

Official Journal of the European Union

L 282



English edition

Legislation

Volume 58

28 October 2015

Contents

II *Non-legislative acts*

INTERNATIONAL AGREEMENTS

- ★ Information concerning the entry into force of the Agreement for scientific and technological cooperation between the European Union and European Atomic Energy Community and the Swiss Confederation associating the Swiss Confederation to Horizon 2020 — the Framework Programme for Research and Innovation and the Research and Training Programme of the European Atomic Energy Community complementing Horizon 2020 and regulating the Swiss Confederation's participation in the ITER activities carried out by Fusion for Energy 1

REGULATIONS

- ★ Commission Delegated Regulation (EU) 2015/1930 of 28 July 2015 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the criteria for establishing the level of financial corrections and for applying flat rate financial corrections, and amending Commission Regulation (EC) No 665/2008 2
- ★ Commission Implementing Regulation (EU) 2015/1931 of 23 October 2015 approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Huile d'olive de Nice (PDO)) 9
- ★ Commission Implementing Regulation (EU) 2015/1932 of 26 October 2015 suspending submission of applications for import licences under the tariff quota opened by Regulation (EC) No 1918/2006 for olive oil originating in Tunisia until the end of the 2015 quota year 10
- ★ Commission Regulation (EU) 2015/1933 of 27 October 2015 amending Regulation (EC) No 1881/2006 as regards maximum levels for polycyclic aromatic hydrocarbons in cocoa fibre, banana chips, food supplements, dried herbs and dried spices ⁽¹⁾ 11

⁽¹⁾ Text with EEA relevance

EN

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

The titles of all other acts are printed in bold type and preceded by an asterisk.

★ Commission Implementing Regulation (EU) 2015/1934 of 27 October 2015 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009	14
Commission Implementing Regulation (EU) 2015/1935 of 27 October 2015 establishing the standard import values for determining the entry price of certain fruit and vegetables	32

DECISIONS

★ Commission Delegated Decision (EU) 2015/1936 of 8 July 2015 on the applicable systems to assess and verify constancy of performance of ventilation ducts and pipes for air ventilation pursuant to Regulation (EU) No 305/2011 of the European Parliament and of the Council ⁽¹⁾	34
★ Commission Decision (EU) 2015/1937 of 21 October 2015 establishing an independent advisory European Fiscal Board	37

GUIDELINES

★ Guideline (EU) 2015/1938 of the European Central Bank of 27 August 2015 amending Guideline (EU) 2015/510 of the European Central Bank on the implementation of the Eurosystem monetary policy framework (ECB/2015/27)	41
---	----

⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Information concerning the entry into force of the Agreement for scientific and technological cooperation between the European Union and European Atomic Energy Community and the Swiss Confederation associating the Swiss Confederation to Horizon 2020 — the Framework Programme for Research and Innovation and the Research and Training Programme of the European Atomic Energy Community complementing Horizon 2020 and regulating the Swiss Confederation's participation in the ITER activities carried out by Fusion for Energy

The Agreement for scientific and technological cooperation between the European Union and European Atomic Energy Community and the Swiss Confederation associating the Swiss Confederation to Horizon 2020 — the Framework Programme for Research and Innovation and the Research and Training Programme of the European Atomic Energy Community complementing Horizon 2020, and regulating the Swiss Confederation's participation in the ITER activities carried out by Fusion for Energy ⁽¹⁾, signed on 5 December 2014, has, in accordance with Article 15.1 thereof, entered into force on 8 October 2015.

⁽¹⁾ OJ L 370, 30.12.2014, p. 3.

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2015/1930

of 28 July 2015

supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the criteria for establishing the level of financial corrections and for applying flat rate financial corrections, and amending Commission Regulation (EC) No 665/2008

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 508/2014 of 15 May 2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council ⁽¹⁾, and in particular Article 105(4) thereof,

Whereas:

- (1) The achievement of the objectives of the common fisheries policy (CFP) should not be undermined by Member States violating CFP rules. Pursuant to Article 41(1) and (2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council ⁽²⁾, financial assistance from the European Maritime and Fisheries Fund (EMFF) is made conditional upon compliance with CFP rules by Member States and non-compliance may result in the interruption or suspension of payments or in the application of financial corrections to Union financial assistance under the CFP.
- (2) Article 22(7), Article 85 and Article 144(1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council ⁽³⁾ set out cases and conditions under which financial corrections may or are to be applied by the Commission. Furthermore, under Article 144(7) of that Regulation, the fund-specific rules for the EMFF may lay down specific bases for financial corrections linked to non-compliance with rules applicable under the CFP.
- (3) In order to safeguard the financial interests of the Union and its taxpayers, the Commission may apply financial corrections by cancelling all or part of the Union contribution to an operational programme, pursuant to Article 105 of Regulation (EU) No 508/2014 in one of the two hypotheses: (a) where a Member State has not corrected expenditure included into a certified statement of expenditure affected by cases in which the beneficiary did not comply with obligations as set out in Article 10(2) of Regulation (EU) No 508/2014; or (b) where in relation to expenditure included into a certified statement of expenditure affected by cases of serious non-compliance that resulted in suspension of payments pursuant to Article 101 of the same Regulation, the Member State has failed to demonstrate that it had taken necessary remedial actions ensuring compliance with and the enforcement of applicable rules of CFP in the future.
- (4) Where it is not possible to quantify precisely the amount of expenditure linked to non-compliance with the CFP rules by Member States, a flat rate financial correction is to be applied under Article 105(3) of Regulation (EU) No 508/2014.

⁽¹⁾ OJ L 149, 20.5.2014, p. 1.

⁽²⁾ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

⁽³⁾ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

- (5) Article 105(4) of Regulation (EU) No 508/2014 empowers the Commission to adopt delegated acts determining the criteria for establishing the level of financial corrections to be applied and the criteria for applying flat rate financial corrections. Article 105(1) of Regulation (EU) No 508/2014 includes the list of cases when the Commission may impose financial corrections on all or part of the operational programme. In cases covered by point (a) of Article 105(1), quantification of the financial impact of the non-compliance by the beneficiary is based on the financing agreement between the beneficiary and the competent national authorities responsible for the implementation of the EMFF programme. Consequently, the application of flat rates for financial corrections may only concern cases referred to in Article 105(1)(b) of Regulation (EU) No 508/2014.
- (6) In order to ensure transparency and proportionality of flat rate financial corrections, and legal certainty and equal treatment of Member States implementing EMFF programmes, it is necessary to define the criteria for establishing the level of financial corrections to be applied by the Commission and the criteria for applying flat rate financial corrections.
- (7) The level of the financial corrections decided upon by the Commission where the Member States do not comply with the CFP rules must be proportionate, having regard to the nature, gravity, duration and repetition of the serious non-compliance with the CFP rules.
- (8) It is appropriate to define the levels of flat rate financial corrections by the Commission on the basis of rates of financial corrections that exist already for certain types of non-compliances within the European Structural and Investment Funds. It is also appropriate to ensure a sufficiently gradual mechanism so that the principle of proportionality can be adequately applied.
- (9) In the field of collection, management and use of data, the provisions on flat rate financial corrections set out in this Regulation should replace those set out in Article 6 of Commission Regulation (EC) No 665/2008 ⁽¹⁾. As a consequence, that Article should be deleted.
- (10) This Regulation should not affect the continuation or the modification of assistance approved by the Commission on the basis of Council Regulation (EC) No 861/2006 ⁽²⁾.
- (11) Article 8 of Council Regulation (EC) No 199/2008 ⁽³⁾ provides that the reduction of the Union financial assistance should amount to no more than 25 % of the total annual cost of the national programme. As a consequence in the field of collection, management and use of data the maximum flat rate of financial corrections set out in this Regulation should apply only after the repeal of Article 8 of that Regulation.
- (12) Given the importance of ensuring that there is a harmonised and equal treatment of Member States across the Union from the start of the programming period, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation sets out the criteria for establishing the level of financial corrections and the criteria for applying flat rates as referred to in Article 105 of Regulation (EU) No 508/2014.

⁽¹⁾ Commission Regulation (EC) No 665/2008 of 14 July 2008 laying down detailed rules for the application of Council Regulation (EC) No 199/2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy (OJ L 186, 15.7.2008, p. 3.)

⁽²⁾ Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea (OJ L 160, 14.6.2006, p. 1.)

⁽³⁾ Council Regulation (EC) No 199/2008 of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy (OJ L 60, 5.3.2008, p. 1.)

*Article 2***Criteria of establishing the level of financial corrections**

The level of the financial correction in cases of non-compliance with the CFP rules referred to in Article 105(1) of Regulation (EU) No 508/2014 shall be established in accordance with the following criteria:

- (a) significance of the potential prejudice to the marine biological resources resulting from the non-compliance with the CFP rules;
- (b) frequency of the non-compliance with the CFP rules;
- (c) duration of the non-compliance with the CFP rules;
- (d) remedial actions taken by the Member State.

*Article 3***Criteria for applying flat rates**

1. The flat rates of financial correction referred to in Article 105(3) of Regulation (EU) No 508/2014 shall be 2 %, 5 %, 10 %, 25 %, 50 % or 100 % of the Union contribution allocated to the relevant Union priorities, or to the relevant part of those priorities, within the operational programme of the Member State.
2. The range within which flat rates shall be applied in individual cases of non-compliance with the CFP rules is set out in the Annex.
3. Where in relation to the same Union priority several cases of non-compliance with the CFP rules are identified by the Commission within the same implementing act pursuant to Article 102 of Regulation (EU) No 508/2014, the flat rates shall not be cumulated, but the financial correction shall be set within the highest of the ranges applicable to those cases.
4. After a financial correction by the Commission for a certain case of non-compliance with the CFP rules has been implemented and the Member State concerned does not take the appropriate remedial action, the flat rate may be increased to the next higher level within the range applicable to that case of non-compliance with the CFP rules.
5. In addition to the cases for which it is explicitly set out in the Annex, a flat rate of 100 % of the Union contribution allocated to the relevant Union priorities, or to the relevant part of those priorities, within the operational programme of the Member State may be applied if:
 - (a) the non-compliance with the CFP rules is so fundamental, frequent or widespread that it represents a complete failure of the system concerned and puts at risk the legality of actions of the Member State or the regularity of the financing of the common fisheries policy; or
 - (b) there is evidence of deliberate negligence on side of the Member State with regard to remedying the non-compliance with the CFP rules.

*Article 4***Transitional provisions**

This Regulation shall not affect the continuation or modification, including the partial or total cancellation, of assistance approved by the Commission in accordance with Regulation (EC) No 861/2006.

*Article 5***Amendments to Regulation (EC) No 665/2008**

In Regulation (EC) No 665/2008, Article 6 is deleted.

*Article 6***Entry into force**

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

However, with regards to cases of non-compliance in the field of collection, management and use of data included in category 4 of the Annex, Article 3(5) of this Regulation shall apply from the date of repeal of Article 8 of Regulation (EC) No 199/2008.

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

Done at Brussels, 28 July 2015.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

Cases of non-compliance ⁽¹⁾		Range of flat rates
Category 1: Failure to contribute to the objectives of the common fisheries policy as set out in Article 2(2) of the Regulation (EU) No 1380/2013 that are essential to the conservation of marine biological resources		
1.1	Failure to ensure that fishing opportunities allocated to the Member State pursuant to Articles 16-17 of Regulation (EU) No 1380/2013 are respected	25-100 %
1.2	Failure to meet requirements set out in different types of conservation measures as listed in Article 7 of the Regulation (EU) No 1380/2013	10-100 %
Category 2: Failure to meet international obligations on conservation		
2.1	Failure to meet obligations deriving from Article 28 of Regulation (EU) No 1380/2013	10-100 %
Category 3: Failure to ensure that the fleet is in balance with the natural resources		
3.1	Failure to submit the report on the balance between the fishing capacity of the fleet and the fishing opportunities that complies with all the requirements of Article 22(2) of Regulation (EU) No 1380/2013;	2-25 %
3.2	Failure to implement the action plan pursuant to Article 22(4) of Regulation (EU) No 1380/2013, if such a plan is included into the report submitted annually;	5-25 %
3.3	Failure to ensure that in case of fishing capacity withdrawn by public finances, respective fishing licences and authorisations are withdrawn in advance and the capacity is not replaced as referred to in Articles 22(5) and 22(6) of Regulation (EU) No 1380/2013;	10-50 %
3.4	Failure to ensure that the fishing capacity does not exceed at any time the ceilings set out in Article 22(7) and Annex II to Regulation (EU) No 1380/2013;	10-50 %
3.5	Failure to implement the entry/exit scheme pursuant to the requirements of Article 23 of Regulation (EU) No 1380/2013;	10-25 %
3.6	Failure to manage the fishing fleet register in compliance with Article 24 of Regulation (EU) No 1380/2013 and Commission Regulation (EC) No 26/2004 ⁽²⁾ ;	10-50 %
Category 4: Failure to implement the Community framework for the collection, management and use of data in line with Article 25 of Regulation (EU) No 1380/2013 as further specified in Regulation (EC) No 199/2008 that result in a lack of information on natural resources		
4.1	Failure to collect and manage biological, environmental, technical and socioeconomic data necessary for fisheries management as set out in Articles 4, 13 and 17 of Regulation (EC) No 199/2008;	2-25 %
4.2	Failure to submit annually a report on execution of national data collection programmes and to make this report publicly available as set out in Article 7 of Regulation (EC) No 199/2008;	2-10 %
4.3	Failure to ensure a national coordination of the collection and management of scientific data for fisheries management as set out in Article 4 of Regulation (EC) No 199/2008;	2-5 %

Cases of non-compliance ⁽¹⁾		Range of flat rates
4.4	Failure to coordinate data collection activities with other Member States in the same region as set out in Article 5 of Regulation (EC) No 199/2008;	2-25 %
4.5	Failure to provide data in a timely manner to end-users in accordance with Articles 18 to 20 of Regulation (EC) No 199/2008;	2-25 %

Category 5: Failure to operate an effective control and enforcement system

5.1	Failure to respect the general principles of control and enforcement in accordance with Title II of Council Regulation (EC) No 1224/2009 ⁽³⁾ ;	10-50 %
5.2	Failure to ensure that the general conditions for access to waters and resources in accordance with Title III of Regulation (EC) No 1224/2009 are respected;	10-50 %
5.3	Failure to control the marketing in order to ensure effective traceability of fisheries and aquaculture products, in accordance with Title V of Regulation (EC) No 1224/2009;	10-50 %
5.4	Failure to carry out effective surveillance and inspections, and to ensure systematic and adequate enforcement action in respect of any breaches of the rules of the CFP, in accordance with Titles VI, VII and VIII of Regulation (EC) No 1224/2009;	10-50 %
5.5	Failure to establish and implement national control action programmes according to Article 46 of Regulation (EC) No 1224/2009 and, when relevant, to carry out specific control and inspection programmes established by the Commission in accordance with Title IX of that Regulation;	10-50 %
5.6	Failure to cooperate with the Commission in order to facilitate the accomplishment of the Commission officials tasks during their missions of verification autonomous inspections and audits in accordance with Title X of Regulation (EC) No 1224/2009;	2-50 %
5.7	Failure to implement the measures decided by the Commission to ensure compliance by Member States with CFP objectives, such as action plans and any other measures in accordance with Title XI of Regulation (EC) No 1224/2009;	10-50 %
5.8	Failure to meet the requirements as regards analysis, validation, access and exchange of data and information, in accordance with Title XII of Regulation (EC) No 1224/2009;	2-25 %
5.9	Failure to control the implementation of an effective catch certificate scheme also provided for in Chapter III of Council Regulation (EC) No 1005/2008 ⁽⁴⁾ ;	10-50 %
5.10	Failure to act on alleged or reported illegal, unreported and unregulated (IUU) fishing activities pursuant to Articles 26(3), 39 and 40 of Regulation (EC) No 1005/2008.	5-50 %

Category 6: Failure to establish and operate a functioning system of effective, proportionate and dissuasive penalties

6.1	In the event of an infringement, failure to notify the flag Member State, the Member State of which the offender holds the citizenship and any other Member State interested in the follow-up of the measures taken to ensure compliance in accordance with Article 89(4) of Regulation (EC) No 1224/2009;	2-10 %
-----	--	--------

Cases of non-compliance ⁽¹⁾		Range of flat rates
6.2	Failure to take immediate measures in accordance with Article 91 of Regulation (EC) No 1224/2009 to prevent masters of fishing vessels or other legal or natural persons who had been caught in committing serious infringement, from continuing to do so;	10-50 %
6.3	Failure to establish the criteria to determine the serious character of the infringement of the CFP rules under Article 42 of Regulation (EC) No 1005/2008;	10-50 %
6.4	Failure to ensure that effective sanctions are applied systematically for breaches of CFP rules and that the level of those sanctions is of adequate in severity and proportionate to the seriousness of such infringements, so as to ensure deterrence and, as a minimum, effectively deprive perpetrators of the economic benefit derived from their infringement in accordance with Title VIII of Regulation (EC) No 1224/2009;	10-50 %
6.5	Failure to apply the point system for serious infringements for holders of fishing licences as well as for masters in accordance with Article 92 of Regulation (EC) No 1224/2009;	10-50 %
6.6	Failure to establish and adequately manage the national register of infringements in accordance with Article 93 of Regulation (EC) No 1224/2009.	10-50 %

⁽¹⁾ As defined pursuant to Article 102 of Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

⁽²⁾ Commission Regulation (EC) No 26/2004 of 30 December 2003 on the Community fishing fleet register (OJ L 5, 9.1.2004, p. 25).

⁽³⁾ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

⁽⁴⁾ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1931**of 23 October 2015****approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Huile d'olive de Nice (PDO))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined France's application for the approval of amendments to the specification for the protected designation of origin 'Huile d'olive de Nice', registered under Commission Regulation (EC) No 2400/96 ⁽²⁾, as amended by Commission Regulation (EC) No 417/2006 ⁽³⁾.
- (2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* ⁽⁴⁾ as required by Article 50(2)(a) of that Regulation.
- (3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

*Article 1*The amendments to the specification published in the *Official Journal of the European Union* regarding the name 'Huile d'olive de Nice' (PDO) are hereby approved.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 23 October 2015.

For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Regulation (EC) No 2400/96 of 17 December 1996 on the entry of certain names in the 'Register of protected designation of origin and protected geographical indications' provided for in Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 327, 18.12.1996, p. 11).

⁽³⁾ Commission Regulation (EC) No 417/2006 of 10 March 2006 supplementing the Annex to Regulation (EC) No 2400/96 as regards the entry of certain names in the Register of protected designations of origin and protected geographical indications (Pimiento Asado del Bierzo — (PGI), Fico bianco del Cilento — (PDO), Melannurca Campana — (PGI), Montes de Granada — (PDO), Huile d'olive de Nice — (PDO), Aceite de la Rioja — (PDO), Antequera — (PDO)) (OJ L 72, 11.3.2006, p. 8).

⁽⁴⁾ OJ C 204, 20.6.2015, p. 24.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1932**of 26 October 2015****suspending submission of applications for import licences under the tariff quota opened by Regulation (EC) No 1918/2006 for olive oil originating in Tunisia until the end of the 2015 quota year**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 188(1) and (3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1918/2006 ⁽²⁾ opened annual tariff quotas for imports of virgin olive oil falling within CN codes 1509 10 10 and 1509 10 90, wholly obtained in Tunisia and transported direct from that country to the Union.
- (2) The quantities covered by the applications for import licences lodged from 1 January 2015 to 4 August 2015 exceed the annual limit of 56 700 tonnes laid down in Article 2(1) of Regulation (EC) No 1918/2006. Commission Implementing Regulation (EU) No 2015/1371 ⁽³⁾ established an allocation coefficient to be applied to the quantities applied for on 3 and 4 August 2015 and suspended the submission of further applications for the month of August 2015. Submission of further applications should be suspended until the end of the current quota year.
- (3) In order to ensure that the measure is effective, 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

Submission of applications for import licences under the quota referred to in Article 2(1) of Regulation (EC) No 1918/2006 is hereby suspended until the end of the current quota year from 28 October 2015.

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, 26 October 2015.

For the Commission,

On behalf of the President,

Jerzy PLEWA

Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Regulation (EC) No 1918/2006 of 20 December 2006 opening and providing for the administration of tariff quotas for olive oil originating in Tunisia (OJ L 365, 21.12.2006, p. 84).

⁽³⁾ Commission Implementing Regulation (EU) No 2015/1371 of 7 August 2015 establishing the allocation coefficient to be applied to the quantities covered by the applications for import licences lodged from 3 to 4 August 2015 under the tariff quota opened by Regulation (EC) No 1918/2006 for olive oil originating in Tunisia and suspending submission of applications for such licences for the month of August 2015 (OJ L 211, 8.8.2015, p. 32).

COMMISSION REGULATION (EU) 2015/1933**of 27 October 2015****amending Regulation (EC) No 1881/2006 as regards maximum levels for polycyclic aromatic hydrocarbons in cocoa fibre, banana chips, food supplements, dried herbs and dried spices****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food ⁽¹⁾, and in particular Article 2(3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1881/2006 ⁽²⁾ sets maximum levels for certain contaminants in foodstuffs.
- (2) According to that Regulation, maximum levels for polycyclic aromatic hydrocarbons (PAHs) must be safe and as low as reasonably achievable based upon good manufacturing, drying and agricultural/fishery practices.
- (3) Cocoa fibre is a specific cocoa product produced from the shell of the cocoa bean and contains higher levels of PAHs than the cocoa products produced from the cocoa nibs. The cocoa fibre and derived products are intermediate products in the food chain and are used as an ingredient in the preparation of low calorie, high fibre foods. It is appropriate to establish specific levels of PAHs for cocoa fibre and derived products. Given that these products have a low fat content, it is appropriate to establish the maximum levels on a wet weight basis.
- (4) Banana chips are used in breakfast cereals and confectionery as well as eaten as snacks. High levels of PAHs have been recently found in banana chips. Those findings are related to the frying of banana chips in coconut oil. Therefore it is appropriate to establish maximum levels of PAHs for banana chips. As a first step, due to a lack of sufficient occurrence data, these maximum levels correspond to the maximum levels of coconut oil intended for direct human consumption or use as an ingredient in food. The maximum levels should be reviewed within 2 years taking into account the available occurrence data.
- (5) High levels of PAHs have been found in certain food supplements which contain or are derived from botanical ingredients. The presence of high levels in these food supplements have been linked to the bad drying practices applied to these botanical ingredients. These high levels are avoidable by applying good practices. It is therefore appropriate to establish maximum levels for PAHs in these products which are achievable by applying good drying practices and which ensure a high level of human health protection.
- (6) Also food supplements containing or derived from propolis, royal jelly and spirulina have been found to contain in certain cases high levels of PAHs which have been linked to the application of bad practices. As lower levels can be achieved by applying good practices, it is appropriate to establish maximum levels for PAHs in these products.
- (7) High levels of PAHs have also been found in dried herbs and dried spices which are also related to the application of bad drying practices. Therefore it is appropriate to set maximum levels for PAHs in dried herbs and dried spices. Traditional smoking and processing methods applied to smoked paprika and cardamom result in high levels of PAHs. Given that the consumption of these spices is low and to enable these smoked products to remain on the market, it is appropriate to exempt these spices from the maximum levels.

⁽¹⁾ OJ L 37, 13.2.1993, p. 1.

⁽²⁾ Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJ L 364, 20.12.2006, p. 5).

- (8) A reasonable period should be provided to allow the Member States and food business operators to adapt to the new requirements set out in this Regulation.
- (9) Regulation (EC) No 1881/2006 should therefore be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1881/2006 is amended in accordance with the Annex to this Regulation.

Article 2

Foodstuffs, listed in the Annex to this Regulation with the exception of those mentioned in point 6.1.11, lawfully placed on the market prior to 1 April 2016 may remain on the market after that date until their date of minimum durability or use-by-date.

Article 3

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

It shall apply from 1 April 2016 with the exception of the foodstuffs mentioned in point 6.1.11 for which the maximum level is of application from the date of entry into force of this Regulation.

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

Done at Brussels, 27 October 2015.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Section 6: 'Polycyclic aromatic hydrocarbons' of the Annex to Regulation (EC) No 1881/2006 is amended as follows:

(1) point 6.1.2 is replaced by the following:

'6.1.2	Cocoa beans and derived products with the exception of the products referred to in point 6.1.11	5,0 µg/kg fat as from 1.4.2013	35,0 µg/kg fat as from 1.4.2013 until 31.3.2015 30,0 µg/kg fat as from 1.4.2015'
--------	---	--------------------------------	---

(2) the following points 6.1.11, 6.1.12, 6.1.13, 6.1.14 and 6.1.15 are added:

'6.1.11	Cocoa fibre and products derived from cocoa fibre, intended for use as an ingredient in food	3,0	15,0
6.1.12	Banana chips	2,0	20,0
6.1.13	Food supplements containing botanicals and their preparations ⁽³⁹⁾ (*) (**) Food supplements containing propolis, royal jelly, spirulina or their preparations ⁽³⁹⁾	10,0	50,0
6.1.14	Dried herbs	10,0	50,0
6.1.15	Dried spices with the exception of cardamon and smoked <i>Capsicum</i> spp.	10,0	50,0

(*) Botanical preparations are preparations obtained from botanicals (e.g. whole, plant parts, fragmented or cut plants) by various processes (e.g. pressing, squeezing, extraction, fractionation, distillation, concentration, drying up and fermentation). This definition includes comminuted or powdered plants, plant parts, algae, fungi, lichen, tinctures, extracts, essential oils (other than the vegetable oils referred to in point 6.1.1), expressed juices and processed exudates.

(**) The maximum level does not apply to food supplements containing vegetable oils. Vegetable oils used as an ingredient in food supplements should comply with the maximum level established in point 6.1.1.'

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1934**of 27 October 2015****imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the 'basic regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) Anti-dumping measures on imports of certain tube and pipe fittings ('TPFs' or the 'product concerned') originating, in the People's Republic of China (the 'country concerned' or 'China') and Thailand were originally imposed by Council Regulation (EC) No 584/96 ⁽²⁾ (the 'original measures') and extended last time by Council Regulation (EC) No 803/2009 ⁽³⁾ (the 'measures in force').
- (2) Pursuant to Article 13(3) of the basic Regulation the original measures were extended to imports consigned from Taiwan, Indonesia, Sri Lanka and the Philippines whether declared as originating respectively in Taiwan, Indonesia, Sri Lanka and the Philippines or not, by Council Regulations (EC) No 964/2003 ⁽⁴⁾, (EC) No 2052/2004 ⁽⁵⁾, (EC) No 2053/2004 ⁽⁶⁾ and (EC) No 655/2006 ⁽⁷⁾.
- (3) The anti-dumping duties in force are 58,6 % for all companies.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Council Regulation (EC) No 584/96 of 11 March 1996 imposing a definitive anti-dumping duty on imports of certain tube or pipe fittings, of iron or steel, originating in the People's Republic of China, Croatia and Thailand, and collecting definitively the provisional duty imposed (OJ L 84, 3.4.1996, p. 1).

⁽³⁾ Council Regulation (EC) No 803/2009 of 27 August 2009 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China and Thailand, and those consigned from Taiwan, whether declared as originating in Taiwan, or not, and repealing the exemption granted to Chup Hsin Enterprise Co. Ltd and Nian Hong Pipe Fittings Co. Ltd (OJ L 233, 4.9.2009, p. 1).

⁽⁴⁾ Council Regulation (EC) No 964/2003 of 2 June 2003 imposing definitive anti-dumping duties on imports of certain tube or pipe fittings, of iron or steel, originating in the People's Republic of China and Thailand, and those consigned from Taiwan, whether declared as originating in Taiwan or not (OJ L 139, 6.6.2003, p. 1).

⁽⁵⁾ Council Regulation (EC) No 2052/2004 of 22 November 2004 extending the definitive anti-dumping duty imposed by Regulation (EC) No 964/2003 on imports of tube or pipe fittings, of iron or steel, originating in the People's Republic of China to imports of tube or pipe fittings, of iron or steel, consigned from Indonesia, whether declared as originating in Indonesia or not (OJ L 355, 1.12.2004, p. 4).

⁽⁶⁾ Council Regulation (EC) No 2053/2004 of 22 November 2004 extending the definitive anti-dumping duty imposed by Regulation (EC) No 964/2003 on imports of tube or pipe fittings, of iron or steel, originating in the People's Republic of China to imports of tube or pipe fittings, of iron or steel, consigned from Sri Lanka, whether declared as originating in Sri Lanka or not (OJ L 355, 1.12.2004, p. 9).

⁽⁷⁾ Council Regulation (EC) No 655/2006 of 27 April 2006 extending the definitive anti-dumping duty imposed by Regulation (EC) No 964/2003 on imports of tube or pipe fittings, of iron or steel, originating in the People's Republic of China to imports of tube or pipe fittings, of iron or steel, consigned from the Philippines, whether declared as originating in the Philippines or not (OJ L 116, 29.4.2006, p. 1).

1.2. Measures in force in respect of other third countries

- (4) Anti-dumping measures are currently in force on imports of TPF originating in Russia and Turkey ⁽¹⁾ and on imports of TPFs originating in the Republic of Korea and Malaysia ⁽²⁾. The measures against Thailand expired on 4 September 2014 ⁽³⁾.

1.3. Initiation of an expiry review

- (5) On 14 December 2013 the European Commission ('the Commission') published a notice of impending expiry ⁽⁴⁾ of anti-dumping measures on imports of certain tube and pipe fittings of iron or steel originating in the People's Republic of China and Thailand and those consigned from Taiwan, Indonesia, Sri Lanka and the Philippines whether declared as originating respectively in Taiwan, Indonesia, Sri Lanka, the Philippines or not.
- (6) On 2 June 2014 the Commission received a request for the initiation of an expiry review of the measures in force under Article 11(2) of the basic Regulation.
- (7) The request was lodged by the Defence Committee of the Steel Butt-Welding Fittings Industry of the European Union ('the applicant') on behalf of producers representing more than 50 % of the total Union production. The request was based on the grounds that the expiry of the measures would likely result in continuation of dumping and injury to the Union industry.
- (8) On 3 September 2014, the Commission initiated an expiry review under Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽⁵⁾.

1.4. Interested parties

- (9) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, users and importers, exporting producers in the country concerned and the Chinese authorities about the initiation of the expiry review and invited them to cooperate.
- (10) All interested parties had the opportunity to comment on the initiation of the review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.4.1. Sampling

- (11) In the Notice of Initiation, the Commission stated that it might sample interested parties, in accordance with Article 17 of the basic Regulation.

(a) Sampling of Union producers

- (12) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers and invited interested parties to comment. The sample was selected on the basis of production and sales volumes of the like product during the review investigation period in the Union whilst ensuring a geographical spread and comprised three companies/group of companies with production facilities in Austria, France, Germany and Italy. No comments were received and thus the provisionally selected companies were retained in the final sample.

⁽¹⁾ Council Implementing Regulation (EU) No 78/2013 of 17 January 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain tube and pipe fittings of iron or steel originating in Russia and Turkey OJ L 27, 29.1.2013, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) No 1283/2014 of 2 December 2014 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the Republic of Korea and Malaysia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 347, 3.12.2014, p. 17).

⁽³⁾ OJ C 297, 4.9.2014, p. 12.

⁽⁴⁾ OJ C 366, 14.12.2013, p. 35.

⁽⁵⁾ OJ C 295, 3.9.2014, p. 6.

- (13) Subsequently, one of the sampled Union producers was not able to provide a full reply to the questionnaire and was therefore replaced by another Union producer. The final sample consisted of three companies/groups of companies representing 57 % of Union production and 58 % of Union industry's sales on the Union market, and with production facilities in four different Member States (Austria, France, Germany and Italy). Interested parties were informed accordingly. The modified sample was considered representative of the Union industry.

(b) Sampling of importers

- (14) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide information specified in the Notice of Initiation. Out of twelve importers that provided the information, only six imported the product concerned from China. Out of these six companies, a sample was selected on the basis of the import volume of the product concerned in the Union during the review investigation period whilst ensuring a geographical spread and was comprised of three importers located in Germany, Greece and Italy.
- (15) All importers that came forward were informed about the proposed sample. No comments were received. The sample represented 15 % of the total imports of the product concerned.

(c) Sampling of exporting producers in China

- (16) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in China to provide the information specified in the Notice of Initiation. In addition, the Commission requested the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (17) Only one Chinese exporting producer came initially forward by providing the information requested in the sampling form. Therefore sampling was not required. Subsequently, as mentioned in recital 20, this exporting producer stopped cooperating.

1.4.2. *Replies to questionnaire*

- (18) The Commission sent questionnaires to all sampled Union producers and sampled importers in the Union and to the abovementioned Chinese exporting producer.
- (19) Replies to the questionnaires were received from the three sampled Union producers/group of producers and three sampled unrelated importers.
- (20) The Chinese exporting producer did not submit a reply to the questionnaire.

1.4.3. *Verification visits*

- (21) The Commission sought and verified all the information it deemed necessary for determining the likelihood of continuation or recurrence of dumping and injury and for assessing whether the imposition of measures would be against the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

(a) Union producers:

- Erne Fittings GmbH and the related company Siekmann Fittings GmbH, Schlins Austria,
- Vallourec Fittings SA, Maubeuge, France,
- Virgilio Cena & Figli SpA., Brescia, Italy.

(b) Importers:

- Biagini Piero & C., Altedo di Malalbergo, Italy,
- General Commercial & Industrial SA, Athens, Greece,
- Manfred Geldbach Flansch und Fitting GmbH, Gelsenkirchen, Germany.

1.5. Review investigation period and the period considered

- (22) The investigation of likelihood of recurrence of dumping covered the period from 1 July 2013 to 30 June 2014 ('the review investigation period' or 'RIP').
- (23) The examination of trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2011 to the end of the review investigation period ('the period considered').

1.6. Disclosure

- (24) The Commission disclosed to all interested parties the essential facts and considerations on the basis of which it intended to maintain the anti-dumping measures in force and invited all interested parties to comment. No comments were submitted.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (25) The product under review is the same as in the expiry review concluded in August 2009 ⁽¹⁾, i.e. tube and pipe fittings (other than cast fittings, flanges and threaded fittings), of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, originating in China, currently falling within CN codes ex 7307 93 11, ex 7307 93 19 and ex 7307 99 80.

2.2. Like product

- (26) The investigation showed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:
- the product concerned;
 - the product produced and sold on the domestic market in Saudi Arabia, which served as an analogue country; and
 - the product produced and sold in the Union by the Union industry.

- (27) The Commission concluded that these products are like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

- (28) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was taking place and whether the expiry of existing measures would be likely to lead to a continuation or recurrence of dumping.

⁽¹⁾ Council Regulation (EC) No 803/2009 of 27 August 2009 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China and Thailand, and those consigned from Taiwan, whether declared as originating in Taiwan, or not, and repealing the exemption granted to Chup Hsin Enterprise Co. Ltd and Nian Hong Pipe Fittings Co. Ltd (OJ L 233, 4.9.2009, p. 1).

- (29) As mentioned in recitals 18 and 19, while a questionnaire was sent to the Chinese exporting producer that came forward during the sampling exercise, this exporting producer did subsequently not provide a reply to the questionnaire. Consequently none of the Chinese exporting producers cooperated in the current investigation and therefore use had to be made of facts available in accordance with Article 18 of the basic Regulation.
- (30) In this regard, the Chinese authorities and the above-mentioned Chinese exporting producer that came forward during the sampling exercise were duly notified that failure to reply to the questionnaire would be considered by the Commission as non-cooperation, and that consequently, the Commission could apply Article 18 of the basic Regulation concerning the findings with regard to China. As mentioned in recital 20 above, the Commission did not receive any reply to the questionnaire.
- (31) On this basis, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping set out below were based on facts available, in particular on information from the request for the expiry review, and on available Eurostat statistics, counterchecked against the import statistics collected pursuant to Article 14(6) of the basic Regulation ('Article 14(6) database') and against information collected during the on-spot verifications of unrelated importers. The Chinese Export Statistics Database was also analysed. However, the analysis showed that its data on import volumes exceeded by far the volumes recorded in other available sources, in particular in the Article 14(6) database. Likewise, its reported average prices were largely above the average prices of other sources including the average price reported by the cooperating unrelated importers. Thus, while the data reported by all other available sources showed negligible differences amongst them, it was established that the data reported by the Chinese database was significantly different from the data reported by all the other sources analysed by the Commission. Therefore the data reported in the Chinese Export Statistics Database was considered unreliable in this case.

3.2. Dumping of imports during the review investigation period

(a) *Analogue country*

- (32) According to Article 2(7)(a) of the basic Regulation, normal value shall be determined on the basis of the price or constructed value in a market economy third country. For this purpose, a market economy third country had to be selected ('the analogue country').
- (33) Thailand was selected as an analogue country in the original investigation. During the previous expiry review the United States of America was used as analogue country because of the non-cooperation from Thai producers.
- (34) For the purpose of the current investigation the Commission informed interested parties in the Notice of Initiation that it envisaged the Republic of Korea as a possible analogue country as the Republic of Korea, contrary to the United States, had no trade defence measures in place and a Korean exporting producer had cooperated in the expiry review concerning the measures in force on imports of TPFs from Malaysia and the Republic of Korea mentioned in recital 4. The Commission invited parties to make comments on the appropriateness of this choice but none of the parties provided any comments.
- (35) The Commission sought information concerning producers of TPFs in other potential analogue countries, namely Bosnia and Herzegovina, India, Israel, Japan, Saudi Arabia, Taiwan and Thailand and invited all known producers of TPFs in these countries, including the producer in the Republic of Korea to provide the necessary information. Only one producer in Saudi Arabia cooperated and submitted a questionnaire reply.
- (36) As set out in recital 26, the investigation revealed that TPFs produced and sold on the domestic market in Saudi Arabia had the same basic physical and chemical characteristics and the same end uses as the product produced and exported by the Chinese exporting producers to the Union.
- (37) The investigation did not reveal any distortions in the domestic market of Saudi Arabia. Although there was only one producer, there were no trade defence measures in place and the domestic producer competed with imports from China, South Korea, Thailand and Japan. On this basis it was concluded that the level of competition in the Saudi market was satisfactory

- (38) The investigation also established that the quantities produced and sold on the Saudi domestic market were representative when compared to the total exports made from China to the Union according to Eurostat.
- (39) As mentioned in recital 45 the investigation revealed that the Saudi producer's domestic sales of TPFs were, on average, loss-making. Nonetheless, the average cost of production was found to be in the same range as that of the Union industry and the audited financial statements were prepared on a 'going concern basis'. On this basis it was considered that the company will remain viable in the foreseeable future.
- (40) Considering the above, Saudi Arabia was considered as an appropriate analogue country under Article 2(7)(a) of the basic Regulation.

(b) *Normal value*

- (41) The information received from the cooperating producer in Saudi Arabia was used as a basis for the determination of the normal value applicable to exporting producers in China.
- (42) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the total volume of domestic sales for the cooperating producer in Saudi Arabia was representative during the review investigation period.
- (43) The domestic sales were considered representative if the total domestic sales volume of the like product to independent customers on the domestic market represented at least 5 % of the total export sales volume of the product concerned to the Union during the review investigation period. The total export sales volume was established based on Eurostat statistics, as explained in recital 31. On this basis the domestic sales in Saudi Arabia were considered to be representative.
- (44) The Commission further examined whether the domestic sales of the like product could be regarded as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.
- (45) The investigation established that over an extended period of time the weighted average domestic sales price was below the weighted average cost of production. Therefore they could not be considered as having been made in the ordinary course of trade. Consequently, normal value was constructed based on the cost of manufacturing to which a reasonable amount of selling, general and administrative costs ('SG&A') and profit were added in accordance with Articles 2(3) and 2(6) of the basic Regulation.
- (46) In accordance with the chapeau of Article 2(6) of the basic Regulation SG&A costs were determined based on data from the cooperating producer in the analogue country. In the absence of any information with regard to the actual profit of the exporting producer, a reasonable profit level was used in accordance with Article 2(6)(c) of the basic Regulation. A profit of 5 % was deemed to be reasonable in the metalworking industry. The dumping margin amounted to 136 %.

(c) *Export price*

- (47) The export price was based on facts available in accordance with Article 18 of the basic Regulation, i.e. on Eurostat statistics cross-checked with the information provided by the applicant in the request, the Article 14(6) database and with data obtained from the cooperating unrelated importers.

(d) *Comparison*

- (48) The Commission compared the normal value and the export price on an ex-works basis. Where justified for the purpose of a fair comparison, the export price and normal value were adjusted for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport costs (ocean freight), insurance costs and custom clearance fees, based on verified information provided by unrelated importers.

(e) *Dumping margin*

- (49) The Commission compared the weighted average normal value to the weighted average export price as established above in accordance with Article 2(11) and 2(12) of the basic Regulation. Given the lack of cooperation from the Chinese exporting producers, the product types exported from China could not be determined. Therefore, a comparison per product type was not possible.

- (50) On this basis, the weighted average dumping margin expressed as a percentage of the cost, insurance, freight ('CIF) Union frontier price, duty unpaid, was over 136 %.

3.3. Development of imports should measures be repealed

(a) Preliminary remark

- (51) Further to the findings of dumping during the review investigation period, the Commission investigated the likelihood of continuation of dumping in the absence of measures. The following elements were analysed: the production capacity and spare capacity in China, the Chinese export behaviour in other third countries and the attractiveness of the Union market.

(b) Production capacity and spare capacity in China

- (52) Chinese production, production capacity and spare capacity were established on estimates provided by the applicant. On this basis, the total production volume in China was estimated at 435 000 tonnes and the total production capacity at 612 000 tonnes. Thus, the total spare capacity in China was estimated at 177 000 tonnes, representing almost three times the Union consumption during the review investigation period. As explained in recitals 53 to 56, large parts of this spare capacity are likely to be redirected to the Union.

(c) Chinese export behaviour in other third countries

- (53) In the absence of any publicly available information and due to the non-cooperation of the Chinese exporting producers, the level of the average Chinese export prices to other third country markets could not be established. However, the Chinese exporting producers engaged in unfair trading practices on the US market where anti-dumping measures against TPFs have been in force since 1992. On this basis, and considering also past and current dumping practices in the Union market, there is no reason to believe that Chinese exporters will change export price behaviour in the near future.

(d) Attractiveness of the Union market

- (54) Even with the duties in place, the Chinese exporting producers increased their export volumes to and market share in the Union, which indicates a continued interest of Chinese exporting producers in the Union market. This is also confirmed by past circumvention practices by transshipment of TPFs via Taiwan, Indonesia, Sri Lanka and the Philippines (see recital 2).
- (55) Even if considering that domestic consumption in China and in other third countries could increase, the high level of production overcapacity in China exceeding by far the total Union consumption suggests that Chinese exporting producers will still have significant quantities available to export to the Union market should measures be allowed to lapse. Considering that the US, another large market of TPFs, has high anti-dumping measures in place regarding imports of TPFs from China, it is likely that large quantities of these spare capacities will be redirected to the Union should measures be allowed to lapse.
- (56) Considering past and present dumping practices of the Chinese exporting producers, as explained in recital 50 above, and the fact that TPFs from China are subject to anti-dumping measures when imported on the US market, it is considered that the Union market will remain attractive to Chinese exporting producers.

3.4. Conclusion on the likelihood of continuation of dumping

- (57) The investigation established that Chinese imports continued to enter the Union market at significantly dumped prices during the review investigation period. In view of the significant spare capacity available in China (almost three times the Union consumption), the export behaviour to the US market and the attractiveness of the Union market, the Commission concluded that there is a likelihood of continuation of dumping should the measures be removed.

4. LIKELIHOOD OF RECURRENCE OF INJURY

4.1. Definition of the Union industry and Union production

- (58) The Union industry did not undergo any major structural changes compared to the investigation period of the last expiry review mentioned in recital 1 above. The like product was manufactured by 22 known producers in the Union during the RIP. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (59) The total Union production during the RIP was established at 48 868 tonnes. The Commission established this figure on the basis of the data provided by the applicant, which was cross-checked with the verified data of the sampled companies.
- (60) As indicated in recital 11, three Union producers/groups of producers were selected in the final sample. The sampled companies/groups of companies represented 57 % of Union production and 58 % of Union sales (see recital 13 above). The sample was considered representative for the Union industry.

4.2. Union consumption

- (61) The Commission established the Union consumption on the basis of (i) the volume of sales of the Union industry on the Union market based on the data provided by the applicant; and (ii) imports from third countries based on Eurostat. As explained in recital 31 the data reported in the Chinese Export Statistics Database was found to be unreliable and thus, it was not used to establish export volumes from China.
- (62) Union consumption developed as follows:

Table 1

Union consumption (tonnes)

	2011	2012	2013	RIP
Total Union consumption	57 897	59 916	60 503	58 113
<i>Index</i>	100	103	104	100

Source: Data provided by the applicant and Eurostat.

- (63) In 2012 and 2013 the consumption increased slightly by 3 % and 4 % respectively compared to the level in 2011 reaching 59 916 tonnes in 2012 and 60 503 tonnes in 2013. In the RIP it decreased to a slightly higher level than in 2011, i.e. to 58 113 tonnes. Overall Union consumption remained thus stable over the period considered.

4.3. Imports from the country concerned

4.3.1. Volume and market share of the imports from the country concerned

- (64) The Commission established the volume of imports on the basis of Eurostat. The total volume of imports from China as shown in the table below includes imports of TPFs originating in China and TPFs consigned from Taiwan, Indonesia, Sri Lanka and the Philippines, in view of the extension of the measures to imports consigned from these countries as referred to in recital 2.

- (65) Imports to the Union from China developed as follows:

Table 2

Import volume (tonnes) and market share

	2011	2012	2013	RIP
TPF originating in China	3 739	6 789	7 091	8 058
TPF consigned from Taiwan, Indonesia, Sri Lanka and the Philippines	1 051	1 168	1 342	1 377
Total volume of imports from China	4 790	7 957	8 433	9 435
<i>Index</i>	100	166	176	197
Market share	8 %	13 %	14 %	16 %

Source: Eurostat.

- (66) During the period considered the total volume of imports from China increased continuously and almost doubled from 4 790 tonnes in 2011 to 9 435 tonnes in the RIP. The Chinese market share followed the same trend and doubled in the period considered from 8 % in 2011 to 16 % in the RIP.

4.3.2. Prices of the imports from the country concerned and price undercutting

- (67) The Commission established the prices of imports on the basis of Eurostat. The average import price as shown in the table below includes TPFs originating in China and TPFs consigned from Taiwan, Indonesia, Sri Lanka and the Philippines for the same reasons set out in recital 64. On this basis, the average price of imports into the Union from the country concerned developed as follows.

Table 3

Import prices (EUR/ton)

	2011	2012	2013	RIP
TPF originating in China	1 347	1 646	1 299	1 179
TPF consigned from Taiwan, Indonesia, Sri Lanka and the Philippines	2 200	2 700	2 633	2 623
China average	1 534	1 801	1 511	1 388
<i>Index</i>	100	117	98	90

Source: Eurostat.

- (68) During the period considered the average import price was subject to considerable fluctuations. First, the price went up by 17 % from 1 534 EUR/ton in 2011 to 1 801 EUR/ton in 2012. Import price decreased in 2013 to 1 511 EUR/ton and to 1 388 EUR/ton in the RIP. Overall, the import price decreased by 10 % during the period considered.
- (69) The Commission determined the price undercutting during the investigation period by comparing the weighted average sales price of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level and the average price of the imports from the country concerned to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis on the basis of Eurostat, with appropriate adjustments for customs duties and post-importation costs.

- (70) As mentioned in recital 49, given the lack of cooperation from the Chinese exporting producers, the product types exported from China could not be determined. Therefore, a comparison on a per-type basis was not possible. The price comparison was made for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of 20,5 %.

4.3.3. Imports from third countries

- (71) The following table shows the development of imports to the Union from other third countries during the period considered in terms of volume and market share as well as the average price of these imports.

Table 4

Imports from third countries

		2011	2012	2013	RIP
Third country imports	Volume in tonnes	9 078	11 560	11 273	11 556
	<i>Index</i>	100	127	124	127
	Market share	16 %	19 %	19 %	20 %
	Average price (EUR/ton)	2 596	2 473	2 584	2 442
	<i>Index</i>	100	95	100	94

Source: Eurostat.

- (72) The volume of imports from other third countries grew from about 9 078 tonnes in 2011 to about 11 556 tonnes in the RIP i.e. by 27 %. This increase occurred mainly between 2011 and 2012, whereas import volumes remained afterwards relatively stable until the end of the RIP. Such increase is reflected in the market share of these imports which grew from 16 % in 2011 to 19 % in 2012 and remained then relatively stable with only a slight increase to 20 % in the RIP. The average import price went down by 5 % in 2012 and then increased by 5 % in 2013. In the RIP it went down again by 6 %. On average these prices were lower than the prices of the Union industry.
- (73) In the RIP the imports came mainly from Vietnam, Cambodia, Thailand, and Israel. They developed as shown below.

Table 5

Import volume (tonnes) from main other third countries

Volume of imports per country	2011	2012	2013	RIP
Vietnam	1 158	1 602	2 635	2 562
<i>Index</i>	100	138	228	221
Cambodia	0	0	365	1 368
<i>Index</i>	100	100	365	1 368

Volume of imports per country	2011	2012	2013	RIP
Thailand	2 520	2 559	1 974	1 357
<i>Index</i>	100	102	78	54
Israel	128	547	745	973
<i>Index</i>	100	427	582	760

Source: Eurostat.

- (74) Imports from Vietnam doubled in the period considered reaching about 2 562 tonnes in the RIP. Imports from Thailand decreased significantly (by 47 %) since 2011 reaching in the RIP the level of 1 357 tonnes. Finally, imports from Cambodia and Israel grew significantly in the period considered to the level of 1 368 tonnes and 973 tonnes, respectively, in the RIP.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (75) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (76) For the injury analysis, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the request for review; the data relate to all known Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers and the data related to the sampled Union producers. Both sets of data have been found to be representative of the economic situation of the Union industry.
- (77) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (78) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital. Figures relating to the microeconomic indicators are based on verified data from the sampled companies or groups of companies only.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

- (79) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 6

Production, production capacity and capacity utilisation

	2011	2012	2013	RIP
Production volume (tonnes)	53 797	54 951	54 572	48 868
<i>Index</i>	100	102	101	90

	2011	2012	2013	RIP
Production capacity (tonnes)	184 220	164 220	164 220	164 220
<i>Index</i>	100	89	89	89
Capacity utilisation	29 %	33 %	33 %	29 %

Source: Request.

- (80) The production volume remained relatively stable between 2011 and 2013 but decreased in the RIP by 10 % to the level of 48 868 tonnes.
- (81) The production capacity of the Union producers remained at the level of 164 220 tonnes since 2012 after a capacity reduction of 11 % in 2011. The reported capacity depicted in the table above was based, in line with the standard practice of this particular industry and the method used in the previous proceedings referred to in recital 4, on the theoretical maximum capacity on the basis of 3 shifts/day, 6 days/week, 48 weeks/year. However, in reality, the industry is only operating on the basis of 2 shifts/day, 5 days/week, 48 weeks/year. The reported capacity does therefore not necessarily reflect accurately the actual capacity during the RIP.
- (82) The capacity utilisation during the RIP stayed at a low level of 29 %. The capacity utilisation increased during the period considered to reach the level of 33 % in 2012 and 2013. This reflects a slight increase in the production volume in these years. As explained in recital 81, the low level of capacity utilisation is partly due to the method to calculate total capacity.

4.4.2.2. Sales volume and market share

- (83) The Union industry's sales volume and market share developed over the period considered as follows:

Table 7

Sales volume and market share

	2011	2012	2013	RIP
Sales volume on the Union market (tonnes)	44 030	40 399	40 797	37 121
<i>Index</i>	100	92	93	84
Market share	76 %	67 %	67 %	64 %

Source: Request.

- (84) The sales volumes on the Union market decreased by 8 % in 2012 compared to the volumes sold in 2011. They only slightly increased in 2013 and dropped again in the RIP to the level of 37 121 tonnes, i.e. overall sales volume decreased by 16 % when compared to 2011.
- (85) The decline in sales of the Union industry was reflected in their market share, which declined by 12 percentage points in the period considered, i.e. from 76 % in 2011 to 64 % in the RIP.

4.4.2.3. Employment and productivity

- (86) Employment and productivity developed over the period considered as follows:

Table 8

Employment and productivity

	2011	2012	2013	RIP
Number of employees	1 092	1 006	962	947
<i>Index</i>	100	92	88	86
Productivity (unit/employee)	49	55	57	52
<i>Index</i>	100	112	116	106

Source: Request.

- (87) During the period considered the number of employees progressively decreased by 14 % from 1 092 employees in 2011 to 947 employees in the RIP. As the production remained at the same level in 2012 and 2013, the productivity of the Union producers' workforce measured as output (tonnes) per person employed per year, rose by respectively 12 % and 16 % in these years compared to 2011. In the RIP the productivity decreased as a result of the decline in production but it exceeded the level of 2011 by 6 %.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

- (88) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 9

Sales prices in the Union and unit cost

	2011	2012	2013	RIP
Average unit selling price in the Union on the total market (EUR/tonnes)	2 774	2 902	2 808	2 892
<i>Index</i>	100	105	101	104
Unit cost of production (EUR/ton)	3 081	3 100	3 042	3 118
<i>Index</i>	100	101	99	101

Source: Verified data of the sampled companies.

- (89) The sales prices in the Union remained relatively stable and showed only minor fluctuations. Thus they increased in 2012 by 5 %, decreased in 2013 by 4 % and increased again in the RIP by 3 %. In the period considered prices increased overall by 4 %. The unit cost of production followed the same trend, i.e. it first increased

in 2012, then decreased in 2013 and increased again in the RIP. However, these fluctuations were minor and only between 1 % and 2 %. Overall, the unit cost of production increased by 1 % during the period considered. Therefore, the slightly higher increase of the sales prices during the period considered allowed improving profitability of the Union producers, which nevertheless remained negative throughout the period considered as shown in recital 94.

4.4.3.2. Labour costs

- (90) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 10

Average labour costs per employee

	2011	2012	2013	RIP
Average labour costs per employee (EUR)	53 347	54 409	55 868	55 715
<i>Index</i>	100	102	105	104

Source: Verified data of the sampled companies.

- (91) The average labour costs per employee had a slightly increasing trend in the period considered. Between 2011 and the RIP the average labour costs per employee increased by 4 % to EUR 55 715. The reduction of the personnel by 14 % in the period considered did not bring immediate economies to the companies due to charges resulting from the termination of the contracts.

4.4.3.3. Inventories

- (92) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 11

Inventories

	2011	2012	2013	RIP
Closing stocks (tonnes)	6 657	6 851	6 807	5 749
<i>Index</i>	100	103	102	86
Closing stocks as a percentage of production	22 %	21 %	29 %	21 %

Source: Verified data of the sampled companies.

- (93) The closing stock first slightly increased in 2012 and then decreased again, from 2012 to 2013 by 1 % and from 2013 to the RIP by 16 %. Overall, the stocks decreased by 14 % during the period considered. Compared to the level of production, the closing stock decreased by 1 percentage point between 2011 and the RIP.

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

- (94) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 12

Profitability, cash flow, investments and return on investments

	2011	2012	2013	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	– 11,2 %	– 5,5 %	– 8,3 %	– 9,1 %
Cash flow (EUR)	– 7 791 330	– 518 192	– 2 540 656	– 1 790 761
<i>Index</i>	100	1 504	307	435
Investments (EUR)	2 388 945	3 111 518	4 339 627	3 362 845
<i>Index</i>	100	130	182	141
Return on investments	– 21,4 %	– 18,8 %	– 13,6 %	– 15,3 %

Source: Verified data of the sampled companies.

- (95) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (96) During the period considered the Union industry suffered significant losses. In 2011 the industry registered a loss of – 11,2 %, which decreased to – 5,5 % in 2012 to increase again in 2013 and in the RIP to – 8,3 % and – 9,1 %, respectively.
- (97) The net cash flow is the ability of the Union producers to self-finance their activities. The cash flow remained negative in the period considered despite an improvement, in particular in 2012.
- (98) The investments followed an increasing trend and were related to improve security of the production process, lower the energy consumption and increase the competitiveness and quality of TPFs. Investments increased in 2012 and again in 2013 but decreased in the RIP. Compared to 2011 the investments increased by 30 % in 2012, by 82 % in 2013 and by 41 % in the RIP. Such an increase in investments did not however translate into a positive return on investments, which is the profit in percentage of the net book value of investments. It ranged between – 21,4 % in 2011 and – 15,3 % in the RIP.

4.4.3.5. Magnitude of the dumping margin and recovery from past dumping

- (99) The dumping margin established by the investigation is well above the *de minimis* level. The impact of the magnitude of the actual margin of dumping on the Union industry is substantial, given the volume and prices of imports from the country concerned.
- (100) The Union industry was still in a recovery process from the effects of past injurious dumping by imports of TPFs originating in Russia, Turkey, Republic of Korea and Malaysia.

4.5. Conclusion on the situation of the Union industry

- (101) Almost all main injury indicators showed a negative trend. The production volume decreased by 9 % and the production capacity by 11 % during the period considered. The Union industry remained in important losses during the entire period considered. Although slightly improving, the losses of the Union industry amounted to – 9,1 % in the RIP. In addition, the Union industry had a continuously negative cash flow and a reduction in employment by about 11 % in the period considered. Moreover the sales went down by 16 % and the market share of the Union producers shrank by 12 percentage points.
- (102) The inventories slightly improved by decreasing by 14 % and the investments increased by 41 % during the period considered. The latter however were necessary for the Union producers, inter alia, to be able to compete on the market. Such growth alone, though, does not preclude the existence of injury and should rather be seen as a part of the ongoing restructuring process of the Union industry.
- (103) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. LIKELIHOOD OF CONTINUATION OF INJURY

5.1. Impact of the projected volume of imports and price effects in case of repeal of measures

- (104) In recital 57, the Commission concluded that the repeal of the measures would in all likelihood result in a continuation of dumped imports from the country concerned.
- (105) The investigation has shown that the Union industry suffered material injury during the review investigation period, which was translated, inter alia, in a drop in production, sales volume, market share, employment and a continuous lack of profit as referred to in recital 101.
- (106) Despite the high duties in place, the volume of imports from China increased significantly during the period considered and consequently the Chinese market share doubled (see recital 65). The price pressure in the Union market remained very high given the significant undercutting margins found during the RIP.
- (107) Furthermore, as mentioned above in recital 52, available spare production capacity in China represented almost three times the Union consumption during the review investigation period. Therefore, should the measures be repealed, it is likely that high volumes of the product concerned will penetrate the Union market.
- (108) Considering the past and current price behaviour of the exporting producers in the country concerned it is expected that imports will continue to be at dumped prices thus undercutting the Union industry's prices significantly. Dumped imports would certainly have a negative impact on the Union industry. It would exercise an even stronger price pressure on the Union industry and would thus contribute to further deteriorating the financial results of the Union industry. These imports would continue to take up market share on the Union market at the Union Industry's expense. This would result in even lower capacity utilisation by the Union industry which is one of the crucial elements contributing to the negative results of the Union industry over the period considered.
- (109) The Commission therefore concluded that the repeal of the measures in force would very likely result in a continuation of injury to the Union Industry within the meaning of Article 11(2) of the basic regulation.

6. UNION INTEREST

- (110) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures against China would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

- (111) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (112) On this basis it was examined whether, despite the conclusions on the likelihood of continuation of dumping and on the likelihood of continuation of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

6.1. Interest of the Union industry

- (113) The anti-dumping measures in force did not prevent dumped imports from entering the Union market and the Union industry suffered material injury during the period considered.
- (114) The Union industry proved to be a structurally viable industry. The efforts aimed at rationalisation of the production process and enhancement of competitiveness and quality resulted in the RIP in an increased productivity (by 6 %) and a reduced production capacity (by 11 %). They were also visible through investments (see recital 98). Finally, profitable export activity of the Union industry developed positively showing that it was competitive on third country markets (exports of the sampled producers increased by 10 % over the period considered).
- (115) Should the measures be allowed to lapse, the likely influx of substantial volumes of dumped imports from the country concerned would deteriorate further the situation of the Union industry. This influx would likely cause, amongst others, further loss of market share, decrease in sales price, decrease in capacity utilisation and in general a further serious deterioration of the Union industry's financial situation.
- (116) The Commission thus concluded that the maintenance of anti-dumping measures against China would be in the interest of the Union industry.

6.2. Interest of unrelated importers and users

- (117) Twelve importers cooperated in the current investigation but only six reported imports of TPFs from the country concerned. A sample of three unrelated importers representing 15 % of the total imports from China in the RIP was selected. The product concerned constituted on average only about 10 % of their total sales. Their business activity related to the product concerned has been profitable. On this basis the measures in force have not affected significantly the verified importers.
- (118) The investigation also revealed that the importers continued to import the product concerned in significant volumes, even raising them during the period considered. On the same grounds, it is unlikely that a continuation of the measures would lead to deterioration in their economic situation in the future.
- (119) None of the users cooperated or made themselves known in the current investigation. Their lack of cooperation seems to confirm the conclusions reached in the original investigation that TPFs represent a very small part of their total production costs and that the measures in force do not appear to have caused any loss of competitiveness to them.

6.3. Conclusion on Union interest

- (120) On the basis of the above, the Commission concluded that there were no compelling reasons against the extension of the anti-dumping measures in force.

7. ANTI-DUMPING MEASURES

- (121) It follows from the above considerations that, under Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain tube and pipe fittings originating in China should be maintained.

- (122) As a consequence, the extension of the measures for the product concerned originating in China to imports consigned from Taiwan ⁽¹⁾, Indonesia ⁽²⁾, Sri Lanka ⁽³⁾ and the Philippines ⁽⁴⁾, whether declared as originating in Taiwan, Indonesia, Sri Lanka and the Philippines or not, should also be maintained.
- (123) This regulation is in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of tube and pipe fittings (other than cast fittings, flanges and threaded fittings), of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, currently falling within CN codes ex 7307 93 11, ex 7307 93 19 and ex 7307 99 80 (TARIC codes 7307 93 11 91, 7307 93 11 93, 7307 93 11 94, 7307 93 11 95, 7307 93 11 99, 7307 93 19 91, 7307 93 19 93, 7307 93 19 94, 7307 93 19 95, 7307 93 19 99, 7307 99 80 92, 7307 99 80 93, 7307 99 80 94, 7307 99 80 95 and 7307 99 80 98) and originating in the People's Republic of China.

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

Country	Company	Rate of duty (%)	TARIC additional codes
China	All companies	58,6	—

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

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, 27 October 2015.

For the Commission

The President

Jean-Claude JUNCKER

⁽¹⁾ Regulation (EC) No 964/2003.

⁽²⁾ Regulation (EC) No 2052/2004.

⁽³⁾ Regulation (EC) No 2053/2004.

⁽⁴⁾ Regulation (EC) No 655/2006.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1935**of 27 October 2015****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 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽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 multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (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, 27 October 2015.

*For the Commission,
On behalf of the President,*

Jerzy PLEWA
Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽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	43,6
	MA	95,1
	MK	86,8
	TR	112,1
	ZZ	84,4
0707 00 05	AL	32,3
	TR	112,1
	ZZ	72,2
0709 93 10	MA	116,3
	TR	144,3
	ZZ	130,3
0805 50 10	AR	130,2
	TR	107,0
	UY	83,2
	ZA	133,8
	ZZ	113,6
0806 10 10	BR	251,7
	EG	210,4
	LB	234,5
	MK	88,0
	PE	75,0
	TR	177,3
	ZZ	172,8
0808 10 80	AL	23,1
	CL	85,3
	NZ	143,1
	ZA	138,5
	ZZ	97,5
0808 30 90	TR	135,8
	ZZ	135,8

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COMMISSION DELEGATED DECISION (EU) 2015/1936

of 8 July 2015

on the applicable systems to assess and verify constancy of performance of ventilation ducts and pipes for air ventilation pursuant to Regulation (EU) No 305/2011 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC ⁽¹⁾, and in particular Article 60(h) thereof,

Whereas:

- (1) The assessment and verification of constancy of performance of ventilation ducts and pipes intended to be used for air ventilation should be carried out in accordance to the systems set out in Annex V to Regulation (EU) No 305/2011.
- (2) It is therefore necessary to establish which systems of assessment and verification of constancy of performance are applicable to ventilation ducts and pipes intended to be used for air ventilation. This should enable manufacturers to access the internal market more efficiently, thus contributing to greater competitiveness of the construction industry as a whole
- (3) This Decision should only apply to products not within the scope of other corresponding acts of Union law. Thus, it should not apply to ducts and pipes used for fixed fire-fighting systems since they are already covered by Commission Decision 96/577/EC ⁽²⁾ and Commission Decision 1999/472/EC ⁽³⁾,

HAS ADOPTED THIS DECISION:

Article 1

This Decision applies to ventilation ducts and pipes intended to be used in construction works for air ventilation as set out in Annex I.

Article 2

The products referred to in Article 1 shall be assessed and verified for constancy of performance in relation to their essential characteristics in accordance with the systems specified in Annex II.

⁽¹⁾ OJ L 88, 4.4.2011, p. 5.

⁽²⁾ Commission Decision 96/577/EC of 24 June 1996 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards fixed fire-fighting systems (OJ L 254, 8.10.1996, p. 44).

⁽³⁾ Commission Decision 1999/472/EC of 1 July 1999 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards pipes, tanks and ancillaries not in contact with water intended for human consumption (OJ L 184, 17.7.1999, p. 42).

Article 3

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

Done at Brussels, 8 July 2015.

For the Commission
The President
Jean-Claude JUNCKER

*ANNEX I***PRODUCTS COVERED**

This Decision applies to:

1. Ventilation ducts and pipes intended to be used in construction works for air ventilation.

ANNEX II

SYSTEMS OF ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE

For the products covered by this Decision, taking into account their essential characteristics, the systems for Assessment and Verification of Constancy of Performance apply as follows:

Table 1

For all essential characteristics except for reaction to fire

Products	Essential Characteristics	Applicable system for Assessment and Verification of Constancy of Performance as set out in Annex V to Regulation (EU) No 305/2011
Ventilation ducts and pipes intended to be used in construction works for air ventilation	For all essential characteristics except for reaction to fire	3

Table 2

For reaction to fire only

For all products indicated in the first column of Table 1, the systems for Assessment and Verification of Constancy of Performance are determined, depending on their subfamilies, as follows:

Product subfamilies	Applicable system for Assessment and Verification of Constancy of Performance as set out in Annex V to Regulation (EU) No 305/2011
Products for which a clearly identifiable stage in the production process results in an improvement of their reaction to fire performance (e.g. an addition of fire retardants or a limiting of organic material)	1
Products for which an applicable European legal base exists to classify their reaction of fire performance without testing	4
Products not belonging to the subfamilies indicated in rows 1 and 2	3

COMMISSION DECISION (EU) 2015/1937
of 21 October 2015
establishing an independent advisory European Fiscal Board

THE EUROPEAN COMMISSION,

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

Whereas:

- (1) The Stability and Growth Pact aims to secure budgetary discipline across the Union and sets out the framework for preventing and correcting excessive government deficits, whereas strengthened surveillance of budgetary policies applies to Member States whose currency is the euro.
- (2) The related competences conferred upon the Commission and the Council with regard to the multilateral surveillance framework are rooted in the Treaties and Union secondary legislation.
- (3) The Five Presidents' Report 'Completing Europe's Economic and Monetary Union' proposes to strengthen the current economic governance framework through the creation of an advisory European Fiscal Board. It should contribute in an advisory capacity to the exercise of the Commission's functions in the multilateral surveillance in the euro area. This is without prejudice to the Treaty-based competences of the Commission.
- (4) The Board should provide the Commission with an evaluation of the implementation of the Union fiscal framework, in particular regarding the horizontal consistency of the decisions and implementation of budgetary surveillance, cases of particularly serious non-compliance with the rules, and the appropriateness of the actual fiscal stance at euro area and national level.
- (5) As the Stability and Growth Pact centres on national budgets and does not specify the aggregate fiscal stance, the Board should also contribute to a more informed discussion within the Commission of the overall implications of budgetary policies at euro area and national level, with a view to achieving an appropriate fiscal stance for the euro area, within the rules of the Stability and Growth Pact.
- (6) The European Fiscal Board should perform its tasks independently and prepare its opinions autonomously from any national or European institution, body, office or agency. Its secretariat should be administratively attached to the Commission's Secretariat-General,

HAS DECIDED AS FOLLOWS:

Article 1

Establishment

An independent European Fiscal Board ('the Board') is established.

Article 2

Mission and tasks

1. The Board shall contribute in an advisory capacity to the exercise of the Commission's functions in the multilateral fiscal surveillance as set out in Articles 121, 126 and 136 TFEU as far as the euro area is concerned.

2. For the purposes of paragraph 1, the Board shall carry out the following tasks.
 - (a) The Board shall provide to the Commission an evaluation of the implementation of the Union fiscal framework, in particular regarding the horizontal consistency of the decisions and implementation of budgetary surveillance, cases of particularly serious non-compliance with the rules, and the appropriateness of the actual fiscal stance at euro area and national level. In this evaluation, the Board may also make suggestions for the future evolution of the Union fiscal framework.
 - (b) The Board shall advise the Commission on the prospective fiscal stance appropriate for the euro area as a whole based on an economic judgment. It may advise the Commission on the appropriate national fiscal stances that are consistent with its advice on the aggregate fiscal stance of the euro area within the rules of the Stability and Growth Pact. Where it identifies risks jeopardising the proper functioning of the Economic and Monetary Union, the Board shall accompany its advice with a specific consideration of the policy options available under the Stability and Growth Pact.
 - (c) The Board shall cooperate with the national fiscal councils as referred to in Article 6(1)(b) of Council Directive 2011/85/EU ⁽¹⁾. The cooperation between the Board and the national fiscal councils shall in particular aim at exchanging best practices and facilitating common understanding on matters related to the Union fiscal framework.
 - (d) On the request of the President, the Board shall provide ad-hoc advice.

Article 3

Composition

1. The Board shall be composed of a Chair and four members.
2. The Chair shall be responsible for overseeing the performance of tasks entrusted to the Board and ensuring its proper functioning. He/She shall convene and chair meetings of the Board. The Chair and one member shall be appointed by the Commission upon proposal of the President, after having consulted the Vice-President for the Euro and Social Dialogue and the Commissioner for Economic and Financial Affairs, Taxation and Customs. The other three members shall be appointed by the Commission upon proposal of the President, after having consulted the national fiscal councils, the European Central Bank and the Eurogroup Working Group. For all Board members, including the Chair, an equal opportunities policy shall apply.
3. The Chair and the members of the Board shall be renowned international experts appointed on the basis of merit, skills, knowledge of macroeconomics and public finances, and experience relevant to fiscal policy and budgetary management.
4. The members of the Board shall be appointed for a period of 3 years, renewable once.
5. The Chair and the members of the Board shall be appointed as Special Advisors, whose status and remuneration are defined pursuant to Articles 5, 123 and 124 of the Conditions of Employment of Other Servants.
6. Travel and subsistence expenses incurred by the Chair and the members shall be reimbursed by the Commission in accordance with the provisions in force within the Commission. Those expenses shall be reimbursed within the limits of the available appropriations allocated under the annual procedure for the allocation of resources.
7. The Board shall be supported by a secretariat consisting of a Head of secretariat and dedicated supporting staff members. The secretariat is attached, for administrative purposes, to the Secretariat-General and shall be responsible for the following activities:
 - (a) assist in the decision-making process of the Board by preparing the meetings of the Board, reviewing the documents to be discussed and monitoring the progress of work against the priorities set out by the Board;

⁽¹⁾ Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States (OJ L 306, 23.11.2011, p. 41).

- (b) provide high-quality analytical, statistical, administrative and logistical support to the Board under the direction of the Chair;
- (c) ensure cooperation with the national fiscal councils as necessary for supporting the mission and tasks of the Board in line with Article 2.

8. The Chief Economic Analyst established by Decision C(2015) 2665 shall exercise the function of Head of Secretariat. His/Her tasks shall include preparing the setting up of the Board. The other members of the secretariat shall be officials, temporary agents, contract agents, and seconded national experts, selected by the Head of Secretariat in agreement with the Chair. All members of the secretariat shall be selected on the basis of high levels of qualification and experience in areas relevant for the Board's activity and be assigned or attached (*mis à disposition*).

Article 4

Independence

1. In the performance of their tasks, the members of the Board shall act independently and shall neither seek nor take instructions from the Union's institutions or bodies, from any government of a Member State or from any other public or private body. The members of the secretariat shall take instructions only from the Board.
2. The members of the Board shall disclose any potential conflict of interest with respect to a particular assessment or opinion to the Chair, who shall take any appropriate measure, and may decide that the member concerned shall not participate in the preparation and adoption of that assessment or opinion. As regards the Chair, any such difficulty shall be settled by decision of the Board.

Article 5

Functioning

1. The Board shall adopt its advice only when at least three members, including the Chair, are present. The Board shall seek to adopt advice as much as possible by consensus. If no consensus can be reached, it shall decide by a simple majority of its members present at the meeting including the Chair, abstentions not counting as a vote. In the event of a tie, the Chair shall have the casting vote.
2. The Board shall establish its Rules of Procedure.
3. The Board shall operate in accordance with its Rules of Procedure. The meetings of the Board shall not be open to the public.
4. A memorandum of understanding laying down practical modalities regarding the scope and means of cooperation, including in particular the access to relevant information, shall be concluded between the Board and relevant Commission services.

Article 6

Transparency

The Board shall publish an annual report of its activities, which shall include summaries of its advice and evaluations rendered to the Commission.

*Article 7***Final provisions**

This decision takes effect on 1 November 2015.

Done at Brussels, 21 October 2015.

For the Commission

The President

Jean-Claude JUNCKER

GUIDELINES

GUIDELINE (EU) 2015/1938 OF THE EUROPEAN CENTRAL BANK

of 27 August 2015

amending Guideline (EU) 2015/510 of the European Central Bank on the implementation of the Eurosysteem monetary policy framework (ECB/2015/27)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the first indent of Article 3.1, Articles 9.2, 12.1, 14.3, 18.2 and the first paragraph of Article 20 thereof,

Whereas:

- (1) Achieving a single monetary policy entails defining the tools, instruments and procedures to be used by the Eurosysteem, which consists of the European Central Bank (ECB) and the national central banks of those Member States whose currency is the euro (hereinafter the 'NCBs'), in order to implement such a policy in a uniform manner throughout the Member States whose currency is the euro.
- (2) The implementation of the Eurosysteem's monetary policy framework should ensure that a broad range of counterparties can participate under uniform eligibility criteria. These criteria are specified to ensure the equal treatment of counterparties across the Member States whose currency is the euro and that counterparties fulfil certain prudential and operational requirements.
- (3) In light of recent legislative developments with respect to the implementation of the banking union, the Governing Council has decided to further refine the rules applicable to counterparties to the Eurosysteem's monetary policy operations.
- (4) The Governing Council decided to introduce a new category of eligible non-marketable assets into the Eurosysteem collateral framework, namely, non-marketable debt instruments backed by eligible credit claims.
- (5) Therefore, Guideline ECB/2014/60 ⁽¹⁾ should be amended accordingly,

HAS ADOPTED THIS GUIDELINE:

Article 1

Guideline ECB/2014/60 is amended as follows:

1. the title to Guideline ECB/2014/60 is replaced by the following:

'Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosysteem monetary policy framework (General Documentation Guideline) (ECB/2014/60)';

⁽¹⁾ Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosysteem monetary policy framework (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3).

2. in Article 2, paragraph 10 is replaced by the following:

‘(10) “competent authority” means a public authority or body officially recognised by national law that is empowered by national law to supervise institutions as part of the supervisory system in the relevant Member State, including the ECB with regard to the tasks conferred on it by Council Regulation (EU) No 1024/2013 (*);

(*) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).’;

3. in Article 2, paragraph 23 is replaced by the following:

‘(23) “domestic use” means the submission, as collateral, by a counterparty established in a Member State whose currency is the euro, of:

- (a) marketable assets issued and held in the same Member State as that of its home NCB;
- (b) credit claims where the credit claim agreement is governed by the laws of the Member State of its home NCB;
- (c) RMBDs issued by entities established in the Member State of its home NCB;
- (d) non-marketable debt instruments backed by eligible credit claims issued and held in the same Member State as that of its home NCB;’;

4. in Article 2, the following paragraph 42a is inserted:

‘(42a) “in-kind recapitalisation with public debt instruments” means any form of increase in the subscribed capital of a credit institution where all or part of the consideration is provided through a direct placement with the credit institution of sovereign or public sector debt instruments that have been issued by the sovereign state or public sector entity providing the new capital to the credit institution;’;

5. in Article 2, paragraph 70 is replaced by the following:

‘(70) “non-marketable asset” means any of the following assets: fixed-term deposits, credit claims, RMBDs and non-marketable debt instruments backed by eligible credit claims;’;

6. in Article 2, the following paragraph 70a is inserted:

‘(70a) “Non-marketable debt instruments backed by eligible credit claims” (hereinafter “DECCs”) means debt instruments:

- (a) that are backed, directly or indirectly, by credit claims that satisfy all Eurosystem eligibility criteria for credit claims in accordance with Section 1, Chapter 1 of Title III of Part Four, subject to the provisions of Article 107f;
- (b) that offer dual recourse to: (i) a credit institution that is the originator of the underlying credit claims; and (ii) the dynamic cover pool of underlying credit claims referred to in point (a);
- (c) for which there is no tranching of risk;’;

7. Article 8(3) is replaced by the following:

‘3. The ECB may conduct fine-tuning operations on any Eurosystem business day to counter liquidity imbalances in the reserve maintenance period. If the trade day, settlement day and reimbursement day are not NCB business days, the relevant NCB is not required to conduct such operations.’;

8. Article 55 is replaced by the following:

'Article 55

Eligibility criteria for participation in Eurosystem monetary policy operations

With regard to Eurosystem monetary policy operations, subject to Article 57, the Eurosystem shall only allow participation by institutions that fulfil the following criteria:

- (a) they shall be subject to the Eurosystem's minimum reserve system pursuant to Article 19.1 of the Statute of the ESCB and shall not have been granted an exemption from their obligations under the Eurosystem's minimum reserve system pursuant to Regulation (EC) No 2531/98 and Regulation (EC) No 1745/2003 (ECB/2003/9);
- (b) they shall be one of the following:
 - (i) subject to at least one form of harmonised Union/EEA supervision by competent authorities in accordance with Directive 2013/36/EU and Regulation (EU) No 575/2013;
 - (ii) publicly owned credit institutions, within the meaning of Article 123(2) of the Treaty, subject to supervision of a standard comparable to supervision by competent authorities under Directive 2013/36/EU and Regulation (EU) No 575/2013;
 - (iii) institutions subject to non-harmonised supervision by competent authorities of a standard comparable to harmonised Union/EEA supervision by competent authorities under Directive 2013/36/EU and Regulation (EU) No 575/2013, e.g. branches established in Member States whose currency is the euro of institutions incorporated outside the EEA;
- (c) they must be financially sound within the meaning of Article 55a;
- (d) they shall fulfil any operational requirements specified in the contractual or regulatory arrangements applied by the home NCB or ECB with respect to the specific instrument or operation.;

9. the following Article 55a is added:

'Article 55a

Assessment of the financial soundness of institutions

1. In its assessment of the financial soundness of individual institutions for the purposes of this Article, the Eurosystem may take into account the following prudential information:

- (a) quarterly information on capital, leverage and liquidity ratios reported under Regulation (EU) No 575/2013 on an individual and consolidated basis, in accordance with the supervisory requirements; or
- (b) where applicable, prudential information of a standard comparable to information under point (a).

2. If such prudential information is not made available to an institution's home NCB and the ECB by the institution's supervisor, either the home NCB or the ECB may require the institution to make such information available. When such information is provided directly by an institution, the institution shall also submit an assessment of the information carried out by the relevant supervisor. An additional certification from an external auditor may also be required.

3. Branches shall report information on the capital, leverage and liquidity ratios as required under Regulation (EU) No 575/2013, or, where applicable, information of a comparable standard, with respect to the institution to which the branch belongs, on an individual and consolidated basis in accordance with the supervisory requirements.

4. As regards the assessment of the financial soundness of institutions that have been subject to in-kind recapitalisation with public debt instruments, the Eurosystem may take into account the methods used for and the role played by such in-kind recapitalisations, including the type and liquidity of such instruments and the market access of the issuer of such instruments, in ensuring the fulfilment of the capital ratios reported under Regulation (EU) No 575/2013.

5. Asset management vehicles resulting from a resolution action in the form of the application of an asset separation tool pursuant to Article 26 of Regulation (EU) No 806/2014 of the European Parliament and of the Council (*) or national legislation implementing Article 42 of Directive 2014/59/EU of the European Parliament and of the Council (**) shall not be eligible to access Eurosystem monetary policy operations.

(*) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

(**) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190);

10. Article 96(3) is replaced by the following:

‘3. For debtors or guarantors that are multilateral development banks or international organisations, the rules in paragraphs 1 and 2, respectively, shall not apply and they shall be eligible irrespective of their place of establishment.’;

11. Article 99 is replaced by the following:

‘Article 99

Additional legal requirements for credit claims

1. In order to ensure that a valid security is created over credit claims and that the credit claim can be swiftly realised in the event of a counterparty default, additional legal requirements shall be met. These legal requirements relate to:

- (a) verification of the existence of credit claims;
- (b) validity of the agreement for the mobilisation of credit claims;
- (c) full effect of the mobilisation vis-à-vis third parties;
- (d) an absence of restrictions concerning the mobilisation and realisation of credit claims;
- (e) an absence of restrictions concerning banking secrecy and confidentiality.

2. The content of these legal requirements is set out in Articles 100 to 105. Further details of the specific features of the national jurisdictions are provided in the relevant national documentation of the NCBs.’;

12. in Chapter 1 of Title III of Part Four, the following section is added:

‘Section 4

Eligibility criteria for DECCs

Article 107a

Eligible type of asset

- 1. The eligible type of asset shall be debt instruments within the definition of DECCs given in Article 2(70a).
- 2. DECCs shall have a fixed, unconditional principal amount and a coupon structure that complies with the criteria set forth in Article 63. The cover pool shall only contain credit claims for which either:
 - (a) a specific DECC loan-level data template; or

(b) an ABS loan-level data template in accordance with Article 73;

is available.

3. The underlying credit claims shall be those granted to debtors established in a Member State whose currency is the euro. The originator shall be a Eurosystem counterparty established in a Member State whose currency is the euro and the issuer shall have acquired the credit claim from the originator.

4. The DECC issuer shall be an SPV established in a Member State whose currency is the euro. Parties to the transaction, other than the issuer, the debtors of the underlying credit claims, and the originator, shall be established in the EEA.

5. The DECCs shall be denominated in euro or in one of the former currencies of the Member States whose currency is the euro.

6. After having carried out a positive assessment, the Eurosystem shall approve the DECC structure as being eligible as Eurosystem collateral.

7. The governing law applicable to the DECC, the originator, the debtors and, where relevant, the guarantors of the underlying credit claims, the underlying credit claim agreements and any agreements ensuring the direct or indirect transfer of the underlying credit claims from the originator to the issuer shall be the law of the jurisdiction where the issuer is established.

8. DECCs shall comply with the requirements on the place of issue and settlement procedures as laid down in Articles 66 and 67.

Article 107b

Non-subordination with respect to DECCs

DECCs shall not give rise to rights to the principal and/or the interest that are subordinated to the rights of holders of other debt instruments of the same issuer.

Article 107c

Credit quality requirements

DECCs shall comply with the Eurosystem's credit quality requirements as laid down in Section 3 of Chapter 2 of Title III of this Part Four.

Article 107d

Acquisition of the underlying credit claims by the issuer

The pool of underlying credit claims shall have been acquired by the issuer from the originator in a manner which the Eurosystem considers to be a "true sale" or equivalent to a "true sale" that is enforceable against any third party, and which is beyond the reach of the originator and its creditors, including in the event of the originator's insolvency.

Article 107e

Transparency requirements for DECCs

1. DECCs shall fulfil transparency requirements at the level of the DECCs' structure and at the level of the underlying individual credit claims.

2. At the level of the DECCs' structure, detailed information on the DECCs' key transaction data, such as identification of the parties to the transaction, a summary of the DECCs' key structural features, a summary description of collateral and the DECCs' terms and conditions shall be made publicly available. The Eurosystem may, in the course of its assessment, require any transaction documentation and legal opinions deemed necessary from any third party it considers relevant, including, but not restricted to, the issuer and/or the originator.

3. At the level of the underlying individual credit claims, comprehensive and standardised loan-level data on the pool of underlying credit claims shall be made available in accordance with the procedures set out in Annex VIII, except with respect to the reporting frequency and transitional period. In order for DECCs to be eligible, all underlying credit claims shall be homogenous, i.e. it must be possible to report them using a single loan-level data template. The Eurosystem may determine that a DECC is not homogenous after evaluating the relevant data.

4. Loan-level data shall be reported on at least a monthly basis, no later than one month following the cut-off date. The cut-off date for which loan-level data shall be reported is the last calendar day of the month. If loan-level data are not reported or updated within one month following the cut-off date, then the DECC shall cease to be eligible.

5. Data quality requirements applied for ABS shall apply to DECCs, including the specific DECC loan-level data templates. There shall be no transition period applied for a DECC to achieve the minimum acceptable loan-level data quality score.

6. In its eligibility assessment, the Eurosystem shall take into account: (a) any failure to deliver mandatory data; and (b) how often individual loan-level data fields do not contain meaningful data.

Article 107f

Types of eligible underlying credit claims

1. Each underlying credit claim shall comply with the eligibility criteria for credit claims provided for in Section 1, Chapter 1 of Title III of Part Four, subject to the modifications set out in this Article.

2. To ensure that a valid security is created over the underlying credit claims, enabling the issuer and the holders of the DECCs to swiftly realise those claims in the event of the originator's default, the following additional legal requirements as specified in paragraphs 3 to 9 shall be met:

- (a) verification of the existence of the underlying credit claims;
- (b) validity of the agreement for the mobilisation of underlying credit claims;
- (c) full effect of the mobilisation vis-à-vis third parties;
- (d) an absence of restrictions on the transfer of the underlying credit claims;
- (e) an absence of restrictions on the realisation of the underlying credit claims;
- (f) an absence of restrictions related to banking secrecy and confidentiality.

Further details of the specific features of the national jurisdictions shall be provided in the relevant national documentation of the NCBs.

3. The NCB of the country where the originator is established, or supervisors or external auditors, shall conduct a one-off verification of the appropriateness of the procedures used by the originator to submit the information on the underlying credit claims to the Eurosystem.

4. The NCB of the country where the originator is established shall, as a minimum, take all of the following steps to verify the existence of the underlying credit claims:

- (a) It shall obtain written confirmation from the originator, at least on a quarterly basis, by which the originators shall confirm:
 - (i) the existence of the underlying credit claims: this confirmation could be replaced with cross-checks of information held in central credit registers, where these exist;
 - (ii) compliance of the underlying credit claims with the eligibility criteria applied by the Eurosystem;

- (iii) that the underlying credit claims are not used simultaneously as collateral to the benefit of any third party and that the originator will not mobilise such underlying credit claims as collateral to the Eurosystem or any third party;
 - (iv) that the originator will undertake to communicate to the relevant NCB no later than within the course of the next business day, any event that materially affects the collateral value of the underlying credit claims, in particular early, partial or total repayments, downgrades and material changes in the conditions of the underlying credit claims.
- (b) The NCB of the country where the originator is located or the relevant central credit registers, banking supervision competent authorities or external auditors, shall perform random checks in respect of the quality and accuracy of the written confirmation of originators, by means of delivery of physical documentation or through on-site visits. The information checked in relation to each underlying credit claim shall cover as a minimum the characteristics that determine the existence and the eligibility of underlying credit claims. For originators with ECAF-approved internal ratings-based (IRB) systems, additional checks on the credit quality assessment of underlying credit claims shall be carried out involving checks of PDs with respect to debtors of credit claims backing DECCs that are used as collateral in Eurosystem credit operations.
- (c) For the checks that are undertaken in accordance with Article 107f(3), (4)(a) or (4)(b) by NCB of the country where the originator is located, supervisors, external auditors or central credit registers, those undertaking the checks shall be authorised to carry out these investigations, if necessary contractually or in accordance with the applicable national requirements.
5. The agreement for the transfer of the underlying credit claims to the issuer or for their mobilisation by way of transfer, assignment or pledge shall be valid between the issuer and the originator and/or the transferee/assignee/pledgee, as appropriate, under the applicable national law. All the necessary legal formalities to ensure the validity of the agreement and to ensure the valid indirect or direct transfer of the underlying credit claims as collateral shall be fulfilled by the originator and/or the transferee, as appropriate. As regards notification of the debtor, the following shall apply, depending on the applicable national law.
- (a) At times it may be necessary to have debtor notification or public registration of: (i) the transfer (direct or indirect) of the underlying credit claims to the issuer; or (ii) when counterparties mobilise DECCs as collateral to the home NCB to ensure full effectiveness of such a transfer or mobilisation vis-à-vis third parties; and in particular (iii) to ensure the priority of the issuer's security interest (with respect to the underlying credit claims) and/or the home NCB's security interest (with respect to the DECCs as collateral) vis-à-vis other creditors. In such cases, these notification or registration requirements shall be completed: (i) in advance or at the time of the underlying credit claims' actual transfer (direct or indirect) to the issuer; or (ii) at the time that counterparties mobilise the DECCs as collateral to the home NCB.
- (b) If *ex ante* notification of the debtor or public registration is not required in accordance with point (a), as specified in the applicable national documentation, *ex post* notification of the debtor is required. *Ex post* notification means that the debtor shall be notified, as specified by national documentation, about the underlying credit claims being transferred or mobilised immediately following an event of default or similar credit event as further specified in the applicable national documentation.
- (c) Points (a) and (b) are minimum requirements. The Eurosystem may decide to require *ex ante* notification or registration in addition to the situations above, including in the case of bearer instruments.
6. The underlying credit claims shall be fully transferable and capable of being transferred to the issuer without restriction. The underlying credit claims agreements or other contractual arrangements between the originator and the debtor shall not contain any restrictive provisions on transfer of collateral. The underlying credit claims agreements or other contractual arrangements between the originator and the debtor shall not contain any restrictive provisions regarding the realisation of the underlying credit claims, including any restrictions regarding form, time or other requirement with regard to realisation, so the Eurosystem shall be able to realise the DECCs' collateral.
7. Notwithstanding paragraph 6, the provisions restricting the assignment of syndicated loan shares to banks, financial institutions and entities which are regularly engaged in or established for the purpose of creating, purchasing or investing in loans, securities or other financial assets shall not be considered as a restriction on the realisation of the underlying credit claims.

8. Notwithstanding the paragraphs 6 and 7, a facility agent for the collection and distribution of payments and administration of the loan shall not be considered as a restriction on the transfer and realisation of a syndicated loan share, provided that:

- (a) the facility agent is a credit institution located in a Member State; and
- (b) the service relationship between the relevant syndicate member and the facility agent can be transferred alongside or as part of the syndicated loan share.

9. The originator and the debtor shall have agreed contractually that the debtor unconditionally consents to disclosure by the originator, issuer and any counterparty mobilising the DECC to the Eurosystem of details in respect of that underlying credit claim and on the debtor that are required by the relevant NCB for the purpose of ensuring that a valid security is created over the underlying credit claims and that the underlying credit claims can be swiftly realised in the event the originator/issuer defaults.’;

13. in Chapter 2 of Title III of Part Four, the following section is added:

‘Section 3

The Eurosystem’s credit quality requirements for DECCs

Article 112a

The Eurosystem’s credit quality requirements for DECCs

1. DECCs shall not be required to be assessed by one of the four credit assessment sources accepted by the Eurosystem in accordance with the general acceptance criteria in Title V of Part Four.

2. Each underlying credit claim in the cover pool of DECCs shall have a credit assessment provided by one of the four credit assessment sources accepted by the Eurosystem in accordance with the general acceptance criteria in Title V of Part Four. In addition, the credit assessment system or source used shall be the same system or source selected by the originator in accordance with Article 110. The rules on the Eurosystem’s credit quality requirements for the underlying credit claims laid down in Section 1 shall be applicable.

3. The credit quality of each underlying credit claim in the cover pool of DECCs shall be assessed on the basis of the credit quality of the debtor or guarantor, which shall comply, as a minimum, with credit quality step 3, as specified in the Eurosystem’s harmonised rating scale.’;

14. in Chapter 2 of Title VI of Part Four, the following Article is added:

‘Article 133a

Establishment of risk control measures for DECCs

Each underlying credit claim included in the cover pool shall be subject to a valuation haircut applied at an individual level following the rules set out in Article 131. The aggregate value of the underlying credit claims included in the cover pool after the application of valuation haircuts shall, at all times, remain equal to or above the value of the principal amount outstanding of the DECC. If the aggregate value falls below the threshold referred to in the previous sentence, the DECC shall be valued at zero.’;

15. in Title VIII of Part Four, the following Article 138a is added:

‘Article 138a

Use of debt instruments in connection with in-kind recapitalisation with public debt instruments

Public debt instruments used in an in-kind recapitalisation of a counterparty may only be used as collateral by that counterparty or by any other counterparty which has “close links”, as defined in Article 138(2), to that counterparty if the Eurosystem considers that the level of market access of their issuer is adequate, also taking into account the role played by such instruments in the recapitalisation.’;

16. Article 148 is replaced by the following:

'Article 148

General principles

1. Counterparties may use eligible assets on a cross-border basis throughout the euro area for all types of Eurosystem credit operations.
2. Counterparties may mobilise eligible assets other than fixed-term deposits and DECCs, for cross-border use in accordance with the following.
 - (a) marketable assets shall be mobilised via: (i) eligible links between EEA SSSs that have been positively assessed pursuant to the Eurosystem User Assessment Framework; (ii) applicable CCBM procedures; (iii) eligible links in combination with the CCBM; and
 - (b) credit claims and RMBDs shall be mobilised in accordance with applicable CCBM procedures as they cannot be transferred through SSSs.
3. Marketable assets may be used through an NCB account in an SSS located in a country other than that of the NCB in question if the Eurosystem has approved the use of such an account.
4. De Nederlandsche Bank shall be authorised to use its account with Euroclear Bank to settle collateral transactions in Eurobonds issued in that ICSD. The Central Bank of Ireland shall be authorised to open a similar account with Euroclear Bank. This account can be used for all eligible assets held in Euroclear Bank, i.e. including eligible assets transferred to Euroclear Bank through eligible links.
5. Counterparties shall execute the transfer of eligible assets via their securities settlement accounts with an SSS that has been positively assessed pursuant to the Eurosystem User Assessment Framework.
6. A counterparty that does not have a safe custody account with an NCB or a securities settlement account with an SSS that has been positively assessed pursuant to the Eurosystem User Assessment Framework may settle transactions through the securities settlement account or the safe custody account of a correspondent credit institution.;

17. Article 158 is replaced by the following:

'Article 158

Discretionary measures on the grounds of prudence or following an event of default

1. On the grounds of prudence, the Eurosystem may take any of the following measures:
 - (a) suspend, limit or exclude a counterparty's access to Eurosystem monetary policy operations, pursuant to any contractual or regulatory arrangements applied by its home NCB or by the ECB;
 - (b) reject, limit the use of or apply supplementary haircuts to assets mobilised as collateral in Eurosystem credit operations by a specific counterparty on the basis of any information the Eurosystem considers relevant, in particular if the credit quality of the counterparty appears to exhibit a high correlation with the credit quality of the assets mobilised as collateral.
2. Counterparties that are subject to supervision as referred to in Article 55(b)(i) but which do not meet the own funds requirements laid down in Regulation (EU) No 575/2013, on an individual and/or consolidated basis, in accordance with the supervisory requirements, and counterparties that are subject to supervision of a comparable standard as referred to in Article 55(b)(iii) but which do not meet requirements comparable to the own funds requirements laid down in Regulation (EU) No 575/2013, on an individual and/or consolidated basis, shall be suspended, limited or excluded from accessing Eurosystem monetary policy operations on the grounds of prudence. There is an exception for cases where the Eurosystem considers that compliance can be restored through adequate and timely recapitalisation measures, as established by the Governing Council.

3. In the context of its assessment of financial soundness of a counterparty pursuant to Article 55(c) and without prejudice to any other discretionary measures, the Eurosystem may suspend, limit or exclude, on the grounds of prudence, access to Eurosystem monetary policy operations by the following counterparties:

- (a) counterparties for which information on capital ratios under Regulation (EU) No 575/2013 is not made available to the relevant NCB and the ECB in a timely manner and at the latest within 14 weeks from the end of the relevant quarter;
- (b) counterparties which are not required to report capital ratios under Regulation (EU) No 575/2013 but for which information of a comparable standard as referred to in Article 55(b)(iii) is not made available to the relevant NCB and the ECB in a timely manner and at the latest within 14 weeks from the end of the relevant quarter.

In the event that the access to Eurosystem monetary policy operations has been suspended, limited or excluded, access may be restored once the relevant information has been made available to the relevant NCB and the ECB and the Eurosystem determines that the counterparty fulfils the criterion of financial soundness pursuant to Article 55(c).

4. Without prejudice to any other discretionary measures, the Eurosystem shall, on the grounds of prudence, limit access to Eurosystem monetary policy operations by counterparties deemed to be “failing or likely to fail” by the relevant authorities based on the conditions laid down in Article 18(4)(a) to (d) of Regulation (EU) No 806/2014 or laid down in national legislation implementing Article 32(4)(a) to (d) of Directive 2014/59/EU. The limitation shall correspond to the level of access to Eurosystem credit operations prevailing at the time when such counterparties are deemed to be “failing or likely to fail”.

5. In addition to limiting access to Eurosystem monetary policy operations under paragraph 4, the Eurosystem may, on the grounds of prudence, suspend, further limit or exclude counterparties from accessing Eurosystem monetary policy operations if they are deemed to be “failing or likely to fail” under paragraph 4 and they meet any of the following:

- (a) are not made subject to a resolution action by the resolution authority because there are reasonable prospects that an alternative private sector measure or supervisory action, as referred to in Article 18(1)(b) of Regulation (EU) No 806/2014 and national legislation implementing Article 32(1)(b) of Directive 2014/59/EU, would prevent the failure of the institution within a reasonable timeframe, in view of the development of the alternative private sector measure or supervisory action;
- (b) are assessed as meeting the conditions for resolution pursuant to Article 18(1) of Regulation (EU) No 806/2014 or national legislation implementing Article 32(1) of Directive 2014/59/EU, in view of the development of the resolution action;
- (c) result from a resolution action as defined under Article 3(10) of Regulation (EU) No 806/2014 and national legislation implementing Article 2(40) of Directive 2014/59/EU or from an alternative private sector measure or supervisory action as referred to in Article 18(1)(b) of Regulation (EU) No 806/2014 and national legislation implementing Article 32(1)(b) of Directive 2014/59/EU.

6. Beyond a limitation of access to Eurosystem monetary policy operations pursuant to paragraph 4, the Eurosystem shall suspend, further limit or exclude from access to Eurosystem monetary policy operations on the grounds of prudence counterparties which have been deemed to be “failing or likely to fail” but for which neither a resolution action has been provided for, nor are there reasonable prospects that an alternative private sector measure or supervisory action would prevent the failure of the institution within a reasonable time-frame as referred to in Article 18(1)(b) of Regulation (EU) No 806/2014 and national legislation implementing Article 32(1)(b) of Directive 2014/59/EU.

7. In the event that a discretionary measure is based on prudential information, the Eurosystem shall use any such information, provided either by supervisors or by counterparties, in a manner strictly commensurate with, and necessary for, the performance of the Eurosystem’s tasks of conducting monetary policy.

8. In the case of an occurrence of an event of default, the Eurosystem may suspend, limit or exclude access to Eurosystem monetary policy operations with regard to counterparties that are in default pursuant to any contractual or regulatory arrangements applied by the Eurosystem.

9. All discretionary measures of the Eurosystem shall be applied in a proportionate and non-discriminatory manner and shall be duly justified by the Eurosystem.’;

18. Article 170(2) is replaced by the following:

‘2. The place of dispute resolution shall be, without prejudice to the competence of the Court of Justice of the European Union, the courts or tribunals of the Member State whose currency is the euro in which the NCB is situated.’.

Article 2

Taking effect and implementation

1. This Guideline shall take effect on the day of its notification to the NCBs.
2. The NCBs shall take the necessary measures to comply with this Guideline and apply them from 2 November 2015. They shall notify the ECB of the texts and means relating to those measures by 6 October 2015 at the latest.

Article 3

Addressees

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 27 August 2015.

For the Governing Council of the ECB
The President of the ECB
Mario DRAGHI

