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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.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2017/2177**of 22 November 2017****on access to service facilities and rail-related services****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area ⁽¹⁾, and in particular Article 13(9) thereof,

Whereas:

- (1) The basic rules of Directive 2012/34/EU concerning access to service facilities and use of services supplied in those facilities, such as provisions on access rights, core procedural rules on handling of requests and requirements on publication of information apply to all service facilities. Directive 2012/34/EU also lays down different rules for different types of services provided in service facilities. These distinctions should also be reflected within this Regulation.

Taking into account the purpose and scope of Directive 2012/34/EU, the provisions on access to services provided in service facilities should cover only services that are related to the provision of railway transport services.

- (2) In order to avoid disproportionate burdens for operators of service facilities with minor importance, it seems appropriate to provide a possibility for regulatory bodies to exempt service facility operators from all or some of the provisions of this Regulation with the exception of certain provisions concerning the obligation to publish a service facility description, when the regulatory body considers that the facility is without strategic importance for the functioning of the market. Where the relevant service facilities market is characterised by a variety of operators providing comparable services in competition or a regulatory body considers that specific provisions of this Regulation could negatively impact the functioning of the service facilities market, the regulatory body should also be entitled to grant such exemptions. This could for example be the case if a railway undertaking is providing services to another railway undertaking in order to assist that undertaking in remote locations as part of a cooperation which is necessary due to the economic cost it would otherwise incur.

Regulatory bodies should assess requests for exemptions individually, on a case by case basis. If following a complaint regarding access to the service facility or rail related service concerned, the regulatory body considers that circumstances have changed in a way so that an exemption previously granted has a negative impact on the railway transport services market, the regulatory body should review and might revoke an exemption.

Regulatory bodies should ensure consistent application of exemptions in all Member States; they should develop common principles for the application of the provisions regarding exemptions by the date of application of Article 2. In accordance with Article 57(8) of Directive 2012/34/EU, if needed, the Commission might adopt measures setting out such principles.

⁽¹⁾ OJ L 343, 14.12.2012, p. 32.

Operators of service facilities that have been exempted from the application of provisions of this Regulation remain subject to all other rules on access to service facilities and use of rail related services laid down in Directive 2012/34/EU.

- (3) Regulation (EU) 2017/352 of the European Parliament and of the Council ⁽¹⁾ establishes a framework for the provision of port services and common rules on the financial transparency of ports. This Regulation which lays down the details of the procedure and criteria to be followed by operators of service facilities and applicants should also apply to maritime and inland port facilities which are linked to rail activities.

Directive (EU) 2016/798 of the European Parliament and of the Council ⁽²⁾ defines obligations of the entity in charge of maintenance. This Regulation should be without prejudice to the provisions of that Directive.

- (4) Transparency on conditions for access to service facilities and rail related services and information on charges is a pre-requisite for enabling all applicants to access service facilities and services supplied in those facilities on a non-discriminatory basis. Hidden discounts that are negotiated individually with each applicant without following the same principles would undermine the principle of non-discriminatory access to the service facilities and rail related services. Information on the principles of discount schemes provided in the service facility description should, however, take account of commercial confidentiality requirements.
- (5) Directive 2012/34/EU requires operators of service facilities to provide non-discriminatory access to service facilities and services supplied in those facilities. That Directive applies in cases of self-supply of services as well as in cases of services being supplied by an operator of a service facility. Where necessary to correct market distortion or undesirable developments in the market, the regulatory body should be able to request that the operator of a service facility opens the facility for self-supply, provided that this is legally and technically feasible and does not endanger the safety of the operations.
- (6) Where it is necessary to pass through a private branch line or siding to access a service facility, the operator of the service facility should provide information about the private branch line and siding. Such information should enable the applicant to understand who to contact in order to request access to this line in accordance with Article 10 of Directive 2012/34/EU.
- (7) Infrastructure managers should facilitate collection of information on service facilities and alleviate the administrative burden of service facility operators by providing a template in an easily accessible place such as their web portal. This template should be developed by the railway sector and regulatory bodies, in consultation with operators of service facilities. Operators of service facilities are under an obligation to supply all relevant information to the infrastructure managers in accordance with Article 31(10) and point 6 of Annex IV to Directive 2012/34/EU. The main infrastructure manager, to which the service facility description is to be provided in case the infrastructure manager to whose network the facility concerned is connected is exempted from the obligation to publish the network statement, should be the one determined by the Member State for the purpose of participating in the network referred to in Article 7f of Directive 2012/34/EU.
- (8) Different entities may be in charge of deciding on access conditions for a service facility, allocating capacity in the service facility and supplying rail related services in the facility. In such cases, all entities concerned are to be considered operators of a service facility within the meaning of Directive 2012/34/EU. In addition, each of them should meet the requirements of this Regulation for the part for which it is responsible. If a facility is owned, managed and operated by several entities, only the entities effectively responsible for providing the information and deciding on requests for access to the service facility and use of rail-related services should be considered as the operators of the service facility.
- (9) Current practice shows that in many cases applicants such as shippers and freight forwarders request access to service facilities. However, the railway undertaking appointed by the applicant often does not have a contractual relationship with the operator of the service facility. Therefore, it should be clarified that not only railway undertakings but also other applicants should have a right to request access to service facilities under the

⁽¹⁾ Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports (OJ L 57, 3.3.2017, p. 1).

⁽²⁾ Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (OJ L 138, 26.5.2016, p. 102).

conditions set out in this Regulation, where national law provides for such a possibility. Operators of such service facilities should be bound by this Regulation regardless of whether they are in a contractual relationship with a railway undertaking or with another applicant entitled to request capacity in service facilities in accordance with national law.

- (10) Train paths and capacity in service facilities are often allocated by different entities. It is therefore important that these entities communicate with one another to make sure that scheduled train paths and scheduled slots in service facilities are consistent so as to enable smooth and efficient train operations. The same should apply to situations where an applicant requests rail related services in a facility which are provided by different providers. For services not directly linked to infrastructure capacity, such cooperation would not be required.
- (11) Exchange of data between entities ordering transport services, railway undertakings and terminals on tracking and tracing and estimated time of arrival and departure should contribute to better service quality and cost-effectiveness in the logistics chain.
- (12) The requirement to make available indicative real-time information on available service facility capacity on a common web portal could be met by providing information on whether the facility is full, has limited remaining capacity or has sufficient remaining capacity to accommodate any type of request. For services such as maintenance, for which a vehicle has to be removed from service for an extended period, such information may not be needed. Maximum operational capacity may be lower than maximum theoretical capacity. This is because appropriate additional time may be needed to enable reliable services in situations such as the delayed arrival of a train in the facility or operational disruptions. The indication of capacity should refer to the available operational capacity.
- (13) Operators of service facilities should not oblige applicants to purchase services offered in a facility, which the applicant does not need. This principle should, however, not imply that the applicant can force the operator of a facility to accept self-supply on the premises of the operator where the operator is offering the respective service in a way that complies with Directive 2012/34/EU and this Regulation.
- (14) When an operator of a service facility receives a request that is in conflict with another request or capacity already allocated, the operator of the service facility should as a first step verify whether it would be possible to accommodate the additional request by proposing a different slot, modifying the allocated slot if the applicant concerned agrees to this, or by taking measures that make it possible to increase the capacity of the facility. The operator should not be obliged to take measures such as changing opening hours or measures that would require investment to increase a facility's capacity. However, where an applicant guarantees to cover costs of investment or additional operational costs incurred, the operator of a service facility should consider this option.
- (15) Where the coordination procedure has not enabled reconciliation of conflicting requests, the operator of a service facility can apply priority criteria to decide between conflicting requests. These criteria should be non-discriminatory and transparent and be published in the service facility description, which is subject to review by the regulatory body.
- (16) The term viable alternative embraces various elements, including in particular *physical and technical characteristics* such as location of a facility, access by road, rail, waterway or public transport, gauge clearance, length of track and electrifications; *operational characteristics* such as opening hours, capacity in and around the facility, driver training requirements, scope and type of services offered; *attractiveness and competitiveness of transport services* such as routing, connections to other modes of transport, and transportation time; and *economic aspects* such as impact on operational costs and the profitability of the envisaged services.
- (17) Building a service facility requires significant investments and the network character of railways implies that there are limitations on where facilities can be constructed; as a result, many service facilities cannot easily be duplicated. Where requests for access to a facility could not be accommodated following the coordination procedure and the facility is close to congestion, regulatory bodies should be able to request operators of service facilities to put in place measure to optimise the use of the facility. The operator of the service facility should identify suitable measures to achieve this objective. These could include for example financial penalties to be paid by applicants that fail to make use of access rights granted or a request to applicants to renounce on rights of access to a service facility or rail related services if they have repeatedly and intentionally failed to make use of such rights or have caused disturbances to the operation of the service facilities or to another applicant.

- (18) In order to make the best use of existing facilities, the operation of facilities that have not been in use for at least two years should be publicised for lease or rent when a railway undertaking expresses interest in using such a facility on the basis of demonstrated needs. Any economic entity interested in operating that facility should be able to participate in the tender procedures and submit an offer to take over the operation of the facility. However, a tender procedure does not have to be launched if a formal process to withdraw the dedication of the site to railway purposes is ongoing and the facility is being redeveloped for purposes other than use as a service facility.
- (19) This Regulation lays down a set of new rules for operators of service facilities. Those operators need time to adapt existing internal procedures in order to ensure full compliance with all the requirements of this Regulation. Therefore the Regulation should only apply from 1 June 2019. This means that the service facility description required in accordance with Article 4 or a link to the relevant information will only have to be prepared and included for the first time in the network statement for the working timetable starting in December 2020.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the Single European Rail Area Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the details of the procedure and criteria to be followed for access to the services to be supplied in the service facilities listed in points 2, 3 and 4 of Annex II to Directive 2012/34/EU.

Where the provisions of this Regulation refer to applicants, they shall be understood as referring to railway undertakings. Where national law entitles applicants other than railway undertakings to request access to service facilities and rail related services, the relevant provisions of this Regulation shall also apply to those applicants in accordance with national law.

Article 2

Exemptions

1. Operators of service facilities referred to in paragraph 2 may request to be exempted from the application of all or some of the provisions of this Regulation, with the exception of Articles 4(2)(a) to (d) and (m) and 5.

Operators of service facilities that exist solely for use by heritage railway operators for their own purposes may request to be exempted from the application of all the provisions of this Regulation.

Such requests shall be submitted to the regulatory body and be duly substantiated.

2. Regulatory bodies may decide to exempt operators of service facilities that operate the following service facilities or provide the following services:

- service facilities or services which do not have any strategic importance for the functioning of the rail transport services market, in particular as regards the level of use of the facility, the type and volume of traffic potentially impacted and the type of services offered in the facility;
- service facilities or services which are operated or provided in a competitive market environment with a variety of competitors providing comparable services;
- service facilities or services where application of this Regulation could negatively impact the functioning of the service facility market.

3. Regulatory bodies shall publish any decision granting an exemption referred to in paragraph 2 on their website within two weeks after adoption of the decision.

4. When the criteria for granting an exemption referred to in paragraph 2 are no longer fulfilled, the regulatory body shall revoke the exemption.
5. Regulatory bodies shall develop and publish common decision making principles for the application of the criteria referred to in paragraph 2.

Article 3

Definitions

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

- (1) 'basic service' means a service supplied in any of the service facilities listed in point 2 of Annex II to Directive 2012/34/EU;
- (2) 'rail-related service' means a basic, additional or ancillary service listed in points 2, 3 and 4 of Annex II to Directive 2012/34/EU;
- (3) 'service facility description' means a document which lays down detailed information necessary for access to service facilities and rail-related services;
- (4) 'service facility capacity' means the potential to use a service facility and supply a service over a given period of time, taking into account the time needed to access and leave the service facility;
- (5) 'coordination procedure' means a procedure through which the operator of a service facility and applicants attempt to resolve situations in which needs for access to a service facility or rail-related services concern the same service facility capacity and are in conflict;
- (6) 'linked service facilities' means service facilities which are adjacent to one another and require passage through one to reach the other;
- (7) 'controlling entity' means a body or firm, which exercises direct or indirect control over an operator of a service facility and is also active and holds a dominant position in national railway transport services markets for which the facility is used or exercises direct or indirect control over an operator of a service facility and a railway undertaking holding such a position;
- (8) 'self-supply of services' means a situation where a railway undertaking performs itself a rail-related service on the premises of a service facility operator, provided that access to and the use of the facility by that railway undertaking for self-supply of services is legally and technically feasible, does not endanger the safety of the operations and the operator of the service facility concerned offers such possibility;
- (9) 'reconversion' means a formal process by which the purpose of the service facility is changed to a use other than for the supply of rail related services;
- (10) 'ad hoc request' means a request for access to a service facility or a rail-related service that is linked to an ad hoc path request for an individual train path referred to in Article 48(1) of Directive 2012/34/EU;
- (11) 'late request' means a request for access to a service facility or a rail related service submitted after the expiry of a deadline for submitting requests defined by the operator of the facility in question;

Article 4

Service facility description

1. Operators of service facilities shall establish a service facility description for the service facilities and services for which they are responsible.
2. The service facility description shall include at least the following information to the extent it is required by this Regulation:
 - (a) the list of all installations in which rail related services are supplied, including information on their locations and opening hours;

- (b) key contact details of the operator of the service facility;
- (c) a description of the technical characteristics of the service facility, such as sidings or shunting and marshalling tracks, technical equipment for loading and unloading, for washing, for maintenance and available storage capacity; information on private branch lines and sidings that are not part of the railway infrastructure, but are needed to get access to service facilities which are essential for the provision of railway transport services;
- (d) a description of all rail-related services, which are supplied in the facility, and of their type (basic, additional or ancillary);
- (e) the possibility for self-supply of rail-related services and conditions applying thereto;
- (f) information on procedures for requesting access to the service facility or services supplied in the facility or both, including deadlines for submitting requests, and time limits for handling those requests;
- (g) in service facilities operated by more than one operator or where rail-related services are provided by more than one operator, an indication as to whether separate requests for access to the facilities and for those services need to be submitted;
- (h) information on the minimum content and format of a request for access to service facilities and rail-related services, or a template for such a request;
- (i) at least in the case of service facilities operated and rail-related services provided by operators under the direct or indirect control of a controlling entity, model access contracts and general terms and conditions;
- (j) where relevant, information on the terms of use of the operator's IT systems, if applicants are required to use such systems, and the rules concerning the protection of sensitive and commercial data;
- (k) a description of the coordination procedure and regulatory measures referred to in Article 10 and priority criteria referred to in Article 11;
- (l) information on changes in technical characteristics and temporary capacity restrictions of the service facility, which could have a major impact on the service facility's operation, including planned works;
- (m) information on charges for getting access to service facilities and charges for the use of each rail-related service supplied therein;
- (n) information on principles of discount schemes offered to applicants, while respecting commercial confidentiality requirements.

Article 5

Publication of service facility description

1. Operators of service facilities shall make publicly available the service facility description free of charge, in one of the following ways:

- (a) by publishing it on their web portal or a common web portal and providing the infrastructure managers with a link to be included in the network statement;
- (b) by providing the infrastructure managers with the relevant and ready-to-be-published information to be included in the network statement.

Where the infrastructure manager to whose network the facility is connected is exempted from the obligation to publish a network statement in accordance with Article 2(3) or (4) of Directive 2012/34/EU, the operator of a service facility shall provide the relevant link or ready-to-be-published information to the main infrastructure manager.

2. Infrastructure managers shall specify in the network statement or on their web portal the deadline to provide information or the link to be published in the network statement, with a view to its publication by the date referred to in Article 27(4) of Directive 2012/34/EU.

Infrastructure managers shall provide a common template to be developed by the railway sector in cooperation with regulatory bodies by 30 June 2018 that operators of service facilities may use to submit the information. The template shall be reviewed and updated as necessary.

3. Operators of service facilities shall keep the service facility description up to date as necessary. They shall in due time inform the applicants having already requested access or subscribed to one or more services in the service facility about any relevant changes in the facility description.

4. In the case of service facilities operated by more than one service facility operator or where services in the facility are supplied by more than one supplier, those operators or suppliers shall coordinate with each other in order to:

- (a) make available in one place their service facility descriptions; or
- (b) indicate in their service facility descriptions all service facility operators responsible for deciding on requests for access to the facility or the rail-related services supplied in the same service facility.

If this coordination is not successful, the regulatory body may adopt a decision designating one of the service facility operators to comply with the requirement laid down in the first subparagraph. Any relevant costs shall be split among all service facility operators concerned.

5. The obligation referred to in paragraph 1 and Article 4 shall be met in a way that is proportionate to the size, technical characteristics and importance of the service facility concerned.

Article 6

Additional information

1. The regulatory body may require operators of service facilities to justify why they designate a rail-related service as basic, additional or ancillary.

2. Upon request of an applicant operators of service facilities listed in points 2(a) to (g) of Annex II to Directive 2012/34/EU shall provide indicative information on available service facility capacity.

3. Wherever technically possible with reasonable economic efforts, operators of service facilities shall make the information referred to in paragraph 2 of this Article and information referred to in Article 4(2)(l) available on a real-time basis through the use of a common web portal.

Article 7

Cooperation on allocation of service facility capacity and its use

1. Applicants shall submit their requests for access to service facilities and rail-related services in accordance with the deadlines set by operators of service facilities. Where relevant, operators of service facilities listed in point 2 of Annex II to Directive 2012/34/EU shall give due consideration to timelines and priority criteria set out by infrastructure managers for the scheduling process when determining these deadlines with a view to preventing inconsistencies.

2. Operators of service facilities listed in point 2 of Annex II to Directive 2012/34/EU and infrastructure managers shall cooperate with the aim of ensuring that the allocation of capacity on infrastructure and in service facilities is consistent where necessary. The obligation of cooperation shall also apply to operators of linked service facilities. The applicants concerned may be involved in this cooperation upon request. Applicants may also request involvement of entities responsible for granting access to private branch lines and sidings needed to get access to service facilities which are essential for the provision of railway transport services in the cooperation.

Where an applicant is seeking supply of additional or ancillary services listed in points 3 and 4 of Annex II to Directive 2012/34/EU offered in the facility by one or more operators of service facility other than the one responsible for granting access to the facility, the applicant may request participation of all operators of service facilities providing these services in the cooperation.

As long as the scheduling process conducted by the infrastructure manager is pending, requests for access to service facilities and rail-related services shall not be rejected on grounds that a requested train path has not yet been allocated. However, operators of service facilities listed in point 2 of Annex II to Directive 2012/34/EU and infrastructure managers concerned shall seek consistency of their respective decisions.

3. Where relevant, operators of service facilities, infrastructure managers and applicants shall cooperate to ensure efficient operation of trains from and to service facilities. In the case of trains using rail freight terminals, including those in maritime or inland ports, this cooperation shall include the exchange of information on train tracking and tracing and, where available, the estimated time of arrival and departure in the event of delays and disturbances.
4. Upon request of the regulatory body operators of service facilities shall demonstrate in writing for the last three years that they have fulfilled the cooperation requirements in accordance with this Article.

Article 8

Requests for access to service facilities and use of rail-related services

1. Requests for access to service facilities and use of rail-related services may be made by applicants.
2. Applicants shall indicate in their requests the service facility or the rail-related services for which they have requested access, or both. Operators of service facilities shall not make the access to the facility or supply of a rail-related service subject to mandatory purchase of other services which are not related to the service requested.
3. The operator of a service facility shall acknowledge receipt of a request without undue delay. When the request does not contain all the information required in accordance with the service facility description and necessary to take a decision, the operator of a service facility concerned shall inform the applicant thereof and shall set a reasonable deadline for submitting the missing information. If such information is not submitted within that deadline, the request may be rejected.

Article 9

Response to requests

1. After receipt of all necessary information, the operator of a service facility shall respond to requests for access to and supply of services in service facilities listed in point 2 of Annex II to Directive 2012/34/EU within the reasonable time limit set by the regulatory body in accordance with Article 13(4) of Directive 2012/34/EU. Different deadlines may be set for different types of service facilities and/or services.
2. Where the operator of a service facility has responded with an offer of access to the service facility, that offer shall remain valid for a reasonable period of time which it specifies and which shall take account of the business needs of the applicant.
3. Regulatory bodies shall set the time limits to respond to requests submitted by applicants as provided for in Article 13(4) of Directive 2012/34/EU prior to the publication of the first network statement subject to the rules of this implementing Regulation in order to ensure compliance with Article 27(4) of Directive 2012/34/EU.
4. For ad hoc requests concerning access to service facilities and services listed in points (a) to (d) and (f) to (i) of point 2 of Annex II, when setting the time limits in accordance with Article 13(4) of Directive 2012/34/EU, regulatory bodies shall take into account the time limits set out in Article 48(1) of Directive 2012/34/EU. Where regulatory bodies have not defined time limits for such ad-hoc requests, the operator of a service facility shall answer the request within the time limits set out in Article 48(1) of the Directive.

Where the operator of a service facility has defined an annual deadline for submitting requests for access to service facilities and rail-related services listed in points (a) to (d) and (f) to (i) of point 2 of Annex II, the time limits for answering late requests defined by the regulatory body shall take account of the time limits applied by infrastructure managers for processing such requests.

For service facilities and rail-related services listed in point (e) of point 2 of Annex II, the time limit shall start once the technical compatibility of the rolling stock with those facilities and the equipment has been assessed and the applicant was informed thereof.

5. Operators of service facilities providing additional and ancillary services listed in points 3 and 4 of Annex II to Directive 2012/34/EU shall respond to requests for such services within the time limit set by the regulatory body or, where such a time limit has not been set, within reasonable time. Where an applicant submits ad hoc requests for several rail-related services supplied in one service facility and it indicates that only their simultaneous allocation is of use, all service facility operators concerned, including suppliers of additional and ancillary services listed in points 3 and 4 of Annex II, shall respond to those requests within the reasonable time limit referred to in paragraph 4.

For rail-related services listed in point (e) of point 4 of Annex II, the time limit shall start once the technical compatibility of the rolling stock with the facilities and the equipment has been assessed and the applicant was informed thereof.

6. With the agreement of the applicant concerned, the time limits referred to in paragraphs 3, 4 and 5 may be extended.

7. Rights of access to railway infrastructure and rail related services shall not be transferred to other applicants.

8. If an applicant intends not to make use of a right of access to a service facility or a rail related service granted by the service facility operator, it shall inform the operator concerned without undue delay.

Article 10

Coordination procedure

1. Where an operator of a service facility listed in point 2 of Annex II to Directive 2012/34/EU receives a request for access to the service facility or supply of a service that is in conflict with another request or concerns service facility capacity already allocated, it shall attempt, through discussion and coordination with the applicants concerned, to ensure the best possible matching of all requests. This coordination shall also involve suppliers of additional and ancillary services listed in points 3 and 4 of Annex II to Directive 2012/34/EU where such services are offered in the facility and requested by an applicant. Any modification of access rights already granted shall be subject to the agreement of the applicant concerned.

2. Operators of service facilities listed in point 2 of Annex II to Directive 2012/34/EU shall not reject requests for access to their service facility or supply of a service nor indicate to the applicant viable alternatives, when capacity that matches the needs of the applicant is available in their service facility or is expected to become available during or following the coordination procedure.

3. Operators of service facilities shall consider different options enabling them to accommodate conflicting requests for access to the service facility or supply of service in the service facility. Those options shall, when necessary, encompass measures to maximise the capacity available in the facility, to the extent it does not require additional investment in resources or facilities. Such measures may include:

- proposing alternative timing;
- changing opening hours or shift patterns, where possible;
- allowing access to the facility for self-supply of services.

4. Applicants and operators of the service facilities may jointly request the regulatory body to participate as an observer in the coordination procedure.

5. Where a request for access to a service facility listed in point 2 of Annex II to Directive 2012/34/EU could not be accommodated following the coordination procedure and the service facility is close to congestion, the regulatory body may request the operator of the service facility to take measures aimed at enabling the accommodation of additional requests for access to their facility. Such measures shall be transparent and non-discriminatory.

Article 11

Priority criteria

Operators of the service facility may determine priority criteria to allocate capacity in the case of conflicting requests for access to service facilities and rail-related services, where such requests cannot be accommodated after the coordination procedure.

Such priority criteria shall be non-discriminatory and objective and published in the service facility description in accordance with letter k of Article 4(2). They shall take into account the purpose of the facility, the purpose and nature of the railway transport services concerned and the objective of securing an efficient use of available capacity.

The priority criteria may also take into account the following aspects:

- existing contracts;
- the intention and ability to use the capacity requested, including previous failure, if any, to use all or part of allocated capacity and the reasons for that failure;
- already allocated train paths linked to the requested services;
- priority criteria for allocation of train paths;
- timely submission of requests.

Article 12

Viable alternatives

1. Where a request for access to service facilities and rail-related services cannot be accommodated after the coordination procedure, the operator of a service facility listed in point 2 of Annex II to Directive 2012/34/EU shall inform the applicant concerned and the regulatory body, upon its request, without undue delay. Member States may require that the regulatory body is informed even in the absence of such a request.

2. The operator of a service facility listed in point 2 of Annex II to Directive 2012/34/EU and the applicant shall, if a request cannot be accommodated, jointly assess whether there are viable alternatives allowing to operate the freight or passenger service concerned on the same or alternative routes under economically acceptable conditions. The applicant shall not be required to disclose its business strategy.

3. For the purpose of paragraph 2 the operator of the service facility shall indicate possible alternatives, including, where relevant, in other Member States, on the basis of other service facility descriptions, information published on a common web portal in accordance with Article 5 and any information provided by the applicant. When proposing possible alternatives, at least the following criteria shall be taken into account, to the extent that those can be assessed by the operator of the service facility:

- substitutability of operational characteristics of the alternative service facility;
- substitutability of physical and technical characteristics of the alternative service facility;
- clear impact on attractiveness and competitiveness of the railway transport service envisaged by the applicant;
- estimated additional cost for the applicant.

The operator of a service facility shall respect the commercial confidentiality of information provided by the applicant.

4. Where information on the capacity of the proposed alternative is not publicly available, the applicant shall verify it.

The applicant shall assess whether using the proposed alternative would allow it to operate the envisaged transport service under economically acceptable conditions. It shall inform the operator of the service facility about the outcome of its assessment within a jointly agreed deadline.

5. The applicant may request the operator of a service facility not to indicate the viable alternatives and not to proceed to the joint assessment.

Article 13

Refusal of access

1. Where the operator of a service facility listed in point 2 of Annex II to Directive 2012/34/EU and the applicant conclude that no viable alternative exists, and it is not possible to accommodate the request for access to or supply of a service in the facility following the coordination procedure, the operator of a service facility may refuse the request.

Where the operator of the service facility and the applicant cannot agree on a viable alternative, the operator of the service facility may refuse the request indicating the alternatives which it considers to be viable.

The applicant may complain to the regulatory body in accordance with Article 13(5) of Directive 2012/34/EU.

2. Where the operator of the service facility and the applicant have jointly identified viable alternatives, the operator of the service facility may refuse the request.

3. Operators of a service facility referred to in Article 13(3) of Directive 2012/34/EU shall justify in writing to the applicant why the request could not be accommodated following the coordination procedure and why, on the basis of the information available, they consider that any proposed alternative meets the applicant's requirements and is viable.

4. An operator of a service facility refusing a request shall demonstrate to the regulatory body and to the applicant, upon their request, the reasons for the refusal, including the alternatives examined and the outcome of the coordination procedure.

5. In the cases referred to in Article 12(5) the operator of a service facility may refuse the request without complying with the requirements laid down in paragraphs 3 and 4 of this Article.

6. Where the applicant repeatedly failed to pay for access rights already granted and used, the operator of a service facility may request financial guarantees to safeguard its legitimate expectations about future revenues and utilisation of the facility. Information on such guarantees shall be published in the service facility description.

Article 14

Complaints

Where the applicant complains to the regulatory body pursuant to Article 13(5) of Directive 2012/34/EU, that regulatory body shall, in assessing the impact of any decision it may take to grant an appropriate part of the capacity to the applicant, take into account at least the following elements, where these are relevant:

- Contractual obligations and the viability of the business models of other users of the service facility affected;
- overall volume of service facility capacity already allocated to other users affected;
- investments made into the facility by other users affected;
- availability of viable alternatives to accommodate needs of other users affected, including alternatives in other Member States in case of international train services;
- the viability of the business model of the operator of the service facility;
- access rights to connecting infrastructure.

Article 15

Unused facilities

1. Service facilities listed in point 2 of Annex II to Directive 2012/34/EU which have not been in use for at least two consecutive years shall be subject to expression of interest and lease or rent. Information on unused facilities shall be published in accordance with Article 5.

2. The two-year period referred to in paragraph 1 shall start on the day following the day on which a rail-related service was supplied in the service facility concerned for the last time.

3. An applicant interested in using a service facility listed in point 2 of Annex II to Directive 2012/34/EU which has not been in use for at least two consecutive years shall express its interest in writing to the operator of the facility concerned and inform the regulatory body thereof. Such an expression of interest shall demonstrate the needs of the railway undertaking concerned. The operator of the service facility may decide to resume operations in a way that satisfies the railway undertaking's demonstrated needs.

4. Where the owner of a service facility does not operate that facility, the operator of that facility shall inform the owner about the expression of interest within 10 days following its receipt. The owner of the facility shall publicise that the facility is available for lease or rent, as a whole or in part, unless the operator of the service facility has decided to resume operations after the expression of interest.

5. Before such publication is made, the owner of the service facility may allow the operator of the service facility to submit its observations on that publication within four weeks. The operator may object to that publication by submitting documents proving that there is an ongoing process of reconversion, launched before the expression of interest.

6. The regulatory body shall be informed by the owner about the reconversion process and may request documents from the operator in order to assess its plausibility.

If the assessment is unsatisfactory the regulatory body shall require the publication of the operation of the facility as being for lease or rent, as a whole or in part.

7. Without prejudice to applicable public procurement rules, the owner of a service facility listed in point 2 of Annex II to Directive 2012/34/EU shall publicise on its web portal a notice on the lease or rent of the service facility concerned and shall inform thereof the regulatory body and the infrastructure manager to whose network the facility is connected. The publication shall include all information necessary to enable interested undertakings to submit an offer to take over operation of the facility, as a whole or in part. This information shall include in particular:

- (a) the details of the selection procedure which shall be transparent and non-discriminatory and take into account the objective of ensuring an optimum effective use of the capacity of the facility;
- (b) the selection criteria;
- (c) main characteristics of the technical equipment of the service facility;
- (d) the address and time limit for submission of tenders which shall be at least 30 days from publication of the notice.

8. The infrastructure manager concerned shall also publish on its web portal the information referred to in paragraph 7.

9. Without prejudice to applicable public procurement rules, the owner of a service facility listed in point 2 of Annex II to Directive 2012/34/EU shall select the successful candidate and make a reasonable offer without undue delay.

10. Member States may apply existing procedures for the regulatory control of decommissioning of service facilities. In this case the regulatory body may grant exemptions from the application of the provisions of this Article.

Article 16

Review

By 1 June 2024, the Commission shall assess the application of this Regulation and based on the outcome of that assessment review it, if necessary.

Article 17

Entry into force

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

It shall apply from 1 June 2019.

However, Article 2 shall apply from 1 January 2019.

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

Done at Brussels, 22 November 2017.

For the Commission

The President

Jean-Claude JUNKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/2178**of 22 November 2017****amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing**

THE EUROPEAN COMMISSION,

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

Having regard to 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 ⁽¹⁾, and in particular Article 30 thereof,

Whereas:

- (1) Chapter V of Regulation (EC) No 1005/2008 lays down procedures for the identification of fishing vessels engaged in illegal, unreported and unregulated fishing ('IUU') as well as procedures for establishing a Union list of such vessels ('the Union list'). Article 37 of that Regulation provides for actions to be taken against fishing vessels included in that list.
- (2) The Union list was established by Commission Regulation (EU) No 468/2010 ⁽²⁾ and subsequently amended by Implementing Regulations (EU) No 724/2011 ⁽³⁾, (EU) No 1234/2012 ⁽⁴⁾, (EU) No 672/2013 ⁽⁵⁾, (EU) No 137/2014 ⁽⁶⁾, (EU) 2015/1296 ⁽⁷⁾ and (EU) 2016/1852 ⁽⁸⁾.
- (3) According to Article 30(1) of Regulation (EC) No 1005/2008, vessels included in the IUU vessel lists adopted by regional fisheries management organisations are to be included in the Union list.
- (4) All regional fishery management organisations provide for the establishment and regular update of IUU vessel lists in accordance with their respective rules ⁽⁹⁾.
- (5) According to Article 30 of Regulation (EC) No 1005/2008, upon the receipt from regional fisheries management organisations of the lists of fishing vessels presumed or confirmed to be involved in IUU fishing, the Commission is to update the Union list. Since the Commission has received new lists from the regional fisheries management organisations, the Union list should now be updated.
- (6) Considering that the same vessel might be listed under different names and/or flags depending on the time of its inclusion on the regional fisheries management organisations' lists, the updated Union list should include the different names and/or flags as established by the relevant regional fisheries management organisations.
- (7) The vessel 'Viking' ⁽¹⁰⁾, which is currently included in the Union list, has been removed from the list established by the Commission for the Conservation of Antarctic Marine Living Resources ('CCAMLR'), since it had been sunk by the Indonesian authorities on 14 March 2016. That vessel should thus be removed from the Union list despite the fact that it has not yet been deleted from the list established by the General Fisheries Commission for the Mediterranean ('GFCM').

⁽¹⁾ OJ L 286, 29.10.2008, p. 1.

⁽²⁾ OJ L 131, 29.5.2010, p. 22.

⁽³⁾ OJ L 194, 26.7.2011, p. 14.

⁽⁴⁾ OJ L 350, 20.12.2012, p. 38.

⁽⁵⁾ OJ L 193, 16.7.2013, p. 6.

⁽⁶⁾ OJ L 43, 13.2.2014, p. 47.

⁽⁷⁾ OJ L 199, 29.7.2015, p. 12.

⁽⁸⁾ OJ L 284, 20.10.2016, p. 5.

⁽⁹⁾ Last updates: CCAMLR: 2016/2017 IUU list as adopted at annual meeting CCAMLR-XXXV, 17 October-28 October 2016; SEAFO: SEAFO IUU vessel list as adopted at 13th annual meeting of the Commission, 28 November-2 December 2016; ICCAT: 2016 IUU list as adopted at 20th special meeting of the Commission, 14 November-21 November 2016; IATTC: 2017 list as adopted at 92nd meeting of IATTC, 24 July-28 July 2017; NEAFC: IUU B list AM 2016-40 as adopted at 35th annual meeting, 14 November-18 November 2016; NAFO: 2016 list as adopted at 38th annual meeting, 19 September-23 September 2016; WCPFC: WCPFC IUU vessel list for 2017, effective from 7 February 2017 as adopted at 13th regular session of the Commission, 5 December-9 December 2016; IOTC: IOTC IUU vessels list, approved at 21st session of the IOTC, 22 May-26 May 2017; GFCM: 2016 IUU list as adopted at 40th session, 30 May-3 June 2016; SPRFMO: 2017 IUU vessel list as adopted at 5th Commission meeting, 18-22 January 2017.

⁽¹⁰⁾ IMO ship identification number: 8713392.

- (8) Regulation (EU) No 468/2010 should therefore be amended accordingly.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Part B of the Annex to Regulation (EU) No 468/2010 is replaced by the text in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the seventh 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, 22 November 2017.

For the Commission
The President
Jean-Claude JUNKER

ANNEX

IMO ⁽¹⁾ ship identification number/RFMO Reference	Vessel's name ⁽²⁾	Flag State or Flag Territory ⁽²⁾	Listed in RFMO ⁽²⁾
20150046 [ICCAT]	ABUNDANT 1 [according to IOTC], YI HONG 6 [according to ICCAT] (previous name according to IOTC: YI HONG 06)	Unknown [according to ICCAT, IOTC], Bolivia [according to ICCAT]	IOTC, ICCAT
20150042 [ICCAT]	ABUNDANT 12 [according to IOTC], YI HONG 106 [according to ICCAT] (previous name according to IOTC: YI HONG 106)	Bolivia [according to ICCAT], Unknown [according to IOTC]	IOTC, ICCAT
20150044 [ICCAT]	ABUNDANT 3 [according to IOTC], YI HONG 16 [according to ICCAT] (previous name according to IOTC: YI HONG 16)	Unknown	IOTC, ICCAT
	ABUNDANT 6 (previous name: YI HONG 86)	Unknown	IOTC
20150043 [ICCAT]	ABUNDANT 9 [according to IOTC], YI HONG 116 [according to ICCAT] (previous name according to IOTC: YI HONG 116)	Bolivia [according to ICCAT], Unknown [according to IOTC]	IOTC, ICCAT
20060010 [ICCAT]	ACROS No. 2	Unknown (latest known flag: Honduras)	ICCAT, GFCM
20060009 [ICCAT]	ACROS No. 3	Unknown (latest known flag: Honduras)	ICCAT, GFCM
7306570	ALBORAN II (previous name according to NAFO, NEAFC: WHITE ENTERPRISE; previous names according to SEAFO: WHITE, ENTERPRISE, ENXEMBRE, ATALAYA, REDA IV, ATALAYA DEL SUR)	Unknown [according to NAFO, NEAFC, SEAFO], Panama [according to GFCM] (latest known flags according to NAFO, NEAFC, SEAFO: Panama, Saint Kitts and Nevis)	NEAFC, NAFO, SEAFO, GFCM
7424891	ALDABRA (previous name according to CCAMLR, GFCM: OMOA I)	Unknown [according to CCAMLR], Tanzania [according to GFCM] (latest known flags according to CCAMLR: Tanzania, Honduras)	CCAMLR, SEAFO, GFCM
7036345	AMORINN (previous names according to CCAMLR, GFCM: ICEBERG II, LOME, NOEMI)	Unknown [according to CCAMLR, GFCM] (latest known flags according to CCAMLR: Togo, Belize)	CCAMLR, SEAFO, GFCM
7236634	ANTONY (previous names according to CCAMLR: URGORA, ATLANTIC OJI MARU No. 33, OJI MARU No. 33)	Unknown (latest known flags according to CCAMLR: Indonesia, Belize, Panama, Honduras, Venezuela)	CCAMLR, SEAFO

IMO ⁽¹⁾ ship identification number/RFMO Reference	Vessel's name ⁽²⁾	Flag State or Flag Territory ⁽²⁾	Listed in RFMO ⁽²⁾
2015001[ICCAT]	ANEKA 228	Unknown	IOTC, ICCAT
2015002[ICCAT]	ANEKA 228; KM.	Unknown	IOTC, ICCAT
7322897/20150024 [ICCAT]	ASIAN WARRIOR [according to CCAMLR], KUNLUN [according to ICCAT, IOTC, SEAFO], HUANG HE 22 [according to GFCM] (previous names according to CCAMLR: KUNLUN, TAISHAN, CHANG BAI, HOUGSHUI, HUANG HE 22, SIMA QIAN BARU 22, CORVUS, GALAXY, INA MAK, BLACK MOON, RED MOON, EOLO, THULE, MAGNUS, DORITA; previous name according to ICCAT, IOTC: TAISHAN; previous names according to GFCM: SIMA QIAN BARU 22, DORITA, MAGNUS, THULE, EOLO, RED MOON, BLACK MOON, INA MAK, GALAXY, CORVUS)	Saint Vincent and the Grenadines [according to CCAMLR], Equatorial Guinea [according to ICCAT, IOTC] (latest known flags according to CCAMLR: Indonesia, Tanzania, North Korea (DPRK), Panama, Sierra Leone, Equatorial Guinea, Saint Vincent and the Grenadines, Uruguay)	CCAMLR, SEAFO, GFCM, IOTC, ICCAT
9037537	BAROON [according to CCAMLR, SEAFO], LANA [according to GFCM] (previous names according to CCAMLR: LANA, ZEUS, TRITON I; previous names according to GFCM: ZEUS, TRITON-1, KINSHO MARU No. 18)	Tanzania [according to CCAMLR, SEAFO], Unknown [according to GFCM] (latest known flags according to CCAMLR: Nigeria, Mongolia, Togo, Sierra Leone)	CCAMLR, SEAFO, GFCM
	BENAIHA	India	IOTC
	BEO HINGIS	India	IOTC
12290 [IATTC]/20110011 [ICCAT]	BHASKARA No. 10	Unknown (latest known flag: Indonesia)	IATTC, ICCAT, GFCM
12291 [IATTC]/20110012 [ICCAT]	BHASKARA No. 9	Unknown (latest known flag: Indonesia)	IATTC, ICCAT, GFCM
20060001 [ICCAT]	BIGEYE	Unknown	ICCAT, GFCM
20040005 [ICCAT]	BRAVO	Unknown	ICCAT, GFCM
9407 [IATTC]/20110013 [ICCAT]	CAMELOT	Unknown (latest known flag according to IATTC: Belize)	IATTC, ICCAT, GFCM
	CARMAL MATHA	India	IOTC
6622642	CHALLENGE (previous names according to CCAMLR: PERSEVERANCE, MILA; previous names according to GFCM: MILA, ISLA, MONTANA CLARA, PERSEVERANCE)	Unknown [according to CCAMLR], Panama [according to GFCM] (latest known flags according to CCAMLR: Panama, Equatorial Guinea, United Kingdom)	CCAMLR, SEAFO, GFCM
20150003 [ICCAT]	CHI TONG	Unknown	IOTC, ICCAT

IMO ⁽¹⁾ ship identification number/RFMO Reference	Vessel's name ⁽²⁾	Flag State or Flag Territory ⁽²⁾	Listed in RFMO ⁽²⁾
125 [IATTC]/ 20110014 [ICCAT]	CHIA HAO No. 66	Unknown (latest known flag according to IATTC, ICCAT: Belize; latest known flag according to ICCAT: Equatorial Guinea)	IATTC, ICCAT, GFCM
7913622	DAMANZAIHAO (previous name: LA-FAYETTE)	Peru (latest known flag: Russia)	SPRFMO
20080001 [ICCAT]	DANIAA (previous name: CARLOS)	Unknown [according to ICCAT], Guinea [according to GFCM] (latest known flag according to ICCAT: Guinea)	ICCAT, GFCM
	DIGNAMOL 1	India	IOTC
6163 [IATTC]/ 20130005 [ICCAT]	DRAGON III	Unknown (latest known flag according to IATTC: Cambodia)	IATTC, ICCAT, GFCM
	EPHRAEEM	India	IOTC
8604668	EROS DOS (previous name: FURABO-LOS)	Unknown [according to NAFO, NEAFC, SEAFO], Panama [according to GFCM] (latest known flags according to NAFO, NEAFC, SEAFO: Panama, Seychelles)	NEAFC, NAFO, SEAFO, GFCM
20150004 [ICCAT]	FU HSIANG FA 18	Unknown	IOTC, ICCAT
20150005 [ICCAT]	FU HSIANG FA No. 01	Unknown	IOTC, ICCAT
20150006 [ICCAT]	FU HSIANG FA No. 02	Unknown	IOTC, ICCAT
20150007 [ICCAT]	FU HSIANG FA No. 06	Unknown	IOTC, ICCAT
20150008 [ICCAT]	FU HSIANG FA No. 08	Unknown	IOTC, ICCAT
20150009 [ICCAT]	FU HSIANG FA No. 09	Unknown	IOTC, ICCAT
20150010 [ICCAT]	FU HSIANG FA No. 11	Unknown	IOTC, ICCAT
20150011 [ICCAT]	FU HSIANG FA No. 13	Unknown	IOTC, ICCAT
20150012 [ICCAT]	FU HSIANG FA No. 17	Unknown	IOTC, ICCAT
20150013 [ICCAT]	FU HSIANG FA No. 20	Unknown	IOTC, ICCAT
20150014 [ICCAT]	FU HSIANG FA No. 21	Unknown	IOTC, ICCAT
20130003 [ICCAT]	FU HSIANG FA No. 21 [according to IC-CAT, IOTC], FU HSIANG FA [according to GFCM]	Unknown	IOTC, ICCAT, GFCM
20150015 [ICCAT]	FU HSIANG FA No. 23	Unknown	IOTC, ICCAT
20150016 [ICCAT]	FU HSIANG FA No. 26	Unknown	IOTC, ICCAT
20150017 [ICCAT]	FU HSIANG FA No. 30	Unknown	IOTC, ICCAT

IMO ⁽¹⁾ ship identification number/RFMO Reference	Vessel's name ⁽²⁾	Flag State or Flag Territory ⁽²⁾	Listed in RFMO ⁽²⁾
7355662/20130001 [ICCAT]/M-01432 [WCPFC]	FU LIEN No. 1	Unknown [according to: WCPFC], Georgia [according to GFCM, ICCAT] (latest known flag according to WCPFC: Georgia)	WCPFC, ICCAT, GFCM
20130004 [ICCAT]	FULL RICH	Unknown (latest known flag according to IOTC: Belize)	IOTC, ICCAT, GFCM
20080005 [ICCAT]	GALA I (previous names: MANARA II, ROAGAN)	Unknown (latest known flags according to ICCAT: Libya, Isle of Man)	ICCAT, GFCM
6591 [IATTC]/20130006 [ICCAT]	GOIDAU RUEY No. 1 (previous names according to IATTC, ICCAT: GOIDAU RUEY 1)	Unknown (latest known flag: Panama)	IATTC, ICCAT, GFCM
7020126	GOOD HOPE (previous name according to CCAMLR: TOTO; previous names according to GFCM: TOTO, SEA RANGER V)	Nigeria	CCAMLR, SEAFO, GFCM
6719419 [NEAFC, SEAFO]/6714919 [NAFO, SEAFO]	GORILERO (previous name: GRAN SOL)	Unknown (latest known flags according to GFCM, NAFO, NEAFC: Sierra Leone, Panama)	NEAFC, NAFO, SEAFO, GFCM
2009003 [ICCAT]	GUNUAR MELYN 21	Unknown	IOTC, ICCAT, GFCM
7322926	HEAVY SEA (previous names according to CCAMLR: DUERO, JULIUS, KETA, SHERPA UNO)	Unknown [according to CCAMLR], Panama [according to GFCM] (latest known flags according to CCAMLR: Panama, Saint Kitts and Nevis, Belize)	CCAMLR, SEAFO, GFCM
20150018 [ICCAT]	HOOM XIANG 101	Unknown (latest known flag: Malaysia)	IOTC, ICCAT
20150019 [ICCAT]	HOOM XIANG 103	Unknown (latest known flag: Malaysia)	IOTC, ICCAT
20150020 [ICCAT]	HOOM XIANG 105	Unknown (latest known flag: Malaysia)	IOTC, ICCAT
20100004 [ICCAT]	HOOM XIANG II [according to ICCAT, IOTC], HOOM XIANG 11 [according to GFCM, ICCAT]	Unknown [according to ICCAT, IOTC] (latest known flag according to ICCAT, IOTC: Malaysia)	IOTC, ICCAT, GFCM
7332218	IANNIS 1 [according to NEAFC], IANNIS I [according to GFCM, NAFO, SEAFO] (previous names according to GFCM: MOANA MAR, CANOS DE MECA)	Unknown (latest known flag according to NAFO, NEAFC, SEAFO: Panama)	NEAFC, NAFO, SEAFO, GFCM
6803961	ITZIAR II (previous names according to CCAMLR, GFCM: SEABULL 22, CARMELA, GOLD DRAGON, GOLDEN SUN, NOTRE DAME, MARE)	Nigeria [according to CCAMLR, SEAFO], Mali [according to GFCM] (latest known flags according to CCAMLR: Mali, Nigeria, Togo, Equatorial Guinea, Bolivia, Namibia)	CCAMLR, SEAFO, GFCM

IMO ⁽¹⁾ ship identification number/RFMO Reference	Vessel's name ⁽²⁾	Flag State or Flag Territory ⁽²⁾	Listed in RFMO ⁽²⁾
9505 [IATTC]/ 20130007 [ICCAT]	JYI LIH 88	Unknown	IATTC, ICCAT, GFCM
20150021 [ICCAT]	KIM SENG DENG 3	Bolivia	IOTC, ICCAT
	KING JESUS	India	IOTC
7905443	KOOSHA 4 (previous name according to GFCM: EGUZKIA)	Iran	CCAMLR, SEAFO, GFCM
20150022 [ICCAT]	KUANG HSING 127	Unknown	IOTC, ICCAT
20150023 [ICCAT]	KUANG HSING 196	Unknown	IOTC, ICCAT
20060007 [ICCAT]	LILA No. 10	Unknown (latest known flag: Panama)	ICCAT, GFCM
7388267	LIMPOPO (previous names according to CCAMLR: ROSS, ALOS, LENA, CAP GEORGE)	Unknown (latest known flags according to CCAMLR: Togo, Ghana, Seychelles, France; latest known flags according to GFCM: Togo, Ghana, Seychelles)	CCAMLR, SEAFO, GFCM
20150025 [ICCAT]	MAAN YIH HSING	Unknown	IOTC, ICCAT
20040007 [ICCAT]	MADURA 2	Unknown	ICCAT, GFCM
20040008 [ICCAT]	MADURA 3	Unknown	ICCAT, GFCM
7325746	MAINE [according to GFCM, NAFO, NEAFC], MAINE/LABIKO [according to SEAFO] (previous names according to SEAFO: GUINESPA I, MAPOSA NO-VENO)	Guinea	NEAFC, NAFO, SEAFO, GFCM
20060002 [ICCAT]	MARIA	Unknown	ICCAT, GFCM
20060005 [ICCAT]	MELILLA No. 101	Unknown (latest known flag: Panama)	ICCAT, GFCM
20060004 [ICCAT]	MELILLA No. 103	Unknown (latest known flag: Panama)	ICCAT, GFCM
7385174	MURTOSA	Unknown (latest known flag according to NAFO, NEAFC, SEAFO: Togo)	NEAFC, NAFO, SEAFO, GFCM
9009918	MYS MARI	Russia	SPRFMO
M-00545 [WCPFC]/ 14613 [IATTC]/C- 00545, 20110003 [ICCAT]	NEPTUNE	Unknown [according to ICCAT, WCPFC], Georgia [IATTC, ICCAT, GFCM] (latest known flag according to ICCAT, WCPFC: Georgia)	IATTC, ICCAT, WCPFC, GFCM
20160001 [ICCAT]	NEW BAI I No. 168 (previous name: SA-MUDERA)	Unknown (latest known flags: Liberia, Indonesia)	ICCAT

IMO ⁽¹⁾ ship identification number/RFMO Reference	Vessel's name ⁽²⁾	Flag State or Flag Territory ⁽²⁾	Listed in RFMO ⁽²⁾
20060003 [ICCAT]	No. 101 GLORIA (previous name: GOLDEN LAKE)	Unknown (latest known flag: Panama)	ICCAT, GFCM
20060008 [ICCAT]	No. 2 CHOYU	Unknown (latest known flag: Honduras)	ICCAT, GFCM
20060011 [ICCAT]	No. 3 CHOYU	Unknown (latest known flag: Honduras)	ICCAT, GFCM
8808903	NORTHERN WARRIOR (previous names according to CCAMLR: MILLENNIUM, SIP 3)	Angola [according to CCAMLR] (last known flags according to CCAMLR: Curacao, Netherlands Antilles, South Africa, Belize, Morocco)	CCAMLR, SEAFO
20040006 [ICCAT]	OCEAN DIAMOND	Unknown	ICCAT, GFCM
7826233/20090001 [ICCAT]	OCEAN LION	Unknown (latest known flag: Equatorial Guinea)	IOTC, ICCAT, GFCM
7816472	OKAPI MARTA	Belize	GFCM
11369 [IATTC]/20130008 [ICCAT]	ORCA	Unknown (latest known flag: Belize)	IATTC, ICCAT, GFCM
20060012 [ICCAT]	ORIENTE No. 7	Unknown (latest known flag: Honduras)	ICCAT, GFCM
5062479	PERLON (previous names according to CCAMLR: CHERNE, BIGARO, HOKING, SARGO, LUGALPESCA; previous names according to GFCM: CHERNE, SARGO, HOKING, BIGARO, UGALPESCA)	Unknown [according to CCAMLR, GFCM] (latest known flags according to CCAMLR, GFCM: Mongolia, Togo, Uruguay)	CCAMLR, SEAFO, GFCM
95 [IATTC]/20130009 [ICCAT]	REYMAR 6	Unknown (latest known flag: Belize)	IATTC, ICCAT, GFCM
	SACRED HEART	India	IOTC
20130013 [ICCAT]	SAMUDERA PASIFIK No. 18 (previous names according to ICCAT: KAWIL No. 03, LADY VI-T-III)	Indonesia	ICCAT, GFCM
20150026 [ICCAT]	SAMUDERA PERKASA 11	Unknown	IOTC, ICCAT
20150027 [ICCAT]	SAMUDRA PERKASA 12 [according to IOTC], SAMUDERA PERKASA 12 [according to ICCAT]	Unknown	IOTC, ICCAT
8514772	SEA BREEZE [according to CCAMLR], ANDREY DOLGOV [according to SEAFO] (previous names according to CCAMLR: ANDREY DOLGOV, STD No. 2, SUN TAI No. 2, SHINSEI MARU No. 2)	Togo [according to CCAMLR], Unknown [according to SEAFO] (latest known flags according to CCAMLR: Cambodia, South Korea, Philippines, Japan, Namibia)	CCAMLR, SEAFO

IMO ⁽¹⁾ ship identification number/RFMO Reference	Vessel's name ⁽²⁾	Flag State or Flag Territory ⁽²⁾	Listed in RFMO ⁽²⁾
	SHALOM	India	IOTC
20080004 [ICCAT]	SHARON 1 (previous names according to GFCM: MANARA I, POSEIDON; previous names according to ICCAT: MANARA 1, POSEIDON)	Unknown (latest known flag according to GFCM: Libya; latest known flags according to ICCAT: Libya, United Kingdom)	ICCAT, GFCM
	SHENG JI QUN 3	Unknown	IOTC
20150028 [ICCAT]	SHUEN SIANG	Unknown	IOTC, ICCAT
	SHUN LAI (previous name: HSIN JYI WANG No. 6)	Unknown	IOTC
20150029 [ICCAT]	SIN SHUN FA 6	Unknown	IOTC, ICCAT
20150030 [ICCAT]	SIN SHUN FA 67	Unknown	IOTC, ICCAT
20150031 [ICCAT]	SIN SHUN FA 8	Unknown	IOTC, ICCAT
20150032 [ICCAT]	SIN SHUN FA 9	Unknown	IOTC, ICCAT
20050001 [ICCAT]	SOUTHERN STAR 136 (previous name: HSIANG CHANG)	Unknown (latest known flag: Saint Vincent and the Grenadines)	ICCAT, GFCM
20150034 [ICCAT]	SRI FU FA 168	Unknown	IOTC, ICCAT
20150035 [ICCAT]	SRI FU FA 18	Unknown	IOTC, ICCAT
20150036 [ICCAT]	SRI FU FA 188	Unknown	IOTC, ICCAT
20150037 [ICCAT]	SRI FU FA 189	Unknown	IOTC, ICCAT
20150038 [ICCAT]	SRI FU FA 286	Unknown	IOTC, ICCAT
20150039 [ICCAT]	SRI FU FA 67	Unknown	IOTC, ICCAT
20150040 [ICCAT]	SRI FU FA 888	Unknown	IOTC, ICCAT
9405 [IATTC]/ 20130010 [ICCAT]	TA FU 1	Unknown (latest known flag according to IATTC: Belize)	IATTC, ICCAT, GFCM
9179359	TAVRIDA (previous names: AURORA, PACIFIC CONQUEROR)	Russia (latest known flag: Peru)	SPRFMO
6818930	TCHAW (previous names according to CCAMLR: REX, CONDOR, INCA, VIKING, CISNE AZUL)	Unknown [according to CCAMLR, GFCM] (latest known flags according to CCAMLR, GFCM: Togo, Belize, Seychelles)	CCAMLR, SEAFO, GFCM

IMO ⁽¹⁾ ship identification number/RFMO Reference	Vessel's name ⁽²⁾	Flag State or Flag Territory ⁽²⁾	Listed in RFMO ⁽²⁾
13568 [IATTC]/ 20130011 [ICCAT]	TCHING YE No. 6 (previous name according to ICCAT: EL DIRIA I)	Unknown (latest known flag according to IATTC, GFCM: Belize; latest known flags according to ICCAT: Belize, Costa Rica)	IATTC, ICCAT, GFCM
20150041 [ICCAT]	TIAN LUNG No.12	Unknown	IOTC, ICCAT
7321374	TRINITY (previous names according to NAFO, SEAFO: ENSEMBRE, YUCUTAN BASIN, FONTE NOVA, JAWHARA; previous names according to NEAFC: ENSEMBRE, YUCUTAN BASIN, FONTE NOVA, JAWHARA)	Unknown [according to NAFO, NEAFC, SEAFO], Ghana [according to GFCM] (latest known flags according to NAFO: Ghana, Panama; latest known flags according to NEAFC: Ghana, Panama, Morocco)	NEAFC, NAFO, SEAFO, GFCM
	VACHANAM	India	IOTC
8994295/129 [IATTC]/ 20130012 [ICCAT]	WEN TENG No. 688/MAHKOIA ABADI No. 196	Unknown (latest known flag: Belize)	IATTC, ICCAT, GFCM
	WISDOM	India	IOTC
20140001 [ICCAT]/ 15579 [IATTC]	XIN SHI JI 16	Fiji	ICCAT, IATTC
6607666	YELE [according to CCAMLR], RAY [according to GFCM, NEAFC, SEAFO] (previous names according to CCAMLR: RAY, KILY, CONSTANT, TROPIC, ISLA GRACIOSA; previous names according to GFCM: KILLY, TROPIC, CONSTANT, ISLA RACIOSA; previous names according to NEAFC: KILLY, CONSTANT, TROPIC, ISLA GRACIOSA; previous names according to SEAFO: KILLY, CONSTANT, TROPICS, ISLA GRACIOSA)	Sierra Leone [according to CCAMLR], Belize [according to NEAFC, SEAFO] (latest known flags according to CCAMLR: Belize, Equatorial Guinea, South Africa; latest known flags according to NEAFC: South Africa, Equatorial Guinea, Mongolia)	CCAMLR, NEAFC, SEAFO, GFCM
20150045 [ICCAT]	YI HONG 3	Unknown	IOTC, ICCAT
20130002 [ICCAT]	YU FONG 168	Chinese Taipei	WCPFC, ICCAT, GFCM
20150048 [ICCAT]	YU FONG 168	Unknown	IOTC, ICCAT
2009002 [ICCAT]	YU MAAN WON	Unknown (latest known flag: Georgia)	IOTC, ICCAT, GFCM
	YUTUNA 3 (previous names: HUNG SHENG No. 166)	Unknown	IOTC
	YUTUNA No. 1	Unknown	IOTC

IMO ⁽¹⁾ ship identification number/RFMO Reference	Vessel's name ⁽²⁾	Flag State or Flag Territory ⁽²⁾	Listed in RFMO ⁽²⁾
9319856/20150033 [ICCAT]	ZEMOUR 1 [according to CCAMLR, SEAFO], HUIQUAN/WUTAISHAN ANHUI 44 [according to GFCM], SONGHUA [according to ICCAT, IOTC] (previous names according to CCAMLR: KADEI, SONGHUA, YUNNAN, NIHEWAN, HUIQUAN, WUTAISHAN ANHUI 44, YANGZI HUA 44, TROSKY, PALOMA V; previous name according to ICCAT, IOTC: YUNNAN; previous name according to SEAFO: SONGHUA)	Mauritania [according to CCAMLR, SEAFO], Tanzania [according to GFCM], Unknown [according to ICCAT, IOTC], Equatorial Guinea [according to ICCAT] (latest known flags according to CCAMLR: Equatorial Guinea, Indonesia, Tanzania, Mongolia, Cambodia, Namibia, Uruguay; latest known flag according to ICCAT, IOTC: Equatorial Guinea)	CCAMLR, SEAFO, GFCM, IOTC, ICCAT
9042001/20150047 [ICCAT]	ZEMOUR 2 [according to CCAMLR, SEAFO], SHAANXI HENAN 33 [according to GFCM], YONGDING [according to ICCAT, IOTC] (previous names according to CCAMLR: LUAMPA, YONGDING, CHENGDU, JIANGFENG, SHAANXI HENAN 33, XIONG NU BARU 33, DRACO I, LIBERTY, CHILBO SAN 33, HAMMER, SEO YANG No. 88, CARRAN; previous names according to GFCM: XIONG NU BARU 33, LIBERTY, CHILBO SAN 33, HAMMER, CARRAN, DRACO-1; previous name according to ICCAT, IOTC: JIANGFENG; previous name according to SEAFO: YONDING)	Mauritania [according to CCAMLR, SEAFO], Tanzania [according to GFCM], Unknown [according to ICCAT], Equatorial Guinea [according to ICCAT, IOTC] (latest known flags according to CCAMLR: Equatorial Guinea, Indonesia, Tanzania, Panama, Sierra Leone, North Korea (DPRK), Togo, Republic of Korea, Uruguay)	CCAMLR, SEAFO, GFCM, IOTC, ICCAT

⁽¹⁾ International Maritime Organization.

⁽²⁾ For any additional information consult the websites of the regional fisheries management organisations (RFMOs).

COMMISSION IMPLEMENTING REGULATION (EU) 2017/2179**of 22 November 2017****imposing a definitive anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾, and in particular Article 11(2) thereof,

Whereas:

A. PROCEDURE**1. Measures in force**

- (1) Following an anti-dumping investigation ('the original investigation'), the Council imposed, by means of Implementing Regulation (EU) No 917/2011 ⁽²⁾, a definitive anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China ('the PRC' or 'China' or 'country concerned').
- (2) The measures took the form of an *ad valorem* duty and the duty levels imposed ranged from 13,9 % ⁽³⁾ to 36,5 % for cooperating producers. Furthermore, a country-wide duty rate of 69,7 % was imposed on Chinese companies which either did not make themselves known or did not cooperate with the investigation.

2. Request for an expiry review

- (3) Following the publication of a notice of impending expiry ⁽⁴⁾ of the anti-dumping measures in force, the Commission received a request for the initiation of an expiry review of the measures in force pursuant to Article 11(2) of Regulation (EU) 2016/1036 ('the basic Regulation') ('the request').
- (4) The request was lodged by the European Ceramic Tile Manufacturers' Federation ('the applicant' or 'CET') on behalf of producers representing more than 25 % of the total Union production of ceramic tiles.
- (5) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and continuation or recurrence of injury to the Union industry.

3. Initiation of an expiry review

- (6) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 13 September 2016, by a notice published in the *Official Journal of the European Union* ⁽⁵⁾ ('Notice of Initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Implementing Regulation (EU) No 917/2011 of 12 September 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China (OJ L 238, 15.9.2011, p. 1), as last amended by Commission Implementing Regulation (EU) 2015/782 of 19 May 2015 adding a company to the list of producers from the People's Republic of China listed in Annex I of Regulation (EU) No 917/2011 (OJ L 124, 20.5.2015, p. 9).

⁽³⁾ See Commission Implementing Regulation (EU) 2015/409 of 11 March 2015 amending Council Implementing Regulation (EU) No 917/2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China (OJ L 67, 12.3.2015, p. 23).

⁽⁴⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 425, 18.12.2015, p. 20).

⁽⁵⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of ceramic tiles originating in the People's Republic of China (OJ C 336, 13.9.2016, p. 5.).

4. Review investigation period and period considered

- (7) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 July 2015 to 30 June 2016 (the 'review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of recurrence of injury covered the period from 1 January 2013 to the end of the review investigation period (the 'period considered').

5. Parties concerned by the investigation

- (8) The Commission advised the applicants, other known Union producers, exporting producers in the PRC, known importers, users and traders known to be concerned, associations representing Union producers and users and representatives of the exporting countries of the initiation of the expiry review.
- (9) Interested parties were given opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation.
- (10) The Union producers, represented by the applicant, took this opportunity to request that their names are kept confidential for fear that they could face retaliation by customers or competitors implicated by this investigation, in line with Article 19(1) of the basic Regulation. The Commission individually examined each of these confidentiality requests for merit thereof. It established that there was indeed evidence of a significant possibility of retaliation in each case and accepted that the names of these companies should not be disclosed.
- (11) The Chinese Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (the 'CCCMC') requested a hearing. The hearing took place on 6 December 2016.
- (12) At the hearing and in the subsequent submissions the CCCMC requested full access to the dumping margin, price effects, injury margin and injury indicators calculations, and any other confidential information on which calculations were based. The CCCMC argued that the lawyers that would be granted the access are registered at a European bar association and are subject to strict bar rules and disclosing confidential information to their clients would result in severe disciplinary actions, including disbarment and potential criminal action. Therefore, the CCCMC argued that the access to the confidential file would not breach the Commission's obligation to protect confidential information whilst allowing an effective exercise of the rights of defence.
- (13) Article 19 of the basic Regulation stipulates that the Commission must not reveal any information which is by nature confidential without specific permission from the supplier of such information. It does not envisage that any other party, including lawyers registered at a European bar association, is granted the access. Furthermore, the jurisprudence of the Court of Justice reveals that the protection of rights of the defence must be, where necessary, reconciled with the principle of confidentiality, which is specifically laid down in Article 19 of the basic Regulation.⁽¹⁾ While that reconciliation permits the receipt of non-confidential summaries of such information (carried out, for instance, in the form of ranges and/or indexed elements of information) where that information would not lead to a disclosure of business secrets, it is not absolute. Accordingly, and while the CCCMC could have been granted access to, for instance, ranges and/or indexed elements of the information requested, full disclosure of that information was not deemed reconcilable with the duty to protect confidential information. In like measure, and because the Union legislator did not foresee this exception in the basic Regulation, the Commission considered that the fact that the lawyers registered at a European bar association are subject to strict bar rules and are potentially subject to sanctions in case of breach of these rules does not allow the Commission services to grant access contrary to the applicable legislation. The Commission thus concluded that the access to confidential information by lawyers registered at a European bar association could not be granted. In any case, an additional element for safeguarding, in this respect, the rights of defence of interested parties, is the possibility of having recourse to the Hearing Officer in Trade Proceedings under Article 15 of his terms of reference⁽²⁾ who did not call into question the Commission's position on confidentiality. Hence, the Commission deemed the information provided in the disclosure documents sufficient to satisfy the former's rights of defence.

5.1. Sampling

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

⁽¹⁾ Judgment of the Court of 20 March 1985, Case C-264/82 *Timex v Council and Commission*, ECLI:EU:C:1985:119, at paragraph 24.

⁽²⁾ Decision of the President of the European Commission of 29 February 2012 on the function and terms of reference of the hearing officer in certain trade proceedings (OJ L 107, 19.4.2012, p. 5).

5.2. *Sampling of exporting producers in the PRC*

- (15) On the basis of information provided by the applicant, the Commission found that the PRC ceramic industry was largely fragmented with 1 452 producers in 2014. Therefore, in view of the apparently large number of exporting producers in the PRC, sampling was envisaged in the Notice of Initiation.
- (16) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, it asked the mission of the PRC to the Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation. In total, the information specified in the Notice of Initiation was sent to 119 companies in the PRC.
- (17) Nineteen producers or group of producers in the PRC provided the requested information and agreed to be included in the sample. Given the number of companies which could have come forward, this was considered low cooperation. In accordance with Article 17(1) of the basic Regulation, the Commission provisionally selected a sample of four groups of exporting producers on the basis of their declared volume of exports to the Union during the review investigation period and their production capacity which could reasonably be investigated within the time available. Following the disclosure to interested parties of this provisional sample, the group of exporting producers with the largest production capacity withdrew its cooperation. Thus, the proposed sample was amended by adding the exporting producer with the second largest production capacity. Following the disclosure of the amended sample to the interested parties, no comments were received. Therefore, the sampling proposal was confirmed in accordance with Article 17(2) of the basic Regulation.
- (18) The four sampled groups of exporting producers had an annual production of 55 million m² of the product concerned, representing around 34 % of the overall declared production and sales of all cooperating exporting producers or groups of exporting producers of the product concerned to the Union. The four sampled groups covered around 8 % of the total Chinese exports to the Union according to Eurostat in the review investigation period.

5.3. *Sampling of Union producers*

- (19) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 17(1) of the basic Regulation, the Commission selected the sample on the basis of the largest representative volume of sales and production, taking into account geographical spread and also the high fragmentation of the ceramic tiles industry in line with the methodology detailed below in recitals (20) to (21).
- (20) In the original investigation the Commission concluded that the ceramic tiles sector is very fragmented. Therefore, in order to ensure that the results of large companies did not dominate the injury analysis and to ensure that the situation of the small and medium-sized companies, collectively accounting for the largest share of the Union production, was adequately reflected, the Commission decided to establish three segments based on the volume of yearly production:
- Segment 1: large companies — production in excess of 10 million m²,
 - Segment 2: medium-sized companies — production between 5 and 10 million m²,
 - Segment 3: small companies — production below 5 million m².
- (21) The Commission's investigation did not reveal any changes to the ceramic tiles market, which continues to be fragmented, and thus dominated by small Union producers as opposed to larger producers able to influence the market's direction. Accordingly, the Commission considered that the high fragmentation of the ceramic tiles sector should also be taken into consideration in the current expiry review. It, therefore, decided to apply the same methodology for the selection of the sample as in the original investigation and considered that all segments, namely small, medium-sized and large companies should be represented in the sample.
- (22) The provisional sample consisted of nine Union producers. The sampled Union producers accounted for over 8,5 % of total estimated Union production in 2015. Companies from all of the three sectors were represented: Two companies were from the segment of large companies, three companies were from the segment of medium-sized companies and four companies were from the segment of small companies. The sampled companies were situated in Germany, Italy, Poland, Portugal and Spain.

- (23) In order to reflect different situations that can be encountered in the Union in the different Member States, when selecting the sample, the Commission also took into account the geographical spread (see recital (19)). The sample thus covered Member States where approximately 90 % of the production is situated. Thus the methodology applied by the Commission ensured that the sample was representative of the Union production as a whole and complied with Article 17(1) of the basic Regulation.
- (24) The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline and the provisional sample was thus confirmed. The sample was considered representative of the Union industry.
- (25) On 28 October 2016, 11 days after the announcement of the final sample, one of the sampled Union producers, the Polish producer, informed the Commission that it had decided to stop cooperating with the investigation. In order not to impact the representativeness of the sample, the Commission decided to replace the company by another Union producer from the same market segment and informed all the interested parties of the change in the sample. The new sample accounted for 7,7 % of the total Union production. The new sample covered Member States where approximately 80 % of the production is situated. The replacement of the non-cooperating company with a company from the same market segment was done to ensure that the final sample remained representative of the Union industry, even though the unexpected non-cooperation of the first company invariably reduced the representativeness of total Union production.

5.4. Sampling of unrelated importers

- (26) To decide whether sampling was necessary and, if so, to select a sample, all known (in total more than 1 000) importers/users were invited to fill in the sampling form attached to the Notice of Initiation.
- (27) Eleven companies replied to the sampling form. The Commission decided to select four companies. In accordance with Article 17(1) of the basic Regulation, the Commission selected the sample of the unrelated importers on the basis of the size of the imports taking into accounts the geographical spread. The sampled importers were situated in Belgium, Denmark and Germany. The sampled unrelated importers accounted for around 6,5 % of total imports from the PRC.
- (28) On 30 November 2016, one of the sampled unrelated importers informed the Commission that it decided to stop cooperating with the investigation. The final sample of the unrelated importers consisted therefore of three unrelated importers. They still accounted for around 6 % of total imports from the PRC. The final sample was therefore considered representative.

6. Questionnaires and verification visits

- (29) The Commission sought and verified all the information deemed necessary for the purpose of determining the likelihood of continuation or recurrence of dumping, the likelihood of recurrence of injury and Union interest.
- (30) The Commission sent questionnaires to the four sampled Chinese exporting producers/groups of exporting producers, the two producers in the analogue country, the nine sampled Union producers and the four unrelated importers that came forward in the sampling exercise. Following sending the questionnaire, one sampled group of exporting producers and one sampled unrelated importer withdrew their cooperation (see recitals (17) and (25) respectively).
- (31) Complete questionnaires replies were received from three sampled groups of exporting producers, two analogue country producers, the nine sampled Union producers and the three unrelated importers.
- (32) The Commission carried out verifications at the premises of the following companies:

(a) Union producers:

— verification visits were carried out at the premises of the nine sampled Union producers ⁽¹⁾;

⁽¹⁾ As explained in the recital (10) the names of the Union producers cannot be disclosed for confidentiality reasons.

(b) Importer:

— Enmon GmbH;

(c) Exporting producers in the country concerned:

— Foshan Shiwan Eagle group, Foshan City, Guangdong Province, PRC,

— Guangdong Bode Fine Building Group, Foshan City, Guangdong Province, PRC,

— Guangdong Kaiping Tile's building Materials, Kaiping City, Guangdong Province, PRC;

(d) Producers in the analogue country:

— Del Conca, Loudon, Tennessee, USA,

— Florida Tiles, Lexington, Kentucky, USA.

7. Disclosure

- (33) On 2 August 2017, the Commission disclosed to all interested parties the essential facts and considerations of the investigation and invited them to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings by 3 September 2017.
- (34) Three Chinese exporting producers, the CCCMC one Union importer and the applicant submitted comments after the disclosure, and a hearing between the Commission services and the CCCMC took place on 22 September 2017.
- (35) By letters of 17 August 2017 and 6 September 2017, the CCCMC requested the Commission to provide information on a number of elements relating to dumping and injury calculations, in addition to the information contained in the open file and disclosed to the interested parties. The CCCMC claimed that because of the Commission's failure to provide this information, neither the CCCMC nor the Chinese exporting producers were in a position to fully exercise their rights of defence.
- (36) The Commission analysed individually each piece of information requested by the CCCMC. It provided all the information by letters of 25 August 2017 and 20 September 2017 to CCCMC, or to the Chinese exporting producers directly, for example a list of product types produced by the Union industry or details on adjustments used for the undercutting calculations, with the exception of information which was not existent, not part of the file, or was confidential. Where information was not existent, not part of the file, or deemed confidential, the Commission appropriately reasoned its rejection. In particular, the Commission did not perform overall aggregated undercutting calculations and undercutting calculations per product control number ('PCN' or 'product type') (rather than per exporting producer). Therefore this information was not part of the file. The Commission was of the opinion that the CCCMC was able to exercise its rights of defence sufficiently without access to this information.
- (37) With respect to the confidential information, such as prices and volumes of sales by the Union industry per PCN for example, the Commission recalled that it was under obligation to protect such information under Article 19 of the basic Regulation. Furthermore the Commission considered that the open file of the case made available to parties, including to the CCCMC, contained all the information relevant for the presentation of their cases and used in the investigation. If the information was deemed confidential, the open file contained meaningful summaries of it. All the interested parties, including the CCCMC had access to the open file and could consult it.
- (38) In sum, the Commission thus considered that all the parties, including the CCCMC, were given the opportunity to fully exercise their rights of defence. The Commission therefore rejected the claim.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (39) The product concerned is glazed and unglazed ceramic flags and paving, hearth or wall tiles; glazed and unglazed ceramic mosaic cubes and the like, whether or not on a backing ('the product concerned'), currently falling within HS code 6907. The above HS code is valid as of 1 January 2017 and replaces the CN codes 6907 10 00, 6907 90 20, 6907 90 80, 6908 10 00, 6908 90 11, 6908 90 20, 6908 90 31, 6908 90 51, 6908 90 91, 6908 90 93 and 6908 90 99 mentioned in the original investigation and the Notice of Initiation of the current proceeding.
- (40) Ceramic tiles are mainly used in the construction industry to cover walls and floors.

2. Like product

- (41) The product concerned and the ceramic tiles produced and sold in the PRC, on the domestic market of the United States of America ('USA'), the analogue country, as well as ceramic tiles produced and sold in the Union by the Union industry were found to have the same basic physical, chemical and technical characteristics and uses.
- (42) Following the disclosure, the CCCMC requested the Commission to provide a more detailed description of the different product types of Union producers and the analogue country producers that were included in a particular product control number. It claimed that there could be differences between a product type produced by the Union industry, by the analogue country industry and by the Chinese exporting producers that were not reflected in the PCN and of that neither the Chinese exporting producers nor the CCCMC were aware. The CCCMC raised the argument in relation to the price comparison for the purpose of both the dumping and the injury analysis, arguing that without the information, it was not in a position to request adjustments when warranted and, therefore, to fully exercise its rights of defence (see recitals (81) to (83) and (120) to (122)).
- (43) However, as the Commission explained to the CCCMC in a letter of 20 September 2017, it did not dispose any more detailed descriptions of the different product types within a particular PCN nor had grounds to consider that any differences within a particular PCN existed. As also explained in recital (45) below, it was considered that the characteristics of each PCN were detailed enough to capture all the differences between the different product types. Nor did the CCCMC provide any arguments that a more detailed description or distinction was necessary. The Commission therefore rejected the claim.
- (44) The CCCMC also claimed that since ceramic tiles encompassed a large number of products, the Commission should have collected information about product types imported from the PRC and product types produced by the Union industry, and to carry out an analysis per (groups of) product types (segments).
- (45) To define the product concerned and to distinguish between the different product types, the Commission used seven characteristics detailing physical characteristics such as water absorption, finishing (if the tiles were glazed/unglazed, single/double fired, coloured/non coloured, rectified or not), size and quality standards. These same characteristics were already used in the original investigation. No other party claimed that they would not reflect all the differences between the different product types, and that the same product type produced in the Union differed from the same product type product in the PRC. Nor did the CCCMC provide any information which other characteristics would be necessary for this matter. Therefore, the Commission maintained that the characteristics of each PCN were detailed enough to capture all the differences between the different product types, allowing a fair product (and price) comparison.
- (46) Furthermore, with regard to the claim that certain product types merited to be grouped in a segment and analysed separately, the Commission did not find any objective basis other than the differences captured by the PCN to make such segments. It also noted that there were not groups of products distinguished in the original investigation. Moreover, the CCCMC did not substantiate its request with a concrete proposal and no other party submitted that grouping some of the product types would be necessary and justified. On the other hand, the Commission considered that an analysis per PCN was more detailed than an analysis per segment that grouped certain PCNs together, and therefore, more appropriate. The Commission therefore rejected the claim.
- (47) Therefore, in view of the above and in absence of any further comments regarding the product concerned and the like product the Commission maintained that these products are alike within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

- (48) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping from the Chinese exporting producers.

- (49) Nineteen exporting producers or groups of exporting producers provided the reply to the sampling form. The declared export volume of ceramic tiles to the Union by the cooperating exporting producers was around 1,7 million m² in the review investigation period corresponding to around 11 % of the total import volumes of the product concerned from China recorded in Eurostat for the same period. The total declared production capacity of the cooperating exporting producers or groups of exporting producers amounted to 207 million m² which is roughly 1,5 % of the total estimated Chinese production capacity (estimated at 13,9 billion m² in 2015). Further details on the production capacity in the PRC can be found in Section 3(a) below.
- (50) The Commission accordingly assessed the likelihood of continuation or recurrence of dumping by reference to the data provided by these three groups of companies.

2. Dumping during the review investigation period

(a) Analogue country

- (51) According to Article 2(7)(a) of the basic Regulation, normal value was determined on the basis of the prices paid or payable on the domestic market or constructed value in an appropriate market economy third country (the 'analogue country').
- (52) The CCCMC contested the methodology of analogue country for establishment of the normal value as such, arguing that Section 15 of the Protocol of Accession of China to the WTO had lapsed after 11 December 2016. Thus, according to the CCCMC, normal value for the Chinese exporting producers should be calculated on the basis of their own domestic prices and/or costs. Following the disclosure, the CCCMC reiterated these claims.
- (53) The Commission recalled that all Chinese exporting producers had the opportunity to submit MET ('Market Economy Treatment') claim forms to enable individual calculations of dumping margins. None of these exporters made use of that possibility. Therefore, pursuant to Article 2(7) of the basic Regulation, normal value was determined on the basis of data from an analogue country. This argument was, thus, rejected.
- (54) In the original investigation, the USA was used as analogue country for the purposes of establishing the normal value with regard to the PRC.
- (55) In the Notice of Initiation, the Commission informed interested parties that it envisaged using the USA as an analogue country and invited parties to comment. Moreover, the Notice of Initiation mentioned that other market-economy producers might be located, inter alia, in Turkey, the United Arab Emirates (the 'UAE'), India and Brazil and would be examined as well.
- (56) The CCCMC raised concerns regarding the appropriateness of the USA as analogue country after the initiation of the case. It considered that the USA was not a suitable analogue country alleging that there was an economic development disparity between China and the USA and a low consumption of ceramic tiles for the flooring market in the USA. The CCCMC expressed that the choice of Brazil, India, Mexico and Turkey as analogue country would be more appropriate, provided that those countries and the PRC were similar in terms of level of development and had a comparable domestic consumption.
- (57) Regarding the USA, the CET claimed that there was a high level of competition on the domestic market among a wide range of products, fully comparable to those exported from the PRC. Moreover, it argued that access to raw material and to energy resources were similar between the USA and PRC and the quantities sold on the USA domestic market made the USA a representative choice of an analogue country.
- (58) Following these comments, the Commission contacted the representations of the countries mentioned above plus the countries with highest import volumes of ceramic tiles to the Union, in order to ask for their help in identifying producers in their respective countries who could be invited to cooperate as analogue country producers. In addition, requests for cooperation were sent to the known analogue country producers and producers associations.
- (59) Ten producers expressed their willingness to cooperate with the investigation. They were located in the USA (3), Brazil (2) and India (5), respectively. The Commission sent the analogue country questionnaire to them on 20 January 2017. No reply was received from India. For exporting producers from Brazil, one producer did not reply and the second one withdrew its cooperation. From the USA, one producer withdrew its cooperation and two producers completed the questionnaire.

- (60) Based on available information, the Commission concluded that the USA had significant production and a satisfactory level of competition on its domestic market. The USA's domestic consumption was around 254 million m². There were at least 28 domestic producers. Moreover, imports represent 68 % of the consumption, originating mainly from the PRC (from a total import volume of 49 million m²). Apart from a customs duty of 8,5 %-10 % there are no import restrictions in force. The US producers used a similar production process than the Chinese sampled exporting producers. The US cooperating producers reported as domestic sales respectively 2,0 and 2,9 million m².
- (61) Following the disclosure, the CCCMC claimed that the USA is in any event not an appropriate analogue country and that the Commission failed to use a country in which the price for a like product is formed in circumstances which are as similar as possible to those in the country of export.
- (62) With regard to this claim, it is first recalled that the Commission contacted the official representations and/or producers located in Brazil, India, Indonesia, Malaysia, Mexico, Russia, Serbia, Thailand, Tunisia, Turkey, the UAE, Ukraine and the USA. However, as described in recital (59), only two producers cooperated.
- (63) As mentioned in recital (60), the USA was considered appropriate as an analogue country because, the USA had significant production, consumption and a satisfactory level of competition on its domestic market. The claim was therefore rejected.
- (64) Following the disclosure, one importer raised concerns as to the choice of two US producers related to Union producers and the establishment of the normal value for the PRC on the basis of these two producers. Therefore, the objectiveness of the data collected from such producers may be questionable.
- (65) The Commission observed that even if a producer in the analogue country is related to Union producer, such a link does not invalidate or affect the determination of the normal value ⁽¹⁾.
- (66) In view of the above and in the absence of any further comments, the Commission concluded that the USA was an appropriate analogue country under Article 2(7)(a) of the basic Regulation.
- (b) Normal value
- (67) The information received from the two cooperating producers in the analogue country was used as a basis for the determination of the normal value.
- (68) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the total volume of domestic sales of the like product to independent customers made by the cooperating analogue country producers during the review investigation period was representative. To this end, their total sales volumes were compared to the total volume of the product concerned exported by each of the sampled Chinese exporting producers to the Union. On that basis, the Commission found that the like product was sold in representative quantities on the US domestic market.
- (69) Second, the Commission compared on a product type basis the sales volume on the US market with the export volumes to the Union by each sampled Chinese exporting producers. This comparison showed that two product types directly comparable were not sold in representative quantities in the USA. Therefore, the normal value of these two product types was constructed on the basis of their own SG&A, profit and allowances found in the ordinary course of trade.
- (70) Following the disclosure, CCCMC claimed that it is not meaningful to compare the volume of sales by the analogue country producers on their domestic market to the volume of export sales by the Chinese exporting producers, as there are entirely unrelated with one another. Therefore, the analysis carried out by the Commission did not say anything about the representativeness of the US domestic sales for these product types.

⁽¹⁾ Please refer also to Judgement in Case C-687/13, point 67, request for a preliminary ruling from the Finanzgericht München — Germany, Fliesen-Zentrum Deutschland GmbH v Hauptzollamt Regensburg Fliesen-Zentrum, Judgment of the Court (Third Chamber) of 10 September 2015.

- (71) By analogy to the situation of a dumping calculation in market economies, the Commission verified if the transactions were made in sufficient quantities at an individual product type level in accordance with Article 2(2) of the basic Regulation. As these two product types represented respectively 0,70 % and 0,09 % of the Chinese exporting producer sales, the Commission considered that the US domestic sales were not representative and constructed the normal value. Moreover, the Commission found that the methodology used had no impact on the establishment of the dumping margin. Therefore, the claim is rejected.
- (72) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the review investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (73) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type, and
 - the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (74) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the IP.
- (75) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the IP, if:
- the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type, or
 - the weighted average price of this product type is below the unit cost of production.
- (76) The analysis of domestic sales showed that the normal values of 10 product types were established on the basis of the method mentioned in recital (74) and 7 product types on the basis of the method mentioned in recital (75).
- (77) The US cooperating producers reported in total 17 product types while Chinese cooperating exporting producers reported in total 15 product types. However, the comparison between the product types exported by the Chinese and sold by the US producers revealed that there was a direct matching for only two product types. The limited number of matching product types was explained by the rather complex definition of the product types involving seven characteristics and 672 possible combinations (including, but not limited to, porcelain/non-porcelain, seven types of working surfaces, presence of single/double or no glazing). As it is a requirement to take into account 100 % of export sales during dumping calculations, for matching purposes, some adjustments had to be made.
- (78) Firstly, the Commission decided to increase the comparability by constructing the normal values of additional product types. In this regard, it is recalled that the Chinese cooperating exporting producers sold two non-porcelain product types to the Union (representing around 6 % of the total quantity exported to the Union). The US analogue country producers, however, did not produce such non-porcelain product types. Therefore, the Commission decided to construct the costs of manufacturing for non-porcelain product types by comparing the Union industry costs for porcelain and non-porcelain. The cost of manufacturing for non-porcelain product types was found to be 30 % below that of porcelain product types. The ratio obtained was applied to the 17 product types reported by the US producers so as to match these to the product types reported by the Chinese exporting producers.
- (79) As regards unglazed ceramic tiles, the Chinese exporting producers reported sales thereof (four product types representing around 56 % of the total quantity exported to the Union) for which there were no direct matching with the product types sold by the US cooperating producers. Applying the same methodology described in recital (78) above, the Commission constructed the costs of manufacturing for single-glazed product types by comparing the Union industry costs for single glazed and unglazed product types. The cost of manufacturing of unglazed ceramic tiles was found to be 6 % below that of single-glazed product types. The ratio obtained was applied to the 17 product types reported by the US producers.

- (80) On the basis of the additional constructed normal values 3 product types matched between the product types produced by the US producers and the Chinese exporting producers. Finally, for the product types for which no direct matching was possible, the Commission decided to compare the product types sold by the Chinese exporting producers with the US product types with the closest technical characteristics and the cheapest normal value.
- (81) Following the disclosure, two interested parties claimed that the Commission had failed to disclose information concerning the specific product types of the analogue country producers. Moreover, they claimed that they were not in position to identify whether there were differences (not reflected by the PCN) that merited an adjustment.
- (82) The Commission disclosed the normal values calculations per product types to interested parties. As mentioned in recital (45) the product types were defined on the basis of the following technical characteristics: water absorption, the finishing (glazed single fired, glazed double fired, or unglazed, polished or un-polished, if the tile body was coloured or non-coloured, rectified or without rectifying), the size of the working surface and the quality standard.
- (83) None of the interested parties commented on the definition of the product types or proposed any additional relevant methodology or submitted additional information. The Commission considered that the product type definitions were sufficient in order to capture all differences affecting price comparability. Therefore, the claim was disregarded. Moreover, a sampled Chinese exporting producer claimed that the Commission should not use the weighted average profit and SG&A margins of the domestic sales found in the analogue country when determining the constructed normal value but the weighted average profit and SG&A margins of the product types with the closest technical characteristics.
- (84) In the current case, the product types exported by the interested party were not produced and sold in the analogue country. Therefore, the Commission constructed the normal value on the basis of the cost of manufacturing of the product types with the closest technical characteristics and, in accordance with Article 2(7) of the basic Regulation, the average amounts for SG&A costs and profit based on actual data pertaining to production and sales of the like product, in the ordinary course of trade, by the analogue country producers. Therefore, this claim was also rejected.

(c) Export price

- (85) The three sampled groups of exporting producers exported directly to the Union in the form of direct sales of the product concerned to independent customers in the Union. Therefore, the export price was established at the price actually paid or payable for the product concerned when sold for export to the Union in accordance with Article 2(8) of the basic Regulation during the review investigation period.

(d) Comparison

- (86) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis. Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (87) Concerning domestic prices of the analogue country producers, adjustments were made for domestic transportation costs, credit costs, handling costs, packing costs and commissions and for level of trade. As regards export prices of the sampled exporting producers, adjustments were made for transport, insurance, handling, credit costs, bank charges, packing costs, import charges, customs duties and commissions.

(e) Dumping margin

- (88) The Commission compared the weighted average normal value of each type of the like product in the analogue country with the weighted average export price of the corresponding type of the product concerned of each sampled cooperating group in accordance with Article 2(11) and (12) of the basic Regulation.
- (89) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price during the review investigation period, duty unpaid, were found to be between 66 % and 231 %.

(f) Conclusion on dumping in the review investigation period

- (90) The Commission found that Chinese exporting producers (at higher volume than in the original investigation) continued to export ceramic tiles to the Union at dumped prices during the review investigation period.

3. Evidence of likelihood of continuation of dumping

- (91) The Commission further analysed whether there was a likelihood of continuation of dumping should the measures be allowed to lapse. When doing so, it looked into the Chinese production capacity and spare capacity, the behaviour of Chinese exporters on other markets, the situation on the domestic market of China and the attractiveness of the Union market.
- (92) As mentioned above, 19 Chinese exporting producers or groups of exporting producers came forward representing only 1,5 % of the estimated Chinese production capacity in 2015. The three Chinese exporting producers sampled and verified during an on-spot verification visit represented a fraction (namely 0,3 %) of the estimated Chinese production. The information available to the Commission on production and spare capacity from Chinese exporting producers was, therefore, limited.
- (93) For this reason, most of the findings set out below concerning the continuation or the recurrence of dumping had to be based on other sources, that is, Eurostat data, the Chinese Export Database and the information submitted by the Union Industry in the review request. The analysis of that information revealed the following.

(a) Production and spare capacity in the PRC

- (94) Chinese producers have installed vast ceramic tiles' production capacities, which continue to exceed the Union's production capacity by far. Over the last decade, Chinese producers have significantly increased production and added production capacity and continue doing so. The Chinese production capacity of ceramic tiles increased by nearly 30 % between 2011 and 2014, from 10,8 to 13,9 billion m². Moreover, the number of Chinese producers of ceramic tiles increased significantly by nearly 20 % between 2014 and 2016, from 1 452 in 2014 to 1 777. Production capacity for the year 2016 was estimated at around 17 billion m² by extrapolating the production capacity from the number of producing companies ⁽¹⁾.
- (95) According to the same Chinese statistical source, the actual production increased from 8,7 billion m² in 2011 to 11,1 billion m² in 2016, that is 2,4 billion m² over the period. However, the production of ceramic tiles did not increase with similar pace compared to the installed capacity of Chinese ceramic tiles production during that period: the production capacity increased by 6,2 billion m² (from 10,8 billion m² in 2011 to 17 billion m² in 2016). Therefore, the spare capacity increased from 20 % in 2011 to 35 % at the end of 2016, equivalent to an increase of 3,8 billion m². This spare capacity is several times higher than the total Union consumption which was approximately 879 million m² during the RIP.
- (96) Moreover, the information collected during the on-spot verification revealed that over the period 2013-RIP, the capacity utilisation of the verified exporting producers decreased from 74 % to 54 % and the number of employees went down by 25 %. Producers stopped production during two months during the first quarter 2017 as stocks reached a level, representing 67 % of the total RIP production. At the end of the RIP, the three sampled exporting producers had stocked in their warehouses 23 million m² (during the RIP, Union imported from China 15 million m²).
- (97) In summary, in view of the fact that China has a large production capacity available and thus the ability to increase its production volumes at short notice, the repeal of the current measures would likely result in an increase of Chinese low-priced dumped imports in the Union market.

(b) Behaviour of the Chinese exporters on the markets of third countries

- (98) Chinese producers export significant quantities of ceramic tiles to third countries other than the Union, in particular the Philippines, USA, Saudi Arabia, South Korea, Indonesia, Thailand and Australia.

⁽¹⁾ Source: The China Building Ceramics and Sanitary Ware Association ('CBCSA') (website: <http://www.china-china.cn>)

- (99) The Commission compared the average price of the product concerned by these producers to the main export markets mentioned above during the review investigation period with the average export price to the Union market. That comparison was made on the basis of the information provided by the Chinese Export Database, where export values are expressed in US dollar and on FOB basis. Quantities are expressed in kilogram.
- (100) Export prices to the Union were significantly higher compared to the other main export markets. The average export price to the Union was around USD 0,46 per kilo while average prices were around USD 0,34 per kilo to the other main destinations.
- (101) According to the Chinese Export Database, sales prices to the rest of the world further decreased after the RIP. During the second semester of 2016 the average export prices to the main export markets dropped when compared to export prices in the RIP (– 37 % for Philippines, – 26 % for Saudi Arabia, – 22 % for USA, around – 13 % for South Korea and Australia).

(c) Attractiveness of the Union market

- (102) The estimated Union demand is a fraction of the available spare capacity of the Chinese domestic market. Before the introduction of the measures, the Union was a traditional export market for China. In the original investigation, the Commission found that Chinese imports had reached 65 million m² annually on average, more than three times their current level of exports to the EU. Currently, the average price in the Union market (USD 0,46/kg) is also higher than the Chinese export price (USD 0,34/kg) in its main export markets. It is therefore likely that the Chinese producers will try to increase their sales using their available capacities to the Union if the measures were allowed to lapse.

(d) Conclusion on dumping and likelihood of continuation of dumping

- (103) The investigation showed that the prices of Chinese exports of ceramic tiles to the Union and to the PRC's main export markets were below the normal value established during the RIP. Furthermore, the production capacity and production were still increasing in China. Their export volume was rather stable and there are no indications that the Chinese domestic consumption would be able to absorb the enormous quantities produced and in stocks. Nor have interested parties been able to explain how these quantities could be absorbed otherwise without posing a threat to the Union.
- (104) On that basis and in absence of any comments from interested parties, the Commission considered it is likely that significant volumes of Chinese ceramic tiles would be exported to the Union at dumped prices in case the measures were allowed to lapse.

D. UNION INDUSTRY

- (105) The Union industry did not undergo major structural changes since the original investigation. The industry is still highly fragmented, and the small and medium-sized companies collectively represent an important share of the market (66 % based on the production volume in 2015). The like product was manufactured by around 500 Union producers during the review investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (106) As described in recital (20), the Commission took into account the high fragmentation of the Union industry when choosing a sample of the Union producers, so that companies from each sector were represented. To reflect the respective share (weight) of the each segment in the total Union production and in order to draw a representative picture of the situation of the Union industry, the Commission used the respective share (weight) to weigh certain microeconomic indicators (see recital (144)) of the sampled companies in the specific segment, in accordance with the methodology used in the original investigation.
- (107) The weights were established on the basis of data provided by the applicant, namely production volumes in 2015 of companies situated in the countries representing 79 % of the Union production.⁽¹⁾ The weights were as follows: companies from the sector of small companies with a production of less than five million square metres represented 41 % of the total Union production; companies from the sector of medium-sized companies with production between five and ten million metre square represented 25 % of the total Union production and companies from the sector of large companies represented 34 % of the total Union production.

⁽¹⁾ The actual weights slightly differed from the ones used in the original investigation, established based on data from 2008.

E. SITUATION ON THE UNION MARKET

1. Union consumption

- (108) Union consumption was established by adding the net Union sales to imports from the PRC and third countries. The production volumes were based on Eurostat data and data obtained from the CET members.
- (109) During the period considered the Union consumption developed as follows:

Table 1

Union consumption

	2013	2014	2015	RIP
Volume (thousand m ²)	750 158	837 188	851 104	878 968
Index (2013 = 100)	100	112	113	117

Source: Eurostat, CET

- (110) The Union consumption increased over the period considered. The largest increase (12 %) occurred between 2013 and 2014 from 750 million m² to around 837 million m². Overall over the period considered the consumption increased by 17 % from 750 million m² to around 879 million m² in the RIP.
- (111) Compared to the period examined in the original investigation, the consumption was however still 37 % less in the RIP than in 2007 when it was around 1,4 billion m². The drop in consumption after 2007 was caused by a contraction in domestic consumption following the Eurozone crisis and the significant ensuing recession of the construction sector. ⁽¹⁾

2. Import from the PRC to the Union

2.1. Volume, price and market share of imports from the PRC

- (112) The volumes and market share of imports were based on Eurostat data.
- (113) During the period considered the volume and market share of imports from the PRC developed as follows:

Table 2

Volume and market shares of imports from the PRC

	2013	2014	2015	RIP
Volume of imports (thousand m ²)	22 691	23 244	18 167	15 057
Index (2013 = 100)	100	102	80	66
Market share (%)	3,02	2,78	2,13	1,70

Source: Eurostat

- (114) Following the imposition of anti-dumping duties, imports of ceramic tiles from the PRC dropped considerably. ⁽²⁾ Nevertheless, Chinese imports were still present in the Union market and in the RIP they represented around 15 million m² in terms of volume of imports and 1,7 % in terms of a percentage of the market share.

⁽¹⁾ See recital 121 of the Commission Regulation (EU) No 258/2011 of 16 March 2011 imposing a provisional anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China (OJ L 70, 17.3.2011, p. 5).

⁽²⁾ During the original investigation (from 2007 to 31 March 2010), imports from the PRC averaged around 65 million m² annually.

- (115) Import volumes from the PRC dropped by 34 % in the RIP compared to 2013 from almost around 22,7 million m² to around 15 million m². The market share of the Chinese imports dropped from 3,2 % in 2013 to around 1,7 % in the RIP.

2.2. Price of imports and price undercutting

- (116) During the period considered the average price of imports from the PRC developed as follows.

Table 3

Average price of imports from the PRC

	2013	2014	2015	RIP
Average CIF Union frontier price EUR/m ²	5,07	5,44	6,13	5,78
Index (2013 = 100)	100	107	121	114

Source: Eurostat

- (117) The average import prices from the PRC increased by 14 % in the period considered from 5,07 EUR/m² to 5,78 EUR/m², with the peak in 2015 when the price increased by 21 % to 6,13 EUR/m².
- (118) For the purpose of analysing price undercutting, the weighted average sales prices of the Union producers to unrelated customers on the Union market, adjusted to ex-works level, were compared per product type to the corresponding weighted average prices of the imports from the PRC to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for the existing customs duties and post-importation costs. For the product types for which a corresponding product type did not exist, the comparison was made by adjusting the closest resembling product type. The adjustments had to be done in particular for double-fired glazed product types and for unglazed product types for which corresponding product types could not be found at the Union industry side.
- (119) The comparison showed that during the RIP, and despite the increase in average CIF Union frontier price, as explained in recital (90) above, Chinese imports of the product concerned were sold in the Union at prices which undercut those of the Union industry. When expressed as a percentage of the latter the level of undercutting ranged from 17 % to 50 %. The calculations were based on the data submitted by the sampled Union producers and sampled exporting producers from the PRC.
- (120) Following the disclosure, the CCCMC claimed that the undercutting analysis was deficient as neither the CCCMC nor the Chinese exporting producers were placed in a position to meaningfully exercise their rights defence since they did not have possibility to identify differences between products produced by the Union industry and the Chinese exporting producers and therefore, to claim adjustments.
- (121) With regard to the potential differences between Union products and the products imported from the PRC, for the reasons mentioned in Section B, the Commission did not have grounds to consider that any such differences within a particular PCN existed. Rather, the definition of the PCN allowed full price comparability between the product concerned and the like product (see Section B).
- (122) Any party claiming an adjustment must base itself on a reasonable estimate of the market value of the difference. However, the Commission did not receive from any of the parties a claim for an adjustment to be made for a particular product type. Therefore, the only adjustments that the Commission did was for double-fired glazed product types and for unglazed product types for which corresponding product types could not be found at the Union industry side, as explained in recital (118). Following the request by the CCCMC of 6 September 2017, the Commission provided details on these adjustments and in particular on the PCNs concerned and on the amount of the adjustment to the two sampled exporting producers concerned, to allow them to comment. Afterwards, the latter did not come back on the issue.

- (123) Following the disclosure, the CCCMC also argued that the Commission should have carried out (and disclosed) an undercutting analysis not only per exporting producer but also on an overall level (on a weighted average basis). Furthermore, the CCCMC claimed that the Commission should have carried out (and disclosed) an undercutting calculation per product type, which was according to the CCCMC the only way to draw meaningful conclusions concerning the possibility for the Chinese imports to exercise price pressure on the Union industry's sales. Furthermore, the CCCMC requested the Commission to also disclose total volume and value sold per PCN of all the sales by the Union industry that were not used for the undercutting calculations.
- (124) As the Commission informed the CCCMC by letters of 25 August 2017 and 20 September 2017, it had made the undercutting calculations per exporting producer on an individual basis and for the PCNs that were sold by the individual sampled Chinese exporting producers. The Commission considered that it was not relevant for the likelihood of recurrence of the injury assessment to carry out an analysis of the overall undercutting level and an analysis of the undercutting level per PCN as this would aggregate the data of the sampled Chinese exporting producers per PCN. The type of aggregated calculation requested by the CCCMC would, in any case, have been meaningless as such type of information does not impact the analysis of the likelihood of recurrence of the injury. Moreover, aggregated calculations would not allow an individual exporting producer to verify whether the Commission used correctly its data to perform the undercutting calculations. The exporting producer would not thus be in a position to exercise its rights of defence. For that reason, the Commission had not performed such a calculation. Instead, the Commission duly carried out the undercutting analysis per sampled exporting producer. Therefore, the Commission did not have to do the requested analyses.
- (125) The Commission also recalled that the current case was an expiry review. The measures in place had for effect a significant decrease of imports of ceramic tiles (from around 66 million m² in the original IP to around 15 million in the RIP of the current investigation). Therefore, the undercutting analysis could only be based on the limited number of PCNs of the product concerned exported from the PRC to the Union. The purpose of carrying out an undercutting analysis per exporting producer was to analyse whether the Chinese exporting producers would be undercutting the Union prices should the measures lapse.
- (126) On the other hand, overall undercutting level and undercutting level per PCN were not considered being relevant for the assessment of likelihood of recurrence of injury and therefore, not part of the file. The Commission considered that it was under no obligation to make (and disclose) calculations that were not performed. The Commission thus decided to reject the claim.

3. Import from other third countries

- (127) During the period considered, the imports from other third countries and their market share developed as follows:

Table 4

Imports from other third countries and their market share

Import volume (in thousand m ²)	2013	2014	2015	RIP
Turkey	35 526	34 256	35 965	35 246
<i>Index (2013 = 100)</i>	100	96	101	99
Import prices	5,44	6,10	6,19	6,11
<i>Index (2013 = 100)</i>	100	112	114	112
Market share (%)	4,74	4,09	4,23	4,01

Import volume (in thousand m ²)	2013	2014	2015	RIP
United Arab Emirates	7 759	6 538	18 424	16 603
<i>Index (2013 = 100)</i>	100	84	237	214
Import prices	7,73	7,92	3,08	3,27
<i>Index (2013 = 100)</i>	100	102	40	42
Market share(%)	1,03	0,78	2,16	1,89
India	1 314	3 582	3 648	4 341
<i>Index (2013 = 100)</i>	100	273	278	330
Import prices	4,32	4,22	5,19	4,67
<i>Index (2013 = 100)</i>	100	98	120	108
Market share (%)	0,18	0,43	0,43	0,49
Other third countries	12 367	12 868	12 301	13 021
<i>Index (2013 = 100)</i>	100	104	99	105
Import prices	6,13	5,95	6,02	5,69
<i>Index (2013 = 100)</i>	100	97	98	93
Market share (%)	1,65	1,54	1,45	1,48
Total of imports from third countries except the country concerned	56 967	57 244	70 338	69 211
<i>Index (2013 = 100)</i>	100	100	123	121
Import prices	5,87	6,15	5,30	5,26
<i>Index (2013 = 100)</i>	100	105	90	90
Market share (%)	7,59	6,84	8,26	7,87

Source: Eurostat

- (128) During the period considered the largest import volumes were from Turkey (with almost 4 % market share in the RIP), United Arab Emirates (with almost 2 % market share in the RIP) and India (with around 0,5 % market share in the RIP). Altogether the market share from third countries represented 7,84 % in the RIP. It remained relatively stable throughout the period considered with a peak in 2015 (8,26 % market share).
- (129) The average import prices of Turkey rose by 12 % over the period considered, to 6,11 EUR/m² in the RIP. The average import prices from the United Arab Emirates dropped by 58 % over the period considered, to 3,27 EUR/m². The average import prices of 4,67 EUR/m² from India were 8 % higher in the RIP compared to the prices in 2013. Altogether the import prices from all the importing countries except the PRC dropped by 10 % in the period considered to 5,26 EUR/m².

4. Economic situation of the Union industry

4.1. General remarks

- (130) In accordance with Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry.

- (131) As mentioned in recital (19), sampling was used for the determination of possible injury suffered by the Union industry.
- (132) The Commission distinguished between macroeconomic and microeconomic injury indicators. It evaluated macroeconomic indicators relating to the whole Union industry on the basis of information provided by the applicant in the review request and the data of the sampled Union producers that was adjusted on the basis of data provided in the replies of the sampled Union producers for the RIP. The Commission evaluated microeconomic indicators relating only to the sampled companies on the basis of data contained in the questionnaire replies of the sampled Union producers. Both sets of data were found representative of the economic situation of the Union industry.
- (133) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the dumping margin.
- (134) The microeconomic indicators are: average sales prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.2. Macroeconomic indicators

4.2.1. Production, production capacity and capacity utilisation

- (135) Data on production of the Union industry for the period considered was established based on the data from Eurostat and the data collected by CET.
- (136) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation

	2013	2014	2015	RIP
Production volume (thousand m ²)	1 126 000	1 168 000	1 192 000	1 238 500
<i>Index (2013 = 100)</i>	100	104	106	110
Production capacity (thousand m ²)	1 503 300	1 545 000	1 536 100	1 536 100
<i>Index (2013 = 100)</i>	100	103	102	102
Capacity utilisation (%)	74,9	75,6	77,6	80,6
<i>Index (2013 = 100)</i>	100	101	104	108

Source: Eurostat, CET

- (137) The total Union production increased by 10 % in the period considered. It amounted to 1,24 billion m² in the RIP. Over the same period the increase in the Union consumption was 18 % (see Table 1).
- (138) Production capacity remained stable over the period considered. The capacity utilisation increased by 8 % and reached around 81 % in the period considered.

4.2.2. Sales volume and market share

- (139) The Union industry's sales volume and market share refer to the sales by the Union industry on the Union market to independent customers. They were established based on the data from Eurostat and the data collected by the CET. They developed over the period considered as follows:

Table 6

Sales volume and market share

	2013	2014	2015	RIP
Sales volume (thousand m ²)	670 500	756 700	762 600	794 700
<i>Index (2013 = 100)</i>	100	113	114	119
Market share (%)	89,4	90,4	89,6	90,4
<i>Index (2013 = 100)</i>	100	101	101	101

Source: Eurostat, CET

- (140) Sales volume of the Union's industry increased by 19 % in the period considered. In the same period the market share of the Union industry remained relatively stable with an increase of 1 %. It held a market share around 90 % in the RIP.

4.2.3. Employment and productivity

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

Table 7

Employment and productivity

	2013	2014	2015	RIP
Number of employees (Full-time employment/employee)	59 348	59 010	59 352	59 352
<i>Index (2013 = 100)</i>	100	99	100	100
Productivity (m ² /employee)	18 973	19 793	20 084	20 867
<i>Index (2013 = 100)</i>	100	104	106	110

Source: Eurostat, CET

- (142) Employment remained stable during the period considered. Productivity expressed by production volume (in m²) per employee increased by 10 % in the period considered.

4.2.4. Magnitude of the dumping margins

- (143) The dumping margins are specified in recital (89). All margins are significantly above the *de minimis* level.

4.3. Microeconomic indicators

4.3.1. General remarks

- (144) For some of the microeconomic indicators expressed in other than absolute values — namely in % or per unit (the sales price, cost of production, profitability and return on investment), the figures were weighted in accordance with the methodology used in the original investigation to reflect the share of that segment in the total Union production (see recital (20)), using the specific weight of each segment in the total Union production (see recital (107)).

4.3.2. Prices and factors affecting prices

- (145) The average sales prices of the Union industry to unrelated customers in the Union developed over the period considered as follows:

Table 8

Average sales prices

	2013	2014	2015	RIP
Sales price (EUR/m ²)	9,00	9,06	9,13	9,21
Index (2013 = 100)	100	101	101	102

Source: verified questionnaire replies

- (146) Over the period considered the Union industry's average unit sales price to unrelated customers in the Union increased by 2 %. In the same period the unit cost of production decreased by 9 %.

4.3.3. Labour costs

- (147) The average labour costs of the Union industry developed over the period considered as follows:

Table 9

Labour costs

	2013	2014	2015	RIP
Average labour costs per employee (EUR)	39 314	41 783	42 922	42 262
Index (2013 = 100)	100	106	109	107

Source: verified questionnaire replies

- (148) Between 2013 and the RIP the average labour costs per employee of the sampled Union producers increased by 7 %.

4.3.4. Inventories

- (149) Stock levels of the Union industry developed over the period considered as follows:

Table 10

Inventories

	2013	2014	2015	RIP
Closing stocks (thousand m ²)	49 168	44 529	42 538	43 427
Index (2013 = 100)	100	91	87	88
Closing stocks as a percentage of production (%)	58	51	46	45
Index (2013 = 100)	100	87	79	78

Source: verified questionnaire replies

- (150) Closing stocks both absolute volumes and as a percentage of production decreased over the period considered (by 12 % and 22 % respectively).
- (151) The relatively high stocks expressed as a percentage of production remains the consequence of the drop of the consumption and thus of the demand in the past years, following the crisis in the construction sector after 2007. The fact that ceramic tiles are products that depend on trends at the time of the sale contributed to the difficulties of companies to find demand for their stocks, and thus to reduce stocks. However, the consumption in the RIP was still lower (by 37 %) than in 2007 (see recital (111)).

4.3.5. Cost of production

The unit cost of production developed as follows during the period considered:

Table 11

Unit cost of production

	2013	2014	2015	RIP
Unit cost of production (EUR/m ²)	10,10	9,54	9,35	9,15
<i>Index (2013 = 100)</i>	100	95	93	91

- (152) Over the period considered the Union industry's unit cost of production of ceramic tiles decreased by 9 %.

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

- (153) 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. It developed as follows:

Table 12

Profitability, cash flow, investments and return on investment

	2013	2014	2015	RIP
Profitability of sales in the Union on the free market (% of sales turnover)	– 5,84	– 2,06	– 0,68	– 2,02
<i>Index (2013 = 100)</i>	– 100	– 35	– 12	35
Cash flow (EUR)	9 801 189	28 450 311	26 667 148	28 851 493
<i>Index (2013 = 100)</i>	100	290	272	294
Investments (EUR)	124 733 782	148 595 194	168 940 047	173 001 344
<i>Index (2013 = 100)</i>	100	119	135	139
Return on investment (%)	– 5,96	– 3,76	– 1,12	2,06
<i>Index (2013 = 100)</i>	– 100	– 63	– 19	35

Source: verified questionnaire replies

- (154) During the period considered, the Union industry's profitability became positive and increased considerably from – 5,8 % to 2,0 %. The increase corresponds to a positive development, during the same period, of indicators impacting profitability such as: an increase by 2 % of the unit sales price (see recital (145)), and a decrease in cost of production per unit by 9 % (see recital (152)). Overall, at macroeconomic level, the production increased by 10 % in the period considered (see recital (137)), and the Union gained an additional 1 % of the market share (see recital (140)).

- (155) The net cash flow is the Union industry's ability to self-finance their activities. The cash flow increased markedly between 2013 and 2014 (by 190 %) and then remained stable.
- (156) Investments increased by 39 % in the period considered. The companies in the ceramic tiles sector need to constantly invest in modernising the equipment, in order to follow the trends in the market. This concerns in particular investing in printing machines allowing the tiles design to follow the trends, and investing in more efficient kilns which are one of the major bottleneck in the ceramic tiles production.
- (157) The return on investments is the profit in percentage of the net book value of fixed assets. It also developed positively in the period considered, becoming positive, reflecting the general upward trend.

5. Conclusion on injury

- (158) The Union industry was able to recover from the past dumping. Its economic situation improved during the period considered compared to its economic situation in the original investigation period. Although the measures in force did not foreclose Chinese producers from the Union market, they allowed the Union producers to maintain the market share, which had a positive impact on the economic development of the Union industry.
- (159) Consequently, in the period considered all the injury indicators showed a positive trend. Both the production and the sales increased during the period considered. The sales price remained relatively stable but the cost of production decreased. Although still relatively high, the level of the stock decreased. Both cash flow and return on investment and cash flow increased considerably.
- (160) All the above indicators had a positive impact on the profitability of the Union industry, departing from negative to positive results in the RIP.
- (161) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

F. LIKELIHOOD OF RECURRENCE OF INJURY

- (162) As determined above (see recitals (103) and (104)), Chinese imports were made at dumped price levels during the review investigation period and a likelihood of continuation of dumping was found should the measures be allowed to lapse.
- (163) Since the Union industry did not suffer material injury anymore, the Commission assessed whether there would be a likelihood of recurrence of injury should the measures be allowed to lapse.
- (164) To establish the likelihood of recurrence of injury, the following elements were analysed: the production capacity and spare capacities in China, the attractiveness of the Union market, including the existence of anti-dumping or countervailing measures on ceramic tiles in other third countries, the price behaviour of Chinese exporting producers in other third country markets, and the effect on the Union industry's situation. The analysis took also into account the increase in consumption in the Union and the profitable situation of the Union industry during the period considered.

1. Production capacities and spare capacities in China

- (165) The PRC is the largest producer of the ceramic tiles in the world. It accounts for more than half of the world's overall production. The estimated total production for 2016 was above 11 billion m² tiles (see recital (95)).
- (166) At the same time, the available spare capacities in the PRC were very high in comparison to the size of the Union market. In 2016, it was estimated at around 6 billion m² (see recital (95)). Compared to this, the Union production in the RIP was around 1,24 billion m² and the tiles consumption was only 879 million m² in the same period. Therefore, the Chinese spare capacity exceeds the Union consumption by more than six times.
- (167) The Commission also established that the Chinese exporting producers have accumulated significant stocks that they can start exporting at the moment the measures lapse (see recital (96)). Based on the information from the sampled Chinese exporting producers the stocks may represent up to two third of their ceramic tiles production.

2. Attractiveness of the Union market

- (168) Although the Union market of ceramic tiles is smaller in terms of consumption compared to, for instance, Asia, it still represents around 7 % of the world's consumption of the ceramic tiles. Furthermore, as shown in Table 1 above, Union consumption of the product concerned increased between 2013 and the RIP from 750 158 tonnes to 878 968 tonnes. This shows that Union consumption remains strong and that the Union market, because of its relatively large size and steadily-increasing consumption, remains attractive for Chinese exporting producers.
- (169) Before the imposition of the measures, Chinese imports represented in average around 65 million m² annually. The fact that Chinese imports, although at a lower level (see Table 2 above), did not stop after the imposition of measures confirms that Chinese exporting producers find the Union market attractive and continue selling on the Union market.
- (170) In addition, anti-dumping measures were imposed on imports of ceramic tiles from the PRC by other third countries, ⁽¹⁾ which will make it more difficult for the Chinese exporting producers to export to these markets and further increases the attractiveness of the Union market where these exports may be redirected.

2.1. Price behaviour of Chinese exporting producers in other third country markets

- (171) A further important factor demonstrating the attractiveness of the Union market is the price of the product concerned, as sold by Chinese exporting producers to third country markets. Export prices of the sampled exporting producers of the product concerned to third country markets are higher than the prices these same producers charge to the Union, however they are still significantly below the prices of the Union industry on the Union market. During the RIP, the average export price of the product concerned, as exported by Chinese exporting producers to third country markets, was on average 15-25 % lower than the average price of ceramic tiles on the Union market.

2.2. Chinese prices in the Union market

- (172) A further element demonstrating the attractiveness of the Union market is the higher price level of ceramic tiles on the Union market. In the RIP, the average price of the exports of Chinese exporting producers to the Union market was on average 30-40 % lower than the average price of ceramic tiles in the Union market. Although the current prices from the UAE and India are currently below the level of the Chinese prices, their volumes and growth potential are not comparable with the size of the production capacities in the PRC.

3. Effect on the Union industry situation

- (173) Given the high spare capacities in the PRC and the attractiveness of the Union market and other elements as summarised above in recitals (162) to (172), it is likely that significant volumes of low priced ceramic tiles would be available for sale/re-direction to the Union already in the short term, should the measures lapse.
- (174) To assess the likely impact of such low-priced Chinese imports on the Union industry the Commission first looked at a potential loss of their market share. It simulated what would be the impact if the Chinese exporting producers regained the market share of 6,5 % in the investigation period of the original investigation, that is, before the imposition of the measures. In terms of volume this would represent 57 million m² based on the Union consumption in the RIP. As established in the original investigation, such a volume of dumped imports of ceramic tiles from the PRC was sufficient to cause material injury to the Union industry in the past.
- (175) The Commission considered that since the average sales prices of third countries' imports to the Union is below the average sales price of the Chinese exporting producers and if low priced Chinese tiles reappear on the Union market, they would potentially first gain market share at the expense of the Union industry, before taking over the market share of the exports from third countries producers to the Union.

⁽¹⁾ Thailand (2,18-35,49 %), Argentina (USD 50,03/m²), Brazil (USD 3,34/m² to USD 6,42/m²), South Korea (9,07 % to 37,40 %), India (up to USD 1,87 per m²), Mexico (price commitment FOB no less than USD 6,72/m², or duties USD 2,9/m² to USD 12,42/m²), and Pakistan (5,21 %-59,18 %). Source: Annex 22 of the request, WTO website for Semi-annual reports under Article 16.4 of the Agreement from the various countries, and Indian Ministry of Finance publication.

- (176) Therefore, assuming that the increase of the imports translates in an equivalent decrease in the production and the sales volumes of the Union industry, as a result, the unit cost of production of the Union industry would increase from 8,95 EUR/m² to 9,09 EUR/m². The increase in the unit cost of production would result in the drop of the Union industry profitability to the break-even point (that is to revenues equalling to total of fixed and variable costs).
- (177) The volume of imports of 57 million m² taken for this simulation was based on a conservative estimate. In reality, it can be assumed that in view of the large overcapacity and the accumulated stocks, the Chinese exporting producers would start exporting even more significant volumes of ceramic tiles to the Union. This stock can be at the moment of discontinuation of the measures made available to be exported to the Union.
- (178) Indeed, ceramic tiles are products that depend on current trends and fashion. Therefore, it is not likely that all the accumulated stock would be exported to the Union should the measures lapse. However, because of the considerable volumes of the accumulated stocks, the impact on the Union industry's situation could be considerable even if a small percentage of this stock arrives on the Union market.
- (179) In addition, the huge spare capacities of the Chinese exporting producers strengthen the likelihood of Chinese ceramic tiles entering the Union market. The Commission found that the Chinese exporting producers use similar or the same equipment as the one used by the Union industry and can produce to large extent tiles of similar quality and design as the Union producers. That being said, after further assessment, the Commission found that there was no information to support the claim that ceramic tiles were price sensitive, and, that from the point of view of the final user the only determining factor would be the price. It cannot be denied that price is at least one of the decisive factors for customers to choose a specific product, next to the other factors such as brand and fashion, and given the similarities between the Union and Chinese ceramic tiles, the Commission noted that there is a likelihood that imports of dumped Chinese products would drive down Union prices and have the above mentioned consequences (see recitals (173) to (178) above).
- (180) Therefore, it is likely that the Chinese dumped imports force the Union ceramic tiles producers to adjust prices to their level. As mentioned above in recital (172), on average, Chinese imports are declared at a price significantly below the Union market price.
- (181) Second, the Commission looked at price effects. It simulated what would be the effect if the entry of low-priced Chinese imports to the Union market would drive down the price of the product concerned, as sold by the Union industry. Based on the verified data of the Union producers and the Chinese exporting producers for the RIP, a hypothetical price decrease of the product concerned by Union producers to the level of Chinese prices would result in a significant decrease in their profitability and in heavy losses of 47,52 %.
- (182) Third, as an alternative, the Commission assumed that the average sales price of the Union industry would be pushed down to the level of the average sales price of the Chinese exporters to third markets. Here, similarly, based on verified data of the Union producers, their profitability would deteriorate and result in considerable losses of 17,15 %.
- (183) The CCCMC argued that the simulations that the Commission carried out were flawed. In its view, when simulating the impact of regaining a market share of 6,5 % by the Chinese imports, the Commission had failed to take into account the different product mixes, the lack of price comparability and (lack of) competition between product types.
- (184) The CCCMC also argued that when simulating the increase of the costs of production resulting from the increased sales of Chinese exporting producers the Commission had disregarded the significant differences between the costs of production of the different product types, and the fact that the Chinese imports only concerned a limited number of PCNs.
- (185) Furthermore, when simulating the price effects of the Chinese imports, the CCCMC argued that the Commission had only relied on average prices and had not taken into account differences in prices of different types of ceramic tiles while the Chinese imports were limited and only concerned a limited number of product types. The CCCMC claimed that because of important differences in types of ceramic tiles, there was no competitive

relationship between different types of ceramic tiles, and therefore, prices of one type of ceramic tiles could not exercise pressure on prices of another type of tiles. It argued that the Commission should have carried out the simulations per product type and not on aggregated basis, as it was the case for the undercutting calculations.

- (186) Therefore, according to the CCCMC, the Commission had failed to conduct the likelihood determination on sufficient factual basis, to allow 'reasoned and adequate conclusions' and failed to carry out an analysis that would be based on a positive evidence and objective examination.
- (187) The Commission recalled first that it had reached the conclusions on the likelihood of the recurrence of injury after having analysed a number of elements such as the production capacity and spare capacities in the PRC, the attractiveness of the Union market, the price behaviour of Chinese exporting producers in other third country markets, and the effect on the Union industry's situation (see recitals (164) to (172)). Its simulations only strengthened and confirmed its conclusions about the recurrence of injury in case the current measures lapse.
- (188) Second, to carry out the simulations, the Commission could only have based itself on the data from the sampled Union producers and aggregated volumes and prices of the exporting producers in the PRC. It did not take into account information about product types and prices of the non-sampled companies.
- (189) Therefore, the Commission had to base itself on a number of assumptions including the given product mix imported from the PRC in the RIP and its average prices. These assumptions did not render its analysis erroneous. Rather, and to the contrary, the Commission considered that it had chosen, in view of all the other elements such as for instance the spare and production capacity in the PRC, rather a conservative approach. The analysis of other elements showed that should the measures lapse, a much bigger volume as well as wider product mix would be imported to the Union, as it was the case in the original IP. Also, the simulations showed that that potential future imports would have had a significant negative impact on the financial health of the Union industry and would translate in a recurrence of injury of the Union industry. The Commission therefore rejected the claim.
- (190) The CCCMC also argued that the conclusion on the likelihood of recurrence of injury was erroneous because the Commission only had found price effects for a small subset of Union sales. The found price undercutting only represented around 1 % of the total Union industry's sales during the RIP and around 8 % of the sales made by the sampled Union producers on the Union market in the RIP. Also, the CCCMC pointed to the low number of product types (six) that were sold by the Chinese exporting producers during the RIP (out of more than one hundred sold by the Union industry), and therefore to a low level of matching.
- (191) First the Commission recalled that the case at hand was an expiry review. The measures currently in place had for effect a significant decrease of imports from the PRC of the product concerned. Therefore, the undercutting analysis could only be carried out based on the (sampled) imports and represented only one of the various elements to assess the likelihood of continuation or recurrence of dumping and injury.
- (192) Second, unlike the assessment in the original investigation, the assessment of the likelihood of recurrence of injury is prospective in nature. The undercutting analysis of the past imports was only one of the indicators as to the future pricing and volume of exporting producers of the product concerned, and its effects on the Union industry.
- (193) Third, the price analysis of the imports from the sampled Chinese exporting producers showed that despite the measures, all the product types imported by them would be undercutting the Union industry prices should the measures lapse. In that event, a bigger volume and also many more product types would be imported to the Union at prices that would likely undercut the Union prices. This further indicates the likelihood of recurrence of injury to the Union industry. The Commission therefore rejected the claim.
- (194) The CCCMC also argued that the lack of a segmented analysis (per segments of companies) vitiated all (likelihood of continuation of) injury related findings. The CCCMC argued that the Commission should have provided the injury assessment per segment namely for small, medium and big companies, to allow the CCCMC to exercise its rights of defence and to analyse the CCCMC position that there was no basis to conclude that injury was likely to recur.

- (195) The Commission considered that a separate injury segment analysis was not appropriate or necessary in this expiry review. By sampling Union producers of different sizes so that each segment was represented by the sample, for the purposes of determination of injury and the likelihood analysis, the situation of the different segments was automatically reflected in all injury findings. Furthermore, in line with Articles 3 and 4 of the basic Regulation, injury determination was carried out for the Union industry as a whole rather than for individual producers or group of producers. The sample in the present case was considered representative for the situation of the Union industry as a whole as also explained in recitals (19) to (25) and (105) to (107) above. The Commission thus rejected the argument.
- (196) The CCCMC finally argued that the Commission should have complemented its analysis of the state of the Union industry with an analysis by groups of product type. However, apart from general statements, neither the CCCMC nor any other interested party did submit any details on what are the particular product types that would merit a separate analysis — see recital (46). Also, a segmented analysis was not part of the original investigation. The Commission did not have any grounds to consider that such an analysis was appropriate and it thus considered this argument unfounded. The Commission therefore rejected the claim.
- (197) On the basis of the above considerations, the Commission maintained that the repeal of the measures would in all likelihood result in a recurrence of injury to the Union industry.

G. UNION INTEREST

1. Preliminary remarks

- (198) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing measures against the PRC 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.

2. Interest of the Union industry

- (199) During the RIP the Union industry had recovered from the injury caused by the dumped imports from the PRC. Should measures against the PRC be repealed, it is, however, likely that the injury would recur as the Union industry would be exposed to dumped imports from the PRC potentially in significant volumes and exerting significant price pressure. As a consequence the economic situation of the Union industry would likely deteriorate significantly for the reasons described above (see recitals (173) to (197)). On the contrary, maintaining the measures would bring certainty to the market, allowing the Union industry to maintain its positive economic situation while operating on a fair and competitive market.
- (200) On this basis the Commission concluded that the continuation of the measures would be in the interest of the Union industry.

3. Interest of importers

- (201) More than 1 000 known importers/users were contacted at the initiation stage. Eleven companies replied to the sampling form, and three companies filled in the questionnaire form.
- (202) Two of the companies were against the continuation of the measures, and one of them argued that it would not be against measures if they were kept at lower rate. The remaining company did not have any specific view on whether the measures should lapse or not.
- (203) All the three companies were of view that together with measures, the current exchange rate and the transport costs make it less attractive to import the ceramic tiles from the PRC, and that the imports from the PRC may not significantly increase if the measures lapse. At the same time two of the three importers considered that before the imposition of the anti-dumping duties, imports from the PRC were attractive in view of their designs and low prices.

- (204) In the original investigation, it was concluded that the imposition of the measures would not have a significant impact on the activity of the importers because they could, among others, switch to other sources of supply. The Commission observed that, indeed, during the RIP, and while the market share of the imports from the PRC decreased to 1,7 %, imports from countries other than the PRC reached almost 8 % market share (see recital (127)) compared to 5,3 % in the investigation period of the original investigation ⁽¹⁾. These imports were not affected by the duties as they are of non-Chinese origin. Therefore, the Commission considered that the prolongation of the measures would not hamper Union importers from continuing buying similar products from other sources.
- (205) Finally, the rather low cooperation of unrelated importers suggests that the continuation of measures would not have a significant negative impact on the importers.

4. Interest of users

- (206) At the initiation all the known users were contacted together with the importers. However, no user or user association came forward. In the original case, the Commission calculated the impact of the measures on the final consumers and came to the conclusion that the impact in terms of increased costs per m² was limited and amounted to less than 0,5 EUR/m². At the same time, the average yearly consumer consumption was around 2,2 m² per person in the Union. The average impact on consumers was, thus 1,1 EUR/m² per person in the Union. For the same reasons as those set out in recitals (182) to (184) of Implementing Regulation (EU) No 917/2011, this was deemed insignificant. The Commission also analysed the impact of the measures on importers, users and suppliers which could be subject to extra costs or to the lack of supply due to the imposition of the measures. It was concluded that the imposition of measures did not have a significant effect on their activity.

5. Weighing and balancing of interests

- (207) In weighing and balancing the competing interests, the Commission gave special consideration to the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition. While the continuation of measures would protect an important Union industry, including many small and medium enterprises, against a likely recurrence of injury, the rather low cooperation of the importers and users suggests that the continuation of measures would not have a disproportionate negative impact on them.

6. Conclusion on Union interest

- (208) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to maintain measures on imports of ceramic tiles originating in the PRC.

H. CONCLUSION AND DISCLOSURE

- (209) All parties were informed of the essential facts and considerations on the basis of which it was intended to maintain the existing measures against the PRC. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.
- (210) It follows from the above that, as provided for by Article 11(6) of the basic Regulation, the anti-dumping measures applicable to imports of ceramic tiles originating in the PRC, imposed by Implementing Regulation (EU) No 917/2011 should be maintained.
- (211) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

⁽¹⁾ See recital 78 of the Commission Regulation (EU) No 258/2011 of 16 March 2011 imposing a provisional anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China (OJ L 70, 17.3.2011, p. 5).

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of glazed and unglazed ceramic flags and paving, hearth or wall tiles; glazed and unglazed ceramic mosaic cubes and the like, whether or not on a backing, currently falling within HS code 6907, and originating from the People's Republic of China.

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

Company	Duty	TARIC Additional Code
Dongguan City Wonderful Ceramics Industrial Park Co., Ltd; Guangdong Jiamei Ceramics Co., Ltd;	32,0 %	B938
Qingyuan Gani Ceramics Co. Ltd; Foshan Gani Ceramics Co. Ltd	13,9 %	B939
Guangdong Xinruncheng Ceramics Co. Ltd	29,3 %	B009
Shandong Yadi Ceramics Co Ltd	36,5 %	B010
Companies listed in Annex I	30,6 %	
All other companies	69,7 %	B999

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

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

Article 2

Where any producer from the People's Republic of China provides sufficient evidence to the Commission that (a) it did not export the goods described in Article 1(1) originating in the People's Republic of China during the period of investigation (1 April 2009 to 31 March 2010); (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and (c) it has either actually exported the goods concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation, the Commission may amend Annex I by adding the new exporting producer to the cooperating companies not sampled or not granted individual treatment, and thus subject to the weighted average duty rate of 30,6 %.

Article 3

Where a declaration for release for free circulation is presented in respect of the products referred to in Article 1, the number of square metres of the products imported shall be entered in the relevant field of that declaration.

Article 4

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

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

Done at Brussels, 22 November 2017.

For the Commission

The President

Jean-Claude JUNKER

ANNEX I

Chinese cooperating producers not sampled or not granted individual treatment:

Name	Taric additional code
Dongguan He Mei Ceramics Co. Ltd	B132
Dongpeng Ceramic (Qingyuan) Co. Ltd	B133
Eagle Brand Ceramics Industrial (Heyuan) Co. Ltd	B134
Enping City Huachang Ceramic Co. Ltd	B135
Enping Huiying Ceramics Industry Co. Ltd	B136
Enping Yungo Ceramic Co. Ltd	B137
Foshan Aoling Jinggong Ceramics Co. Ltd	B138
Foshan Bailifeng Building Materials Co. Ltd	B139
Foshan Bragi Ceramic Co. Ltd	B140
Foshan City Fangyuan Ceramic Co. Ltd	B141
Foshan Gaoming Shuncheng Ceramic Co. Ltd	B142
Foshan Gaoming Yaju Ceramics Co. Ltd	B143
Foshan Guanzhu Ceramics Co. Ltd	B144
Foshan Huashengchang Ceramic Co. Ltd	B145
Foshan Jiajun Ceramics Co. Ltd	B146
Foshan Mingzhao Technology Development Co. Ltd	B147
Foshan Nanhai Jingye Ceramics Co. Ltd	B148
Foshan Nanhai Shengdige Decoration Material Co. Ltd	B149
Foshan Nanhai Xiaotang Jinzun Border Factory Co. Ltd	B150
Foshan Nanhai Yonghong Ceramic Co. Ltd	B151
Foshan Oceanland Ceramics Co. Ltd	B152
Foshan Oceano Ceramics Co. Ltd	B153
Foshan Sanshui Hongyuan Ceramics Enterprise Co. Ltd	B154
Foshan Sanshui Huiwanjia Ceramics Co. Ltd	B155
Foshan Sanshui New Pearl Construction Ceramics Industrial Co. Ltd	B156
Foshan Shiwan Eagle Brand Ceramic Co. Ltd	B157
Foshan Shiwan Yulong Ceramics Co. Ltd	B158
Foshan Summit Ceramics Co. Ltd	B159
Foshan Tidiy Ceramics Co. Ltd	B160
Foshan VIGORBOOM Ceramic Co. Ltd	B161
Foshan Xingtai Ceramics Co. Ltd	B162
Foshan Zhuyangyang Ceramics Co. Ltd	B163

Name	Taric additional code
Fujian Fuzhou Zhongxin Ceramics Co. Ltd	B164
Fujian Jinjiang Lianxing Building Material Co. Ltd	B165
Fujian Mingqing Jiali Ceramics Co. Ltd	B166
Fujian Mingqing Ruimei Ceramics Co. Ltd	B167
Fujian Mingqing Shuangxing Ceramics Co. Ltd	B168
Gaoyao Yushan Ceramics Industry Co. Ltd	B169
Guangdong Bode Fine Building Materials Co. Ltd	B170
Guangdong Foshan Redpearl Building Material Co. Ltd	B171
Guangdong Gold Medal Ceramics Co. Ltd	B172
Guangdong Grifine Ceramics Co. Ltd	B173
Guangdong Homeway Ceramics Industry Co. Ltd	B174
Guangdong Huiya Ceramics Co. Ltd	B175
Guangdong Juimsi Ceramics Co. Ltd	B176
Guangdong Kaiping Tilee's Building Materials Co. Ltd	B177
Guangdong Kingdom Ceramics Co. Ltd	B178
Guangdong Monalisa Ceramics Co. Ltd	B179
Guangdong New Zhong Yuan Ceramics Co. Ltd Shunde Yuezhong Branch	B180
Guangdong Ouya Ceramics Co. Ltd	B181
Guangdong Overland Ceramics Co. Ltd	B182
Guangdong Qianghui (QHTC) Ceramics Co. Ltd	B183
Guangdong Sihui Kedi Ceramics Co. Ltd	B184
Guangdong Summit Ceramics Co. Ltd	B185
Guangdong Tianbi Ceramics Co. Ltd	B186
Guangdong Winto Ceramics Co. Ltd	B187
Guangdong Xinghui Ceramics Group Co. Ltd	B188
Guangning County Oudian Art Ceramic Co. Ltd	B189
Guangzhou Cowin Ceramics Co. Ltd	B190
Hangzhou Nabel Ceramics Co. Ltd	B191
Hangzhou Nabel Group Co. Ltd	B192
Hangzhou Venice Ceramics Co. Ltd	B193
Heyuan Becarry Ceramics Co. Ltd	B194
Guangdong Luxury Micro-crystal stone Technology Co., Ltd	B195
Hitom Ceramics Co. Ltd	B196
Huiyang Kingtile Ceramics Co. Ltd	B197

Name	Taric additional code
Jiangxi Ouya Ceramics Co. Ltd	B198
Jingdezhen Tidiy Ceramics Co. Ltd	B199
Kim Hin Ceramics (Shanghai) Co. Ltd	B200
Lixian Xinpeng Ceramic Co. Ltd	B201
Louis Valentino (Inner Mongolia) Ceramic Co. Ltd	B202
Louvrenike (Foshan) Ceramics Co. Ltd	B203
Nabel Ceramics (Jiujiang City) Co. Ltd	B204
Ordos Xinghui Ceramics Co. Ltd	B205
Qingdao Diya Ceramics Co. Ltd	B206
Qingyuan Guanxingwang Ceramics Co. Ltd	B207
Qingyuan Oudian Art Ceramic Co. Ltd	B208
Qingyuan Ouya Ceramics Co. Ltd	B209
RAK (Gaoyao) Ceramics Co. Ltd	B210
Shandong ASA Ceramic Co. Ltd	B211
Shandong Dongpeng Ceramic Co. Ltd	B212
Shandong Jialiya Ceramic Co. Ltd	B213
Shanghai CIMIC Holdings Co., Ltd	B214
Sinyih Ceramic (China) Co. Ltd	B215
Sinyih Ceramic (Penglai) Co. Ltd	B216
Southern Building Materials and Sanitary Co. Ltd of Qingyuan	B217
Tangshan Huida Ceramic Group Co. Ltd	B218
Tangshan Huida Ceramic Group Huiquin Co. Ltd	B219
Tegaote Ceramics Co. Ltd	B220
Tianjin (TEDA) Honghui Industry & Trade Co. Ltd	B221
Topbro Ceramics Co. Ltd	B222
Xingning Christ Craftworks Co. Ltd	B223
Zhao Qing City Shenghui Ceramics Co. Ltd	B224
Zhaoqing Jin Ouya Ceramics Company Limited	B225
Zhaoqing Zhongheng Ceramics Co. Ltd	B226
Zibo Hualiansheng Ceramics Co. Ltd	B227
Zibo Huaruino Ceramics Co. Ltd	B228
Shandong Tongyi Ceramics Co. Ltd	B229
Onna Ceramic Industries (China) Co., Ltd	B293
Everstone Industry (Qingdao) Co., Ltd	B998

ANNEX II

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

1. The name and function of the official of the entity issuing the commercial invoice.
2. The following declaration:

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

(Date and signature)'

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2017/2180

of 16 November 2017

extending the period of validity of Implementing Decision (EU) 2016/412 authorising Member States to provide for a temporary derogation from certain provisions of Council Directive 2000/29/EC in respect of ash wood originating or processed in Canada

(notified under document C(2017) 7488)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ⁽¹⁾, and in particular the first indent of Article 15(1) thereof,

Whereas:

- (1) Commission Implementing Decision (EU) 2016/412 ⁽²⁾ allows Member States to authorise, by way of derogation from Article 5(1) of Directive 2000/29/EC, and in conjunction with point 2.3 of Section I of Part A of Annex IV to that Directive, the introduction into the Union of ash (*Fraxinus* L.) wood originating in Canada subject to certain conditions.
- (2) Since the circumstances justifying that authorisation still apply and there is no new information giving cause for revision of the specific conditions, that authorisation should be extended.
- (3) Based on the experience gained with the application of Implementing Decision (EU) 2016/412, it is appropriate to extend the authorisation for one year.
- (4) Implementing Decision (EU) 2016/412 should therefore be amended accordingly.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

In Article 5 of Implementing Decision (EU) 2016/412, the date ‘31 December 2017’ is replaced by ‘31 December 2018’.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 16 November 2017.

For the Commission

Vytenis ANDRIUKAITIS

Member of the Commission

⁽¹⁾ OJ L 169, 10.7.2000, p. 1.

⁽²⁾ Commission Implementing Decision (EU) 2016/412 of 17 March 2016 authorising Member States to provide for a temporary derogation from certain provisions of Council Directive 2000/29/EC in respect of ash wood originating or processed in Canada (OJ L 74, 19.3.2016, p. 41).

COMMISSION IMPLEMENTING DECISION (EU) 2017/2181**of 21 November 2017****amending Implementing Decision (EU) 2016/1918 concerning certain safeguard measures in relation to chronic wasting disease***(notified under document C(2017) 7661)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽¹⁾, and in particular Article 4(2) thereof,

Whereas:

- (1) Regulation (EC) No 999/2001 lays down rules for the prevention, control and eradication of transmissible spongiform encephalopathies (TSEs) in the Union. It applies to the production and placing on the market of live animals and products of animal origin and in certain specific cases to exports thereof. It also provides, inter alia, for monitoring programmes for certain TSEs and also for the adoption of safeguard measures in the event of outbreaks of TSEs.
- (2) Commission Implementing Decision (EU) 2016/1918 ⁽²⁾ lays down temporary safeguard measures in relation to chronic wasting disease (CWD). It was adopted following the detection of five cases of CWD in cervids in Norway in 2016. That was the first time that CWD had been detected in Europe and the first natural case in reindeer in the world. CWD is an infectious disease and in the event of an outbreak of that disease there is a risk that it can spread to other cervid populations and to other regions and also to the territory of other Member States of the Union and to European Free Trade Association States of the European Economic Area (EEA EFTA States).
- (3) On 2 December 2016, the European Food Safety Authority (EFSA) adopted a scientific opinion on CWD in cervids (the EFSA opinion) ⁽³⁾. The EFSA opinion recommended the implementation of a 3-year surveillance programme for CWD in cervids in Estonia, Finland, Iceland, Latvia, Lithuania, Norway, Poland and Sweden, which are the Member States and the EEA EFTA States with a reindeer or a moose population, or with both populations. The EFSA opinion highlighted that the objective of the 3-year CWD monitoring programme should be to confirm or exclude the presence of CWD in countries where the disease has never been detected and in countries where CWD has been detected, in order to estimate the prevalence and geographical spread of CWD. To date, CWD has not been detected in the Union and as regards EEA EFTA States, it has only been detected in Norway.
- (4) Following the adoption of the EFSA opinion, Annex III to Regulation (EC) No 999/2001 was amended by Commission Regulation (EU) 2017/1972 ⁽⁴⁾ in order to provide for a 3-year monitoring programme for CWD in cervids in certain Member States and in EEA EFTA States which have cervid populations which may have been exposed to CWD, covering the period from 1 January 2018 to 31 December 2020 (the 3-year monitoring programme for CWD). The purpose of the 3-year monitoring programme for CWD is to obtain a clear picture of the epidemiological situation as regards CWD in cervids in Europe.
- (5) Between January 2017 and September 2017, Norway informed the Commission and the Member States, via electronic submissions as referred to in Part I.B of Chapter B of Annex III to Regulation (EC) No 999/2001, of three additional cases of CWD detected in wild reindeers, in addition to the five CWD cases detected in Norway in 2016 in wild reindeers and wild moose.

⁽¹⁾ OJ L 147, 31.5.2001, p. 1.

⁽²⁾ Commission Implementing Decision (EU) 2016/1918 of 28 October 2016 concerning certain safeguard measures in relation to chronic wasting disease (OJ L 296, 1.11.2016, p. 21).

⁽³⁾ Scientific Opinion on Chronic wasting disease (CWD) in cervids, *The EFSA Journal* (2017);15(1):46.

⁽⁴⁾ Commission Regulation (EU) 2017/1972 of 30 October 2017 amending Annexes I and III to Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards a surveillance programme for chronic wasting disease in cervids in Estonia, Finland, Latvia, Lithuania, Poland and Sweden and repealing Commission Decision 2007/182/EC (OJ L 281, 31.10.2017, p. 14).

- (6) The EFSA opinion also highlights that the use of natural cervid urine lures increases the probability of introduction of CWD into the Union and recommends taking measures in order to reduce the probability of its introduction via natural cervid urine lures. CWD infectivity is present in urine, which plays a role in the transmission and dissemination of CWD. In the form of hunting lures, urine derived from infected cervids can therefore lead to the contamination of areas where CWD was previously not present. The EFSA opinion therefore recommends discontinuing the use of cervid urine hunting lures.
- (7) Taking into account the recommendations set out in the EFSA opinion, it is appropriate to extend the safeguard measures laid down in Implementing Decision (EU) 2016/1918 to cover cervid urine hunting lures by prohibiting the importation into the Union of cervid urine hunting lures from third countries, the movement of consignments of urine hunting lures derived from cervids originating in Norway into the Union, and the manufacture, placing on the market and use of urine hunting lures from cervids originating in the areas of Sweden and Finland listed in the Annex to Implementing Decision (EU) 2016/1918.
- (8) In addition, the period of application of Implementing Decision (EU) 2016/1918 should be prolonged, taking into account the detection of the new cases of CWD in Norway and pending the outcome of the 3-year monitoring programme for CWD. The period of application of that act should therefore be extended until 31 December 2020.
- (9) It is also necessary to amend the Annex to Implementing Decision (EU) 2016/1918 as a result of the amendments made to the Articles of that act by this Decision.
- (10) Implementing Decision (EU) 2016/1918 should therefore be amended accordingly.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision (EU) 2016/1918 is amended as follows:

- (1) the following Article 3a is inserted:

'Article 3a

- 1. The importation into the Union from third countries of consignments of cervid urine hunting lures shall be prohibited.
- 2. The movement into the Union of consignments of urine hunting lures derived from cervids originating in Norway shall be prohibited.
- 3. The manufacture, placing on the market and use of urine hunting lures from cervids originating in the areas listed in the Annex shall be prohibited.;

- (2) in Article 4, the date '31 December 2017' is replaced by the date '31 December 2020';

- (3) the Annex is replaced by the text set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 21 November 2017.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

‘ANNEX

1. The areas of Sweden referred to in Article 2(2)(a) and (e), Article 3(1), (2) and (4) and Article 3a(3)

- the county of Norrbotten,
- the county of Västerbotten,
- the county of Jämtland,
- the county of Västernorrland,
- the Älvdalen municipality in the county of Dalarna,
- the municipalities of Nordanstig, Hudiksvall and Söderhamn in the county of Gävleborg.

2. The areas of Finland referred to in Article 2(2)(b), Article 3(1), (3) and (4) and Article 3a(3)

- the area located between the Norwegian-Finnish border and the Norwegian-Finnish Reindeer Fence.’
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