), the terms 'Groups No 3, 6 and 8' are replaced by 'Groups Nos 3, 6A, 6B and 8';
 - (iii) in the third subparagraph, the terms 'Group No 5' are replaced by 'Groups Nos 5A and 5B';
- (d) in paragraph 6, the terms 'Groups Nos 3, 6 and 8' are replaced by 'Groups Nos 3, 6A, 6B and 8';
- (e) in paragraph 7, third subparagraph, the terms 'Groups Nos 3 and 6' are replaced by 'Groups Nos 3, 6A and 6B';

(4) Article 5 is amended as follows:

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

'1. Applications for import rights for Groups Nos 5A and 5B and for import licences for the other groups may be submitted only in the first seven days of the third month preceding each quota period or subperiod.'
- (b) in paragraph 2 the terms 'Group No 5' are replaced by 'Groups Nos 5A and 5B' and the terms 'Groups Nos 1, 4 and 7' are replaced by 'Groups 1, 4A, 4B and 7';
- (c) paragraph 3 is replaced by the following:

'3. Member States shall notify the Commission, by the 14th day of the month in which applications are submitted, of the total quantities in kilograms requested, broken down by order number and origin.'
- (d) in paragraph 5, first and second subparagraphs, the terms 'Group No 5' is replaced by 'Groups Nos 5A and 5B';

(5) Article 6 is amended as follows:

- (a) paragraph 1 is amended as follows:
 - (i) in point (a), the terms 'Group No 5' is replaced by 'Groups Nos 5A and 5B';
 - (ii) point (b) is replaced by the following:

'(b) for Groups Nos 5A and 5B and not later than the 10th day of the month following each quota period or subperiod, of the quantities covered by licences they have issued during that quota period or subperiod.'
- (b) in paragraph 3, the second subparagraph is replaced by the following:

'For Groups Nos 3, 4B, 5B and 6B, the notification referred to in point (a) of the first subparagraph shall not apply.'
- (c) paragraph 4 is replaced by the following:

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

(6) in Article 7, paragraph 1 is replaced by the following:

'1. By way of derogation from Article 22 of Commission Regulation (EC) No 376/2008 (*), the import licences shall be valid for 150 days from the first day of the quota period or subperiod for which they were issued.

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

(*) OJ L 114, 26.4.2008, p. 3.;

(7) Article 8 is replaced by the following:

Article 8

1. Release for free circulation within the quotas referred to in Article 1 of this Regulation shall be subject to the presentation of a certificate of origin issued by the competent authorities of Brazil (for Groups Nos 1, 4A, 4B, and 7) or Thailand (for Groups Nos 2, 5A and 5B) in accordance with Articles 55 to 65 of Regulation (EEC) No 2454/93.

2. Paragraph 1 shall not apply to Groups Nos 3, 6A, 6B and 8.;

(8) Annex I is replaced by the text set out in the Annex to this Regulation.

Article 2

Derogations from Regulation (EC) No 616/2007

For the quota period from 1 July 2012 to 30 June 2013 and as regards the tariff quotas corresponding to order numbers 09.4251, 09.4252, 09.4253, 09.4254, 09.4255, 09.4256,

09.4257, 09.4258, 09.4259, 09.4260, 09.4261, 09.4262, 09.4263, 09.4264 and 09.4265, referred to in Annex I to Regulation (EC) No 616/2007 as amended by Article 1 of this Regulation, the following derogations shall apply:

- (a) the quota period is opened from 1 March to 30 June 2013 and the annual quantity is reduced by 67 %;
- (b) the subperiods set out in Article 3(1) of Regulation (EC) No 616/2007 shall not apply;
- (c) applications for import licences and import rights as referred to in Article 5(1) of that Regulation may be submitted only in the first seven days of January 2013;
- (d) the import licences for all Groups except those for Groups Nos 5A and 5B shall be valid from 1 March 2013 until 30 June 2013.

Article 3

Entry into force and application

This Regulation shall enter into force on 1 January 2013.

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

Done at Brussels, 19 December 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX

‘ANNEX I

Poultry meat, salted or in brine (*)

Country	Group No	Management periodicity	Order number	CN code	Customs duty	Annual quantity (tonnes)
Brazil	1	Quarterly	09.4211	ex 0210 99 39	15,4 %	170 807
Thailand	2	Quarterly	09.4212	ex 0210 99 39	15,4 %	92 610
Other	3	Annual	09.4213	ex 0210 99 39	15,4 %	828

(*) Applicability of the preferential arrangements is determined on the basis of the CN code and is subject to the meat salted or in brine being poultrymeat of CN 0207.

Preparations of poultry meat other than turkey

Country	Group No	Management periodicity	Order number	CN code	Customs duty	Annual quantity (tonnes)
Brazil	4A	Quarterly	09.4214	1602 32 19	8 %	79 477
			09.4251	1602 32 11	630 €/t	15 800
			09.4252	1602 32 30	10,9 %	62 905
Thailand	5A	Quarterly	09.4215 09.4254 09.4255 09.4256	1602 32 19	8 %	160 033
				1602 32 30	10,9 %	14 000
				1602 32 90	10,9 %	2 100
				1602 39 29	10,9 %	13 500
	5B	Annual	09.4257 09.4258 09.4259	1602 39 21	630 €/t	10
				ex 1602 39 85 ⁽¹⁾	10,9 %	600
				ex 1602 39 85 ⁽²⁾	10,9 %	600
Other	6A	Quarterly	09.4216 09.4260	1602 32 19	8 %	11 443
				1602 32 30	10,9 %	2 800
	6B	Annual	09.4261 09.4262 09.4263 09.4264 09.4265	1602 32 11	630 €/t	340
				1602 32 90	10,9 %	470
				1602 39 29	10,9 %	220
				ex 1602 39 85 ⁽¹⁾	10,9 %	148
				ex 1602 39 85 ⁽²⁾	10,9 %	125

⁽¹⁾ Processed duck, geese, guinea fowl meat, containing 25 % or more but less than 57 % by weight of poultry meat or offal.

⁽²⁾ Processed duck, geese, guinea fowl meat, containing less than 25 % by weight of poultry meat or offal.

Preparations of turkey meat

Country	Group No	Management periodicity	Order number	CN code	Customs duty	Annual quantity (tonnes)
Brazil	7	Quarterly	09.4217	1602 31	8,5 %	92 300
Other	8	Quarterly	09.4218	1602 31	8,5 %	11 596'

COMMISSION IMPLEMENTING REGULATION (EU) No 1247/2012**of 19 December 2012****laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ⁽²⁾ and in particular Article 9(6) thereof,

Whereas:

- (1) To avoid inconsistencies, all data sent to trade repositories under Article 9 of Regulation (EU) No 648/2012 should follow the same rules, standards and formats for all trade repositories, all counterparties and all types of derivatives. A unique data set should therefore be used for describing a derivatives trade.
- (2) Since OTC derivatives are typically neither uniquely identifiable by existing codes which are widely used in financial markets, such as the International Securities Identification Numbers (ISIN), nor describable by using the ISO Classification of Financial Instruments (CFI) code, a new and universal method of identification has to be developed. If a unique product identifier is available and follows the principles of uniqueness, neutrality, reliability, open source, scalability, accessibility, has a reasonable cost basis, is offered under an appropriate governance framework and is adopted for use in the Union, it should be used. If a unique product identifier meeting these requirements is not available, an interim taxonomy should be used.
- (3) The underlying should be identified by using a single identifier, however there is currently no market wide standardised code to identify the underlying within a basket. Counterparties should therefore be required to indicate at least that the underlying is a basket and use ISINs for standardised indices where possible.

- (4) To ensure consistency, all parties to a derivatives contract should be identified by a unique code. A global legal entity identifier or an interim entity identifier, to be defined under a governance framework which is compatible with the FSB recommendations on data requirements and is adopted for use in the Union, should be used to identify all financial and non-financial counterparties, brokers, central counterparties, and beneficiaries once available, in particular to ensure consistency with the Committee on Payment and Settlement Systems (CPSS) and International Organisation of Securities Commissions (IOSCO) report on OTC Derivatives Data Reporting and Aggregation Requirements that describes legal entity identifiers as a tool for data aggregation. In the case of agency trades, the beneficiaries should be identified as the individual or entity on whose behalf the contract was concluded.

- (5) The approach used in third countries and also taken by trade repositories themselves as they start their businesses should be taken into account. Therefore, to ensure a cost-effective solution for counterparties and to mitigate operational risk for trade repositories, the reporting start date should include phase-in dates for different derivative classes, beginning with the most standardised classes and subsequently extending to the other classes. The derivative contracts which were entered into before, on or after the date of entry into force of Regulation (EU) No 648/2012, that are not outstanding on or after the reporting start date, are not of major relevance for regulatory purposes. They must however be reported under Article 9(1)(a) of Regulation (EU) No 648/2012. To ensure an efficient and proportionate reporting regime in those cases and taking into account the difficulties in reconstructing data of terminated contracts, a longer deadline should be provided for such reporting.

- (6) This Regulation is based on draft implementing technical standards submitted by the European Securities and Markets Authority (hereinafter ESMA) to the Commission.

- (7) In accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ OJ L 201, 27.7.2012.

Authority) ⁽¹⁾ ESMA has conducted open public consultations on such draft implementing technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Format of derivative contract reports

The information contained in a report under Article 9 of Regulation (EU) No 648/2012 shall be provided in the format specified in the Annex to this Regulation.

Article 2

Frequency of derivative contract reports

Where provided for in Article 11(2) of Regulation (EU) No 648/2012, mark to market or mark to model valuations of contracts reported to a trade repository shall be done on a daily basis. Any other reporting elements as provided for in the Annex to this Regulation and the Annex to the delegated act with regard to regulatory technical standards specifying the minimum details of the data to be reported to trade repositories pursuant to Article 9(5) of Regulation (EU) No 648/2012 shall be reported as they occur and taking into account the time limit foreseen under Article 9 of Regulation (EU) No 648/2012, notably as regards the conclusion, modification or termination of a contract.

Article 3

Identification of counterparties and other entities

1. A report shall use a legal entity identifier to identify:

- (a) a beneficiary which is a legal person;
- (b) a broking entity;
- (c) a CCP;
- (d) a clearing member which is a legal person;
- (e) a counterparty which is a legal entity;
- (f) a submitting entity.

2. Where a legal entity identifier is not available, the report shall include an interim entity identifier as defined at the Union level which is:

- (a) unique;
- (b) neutral;
- (c) reliable;
- (d) open source;
- (e) scalable;
- (f) accessible;
- (g) available at a reasonable cost basis;
- (h) subject to an appropriate governance framework.

3. Where neither a legal entity identifier nor an interim entity identifier is available, a report shall use a Business Identifier Code in accordance with ISO 9362 where available.

Article 4

Identification of Derivatives

1. A report shall identify a derivative contract using a unique product identifier which is:

- (a) unique;
- (b) neutral;
- (c) reliable
- (d) open source;
- (e) scalable;
- (f) accessible;
- (g) available at a reasonable cost basis;
- (h) subject to an appropriate governance framework.

2. Where a unique product identifier does not exist, a report shall identify a derivative contract by using the combination of the assigned ISO 6166 ISIN code or Alternative Instrument Identifier code with the corresponding ISO 10962 CFI code.

3. Where the combination referred to in paragraph 2 is not available, the type of derivative shall be identified on the following basis:

- (a) the derivative class shall be identified as one of the following:
 - (i) commodities;
 - (ii) credit;
 - (iii) foreign exchange;
 - (iv) equity;
 - (v) interest rate;
 - (vi) other.
- (b) the derivative type shall be identified as one of the following:
 - (i) contracts for difference;
 - (ii) forward rate agreements
 - (iii) forwards;
 - (iv) futures;
 - (v) options;
 - (vi) swaps;
 - (vii) other.

(c) in the case of derivatives not falling into a specific derivative class or derivative type, the report shall be made on the basis of the derivative class or derivative type that the counterparties agree the derivative contract most closely resembles.

⁽¹⁾ OJ L 331, 15.12.2010, p.84.

*Article 5***Reporting start date**

1. Credit derivative and interest rate derivative contracts shall be reported:

(a) by 1 July 2013, where a trade repository for that particular derivative class has been registered under Article 55 of Regulation (EU) No 648/2012 before 1 April 2013;

(b) 90 days after the registration of a trade repository for a particular derivative class under Article 55 of Regulation (EU) No 648/2012, where there is no trade repository registered for that particular derivative class before or on 1 April 2013,;

(c) by 1 July 2015, where there is no trade repository registered for that particular derivative class under Article 55 of Regulation (EU) No 648/2012 by 1 July 2015. The reporting obligation shall commence on this date and contracts shall be reported to ESMA in accordance with Article 9(3) of that Regulation until a trade repository is registered for that particular derivative class.

2. Derivative contracts not referred to in paragraph 1 shall be reported:

(a) by 1 January 2014, where a trade repository for that particular derivative class has been registered under Article 55 of Regulation (EU) No 648/2012 before 1 October 2013;

(b) 90 days after the registration of a trade repository for a particular derivative class under Article 55 of Regulation (EU) No 648/2012, where there is no trade repository registered for that particular derivative class before or on 1 October 2013;

(c) by 1 July 2015, where there is no trade repository registered for that particular derivative class under Article 55 of Regulation (EU) No 648/2012 by 1 July 2015. The reporting obligation shall commence on this date and contracts shall be reported to ESMA in accordance with Article 9(3) of that Regulation until a trade repository is registered for that particular derivative class.

3. Those derivative contracts which were outstanding on 16 August 2012 and are still outstanding on the reporting start date shall be reported to a trade repository within 90 days of the reporting start date for a particular derivative class.

4. Those derivative contracts which:

(a) were entered into before 16 August 2012 and are still outstanding on 16 August 2012; or

(b) were entered into on or after 16 August 2012,

and that are not outstanding on or after the reporting start date shall be reported to a trade repository within 3 years of the reporting start date for a particular derivative class.

5. The reporting start date shall be extended by 180 days for the reporting of information referred to in Article 3 of the delegated act with regard to regulatory technical standards specifying the minimum details of the data to be reported to trade repositories pursuant to Article 9(5) of Regulation (EU) No 648/2012.

*Article 6***Entry into force**

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

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

Done at Brussels, 19 December 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX

Table 1

Counterparty Data

	Field	Format
	Parties to the contract	
1	Reporting timestamp	ISO 8601 date format / UTC time format.
2	Counterparty ID	Legal Entity Identifier (LEI) (20 alphanumeric digits), interim entity identifier (20 alphanumeric digits), BIC (11 alphanumeric digits) or a client code (50 alphanumeric digits).
3	ID of the other Counterparty	Legal Entity Identifier (LEI) (20 alphanumeric digits), interim entity identifier (20 alphanumeric digits), BIC (11 alphanumeric digits) or a client code (50 alphanumeric digits).
4	Name of the counterparty	100 alphanumeric digits or blank in case of coverage by Legal Entity Identifier (LEI).
5	Domicile of the counterparty	500 alphanumeric digits or blank in case of coverage by Legal Entity Identifier (LEI).
6	Corporate sector of the counterparty	Taxonomy: A = Assurance undertaking authorised in accordance with Directive 2002/83/EC; C = Credit institution authorised in accordance with Directive 2006/48/EC; F = Investment firm in accordance with Directive 2004/39/EC; I = Insurance undertaking authorised in accordance with Directive 73/239/EEC; L = Alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU; O = Institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC; R = Reinsurance undertaking authorised in accordance with Directive 2005/68/EC; U = UCITS and its management company, authorised in accordance with Directive 2009/65/EC; or blank in case of coverage by Legal Entity Identifier (LEI) or in case of non-financial counterparties.
7	Financial or non-financial nature of the counterparty	F=Financial Counterparty, N=Non-Financial Counterparty.
8	Broker ID	Legal Entity Identifier (LEI) (20 alphanumeric digits), interim entity identifier (20 alphanumeric digits), BIC (11 alphanumeric digits) or a client code (50 alphanumeric digits).

	Field	Format
	Parties to the contract	
9	Reporting entity ID	Legal Entity Identifier (LEI) (20 alphanumeric digits), interim entity identifier (20 alphanumeric digits), BIC (11 alphanumeric digits) or a client code (50 alphanumeric digits).
10	Clearing member ID	Legal Entity Identifier (LEI) (20 alphanumeric digits), interim entity identifier (20 alphanumeric digits), BIC (11 alphanumeric digits) or a client code (50 alphanumeric digits).
11	Beneficiary ID	Legal Entity Identifier (LEI) (20 alphanumeric digits), interim entity identifier (20 alphanumeric digits), BIC (11 alphanumeric digits) or a client code (50 alphanumeric digits).
12	Trading capacity	P=Principal, A=Agent.
13	Counterparty side	B=Buyer, S=Seller.
14	Trade with non-EEA counterparty	Y=Yes, N=No.
15	Directly linked to commercial activity or treasury financing	Y=Yes, N=No.
16	Clearing threshold	Y=Above, N=Below.
17	Mark to market value of contract	Up to 20 numerical digits in the format xxxx,yyyyy.
18	Currency of mark to market value of the contract	ISO 4217 Currency Code, 3 alphabetical digits.
19	Valuation date	ISO 8601 date format.
20	Valuation time	UTC time format.
21	Valuation type	M=mark to market / O=mark to model.
22	Collateralisation	U=uncollateralised, PC= partially collateralised, OC=one way collat- eralised or FC=fully collateralised.
23	Collateral portfolio	Y=Yes, N=No.
24	Collateral portfolio code	Up to 10 numerical digits.
25	Value of the collateral	Specify the value the total amount of collateral posted; up to 20 numerical digits in the format xxxx,yyyyy.

	Field	Format
	Parties to the contract	
26	Currency of the collateral value	Specify the currency of field 25; ISO 4217 Currency Code, 3 alphabetical digits.

Table 2

Common Data

	Field	Format	Applicable types of derivative contract
	Section 2a - Contract type		All contracts
1	Taxonomy used	Identify the taxonomy used: U = Product Identifier [endorsed in Europe] I = ISIN/AII + CFI E = Interim taxonomy	
2	Product ID 1	For taxonomy = U: Product Identifier (UPI), to be defined For taxonomy = I: ISIN or AII, 12 digits alphanumerical code For taxonomy = E: Derivative class: CO = Commodity CR = Credit CU = Currency EQ = Equity IR = Interest Rate OT = Other	
3	Product ID 2	For taxonomy = U Blank For taxonomy = I CFI, 6 characters alphabetical code For taxonomy = E: Derivative type: CD = Contracts for difference FR = Forward rate agreements FU = Futures FW = Forwards OP = Option SW = Swap OT = Other	

	Field	Format	Applicable types of derivative contract
4	Underlying	ISIN (12 alphanumerical digits); LEI (20 alphanumerical digits); Interim entity identifier (20 alphanumerical digits); UPI (to be defined); B = Basket; I = Index.	
5	Notional currency 1	ISO 4217 Currency Code, 3 alphabetical digits.	
6	Notional currency 2	ISO 4217 Currency Code, 3 alphabetical digits.	
7	Deliverable currency	ISO 4217 Currency Code, 3 alphabetical digits.	
	Section 2b - Details on the transaction		All contracts
8	Trade ID	Up to 52 alphanumerical digits.	
9	Transaction reference number	An alphanumeric field up to 40 characters	
10	Venue of execution	ISO 10383 Market Identifier Code (MIC), 4 digits alphabetical. Where relevant, XOFF for listed derivatives that are traded off-exchange or XXXX for OTC derivatives.	
11	Compression	Y = if the contract results from compression; N= if the contract does not result from compression.	
12	Price / rate	Up to 20 numerical digits in the format xxxx.yyyyy.	
13	Price notation	E.g. ISO 4217 Currency Code, 3 alphabetical digits, percentage.	
14	Notional amount	Up to 20 numerical digits in the format xxxx.yyyyy.	
15	Price multiplier	Up to 10 numerical digits.	
16	Quantity	Up to 10 numerical digits.	
17	Up-front payment	Up to 10 numerical digits in the format xxxx.yyyyy for payments made by the reporting counterparty and in the format xxxx.yyyyy for payments received by the reporting counterparty.	
18	Delivery type	C=Cash, P=Physical, O=Optional for counterparty.	
19	Execution timestamp	ISO 8601 date format / UTC time format.	
20	Effective date	ISO 8601 date format.	
21	Maturity date	ISO 8601 date format.	

	Field	Format	Applicable types of derivative contract
22	Termination date	ISO 8601 date format.	
23	Settlement date	ISO 8601 date format.	
24	Master Agreement type	Free Text, field of up to 50 characters, identifying the name of the Master Agreement used, if any.	
25	Master Agreement version	Year, xxxx.	
	Section 2c - Risk mitigation / Reporting		All contracts
26	Confirmation timestamp	ISO 8601 date format, UTC time format.	
27	Confirmation means	Y=Non-electronically confirmed, N=Non-confirmed, E=Electronically confirmed.	
	Section 2d - Clearing		All contracts
28	Clearing obligation	Y=Yes, N=No.	
29	Cleared	Y=Yes, N=No.	
30	Clearing timestamp	ISO 8601 date format / UTC time format.	
31	CCP ID	Legal Entity Identifier (LEI) (20 alphanumeric digits) or, if not available, interim entity identifier (20 alphanumeric digits) or, if not available, BIC (11 alphanumeric digits).	
32	Intragroup	Y=Yes, N=No.	
	Section 2e - Interest Rates		Interest rate derivatives
33	Fixed rate of leg 1	Numerical digits in the format xxxx,yyyyy.	
34	Fixed rate of leg 2	Numerical digits in the format xxxx,yyyyy.	
35	Fixed rate day count	Actual/365, 30B/360 or Other.	
36	Fixed leg payment frequency	An integer multiplier of a time period describing how often the counterparties exchange payments, e.g. 10D, 3M, 5Y.	
37	Floating rate payment frequency	An integer multiplier of a time period describing how often the counterparties exchange payments, e.g. 10D, 3M, 5Y.	
38	Floating rate reset frequency	D = An integer multiplier of a time period describing how often the counterparties exchange payments, e.g. 10D, 3M, 5Y.	
39	Floating rate of leg 1	The name of the floating rate index, e.g. 3M Euribor.	

	Field	Format	Applicable types of derivative contract
40	Floating rate of leg 2	The name of the floating rate index, e.g. 3M Euribor.	
	Section 2f – Foreign Exchange		Currency derivatives
41	Currency 2	ISO 4217 Currency Code, 3 alphabetical digits.	
42	Exchange rate 1	Up to 10 numerical digits in the format xxxx,yyyyy.	
43	Forward exchange rate	Up to 10 numerical digits in the format xxxx,yyyyy.	
44	Exchange rate basis	E.g. EUR/USD or USD/EUR.	
	Section 2g - Commodities	If a UPI is reported and contains all the information below, this is not required unless to be reported according to Regulation (EU) No 1227/2011.	Commodity derivatives
	General		
45	Commodity base	AG = Agricultural EN = Energy FR = Freights ME = Metals IN = Index EV = Environmental EX = Exotic	
46	Commodity details	<i>Agricultural</i> GO = Grains oilseeds DA = Dairy LI = Livestock FO = Forestry SO = Softs <i>Energy</i> OI = Oil NG = Natural gas CO = Coal EL = Electricity IE = Inter-energy <i>Metals</i> PR = Precious NP = Non-precious <i>Environmental</i> WE = Weather EM = Emissions	

	Field	Format	Applicable types of derivative contract
	Energy		
47	Delivery point or zone	EIC code, 16 character alphanumeric code.	
48	Interconnection Point	Free text, field of up to 50 characters.	
49	Load type	Repeatable section of fields 50-54 to identify the product delivery profile which correspond to the delivery periods of a day; BL = Base Load PL = Peak Load OP = Off-Peak BH = Block Hours OT = Other	
50	Delivery start date and time	ISO 8601 date format / UTC time format.	
51	Delivery end date and time	ISO 8601 date format / UTC time format.	
52	Contract capacity	Free text, field of up to 50 characters.	
53	Quantity Unit	10 numerical digits in the format xxxx,yyyyy.	
54	Price/time interval quantities	10 numerical digits in the format xxxx,yyyyy.	
	Section 2h - Options		Contracts that contain an option
55	Option type	P=Put, C=Call.	
56	Option style (exercise)	A=American, B=Bermudan, E=European, S=Asian.	
57	Strike price (cap/floor rate)	Up to 10 Numerical digits in the format xxxx,yyyyy.	
	Section 2i - Modifications to the contract		All contracts
58	Action type	N = New M = Modify E = Error, C = Cancel, Z = Compression, V = Valuation update, O = Other.	
59	Details of action type	Free text, field of up to 50 characters.	

COMMISSION IMPLEMENTING REGULATION (EU) No 1248/2012**of 19 December 2012****laying down implementing technical standards with regard to the format of applications for registration of trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to the opinion of the European Central Bank ⁽¹⁾,Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ⁽²⁾, and in particular Article 56(4) thereof,

Whereas:

- (1) Any information submitted to the European Securities and Markets Authority (ESMA) in an application for registration of a trade repository should be provided in a durable medium, which enables its storage for future use and reproduction. In order to facilitate the identification of the information submitted by a trade repository, documents included with an application should bear a unique reference number.
- (2) This Regulation is based on the draft implementing technical standards submitted by ESMA to the European Commission, pursuant to the procedure in Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) ⁽³⁾.
- (3) In accordance with Article 15 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on such draft implementing technical standards, analysed the potential related costs and benefits

and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1***Format of the application**

1. An application for registration shall be provided in an instrument which stores information in a durable medium as defined in Article 2(1)(m) of Directive 2009/65/EC of the European Parliament and of the Council ⁽⁴⁾.
2. An application for registration shall be submitted in the format set out in the Annex.
3. A trade repository shall give a unique reference number to each document it submits and shall ensure that the information submitted clearly identifies which specific requirement of the delegated act with regard to regulatory technical standards specifying the details of the application for registration of trade repositories adopted pursuant to Article 56(3) of Regulation (EU) No 648/2012 it refers to, in which document that information is provided and also provides a reason if the information is not submitted as outlined in the document references section of the Annex.

*Article 2***Entry into force**

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

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

Done at Brussels, 19 December 2012.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ OJ L 201, 27.7.2012, p. 1.

⁽³⁾ OJ L 331, 15.12.2010, p. 84.

⁽⁴⁾ OJ L 302, 17.11.2009, p. 32.

ANNEX

FORMAT OF APPLICATION

GENERAL INFORMATION

Date of application	
Corporate name of trade repository	
Legal address	
The classes of derivatives for which the trade repository is applying to be registered	
Name of the person assuming the responsibility of the application	
Contact details of the person assuming the responsibility of the application	
Name of other person responsible for the trade repository compliance	
Contact details of the person(s) responsible for the trade repository compliance	
Identification of any parent company	

DOCUMENT REFERENCES

(Article 1(3))

Article of the delegated act with regard to regulatory technical standards specifying the details of the application for registration of trade repositories adopted pursuant to Article 56(3) of Regulation (EU) No 648/2012	Unique reference number of document	Title of the document	Chapter or section or page of the document where the information is provided or reason why the information is not provided

COMMISSION IMPLEMENTING REGULATION (EU) No 1249/2012**of 19 December 2012****laying down implementing technical standards with regard to the format of the records to be maintained by central counterparties according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ⁽²⁾, and in particular Article 29(5) thereof,

Whereas:

(1) In accordance with Article 29(4) of Regulation (EU) No 648/2012, Articles 13, 14 and 15 of the delegated act with regard to regulatory technical standards specifying the details of the records and information to be kept by central counterparties (CCPs) adopted pursuant to Article 29(4) of Regulation (EU) No 648/2012, rules should also be laid down to specify the format of the record and information kept in accordance those Articles.

(2) To carry out their duties effectively and consistently, the relevant authorities should be provided with data that are comparable among CCPs. The use of common formats also facilitates the reconciliation of data between CCPs.

(3) A CCP should be required to retain data for record keeping purposes in a format compatible with the format in which data is retained by trade repositories, taking into account that in certain circumstances CCPs and trade repositories are required to maintain or report the same information. The use of a common format across different financial market infrastructures facilitates the greater use of these formats by a wide variety of market participants, thus promoting standardisation.

(4) To facilitate straight through processing and reduction of costs to market participants, it is important to use standardised procedures and data formats across CCPs as much as possible.

(5) The underlying should be identified by using a single identifier, however there is currently no market wide standardised code to identify the underlyings within a basket. CCPs should therefore indicate at least that the underlying is a basket and use International Securities Identification numbers (ISINs) for standardised indices where possible.

(6) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(7) In accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) ⁽³⁾, ESMA has conducted an open public consultation before submitting the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

*Article 1***Formats of records**

1. A CCP shall retain the records specified in Article 20 of the delegated act with regard to regulatory technical standards on requirements specifying the details of the records and information to be kept by central counterparties (CCPs) adopted pursuant to Article 29(4) of Regulation (EU) No 648/2012 for each contract processed in the format set out in Table 1 in the Annex.

2. A CCP shall retain the records specified in Article 21 of the delegated act with regard to regulatory technical standards on requirements specifying the details of the records and information to be kept by central counterparties (CCPs) adopted pursuant to Article 29(4) of Regulation (EU) No 648/2012 for each position in the format set out in Table 2 in the Annex.

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ OJ L 201. 27.7.2012, p. 1.

⁽³⁾ OJ L 331, 15.12.2010, p. 84.

3. A CCP shall retain the records specified in Article 22 of the delegated act with regard to regulatory technical standards on requirements specifying the details of the records and information to be kept by central counterparties (CCPs) adopted pursuant to Article 29(4) of Regulation (EU) No 648/2012 for activities related to its business and internal organisation in the format set out in Table 3 in the Annex.

4. A CCP shall provide the competent authority the records and information under paragraphs 1, 2 and 3 in a format that

allows a direct data feed between the CCP and the competent authority. A CCP shall establish such data feed within six months after the request of the competent authority.

Article 2

Entry into force

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

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

Done at Brussels, 19 December 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX

Tables of fields to be recorded as referred to in Article 1

Table 1

Records of transactions processed

	Field	Format	Description
1	Reporting timestamp	<i>ISO 8601 date format / UTC time format.</i>	Date and time of reporting.
2	Price/rate	<i>Up to 20 numerical digits in the format xxx.xxxxx.</i>	The price per security or derivative contract excluding commission and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.
2a	Price notation	<i>E.g. ISO 4217 Currency Code, 3 alphabetical digits, percentage.</i>	The manner in which the price is expressed.
3	Notional Currency	<i>ISO 4217 Currency Code, 3 alphabetical digits.</i>	The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt, the price is expressed as a percentage, that percentage shall be included.
3a	Deliverable currency	<i>ISO 4217 Currency Code, 3 alphabetical digits.</i>	The currency to be delivered.
4	Quantity	<i>Up to 10 numerical digits.</i>	The number of units of the financial instruments, the nominal value of bonds, or the number of derivative contracts included in the transaction.
5	Quantity notation	<i>Up to 10 numerical digits.</i>	An indication as to whether the quantity is the number of units of financial instruments, the nominal value of bonds or the number of derivative contracts.
6	CCP side	<i>B=Buyer / S=Seller.</i>	
7	Product ID	<i>Interim taxonomy in accordance with the information in Article 4 of Regulation (EC) xx/2012 [draft ITS on format and frequency of trade reports to trade repositories], ISIN or a unique product identifier (UPI).</i>	The contract shall be identified by using a product identifier, where available.
8	Clearing member ID	<i>Legal Entity Identifier (LEI) (20 alphanumeric digits), interim entity identifier (20 alphanumeric digits), BIC (11 alphanumeric digits) or client code (50 alphanumeric digits).</i>	In case the reporting counterparty is not a clearing member, its clearing member shall be identified in this field by a unique code. In case of an individual, a client code, as assigned by the CCP, shall be used.

	Field	Format	Description
9	Beneficiary ID	<i>Legal Entity Identifier (LEI) (20 alpha-numerical digits), interim entity identifier (20 alphanumeric digits), BIC (11 alphanumeric digits) or client code (50 alphanumeric digits).</i>	If the beneficiary of the contract is not a C/P to this contract it has to be identified by a unique code or, in case of individuals, by a client code as assigned by the legal entity used by the individual.
10	Party that transferred the contract (in case of give-up)	<i>Legal Entity Identifier (LEI) (20 alpha-numerical digits), interim entity identifier (20 alphanumeric digits), BIC (11 alphanumeric digits) or client code (50 alphanumeric digits).</i>	
11	Venue of execution	<i>ISO 10383 Market Identifier Code (MIC) where relevant, XOFF for listed derivatives that are traded off-exchange or XXXX for OTC derivatives.</i>	Identification of the venue where the transaction was executed. In case of a contract concluded OTC, it has to be identified whether the respective instrument is admitted to trading but traded OTC or not admitted to trading and traded OTC.
12	Date of interposition	<i>ISO 8601 date format.</i>	The day on which the interposition of the CCP in the contract was executed.
13	Time of interposition	<i>UTC time format.</i>	The time at which the interposition of the CCP in the contract was executed, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours.
14	Date of termination of the contract	<i>ISO 8601 date format.</i>	The day on which the termination of the contract occurred.
15	Time of termination of the contract	<i>UTC time format.</i>	The time at which the termination of the contract occurred, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours.
16	Delivery type	<i>C = cash, P = physical, O = optional for counterparty.</i>	Whether the contract is settled physically or in cash.
17	Settlement date	<i>ISO 8601 date format.</i>	The day on which the settlement or the buy-in of the contract is executed. If more than one, further fields may be identified.
18	Time of settlement or of buy-in in the contract	<i>UTC time format.</i>	The time at which the settlement or the buy-in of the contract is executed, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours.

	Field	Format	Description
Details on the original terms of the contracts cleared, to be provided to the extent they are applicable			
19	Date	ISO 8601 date format.	The day on which the contract was originally concluded.
20	Time	UTC time format.	The time at which the original contract was originally concluded, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours.
21	Product ID	Interim taxonomy in accordance with the information in Article 4 of Regulation (EC) xx/2012 [draft ITS on format and frequency of trade reports to trade repositories], ISIN or a unique product identifier (UPI).	The contract shall be identified by using a unique product identifier where available.
22	Underlying	A unique product identifier, ISIN (12 alphanumeric digits and CFI (6 alphanumeric digits), Legal Entity Identifier (LEI) (20 alphanumeric digits), interim entity identifier (20 alphanumeric digits), B= Basket, or I=Index.	The instrument identification applicable to the security that is the underlying asset in a derivative contract as well as the transferable security falling within Article 4(1)(18)(c) of Directive 2004/39/EC.
23	Derivative type (in case of derivative contract)	The harmonised description of the derivative type should be done according to one of the top level categories as provided by a uniform internationally accepted standard for financial instrument classification.	
24	Inclusion of the instrument in the ESMA register of contracts subject to the clearing obligation (in case of derivative contract)	Y=Yes / N=No.	
Other information to be provided to the extent they are applicable			
25	Identification of the inter-operable CCP clearing one leg of the transaction	Legal Entity Identifier (LEI) (20 alphanumeric digits), interim entity identifier (20 alphanumeric digits), BIC (11 alphanumeric digits) or client code (50 alphanumeric digits).	

Table 2

Position records

	Field	Format
1	Clearing member ID	<i>Legal Entity Identifier (LEI), interim entity identifier or BIC</i>
2	Beneficiary ID	<i>Legal Entity Identifier (LEI), interim entity identifier, BIC or Client Code</i>
3	Interoperable CCP maintaining the position	<i>Legal Entity Identifier (LEI), interim entity identifier, BIC or Client Code</i>
4	Sign of the position	<i>B=Buyer / S=Seller</i>
5	Value of the position	<i>Up to 10 numerical digits (xxxx,yy).</i>
6	Price at which the contracts are valued	<i>Up to 10 numerical digits (xxxx,yy).</i>
7	Currency	<i>ISO Currency Code.</i>
8	Other relevant information	<i>Free Text</i>
9	Amount of margins called by the CCP	<i>Up to 10 numerical digits (xxxx,yy).</i>
10	Amount of default fund contributions called by the CCP	<i>Up to 10 numerical digits (xxxx,yy).</i>
11	Amount of other financial resources called by the CCP	<i>Up to 10 numerical digits (xxxx,yy).</i>
12A	Amount of margins posted by the Clearing Member with reference to client account A	<i>Up to 10 numerical digits (xxxx,yy).</i>
13A	Amount of default fund contributions posted by the Clearing Member with reference to client account A	<i>Up to 10 numerical digits (xxxx,yy).</i>
14A	Amount of other financial resources posted by the Clearing Member with reference to client account A	<i>Up to 10 numerical digits (xxxx,yy).</i>
15B	Amount of margins posted by the Clearing Member with reference to client account B	<i>Up to 10 numerical digits (xxxx,yy).</i>
16B	Amount of default fund contributions posted by the Clearing Member with reference to client account B	<i>Up to 10 numerical digits (xxxx,yy).</i>
17B	Amount of other financial resources posted by the Clearing Member with reference to client account B	<i>Up to 10 numerical digits (xxxx,yy).</i>

Table 3

Business records

	Field	Format	Description
1	Organisational charts	Free text	Board and relevant committees, clearing unit, risk management unit, and all other relevant units or divisions.

Shareholders or members that have qualifying holdings (fields to be added for each of the relevant shareholder/member)

2	Type	S=Shareholder / M=member.	
3	Type of qualified holding	D=direct / I=indirect.	
4	Type of entity	N=natural person / L=legal person.	
5	Amount of the holding	Up to 10 numerical digits (xxxx,yyyy).	

Other documents

6	Policies, procedures, processes required under organisational requirements	Documents	
7	Minutes of Board meetings, meeting of sub-committees (if applicable) and of Senior Management Committees (if applicable)	Documents	
8	Minutes of meetings of the risk committee	Documents	
9	Minutes of consultation group with clearing members and clients (if any)	Documents	
10	Reports of internal and external audit, risk management, compliance and consultant	Documents	
11	Business continuity policy and disaster recovery plan	Documents	
12	Liquidity plan and daily liquidity reports	Documents	
13	Documents reflecting all assets and liabilities and capital accounts	Documents	

	Field	Format	Description
14	Complaints received	<i>Free text</i>	For each complaint: information on complaint's name, address and account number; date of receiving the complaint; names of all persons identified in the complaint; description of the nature of the complaint; disposition of the complaint; date at which the complaint was resolved.
15	Information on interruption of services or dysfunction	<i>Free text</i>	Information on any interruption of services or dysfunction, including a detailed report on the timing, effects and remedial actions.
16	Results of back and stress test performed	<i>Free text</i>	
17	Written communications with competent Authorities, ESMA and the relevant members of the ESCB	<i>Documents</i>	
18	Legal opinions received in accordance with organisational requirements	<i>Documents</i>	
19	Interoperability arrangements with other CCPs (where applicable)	<i>Documents</i>	
20	List of all clearing members (Article 17 of Regulation (EU) No XXX/2012)	<i>Free text / Document</i>	List in accordance with Article 17 of Regulation (EU) No XXX/2012.
21	Information required by Article 17 of Regulation (EU) No XXX/2012	<i>Free text / Documents</i>	Law and Rules governing (i) the access to the CCP, (ii) the contracts concluded by the CCP with clearing members and, where practicable, clients, (iii) the contracts that the CCP accepts for clearing, (iv) any interoperability arrangements, (v) the use of collateral and default fund contributions, including the liquidation of positions and collateral and the extent to which collateral is protected against third party claims (level of segregation).
22	Development on new initiative processes	<i>Free text</i>	In case of the provision of new services.

COMMISSION IMPLEMENTING REGULATION (EU) No 1250/2012**of 20 December 2012****amending Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities associated with a view to combating terrorism ⁽¹⁾, and in particular Article 7 thereof,

Whereas:

- (1) Annex to Regulation (EC) No 2580/2001 lists the competent authorities to whom information and requests concerning the measures imposed by that Regulation should be sent.

- (2) Slovenia requested that the address details concerning its competent authorities should be amended. Furthermore, the European Commission's address should be updated.

- (3) Annex to Regulation (EC) No 2580/2001 should therefore be updated accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex to Regulation (EC) No 2580/2001 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, 20 December 2012.

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

⁽¹⁾ OJ L 344, 28.12.2001, p. 70.

ANNEX

Annex to Regulation (EC) No 2580/2001 is amended as follows:

- (1) The address details under the heading 'Slovenia' shall be replaced with:

'Article 4

Ministrstvo za zunanje zadeve
Prešernova cesta 25
1001 Ljubljana
Tel.: + 386 1 478 2000
Fax: + 386 1 478 2340
E-mail: gp.mzz@gov.si

Articles 5 and 6

Ministrstvo za finance
Župančičeva 3
1502 Ljubljana
Tel.: +386 1 369 5200
Fax: + 386 1 369 6659
E-mail: gp.mf@gov.si'

- (2) The heading 'European Community' and the paragraph under 'European Community' shall be replaced by the following heading and paragraph:

'Address for notifications to the European Commission:

European Commission
Service for Foreign Policy Instruments (FPI)
Office EEAS 02/309
B-1049 Bruxelles/Brussel (Belgium)
E-mail: relex-sanctions@ec.europa.eu'

COMMISSION IMPLEMENTING REGULATION (EU) No 1251/2012**of 20 December 2012****amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1183/2005 of 18 July 2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo ⁽¹⁾, and in particular Article 9(1)(a) thereof,

Whereas:

- (1) Annex I to Regulation (EC) No 1183/2005 lists the natural and legal persons, entities and bodies covered by the freezing of funds and economic resources under the Regulation.
- (2) On 12 and 30 November 2012, the Sanctions Committee of the United Nations Security Council added three persons to the list of individuals and entities subject to the freezing of assets.
- (3) The address for notifications to the European Commission set out in Annex II to Regulation (EC) No 1183/2005 should be updated.

- (4) Annexes I and II to Regulation (EC) No 1183/2005 should therefore be amended accordingly.

- (5) In order to ensure that the measures provided for in this Regulation are effective, it should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1183/2005 is amended as follows:

- (1) Annex I is amended in accordance with Annex I to this Regulation.
- (2) Annex II is amended in accordance with Annex II 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, 20 December 2012.

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

⁽¹⁾ OJ L 193, 23.7.2005, p. 1.

ANNEX I

Annex I to Regulation (EC) No 1183/2005 is amended as follows:

The following entries shall be added under the heading 'A. NATURAL PERSONS':

- (a) 'Sultani **Makenga** (*alias* (a) Colonel Sultani Makenga, (b) Emmanuel Sultani Makenga). Date of birth: 25 December 1973. Place of birth: Rutshuru, Democratic Republic of the Congo. Nationality: Congolese. Other information: Military leader of the Mouvement du 23 Mars (M23) group operating in the Democratic Republic of the Congo. Date of designation referred to in Article 5(1)(b): 12.11.2012.'
- (b) 'Baudoin **Ngaruye Wa Myamuro** (*alias* Colonel Baudoin Ngaruye). Date of Birth: 1978. Place of Birth: Lusamambo, Lubero territory, Democratic Republic of the Congo. Other information: Military leader of the Mouvement du 23 Mars (M23). FARDC ID: 1-78-09-44621-80. Date of designation referred to in Article 5(1)(b): 30.11.2012.'
- (c) 'Innocent **Kaina** (*alias* (a) Colonel Innocent Kaina, (b) India Queen). Place of Birth: Bunagana, Rutshuru territory, Democratic Republic of the Congo. Date of designation referred to in Article 5(1)(b): 30.11.2012.'

ANNEX II

Annex II to Regulation (EC) No 1183/2005 is amended as follows:

The heading 'European Community' and the paragraph under 'European Community' shall be replaced by the following heading and paragraph:

'Address for notifications to the European Commission:

European Commission
Service for Foreign Policy Instruments (FPI)
Office EEAS 02/309
B-1049 Bruxelles/Brussel (Belgium)
E-mail: relex-sanctions@ec.europa.eu'

COMMISSION IMPLEMENTING REGULATION (EU) No 1252/2012**of 20 December 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, 20 December 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	32,6
	MA	80,4
	TN	114,7
	TR	112,5
	ZZ	85,1
0707 00 05	TR	116,2
	ZZ	116,2
0709 93 10	MA	124,9
	TR	134,6
	ZZ	129,8
0805 10 20	MA	71,3
	TR	60,6
	ZA	51,2
	ZZ	61,0
0805 20 10	MA	67,0
	ZZ	67,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	97,8
	JM	129,1
	MA	98,7
	TR	84,6
	ZZ	102,6
0805 50 10	TR	72,4
	ZZ	72,4
0808 10 80	CN	169,3
	MK	39,0
	US	125,5
	ZA	123,7
	ZZ	114,4
0808 30 90	CN	60,5
	TR	135,1
	US	160,6
	ZZ	118,7

⁽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

POLITICAL AND SECURITY COMMITTEE DECISION ATALANTA/4/2012

of 18 December 2012

on the appointment of an EU Operation Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta)

(2012/808/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 38 thereof,

Having regard to Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast ⁽¹⁾ (Atalanta), and in particular Article 6 thereof,

Whereas:

- (1) Pursuant to Article 6(1) of Joint Action 2008/851/CFSP, the Council authorised the Political and Security Committee ('PSC') to take decisions on the appointment of the EU Operation Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast ('EU Operation Commander').
- (2) On 15 June 2011, the PSC adopted Decision Atalanta/2/2011 ⁽²⁾ appointing Rear Admiral Duncan POTTS as EU Operation Commander.
- (3) The United Kingdom has proposed that Rear Admiral (designate) Robert TARRANT replace Rear Admiral Duncan POTTS as EU Operation Commander.
- (4) The EU Military Committee supports that proposal.

- (5) In accordance with Article 5 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications,

HAS ADOPTED THIS DECISION:

Article 1

Rear Admiral (designate) Robert TARRANT is hereby appointed EU Operation Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast as from 16 January 2013.

Article 2

Decision Atalanta/2/2011 is hereby repealed.

Article 3

This Decision shall enter into force on 16 January 2013.

Done at Brussels, 18 December 2012.

For the Political and Security Committee
The Chairperson
O. SKOOG

⁽¹⁾ OJ L 301, 12.11.2008, p. 33.

⁽²⁾ OJ L 158, 16.6.2011, p. 36.

**COUNCIL IMPLEMENTING DECISION 2012/809/CFSP
of 20 December 2012**

implementing Decision 2011/486/CFSP concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2011/486/CFSP of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan ⁽¹⁾, and in particular Article 5 and Article 6(1) thereof,

Whereas:

- (1) On 1 August 2011, the Council adopted Decision 2011/486/CFSP.
- (2) On 20 November 2012, the United Nations Security Council Committee, established pursuant to paragraph 30 of Security Council Resolution 1988 (2011), amended the list of individuals, groups, undertakings and entities subject to restrictive measures.

- (3) The Annex to Decision 2011/486/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2011/486/CFSP is hereby amended as set out in the Annex to this Decision.

Article 2

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

Done at Brussels, 20 December 2012.

For the Council

The President

E. FLOURENTZOU

⁽¹⁾ OJ L 199, 2.8.2011, p. 57.

ANNEX

I. The entries below shall be added to the list set out in the Annex to Decision 2011/486/CFSP.**A. Individuals associated with the Taliban****1. Mohammed Qasim Sadozai Khudai Rahmin (alias Muhammad Qasim)**

Title: Haji Date of birth: Between 1975 and 1976 Place of birth: Minar village, Garmser District, Helmand Province, Afghanistan Nationality: Afghan National identification no.: (a) Afghan national identification card (tazkira) number 57388 issued in Lashkar Gah District, Helmand Province, Afghanistan (b) Residential card number 665, Ayno Maina, Kandahar Province, Afghanistan Address: (a) Wesh, Spin Boldak District, Kandahar Province, Afghanistan (b) Safaar Bazaar, Garmser District, Helmand Province, Afghanistan (c) Room number 33, 5th Floor Sarafi Market, Kandahar City, Kandahar Province, Afghanistan Other information: (a) Owner of Rahat Ltd. Involved in the supply of weapons for Taliban, including improvised explosive devices (IED). (b) Father's name is Haji Mullah Wali. Alternative father's name is Haji Sadozai. Grandfather's name is Khudai Rahim. Date of UN designation: 21.11.2012.

B. Entities and other groups and undertakings associated with the Taliban**1. Rahat Ltd. (alias (a) Rahat Trading Company (b) Haji Muhammad Qasim Sarafi (c) New Chagai Trading)**

Address: (a) Branch Office 1: Room number 33, 5th Floor, Sarafi Market, Kandahar city, Kandahar Province, Afghanistan (b) Branch Office 2: Shop number 4, Azizi Bank, Haji Muhammad Isa Market, Wesh, Spin Boldak, Kandahar Province, Afghanistan (c) Branch Office 3: Safaar Bazaar, Garmser District, Helmand Province, Afghanistan (d) Branch Office 4: Lashkar Gah, Helmand Province, Afghanistan (e) Branch Office 5: Gereshk District, Helmand Province, Afghanistan (f) Branch Office 6: Zaranj District, Nimroz Province, Afghanistan (g) Branch Office 7: i) Dr Barno Road, Quetta, Pakistan ii) Haji Mohammed Plaza, Tol Aram Road, near Jamaluddin Afghani Road, Quetta, Pakistan iii) Kandahari Bazaar, Quetta, Pakistan (h) Branch Office 8: Chaman, Baluchistan Province, Pakistan (i) Branch Office 9: Chaghi Bazaar, Chaghi, Baluchistan Province, Pakistan (j) Branch Office 10: Zahedan, Zabol Province, Iran. Other information: (a) Rahat Ltd. was used by Taliban leadership to transfer funds originating from external donors and narcotics trafficking to finance Taliban activity as of 2011 and 2012. (b) Owned by Mohammed Qasim Sadozai Khudai Rahim. (c) Also associated Mohammad Naim Barich Khudaidad. Date of UN designation: 21.11.2012.

COUNCIL DECISION 2012/810/CFSP**of 20 December 2012****amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran**

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Article 1

The following paragraph is added to Article 2b of Decision 2011/235/CFSP:

Whereas:

- (1) On 12 April 2011, the Council adopted Decision 2011/235/CFSP ⁽¹⁾.
- (2) It should be specified that the prohibition to sell, supply, transfer or export equipment which might be used for internal repression in Iran does not apply if the sale, supply, transfer or export of such equipment is intended solely for the protective use of the personnel of the Union and its Member States in Iran, nor to the provision of technical assistance, brokering services and other services or of financing and financial assistance related to such equipment.
- (3) Decision 2011/235/CFSP should therefore be amended accordingly,

‘3. Paragraphs 1 and 2 shall not apply to the sale, supply, transfer or export of equipment which is intended solely for the protective use of the personnel of the Union and its Member States in Iran, or to the provision of technical assistance, brokering services and other services or of financing and financial assistance related to such equipment, as approved in advance by the relevant competent authority.’.

Article 2

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

Done at Brussels, 20 December 2012.

For the Council

The President

E. FLOURENTZOU

⁽¹⁾ OJ L 100, 14.4.2011, p. 51.

COUNCIL DECISION 2012/811/CFSP**of 20 December 2012****amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Whereas:

- (1) On 20 December 2010, the Council adopted Decision 2010/788/CFSP ⁽¹⁾ imposing restrictive measures against the Democratic Republic of the Congo.
- (2) United Nations Security Council Resolution (UNSCR) 2078 (2012) of 28 November 2012 amended the criteria for the designation of persons and entities to be subject to the restrictive measures set out in paragraphs 9 and 11 of UNSCR 1807 (2008).
- (3) UNSCR 2078 (2012) also added a further exemption to the measures set out in paragraph 9 of UNSCR 1807 (2008).
- (4) On 12 and 30 November 2012, the Sanctions Committee established pursuant to UNSCR 1533 (2004) added additional persons to the list of persons and entities subject to restrictive measures.
- (5) Decision 2010/788/CFSP should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2010/788/CFSP is hereby amended as follows:

- (1) Article 3 is replaced by the following:

‘Article 3

Restrictive measures as provided for in Articles 4(1) and 5(1) and (2) shall be imposed against the following persons and, as appropriate, entities, designated by the Sanctions Committee:

- persons or entities acting in violation of the arms embargo and related measures as referred to in Article 1,
- political and military leaders of foreign armed groups operating in the DRC who impede the disarmament

and the voluntary repatriation or resettlement of combatants belonging to those groups,

- political and military leaders of Congolese militias receiving support from outside the DRC, who impede the participation of their combatants in disarmament, demobilisation and reintegration processes,
- political and military leaders operating in the DRC and recruiting or using children in armed conflict contrary to applicable international law,
- individuals or entities operating in the DRC and committing serious violations involving the targeting of children or women in situations of armed conflict, including killing and maiming, sexual violence, abduction, and forced displacement,
- individuals or entities obstructing the access to or the distribution of humanitarian assistance in the eastern part of the DRC,
- individuals or entities illegally supporting armed groups in the eastern part of the DRC through illicit trade of natural resources, including gold,
- individuals or entities acting on behalf of or at the direction of a designated individual or entity owned or controlled by a designated individual,
- individuals or entities who plan, sponsor or participate in attacks against peacekeepers of the United Nations Organization Stabilization Mission in the DRC (MONUSCO).

The relevant persons and entities are listed in the Annex.’;

- (2) in Article 4(3) the following phrase is added after point (c):

‘or where such entry or transit is necessary for the fulfilment of judicial process.’.

Article 2

The persons listed in the Annex to this Decision shall be added to the list of persons set out in the Annex to Decision 2010/788/CFSP.

⁽¹⁾ OJ L 336, 21.12.2010, p. 30.

Article 3

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

Done at Brussels, 20 December 2012.

For the Council

The President

E. FLOURENTZOU

ANNEX

PERSONS REFERRED TO IN ARTICLE 2

Name	Alias	Date of birth/place of birth	Identifying information	Reasons	Date of designation
MAKENG, Sultani	Colonel Sultani Makenga Emmanuel Sultani Makenga	25 December 1973 Rutshuru, Democratic Republic of Congo	Congolese A military leader of the Mouvement du 23 Mars (M23) group operating in the Democratic Republic of the Congo.	Sultani Makenga is a military leader of the Mouvement du 23 Mars (M23) group operating in the Democratic Republic of the Congo (DRC). As a leader of M23 (also known as the Congolese Revolutionary Army), Sultani Makenga has committed and is responsible for serious violations of international law involving the targeting of women and children in situations of armed conflict, including killing and maiming, sexual violence, abduction, and forced displacement. He has also been responsible for violations of international law related to M23's actions in recruiting or using children in armed conflict in the DRC. Under the command of Sultani Makenga, M23 has carried out extensive atrocities against the civilian population of the DRC. According to testimonies and reports, the militants operating under the command of Sultani Makenga have conducted rapes throughout Rutshuru territory against women and children, some of whom have been as young as 8 years old, as part of a policy to consolidate control in Rutshuru territory. Under Makenga's command, M23 has conducted extensive forced recruitment campaigns of children in the DRC and in the region, as well as killing, maiming, and injuring scores of children. Many of the forced child recruits have been under the age of 15. Makenga has also been reported to be the recipient of arms and related materiel in violation of measures taken by the DRC to implement the arms embargo, including domestic ordinances on the importing and possession of arms and related materiel. Makenga's actions as the leader of M23 have included serious violations of international law and atrocities against the civilian population of the DRC, and have aggravated the conditions of insecurity, displacement, and conflict in the region.	12.11.2012
NGARUYE WA MYAMURO, Baudoin	Colonel Baudoin NGARUYE	1978, Lusamambo, Lubero territory, Democratic Republic of the Congo.	Military leader of the Mouvement du 23 Mars (M23) FARDC ID: 1-78-09-44621-80	In April 2012, Ngaruye commanded the ex-CNDP mutiny, known as the Mouvement du 23 Mars (M23), under the orders of General Ntaganda. He is currently the third highest ranking military commander within the M23. The Group of experts on the DRC previously recommended him for designation in 2008 and 2009. He is responsible for and has committed severe violations of human rights and international law. He recruited and trained hundreds of children between 2008 and 2009 and then towards the end of 2010 for the M23. He has committed killing, maiming and abductions, often targeting women. He is responsible for executions and torture of deserters within the M23. In 2009 within the FARDC, he gave the orders to kill all men in Shalio village of Walikale. He also provided weapons, munitions and salaries in Masisi and Walikale under the direct orders from Ntaganda. In 2010 he orchestrated the forced displacement and expropriation of populations in the area of Lukopfu. He has also been extensively involved in criminal networks within the FARDC deriving profits from the mineral trade which led to tensions and violence with Colonel Innocent Zimurinda in 2011.	30.11.2012

Name	Alias	Date of birth/place of birth	Identifying information	Reasons	Date of designation
KAINA, Innocent	Colonel Innocent KAINA "India Queen"	Bunagana, Rutshuru territory, Democratic Republic of the Congo		Innocent Kaina is currently a Sector commander in the Mouvement du 23 Mars (M23). He is responsible for and has committed serious violations of international law and human rights. In July 2007 the Garrison Military Tribunal of Kinshasa found Kaina responsible for crime against humanity committed in the District of Ituri, between May 2003 and December 2005. He was released in 2009 as part of the peace agreement between the Congolese government and the CNDP. Within the FARDC in 2009, he has been guilty of executions, abductions and maiming in Masisi territory. As Commander under the orders of General Ntaganda, he initiated the ex-CNDP mutiny in Rutshuru territory in April 2012. He ensured the security of the mutineers out of Masisi. Between May and August 2012, he oversaw the recruitment and training of over 150 children for the M23 rebellion, shooting the boys who had tried to escape. In July 2012 he travelled to Berunda and Degho for mobilization and recruitment activities for the M23.	30.11.2012

COUNCIL DECISION 2012/812/CFSP
of 20 December 2012
amending Common Position 2003/495/CFSP on Iraq

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 29 thereof,

Whereas:

- (1) On 7 July 2003, the Council adopted Common Position 2003/495/CFSP on Iraq⁽¹⁾ in implementation of United Nations Security Council (UNSC) Resolution 1483 (2003).
- (2) On 15 December 2010, the UNSC adopted Resolution 1956 (2010) by which it decided that the full proceeds from the Development Fund for Iraq should be transferred to the Government of Iraq's successor arrangements account or accounts and that the Development Fund for Iraq should be terminated no later than 30 June 2011.
- (3) Common Position 2003/495/CFSP should therefore be amended to permit the transfer of frozen funds, other financial assets or economic resources to the successor arrangements to the Development Fund for Iraq put in place by the Government of Iraq under the conditions set out in Security Council Resolutions 1483 (2003) and 1956 (2010).
- (4) Common Position 2003/495/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Common Position 2003/495/CFSP is hereby amended as follows:

Article 2 is replaced by the following:

'Article 2

All funds or other financial assets or economic resources:

(a) of the previous Government of Iraq or its State bodies, corporations or agencies located outside Iraq on the date of 22 May 2003, as designated by the Committee established pursuant to Security Council Resolution 661 (1990); or

(b) that have been removed from Iraq, or acquired by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled directly or indirectly by them or by persons acting on their behalf or at their direction, as designated by the Committee established pursuant to Security Council Resolution 661 (1990);

shall be frozen without delay and, unless those funds or other financial assets or economic resources are themselves the subject of a prior judicial, administrative or arbitral lien or judgement, in which case they may be used to satisfy such lien or judgement, Member States shall immediately cause their transfer to the successor arrangements to the Development Fund for Iraq put in place by the Government of Iraq under the conditions set out in Security Council Resolutions 1483 (2003) and 1956 (2010).'

Article 2

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

Done at Brussels, 20 December 2012.

For the Council
The President

E. FLOURENTZOU

⁽¹⁾ OJ L 169, 8.7.2003, p. 72.

COMMISSION IMPLEMENTING DECISION

of 19 December 2012

amending Decision 90/178/Euratom, EEC authorising Luxembourg not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

*(notified under document C(2012) 9533)***(Only the French text is authentic)**

(2012/813/EU, Euratom)

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

- (1) Under Article 370 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, Member States which, at 1 January 1978, taxed the transactions listed in Annex X, Part A, may continue to tax those transactions; these transactions must be taken into account for the determination of the VAT resources base.
- (2) Under Article 371 of Directive 2006/112/EC, Member States which, at 1 January 1978, exempted the transactions listed in Annex X, Part B, may continue to exempt those transactions, in accordance with the conditions applying in the Member State concerned on that date; these transactions must be taken into account for the determination of the VAT resources base.
- (3) In the case of Luxembourg, the Commission, on the basis of Regulation (EEC, Euratom) No 1553/89, adopted Decision 90/178/Euratom, EEC ⁽³⁾ authorising Luxembourg, with effect from 1 January 1989, not to take into account certain categories of transactions and

to use certain approximate estimates for the calculation of the VAT own resources base.

- (4) The Commission invited Luxembourg to verify whether those authorisations granted to Luxembourg with no explicit limitation in time, were still needed and to confirm this to the Commission; Luxembourg confirmed that authorisation to use approximate estimates for the transactions mentioned in point 4 of Annex X, Part A to Directive 2006/112/EC was obsolete.
- (5) For the sake of clarity and transparency of Community rules, provisions that have become obsolete or have ceased to have effect should be repealed.
- (6) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee on Own Resources,

HAS ADOPTED THIS DECISION:

Article 1

Article 1(2) of Decision 90/178/Euratom, EEC is hereby deleted.

Article 2

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels, 19 December 2012.

For the Commission

Janusz LEWANDOWSKI

Member of the Commission⁽¹⁾ OJ L 155, 7.6.1989, p. 9.⁽²⁾ OJ L 347, 11.12.2006, p. 1.⁽³⁾ OJ L 99, 19.4.1990, p. 26.

COMMISSION IMPLEMENTING DECISION

of 19 December 2012

amending Decision 90/184/Euratom, EEC authorising Denmark not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

*(notified under document C(2012) 9538)***(Only the Danish text is authentic)***(2012/814/EU, Euratom)*

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

- (1) Under Article 371 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, Member States which, at 1 January 1978, exempted the transactions listed in Annex X, Part B, may continue to exempt those transactions, in accordance with the conditions applying in the Member State concerned on that date; these transactions must be taken into account for the determination of the VAT resources base.
- (2) In the case of Denmark, the Commission, on the basis of Regulation (EEC, Euratom) No 1553/89, adopted Decision 90/184/Euratom, EEC ⁽³⁾ authorising Denmark, with effect from 1 January 1989, not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base.
- (3) Since 1 January 1995, Denmark has taxed the transactions referred to in point 2 of Annex X, Part B to

Directive 2006/112/EC; the authorisation granted in this connection should be discontinued with effect from that date.

- (4) The Commission invited Denmark to verify whether those authorisations granted to Denmark with no explicit limitation in time, were still needed and to confirm this to the Commission; Denmark confirmed that one authorisation not to take into account the transactions mentioned in point 2 of Annex X, Part B to Directive 2006/112/EC was obsolete.
- (5) For the sake of clarity and transparency of Union rules, provisions that have become obsolete or have ceased to have effect should be repealed.
- (6) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee on Own Resources,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 of Decision 90/184/Euratom, EEC is hereby deleted.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 19 December 2012.

For the Commission

Janusz LEWANDOWSKI

Member of the Commission⁽¹⁾ OJ L 155, 7.6.1989, p. 9.⁽²⁾ OJ L 347, 11.12.2006, p. 1.⁽³⁾ OJ L 99, 19.4.1990, p. 37.

COMMISSION IMPLEMENTING DECISION

of 19 December 2012

amending Decision 96/564/Euratom, EC authorising Austria not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

*(notified under document C(2012) 9539)***(Only the German text is authentic)**

(2012/815/EU, Euratom)

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

- (1) Under Article 378(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, Austria may continue to tax the transactions listed in point 2 of Annex X, Part A; these transactions must be taken into account for the determination of the VAT resources base.
- (2) Under Article 378(2)(a) of Directive 2006/112/EC, Austria may continue to exempt the transactions listed in points 5 and 9 of Annex X, Part B; these transactions must be taken into account for the determination of the VAT resources base.
- (3) For the purposes of applying Article 28(3)(a) of the Sixth Directive, paragraph 2(h) of Annex IX (Taxation) to the Act of Accession of the Republic of Austria to the European Communities ⁽³⁾ authorised Austria to tax with value added tax pursuant to point 2 of Annex E, until 31 December 1996, services supplied by dental technicians in their professional capacity and dental prostheses supplied by dentists and dental technicians to Austrian social security institutions; consequently, the authorisation granted in this connection by the Commission for the purposes of determining the VAT own resources base should also be discontinued.
- (4) For the purposes of applying Article 28(3)(b) of the Sixth Directive, paragraph 2(i) of Annex IX (Taxation) to the

Act of Accession of the Republic of Austria to the European Communities authorised Austria to exempt from value added tax telecommunications services supplied by public postal services, until such time as the Council has adopted a common scheme for taxation of such services, or until the date on which all present Member States currently applying full exemption cease to apply it, whichever comes first, but in any event until 31 December 1995; consequently, the authorisation granted in this connection by the Commission for the purposes of determining the VAT own resources base should also be discontinued.

- (5) In the case of Austria, the Commission, on the basis of Regulation (EEC, Euratom) No 1553/89, adopted Decision 96/564/Euratom, EC ⁽⁴⁾ authorising Austria, with effect from 1 January 1995, not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base.
- (6) The Commission invited Austria to verify whether those authorisations granted to Austria with no explicit limitation in time, were still needed and to confirm this to the Commission; Austria confirmed that two authorisations were no longer needed.
- (7) For the sake of clarity and transparency of Union rules, provisions that have become obsolete or have ceased to have effect should be repealed.
- (8) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee on Own Resources,

HAS ADOPTED THIS DECISION:

Article 1

- (1) Article 2, point 1 of Decision 96/564/Euratom, EC is hereby deleted.
- (2) Article 2, point 2 of Decision 96/564/Euratom, EC is hereby deleted.

⁽¹⁾ OJ L 155, 7.6.1989, p. 9.⁽²⁾ OJ L 347, 11.12.2006, p. 1.⁽³⁾ OJ C 241, 29.8.1994, p. 336.⁽⁴⁾ OJ L 247, 28.9.1996, p. 39.

Article 2

This Decision is addressed to the Republic of Austria.

Done at Brussels, 19 December 2012.

For the Commission

Janusz LEWANDOWSKI

Member of the Commission

COMMISSION IMPLEMENTING DECISION

of 19 December 2012

amending Decision 96/565/Euratom, EC authorising Sweden not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

*(notified under document C(2012) 9547)***(Only the Swedish text is authentic)**

(2012/816/EU, Euratom)

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

- (1) Under Article 380 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, Sweden may continue to exempt the supply of services by authors, artists and performers, listed in point 2 of Annex X, Part B, and the transactions listed in points 1, 9 and 10 of Annex X, Part B, for as long as the same exemptions are applied in any of the Member States which were members of the Community on 31 December 1994; these transactions must be taken into account for the determination of the VAT resources base.
- (2) In the case of Sweden, the Commission, on the basis of Regulation (EEC, Euratom) No 1553/89, adopted Decision 96/565/Euratom, EC ⁽³⁾ authorising Sweden, with effect from 1 January 1995, to use certain approximate estimates for the calculation of the VAT own resources base.
- (3) Since 1 January 1997, as long as copyrights and royalties are concerned, Sweden has taxed the transactions referred to in point 2 of Annex X, Part B to Directive

2006/112/EC; the authorisation granted in this connection should be discontinued with effect from that date.

- (4) The Commission invited Sweden to verify whether those authorisations granted to Sweden with no explicit limitation in time, were still needed and to confirm this to the Commission; Sweden confirmed that authorisation to use approximate estimates for the transactions mentioned in point 2 of Annex X, Part B to Directive 2006/112/EC would not apply any longer for copyrights and royalties.
- (5) For the sake of clarity and transparency of Union rules, provisions that have become obsolete or have ceased to have effect should be repealed.
- (6) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee on Own Resources,

HAS ADOPTED THIS DECISION:

Article 1

Article 2.2 of Decision 96/565/Euratom, EC is hereby deleted.

Article 2

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 19 December 2012.

For the Commission

Janusz LEWANDOWSKI

Member of the Commission⁽¹⁾ OJ L 155, 7.6.1989, p. 9.⁽²⁾ OJ L 347, 11.12.2006, p. 1.⁽³⁾ OJ L 247, 28.9.1996, p. 41.

COMMISSION IMPLEMENTING DECISION

of 19 December 2012

amending Decision 90/185/Euratom, EEC authorising Greece to use certain approximate estimates for the calculation of the VAT own resources base*(notified under document C(2012) 9549)***(Only the Greek text is authentic)***(2012/817/EU, Euratom)*

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

- (1) Under Article 375 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, Greece may continue to exempt the transactions listed in points 2, 8, 11 and 12 of Annex X, Part B; these transactions must be taken into account for the determination of the VAT resources base.
- (2) In the case of Greece, the Commission, on the basis of Regulation (EEC, Euratom) No 1553/89, adopted Decision 90/185/Euratom, EEC ⁽³⁾ authorising Greece, with effect from 1 January 1989, to use certain approximate estimates for the calculation of the VAT own resources base.
- (3) Since 1 July 2010, Greece has taxed the transactions referred to in point 2 of Annex X, Part B to Directive 2006/112/EC; the authorisation granted in this connection should be discontinued with effect from that date.
- (4) Since 22 August 2011, Greece has taxed the transactions referred to in point 8 of Annex X, Part B to Directive 2006/112/EC; the authorisation granted in this connection should be discontinued with effect from that date.
- (5) The Commission invited Greece to verify whether those authorisations granted to Greece with no explicit limitation in time, were still needed and to confirm this to the Commission; Greece confirmed that two authorisations to use approximate estimates for the transactions

mentioned in points 2 and 8 of Annex X, Part B to Directive 2006/112/EC would not apply any longer.

- (6) In the case of Greece, Greece acknowledged that with regard to Annex X, part B, points 11 and 12 the need for using approximate estimates would no longer be justified as data were provided by the Ministry of Defence in a greater level of detail.
- (7) For the sake of clarity and transparency of Community rules, provisions that have become obsolete or have ceased to have effect should be repealed.
- (8) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee on Own Resources,

HAS ADOPTED THIS DECISION:

Article 1

- (1) Article 1, point 1 of Decision 90/185/Euratom, EEC is hereby deleted.
- (2) Article 1, point 3 of Decision 90/185/Euratom, EEC is hereby deleted.
- (3) Article 1, point 5 of Decision 90/185/Euratom, EEC is hereby deleted.
- (4) Article 1, point 6 of Decision 90/185/Euratom, EEC is hereby deleted.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 19 December 2012.

For the Commission

Janusz LEWANDOWSKI

Member of the Commission⁽¹⁾ OJ L 155, 7.6.1989, p. 9.⁽²⁾ OJ L 347, 11.12.2006, p. 1.⁽³⁾ OJ L 99, 19.4.1990, p. 39.

COMMISSION IMPLEMENTING DECISION

of 19 December 2012

authorising Denmark to use certain approximate estimates for the calculation of the VAT own resources base*(notified under document C(2012) 9551)***(Only the Danish text is authentic)**

(2012/818/EU, Euratom)

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

- (1) Under Article 370 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, Member States which, at 1 January 1978, taxed the transactions listed in Annex X, Part A, may continue to tax those transactions; these transactions must be taken into account for the determination of the VAT resources base.
- (2) Under Article 371 of Directive 2006/112/EC, Member States which, at 1 January 1978, exempted the transactions listed in Annex X, Part B, may continue to exempt those transactions, in accordance with the conditions applying in the Member State concerned on that date; these transactions must be taken into account for the determination of the VAT resources base.
- (3) Denmark has requested authorisation from the Commission to use certain approximate estimates for the calculation of the VAT own resources base since it is unable to make the precise calculation of the VAT own resources base for transactions referred to in point 2 of Part A and point 10 of Part B of Annex X to Directive 2006/112/EC. Such calculation is likely to involve an unjustified administrative burden in relation to the effect of these transactions on Denmark's total VAT own resources base. Denmark is able to make a calculation using approximate estimates for these categories of transactions. Denmark should therefore be authorised to

calculate the VAT own resource base using approximate estimates in accordance with the second indent of Article 6(3) of Regulation (EEC, Euratom) No 1553/89.

- (4) For reasons of transparency and legal certainty it is appropriate to limit the applicability of the authorisation in time.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee on Own Resources,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of calculating the VAT own resources base from 1 January 2012, Denmark is authorised to use approximate estimates in respect of the following categories of transactions referred to in Annex X to Directive 2006/112/EC:

- (1) Activities of public radio and television bodies other than those of a commercial nature (Part A, point 2);
- (2) Transport of passengers (Part B, point 10).

Article 2

This Decision shall apply from 1 January 2012 to 31 December 2016.

Article 3

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 19 December 2012.

For the Commission

Janusz LEWANDOWSKI

Member of the Commission

⁽¹⁾ OJ L 155, 7.6.1989, p. 9.

⁽²⁾ OJ L 347, 11.12.2006, p. 1.

COMMISSION IMPLEMENTING DECISION

of 19 December 2012

repealing Decision 90/182/Euratom, EEC authorising the United Kingdom not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

*(notified under document C(2012) 9556)***(Only the English text is authentic)***(2012/819/EU, Euratom)*

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

- (1) Under Article 371 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, Member States which, at 1 January 1978, exempted the transactions listed in Annex X, Part B, may continue to exempt those transactions, in accordance with the conditions applying in the Member State concerned on that date; these transactions must be taken into account for the determination of the VAT resources base.
- (2) In the case of the United Kingdom, the Commission, on the basis of Regulation (EEC, Euratom) No 1553/89, adopted Decision 90/182/Euratom, EEC ⁽³⁾ authorising the United Kingdom, with effect from 1 January 1989, not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base.
- (3) The Commission invited the United Kingdom to verify whether those authorisations granted to the United

Kingdom with no explicit limitation in time, were still needed and to confirm this to the Commission; the United Kingdom confirmed that the authorisation to use approximate estimates in respect of the transactions mentioned in point 7 of Annex X, Part B of Directive 2006/112/EC was no longer needed due to the changes in the methodology.

- (4) For the sake of clarity and transparency of Union rules, provisions that have become obsolete or have ceased to have effect should be repealed.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee on Own Resources,

HAS ADOPTED THIS DECISION:

Article 1

Decision 90/182/Euratom, EEC is hereby repealed.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 19 December 2012.

For the Commission

Janusz LEWANDOWSKI

Member of the Commission

⁽¹⁾ OJ L 155, 7.6.1989, p. 9.

⁽²⁾ OJ L 347, 11.12.2006, p. 1.

⁽³⁾ OJ L 99, 19.4.1990, p. 33.

COMMISSION IMPLEMENTING DECISION

of 19 December 2012

amending Decision 90/180/Euratom, EEC authorising the Netherlands not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

*(notified under document C(2012) 9567)***(Only the Dutch text is authentic)**

(2012/820/EU, Euratom)

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

(1) Under Article 370 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, Member States which, at 1 January 1978, taxed the transactions listed in Annex X, Part A, may continue to tax those transactions; these transactions must be taken into account for the determination of the VAT resources base.

(2) Under Article 371 of Directive 2006/112/EC, Member States which, at 1 January 1978, exempted the transactions listed in Annex X, Part B, may continue to exempt those transactions, in accordance with the conditions applying in the Member State concerned on that date; these transactions must be taken into account for the determination of the VAT resources base.

(3) In the case of the Netherlands, the Commission, on the basis of Regulation (EEC, Euratom) No 1553/89, adopted Decision 90/180/Euratom, EEC ⁽³⁾ authorising the Netherlands, with effect from 1 January 1989, not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base.

(4) Since 1 January 1993, the Netherlands has taxed the transactions referred to in point 5 of Annex X, Part B to Directive 2006/112/EC; the authorisation granted in this connection should be discontinued with effect from that date.

(5) The Commission invited the Netherlands to verify whether those authorisations granted to the Netherlands with no explicit limitation in time, were still needed and to confirm this to the Commission; the Netherlands confirmed that authorisation to use approximate estimates for the transactions mentioned in point 5 of Annex X, Part B to Directive 2006/112/EC was no longer needed.

(6) For the sake of clarity and transparency of Community rules, provisions that have become obsolete or have ceased to have effect should be repealed.

(7) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee on Own Resources,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 point 2 of Decision 90/180/Euratom, EEC is hereby deleted.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 19 December 2012.

For the Commission

Janusz LEWANDOWSKI

Member of the Commission

⁽¹⁾ OJ L 155, 7.6.1989, p. 9.

⁽²⁾ OJ L 347, 11.12.2006, p. 1.

⁽³⁾ OJ L 99, 19.4.1990, p. 30.

COMMISSION IMPLEMENTING DECISION

of 19 December 2012

amending Decision 90/177/Euratom, EEC authorising Belgium not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

*(notified under document C(2012) 9568)***(Only the Dutch and French texts are authentic)**

(2012/821/EU, Euratom)

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

- (1) Under Article 370 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, Member States which, at 1 January 1978, taxed the transactions listed in Annex X, Part A, may continue to tax those transactions; these transactions must be taken into account for the determination of the VAT resources base.
- (2) Under Article 371 of Directive 2006/112/EC, Member States which, at 1 January 1978, exempted the transactions listed in Annex X, Part B, may continue to exempt those transactions, in accordance with the conditions applying in the Member State concerned on that date; these transactions must be taken into account for the determination of the VAT resources base.
- (3) Since 1 January 2011, Belgium has taxed the supply of land adjacent to a building sold subject to VAT (before first occupation) referred to in Article 12(1)(a) of Directive 2006/112/EC; the authorisation granted in this connection should be discontinued with effect from that date.
- (4) Since 1 January 2012, Belgium has taxed the supply of services by notaries and bailiffs; the authorisation granted in this connection should be discontinued with effect from that date.
- (5) In the case of Belgium, the Commission, on the basis of Regulation (EEC, Euratom) No 1553/89, adopted Decision 90/177/Euratom, EEC ⁽³⁾ authorising Belgium,

with effect from 1989, not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base.

- (6) The Commission invited Belgium to verify whether those authorisations granted to Belgium with no explicit limitation in time, were still needed and to confirm this to the Commission; Belgium confirmed that scope of two authorisations had to be amended.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee on Own Resources,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Decision 90/177/Euratom, EEC is amended as follows:

- (1) Point 2 is replaced by the following:

‘2. Services supplied by lawyers in so far as these are not services specified in Annex B to the Second Directive 67/228/EEC (Annex F, ex point (2));’

- (2) Point 4 is replaced by the following:

‘4. Supplies of building land described in Article 4(3) of the Sixth Directive 77/388/EEC (Annex F, ex point (16)).’

Article 2

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 19 December 2012.

For the Commission

Janusz LEWANDOWSKI

Member of the Commission⁽¹⁾ OJ L 155, 7.6.1989, p. 9.⁽²⁾ OJ L 347, 11.12.2006, p. 1.⁽³⁾ OJ L 99, 19.4.1990, p. 24.

COMMISSION IMPLEMENTING DECISION

of 19 December 2012

amending Decision 90/179/Euratom, EEC authorising the Federal Republic of Germany to use statistics for years earlier than the last year but one and not to take into account certain categories of transactions or to use certain approximate estimates for the calculation of the VAT own resources base

*(notified under document C(2012) 9569)***(Only the German text is authentic)**

(2012/822/EU, Euratom)

THE EUROPEAN COMMISSION,

in this connection by the Commission for purposes of determining the VAT own resources base should also be discontinued.

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

(1) Under Article 370 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, Member States which, at 1 January 1978, taxed the transactions listed in Annex X, Part A, may continue to tax those transactions; these transactions must be taken into account for the determination of the VAT resources base.

(2) Under Article 371 of Directive 2006/112/EC, Member States which, at 1 January 1978, exempted the transactions listed in Annex X, Part B, may continue to exempt those transactions, in accordance with the conditions applying in the Member State concerned on that date; these transactions must be taken into account for the determination of the VAT resources base.

(3) With effect from 1 January 1991 the possibility afforded Member States of continuing to exempt transactions listed in point 13 of Annex F to the Sixth Council Directive 77/388/EEC ⁽³⁾ was terminated by virtue of Article 1, point 2(a) of Eighteenth Council Directive 89/465/EEC ⁽⁴⁾; consequently, the authorisation granted

(4) In the case of Germany, the Commission, on the basis of Regulation (EEC, Euratom) No 1553/89, adopted Decision 90/179/Euratom, EEC ⁽⁵⁾ authorising Germany, with effect from 1 January 1989, to use statistics for years earlier than the last year and not to take into account certain categories of transactions or to use certain approximate estimates for the calculation of the VAT own resources base.

(5) The Commission invited Germany to verify whether those authorisations granted to Germany with no explicit limitation in time, were still needed and to confirm this to the Commission; Germany confirmed that authorisation not to take into account the transactions mentioned in point 13 of Annex F to the Sixth Directive and that authorisation to use approximate estimates for the transactions mentioned in point 3 of Annex X, Part B to Directive 2006/112/EC were no longer needed; consequently, the authorisations granted in this connection by the Commission for purposes of determining the VAT own resources base should be discontinued.

(6) For the sake of clarity and transparency of Union rules, provisions that have become obsolete or have ceased to have effect should be repealed.

(7) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee on Own Resources,

HAS ADOPTED THIS DECISION:

Article 1

(1) Article 2, point 3 of Decision 90/179/Euratom, EEC is hereby deleted.

(2) Article 3, point 3 of Decision 90/179/Euratom, EEC is hereby deleted.

⁽¹⁾ OJ L 155, 7.6.1989, p. 9.

⁽²⁾ OJ L 347, 11.12.2006, p. 1.

⁽³⁾ OJ L 145, 13.6.1977, p. 1.

⁽⁴⁾ OJ L 226, 3.8.1989, p. 21.

⁽⁵⁾ OJ L 99, 19.4.1990, p. 22.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 19 December 2012.

For the Commission

Janusz LEWANDOWSKI

Member of the Commission

COMMISSION IMPLEMENTING DECISION

of 19 December 2012

amending Decision 90/183/Euratom, EEC authorising Ireland not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

*(notified under document C(2012) 9570)***(Only the English text is authentic)***(2012/823/EU, Euratom)*

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

- (1) Under Article 370 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, Member States which, at 1 January 1978, taxed the transactions listed in Annex X, Part A, may continue to tax those transactions; these transactions must be taken into account for the determination of the VAT resources base.
- (2) Under Article 371 of Directive 2006/112/EC, Member States which, at 1 January 1978, exempted the transactions listed in Annex X, Part B, may continue to exempt those transactions, in accordance with the conditions applying in the Member State concerned on that date; these transactions must be taken into account for the determination of the VAT resources base.
- (3) In the case of Ireland, the Commission, on the basis of Regulation (EEC, Euratom) No 1553/89, adopted Decision 90/183/Euratom, EEC ⁽³⁾ authorising Ireland, with effect from 1989, not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base.

(4) The Commission invited Ireland to verify whether those authorisations granted to Ireland with no explicit limitation in time, were still needed and to confirm this to the Commission; Ireland confirmed that authorisation to use approximate estimates for the transactions mentioned in point 13 of Annex X, Part B to Directive 2006/112/EC had been replaced by the introduction of the margin scheme and was no longer needed.

(5) For the sake of clarity and transparency of Union rules, provisions that have become obsolete or have ceased to have effect should be repealed.

(6) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee on Own Resources,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 point 5 of Decision 90/183/Euratom, EEC is hereby deleted.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 19 December 2012.

For the Commission

Janusz LEWANDOWSKI

Member of the Commission

⁽¹⁾ OJ L 155, 7.6.1989, p. 9.

⁽²⁾ OJ L 347, 11.12.2006, p. 1.

⁽³⁾ OJ L 99, 19.4.1990, p. 35.

COMMISSION IMPLEMENTING DECISION

of 19 December 2012

amending Decision 90/176/Euratom, EEC authorising France not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

*(notified under document C(2012) 9572)***(Only the French text is authentic)**

(2012/824/EU, Euratom)

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

- (1) Under Article 370 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, Member States which, at 1 January 1978, taxed the transactions listed in Annex X, Part A, may continue to tax those transactions; these transactions must be taken into account for the determination of the VAT resources base.
- (2) Under Article 371 of Directive 2006/112/EC, Member States which, at 1 January 1978, exempted the transactions listed in Annex X, Part B, may continue to exempt those transactions, in accordance with the conditions applying in the Member State concerned on that date; these transactions must be taken into account for the determination of the VAT resources base.
- (3) With effect from 1 January 1990 the possibility afforded Member States of continuing to exempt transactions listed in point 20 of Annex F to the Sixth Council Directive 77/388/EEC ⁽³⁾ was terminated by virtue of Article 1, point (2)(a) of Eighteenth Council Directive 89/465/EEC ⁽⁴⁾; consequently, the authorisation granted in this connection by the Commission for purposes of determining the VAT own resources base should also be discontinued.
- (4) With effect from 17 October 1998 point 26 of Annex F to the Sixth Directive was deleted by virtue of Article 2 of Council Directive 98/80/EC ⁽⁵⁾ and the special scheme

for investment gold for all Member States was introduced; consequently, the authorisation granted in this connection by the Commission for purposes of determining the VAT own resources base should also be discontinued.

- (5) In the case of France, the Commission, on the basis of Regulation (EEC, Euratom) No 1553/89, adopted Decision 90/176/Euratom, EEC ⁽⁶⁾ authorising France, with effect from 1 January 1989, not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base.
- (6) The Commission invited France to verify whether those authorisations granted to France with no explicit limitation in time, were still needed and to confirm this to the Commission; in addition to two obsolete authorisations mentioned above, France confirmed that two authorisations not to take into account the transactions mentioned in points 5 and 6 of Annex X, Part B to Directive 2006/112/EC were no longer effectively used; consequently, the authorisations granted in this connection by the Commission for purposes of determining the VAT own resources base should be discontinued.
- (7) For the sake of clarity and transparency of Union rules, provisions that have become obsolete or have ceased to have effect should be repealed.
- (8) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee on Own Resources,

HAS ADOPTED THIS DECISION:

Article 1

- (1) Article 1 of Decision 90/176/Euratom, EEC is hereby deleted.
- (2) Article 2, point 5 of Decision 90/176/Euratom, EEC is hereby deleted.
- (3) Article 2, point 6 of Decision 90/176/Euratom, EEC is hereby deleted.

⁽¹⁾ OJ L 155, 7.6.1989, p. 9.⁽²⁾ OJ L 347, 11.12.2006, p. 1.⁽³⁾ OJ L 145, 13.6.1977, p. 1.⁽⁴⁾ OJ L 226, 3.8.1989, p. 21.⁽⁵⁾ OJ L 281, 17.10.1998, p. 31.⁽⁶⁾ OJ L 99, 19.4.1990, p. 22.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 19 December 2012.

For the Commission

Janusz LEWANDOWSKI

Member of the Commission

COMMISSION DECISION

of 20 December 2012

terminating the anti-subsidy proceeding concerning imports of bioethanol originating in the United States of America and terminating the registration of such imports imposed by Regulation (EU) No 771/2012

(2012/825/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Articles 14 and 15 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. INITIATION

- (1) On 25 November 2011, the European Commission ('the Commission') announced, by a notice published in the *Official Journal of the European Union* ⁽²⁾, the initiation of an anti-subsidy proceeding ('AS proceeding' or 'the proceeding') with regard to imports into the Union of bioethanol originating in the United States of America ('USA' or 'the country concerned').
- (2) On the same day, the Commission announced by a notice published in the *Official Journal of the European Union* ⁽³⁾, the initiation of an anti-dumping proceeding with regard to imports into the Union of bioethanol originating in the USA and commenced a separate investigation ('AD proceeding').
- (3) The AS proceeding was initiated following a complaint lodged on 12 October 2011 by the European Producers Union of Renewable Ethanol Association (ePURE) ('the complainant') on behalf of producers representing more than 25 %, of the total Union production of bioethanol. The complaint contained prima facie evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.
- (4) Prior to the initiation of the AS proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the authorities of the USA that it had received a properly documented complaint alleging that subsidised imports of bioethanol originating

in the USA were causing material injury to the Union industry. The authorities of the USA were invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. The authorities of the USA accepted the invitation and consultations were subsequently held on 17 November 2011. During the consultations no mutually agreed solution was found.

1.2. PARTIES CONCERNED BY THE PROCEEDING

- (5) An information document containing the essential facts and considerations on the basis of which it was decided not to impose provisional countervailing measures (information document) was disclosed to interested parties in August 2012. Several interested parties made written submissions making their views known on these findings. The parties who so requested were granted the opportunity to be heard. The Commission continued to seek information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and taken into account, where appropriate.
- (6) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the termination of both the anti-subsidy investigation concerning imports of bioethanol originating in the USA and the registration of such imports ⁽⁴⁾. The parties were also granted a period within which they could make representations subsequent to this final disclosure.

Sampling of exporters/producers in the USA

- (7) In view of the potentially large number of exporters/producers in the USA, sampling was envisaged in the notice of initiation in accordance with Article 27 of the basic Regulation.
- (8) In order to enable the Commission to decide whether sampling would be necessary and if so, to select a sample, exporters/producers in the USA were asked to make themselves known to the Commission within 15 days from the date of the initiation of the investigation and to provide, as specified in the notice of initiation, basic information on their activities related to bioethanol during the period from 1 October 2010 to 30 September 2011 ('the investigation period' or 'the IP').
- (9) The relevant US authorities were also consulted for the selection of a representative sample.

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ OJ C 345, 25.11.2011, p. 13.

⁽³⁾ OJ C 345, 25.11.2011, p. 7.

⁽⁴⁾ OJ L 229, 24.08.2012, p. 20.

- (10) More than 60 companies made themselves known and provided the requested information within the 15 days deadline.
- (11) In accordance with Article 27 of the basic Regulation, The Commission selected a sample based on the largest representative quantity of exports of bioethanol to the Union which could reasonably be investigated within the time available. The sample selected on that basis consisted of five bioethanol producers and one trader.
- (12) The investigation also showed that although exporters mentioned exports to the Union in the sampling questionnaire they received, none of the sampled producers exported bioethanol directly to the Union market but sold it to unrelated blenders/traders in the USA which then blended it with gasoline and resold it. In order to identify their exports to the Union, the producers relied mainly on data they received from the unrelated blenders/traders customers.
- (13) In this context, it should be noted that the information provided by the US authorities demonstrated that all bioethanol sold in and exported from the United States benefitted from the main subsidy scheme, in particular when it was blended with gasoline. It was the blending activity and the sale of the taxable mixture that triggered the subsidization of bioethanol in the US. In the present case it was found that the main subsidy identified in the US was claimed by and granted to the blenders. The companies selected in the sample were mainly producers of bioethanol and only to a smaller extent were blending bioethanol and it was predominantly the traders/blenders that also exported their products to the Union that received the main subsidy based on the bioethanol contained in the blends they were producing. Consequently, the sample, which is mainly composed of producers of bioethanol which did not export directly to the Union and which did basically not blend bioethanol into fuel mixtures, was not reliable for establishing the level of subsidisation in the present case.

1.2.1. Sampling of Union producers

- (14) In view of the potentially large number of Union producers, sampling was envisaged in the notice of initiation in accordance with Article 27 of the basic Regulation.
- (15) In the notice of initiation the Commission announced that it had provisionally selected a sample of Union producers. This sample consisted of five companies and groups, out of the 19 Union producers that were known prior to the initiation of the investigation. The sample was selected on the basis of the production volume of bioethanol during the investigation period and the location of the known producers. This sample represented 48 % of the total estimated Union production during the IP.
- (16) However, the investigation revealed that the groups included in the sample consisted of a large number of companies or single entities producing the like product. In this case it would have meant to investigate thirteen

companies. It was thus not possible to investigate all of them given the time available for the investigation. It was decided to re-examine the data available for the initial sample. This examination led to the conclusion that the sample should be based on the largest individual producing entities and not on groups of producers taking also into account a certain geographical spread amongst sampled producers.

- (17) Hence, a definitive sample of six individual producers was ultimately selected based on representativity in terms of the production and sales volume of bioethanol during the IP and the geographical location of the producer. These producers represent 36 % of the total estimated Union production and 44 % of the total production reported by the companies that submitted data for the selection of a sample. This sample was deemed to be representative for the Union industry.
- (18) Interested parties were given the opportunity to comment on the appropriateness of the choice of the sample.
- (19) Some parties claimed that the sample was less representative than the one originally selected which included groups of companies. In their view, an objective analysis of the situation of the Union industry could only be made by including all companies which are part of groups in the sample. They alleged in particular that costs and revenues could be allocated to certain companies of a group which are not visited and may thus not be included in the injury analysis.
- (20) In this respect it should be noted that the Commission duly considered and examined the data provided by all non-sampled companies and in particular the companies belonging to groups, in order to make sure that all costs and revenues involved in the production and sale by the companies selected had been fully and correctly reflected in the injury analysis. Furthermore, the six companies finally selected producers represented 36 % of the total estimated Union production and this was considered to be representative for the purposes of Article 27 of the basic Regulation.
- (21) Some parties contested the inclusion in the sample of Union producers which were in a start-up phase. They also claimed that one company with important idle capacity in 2011, located in a Member State that did not implement the Renewable Energies Directive ('RED'), should not have been included in the sample. Parties added that in case these companies would be finally included in the sample, the Commission should adjust their data in order to account for these extraordinary circumstances.
- (22) It is considered that the fact that companies recently started or resumed operations does not preclude them from being part of the sample. The inclusion of these companies is not in contravention with the criteria for the selection of a sample as laid down in Article 27 of the basic Regulation. With regard to the adjustment of their data, parties did not provide any specific issue or

substantiated evidence to support their claim, nor a basis on how to make the claimed adjustment. Furthermore, the investigation did not reveal any cost, such as for example accelerated depreciations, which should be adjusted to correct any distortion due to the start-up of activity. Hence, this claim is rejected.

- (23) Some parties also disputed the exclusion from the sample of one company that was provisionally selected and located in a Member State with high consumption and production of bioethanol. They claimed that this company performed particularly well and alleged that this was the reason for its exclusion from the sample. They further argued that the selection of the sample had been skewed towards finding injury. According to these parties the Commission should have sent so called mini-questionnaires to all producers to collect the relevant data in order to select a sample. In this respect it should be noted that the company in question informed the Commission that it could no longer be included in the sample. Regarding the sending of mini-questionnaires, it should be noted that, prior to the selection of the sample, the Commission requested information from all Union producers known to be concerned in order to collect the relevant data for the purpose of the selection of a sample. The above claims were therefore rejected.

- (24) Finally, it was claimed that the sample should have included companies producing bioethanol from sugar beet since production from this raw material can be much more profitable than production from, for example, wheat. Even though this claim was not substantiated, the information available has shown that bioethanol produced from sugar beet represents only a small part of total Union production, around 12 % in 2011 and that two of the companies included in the sample partially use sugar beet as feedstock to produce bioethanol. Therefore, this claim was rejected.

1.2.2. Sampling of unrelated importers

- (25) In view of the potentially large number of importers involved in the proceeding, sampling was envisaged for importers in the notice of initiation in accordance with Article 27 of the basic Regulation.
- (26) Only three importers provided the requested information and agreed to be included in the sample within the deadline set in the notice of initiation. In view of the limited number of cooperating importers, sampling was not deemed to be necessary.

1.2.3. Questionnaire replies and verifications

- (27) The Commission sent questionnaires to all parties known to be concerned. Questionnaires were thus sent to the authorities of the USA, the sampled US exporters/producers, the sampled Union producers, the three cooperating unrelated importers in the Union and to all users known to be concerned by the investigation.
- (28) Replies were received from the authorities of the USA, the sampled US exporters/producers, the sampled Union producers, two unrelated importers and four users.

- (29) The Commission sought and verified all the information provided by interested parties and deemed necessary for the purposes of a determination of subsidisation, resulting injury and Union interest.

- (30) Verification visits were carried out at the following US authorities:

Federal authorities of the USA

- Departament of Agriculture
- Departament of Commerce
- Department of Energy
- Department of the Treasury
- International Trade Administration
- Office of the United States Trade Representative

- (31) Verification visits were also carried out at the premises of the following companies:

Exporters/producers in the USA

- CHS Inc, Inver Grove Heights, Minnesota
- Marquis Energy LLC, Hennepin, Illinois
- Patriot Renewable Fuels LLC, Annawan, Illinois
- Plymouth Energy Company LLC, Merrill, Iowa
- POET LLC, Sioux Falls, South Dakota
- Valero Renewable Fuels Company LLC, San Antonio, Texas

Producers in the Union

- Abengoa Energy Netherlands B.V., Rotterdam, the Netherlands
- BioWanze, S.A., Wanze, Belgium.
- Crop Energies Bioethanol GmbH, Mannheim, Germany
- Ensus, Yarm, United Kingdom

- Lantmännen Energi / Agroetanol, Norrköping, Sweden

- Tereos BENP, Lillebonne, France

Unrelated importers in the Union

- Shell Trading Rotterdam B.V., Rotterdam, the Netherlands
- Greenergy Fuels Limited, London, United Kingdom

Users in the Union

— Shell Nederland Verkoopmaatschappij B.V.,
Rotterdam, the Netherlands

1.3. INVESTIGATION PERIOD

- (32) The investigation of subsidisation and injury covered the period from 1 October 2010 to 30 September 2011. The examination of trends relevant for the assessment of injury covered the period from January 2008 to the end of the IP ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. PRODUCT CONCERNED

- (33) The product concerned is bioethanol, sometimes referred to as 'fuel ethanol', i.e. ethyl alcohol produced from agricultural products, denatured or undenatured, excluding products with a water content of more than 0,3 % (m/m) measured according to the standard EN 15376, as well as ethyl alcohol produced from agricultural products contained in blends with gasoline with an ethyl alcohol content of more than 10 % (v/v) originating in the USA, currently falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 12 11, ex 2710 12 15, ex 2710 12 21, ex 2710 12 25, ex 2710 12 31, ex 2710 12 41, ex 2710 12 45, ex 2710 12 49, ex 2710 12 51, ex 2710 12 59, ex 2710 12 70, ex 2710 12 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 90 97.

- (34) Bioethanol can be produced from various agricultural feedstocks, such as sugar cane, sugar beet, potatoes, manioc, and corn. In the USA a distinction on the basis of the various feedstocks is made, as described below:

- (a) The Conventional Biofuel (mainly produced from corn feedstock and commonly called corn ethanol) which is defined as a renewable fuel derived from corn starch produced from facilities that commenced construction after the date of enactment (December 19, 2007) and which must achieve in the future a 20 % reduction in greenhouse gas ('GHG') emissions compared to baseline lifecycle GHG emissions of gasoline and diesel.
- (b) The Advanced Biofuel which is defined as a renewable fuel other than ethanol derived from corn starch, which is derived from renewable biomass and has lifecycle GHG emissions, as determined by the Energy Policy Act ('EPA') Administrator, that are at least 50 % less than baseline GHG emissions. This term includes "cellulosic biofuels" such as bioethanol and "biomass-based diesel." The

schedule for Advanced Biofuels includes the schedule for Cellulosic Biofuels, Biomass-Based Diesel, and Undifferentiated Advanced Biofuels.

- (35) More specifically, Cellulosic Biofuel⁽¹⁾ is defined as a renewable fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass and that has lifecycle GHG emissions, as determined by the EPA Administrator, that are at least 60 % less than the baseline lifecycle GHG emissions. Cellulosic biofuels include bioethanol. There are researches and pilot projects largely supported by the US Federal Government for producing Advanced Biofuels and in particular cellulosic bioethanol, produced in particular out of agricultural and forestry wastes. According to US officials and publicly available data⁽²⁾, the production of this type of biodiesel will reach around 4 billion litres in 2014 and more than 50 billion litres by 2021. Production of cellulosic bioethanol was negligible in the IP.
- (36) During the investigation period up to now corn has been the main feedstock used in the USA, while the main feedstock used in the Union is wheat.
- (37) The investigation showed that bioethanol is generally sold in its pure form to blenders/traders which blend⁽³⁾ it with gasoline in particular to produce high level blends which are exported or sold on the domestic market for further blending and consumption. Blending is not a very complex operation and may be accomplished by mixing the products in special tanks adding the desired percentages of bioethanol and gasoline.
- (38) To identify the various types of bioethanol, bioethanol blends or mixtures in use around the world, ethanol fuel mixtures have "E" numbers which describe the percentage of ethanol fuel in the mixture by volume. For example, E85 is 85 % anhydrous ethanol and 15 % gasoline. Low ethanol blends, from E5 to E25, are also known as gasohol, though internationally the most common use of the term gasohol refers to the E10 blend. Blends of E10 or less have been used in more than twenty countries around the world by 2011, led by the USA, where almost all retail gasoline sold in 2010 was blended with 10 % of ethanol.
- (39) The investigation showed that all types of bioethanol are considered to be biofuels under the current National Renewable Fuel Standard program (RFS1) established under the Energy Policy Act of 2005, which amended the Clean Air Act by establishing the first national renewable fuel standard. The U.S. Congress gave the US Environmental Protection Agency (EPA) the responsibility

⁽¹⁾ See US Internal Revenue Code (IRC) – sec. 40(b)(4) point E.

⁽²⁾ See www.ethanol.org – RFS (Renewable fuels standard) under the Energy Independence and Security Act of 2007.

⁽³⁾ The investigation showed that to avail the alcohol mixture credit, as defined in Sec. 40(b)(3) of the IRC in the USA it sufficed to blend neat bioethanol with as little as 0,1 % of gasoline.

to coordinate with the US Department of Energy, the US Department of Agriculture, and stakeholders to design and implement this program.

- (40) As a result of the policy engaged in the USA for a number of years for the promotion of bioethanol, the USA became the largest worldwide producer of bioethanol as from 2005 accounting for 57,5 % of global production. In 2009, the EPA announced that the Renewable Fuel Standard will require most refiners, importers and non-oxygenate blenders of gasoline to displace around 10 % of their gasoline with renewable fuels such as ethanol. That requirement aimed to ensure that at least 11 billion US gallons of renewable fuels would be produced in 2009, in particular to keep with the targets established by the Energy Independence and Security Act of 2007 (EISA) but also to export to other markets.
- (41) Based on official sources, market and publicly available information⁽¹⁾, all types of bioethanol and bioethanol contained in blends, namely mixtures of bioethanol with mineral gasoline, which are produced and sold in the USA and exported are considered to be bioethanol fuels and are part of a legislative package concerning energy efficiency and renewable energy and alternative fuels in the USA.
- (42) It has been found that all types of bioethanol and bioethanol in blends covered by this investigation, despite possible differences in terms of feedstock used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible minor variations in the product concerned do not alter its basic definition, its characteristics or the perception that various parties have of it.
- (43) Some parties claimed that the definition of the product concerned was not clear, in particular because it did not allow for distinguishing the bioethanol for fuel applications from that destined for other applications. Hence, they claimed that the investigation should cover ethanol for all uses and ethanol from all sources, including synthetic ethanol that competes with bioethanol for industrial use.
- (44) Another party claimed the opposite, namely that the investigation should only cover bioethanol for fuel applications and that bioethanol for industrial use should thus be excluded.

⁽¹⁾ For instance (a) The information published by the American Coalition for Ethanol (ACE) on the web (b) the Energy Policy Act (EPA) of 2005, in particular P.L. 110-58 (c) the Energy Independence and Security Act of 2007 (P.L. 110-140, H.R.6) which amended and increased the Renewable Fuels Standard (RFS) requiring 9 billion gallons of renewable fuels use in 2008 and 13,9 billion gallons in 2011, (d) fact sheets issued by the US Department of Energy under the Clean cities actions, etc.

- (45) In this context, it is noted that the product concerned should primarily be defined on the basis of its basic physical, technical and chemical characteristics and not its uses or applications. A product which has various applications may indeed have the same or similar basic characteristics notwithstanding its further use and in certain circumstances it may be necessary to deepen the analysis of the product definition and the product scope in the light of the specificity of the industry and the market.
- (46) In the present case, it was clear that the notice of initiation did not intend to cover synthetic ethanol in the product definition. Synthetic ethanol has different characteristics than bioethanol and does not correspond to the above criteria linked to the definition of the product concerned. There is no producer that focusses on the production of that product which took part in this investigation. Therefore, synthetic ethanol cannot be included in the definition of the product concerned and is outside the scope of the investigation.
- (47) During the investigation of operators in the US and in the Union, no questions regarding possible problems for distinguishing bioethanol for fuel application and bioethanol destined to other applications were raised and thus no relevant evidence could be examined. The investigation confirmed that subsidization in the USA is intended for fuel bioethanol, namely bioethanol included in a fuel mixture and the investigation of Union producers focussed on bioethanol destined to fuel applications and not for other uses.

2.2. LIKE PRODUCT

- (48) It was found that bioethanol manufactured by the Union industry and sold on the Union market have similar basic physical, chemical and technical characteristics when compared to bioethanol exported to the Union from the USA.
- (49) As described in recital (34) above, bioethanol can be produced from various feedstocks. However, the investigation did not show that the feedstock used would lead into any differences in the end product. It was found that the product concerned produced in the USA and exported to the Union is interchangeable with that produced and sold in the Union by Union producers. In addition, there are no significant differences in the uses and the perception by operators and users in the market.
- (50) It is therefore concluded that bioethanol produced and sold in the Union and the product concerned should be considered to be alike within the meaning of Article 2(c) of the basic Regulation.

3. SUBSIDISATION

3.1. INTRODUCTION

- (51) On the basis of the information contained in the complaint and the replies to the Commission's questionnaires, the following Federal Schemes, which allegedly involved the granting of subsidies, were investigated:

Federal Schemes

- (a) Fuel mixture tax credits - Excise Tax/Income Tax credits
 - (b) Small producer income tax credit
 - (c) Income tax credit for producers of cellulosic bioethanol
 - (d) The US Department of Agriculture Bioenergy Program
 - (e) USDA Bioenergy Program for Advanced Biofuels
 - (f) USDA Biorefinery Assistance Program
 - (g) USDA Biomass Crop Assistance Program
 - (h) USDA Rural Energy for America Program
 - (i) Department of Energy Biorefinery Project Grants
- (52) On the basis of the information contained in the complaint and the replies to the Commission's questionnaires, the following State Schemes, which allegedly involved the granting of subsidies, were also investigated:

State Schemes

- (a) Illinois State Bioethanol Incentives
 - (i) Illinois Biofuels Production Facility Grants
 - (ii) E85 Infrastructure Grants
- (b) Iowa
 - (i) Iowa Alternate Energy Revolving Loan Program
 - (ii) Biofuels Infrastructure Grants
- (c) Minnesota State Bioethanol Incentives
 - (i) Minnesota Cellulosic Ethanol Investment Tax Credit
 - (ii) E85 Fueling Infrastructure Grants

- (d) Nebraska Ethanol Production Tax Credit

- (e) South Dakota Ethanol Production Incentive

3.2. FEDERAL SCHEMES

3.2.1. Fuel mixture tax credits - Excise Tax/Income Tax credits

(a) Legal basis

- (53) Title 26 U.S.C – Internal Revenue Code - sections 6426 and 6427 is the legal basis for the fuel mixture tax credit ('mixture tax credit') on bioethanol.

(b) Eligibility

- (54) In order to be eligible for the mixture tax credit in the IP, persons were required to create a mixture of bioethanol with a taxable fuel (gasoline, diesel fuel or kerosene), which would then be used as a fuel or sold for use as a fuel. For such persons (blenders), the credit was 0,45 USD per gallon of bioethanol blended in a taxable fuel.

- (55) The producers of bioethanol can only claim the incentive when they are themselves performing a blending activity. The producer must blend the unmixed bioethanol with e.g. gasoline. Companies that do not produce but rather purchase unmixed bioethanol and blend it into a bioethanol mixture are also entitled to the mixture tax credit. In terms of entitlement to the incentive, there are no differences between blended bioethanol destined for domestic sales and export sales.

(c) Practical implementation

- (56) It is thus the activity of blending that triggers the eligibility for the mixture tax credit. The amount of the subsidy granted for a blended fuel depends on the proportion of bioethanol it contains. The subsidy can be claimed either as a credit against excise tax liability or income tax liability or as a direct cash payment.
- (57) During the IP, the mixture tax credit was predominantly (more than 90 %) claimed as an excise tax credit by a blender on Schedule C of Form 720, 'Quarterly Federal Excise Tax Return'. The credit was allowed to the extent of fuel tax liability and would be claimed on this form by anyone subject to tax on gasoline, e.g. in a situation where the blending of bioethanol and gasoline took place within the storage terminal before the taxation of gasoline.
- (58) The blender could also claim a refundable income tax credit or direct payment instead of an excise tax credit, but only for the amount by which the excise tax credit exceeded the total excise tax liability, i.e. the amount by which the maximum subsidy allowable for the mixture exceeded the credit allowed on Form 720. It should be noted that the excise tax credit could exceed excise tax liability if, for example, the gasoline used to make the

mixture was taxed before it was acquired by the blender. In such cases claims could be made on Form 8849, 'Claim for Refund of Excise Taxes'.

- (59) The mixture tax credit was non-cumulative, i.e. it remained the same whether the subsidy was claimed as an excise tax credit, an income tax credit, a direct payment to the taxpayer or any combination of the foregoing. Claims for payment were made either on Form 8849, Schedule C of Form 720 or in case of the refundable income tax credit on Form 4136, 'Credit for Federal Tax Paid on Fuel', which was attached to the claimant's income tax return. It should be noted, however, that the total amount of the subsidy could not exceed 0,45 USD per gallon of bioethanol.
- (60) A non-refundable income tax credit was also available to bioethanol blenders during the IP. This non-refundable income tax credit on a quantity of fuel available to a blender was reduced by the amount of the excise tax credit claimed with respect to that same quantity of fuel. In other words, a blender could not claim both the excise tax credit and the non-refundable income tax credit for the same quantity of bioethanol blended with gasoline. When applying for the non-refundable income tax credit the producer had to declare that he had not claimed the excise tax credit for the same quantity of bioethanol.
- (61) The mixture tax credit can only be claimed once for the same quantity of bioethanol used to make a mixture, i.e. either by the producer who blends himself or by a purchaser who is undertaking the blending activity. In both cases the blender is entitled to a 0,45 USD per gallon tax credit for the number of gallons of bioethanol used in producing a mixture.
- (62) The investigation showed that in the majority of cases the one claiming the subsidy ('the claimant') was a blender/trader with excise tax liabilities such as a petrochemical company. Indeed, blending will depend on a number of factors such as the available tank capacity as well as the geographical location of available bioethanol and gasoline respectively. In most cases it appeared that the producer of bioethanol did not claim the mixture tax credit. In fact it is clear that the blending in most cases took place in terminals or terminal racks. In this respect, it appears that the claimant was in the majority of cases a person with excise tax liability.
- (63) The market for unmixed bioethanol as an end-use was not big and it therefore made economic sense to blend the bioethanol produced and make a mixture which

would trigger the mixture tax credit. It should be noted that the mixture tax credit (Excise Tax /Income tax credit) for bioethanol had been in existence since 1980, i.e. for more than 30 years, and expired at the end of December 2011 (post-IP).

- (64) The investigation found that two companies in the sample made claims for the mixture tax credit in the IP. However, for both companies the subsidies obtained were insignificant.
- (65) Nevertheless, when comparing the total production of bioethanol in the USA during the IP with the total quantity of bioethanol receiving a mixture tax credit, it is clear that all bioethanol produced in the USA in the IP benefitted from a subsidy under this scheme. This is also confirmed by the statistics provided by the relevant US authorities.
- (66) On this basis, the findings of investigation clearly showed that all bioethanol was subsidised through this mixture tax credit during the IP.

(d) Conclusion

- (67) The investigation showed that during the IP, all the US produced bioethanol benefitted from the mixture tax credit. This mixture tax credit has to be regarded as a fiscal incentive whether or not it is given to be offset against tax liabilities or as a cash payment.
- (68) This scheme is considered to be a subsidy in the sense of Article 3(1)(a)(i) and Article 3(1)(a)(ii) of the basic Regulation as the scheme provides a financial contribution by the Government of the USA in the form of direct grants (cash payments) and revenue foregone which is otherwise due (tax offset). The subsidy confers a benefit to the companies receiving them.
- (69) The scheme is limited to companies that are involved in the bioethanol industry i.e. the blending of bioethanol, and is therefore considered to be specific under Article 4(2), first sub-paragraph, point (a) of the basic Regulation and therefore countervailable.

(e) Calculation of the subsidy amount

- (70) The bioethanol mixture tax credit was granted by reference to the quantities of bioethanol used in a blend, i.e. 0,45 USD per gallon of bioethanol blended in a taxable fuel.

- (71) It is considered that the amount of subsidy is 0,45 USD per gallon on a country-wide basis as the total production of US bioethanol, including exports of bioethanol to the Union, ultimately would have benefitted from the bioethanol mixture credit. It is therefore not necessary to differentiate between economic operators, in particular as the subsidy is rarely granted to producers of bioethanol but predominantly to operators who blend the bioethanol with e.g. gasoline.

3.2.2. Small producer income tax credit

(a) Legal basis

- (72) Title 26 U.S.C Internal Revenue Code, section 40 is the legal basis for the small producer income tax credit.

(b) Eligibility

- (73) This scheme is only available to small producers of bioethanol. A small producer is defined as any person whose production capacity does not exceed 60 million gallons of bioethanol per year. During the IP a small producer could claim a non-refundable, general business income tax credit of 0,10 USD for each gallon of bioethanol produced. Any blender or trader who purchases but does not produce bioethanol is not eligible for the credit. In addition, to be eligible for the credit, the production may not exceed 15 million gallons in any taxable year and the bioethanol produced must be used as a fuel, sold for use as a fuel, or used to create a mixture of bioethanol and a taxable fuel that is subsequently used as a fuel or sold for use as a fuel.

(c) Practical implementation

- (74) Claims for the small producer income tax credit are made annually, as part of the claimant's income tax return. The credit for each gallon of bioethanol produced by the claimant during the relevant tax year, up to a maximum of 15 million gallons, is offset against the claimant's liability for corporate income tax. If the claimant's tax liability is less than the amount of credit claimed, the excess amount can be carried forward to subsequent tax years.

- (75) Due to the eligibility criteria, only two companies in the sample benefitted from this scheme during the IP.

(d) Conclusion

- (76) This scheme is considered to be a subsidy in the sense of Article 3(1)(a)(ii) of the basic Regulation as the scheme provides a financial contribution by the Government of the USA in the form of revenue foregone which is otherwise due. The subsidy confers a benefit to the companies receiving them.

- (77) The scheme is limited to companies that produce bioethanol, and is therefore considered to be specific under Article 4(2), first sub-paragraph, point (a) of the basic Regulation and therefore countervailable.

- (78) Statistics provided by the US authorities showed overall very little use of the small producer's income tax credit in contrast to claims made for the mixture tax credit. A comparison of the total amount claimed under this incentive in relation to the total production of bioethanol showed insignificant overall subsidisation during the IP.

3.2.3. Income tax credit for producers of cellulosic bioethanol

(a) Legal basis

- (79) Title 26 U.S.C Internal Revenue Code, section 40 is the legal basis for the income tax credit for producers of cellulosic bioethanol.

(b) Eligibility

- (80) This scheme is only available to producers of cellulosic bioethanol.

(c) Practical implementation

- (81) Claims for the income tax credit are made annually, as part of the claimant's income tax return.
- (82) Prior to 1 January 2012 the credit available was 0,46 USD per gallon of cellulosic bioethanol produced. As of 1 January 2012 the credit increased to 1,01 USD per gallon.

(d) Conclusion

- (83) This scheme is considered to be a subsidy in the sense of Article 3(1)(a)(ii) of the basic Regulation as the scheme provides a financial contribution by the Government of the USA in the form of and revenue foregone which is otherwise due. The subsidy confers a benefit to the companies receiving them.

- (84) The scheme is limited to companies that produce bioethanol, and is therefore considered to be specific under Article 4(2), first sub-paragraph, point (a) of the basic Regulation and therefore countervailable.

- (85) There were no claims for the income tax credit from producers of cellulosic bioethanol during the IP which coincides with the lack of commercial production of cellulosic bioethanol up to the end of the IP. In these circumstances, no subsidy amount was calculated.

3.2.4. The US Department of Agriculture Bioenergy Program

(a) Legal basis

- (86) The US Department of Agriculture ('USDA') Bioenergy Program was originally authorized and funded by the USDA's Commodity Credit Corporation ('CCC') under its general authority under Section 5 of the CCC Charter Act.

- (87) The scheme was in operation from 1 December 2000 to June 2006. It was administered by USDA's Farm Service Agency (FSA).

(b) Eligibility

- (88) When the program was in operation, all commercial bioenergy producers were eligible to participate. Producers were required to provide evidence of production, as well as evidence of the purchase and use of agricultural commodities related to that production. In particular, bioethanol producers were required to produce and sell bioethanol commercially.
- (89) To be eligible, a producer had to meet certain requirements with regard to the keeping of records and to provide required information, as well as granting permission to CCC to verify such information. The relevant regulations set forth the details of the procedures to be followed for signing up for the program, applications for payments and reporting procedures that claimants were required to follow in order to be eligible for payments.

(c) Practical implementation

- (90) In each fiscal year bioethanol producers could sign up for the scheme by submitting the relevant forms. After signing up, bioethanol producers submitted quarterly applications for payment. The bioethanol producers had to provide documentation of their net purchases of eligible commodities and net production of bioethanol during the relevant periods.
- (91) The scheme provided payments to bioethanol producers based on a combination of their base bioethanol production and increased bioethanol production in the corresponding period of the previous fiscal year. For fiscal year 2006, companies only received incentives from increased bioethanol production.
- (92) As the scheme was terminated in June 2006, none of the companies in the sample received incentives under this scheme during the investigation period.
- (93) There appears to have been confusion about whether this scheme was re-introduced for the fiscal year 2009 (October 2008-September 2009). However, the investi-

gation confirmed that this was not the case. The scheme as described above expired in 2006.

(d) Conclusion

- (94) It was found that the scheme was terminated in June 2006 and that no subsidies were provided during the IP.

3.2.5. USDA Bioenergy Program for Advanced Biofuels

- (95) The Bioenergy Program for Advanced Biofuels (generally referred to as the 'Advanced Biofuel Payment Program') provides production-based payments to eligible producers of 'advanced biofuels'. According to the US authorities, 'advanced biofuels' are specifically defined to exclude fuel derived from corn which is the main feedstock for US bioethanol production.

(a) Legal basis

- (96) Title IX, Section 9005 of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) as amended by Title IX, Section 9001 of the Food, Conservation, and Energy Act of 2008 is the legal basis for the Bioenergy Program for Advanced Biofuels.

(b) Eligibility

- (97) An applicant must be an 'advanced biofuel producer'. The term 'advanced biofuel producer' is defined as: 'An individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that produces and sells an advanced biofuel. An entity that blends or otherwise combines advanced biofuels into a blended biofuel is not considered an advanced biofuel producer under this Program'.
- (98) Advanced biofuel is defined in Section 9001 of the Food, Conservation, and Energy Act of 2008 as 'fuel derived from renewable biomass other than corn kernel starch'. According to this Act, advanced biofuels specifically include:
- Biofuel derived from cellulose, hemicellulose, or lignin;
 - Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);
 - Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste and yard waste;
 - Diesel-equivalent fuel derived from Renewable Biomass, including vegetable oil and animal fat;

— Biogas produced through the conversion of organic matter from Renewable Biomass;

— Butanol or other alcohols produced through the conversion of organic matter from Renewable Biomass; and

— Other fuel derived from cellulosic biomass.

(c) Practical implementation

(99) Bioethanol producers can benefit from this scheme. In order to be eligible for payments, the producers must maintain records for all relevant fiscal years and quarters. Such records include documentation for purchase of feedstock, production of bioethanol, price and quantity of bioethanol sold. Producers receive direct payments from the Government.

(100) The scheme provides payments to bioethanol producers based on a combination of their actual production and incremental production, i.e. the increase in production compared to the previous year. Actual production payment rates are calculated quarterly for the amount of actual advanced biofuel produced each quarter. Incremental production payments are made for the quantity of eligible advanced biofuel produced in a fiscal year by an eligible producer that exceeds the quantity produced in the prior fiscal year.

(101) The end-product is exactly the same regardless of whether the bioethanol is derived from the feedstock mentioned in recital (98), or whether it has been produced from corn which is the main feedstock for US bioethanol production.

(d) Conclusion

(102) It was found that the subsidies provided under this scheme did not benefit any of the companies in the sample. The majority of producers benefiting from this scheme are biodiesel producers. In fact, only 15 out of around 155 companies in the USA who received subsidies under this scheme in 2011 produced bioethanol.

(103) As regards the companies not selected in the sample, the investigation showed that the total amount of subsidies granted under this scheme to bioethanol production was insignificant when compared to the total production of bioethanol during the IP.

(104) It was therefore not necessary further to assess the countervailability of this scheme.

3.2.6. USDA Biorefinery Assistance Program

(105) The Biorefinery Assistance Program is meant to assist the development of new and emerging technologies for advanced biofuels.

(a) Legal basis

(106) Title IX, Section 9003 of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) as amended by Title IX, Section 9001 of the Food, Conservation, and Energy Act of 2008 is the legal basis for the Biorefinery Assistance Program.

(b) Eligibility

(107) The program is administered by a branch of the Department of Agriculture. It offers loan guarantees to eligible applicants in support of the development and construction of commercial-scale biorefineries using eligible technology, or the retrofitting of existing facilities with eligible technology. To be eligible for the scheme, a given project must use a technology adapted for a viable commercial-scale operation or it has to be demonstrated to have technical and economic potential for commercial application in a biorefinery that produces advanced biofuel. The project must use an eligible feedstock for the production of advanced biofuels and bio-based products. Examples of eligible feedstocks include, but are not limited to, renewable biomass, biosolids, treated sewage sludge, and by-products of the pulp and paper industry. The majority of an eligible biorefinery's production must be of advanced biofuels.

(c) Practical implementation

(108) Bioethanol producers can benefit from this scheme if they meet the eligibility criteria and provided that sufficient Government funds are available. A project must have technical merit and the borrower must meet certain financial criteria set out in relevant legislation. There must also be reasonable assurance that the loan being guaranteed will be repaid.

(109) A successful applicant would receive a loan guarantee to enable the applicant to obtain the necessary fund from a third-party lender. Maximal Agency (Federal Government) participation in an eligible project is a 90 % guarantee of a loan which covers up to 80 % of eligible project's costs of the project being financed. The borrower must provide the remaining 20 %. In addition, the maximum guarantee percentage decreases as the amount of the loan increases.

(d) Conclusion

(110) The investigation showed that no companies had yet received payments from the US Government under this scheme. During the IP three companies not selected in the sample had applied for a loan guarantee relating to the production of cellulosic bioethanol, although two of the loan guarantee applications were pending. None of these companies are producers of bioethanol derived from corn. The investigation also showed that there has not yet been any production of bioethanol as a result of this scheme.

(111) The investigation also showed that the loan guarantee awards to future producers of cellulosic bioethanol had no impact on the production and sale of bioethanol during the IP.

- (112) It is therefore not necessary to further evaluate the countervailability of this scheme in the context of this investigation.

3.2.7. USDA Biomass Crop Assistance Program

- (113) The USDA Biomass Crop Assistance Program ('BCAP') supports the production of feedstocks for next-generation advanced biofuels. BCAP provides benefits to producers of eligible crops or owners of biomass materials grown on eligible lands. As such, benefits are provided for the production of crops and materials that may be used as an input for advanced biofuels, but not for the production of biofuels.
- (114) According to the authorities of the USA, bioethanol produced from corn, which accounts for nearly all US bioethanol production and exports, is specifically excluded from the BCAP. In the view of the authorities of the USA, given BCAP's focus on advanced biofuels, and the lack of advanced biofuels commercial production, the program did not confer any benefit on commercial producers of bioethanol in the United States during the IP.

(a) Legal basis

- (115) Section 9011 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) is the legal basis for the USDA Biomass Crop Assistance Program.

(b) Eligibility

- (116) BCAP has two components, each with specific and different eligibility. The first component, the Project Area component, provides benefits to producers of 'eligible crops' while the second component, the Matching Assistance component, provides benefits to owners of 'eligible materials'. Eligible crops and eligible materials serve as inputs for advanced biofuels, heat, power, and bio-based products. According to the authorities of the USA, payments are not made to biofuel and bioenergy producers themselves.
- (117) An eligible crop is defined as any crop of 'renewable biomass' excluding any crop eligible to receive payments under Title I of the 2008 Farm Bill. Among other things, the excluded crops are corn, grain sorghum, oats, rice, wheat, honey and sugar.
- (118) Eligible material is defined as any 'renewable biomass', excluding whole grain from any crop excluded from 'eligible crops' as mentioned above. Although the grain from excluded crops (such as corn) is excluded from 'eligible materials', residuals from those crops (such as the cellulosic material) are 'eligible materials'.

- (119) The first component of BCAP provides benefits to producers of eligible crops. To be eligible for benefits the eligible crop must be produced in a geographic area designated as 'project area'. The second component of BCAP provides matching payments for the collection, harvest, storage and transportation of renewable biomass sources or eligible materials.

(c) Practical implementation

- (120) Biomass conversion facilities, including bioethanol producers, do not receive compensation through BCAP. Their suppliers, who produce eligible crops or own eligible material, receive payments. The authorities of the USA stated that the BCAP has not contributed to the production of any bioethanol, including cellulosic bioethanol during the IP.
- (121) Regarding BCAP payments during the IP, three bioethanol facilities qualified for the purpose of Research and Development in the area of transportation and storage. During the IP, a total of 1,7 million USD was paid to 83 material owners who delivered corn to one approved facility. No payments were made to the other material owners for delivery of materials to the two other qualified biomass conversion facilities.
- (122) Before the IP there were 458 biomass conversion facilities that were qualified to receive the delivery of eligible materials. Only two of these qualified facilities were bioethanol producers.

- (123) There were nine project areas established in the IP. During this time, crops were being signed up or were in the process of enrolling in BCAP. Thus, no crop collection or harvesting occurred in that period.

(d) Conclusion

- (124) As explained above, suppliers who produce eligible crops or own eligible material, receive payments under this scheme. There was no evidence showing that benefits passed through to the producers of bioethanol and the amounts paid are thus not countervailable.

3.2.8. USDA Rural Energy for America Program

- (125) The USDA Rural Energy for America Program ('REAP') provides loan guarantees and grants to rural small businesses and agricultural producers to purchase renewable energy systems and to make energy efficiency improvements. It also provides grants to conduct feasibility studies for renewable energy systems, to perform energy audits, as well as renewable energy development assistance for agriculture producers and rural small businesses. According to the authorities of the USA, REAP

supports a wide range of agricultural producers and small businesses in their efforts to reduce energy consumption; it does not support the production of any specific commodity and it is not specific to an enterprise or group thereof.

(126) REAP has three components:

- The Renewable Energy System ('RES') and Energy Efficiency Improvement ('EEI') Loan Guarantee and Grant Program provides loan guarantees and/or grants to agricultural producers and rural small businesses to purchase, install and construct renewable energy systems and make energy efficiency improvements;
- The Energy Audit and Renewable Energy Development Assistance Grant Program provides grant assistance to entities that assist agriculture producers and small rural businesses by conducting energy audits and providing information on renewable energy development assistance;
- The Feasibility Studies Grant Program provides grant assistance to applicants that need to complete a feasibility study, which is required in applications for many of the Government's energy programs.

(127) Through these three components, REAP is available for the following types of projects: Renewable Energy Systems, Energy Efficiency Improvements, Energy Audits, Renewable Energy Development Assistance and Feasibility Studies.

(a) *Legal basis*

(128) Title IX, Section 9006 of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) as well as Title IX, Section 9007 of the 2002 Farm Bill as amended by Title IX, Section 9001 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) is the legal basis for the USDA Rural Energy for America Program.

(b) *Eligibility*

(129) The eligibility criteria vary depending on the type of project, as referred to in recital (127), and, as regards projects for Renewable Energy Systems and Energy Efficiency Improvements, whether a grant or loan guarantee is being requested.

(c) *Practical implementation*

(130) The investigation showed that since the 2008 Farm Bill was enacted, REAP has made awards to over 5 960

projects, covering the period 1 October 2008 through 30 September 2011 (the investigation period). According to the authorities of the USA, the majority of these awards were for projects unrelated to biofuels of any kind. Such projects included, but were not limited to solar, wind and energy efficiency.

(131) During the IP, only two bioethanol producers received benefits under REAP programs, each for a feasibility study grant. Prior to the IP, one company received a grant for Renewable Energy Systems for a project involving bioethanol production from sugar and alcohol-based waste.

(d) *Conclusion*

(132) This scheme is considered to be a subsidy in the sense of Article 3(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the Government of the USA in the form of a grant. The subsidy confers a benefit to the companies receiving them.

(133) However, it should also be noted that none of these grants appeared to be specific for the production of any commodity including bioethanol which means that they cannot be considered countervailable pursuant to Article 4 of the basic Regulation.

3.2.9. Department of Energy Biorefinery Project Grants

(134) The relevant legislation authorises the funding of 'Integrated Biorefinery Demonstration Projects' to demonstrate: the commercial application of integrated biorefineries with a focus on lignocellulosic feedstock; the commercial application of biomass technologies for a variety of uses, including liquid transportations fuels, high-value bio-based chemicals, substitutes for petroleum-based feedstock and products, and energy in the form of electricity or useful heat; and the collection and treatment of a variety of biomass feedstock.

(a) *Legal basis*

(135) Energy Policy Act of 2005, sections 931-932 is the legal basis for the Department of Energy Biorefinery Project Grants.

(b) *Eligibility*

(136) Eligibility is specific to the funding opportunity announcement (FOA) for each project published by the relevant authorities of the Department of Energy. Regarding FOAs relevant to bioethanol, recipients must use cellulosic biomass and produce a biofuel; the particular eligible biomass and biofuel(s) are delineated in each FOA.

(c) *Practical implementation*

- (137) The scheme is administered through a series of annual competitive solicitations or FOAs that distribute appropriated funds. The competitive solicitations are open to eligible applicants from industry, academia and national laboratories. Eligible applicants submit proposals that are reviewed against the criteria set out in the FOA. Once an award has been granted, the relevant authorities of the Department of Energy monitor the performance of the recipient against the scope, schedule and cost through the life of the award. Payment for costs incurred by the recipient in performance of the project is made on a reimbursement basis.
- (138) No financial assistance agreements under this program support the development of corn bioethanol process technologies. The assistance is solely focused on cellulosic advanced biofuels.
- (139) Recipients must use cellulosic biomass and produce a biofuel; the particular eligible biomass and biofuel(s) are delineated in each FOA.
- (140) During the IP there were five large scale bioethanol projects funded under this scheme. One of the companies in the sample received benefits from this scheme during the IP.

(d) *Conclusion*

- (141) This scheme is considered to be a subsidy in the sense of Article 3(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the Government of the USA in the form of grants. The subsidy confers a benefit to the companies receiving them.
- (142) However, the investigation established that during the IP there was no commercial cellulosic bioethanol sold on the market. In view of the particular circumstances in the present case, i.e. the fact that the scheme focuses for example on cellulosic biofuels, and the lack of commercial cellulosic bioethanol production, it is considered that during the IP this scheme did not confer any benefit on commercial producers of bioethanol in the USA and consequently did not have any impact on exports of bioethanol to the EU during the IP.
- (143) It is also noted that in relation to the turnover of the product concerned by the sampled companies, the amount of subsidies provided under this scheme was insignificant.

3.2.10. **Conclusion on Federal Schemes**

Fuel mixture tax credits - Excise Tax/Income Tax credits

- (144) It was established that during the IP the US Government provided a credit of 0,45 USD for each gallon of ethanol used in producing alcohol fuel mixture. This means that bioethanol blenders benefited from a reduced tax rate at the time of sale or received a direct payment, which offset their normal liability for a part of the excise duty on gasoline fuel. Only to a lesser extent the mixture tax credit was used to offset income tax liability. This is a financial contribution, in the form of Government revenue foregone, which confers a benefit to the recipients in the form of a reduced tax liability. The scheme is limited to companies that are involved in the bioethanol industry, i.e. the blending of bioethanol, and is therefore countervailable.
- (145) The investigation established, however, that the main subsidy scheme, the bioethanol mixture tax credit, expired in the end of 2011 and has not been reintroduced.
- (146) Following the disclosure of the essential facts and considerations on the basis of which the Commission has decided to continue the investigation without the imposition of provisional measures, one party claimed that various tax forms allow recipients to still claim this subsidy later than 31 December 2011.
- (147) In reply to this claim it is noted that the investigation showed that the bioethanol mixture tax credit was predominantly claimed as an excise tax credit by a blender at the time of the blending of bioethanol with gasoline in order to reduce the excise tax liability of the claimant. Only to a limited extent the bioethanol mixture tax credit would be used to offset the income tax liability of the claimant. It goes without saying that there is a certain time span between the time of blending and the time when the credit is paid to the claimant. The amount of mixture tax credits provided during the IP also relates to blending taking place before the IP. Consequently, unless the scheme is retroactively reinstated, at the time of the decision whether or not to impose definitive measures in 2012, any claims for the mixture tax credit would be insignificant. Therefore, there are no elements to say that the subsidy continued.
- (148) The same party argued that it is clear from the provisions of Article 15(1), fourth subparagraph, that a subsidy should not be considered as "withdrawn" until the defending party has brought convincing evidence that no payments, under any subsidy scheme benefitting producers/exporters of the product concerned, could still be made. It should be noted, however, that the bioethanol mixture tax credit was the only subsidy scheme

which provided potentially countervailable subsidies during the IP and this scheme has expired. The other investigated schemes which provided benefits directly to the bioethanol industry were insignificant. This argument is therefore rejected.

(149) The party has also claimed that the income tax credit for producers of cellulosic bioethanol, which is described in recitals (79) to (85) above, is a scheme designed to replace the mixture tax credit scheme as a means of subsidising the product concerned. In reply to this claim it is noted that, while support for first generation bioethanol has been mostly phased out, schemes for second generation biofuels has increased. However, the production of second generation biofuels is not significant and therefore granted subsidies are at this stage very limited. It should be clarified that the income tax credit for producers of cellulosic bioethanol is not a replacement scheme for the mixture tax credit scheme for the simple reason that it is already in existence. Moreover, income tax credit for producers of cellulosic bioethanol is, as the name of scheme suggest, an incentive to producers of cellulosic bioethanol. The mixture tax credit provides an incentive to blenders. The investigation showed that in the majority of cases the one claiming the mixture tax credit was a blender/trader with excise tax liability such as a petrochemical company. In other words, it was not bioethanol producers who claimed the bulk of the mixture tax credit during the IP. Therefore, it cannot be argued that the income tax credit for producers of cellulosic bioethanol replaces the mixture tax credit. Consequently, this claim is rejected.

(150) Finally, the party has claimed that the benefits can still be conferred after the end of the mixture tax credit scheme due to the continued utilization of fixed assets paid by the subsidy. It was argued that in case of recurring subsidies linked to the acquisition of fixed assets, benefits accruing from previous years within the depreciation period should be taken into account when calculating the benefit. First of all it is noted that the subsidy is not linked to the acquisition of fixed assets. The mixture tax credit is a recurring subsidy in the sense that it is periodic and the benefits are presumed to accrue in the year in which they are granted. Moreover, as mentioned above, during the IP, the claimants were only to a very little extent bioethanol producers. Therefore, this claim is rejected.

Other Federal Schemes

(151) Statistics provided by the US authorities showed overall very little use of the small producer's income tax credit in contrast to claims made for the mixture tax credit. A comparison of the total amount claimed under this incentive in relation to the total production of bioethanol showed insignificant overall subsidisation during the IP.

(152) There were no claims for the income tax credit from producers of cellulosic bioethanol during the IP which coincides with the lack of commercial production of cellulosic bioethanol up to the end of the IP.

(153) The investigation established that the US Department of Agriculture's Bioenergy Program expired in 2006 and was not re-introduced. As regards the USDA Bioenergy for Advanced Biofuels, the USDA Biorefinery Assistance Program, the USDA Biomass Crop Assistance Program, the USDA Rural Energy for America Program and the Department of Energy Biorefinery Project Grants, the investigation showed that to the extent these six schemes provided benefits to production of bioethanol during the IP, the amount of subsidies was insignificant.

3.3. STATE SCHEMES

3.3.1. Introduction

(154) The investigation showed that three State schemes, i.e. the E85 Infrastructure Grants run by the State of Illinois, the Biofuels Infrastructure grants run by the State of Iowa and the E85 Fuelling Infrastructure Grants run by the State of Minnesota are not applicable to bioethanol producers. These schemes provide fuel retail establishments with support for the installation of fuel pumps capable of delivering high-ethanol content fuel and are limited to bioethanol retailers. Consequently, bioethanol producers receive no benefits from these schemes. In this regard, it is noted that none of the companies in the sample received benefits from these schemes directly or indirectly.

(155) Moreover, it was clarified by the US authorities that the State of Minnesota does not have a Cellulosic Ethanol Investments Tax Credit scheme as claimed by the complainant. It was clarified that the State of Minnesota enacted a law in early 2010 called the 'Small Business Investment Tax Credit' commonly referred to as the 'Angel Investment Tax Credit'. Contrary to what is alleged in the complaint, the Angel Investment Tax Credit provides no tax credits to businesses, but rather to investors who invest in small businesses.

3.3.2. Illinois Biofuels Production Facility Grants

(156) According to the authorities of the USA, this scheme was not in operation during the IP, has not received funding since July 2007 and has been inoperative since 2008 when funds were exhausted. When operative, the

scheme authorised grants for the construction of new renewable fuel production facilities or the expansion of existing facilities.

- (157) Two grants were granted in 2008 when the scheme was still in operation, and two companies outside the sample located in Illinois each received a grant. However, this scheme is no longer in operation and none of the sampled companies availed of benefits under this scheme during the IP.

3.3.3. Iowa Alternate Energy Revolving Loan Programme

- (158) The Alternate Energy Revolving Loan Program (AERLP) is authorized by section 476.46 Code of Iowa 1997 as amended. This code states that the Iowa Energy Center shall establish and administer an alternate energy revolving loan program and creates an alternative energy revolving loan fund in the office of the Treasurer of State to be administered by the Energy Center.
- (159) Money in the AERLP fund may be used to provide loans for the construction of alternate energy production facilities or small hydro facilities as defined in section 476.46 Code of Iowa 1997, as amended.
- (160) According to the authorities of the United States, no bioethanol production facilities received loans pursuant to the AERLP for the years 2008, 2009, 2010 and the IP. None of the sampled companies received benefits under this scheme. Consequently, it was decided not to further investigate this scheme in the context of this proceeding.

3.3.4. Nebraska Ethanol Production Tax Credit

- (161) The current Nebraska State motor fuels tax rate is 0,267 USD per gallon for all gasoline, gasohol, diesel fuel, bioethanol and compressed gases sold in the State. The Ethanol Production Incentive scheme in effect during the IP provides a 0,18 USD per gallon tax credit to qualifying ethanol production facilities in operation on or before 30 June 2004.
- (162) The deadline to apply to participate in this scheme was 16 April 2004. A qualified production facility must have been located in the State of Nebraska and must have either (i) not been in production on or before 1 September 2001 or (ii) not received credits prior to 1 June 1999. All fermentation, distillation and dehydration must take place at the qualified facility.
- (163) This scheme did not benefit any of the companies in the sample. In any event, it appears that the amount of subsidy was negligible when compared to the total production of bioethanol in the USA.

3.3.5. South Dakota Ethanol Production Incentive

- (164) The State of South Dakota administers a bioethanol producer payment program that provides financial assistance for eligible bioethanol plants of 0,20 USD per gallon of bioethanol produced up to a possible 1 million USD annually per facility.
- (165) The ethyl alcohol must be fully distilled and produced in South Dakota, must be 99 % pure, must be distilled from cereal grains and must be denatured. The ethanol production payment is only available for qualifying ethyl alcohol produced by plants than began production on or before 31 December 2006.
- (166) Each eligible facility may receive a maximum of 83 333 USD per month of production incentive payments. If sufficient funds are not available to pay the monthly payment of 83 333 USD to each bioethanol production facility, each facility receives a prorated share of the funds available based upon the gallons of ethyl alcohol produced that month proportionate to all qualifying gallons of ethyl alcohol produced at all qualifying facilities. Each eligible facility may receive a maximum of 1 million USD per year and for all years of participation in the scheme a maximum of 9 682 000 USD in production payments. As such the subsidies are recurring and considered to be expensed each particular year.
- (167) The investigation showed that two of the companies in the sample received benefits under this scheme during the IP. For both companies, the subsidy amount was calculated on the basis of the amount of payments received during the IP. The amount of subsidy was then allocated over the total sales of bioethanol made by the companies concerned during the IP as the appropriate denominator.

- (168) This calculation showed that the amount of subsidy for both companies was insignificant.

3.3.6. Conclusion on State Schemes

- (169) The investigation showed that two of the US State schemes identified by the complainant, i.e. the Nebraska Ethanol Production Tax Credit and South Dakota Ethanol Production Incentive, provided subsidies to bioethanol production that are financial contributions which confer a benefit to the producers in those States. Although the schemes seem to be specific within the States concerned, the amount of subsidies is insignificant when compared to the total production of bioethanol in the USA. Regarding subsidies received by the companies in the sample, it was also concluded that the amount of subsidisation was insignificant.

3.4. AMOUNT OF COUNTERAVAILABLE SUBSIDIES DURING THE IP

- (170) The investigation has shown that all investigated schemes except the one mentioned in recital (171) below, were negligible and not countervailable during the IP.
- (171) As mentioned in recitals (53) to (71) above, the investigation showed that the US Government provides a mixture tax credit of 0,45 USD for each gallon of bioethanol used in producing an alcohol fuel mixture which benefits ethanol blenders.
- (172) As such the subsidy was granted on a per unit basis, i.e. by reference to the quantities of bioethanol used. The benefit is also attached to the imported product in the Union.
- (173) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation is 0,45 USD per gallon.
- (174) It is noted that the amount of subsidisation depends on the proportion, in weight, of bioethanol in the blend.
- (175) It is considered that the amount of subsidy is 0,45 USD per gallon on a country-wide basis as all of US produced bioethanol, including exports to the Union, ultimately benefitted from the bioethanol mixture tax credit. It is therefore not necessary to differentiate between economic operators, in particular as the subsidy is rarely granted to producers of bioethanol but predominantly to traders/operators that are blending the bioethanol.
- (176) Following the disclosure of the essential facts and considerations on the basis of which the Commission decided to continue the investigation without imposition of provisional measures, several parties argued that in any case, the sampled producers should be assigned individual subsidy margins, and in case they did not receive the bioethanol mixture tax credit they should be assigned a zero subsidy margin.
- (177) Pursuant to Article 15 of the basic Regulation, any regulation imposing the duty shall either specify the duty for individual suppliers or the supplying country concerned. In this case it was found that the structure of the bioethanol industry and the way the subsidies were granted, in particular the Bioethanol Mixture Tax Credit, any individual subsidy margins would not be representative and would not reflect the actual situation on the bioethanol market, in particular for the export.
- (178) It is clear from the WTO Agreement on Subsidies and Countervailing Measures and GATT Article VI:3 that the purpose of any measures is to offset the effect of the subsidised imports.

- (179) In the present case the evidence found in the investigation showed that all US exports of bioethanol were subsidised by a maximum amount of USD 0,45 per gallon during the IP. It is noted that at a point in the investigation it became clear that any sample was not representative due in particular to the nature of subsidisation in the present case. Moreover, the sampled producers did not export the product concerned to the Union.
- (180) Indeed, it was the activity of blending which triggered the credit irrespective of whether the blender is a producer or an exporter. In the present case it was established that it was predominantly the exporters who claimed the Bioethanol Mixture Tax Credit.
- (181) It was also argued that, in the alternative to assigning individual subsidy margins to the sampled companies, the Commission should provide a pass-through analysis on how the bioethanol mixture tax credit can automatically be attributed to and benefit the producers. The request for a pass-through analysis appears unfounded. The subsidy is only paid once and the product does not change. It is the product exported to the EU, bioethanol, which is subsidised. Therefore, there is no need for such analysis.

3.5. POST IP DEVELOPMENTS

- (182) Parties highlighted the fact that the main subsidy scheme, the mixture tax credit, which conferred countervailable subsidies to US recipients in the IP, expired in the end of 2011 and has not been reintroduced. They noted that Article 15 of the basic Regulation provides that no measures shall be imposed if the subsidy or subsidies are withdrawn or when the subsidies no longer confer any benefit on the exporters concerned.
- (183) In view of the current cessation of the main subsidy scheme identified in the IP and the fact that there are no signs that it will be introduced, these parties considered that imposition of definitive countervailing measures would not be warranted. They also argued that any imposition of definitive measures would anyway go beyond what is necessary to counter the effects of the subsidisation at the time these measures would be imposed.
- (184) The investigation showed that the bioethanol mixture tax credit procured during the IP was withdrawn at the end of 2011. Given that this event occurred after the IP, the Commission thus contacted in several occasions the US authorities to receive further information with regard to the definitive termination of the main subsidy scheme.
- (185) The information collected during the investigation at the premises of the US authorities and the further clarification they provided demonstrated that certain amounts were paid out to US recipients just after the IP, namely in the US fiscal year 2012, which ran from

1 October 2011 to 30 September 2012. Whilst these amounts would still lead to continued subsidisation above the *de minimis* threshold in the first quarter of fiscal year 2012, the amounts paid out after that period, and in particular at the end of 2012, would be negligible in view of the cessation of the main subsidy scheme in December 2011. Up to now, there are no signs of reinstatement of the mixture tax credit and any reinstatement of that scheme would normally require an act of the United States Congress.

4. REGISTRATION OF IMPORTS FROM THE COUNTRY CONCERNED

(186) The complainant requested several times registration of imports of bioethanol originating in the USA with a view of retroactive collection of duties. The request contained sufficient evidence to justify registration in accordance with Article 24(5) of the basic Regulation.

(187) The Commission considered that, even if it had provisionally concluded that the main subsidy scheme in force during the IP had ceased, in the sense that it no longer conferred a benefit at the time provisional measures would have been imposed, there was evidence that the United States might reinstate such subsidy scheme. Thus, in order to preserve the European Union's rights under these special circumstances, the Commission decided to subject imports of the product concerned to registration pursuant to Article 24(5) of the basic Regulation so that, eventually, measures may retroactively be levied against those imports from the date of such registration. A Commission Regulation (EU) No 771/2012⁽¹⁾ was published on 24 August 2012 to this effect.

5. TERMINATION OF THE ANTI-SUBSIDY PROCEEDING AND OF REGISTRATION

(188) The investigation established that apart from the main subsidy scheme, the mixture tax credit described in recitals (53) to (71) above, the amount of subsidisation received for all other subsidy schemes investigated were insignificant and not countervailable during the IP.

(189) As mentioned above in recitals (182) to (185), the investigation established that the main subsidy scheme, the mixture tax credit, expired in the end of 2011 and has not been reintroduced. The information available clearly point to the cessation of the main subsidy scheme. Up to now, there are no signs of reinstatement of the mixture tax credit and any reinstatement of that scheme would normally require an act of the United States Congress.

(190) Article 15 of the basic Regulation provides that no measures shall be imposed if the subsidy or subsidies are withdrawn or it has been demonstrated that the subsidies no longer confer any benefit on the exporters concerned.

(191) It is also noted that pursuant to Article 14(3) of the basic Regulation, there shall be immediate termination of the proceeding where it is determined that the amount of countervailable subsidies is *de minimis*, namely below 2 % *ad valorem*.

(192) In view of the withdrawal of the main subsidy scheme established in the IP and the fact that the amount of subsidisation received for all other subsidy schemes investigated were below the *de minimis* threshold during the IP in the meaning of Article 14(3) of the basic Regulation, it is considered that imposition of definitive measures is not warranted.

(193) In the light of the above, it is considered that the present anti-subsidy investigation should be terminated.

(194) In line with the termination of this investigation the registration of imports should hereby be terminated.

(195) All parties were informed about the essential facts and considerations on the basis of which it was intended to terminate proceeding. They were granted a period within which they could make representations subsequent to this disclosure.

(196) In light of the above, the Commission therefore concludes that the anti-subsidy proceeding concerning imports into the Union of bioethanol originating in the United States of America should be terminated without the imposition of anti-subsidy measures and that the registration of imports should likewise be terminated,

6. ADVISORY COMMITTEE

(197) Objections to the termination of this anti-subsidy proceeding were raised in the Advisory committee. Consequently, in accordance with Article 14 of Regulation (EC) 597/2009, the proceeding shall stand terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise. This Decision shall then be published in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

Article 1

The anti-subsidy proceeding on imports of bioethanol, sometimes referred to as "fuel ethanol", i.e. ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union), denatured or undenatured, excluding products with a water content of more than 0,3 % (m/m) measured according to the standard EN 15376, as well as ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on

⁽¹⁾ OJ L 229, 24.8.2012, p. 20.

the Functioning of the European Union) contained in blends with gasoline with an ethyl alcohol content of more than 10 % (v/v) currently falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 12 11, ex 2710 12 15, ex 2710 12 21, ex 2710 12 25, ex 2710 12 31, ex 2710 12 41, ex 2710 12 45, ex 2710 12 49, ex 2710 12 51, ex 2710 12 59, ex 2710 12 70, ex 2710 12 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 90 97 and originating in the United States of America, is hereby terminated.

Article 2

Customs authorities are hereby directed to cease the registration of imports carried out pursuant to Article 1 of Regulation (EU) No 771/2012. No countervailing duty shall be collected on the imports thus registered.

Article 3

Regulation (EU) No 771/2012 is hereby repealed.

Article 4

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

Done at Brussels, 20 December 2012.

For the Commission

The President

José Manuel BARROSO

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