Official Journal of the European Union

L 360

English edition

Legislation

Volume 57

17 December 2014

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[1] Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 1334/2014

of 16 December 2014

approving the active substance gamma-cyhalotrin, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 and allowing Member States to extend provisional authorisations granted for that active substance

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Whereas:

(1) In accordance with Article 80(1)(a) of Regulation (EC) No 1107/2009, Council Directive 91/414/EEC ([2]) is to apply, with respect to the procedure and the conditions for approval, to active substances for which a decision has been adopted in accordance with Article 6(3) of that Directive before 14 June 2011. For gamma-cyhalothrin the conditions of Article 80(1)(a) of Regulation (EC) No 1107/2009 are fulfilled by Commission Decision 2004/686/EC ([3]).

(2) In accordance with Article 6(2) of Directive 91/414/EEC the United Kingdom received on 4 November 2003 an application from Cheminova A/S for the inclusion of the active substance gamma-cyhalothrin in Annex I to Directive 91/414/EEC. Decision 2004/686/EC confirmed that the dossier was 'complete' in the sense that it could be considered as satisfying, in principle, the data and information requirements of Annexes II and III to Directive 91/414/EEC.

(3) For that active substance, the effects on human and animal health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of Directive 91/414/EEC, for the uses proposed by the applicant. The designated rapporteur Member State, the United Kingdom, submitted a draft assessment report on 25 January 2008. In accordance with Article 11(6) of Commission Regulation (EU) No 188/2011 ([4]) additional information was requested from the applicant. The evaluation of the additional data by the United Kingdom was submitted in the format of addenda to the draft assessment report on 13 September 2012.

([1]) OJ L 309, 24.11.2009, p. 1.

([2]) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

([3]) Commission Decision 2004/686/EC of 29 September 2004 recognising in principle the completeness of the dossiers submitted for detailed examination in view of the possible inclusion of proquinazid, IKI-220 (flonicamid) and gamma-cyhalothrin in Annex I to Council Directive 91/414/EEC (OJ L 313, 12.10.2004, p. 21).

([4]) Commission Regulation (EU) No 188/2011 of 25 February 2011 laying down detailed rules for the implementation of Council Directive 91/414/EEC as regards the procedure for the assessment of active substances which were not on the market 2 years after the date of notification of that Directive (OJ L 53, 26.2.2011, p. 51).

(4) The draft assessment report was reviewed by the Member States and the European Food Safety Authority (hereinafter 'the Authority'). The Authority presented to the Commission its conclusion on the pesticide risk assessment of the active substance gamma-cyhalothrin ([1]) on 4 February 2014. The draft assessment report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on Plants, Animals, Food and Feed and finalised on 10 October 2014 in the format of the Commission review report for gamma-cyhalothrin.

(5) It has appeared from the various examinations made that plant protection products containing gamma-cyhalothrin may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) and Article 5(3) of Directive 91/414/EEC, in particular with regard to the uses which were examined and detailed in the Commission review report. It is therefore appropriate to approve gamma-cyhalothrin.

(6) In accordance with Article 13(2) of Regulation (EC) No 1107/2009 in conjunction with Article 6 thereof and in the light of current scientific and technical knowledge, it is, however, necessary to include certain conditions and restrictions. It is, in particular, appropriate to require further confirmatory information.

(7) A reasonable period should be allowed to elapse before approval in order to permit Member States and the interested parties to prepare themselves to meet the new requirements resulting from the approval.

(8) Without prejudice to the obligations provided for in Regulation (EC) No 1107/2009 as a consequence of approval, taking into account the specific situation created by the transition from Directive 91/414/EEC to Regulation (EC) No 1107/2009, the following should, however, apply. Member States should be allowed a period of 6 months after approval to review authorisations of plant protection products containing gamma-cyhalothrin. Member States should, as appropriate, vary, replace or withdraw authorisations. By way of derogation from that deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier, as set out in Directive 91/414/EEC, of each plant protection product for each intended use in accordance with the uniform principles.

(9) The experience gained from inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 ([2]) has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the Directives which have been adopted until now amending Annex I to that Directive or the Regulations approving active substances.

(10) In accordance with Article 13(4) of Regulation (EC) No 1107/2009, the Annex to Commission Implementing Regulation (EU) No 540/2011 ([3]) should be amended accordingly.

(11) It is also appropriate to allow Member States to extend provisional authorisations granted for plant protection products containing gamma-cyhalothrin in order to provide them with the time necessary to fulfil the obligations set out in this Regulation as regards those provisional authorisations.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Approval of active substance

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

([1]) European Food Safety Authority, 2014. Conclusion on the peer review of the pesticide risk assessment of the active substance gamma-cyhalothrin. *EFSA Journal* 2014;12(2):3560, 93 pp. doi:10.2903/j.efsa.2014.3560.

([2]) Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market (OJ L 366, 15.12.1992, p. 10).

([3]) Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

Article 2

Re-evaluation of plant protection products

1. Member States shall in accordance with Regulation (EC) No 1107/2009, where necessary, amend or withdraw existing authorisations for plant protection products containing gamma-cyhalothrin as an active substance by 30 September 2015.

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

2. By way of derogation from paragraph 1, for each authorised plant protection product containing gamma-cyhalothrin as either the only active substance or as one of several active substances, all of which were listed in the Annex to Implementing Regulation (EU) No 540/2011 by 31 March 2015 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, on the basis of a dossier satisfying the requirements of Annex III to Directive 91/414/EEC and taking into account the column on specific provisions of Annex I to this Regulation. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 29(1) of Regulation (EC) No 1107/2009.

Following that determination Member States shall:

(a) in the case of a product containing gamma-cyhalothrin as the only active substance, where necessary, amend or withdraw the authorisation by 30 September 2016 at the latest; or

(b) in the case of a product containing gamma-cyhalothrin as one of several active substances, where necessary, amend or withdraw the authorisation by 30 September 2016 or by the date fixed for such an amendment or withdrawal in the respective act or acts which added the relevant substance or substances to Annex I to Directive 91/414/EEC or approved that substance or those substances, whichever is the latest.

Article 3

Amendments to Implementing Regulation (EU) No 540/2011

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

Article 4

Extension of existing provisional authorisations

Member States may extend existing provisional authorisations for plant protection products containing gamma-cyhalothrin for a period ending on 30 September 2016 at the latest.

Article 5

Entry into force and date of application

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

It shall apply from 1 April 2015.

However, Article 4 shall apply from the date of the entry into force of this Regulation.

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

Done at Brussels, 16 December 2014.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX I

Common Name, Identification Numbers	IUPAC Name	Purity [1]	Date of approval	Expiration of approval	Specific provisions
Gamma-cyhalothrin CAS No 76703-62-3 CIPAC No 768	(*S*)-α-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-[(*Z*)-2-chloro-3,3,3-trifluoropropenyl]-2,2-dimethylcyclopropanecarboxylate or (*S*)-α-cyano-3-phenoxybenzyl (1*R*)-*cis*-3-[(*Z*)-2-chloro-3,3,3-trifluoropropenyl]-2,2-dimethylcyclopropanecarboxylate	≥ 980 g/kg	1 April 2015	31 March 2025	For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on gamma-cyhalothrin, and in particular Appendices I and II thereof, as finalised in the Standing Committee on Plants, Animals, Food and Feed on 10 October 2014 shall be taken into account. In this overall assessment Member States shall pay particular attention to: (a) the safety of operators and workers; (b) the risk to aquatic organisms. Conditions of use shall include risk mitigation measures, where appropriate. The applicant shall submit confirmatory information as regards: (1) analytical methods for the monitoring of residues in body fluids, tissues and environmental matrices; (2) the toxicity profile of the metabolites CPCA, PBA and PBA(OH); (3) the long-term risk to wild mammals; (4) the potential for biomagnification in terrestrial and aquatic food chains. The applicant shall submit to the Commission, the Member States and the Authority the relevant information by 31 March 2017.

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

ANNEX II

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

Number	Common Name, Identification Numbers	IUPAC Name	Purity [1]	Date of approval	Expiration of approval	Specific provisions
'82	Gamma-cyhalothrin CAS No 76703-62-3 CIPAC No 768	(*S*)-α-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-[(*Z*)-2-chloro-3,3,3-trifluoropropenyl]-2,2-dimethylcyclopropanecarboxylate or (*S*)-α-cyano-3-phenoxybenzyl (1*R*)-*cis*-3-[(*Z*)-2-chloro-3,3,3-trifluoropropenyl]-2,2-dimethylcyclopropanecarboxylate	≥ 980 g/kg	1 April 2015	31 March 2025	For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on gamma-cyhalothrin, and in particular Appendices I and II thereof, as finalised in the Standing Committee on Plants, Animals, Food and Feed on 10 October 2014 shall be taken into account. In this overall assessment Member States shall pay particular attention to: (a) the safety of operators and workers; (b) the risk to aquatic organisms. Conditions of use shall include risk mitigation measures, where appropriate. The applicant shall submit confirmatory information as regards: (1) analytical methods for the monitoring of residues in body fluids, tissues and environmental matrices; (2) the toxicity profile of the metabolites CPCA, PBA and PBA(OH); (3) the long-term risk to wild mammals; (4) the potential for biomagnification in terrestrial and aquatic food chains. The applicant shall submit to the Commission, the Member States and the Authority the relevant information by 31 March 2017.'

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

COMMISSION IMPLEMENTING REGULATION (EU) No 1335/2014

of 16 December 2014

amending Regulation (EC) No 2535/2001 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the import arrangements for milk and milk products and opening tariff quotas

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]), and in particular Article 187 thereof,

Whereas:

(1) Commission Implementing Regulation (EU) No 1101/2014 ([2]) provides for amendments in CN codes for dairy products of Chapter 4 with effect from 1 January 2015.

(2) Commission Regulation (EC) No 2535/2001 ([3]) lays down detailed rules as regards the import arrangements for milk and milk products and opening tariff quotas. To reflect amendments in CN codes for dairy products, it is necessary to update Annexes I, II and VIIa to that Regulation.

(3) Article 4(2) of Regulation (EC) No 2535/2001 refers to CN codes which are deleted with effect from 1 January 2015. Moreover, Annex 3, relating to concessions regarding cheeses, to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products ([4]), approved by Decision 2002/309/EC, Euratom of the Council and of the Commission ([5]), provides for the full liberalisation of the bilateral trade in cheeses as from 2007. That provision is therefore obsolete and should be deleted.

(4) Article 19a(1)(c) and (4)(c) relating to Part 3 of Annex VIIa to Regulation (EC) No 2535/2001 and Article 20(1)(a)(ii) relating to Part C of Annex II to that Regulation concern respectively a cheese tariff quota and preferential imports in application of the Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part ([6]), approved by Council Decision 2004/441/EC ([7]). Those provisions refer to CN codes which are deleted with effect from 1 January 2015. Since the corresponding quota period and import duty elimination period have expired, it is appropriate to delete those provisions.

(5) Regulation (EC) No 2535/2001 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2535/2001 is amended as follows:

(1) In Article 4, paragraph 2 is deleted;

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) Commission Implementing Regulation (EU) No 1101/2014 of 16 October 2014 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 312, 31.10.2014, p. 1).
([3]) Commission Regulation (EC) No 2535/2001 of 14 December 2001 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the import arrangements for milk and milk products and opening tariff quotas (OJ L 341, 22.12.2001, p. 29).
([4]) OJ L 114, 30.4.2002, p. 132.
([5]) Decision 2002/309/EC, Euratom of the Council, and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation (OJ L 114, 30.4.2002, p. 1).
([6]) OJ L 311, 4.12.1999, p. 3.
([7]) Council Decision 2004/441/EC of 26 April 2004 concerning the conclusion of the Trade, Development and Cooperation Agreement between the European Community and its Member States, on the one part, and the Republic of South Africa, on the other part (OJ L 127, 29.4.2004, p. 109).

(2) In Article 19a, paragraphs 1(c) and 4(c) are deleted;

(3) In Article 20, paragraph (1)(a)(ii) is deleted;

(4) Annex I is amended in accordance with Annex I to this Regulation;

(5) Annex II is amended as follows:

(a) Part B is replaced by the text in Annex II to this Regulation;

(b) Part C is deleted;

(6) Annex VIIa is amended as follows:

(a) Part 3 is deleted;

(b) Part 4 is replaced by the text in Annex III to this Regulation.

Article 2

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

It shall apply from 1 January 2015.

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

Done at Brussels, 16 December 2014.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX I

Annex I to Regulation (EC) No 2535/2001 is amended as follows:

(1) Part I.A is replaced by the following:

'I. A

TARIFF QUOTAS NOT SPECIFIED BY COUNTRY OF ORIGIN

Quota number	CN code	Description (1)	Import duty (EUR/ 100 kg net weight)	Country of origin	Annual quota (in tonnes)	Six-monthly quota (in tonnes)
09.4590	0402 10 19	Skimmed-milk powder	47,50	All third countries	68 537	34 268,5
09.4599	0405 10 11 0405 10 19 0405 10 30 0405 10 50 0405 10 90 0405 90 10 (*) 0405 90 90 (*)	Butter and other fats and oils derived from milk	94,80	All third countries	11 360 in butter equivalent (*) (*) 1 kg of product = 1,22 kg butter	5 680
09.4591	ex 0406 10 30 ex 0406 10 50 ex 0406 10 80	Pizza cheese, frozen, cut into pieces each weighing not more than 1 gram, in containers with a net content of 5 kg or more, of a water content, by weight, of 52 % or more, and a fat content by weight in the dry matter of 38 % or more	13,00	All third countries	5 360	2 680
09.4592	ex 0406 30 10	Processed Emmentaler	71,90	All third countries	18 438	9 219
	0406 90 13	Emmentaler	85,80			
09.4593	ex 0406 30 10	Processed Gruyère	71,90	All third countries	5 413	2 706,5
	0406 90 15	Gruyère, Sbrinz	85,80			
09.4594	0406 90 01 (2)	Cheese for processing	83,50	All third countries	20 007	10 003,5
09.4595	0406 90 21	Cheddar	21,00	All third countries	15 005	7 502,5

Quota number	CN code	Description (1)	Import duty (EUR/ 100 kg net weight)	Country of origin	Annual quota (in tonnes)	Six-monthly quota (in tonnes)
09.4596	ex 0406 10 30 ex 0406 10 50 ex 0406 10 80	Fresh (unripened or uncured) cheese, including whey cheese, and curd, other than pizza cheese of quota number 09.4591	92,60 92,60 106,40	All third countries	19 525	9 762,5
	0406 20 00	Grated or powdered cheese	94,10			
	0406 30 31	Other processed cheese, not grated or powdered	69,00			
	0406 30 39		71,90			
	0406 30 90		102,90			
	0406 40 10 0406 40 50 0406 40 90	Blue-veined cheese and other cheese containing veins produced by *Penicillium roqueforti*	70,40			
	0406 90 17	Bergkäse and Appenzell	85,80			
	0406 90 18	Fromage Fribourgeois, Vacherin Mont d'Or and Tête de Moine	75,50			
	0406 90 23	Edam	75,50			
	0406 90 25	Tilsit	75,50			
	0406 90 29	Kashkaval	75,50			
	0406 90 32	Feta	75,50			
	0406 90 35	Kefalo-Tyri	75,50			
	0406 90 37	Finlandia	75,50			
	0406 90 39	Jarlsberg	75,50			
	0406 90 50	Cheese of sheep's milk or buffalo milk in containers containing brine, or in sheep-skin or goatskin bottles	75,50			
	ex 0406 90 63	Pecorino	94,10			
	0406 90 69	Other	94,10			
	0406 90 73	Provolone	75,50			

Quota number	CN code	Description [1]	Import duty (EUR/ 100 kg net weight)	Country of origin	Annual quota (in tonnes)	Six-monthly quota (in tonnes)
	0406 90 74	Maasdam	75,50			
	ex 0406 90 75	Caciocavallo	75,50			
	ex 0406 90 76	Danbo, Fontal, Fynbo, Havarti, Maribo, Samsø	75,50			
	0406 90 78	Gouda	75,50			
	ex 0406 90 79	Esrom, Italico, Kernhem, Saint-Paulin	75,50			
	ex 0406 90 81	Cheshire, Wensleydale, Lancashire, Double Gloucester, Blarney, Colby, Monterey	75,50			
	0406 90 82	Camembert	75,50			
	0406 90 84	Brie	75,50			
	0406 90 86	Other cheese of a fat content, by weight, not exceeding 40 % and a water content, by weight, in the non-fatty matter, exceeding 47 % but not exceeding 52 %	75,50			
	0406 90 89	Other cheese of a fat content, by weight, not exceeding 40 % and a water content, by weight, in the non-fatty matter, exceeding 52 % but not exceeding 62 %	75,50			
	0406 90 92	Other cheese of a fat content, by weight, not exceeding 40 % and a water content, by weight, in the non-fatty matter, exceeding 62 % but not exceeding 72 %	75,50			
	0406 90 93	Other cheese of a fat content, by weight, not exceeding 40 % and a water content, by weight, in the non-fatty matter, exceeding 72 %	92,60			
	0406 90 99	Other cheeses of a fat content, by weight, exceeding 40 %	106,40			

(1) Irrespective of the rules for the interpretation of the Combined Nomenclature, the wording of the product description must be considered to have merely indicative value, since the applicability of the preferential arrangements is determined in the context of this Annex by the scope of the CN code. Where ex CN codes are indicated, the applicability of the preferential scheme is determined on the basis of the CN code and the corresponding description taken jointly.

(2) The cheeses referred to are considered as processed when they have been processed into products falling within subheading 0406 30 of the Combined Nomenclature. Articles 291 to 300 of Regulation (EEC) No 2454/93 apply.';

(2) Part I.I is replaced by the following:

'I. I

Tariff quotas under Annex II to the Agreement with Iceland approved by Decision 2007/138/EC

Annual quota from 1 July to 30 June

(Quantity in tonnes)

Quota number	CN code	Description (*)	Applicable duty	Annual quantity	Half yearly quantity as from 1.1.2008
09.4205	0405 10 11 0405 10 19	Natural butter	Exemption	350	175
09.4206	ex 0406 10 50 (**)	"Skyr"	Exemption	380	190

(*) Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products is to be considered as having no more than an indicative value, the preferential arrangements being determined, within the context of this Annex, by the coverage of the CN codes. Where ex CN codes are referred to, the applicability of the preferential arrangements is determined to the basis of the CN code and the corresponding description taken jointly.

(**) CN code subject to modification, pending confirmation of classification of the product.'

ANNEX II

'II. B

PREFERENTIAL IMPORT ARRANGEMENTS TURKEY

Serial number	CN code	Description [1]	Country of origin	Import duty (EUR/100 kg net weight without further indication)
1	0406 90 29	Kashkaval	Turkey	67,19
2	0406 90 50	Cheeses made from sheep's milk or buffalo milk, in containers containing brine, or in sheepskin or goatskin bottles	Turkey	67,19
3	ex 0406 90 86 ex 0406 90 89 ex 0406 90 92	*Tulum peyniri*, made from sheep's milk or buffalo milk, in individual plastic or other kind of packing of less than 10 kg	Turkey	67,19

[1] Notwithstanding the rules for the interpretation of the combined nomenclature, the wording for the description of the products is to be considered as having no more than an indicative value, the applicability of the preferential scheme being determined, for the purposes of this Annex, by the coverage of the CN code. Where ex CN codes are indicated, the applicability of the preferential scheme is determined on the basis of the CN code and the corresponding description taken jointly.'

ANNEX III

'4.

TARIFF QUOTAS UNDER PROTOCOL 1 TO DECISION No 1/98 OF THE EC-TURKEY ASSOCIATION COUNCIL

Quota number	CN code	Description [1]	Country of origin	Annual quota from 1 January to 31 December (in tonnes)	Import duty (EUR/100 kg net weight)
09.0243	0406 90 29	Kashkaval	Turkey	2 300	0
	0406 90 50	Cheese of sheep's milk or buffalo milk, in containers containing brine, or in sheep-skin or goatskin bottles			
	ex 0406 90 86 ex 0406 90 89 ex 0406 90 92	Tulum Peyniri, made from sheep's milk or buffalo milk, in individual plastic or other kind of packings of less than 10 kg			

[1] Notwithstanding the rules for the interpretation of the combined nomenclature, the wording for the description of the products is to be considered as having no more than an indicative value, the applicability of the preferential scheme being determined, for the purposes of this Annex, by the coverage of the CN codes. Where ex CN codes are indicated, the applicability of the preferential scheme is determined on the basis of the CN code and the corresponding description taken jointly.'

COMMISSION DELEGATED REGULATION (EU) No 1336/2014

of 16 December 2014

laying down temporary exceptional measures for the milk and milk product sector in the form of advancing the public intervention period for butter and skimmed milk powder in 2015

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]), and in particular Article 219(1) in conjunction with Article 228 thereof,

Whereas:

(1) On 7 August 2014 the Russian government introduced a ban on imports of certain products from the Union to Russia, including milk and milk products. This ban has resulted in market disturbances with significant price falls due to the fact that an important export market has suddenly become unavailable.

(2) Article 12(d) of Regulation (EU) No 1308/2013 provides that public intervention for butter and skimmed milk powder shall be available from 1 March to 30 September.

(3) A situation has therefore arisen in which the normal measures available under Regulation (EU) No 1308/2013 appear to be insufficient to address the market disturbance.

(4) The public intervention period for butter and skimmed milk powder has been extended to 31 December 2014 by Commission Delegated Regulation (EU) No 949/2014 ([2]).

(5) Prices of butter and skimmed milk powder in the Union have further deteriorated and downward pressure is likely to carry on.

(6) In order to cater for a situation where prices would further deteriorate and market disturbances would deepen, it is essential that public intervention is also available after 31 December 2014.

(7) It is therefore appropriate to fix the start of the intervention buying-in period for butter and skimmed milk powder in 2015 at 1 January.

(8) In order to have an immediate impact on the market and to contribute to stabilise prices, the temporary measure provided for in this Regulation should enter into force on the day following that of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from Article 12(d) of Regulation (EU) No 1308/2013, in 2015 public intervention for butter and skimmed milk powder shall be available from 1 January to 30 September.

([1]) OJ L 347, 20.12.2013, p. 671.

([2]) Commission Delegated Regulation (EU) No 949/2014 of 4 September 2014 laying down temporary exceptional measures for the milk and milk product sector in the form of extending the public intervention period for butter and skimmed milk powder in 2014 (OJ L 265, 5.9.2014, p. 21).

Article 2

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

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

Done at Brussels, 16 December 2014.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) No 1337/2014

of 16 December 2014

amending Implementing Regulations (EU) No 947/2014 and (EU) No 948/2014 as regards the last day for submission of applications for private storage aid for butter and skimmed milk powder

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 [1], and in particular Article 18(2), Article 20(c), (f), (l), (m) and (n), and Article 223(3)(c) thereof,

Having regard to Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products [2] and in particular Article 4 thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 [3], and in particular Article 62(2)(b) thereof,

Whereas:

(1) Commission Implementing Regulations (EU) No 947/2014 [4] and (EU) No 948/2014 [5] opened private storage for butter and skimmed milk powder, respectively, in view of the particular difficult market situation, notably resulting from the ban introduced by the Russian government on imports of dairy products from the Union to Russia.

(2) Those Regulations provide that applications for aid can be lodged until 31 December 2014.

(3) Prices of butter and skimmed milk powder in the Union have further deteriorated and downward pressure is likely to carry on.

(4) In view of the current market situation it is appropriate to extend the private storage aid schemes for butter and skimmed milk powder.

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

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EU) No 947/2014

In Article 5 of Regulation (EU) No 947/2014, '31 December 2014' is replaced by '28 February 2015'.

[1] OJ L 347, 20.12.2013, p. 671.
[2] OJ L 346, 20.12.2013, p. 12.
[3] OJ L 347, 20.12.2013, p. 549.
[4] Commission Implementing Regulation (EU) No 947/2014 of 4 September 2014 opening private storage for butter and fixing in advance the amount of aid (OJ L 265, 5.9.2014, p. 15).
[5] Commission Implementing Regulation (EU) No 948/2014 of 4 September 2014 opening private storage for skimmed milk powder and fixing in advance the amount of aid (OJ L 265, 5.9.2014, p. 18).

Article 2

Amendment to Regulation (EU) No 948/2014

In Article 5 of Regulation (EU) No 948/2014, '31 December 2014' is replaced by '28 February 2015'.

Article 3

Entry into force

This Regulation shall enter into force on the third 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, 16 December 2014.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) No 1338/2014

of 16 December 2014

amending Implementing Regulation (EU) No 439/2011 as regards a prolongation of a derogation from Regulation (EEC) No 2454/93 in respect of the definition of the concept of originating products used for the purposes of the scheme of generalised tariff preferences to take account of the special situation of Cape Verde regarding exports of certain fisheries products to the European Union

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

(1) By Commission Regulation (EC) No 815/2008 ([3]) Cape Verde was granted a derogation from the rules of origin laid down in Regulation (EEC) No 2454/93. By Implementing Regulation (EU) No 439/2011 ([4]) the Commission granted Cape Verde a new derogation from those rules of origin. The latest derogation expires on 31 December 2014.

(2) By letter dated 4 June 2014, Cape Verde submitted a request for a prolongation of that derogation for an indefinite period of time from 1 January 2015 until either the expiry of the Protocol (to be published) between the European Union and the Republic of Cape Verde setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the two parties currently in force, or the application date for the rules of origin under a future Economic Partnership Agreement between the Union and the Economic Community of West African States, whichever occurs later. The request concerns an annual volume of 2 500 tonnes for prepared or preserved mackerel fillets and 875 tonnes for prepared or preserved frigate tuna or frigate mackerel fillets.

(3) From 2008, the total annual quantities that were granted to Cape Verde under the derogation have contributed, to a significant extent, to improving the situation in the Cape Verdean fishery processing sector. Those quantities also led, to a certain extent, to the revitalisation of Cape Verde's artisanal fleet, which is of vital importance for the country. However, fully revitalising the Cape Verdean fleet to the degree envisaged requires that Cape Verde's fish processing industries continue to be provided with enough originating raw materials.

(4) The request demonstrates that, without the derogation, the ability of the Cape Verdean fish processing industry to continue exporting to the Union would be significantly affected, which might deter further development of the Cape Verdean fleet for small pelagic fishing.

(5) Additional time is needed to consolidate the results already obtained by Cape Verde in its efforts to revitalise its local fishing fleet. The derogation should give Cape Verde sufficient time to prepare itself to comply with the rules for the acquisition of preferential origin.

([1]) OJ L 302, 19.10.1992, p. 1.
([2]) OJ L 253, 11.10.1993, p. 1.
([3]) Commission Regulation (EC) No 815/2008 of 14 August 2008 on a derogation from Regulation (EEC) No 2454/93 in respect of the definition of the concept of originating products used for the purposes of the scheme of generalised preferences to take account of the special situation of Cape Verde regarding exports of certain fisheries products to the Community (OJ L 220, 15.8.2008, p. 11).
([4]) Commission Implementing Regulation (EU) No 439/2011 of 6 May 2011 on a derogation from Regulation (EEC) No 2454/93 in respect of the definition of the concept of originating products used for the purposes of the scheme of generalised tariff preferences to take account of the special situation of Cape Verde regarding exports of certain fisheries products to the European Union (OJ L 119, 7.5.2011, p. 1).

(6) Having regard to the temporary nature of derogations granted in respect of the definition of the concept of originating products,, it is not possible to grant the derogation for an indefinite period as requested by Cape Verde. Instead, the derogation should be granted for a period of two years, in respect of yearly quantities of 2 500 tonnes for prepared or preserved mackerel fillets and 875 tonnes for prepared or preserved frigate tuna or frigate mackerel fillets, to allow Cape Verde to achieve compliance with the rules.

(7) Implementing Regulation (EU) No 439/2011 should therefore be amended accordingly.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 439/2011 is amended as follows:

(1) Article 2 is replaced by the following:

'*Article 2*

The derogation provided for in Article 1 shall apply to products exported from Cape Verde and declared for release for free circulation in the Union, during the periods from 1 January 2011 until 31 December 2011, 1 January 2012 until 31 December 2012, 1 January 2013 until 31 December 2013, 1 January 2014 until 31 December 2014, 1 January 2015 until 31 December 2015 and 1 January 2016 until 31 December 2016, up to the quantities listed in the Annex, where the conditions specified in Article 74 of Regulation (EEC) No 2454/93 are satisfied.';

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

Article 2

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

2. It shall apply from 1 January 2015.

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

Done at Brussels, 16 December 2014.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Order No	CN code		Description of goods	Periods	Quantity (in tonnes net weight)
09.1647	1604 15 11 ex 1604 19 97		Prepared or preserved fillets of mackerel (*Scomber scombrus, Scomber japonicus, Scomber colias*)	1.1.2011 to 31.12.2011 1.1.2012 to 31.12.2012 1.1.2013 to 31.12.2013 1.1.2014 to 31.12.2014 1.1.2015 to 31.12.2015 1.1.2016 to 31.12.2016	2 500 2 500 2 500 2 500 2 500 2 500
09.1648	ex 1604 19 97		Prepared or preserved fillets of frigate tuna or frigate mackerel (*Auxis thazard, Auxis rochei*)	1.1.2011 to 31.12.2011 1.1.2012 to 31.12.2012 1.1.2013 to 31.12.2013 1.1.2014 to 31.12.2014 1.1.2015 to 31.12.2015 1.1.2016 to 31.12.2016	875 875 875 875 875 875

COMMISSION IMPLEMENTING REGULATION (EU) No 1339/2014

of 16 December 2014

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ([2]), and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 16 December 2014.

For the Commission,

On behalf of the President,

Jerzy PLEWA

Director-General for Agriculture and Rural Development

([1]) OJ L 347, 20.12.2013, p. 671.

([2]) OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code [1]	Standard import value
0702 00 00	AL	55,8
	IL	97,8
	MA	87,7
	TN	139,2
	TR	110,2
	ZZ	98,1
0707 00 05	EG	191,6
	TR	142,8
	ZZ	167,2
0709 93 10	MA	80,9
	TR	134,6
	ZZ	107,8
0805 10 20	AR	35,3
	MA	68,6
	TR	59,8
	UY	32,9
	ZA	47,2
	ZW	33,9
	ZZ	46,3
0805 20 10	MA	64,8
	ZZ	64,8
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	95,0
	MA	75,3
	TR	76,8
	ZZ	82,4
0805 50 10	TR	77,1
	ZZ	77,1
0808 10 80	BR	53,5
	CL	80,2
	NZ	90,6
	US	94,0
	ZA	143,5
	ZZ	92,4
0808 30 90	CN	98,5
	TR	174,9
	US	173,2
	ZZ	148,9

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

DIRECTIVES

COMMISSION DELEGATED DIRECTIVE 2014/109/EU

of 10 October 2014

amending Annex II to Directive 2014/40/EU of the European Parliament and of the Council by establishing the library of picture warnings to be used on tobacco products

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC ([1]), and in particular Article 10(3)(b) thereof,

Whereas:

(1) Article 10 of Directive 2014/40/EU provides that each unit packet and any outside packaging of tobacco products for smoking is to carry combined health warnings unless exempted in accordance with Article 11. The combined health warnings are to contain, inter alia, one of the text warnings listed in Annex I and a corresponding colour photograph specified in the picture library in Annex II to that Directive.

(2) Directive 2014/40/EU also empowers the Commission to adopt delegated acts to establish and adapt the picture library in Annex II taking into account scientific and market developments.

(3) Therefore, Annex II to Directive 2014/40/EU should be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex II to Directive 2014/40/EU is replaced in accordance with the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 20 May 2016 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 20 May 2016.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

([1]) OJ L 127, 29.4.2014, p. 1.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 10 October 2014.

For the Commission

The President

José Manuel BARROSO

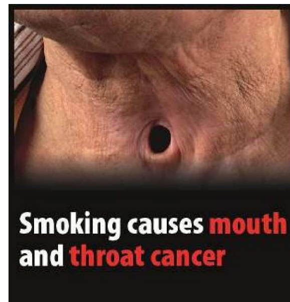
ANNEX

'ANNEX II

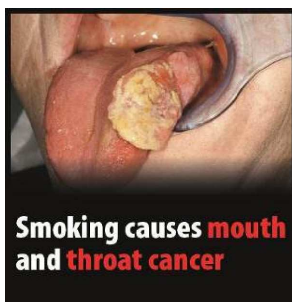
Picture Library (of combined health warnings)

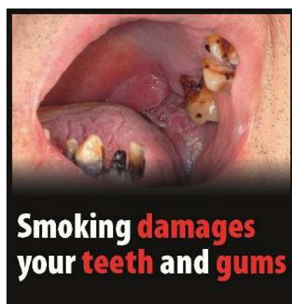
(referred to in Article 10(1))

Set 1

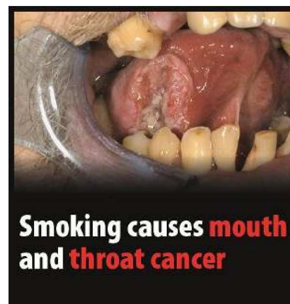


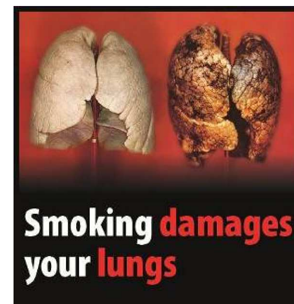
Set 2

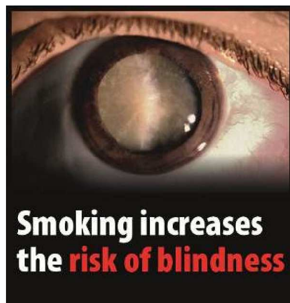


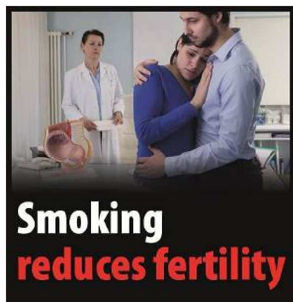


Set 3








Smoking
reduces fertility

Smoking increases
the risk of impotence

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DECISIONS

COUNCIL DECISION

of 4 December 2014

on the launch of automated data exchange with regard to dactyloscopic data in Latvia

(2014/911/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ([1]), in particular Article 25 thereof,

Having regard to Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ([2]), in particular Article 20 and Chapter 4 of the Annex thereto,

Whereas:

(1) According to the Protocol on Transitional Provisions annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, the legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted prior to the entry into force of the Treaty of Lisbon are preserved until those acts are repealed, annulled or amended in implementation of the Treaties.

(2) Accordingly, Article 25 of Decision 2008/615/JHA is applicable and the Council must unanimously decide whether the Member States have implemented the provisions of Chapter 6 of that Decision.

(3) Article 20 of Decision 2008/616/JHA provides that decisions referred to in Article 25(2) of Decision 2008/615/JHA are to be taken on the basis of an evaluation report based on a questionnaire. With respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA, the evaluation report is to be based on an evaluation visit and a pilot run.

(4) According to Chapter 4, point 1.1, of the Annex to Decision 2008/616/JHA, the questionnaire drawn up by the relevant Council Working Group concerns each of the automated data exchanges and has to be answered by a Member State as soon as it believes it fulfils the prerequisites for sharing data in the relevant data category.

(5) Latvia has completed the questionnaire on data protection and the questionnaire on dactyloscopic data exchange.

(6) A successful pilot run has been carried out by Latvia with Austria.

(7) An evaluation visit has taken place in Latvia and a report on the evaluation visit has been produced by the Austrian evaluation team and forwarded to the relevant Council Working Group.

(8) An overall evaluation report, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning dactyloscopic data exchange has been presented to the Council,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of automated searching of dactyloscopic data, Latvia has fully implemented the general provisions on data protection of Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from the day of the entry into force of this Decision.

([1]) OJ L 210, 6.8.2008, p. 1.
([2]) OJ L 210, 6.8.2008, p. 12.

Article 2

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

Done at Brussels, 4 December 2014.

For the Council

The President

A. ORLANDO

COUNCIL DECISION 2014/912/CFSP

of 15 December 2014

in support of physical security and stockpile management (PSSM) activities to reduce the risk of illicit trade in small arms and light weapons (SALW) and their ammunition in the Sahel region

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 26(2) and 31(1) thereof,

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

Whereas:

(1) On 15 and 16 December 2005, the European Council adopted the EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition. In that Strategy, the European Council acknowledges that the abundance of stocks of SALW and ammunition makes such arms easily obtainable by civilians, criminals, terrorists and combatants alike and stresses the need to pursue preventive action to tackle the illegal supply of conventional weapons and their demand. It also singles out Africa as the continent most affected by the impact of internal conflicts aggravated by the destabilising influx of SALW.

(2) On 21 March 2011, the Council endorsed the European Union Strategy for Security and Development in the Sahel, which provides an integrated framework for Union engagement in the Sahel region. One of the four strands of actions of the Strategy aims at strengthening the capacities of the security, law enforcement and the rule of law sectors in this region to fight threats and handle terrorism and organised crime in a more efficient and specialised manner and link them to measures of good governance.

(3) On 14 June 2006 in Abuja, Nigeria, the Member States of the Economic Community of West African States (ECOWAS) adopted the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials, which entered into force on 29 September 2009. On 30 April 2010 in Kinshasa, Democratic Republic of the Congo, the Member States of the Economic Community of Central African States (ECCAS) and the Republic of Rwanda adopted a Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition, Parts and Components that can be used for their Manufacture, Repair or Assembly. In both Conventions, signatory States have undertaken, inter alia, to take the necessary measures to ensure the safe and effective management, storage and security of their national stocks of SALW, in accordance with the appropriate standards and procedures.

(4) Burkina Faso, Mali and Nigeria have ratified the Arms Trade Treaty, as have 23 Member States, while Chad, Mauritania, and Niger have signed it. Article 16(1) of the Arms Trade Treaty provides that, in implementing the Treaty, each State Party may seek assistance including legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Such assistance may include stockpile management, disarmament, demobilisation and reintegration programmes, model legislation, and effective practices for implementation. Each State Party in a position to do so shall provide such assistance, upon request.

(5) Burkina Faso, Mali, Mauritania and Nigeria are States Parties to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (the 'Firearms Protocol').

(6) All UN Member States are committed to the effective implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects ('UN Programme of Action'), as well as of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons.

(7) At the Fifth Biennial Meeting of States to Consider the Implementation of the UN Programme of Action (New York, 16-20 June 2014), all UN Member States reiterated that proper management of SALW stockpiles, in particular in conflict and post-conflict situations, is essential to prevent accidents and reduce the risk of diversion to the illicit trade, illegal armed groups, terrorists, and other unauthorised recipients. UN Member States called for

strengthened international and regional cooperation and assistance on stockpile management and physical security issues, and undertook to take advantage, where feasible, of technological advances to strengthen stockpile management, including physical security measures.

(8) The popular uprising in Libya in February 2011 and the ensuing armed conflict, and the political and security crises in Mali in 2012 have illustrated how non-State actors, including terrorists, can take advantage of improperly secured and managed government-owned stockpiles to divert SALW and ammunition, to the detriment of peace and security. In a context of increased activity by non-State actors in the Sahel region, including in northern Nigeria, the improvement of weapons and ammunition security in Sahel States has become a priority.

(9) The United Nations Regional Centre for Peace and Disarmament in Africa (UNREC), which is part of the United Nations Office for Disarmament Affairs (UNODA), has a long experience of lending support to Sahel States and civil society in their implementation of international and regional instruments on SALW control, in line with its mandate received from the UN General Assembly (Resolution 40/151 G, 16 December 1985).

(10) Since 2013, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), through the United Nations Mine Action Service (UNMAS), has been assisting the Malian authorities in mine action and weapons and ammunition management, in line with UN Security Council Resolutions 2100(2013) and 2164 (2014).

(11) The non-governmental organisation Mine Advisory Group (MAG) has recently started a regional project addressing urgent conventional weapons and ammunition security and management issues in target countries within the Sahel-Maghreb region.

(12) Under Council Decision 2011/428/CFSP ([1]), the Union has financed, inter alia, the provision of marking equipment to law enforcement agencies in several West African States, as well as training on the International Tracing Instrument and on the International Ammunition Technical Guidelines.

(13) Under Council Decision 2013/320/CFSP ([2]), the Union is supporting measures aimed at ensuring the sound physical security and stockpile management (PSSM) of the Libyan weapons arsenals, in order to reduce the risks posed by the illicit spread of SALW and ammunition for the security of Libya and of its neighbouring countries, including in the Sahel.

(14) Under Council Decision 2013/698/CFSP ([3]), the Union is supporting the establishment of a global reporting mechanism on illicit SALW and other conventional weapons and ammunition ('iTrace'), based in particular on in-field research into SALW and ammunition circulating in conflict-affected areas, including in Africa.

(15) Under its Common Security and Defence Policy, the Union has launched three actions in the Sahel region, namely, first, EUCAP Sahel Niger, which started on 8 August 2012, to support the fight against organised crime and terrorism in Niger; second, the European Union Training Mission in Mali, which started on 18 February 2013, to contribute to the restructuring and the reorganisation of the Malian Armed Forces though training and advice; and, third, EUCAP Sahel Mali, which was launched on 15 April 2014, to provide strategic advice and training for the internal security forces in Mali.

(16) Under the Instrument contributing to Stability and Peace, since 2011 the Union has been supporting the UN Office on Drugs and Crime in its efforts to promote the ratification and implementation of the Firearms Protocol, in particular, in West Africa. Under that Instrument, since 2010 the Union has been providing financial support to the Regional Centre on Small Arms (RECSA) in the Great Lakes Region, the Horn of Africa and Bordering States based in Nairobi,

([1]) Council Decision 2011/428/CFSP of 18 July 2011 in support of United Nations Office for Disarmament Affairs activities to implement the United Nations Programme of Actions to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (OJ L 188, 19.7.2011, p. 37).

([2]) Council Decision 2013/320/CFSP of 24 June 2013 in support of physical security and stockpile management activities to reduce the risk of illicit trade in small arms and light weapons (SALW) and their ammunition in Libya and its region (OJ L 173, 26.6.2013, p. 54).

([3]) Council Decision 2013/698/CFSP of 25 November 2013 in support of a global reporting mechanism on illicit small arms and light weapons and other illicit conventional weapons and ammunition to reduce the risk of their illicit trade (OJ L 320, 30.11.2013, p. 34).

HAS ADOPTED THIS DECISION:

Article 1

1. The Union shall contribute to the security and stability in the Sahel region by assisting States of this region to prevent the diversion of, and the illicit trafficking in, government-owned SALW and ammunition by improving their physical security and stockpile management ('PSSM').

2. The activities to be supported by the Union shall have the following specific objectives:

(a) to generate the necessary political buy-in for the enhancement of PSSM procedures and promote regional cooperation and knowledge sharing;

(b) to support target countries in the development of up-to-date legislation, administrative procedures and practical standard operating procedures (SOPs) as the foundation of enhanced PSSM, in line with international best practice standards;

(c) to directly support the implementation of stockpile management and security activities, including through rehabilitation of storage facilities, destruction of surplus, obsolete or illicit SALW and the piloting of new technologies.

A detailed description of these activities is set out in the Annex.

Article 2

1. The High Representative of the Union for Foreign Affairs and Security Policy ('High Representative') shall be responsible for the implementation of this Decision.

2. The technical implementation of the activities referred to in Article 1(2) shall be carried out by UNODA through UNREC. UNODA shall perform these tasks under the responsibility of the High Representative. For this purpose, the High Representative shall enter into the necessary arrangements with UNODA.

Article 3

1. The financial reference amount for the implementation of the activities referred to in Article 1(2) shall be EUR 3 561 257,06. The total estimated budget of the overall project shall be EUR 4 129 393,06, which shall be provided through co-financing.

2. The expenditure financed by the amount set out in paragraph 1 shall be managed in accordance with Union procedures and rules applicable to the general Union budget.

3. The Commission shall supervise the proper implementation of the Union contribution referred to in paragraph 1. For this purpose, it shall conclude a financing agreement with UNODA. The agreement shall stipulate that UNODA is to ensure that the visibility of the Union contribution is appropriate to its size.

4. The Commission shall endeavour to conclude the financing agreement referred to in paragraph 3 as soon as possible after 15 December 2014. It shall inform the Council and the High Representative of any difficulties in the process and of the date of conclusion of the financing agreement, within two weeks of signature.

Article 4

1. The High Representative shall report to the Council on the implementation of this Decision on the basis of regular reports to be prepared by UNODA. These reports shall form the basis for the evaluation by the Council.

2. The Commission shall provide information on the financial aspects of the implementation of the activities referred to in Article 1(2).

Article 5

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

2. This Decision shall expire 42 months after the conclusion of the relevant financing agreement referred to in Article 3(3), or six months after the date of its adoption if no financing agreement has been concluded within this period.

Done at Brussels, 15 December 2014.

For the Council

The President

F. MOGHERINI

ANNEX

Physical security and stockpile management (PSSM) activities to reduce the risk of illicit trade in small arms and light weapons (SALW) and their ammunition in the Sahel region

1. Background and rationale for CFSP support

1.1. Background

The lack of effective PSSM, in accordance with international standards, in existing conventional arms and ammunition depots in the Sahel has been recognised as posing a serious challenge to peace and security in the region and beyond. In the recent past, government-owned stockpiles in Libya and Mali have been looted by armed non-State actors, including terrorist groups. There is a concrete risk that a similar situation may occur in parts of Burkina Faso, Chad, Mauritania, Niger and Nigeria, as armed groups and terrorist groups operate across borders and are involved in the illicit trade in SALW. Inadequate PSSM of weapons and ammunition increases the risk of diversion — including through theft and attack — to the illicit market as well as unplanned explosions at munitions sites. This could lead to a destabilising accumulation of and trafficking in SALW, affecting national, regional and international peace and security.

This threat is also recognised in the United Nations Integrated Strategy for the Sahel, which deems it necessary to minimise the risk of the diversion of SALW to non-State actors, by increasing the security of existing stockpiles and, if necessary, relocating them, as well as destroying surplus or illicit SALW and ammunition. This can be done by effectively implementing the UN Programme of Action on the Illicit Trade in SALW and the International Tracing Instrument using the International Small Arms Control Standards (ISACS) as well as the International Ammunition Technical Guidelines (IATG), developed in the framework of the United Nations.

1.2. Rationale

Within its mandate under UN General Assembly Resolution 40/151 G, the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC), as the African regional presence of the United Nations Office for Disarmament Affairs (UNODA), is in a unique position to assist and strengthen the capacity and capability of Sahel States in effectively utilising these standards and best practices, and thereby controlling their SALW and ammunition stockpiles to prevent the destabilising effect of SALW accumulation and their illicit trade in the subregion and further beyond.

UNREC proposes to implement the project in cooperation with the United Nations Mine Action Service (UNMAS) and the non-governmental organisation Mines Advisory Group (MAG) and in coordination with relevant regional and subregional organisations, such as ECOWAS and ECCAS, as well as non-governmental organisations. UNMAS is conducting activities in support of United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), as one of its integrated components within the framework of UN Security Council Resolution 2100(2013) and with the UN Country Team in Mali. MAG is currently undertaking a regional project addressing conventional weapons and ammunition security and management in target countries within the Sahel-Maghreb region. Findings from these activities will be used to inform planning and implementation of the project. Synergies will offer the possibility of greater overall impact. The project will further benefit from UNODA in-house expertise at UN headquarters and in the region, as well as from further expertise available in the UN System.

These activities will build upon, complement, and capitalise on synergies with projects which UNREC and other bilateral partners, UN agencies, subregional organisations and non-governmental organisations are already implementing in the region, including: a project to support the re-operationalisation of the Mali National Commission on SALW and to develop a National Action Plan on SALW; Decision 2011/428/CFSP pursuant to which, inter alia, marking machines are provided to Burkina Faso and Niger; the ongoing project 'The Fight Against the Illicit Accumulation and Trafficking of Firearms in Africa', which is funded by the European Commission under the Instrument contributing to Stability and Peace, and during the project's first phase (2010-2013), inter alia, marking activities were undertaken, and electronic marking machines were provided coupled with the installation of customised software for recordkeeping in Eastern African countries, while the ongoing phase (2013-2016) provides for similar activities in other countries (indicatively: Burundi, Cameroon, Chad, Côte d'Ivoire, Equatorial Guinea, Gabon, Ghana, Liberia, Mali, Rwanda, Somalia, South Sudan, Togo, Uganda); a trans-regional project

implemented by the UN Office on Drugs and Crime in inter alia West Africa (i.e. Benin, Burkina Faso, Gambia, Ghana, Mali, Mauritania, Senegal, Togo), also financed by the Union's Instrument contributing to Stability and Peace, which aims to promote the ratification and implementation of the UN Convention against Transnational Organized Crime and the Firearm Protocol thereto, primarily through support for legislative review and reform; arms management related training activities undertaken by the EU Common Security and Defence Policy mission EUCAP Sahel Niger; as well as a NATO project in Mauritania implemented by the NATO Support Agency (NSPA).

Moreover, the PSSM activities under this project should take into account and support, where pertinent, broader security programmes implemented in the beneficiary countries, such as Disarmament, Demobilisation and Reintegration (DDR) as well as Security Sector Reform (SSR) processes. The review of legislation and administrative frameworks of PSSM and the further recommendations for them to meet international standards on arms control, as well as the development of national standard operating procedures on PSSM, will contribute to SSR efforts in each country and in the subregion. Activities under the project can also support, where appropriate, DDR efforts — specifically those linked to practical disarmament — as the development of national SOPs on arms control can be integrated into DDR processes, for example by setting norms for the marking and registration or destruction of recovered weapons. Existing practices, promoted also through other relevant EU-funded projects, should be used to ensure harmonised processes.

With the implementation of international best practice standards in arms control, this project will assist States in developing independent civilian oversight of national PSSM activities. The need for civilian oversight will be streamlined in the different activities of the project, particularly in consultations and workshops.

2. Overall objectives

The Action described in this point will contribute to the security and stability in the Sahel and to assist the six States of the Sahel region (Burkina Faso, Chad, Mali, Mauritania, Niger and Nigeria) to prevent the diversion of, and the illicit trafficking in, government-owned SALW and ammunition by improving their PSSM.

Specifically, the Action will aim to:

(a) generate the necessary political buy-in for the enhancement of PSSM procedures and promote regional cooperation and knowledge sharing;

(b) support target countries in the development of up-to-date legislation, administrative procedures and practical SOPs as the foundation of enhanced PSSM in line with international best practice standards;

(c) directly support the implementation of stockpile management activities, including through rehabilitation of storage facilities, destruction of surplus, obsolete or illicit SALW and the piloting of new technologies.

3. Outcomes

The Action will have the following results:

(a) adequate legislative and administrative norms on PSSM;

(b) improved PSSM of SALW through the enhancement of storage sites;

(c) reduced risk of diversion and accidental explosions of surplus, obsolete and illicit SALW and ammunition through destruction;

(d) improved marking, tracing and record-keeping of SALW;

(e) strengthened regional cooperation and information sharing;

(f) identification of the possible use of new technologies in PSSM;

(g) enhancing national capacity and ownership of PSSM in the beneficiary countries;

(h) furthering the understanding of the contribution of PSSM to regional security;

(i) contribution to reducing the risk of regional destabilisation, which may be caused by excessive accumulation of SALW and their ammunition or the diversion of SALW to non-State actors, including terrorist groups.

4. Description of the Action

4.1. Wilton Park conference on PSSM in the Sahel

Objectives

Provide an opportunity for experience-sharing and generate the necessary political buy-in for the activities to be conducted under the project.

Description

Organisation of a conference by Wilton Park and UNREC in order to discuss the impact of unsecured Libyan stockpiles on weapons-security in the Sahel, to develop strategies to prevent the diversion of, and the illicit trafficking in, government-owned SALW and ammunition by improving their PSSM. The conference will also offer the opportunity to take stock of the progress achieved in the field of PSSM in the Sahel region, in particular, in the context of international assistance, to discuss the actual needs of the countries, map the relevant ongoing actions, and identify the gaps that should be addressed. Moreover, it will be used to explore synergies with other EU-supported SALW control tools, including the 'iTrace' global monitoring mechanism (financed under Decision 2013/698/CFSP), in consultation with the recipient countries. Attendance will be by invitation only, and senior participation will be sought from the six States of the Sahel region (Burkina Faso, Chad, Mali, Mauritania, Niger and Nigeria), as well as Libya, other relevant neighbouring countries, ECOWAS, ECCAS and the African Union (AU).

Outcome/implementation indicators

Conference in Wilton Park to take place as scheduled with the participation of relevant stakeholders, including representatives from the six target countries (up to 40 participants).

4.2. Review of legislation and administrative procedures and consultations on PSSM

4.2.1. National consultations on PSSM procedures and for the identification of pilot sites

Objectives

(a) Gain a clear understanding of the legislative and administrative framework on PSSM per country and in the region.

(b) In those countries without an updated regulatory framework, make recommendations on legislation and procedures to meet international requirements as outlined in legally binding international instruments (e.g. the UN Firearms Protocol, the ECOWAS Convention on SALW [1] and the Kinshasa Convention on SALW [2]), the UN Programme of Action on the Illicit Trade in SALW, the International Tracing Instrument, IATG and ISACS, and other relevant standards and instruments.

(c) Identify priority storage facilities that would serve as pilot sites, in accordance with their national priorities, and, where appropriate, taking into account available information about patterns of diversion and trafficking.

[1] Burkina Faso, Mali, Niger and Nigeria are States Parties to the ECOWAS Convention.
[2] Chad ratified the Kinshasa Convention on 8 August 2012.

Description

Working with the national authorities in the six States of the Sahel region, namely, Burkina Faso, Chad, Mali, Mauritania, Niger and Nigeria, UNREC will conduct an assessment of all existing PSSM-related legislation, as well as administrative and standard operating procedures, making full use of already available assessments and liaising with ongoing regional and bilateral projects supporting legislative reforms in SALW, to avoid duplication and overlap.

UNREC legal experts will provide support to the relevant line ministries, legislators and senior law enforcement and defence officials in the review of national legislation and administrative procedures, to ensure that international legal obligations and international technical standards, especially the ISACS and IATG, are incorporated into the national regulatory framework.

Support in this area should be provided upon request of the countries and focus primarily on the approximation to international standards on PSSM, taking into account other ongoing initiatives providing assistance or advice on wider arms control or security sector issues.

UNREC will organise national workshops with senior representatives of national defence, law enforcement and other civilian authorities concerned with SALW security. Participants will jointly discuss the findings and recommendations of the assessment and agree on the different measures to take, and identify recommendations that can be fulfilled through legislative changes or administrative decrees.

During the national consultations, priority storage facilities to serve as pilot sites will be identified. These could include one in each of the capitals, one in a major provincial hub, one in a rural area and/or one in a border area (land border, port or airport), as well as major transportation routes for government-owned SALW and ammunition. When possible and appropriate, the choice of priority storage facilities should take into account available information about patterns of diversion and trafficking, so as to prioritise stockpiles which have been identified as contributing to the region's instability.

UNREC will produce one final assessment report per country setting out the recommendations on legislation and procedures required to meet international requirements. These reports will include the feedback from national authorities and other stakeholders from the six target countries.

Outcome/implementation indicators

(a) Per-country reports (six in total) on the existing legislative and administrative framework on PSSM, including recommendations to close gaps with international disarmament instruments.

(b) Six national workshops, one in each targeted country, take place.

(c) Up to 18 storage facilities (three per country) to serve as pilot sites are identified.

4.2.2. Regional consultations on PSSM procedures

Objectives

(a) Facilitate exchange of information and experience at the regional level on PSSM procedures, based on the national assessments conducted under point 4.2.1.

(b) Promote among national and regional stakeholders the use of ISACS and IATG.

Description

Regional consultations with the participation of senior representatives from the six governments will be carried out, with a view to exchanging information on the national findings and sharing experience and best practices, on the basis of the assessment at the national level (point 4.2.1). Representatives from the relevant regional and subregional organisations (AU, ECOWAS, ECCAS, RECSA), UN Agencies participating in the Coordinating Action on Small Arms (CASA) mechanism, relevant experts from the Union and from its Member States (including from Common Security and Defence Policy missions) as well as senior experts from outside the region will also be invited to share their experience.

UNREC will produce a report covering the findings of the regional consultative workshop.

Outcome/implementation indicators

(a) One regional consultation on PSSM procedures takes place.

(b) Report on regional consultative workshop.

4.3. Physical security and stockpile management (PSSM)

4.3.1. Assessment of PSSM at national conventional arms depots and SALW and ammunition transportation

Objectives

(a) Conduct detailed and practical assessments of the selected sample facilities to identify current practices, physical security and surplus, obsolete or illicit weapons and ammunition.

(b) Transfer practical knowledge skills on PSSM procedures according to international best practice standards.

Description

Based on the findings of the national consultative workshops, and under the coordination of UNREC, UNMAS experts and MAG experts will conduct detailed and practical assessments of the selected sample facilities to identify current practices and issues, using ISACS and IATG as the basis. In these pilot sites, experts will also verify current national practices in light of the existing national legislation and procedures and suggest their review as necessary.

UNMAS and MAG experts will work in countries where they have ongoing operations. UNMAS will work in Mali under the framework of its current operation and mandate in the country; and MAG will work in Burkina Faso, Chad, Mauritania, Niger and Nigeria. Operations will take place in cooperation with the National Commissions on SALW. The activity will include an assessment of the suitability of infrastructure and physical security, conditions of SALW and ammunition stockpiles, current practices on their transportation, and, with the support of and in agreement with national authorities, the identification of surplus, obsolete or illicit conventional weapons and ammunition contained in the depots. Furthermore, an assessment of the qualification and capacity of personnel at the depots will be conducted to identify possible training needs. In conducting these assessments, use will be made of the ISACS Assessment Tool and the MAG Armoury Risk Assessment tool. At the request of the beneficiary State concerned, ad hoc trainings on PSSM can be conducted at the selected sample facilities to respond to urgent needs.

The security situation is diverse within the targeted countries. The level of ongoing activities on PSSM varies in each country depending on the national resources they have available, and the support they receive from international donors and partners. In order to benefit from ongoing efforts and identify best practices, the PSSM component of the project will begin in two countries and then will be further extended, in phases, to the remaining ones.

Outcome/implementation indicators

(a) Up to 18 storages sites in the six target countries (three per country) are visited and assessed.

(b) Up to 18 training sessions (three per country) on PSSM best standards are organised at sample facilities for countries that request capacity building on the subject of PSSM.

4.3.2. Rehabilitation of the sample facilities and marking of SALW

Objectives

(a) Rehabilitate pilot storage facilities to bring them to ISACS and IATG standards and guidelines, and decrease the risk of diversion of arms and ammunition.

(b) Provide, where required, immediate low-cost high-impact intervention to secure pilot storage facilities (e.g. fitting doors, locks, etc.)

(c) Promote marking and registration of weapons on the basis of best practices and also building upon capacities built through past and ongoing assistance programmes to avoid duplication.

(d) Assist in the development or improvement of national central arms databases using existing software developed by UNREC and in accordance with international best practice standards, as set out in relevant international disarmament instruments, and in consultation with relevant actors assisting the countries in the region to this end, for example the UN Office on Drugs and Crime (UNODC) and RECSA.

Description

In coordination with UNREC, UNMAS experts and MAG experts will carry out immediate interventions where required. After this initial Action, the assessed depots (armouries and ammunition depots) will be rehabilitated in accordance with ISACS and IATG, in order to secure government-owned stockpiles from diversion, theft and attacks. The plans and documents prepared for the rehabilitation will be developed as model documentation for the rehabilitation and construction of other armouries and ammunition depots. The extent of the intervention and considerations for rehabilitation or construction in each pilot site will be based on the results of the assessment.

UNREC will work with national authorities so that SALW that are stocked in the depots are marked and registered in accordance with ISACS, using existing capacities in the subregion. UNREC will also develop an accurate and comprehensive system for the management of weapons and ammunition storage depots, which responds to the needs of the countries concerned, takes into account existing systems and avoids duplication of ongoing efforts. This activity will allow for a reliable assessment of conventional weapons and ammunition types, their registration and transparency, taking into account the existing information technology infrastructure, ensuring compatibility with INTERPOL's iARMS and allowing for interoperability between the countries. This will facilitate cross-border cooperation in arms tracing and preventing the illicit trade of SALW.

The SALW marking, registration and stockpile management will build on recent and current SALW marking activities in the subregion funded under Decision 2011/428/CFSP and through the EU's Instrument contributing to Stability and Peace. It will benefit from UNREC experience in conducting similar activities in post-conflict countries in the subregion.

Outcome/implementation indicators

(a) Up to 18 pilot sites are compliant with international best practice standards on PSSM.

(b) Unmarked weapons in the pilot storage sites are marked and registered.

(c) A database is developed (or improved) for each country in order to register marked and other weapons.

4.3.3. Destruction of surplus ammunition and SALW

Objectives

Contribute to the destruction of surplus, obsolete or illicit weapons in the country.

Description

Under UNREC coordination, SALW and ammunition that have been identified as surplus, obsolete or illicit at the assessed depots will be destroyed by the competent national authorities with the technical assistance of UNMAS and MAG (in the countries where they operate) in accordance with ISACS 05.50 and IATG 10.10. The equipment to be provided for destruction and the amount of weapons to be destroyed will depend on the findings of the assessment.

Outcome/implementation indicators

(a) Destruction of identified weapons.

(b) Practical know-how on destruction techniques is imparted to national authorities in targeted countries.

4.3.4. Piloting of new technologies

Objectives

Assess the potential use of new technologies to secure SALW that meet the needs of the region.

Description

Limited PSSM infrastructure leaves countries extremely vulnerable to diversion of SALW when these are stored in small armouries in remote locations, including in volatile border regions, and during transfer. In the case of robbery, theft or looting that diverts the weapon to a non-State actor, a weapon becomes accessible and available to misuse, if it is not individually secured.

New mobile and flexible technologies may offer solutions to effectively secure SALW in instances when the risk of diversion is at the highest. The technology could offer appropriate cost effective solutions for Member States that are lacking a large weapons security infrastructure.

Electronics could add a layer of additional security and safety for small arms. A system that secures the individual weapon at the point of collection from a secure armoury, keeps it secured during transport and temporary storage until it reaches its final secure destination, could significantly reduce the risk of diversion of weapons in cases of robbery, theft or looting. Electronic systems locking or deactivating the individual weapon during transfer and temporary storage could use locks with digital, radio-frequency or biometric codes, which would improve PSSM at the most vulnerable points. Digital keys would not be available during transport, as they could be transmitted via other means of communication, such as e-mails or SMS messages, to authorised persons. These protection means would disable unauthorised personnel to use weapons diverted into illegal market as a result of theft, robbery or looting.

UNREC will carry out an assessment of the potential of new technologies to secure SALW that meet the needs of the region through consultation with regional organisations and National Commissions on SALW and in cooperation with industry. Experience from neighbouring countries of the subregion on the use of smart technology to secure weapons during the DDR process will also be taken into account, for example the case study of Côte d'Ivoire.

The assessment will also identify facilities and transportation routes in Burkina Faso and Chad where such technology can be piloted. Such conventional weapons and ammunition stockpiling and weapons security technology (including for transport) will be introduced in up to four depots.

The findings of the assessment and the pilot activity will be the base for a guidance document outlining a long-term roadmap for the possible use of such new technologies in Africa and will be shared with all States in the Sahel region, with regional and subregional organisations and at international technical conferences and meetings.

Outcome/implementation indicators

(a) report on the assessment of the use of new technologies, which includes the identification of technologies to be piloted, and of four pilot sites and transportation routes in Burkina Faso and Chad.

(b) pilot new technologies in four sites, two in Burkina Faso and two in Chad, and on transportation routes.

(c) report on the results of pilot activities.

4.4. Setting national standards in accordance with IATG and ISACS

Objectives

(a) Improve arms and ammunition management.

(b) Provide and validate national SOPs on PSSM that are compliant with international best practice standards, therefore raising security and safety of conventional weapons and ammunition stockpiles.

Description

Based on the findings of the assessments and consultations (see point 4.2), as well as on the experience gained during the practical assessment and rehabilitation work (see point 4.3), UNREC will support the beneficiary countries to further review and, if need be, develop national manuals, guidelines and SOPs for PSSM (PSSM SOPs) so that they are compliant with ISACS, IATG and regional and subregional legislation. PSSM SOPs will also cover reporting obligations under international instruments.

In every country, UNREC will organise validation workshops for the SOPs — one at the senior technical level and one at the senior policy level — before the SOPs are rolled out nationally. The programme for the workshops will include an evaluation component to assess the different activities that would have already taken place in each country. As part of the roll-out procedure, training of trainers workshops introducing the new SOPs will be conducted in every one of the countries concerned by UNREC and by the implementing parties.

Outcome/implementation indicators

(a) PSSM SOPs are developed for targeted countries.

(b) Technical level and senior policy level workshops are carried out in the six target countries.

(c) One training of trainers workshops on the SOPs will be conducted in each country, each of up to 35 participants.

4.5. Evaluation and way forward

4.5.1. Regional evaluation

Objectives

(a) Analyse the impact or potential impact after project implementation.

(b) Evaluate all the measures taken under the project; identify good practices, shortcomings and areas of future activities.

Description

For the duration of the project period, UNREC will conduct regular follow-up visits to the facilities. Those visits will allow it to assess the use and the practice over time, and allow experts to continuously engage with senior personnel.

The findings of the national evaluations will be discussed at a regional meeting, with the participation of representatives of the six States of the Sahel region, donors, CASA agencies, the relevant regional organisations (AU, ECOWAS, ECCAS, RECSA), the relevant experts from the Union and its Member States (including from Common Security and Defence Policy missions) and civil society. Areas in which best practices can be exchanged among countries of the Sahel region, including initiatives to improve civilian oversight, will be identified and ways ahead for future cross-border cooperation on PSSM will be outlined.

Outcome/implementation indicators

(a) Country visits and missions by project staff under other activities include evaluation and monitoring components.

(b) Follow-up missions take place every six months.

(c) A regional meeting on the outcomes of the project takes place.

4.5.2. Final report

Objectives

(a) Analyse the impact or potential impact after project implementation and integrating feedback from stakeholders and national authorities.

(b) Evaluate all the measures taken under the project; identify good practices, shortcomings and areas of future activities.

Description

UNREC will prepare a final report, which will include an executive summary, a compilation of the findings of the national and regional workshops, national legislation, administrative procedures and SOPs, as well as the findings of the pilot activity on new technology for weapons and stockpile management. It will also include the model plans and documents for the rehabilitation of armouries and ammunition depots.

Outcome/implementation indicators

Final report is drafted and disseminated.

5. Duration

The total estimated duration of the implementation of the projects will be 36 months.

6. Beneficiaries

The direct beneficiaries of the project are the national institutions responsible for SALW control and PSSM in Burkina Faso, Chad, Mali, Mauritania, Niger and Nigeria, such as the Ministries of Defence and of Security, as well as the National Commissions (or Committees) on SALW.

Indirect beneficiaries include the civilian population of the six States of the Sahel region, neighbouring States and their population, the AU, African subregional organisations, as well as all States that will benefit from the lessons learned from this project.

7. Implementing entity

The activities will be implemented by UNODA through its regional disarmament centre UNREC, in cooperation with:

(a) National Focal Points and National Commissions on Small Arms and Light Weapons of Burkina Faso, Chad, Mali, Mauritania, Niger and Nigeria.

(b) DPKO/UNMAS,

(c) MAG,

(d) ISACS Inter-Agency Support Unit,

(e) Wilton Park.

The ultimate responsibility regarding the implementation of this Action vis-à-vis the Commission shall lie with UNODA.

8. Partnerships and synergies

During the implementation of the project, UNREC will organise meetings with the EU Delegations and the Member States Embassies located in the six States of the Sahel region and keep them regularly informed about the project's activities in each country. EU Delegations and Member States representatives will be informed in advance of project activities (for example workshops) and invited to participate. UNREC will also consult and cooperate, as appropriate, with the EU Common Security and Defence Policy missions EUCAP Sahel Niger and EUCAP Sahel Mali.

In addition, UNREC will coordinate with other partners to avoid duplication of efforts and identify areas of collaboration and complementarity that support the project's objectives. Some of these partners include: AU, African regional organisations (including ECOWAS, ECCAS, RECSA), NATO, UN Country Teams, UNODC, the technical and financial partners engaged in the field of security, international NGOs (including Small Arms Survey, Handicap International, Parliamentary Forum on Small Arms and Light Weapons and Parliamentarians for Global Action), Multinational Small Arms and Ammunition Group (MSAG) and industry.

Finally, UNREC and the other implementing partners will consult entities involved in the investigation of diversion and trafficking, among others by means of tracing and tracking of illicit SALW and ammunition in the Sahel region, including experts from UN Panels of Experts monitoring arms embargoes, arms experts attached to UN peace support operations, Small Arms Survey and Conflict Armament Research ('iTrace' global monitoring mechanism, supported under Decision 2013/698/CFSP). UNREC will also encourage the relevant authorities of the beneficiary countries to make use of the EU-funded INTERPOL Illicit Arms Records and tracing Management System ('iARMS').

9. Implementing agency: rationale of the choice

UNODA plays a central role in the promotion of disarmament efforts in the area of conventional weapons, such as SALW. It plays a key role in promoting the effective implementation of multilaterally negotiated normative frameworks such as the UN Programme of Action on SALW and of the International Tracing Instrument, at the national, regional and global level. The Union seeks to continue fruitful cooperation with UNODA.

UNREC, which is part of UNODA, has a long experience of lending support to Sahel States and civil society in their implementation of international and regional instruments on SALW control, in line with its mandate received from the UN General Assembly to provide, upon request, substantive support for initiatives and other efforts of Member States of the African region towards the realisation of measures of peace, arms limitations and disarmament in the region (Resolution 40/151 G, 16 December 1985). UNREC has already been in talks with the potential beneficiary countries to seek their agreement and has ongoing projects on arms control in three of the targeted countries. It is therefore uniquely placed to implement this Decision.

10 EU Visibility

UNREC will take all appropriate measures to publicise the fact that the Action has been funded by the European Union. Such measures will be carried out in accordance with the Communication and Visibility Manual for European Union External Actions laid down and published by the Commission, and any other guidelines agreed between the Commission and the UN.

Indicative timeframe

Overall duration: 36 months

Activity		Proposed timeframe
4.1	Wilton Park conference on PSSM in the Sahel	January — March 2015 (conference in February 2015)
4.2	Review of legislation and administrative procedures and consultations on PSSM	January — December 2015
4.2.1	National consultations on PSSM procedures and for the identification of pilot sites	January — September 2015
4.2.2	Regional consultations on PSSM procedures	October-December 2015
4.3	PSSM	July 2015 — June 2017
4.3.1	Assessment of PSSM at national conventional arms depots and SALW and ammunition transportation (assessment will begin in two countries)	July 2015 — June 2017
4.3.2	Rehabilitation of the sample facilities and marking of SALW	July 2015 — June 2017
4.3.3	Destruction of surplus ammunition and SALW	July 2015 — June 2017
4.3.4	Piloting of new technologies	January — June 2017
4.4	Setting national standards in accordance with IATG and ISACS	January — December 2017
4.5	Evaluation and way forward	July — December 2017
4.5.1	Regional evaluation	July — December 2017
4.5.2	Final report	October — December 2017

COUNCIL DECISION 2014/913/CFSP

of 15 December 2014

in support of the Hague Code of Conduct and ballistic missile non-proliferation in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 26(2) thereof,

Whereas:

(1) On 12 December 2003, the European Council adopted the EU Strategy against the Proliferation of Weapons of Mass Destruction ('the Strategy'), Chapter III of which contains a list of measures that need to be taken both within the Union and in third countries to combat such proliferation.

(2) The EU is actively implementing the Strategy and giving effect to the measures listed in Chapters II and III thereof, for example by releasing financial resources to support specific projects leading to the enhancement of a multilateral non-proliferation system and multilateral confidence building measures. The Hague Code of Conduct against ballistic missile proliferation ('the Code' or 'HCoC') and the Missile Technology Control Regime ('MTCR') are integral parts of that multilateral non-proliferation system. The Code and the MTCR aim to prevent and curb the proliferation of ballistic missile systems capable of delivering weapons of mass destruction ('WMD') and related technologies.

(3) On 17 November 2003, the Council adopted Common Position 2003/805/CFSP ([1]). That Common Position calls, inter alia, for the promotion of the subscription of as many countries as possible to the Code, especially those with ballistic missile capabilities, as well as for the further development and implementation of the Code, especially its confidence-building measures, and for the promotion of a closer relationship between the Code and the UN multilateral non-proliferation system.

(4) On 8 December 2008, the Council adopted its conclusions and a document entitled 'New lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems'. The document states, inter alia, that proliferation of WMD and their delivery systems continue to constitute one of the greatest security challenges and that non-proliferation policy constitute an essential part of Common Foreign and Security Policy. In the light of progress made and of ongoing efforts in the implementation of the 'new lines for action', the Council agreed in December 2010 to prolong their implementation period until the end of 2012.

(5) On 18 December 2008, the Council adopted Decision 2008/974/CFSP ([2]) in support of the Code in the framework of the implementation of the Strategy.

(6) On 23 July 2012, the Council adopted Decision 2012/423/CFSP ([3]). That Decision has allowed the successful promotion of the universality of the Code and compliance with its principles. It is a priority of the Union to continue dialogue among subscribing and non-subscribing States with the aim of further promoting the universality of the Code as well as its better implementation and enhancement. This Decision should contribute to this process.

(7) More generally, the continued proliferation of ballistic missiles capable of delivering WMD constitutes a cause of growing concern for the international community, in particular ongoing missiles programmes in the Middle-East, North-East Asia and South-East Asia, including Iran, Syria and the Democratic People's Republic of Korea ('DPRK').

(8) The UN Security Council emphasised in UNSCR 1540 (2004) and recalled in UNSCR 1977 (2011) that the proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constituted a threat to international peace and security and obliged States, inter alia, to refrain from supporting by any means non-State

([1]) Council Common Position 2003/805/CFSP of 17 November 2003 on the universalisation and reinforcement of multilateral agreements in the field of non-proliferation of weapons of mass destruction and means of delivery (OJ L 302, 20.11.2003, p. 34).

([2]) Council Decision 2008/974/CFSP of 18 December 2008 in support of the Hague Code of Conduct against Ballistic Missile Proliferation in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction (OJ L 345, 23.12.2008, p. 91).

([3]) Council Decision 2012/423/CFSP of 23 July 2012 in support of ballistic missile non-proliferation in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction and of the Council Common Position 2003/805/CFSP (OJ L 196, 24.7.2012, p. 74).

actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their delivery systems. The threat caused by nuclear, chemical and biological weapons and their means of delivery to international peace and security was reaffirmed in UNSCR 1887 (2009) on nuclear non-proliferation and nuclear disarmament. Furthermore, the UN Security Council decided in UNSCRs 1929 (2010) and 1718 (2006), based inter alia on UNSC resolutions 1540 (2004), 1977 (2011) and 1887 (2009), that Iran and the DPRK should not undertake any activity related to ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missile technology, and that States should take all necessary measures to prevent the transfer of technology or technical assistance to Iran and DPRK related to such activities.

(9) This Decision should serve, more generally, to support a range of activities aimed to fight against the proliferation of ballistic missiles,

HAS ADOPTED THIS DECISION:

Article 1

1. For the purposes of ensuring the continuous and practical implementation of certain elements of the Strategy, as referred to in the Annex, the Union shall:

(a) support activities in support of the Code and the MTCR, in particular with the aim to:

(i) promote the universality, and in particular the subscription to the Code by all States with ballistic missile capabilities;

(ii) support the implementation and reinforcing the visibility of the Code;

(iii) promote adherence to the MTCR guidelines and the Annex thereto;

(b) more generally, support a range of activities to fight against the proliferation of ballistic missiles, aimed in particular at raising awareness of this threat, stepping up efforts to increase the effectiveness of multilateral instruments, building up support to initiatives to address these specific challenges and helping interested countries to reinforce nationally their relevant export control regimes.

2. In this context, the projects to be supported by the Union shall cover the following specific activities:

(a) activities in support of the Code:

(i) prepare and publish a 'welcome package' for outreach activities towards non-subscribing States, also recalling obligations for subscribing States;

(ii) organise outreach side events in Vienna in the margins of the HCoC annual meeting of subscribing States;

(iii) organise outreach side events in support of the HCoC in the margins of the UN General Assembly First Committee meetings;

(iv) organise up to three regional outreach seminars based on EU priorities (possibly Asia, Gulf countries and Latin America);

(v) encourage subscribing and non-subscribing States' representatives from developing countries to attend the HCoC Annual meetings and outreach seminars;

(vi) organise awareness sessions for States having recently joined the HCoC to assist them in fulfilling their obligations, including in the margins of the HCoC annual meeting in Vienna;

(vii) support the coordination of HCoC promotion efforts with the activities of the UN 1540 Committee, including through financing the participation of HCoC experts into the 1540 Committee country visits;

(viii) support the HCoC secure internet-based information and communication mechanism (e-ICC), including through technical enhancement of the website;

(b) activities in support of ballistic missile non-proliferation in general:

(i) organise up to four seminars to raise awareness on ballistic missile proliferation in the margins of multilateral fora, possibly linked with the HCoC outreach events referred to in point (a), such as a seminar in the margins of UNGA or the Non-Proliferation Treaty Preparatory committees;

(ii) organise up to three regional seminars to raise awareness on ballistic missile proliferation and encourage discussions on perspectives to better address the ballistic missile proliferation threat at a regional level, possibly linked with other EU outreach activities on HCoC; in association with the States concerned, seminars could take place in Asia, the Gulf region and Latin America;

(iii) provide four food-for-thought papers on possible further multilateral steps to prevent the threat of missile proliferation and to promote disarmament efforts in the field of ballistic missiles, focusing in particular on possible confidence-building measures and exploring the possibility to adopt a regional focus as a first step, for instance in regions of particular interest for the Union and/or where progress can be expected in the near future;

(iv) in order to prevent dual-use technology and knowledge transfer at an early stage, organise up to three awareness-building sessions for experts, especially from the scientific and/or space communities and the industry;

(v) encourage access of academics from developing countries working on missile non-proliferation to projects of the EU Centres of Excellence;

(vi) in coordination with the EU Centres of Excellence, organise targeted expert missions in third countries in order to share information and lessons learned regarding missile technology and dual use goods related export control and help them build up their national capabilities;

(vii) support experts training on ballistic missiles non-proliferation, through participation in EU programmes such as that of the European Security and Defence College or in programmes of the Member States of the Union ('Member States').

A detailed description of the projects is set out in the Annex.

Article 2

1. The High Representative of the Union for Foreign Affairs and Security Policy (HR) shall be responsible for the implementation of this Decision.

2. Technical implementation of the projects referred to in Article 1(2) shall be carried out by the *Fondation pour la recherche stratégique* (FRS), which shall perform this task under the responsibility of the HR. For this purpose, the HR shall enter into the necessary arrangements with the FRS.

Article 3

1. The financial reference amount for the implementation of the projects referred to in Article 1(2) shall be EUR 990 000.

2. The expenditure financed by the amount set out in paragraph 1 shall be managed in accordance with the procedures and rules applicable to the general budget of the Union.

3. The Commission shall supervise the proper management of the expenditure referred to in paragraph 1. For this purpose, it shall conclude a financing agreement with the FRS. The agreement shall stipulate that the FRS is to ensure visibility of the EU contribution, appropriate to its size.

4. The Commission shall endeavour to conclude the financing agreement referred to in paragraph 3 as soon as possible after the entry into force of this Decision. It shall inform the Council of any difficulties in that process and of the date of conclusion of the financing agreement.

Article 4

1. The HR shall report to the Council on the implementation of this Decision on the basis of regular reports prepared by the FRS. Those reports shall form the basis for the evaluation carried out by the Council.

2. The Commission shall provide information on the financial aspects of the projects referred to in Article 1(2).

Article 5

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

2. This Decision shall expire 30 months after the date of the conclusion of the financing agreement referred to in Article 3(3). However, it shall expire six months after its entry into force if no financing agreement has been concluded by that time.

Done at Brussels, 15 December 2014.

For the Council

The President

F. MOGHERINI

ANNEX

1. OBJECTIVES

The Union is a strong promoter of missile non-proliferation. Its efforts in this regard include the Strategy and Common Position 2003/805/CFSP. In addition, the Council has endorsed 'New lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems', and the EU supported UNSC Resolution 1540 (2004), which has since been recalled in UNSC resolution 1977 (2010).

The Union considers the MTCR an important multilateral instrument which aims at curbing the proliferation of ballistic missile systems and related technologies and know-how through the establishment and the implementation of export control regulations on sensitive materials. 19 Member States are members of the MTCR and all Member States are implementing the MTCR export control list through Council Regulation (EC) No 428/2009 ([1]).

The Union has also strongly supported the Code from its inception and has expressed regular concern over ballistic missile proliferation. The Union considers the Code as a central transparency and confidence building measure. All Member States have subscribed to the Code and are implementing the Code in good faith.

In the past, the Union tried to overcome the remaining loopholes in the implementation of the Code and in its universality by organising workshops, expert meetings and regional awareness seminars. Those activities, which have been organised under Decision 2008/974/CFSP and implemented by the FRS, have proved their efficiency and relevance.

Encouraged by the outcome of those events, the Union has pursued its initiative and supported three aspects of the Code as follows:

(a) universality of the Code;

(b) implementation of the Code;

(c) enhancement and improved functioning of the Code.

This action was undertaken under Decision 2012/423/CFSP, which allowed the development of several initiatives in support of HCoC including:

(a) the development of a dedicated secure website;

(b) the organisation of several side-events aimed at promoting the Code vis-à-vis non-subscribing States in Vienna, Geneva and New York;

(c) awareness raising workshop for African and Middle Eastern Countries in Paris;

(d) regional seminars in Singapore, Abu Dhabi and Lima;

(e) preparation of food-for-thought papers.

Decision 2012/423/CFSP has contributed to raising awareness about the Code and to its promotion vis-à-vis third countries. Through that Decision, the Union has supported Costa Rica, France, Hungary, Japan, Peru and Romania in their activities as HCoC Chairs. By raising the profile of the HCoC, it has facilitated the adherence of new members to the Code.

In view of the results achieved, and of the continued proliferation of ballistic missiles capable of delivering WMD which constitute a cause of growing concern for the international community, in particular ongoing missile programmes in the Middle-East, North-East Asia and South-East Asia, including Iran and the DPRK, the following actions will be carried out:

(a) project 1, information and communication;

(b) project 2, strengthening the ballistic missile non-proliferation;

(c) project 3, universalisation of the HCoC — Outreach activities;

Going beyond the sole promotion of adherence to the Code and the MTCR, this Decision allows for the deepening of the international debate over missile proliferation and engaging new regional areas and new communities.

([1]) Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).

2. DESCRIPTION OF THE PROJECT

2.1. Project 1: Information and Communication

2.1.1. Objective of the project

The Code represents an important instrument for curbing the proliferation of ballistic missiles and related technologies through confidence-building and transparency measures. However, more needs to be done to support it, in particular with the aim of:

(a) promoting the universality of the Code, and in particular the subscription to the Code by all States with ballistic missile and space capabilities;

(b) supporting the implementation of the Code in all its aspects;

(c) reinforcing the visibility of the Code.

2.1.2. Description of the project

The project provides for three types of activities:

(a) preparing, designing, printing and distributing up to 1 500 leaflets describing Union support for the Code. The leaflet will also include:

(i) a description of the HCoC;

(ii) the objectives of the HCoC;

(iii) a description of the annual declarations, the pre-launch notifications and the voluntary observation visits;

(iv) the European strategy towards the HCoC and the proliferation of WMD means of delivery;

(v) demarches to be fulfilled in order to subscribe to the Code;

(vi) contact details for non-subscribing States;

(b) preparing, designing, printing and distributing up to 1 000 'welcome package' printed booklets and a USB stick for outreach activities towards non-subscribing States, also recalling obligations for subscribing States. It will also be available online, covering all the necessary information about the Code and the relevant points of contact. The 'welcome package' will include the leaflet described in point (a);

(c) supporting and updating the HCoC secure Internet-based information and communication mechanism ('electronic Immediate Central Contact' — e-ICC), including through technical enhancement of the website in close cooperation with the Austrian Federal Ministry of Foreign Affairs.

2.1.3. Expected results of the project/indicators

(a) through wide distribution of the 'welcome package' during the various events, greater awareness achieved amongst partners of the value added of the HCoC, and of the role of the Union;

(b) more secure HCoC website enables improved exchange of relevant information amongst partners;

(c) use of the 'welcome package' by the HCoC Chair, the Austrian Secretariat ('Immediate Central Contact' ('ICC')), the Union and other partners as necessary in their outreach activities.

2.1.4. Beneficiaries of the project

The beneficiaries of the project are both States subscribing to the HCoC and non-subscribing States.

2.2. Project 2: strengthening the ballistic missile non-proliferation

2.2.1. Purpose of the project

The continued proliferation and operational use of ballistic missiles capable of delivering WMD constitutes a cause of growing concern for the international community, in particular ongoing missiles programmes in the Middle-East, North-East Asia and South-East Asia, including Iran and the DPRK.

More generally, the project will support a range of activities to fight against the proliferation of ballistic missiles, aimed in particular at raising awareness of the threat, stepping up efforts to increase the effectiveness of multilateral instruments, building support to initiatives to address those specific challenges and helping interested countries to reinforce nationally their relevant export control regimes.

2.2.2. Description of the project

The publication of two food-for-thought papers per year (4 for the duration of the project). Possible subjects could include:

(a) the use of the existing WMD free zones as an example and a potential framework for further initiatives banning ballistic missiles;

(b) further multilateral steps to prevent the threat of missile proliferation and to promote disarmament efforts in the field of ballistic missiles, focusing in particular on possible confidence-building measures;

(c) export and transit control mechanisms;

(d) the role of Intangible Transfer of Technology (ITT) in the area of ballistic missiles.

2.2.3. Expected results of the project/indicators

(a) Promoting multilateral efforts curbing missile proliferation including the HCoC and the MTCR increases the EU influence in the field of missile non-proliferation;

(b) encouraging the debate on new initiatives to strengthen the Code and the MTCR and open the door for further initiatives;

(c) fostering missile non-proliferation;

(d) at least 4 food-for-thought papers to be published;

(e) raising awareness about dual-use technology and knowledge transfer issues prevents unintentional transfer among Member States and increase global awareness of export control mechanism.

2.2.4. Project beneficiaries

The Union and the Member States will benefit from the food-for-thought papers; wider distribution will be decided by the HR in close consultation with Member States in the framework of the competent Council Working Party. The final decision will be based on proposals by the implementing entity in accordance with Article 2(2) of this Decision.

2.3. Project 3: Universalisation of the HCoC — Outreach activities

2.3.1. Purpose of the project

The project will raise awareness of both missile non-proliferation and the HCoC by organising several events aimed at engaging non-subscribing States. To this end, events will be organised in Vienna and New York to engage the UN delegations in the margins of relevant events.

2.3.2. Project description

The project will provide for three types of events:

(a) Financing of four outreach events (2 in each city) in support of both the HCoC and ballistic missile non-proliferation that will take place in two cities:

(i) in New York, in the margins of the UN General Assembly First Committee meetings or of the non-Proliferation Treaty Preparatory Committees meetings;

(ii) in Vienna, in the margins of the HCoC or other relevant activities of the UN in Vienna.

Regarding the organisation of the seminars:

(i) each seminar will last half a day and will gather up to 80 participants from UN missions in New York and Vienna around a selected group of speakers and EU officials;

(ii) up to 6 speakers will be invited;

(iii) the HCoC acting Chair will be invited;

(iv) restricted lunches or dinners aimed at engaging senior officials from selected countries led by an EU senior representative and experts will be organised and funded under this Decision.

To this end, the implementing entity will propose for each event a list of countries, some of which will be non-subscribing States. This will allow the convening of senior representatives who deal with non-proliferation issues.

(b) Financing of three regional outreach seminars that could take place in Latin America (e.g. Argentina, Brazil, Chile, Mexico or a non-member in the Caribbean region), the Middle East (e.g. the Gulf countries, Bahrain, Qatar or Saudi Arabia) and Asia (e.g. Indonesia or Vietnam). The choice of the location will be made in agreement with the HR, in close consultation with Member States in the framework of the competent Council Working Party. The seminar will be dedicated to trends in missile proliferation and a focus on regional issues and will address the HCoC and practical information about being a subscribing State. Subscribing States of the region will be invited at governmental level in order to share their experience with non-subscribing States. The HCoC acting Chair will also be invited to deliver a statement and chair the session. The attendance could include officials, diplomats, military staff, international organisation representatives, EU representatives, academics, etc.

Regarding the organisation of the seminars:

(i) each seminar will last one day;

(ii) up to 50 persons could be invited to attend;

(iii) the HCoC acting Chair will be invited to deliver a statement.

(c) Up to 10 targeted expert missions for non-subscribing States. They will mainly target the relevant industries, scientific community, export control experts and civil society representatives. In coordination with the European Union Centres of Excellence, two experts on ballistic missile non-proliferation from the implementing agency and an EU expert will conduct field missions in targeted countries. Possible destinations could include, but are not limited to Algeria, Bahrain, Bolivia, Brazil, China, Egypt, India, Indonesia, Israel, Malaysia, Mexico, Qatar, Saudi Arabia, South Africa and Thailand. The final list of countries will be decided in close cooperation with the HR, as well as the opportunity of joint demarches with the UN 1540 Committee outreach efforts. The attendance could include officials, diplomats, military staff, academics, industry, researchers, etc. from the visited country. Priority will be given to officials and political deciders, diplomats, relevant military staff, etc.

Regarding the organisation of the seminars:

(i) each seminar will last one day;

(ii) up to 25 persons could be invited;

(iii) 3 experts will be invited;

(iv) the HCoC acting Chair will be invited.

2.3.3. Expected results of the project/ indicators

(a) At least 4 outreach events to be organised in New York and Vienna;

(b) the 3 regional events have gathered an important diplomatic and academic community and allowed new perspectives on adhesions;

(c) 10 expert's missions were conducted in order to enhance the universalisation of the HCoC. Those missions have gathered at least 20 decision-makers and officials and increased the level of commitment from the officials and decision-makers in the visited countries;

(d) raising awareness of missile proliferation trends and more particularly on the Code with regard to non-subscribing States promote discussions on further efforts to curb missile proliferation;

(e) the project fosters the debate within and outside the Union on future initiatives;

(f) the project raises the profile of missile proliferation as a strategic challenge.

2.3.4. Beneficiaries of the project

The main focus of these events will be non-subscribing States, although subscribing States might be associated with some events for policy reasons. Participants should be primarily governmental experts and senior officials.

The final choice of the beneficiary States will be made in consultation between the implementing entity and the HR in close consultation with Member States in the framework of the competent Council Working Party.

3. DURATION

The total estimated duration of the implementation of the projects is 30 months.

4. IMPLEMENTING ENTITY

(a) The FRS will be entrusted with the technical implementation of the projects;

(b) co-funding will depend on the FRS;

(c) the implementing entity will prepare:

(i) quarterly reports on the implementation of the projects;

(ii) a final report not later than one month after the end of the implementation of the projects;

(d) reports will be sent to the HR;

(e) the FRS will ensure the visibility of the Union contribution, appropriate to its size.

5. THIRD-PARTY PARTICIPANTS

The projects will be financed in their entirety under this Decision. Experts from States subscribing to the Code or from non-subscribing States may be considered as third-party participants. They will work in accordance with the standard rules of the FRS.

COUNCIL IMPLEMENTING DECISION

of 15 December 2014

amending Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing as regards Belize

(2014/914/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 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 34(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

1. INTRODUCTION

(1) Regulation (EC) No 1005/2008 establishes a Union system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.

(2) Chapter VI of the Regulation (EC) No 1005/2008 lays down the procedure with respect to the identification of non-cooperating third countries, *démarches* in respect of countries identified as non-cooperating third countries, the establishment of a list of non-cooperating third countries, removal from the list of non-cooperating third countries, publicity of the list of non-cooperating third countries and any emergency measures.

(3) In accordance with Article 32 of the Regulation (EC) No 1005/2008, the Commission notified eight third countries, by Decision of 15 November 2012 ([2]) ('Decision of 15 November 2012'), of the possibility of their being identified as countries which the Commission considers as non-cooperating third countries. Belize was among those countries.

(4) In its Decision of 15 November 2012, the Commission included the information concerning the essential facts and considerations underlying such identification.

(5) Also on 15 November 2012, the Commission notified the eight third countries by separate letters that it was considering the possibility of identifying them as non-cooperating third countries. Belize was among those countries.

(6) By Implementing Decision of 26 November 2013 ([3]) ('Implementing Decision of 26 November 2013'), the Commission identified Belize, the Kingdom of Cambodia and the Republic of Guinea as non-cooperating third countries in fighting IUU fishing. In accordance with the Regulation (EC) No 1005/2008, the Commission provided the reasons for which it considered that those three countries failed to discharge their duties under international law, as flag, port, coastal or market States, to take action to prevent, deter and eliminate IUU fishing.

(7) In accordance with Article 33 of the Regulation (EC) No 1005/2008, the Council, by Implementing Decision 2014/170/EU ([4]), placed Belize, the Kingdom of Cambodia and the Republic of Guinea on the list of non-cooperating third countries in fighting IUU fishing.

([1]) OJ L 286, 29.10.2008, p. 1.

([2]) Commission Decision of 15 November 2012 on notifying the third countries that the Commission considers as possible of being identified as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ C 354, 17.11.2012, p. 1).

([3]) Commission Implementing Decision of 26 November 2013 identifying the third countries that the Commission considers as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ C 346, 27.11.2013, p. 2).

([4]) Council Implementing Decision 2014/170/EU of 24 March 2014 establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 91, 27.3.2014, p. 43).

(8) Following the establishment by Implementing Decision 2014/170/EU of the list of non-cooperating third countries in fighting IUU fishing, the Commission offered the identified countries the opportunity to continue the dialogue in line with the substantive and procedural requirements laid out in the Regulation (EC) No 1005/2008. The Commission continued to seek and verify all information deemed necessary, including oral and written comments, aiming at giving any identified country the opportunity to rectify the situation that warranted its listing, and to take concrete measures capable of remedying the identified failures. That process resulted in the acknowledgement that Belize has rectified the situation and taken remedial action.

(9) Pursuant to Article 34(1) of the Regulation (EC) No 1005/2008, the Council should therefore amend Implementing Decision 2014/170/EU by removing Belize from the list of non-cooperating third countries.

(10) Upon the adoption of this Decision removing Belize from the list of non-cooperating third countries in accordance with Article 34(1) of the Regulation (EC) No 1005/2008, the Implementing Decision of 26 November 2013 identifying Belize as a non-cooperating third country is no longer relevant.

2. REMOVAL OF BELIZE FROM THE LIST OF NON-COOPERATING THIRD COUNTRIES

(11) Following the adoption of the Implementing Decision of 26 November 2013 and Implementing Decision 2014/170/EU, the Commission continued its dialogue with Belize. In particular, Belize appears to have implemented its international law obligations and has adopted an adequate legal framework for fighting IUU fishing. It introduced an adequate and efficient monitoring, control and inspection scheme, created a deterrent sanctioning system and ensured the proper implementation of the catch certification scheme. Furthermore, Belize improved its compliance with its international obligations, including those stemming from Regional Fisheries Management Organisations' recommendations and resolutions, and set up a new system of registration of vessels according to international law. Belize is currently compliant with the recommendations and resolutions from relevant bodies and has adopted its own National Plan of Action against IUU, in line with the International Plan of Action against Illegal, Unreported and Unregulated fishing of the United Nations.

(12) The Commission reviewed Belize's compliance with its international obligations as flag, port, coastal or market State in line with the findings in the Decision of 15 November 2012, with Implementing Decision of 26 November 2013 and Implementing Decision 2014/170/EU, and with the relevant information provided by Belize. It also considered the measures taken to rectify the situation as well as the guarantees provided by the competent authorities of Belize.

(13) The Commission concluded, on the basis of the above, that the actions undertaken by Belize in light of its duties as flag State are sufficient to comply with Articles 91, 94, 117 and 118 of the United Nations Convention on the Law of the Sea, Articles 18, 19 and 20 of the United Nations Fish Stocks Agreement and Article III(8) of FAO Compliance Agreement. The Commission concluded that the elements put forward by Belize demonstrate that the situation which warranted the listing of Belize has been rectified and that Belize has taken concrete measures capable of achieving a lasting improvement of the situation.

(14) In the circumstances, and pursuant to Article 34(1) of the Regulation (EC) No 1005/2008, the Council concludes that Belize should be removed from the list of non-cooperating third countries. Implementing Decision 2014/170/EU should be amended accordingly.

(15) The decision taken by the Council does not preclude any subsequent steps that might be taken by the Council or the Commission, in line with Chapter VI of the Regulation (EC) No 1005/2008, in case factual elements were to reveal that Belize has failed to discharge the duties incumbent upon it under international law as flag, port, coastal or market State, to take action to prevent, deter and eliminate IUU fishing.

(16) In the light of the adverse consequences caused by listing as a non-cooperating third country, it is appropriate to give immediate effect to the delisting of Belize as a non-cooperating third country,

HAS ADOPTED THIS DECISION:

Article 1

Belize shall be removed from the Annex to Implementing Decision 2014/170/EU.

Article 2

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

Done at Brussels, 15 December 2014.

For the Council

The President

M. MARTINA

COUNCIL DECISION 2014/915/CFSP

of 16 December 2014

amending Decision 2010/452/CFSP on the European Union Monitoring Mission in Georgia, EUMM Georgia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28 and Articles 42(4) and 43(2) thereof,

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

Whereas:

(1) On 12 August 2010, the Council adopted Decision 2010/452/CFSP ([1]) which extended the European Union Monitoring Mission in Georgia, EUMM Georgia ('EUMM Georgia' or the 'Mission') established by Joint Action 2008/736/CFSP ([2]). Decision 2010/452/CFSP expires on 14 December 2014.

(2) EUMM Georgia should be extended for a further period of two years on the basis of its current mandate.

(3) The Mission will be conducted in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty.

(4) Decision 2010/452/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2010/452/CFSP is hereby amended as follows:

(1) in Article 7, paragraph 3 is replaced by the following:

'3. All staff shall abide by the Mission-specific minimum security operating standards and the Mission security plan supporting the Union's field security policy. As regards the protection of EU classified information with which staff are entrusted in the course of their duties, all staff shall respect the security principles and minimum standards established by Council Decision 2013/488/EU (*).

(*) Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).';

(2) in Article 12, paragraph 5 is replaced by the following:

'5. The Head of Mission shall ensure the protection of EU classified information in accordance with Decision 2013/488/EU.';

(3) in Article 14, paragraph 1, the following subparagraph is added:

'The financial reference amount intended to cover the expenditure related to the Mission between 15 December 2014 and 14 December 2015 shall be EUR 18 300 000.';

([1]) Council Decision 2010/452/CFSP of 12 August 2010 on the European Union Monitoring Mission in Georgia, EUMM Georgia (OJ L 213, 13.8.2010, p. 43).

([2]) Council Joint Action 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission in Georgia, EUMM Georgia (OJ L 248, 17.9.2008, p. 26).

(4) the following Article is inserted:

'*Article 14a*

Project Cell

1. EUMM Georgia shall have a Project Cell for identifying and implementing projects. EUMM Georgia shall, as appropriate, facilitate and provide advice on projects implemented by Member States and third States under their responsibility in areas related to EUMM Georgia and in support of its objectives.

2. Subject to paragraph 3, EUMM Georgia shall be authorised to seek recourse to financial contributions from the Member States or third States in order to implement projects identified as supplementing EUMM Georgia's other actions in a consistent manner, if those projects are:

(a) provided for in the financial statement relating to this Decision; or

(b) integrated during the mandate by means of an amendment to the financial statement requested by the Head of Mission.

EUMM Georgia shall conclude an arrangement with those States, covering in particular the specific procedures for dealing with any complaint from third parties concerning damage caused as a result of acts or omissions by EUMM Georgia in the use of the funds provided by those States. Under no circumstances may the contributing States hold the Union or the HR liable for acts or omissions by EUMM Georgia in the use of the funds provided by those States.

3. Financial contributions from third States to the Project Cell shall be subject to acceptance by the PSC.';

(5) in Article 16, paragraphs 1, 2 and 3 are replaced by the following:

'1. The HR shall be authorised to release to the third States associated with this Decision, as appropriate and in accordance with the needs of the Mission, EU classified information and documents up to "CONFIDENTIEL UE/EU CONFIDENTIAL" level generated for the purposes of the Mission, in accordance with Decision 2013/488/EU.

2. The HR shall also be authorised to release to the UN and the OSCE, in accordance with the operational needs of the Mission, EU classified information and documents up to "RESTREINT UE/EU RESTRICTED" level which are generated for the purposes of the Mission, in accordance with Decision 2013/488/EU. Arrangements between the HR and the competent authorities of the UN and the OSCE shall be drawn up for that purpose.

3. In the event of a specific and immediate operational need, the HR shall also be authorised to release to the host State any EU classified information and documents up to "RESTREINT UE/EU RESTRICTED" level which are generated for the purposes of the Mission, in accordance with Decision 2013/488/EU. Arrangements between the HR and the competent authorities of the host State shall be drawn up for that purpose.';

(6) in Article 18, the second paragraph is replaced by the following:

'It shall expire on 14 December 2016.'.

Article 2

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

It shall apply from 15 December 2014.

Done at Brussels, 16 December 2014.

For the Council

The President

S. GOZI

COMMISSION IMPLEMENTING DECISION

of 15 December 2014

correcting the Annex to Implementing Decision 2014/154/EU authorising the placing on the market of (6S)-5-methyltetrahydrofolic acid, glucosamine salt as a novel food ingredient under Regulation (EC) No 258/97 of the European Parliament and of the Council

(notified under document C(2014) 9452)

(Only the Italian text is authentic)

(2014/916/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients [1], and in particular Article 7 thereof,

Whereas:

(1) Commission Implementing Decision 2014/154/EU [2] authorises the placing on the market of (6S)-5-methyltetrahydrofolic acid, glucosamine salt as a novel food ingredient.

(2) The Annex to Implementing Decision 2014/154/EU lays down the specification for (6S)-5-methyltetrahydrofolic acid, glucosamine salt. The Annex contains an error in the specifications. That error should be corrected.

(3) Implementing Decision 2014/154/EU should therefore be corrected accordingly.

(4) 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 the specifications concerning purity of the Annex to Implementing Decision 2014/154/EU, the entry as regards glucosamine assay is replaced by the following:

'Glucosamine assay	34-46 % in dry basis'.

Article 2

This Decision is addressed to Gnosis SpA, Via Lavoratori Autobianchi 1, 20832 Desio (MB), Italy.

Done at Brussels, 15 December 2014.

For the Commission

Vytenis ANDRIUKAITIS

Member of the Commission

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[1] OJ L 43, 14.2.1997, p. 1.

[2] Commission Implementing Decision 2014/154/EU of 19 March 2014 authorising the placing on the market of (6S)-5-methyltetrahydrofolic acid, glucosamine salt as a novel food ingredient under Regulation (EC) No 258/97 of the European Parliament and of the Council (OJ L 85, 21.3..2014, p. 10).

COMMISSION IMPLEMENTING DECISION

of 15 December 2014

setting out detailed rules for the implementation of Council Directive 2000/29/EC as regards the notification of the presence of harmful organisms and of measures taken or intended to be taken by the Member States

(notified under document C(2014) 9460)

(2014/917/EU)

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 Article 16(4) thereof,

Whereas:

(1) The notifications of the presence of harmful organisms as referred to in Article 16(1) of Directive 2000/29/EC or of the actual or suspected appearance of harmful organisms as referred to in the first subparagraph of Article 16(2) of that Directive should include all information that would allow the Commission and other Member States to plan and implement the most effective possible action at Union or regional level as appropriate. This is important to ensure comprehensive protection of the Union territory against all possible sources of phytosanitary risk.

(2) In order to allow for a quick reaction, certain elements of those notifications should be submitted within eight working days after the confirmation of the presence or appearance of harmful organisms, in view of their importance and the feasibility of their swift submission, and all required elements should be submitted no later than thirty days after that confirmation.

(3) In order to ensure that the Commission and the other Member States are kept informed of any changes, the notifying Member State shall update those notifications as soon as possible in case any new relevant information is made available to it or in case it takes any new relevant measures after it has submitted the required information.

(4) 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

Content of notifications

1. When notifying the Commission and the other Member States of the presence or the appearance of any harmful organism as referred to in the first subparagraph of Article 16(1) of Directive 2000/29/EC or of the actual appearance of any harmful organism as referred to in the first subparagraph of Article 16(2) of that Directive, Member States shall submit the information provided for in the Annex.

2. When notifying the Commission and the other Member States of the suspected appearance of any harmful organism as referred to in the first subparagraph of Article 16(2) of Directive 2000/29/EC, Member States shall submit, where applicable, the information provided for in the Annex.

([1]) OJ L 169, 10.7.2000, p. 1.

Article 2

Deadlines for submission of notifications

1. No later than eight working days following the date of the official confirmation by the responsible official body of the presence, or actual appearance, of the harmful organism as referred to in the first subparagraph of Article 16(1) and in the first subparagraph of Article 16(2) of Directive 2000/29/EC, Member States shall submit a notification containing at least the information indicated in points 1.1, 1.3, 2.1, 2.2., 3.1, 4.1, 5.1, 5.2, 5.6, 6.4 and 8 of the Annex.

2. No later than thirty days following the date of the official confirmation by the responsible official body of the presence or actual appearance of the harmful organism as referred to in the first subparagraph of Article 16(1) and in the first subparagraph of Article 16(2) of Directive 2000/29/EC, Member States shall submit a notification containing the information indicated in the points of the Annex which are not referred to in paragraph 1.

3. No later than eight working days following the date on which the responsible official body suspects the appearance of a harmful organism as referred to in the first subparagraph of Article 16(2) of Directive 2000/29/EC, Member States shall submit a notification containing at least the information indicated in points 1.1, 1.3, 2.1, 2.2., 3.1, 4.1, 5.1, 5.2, 6.4 and 8 of the Annex.

4. No later than thirty days following the date on which the responsible official body suspects the appearance of a harmful organism as referred to in the first subparagraph of Article 16(2) of Directive 2000/29/EC, Member States shall submit a notification containing the information indicated in the points of the Annex which are not referred to in paragraph 3.

5. Member States shall update the notifications referred to in paragraphs 1 to 4, as soon as any relevant new information has been made available to, and verified by, them, or as soon as they have taken any new measures.

Article 3

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 15 December 2014.

For the Commission

Vytenis ANDRIUKAITIS

Member of the Commission

ANNEX

CONTENT OF THE NOTIFICATIONS REFERRED TO IN ARTICLE 1

1. General information on the notification

1.1. Title. Indication of the scientific name of the harmful organism concerned, location and whether it is first presence or not. The scientific name shall be one of the following:

(a) the scientific name of the harmful organism as referred to in Directive 2000/29/EC, or as referred to in the measures adopted pursuant to Article 16(3) of that Directive, including as appropriate the pathovar, or,

(b) if point (a) is not applicable, the scientific name approved by an international organisation, including the pathovar, and the name of that organisation, or,

(c) if neither point (a) nor point (b) is applicable, indication of the scientific name from the most reliable source of information, with reference to that source.

Possible submission of explanatory notes.

1.2. Executive summary. Submission of a summary of the information in points 3 to 7.

1.3. Indication of one of the following elements: (1) partial notification in accordance with Article 2(1) or 2(3); (2) notification in accordance with Article 2(2) or 2(4); (3) update of the notification in accordance with Article 2(5); (4) closing note indicating the termination of the taken measures and the reasoning for such termination.

2. Information concerning the single authority and responsible persons.

2.1. Name of the single authority, as referred to in Article 1(4) of Directive 2000/29/EC, submitting the notification (hereinafter: 'the single authority'). Indication of the words 'Notification from', followed by the name of the single authority, and the name of the Member State of that authority.

2.2. Official contact at the single authority. Indication of the name, telephone number and e-mail address of the person named by the single authority as official contact for the notification concerned. Where more than one person is named, indication of the reasons.

3. Location of presence of harmful organism.

3.1. Indication, as specific as possible, of the location of the presence of the harmful organism concerned, with reference at least to an administrative region (e.g. municipality, city, province) as appropriate.

3.2. Further to point 3.1, map(s) of the respective location. Submissions, in the form of comments, information about the boundaries, with reference to the nomenclature of Eurostat territorial units (NUTS) or to geographical codes (Geocodes), aerial photos or GPS key coordinates are possible.

4. Information related to the reason of the notification, and the pest status of the area and the Member State concerned.

4.1. Indication of one of the following options: (1) first confirmed or suspected presence of the harmful organism in the territory of the Member State concerned; (2) confirmed or suspected appearance of the harmful organism in part of the territory of the Member State concerned, in which its presence was previously unknown. In the case of option (2), and where applicable, indication that the harmful organism appeared in part of the territory of the Member State concerned, in which that harmful organism had been previously present but eradicated.

4.2. Pest status of the area where the harmful organism has been found present, after the official confirmation. Indication, with explanatory note, of one or more of the following options: (1) Present: in all parts of the area concerned; (2) Present: only in specific parts of the area concerned; (3) Present: in specific parts of the area where host plants are not grown; (4) Present: under eradication; (5) Present: under containment; (6) Present: at low prevalence; (7) Absent: Pest found present but eradicated; (8) Absent: Pest found present but no longer present for reasons other than eradication; (9) Transient (the presence of the harmful organism is not expected to lead to establishment): non-actionable; (10) Transient: actionable, under surveillance; (11) Transient: actionable, under eradication; (12) Other.

4.3. Pest status in the Member State concerned before the official confirmation of the presence, or suspected presence, of the harmful organism. Indication, with explanatory note, of one or more of the following options: (1) Present: in all parts of the Member State concerned; (2) Present: only in some parts of the Member State concerned; (3) Present: in specific parts of the Member State, where host crop(s) are not grown; (4) Present: Seasonally; (5) Present: under eradication; (6) Present: under containment, in case eradication is impossible (7) Present: at low prevalence; (8) Absent: no pest records; (9) Absent: Pest eradicated; (10) Absent: Pest no longer present for reasons other than eradication; (11) Absent: Pest records invalid; (12) Absent: Pest records unreliable; (13) Absent: intercepted only; (14) Transient: non-actionable; (15) Transient: actionable, under surveillance; (16) Transient: actionable, under eradication; (17) Other.

4.4. Pest status in the Member State concerned after the official confirmation of the presence of the harmful organism. Indication, with explanatory note, of one or more of the following options: (1) Present: in all parts of the Member State concerned; (2) Present: only in some parts of the Member State concerned; (3) Present: in specific parts of the Member State, where host crop(s) are not grown; (4) Present: Seasonally; (5) Present: under eradication; (6) Present: under containment, in case eradication is impossible (7) Present: at low prevalence; (8) Absent: Pest eradicated; (9) Absent: Pest no longer present for reasons other than eradication; (10) Absent: Pest records invalid; (11) Absent: Pest records unreliable; (12) Absent: intercepted only; (13) Transient: non-actionable; (14) Transient: actionable, under surveillance; (15) Transient: actionable, under eradication; (16) Other.

5. Information relating to the finding, sampling, testing and confirmation of the harmful organism.

5.1. How the presence or appearance of the harmful organism was found. Indication of one of the following options: (1) pest related official survey; (2) survey related to an existing or eradicated outbreak of a harmful organism; (3) phytosanitary inspections of any type; (4) trace back and forward inspection related to the specific presence of the harmful organism concerned; (5) official inspection for purposes other than phytosanitary ones; (6) information submitted by professional operators, laboratories or other persons; (7) scientific information; (8) other. Further comments in the form of free text or attached documents are possible. In case of option (8), indication of a specification is necessary. Where applicable, indication of the date of inspection(s), the description of the method of inspection (including details of the visual or other checks as appropriate), and a short description of the site where the inspection took place, the findings of that inspection and picture(s). In the case of options (3) and (4), indication of the date of inspection(s), the description of the method of inspection (including details of the visual or other checks as appropriate). Possible submission of a short description of the site where the inspection took place, the findings of that inspection and picture(s).

5.2. Date of finding: Indication of the date when the responsible official body found the presence or appearance of the harmful organism, or received the first information concerning its finding. If the harmful organism was found by a person other than the responsible official body, indication of the date of finding of the harmful organism by that person, and the date when that person accordingly informed the responsible official body.

5.3. Sampling for laboratory analysis. Where applicable, submission of information concerning the sampling procedure for laboratory analysis, including date, method, and sample size. Attachment of pictures is possible.

5.4. Laboratory. Where applicable, indication of the name and the address of the laboratory(ies) involved in the identification of the harmful organism concerned.

5.5. Diagnostic method. Indication of one of the following options: (1) According to peer reviewed protocol; (2) Other, with specification of the method concerned. In the case of Option (1), provision of clear reference to the respective protocol and, where appropriate, any deviation from that protocol.

5.6. Date of official confirmation of the harmful organism's identity.

6. Information related to the infested area, and the severity and source of the outbreak in that area.

6.1. Size and delimitation of the infested area. Indication of one or more of the following options: (1) infested surface (m2, ha, km2); (2) number of infested plants (pieces); (3) volume of infested plant products (tons, m3); (4) GPS key coordinates, or any other specific description, of the delimitation of the infested area. Submission of approximate figures is possible, however with an explanation concerning the reason of lacking exact figures.

6.2. Characteristics of the infested area and its vicinity. Indication of one or more of the following options:

(1) Open air – production area

(1.1) field (arable, pasture);

(1.2) orchard/vineyard;

(1.3) nursery;

(1.4) forest.

(2) Open air – other

(2.1) private garden;

(2.2) public sites;

(2.3) conservation area;

(2.4) wild plants in areas other than conservation areas;

(2.5) other, with specification of the particular case.

(3) Physically closed conditions

(3.1) greenhouse;

(3.2) private site, other than greenhouse;

(3.3) public site, other than greenhouse;

(3.4) other, with specification of the particular case.

For each option, indication whether the respective infestation concerns one or more of the following elements: plants for planting, other plants, or plant products.

6.3. Host plants in the infested area and its vicinity. Indication of the scientific name of host plants in that area, in accordance with point 6.4. Additional information is possible concerning the density of host plants in the area, with reference to cultivation practices, specific characteristic of the habitats, or information about susceptible plant products, produced in the area.

6.4. Infested plant(s), plant product(s) and other object(s). Indication of the scientific name of the infested host plant(s).

Submission of the variety and, for plant products, the type of the commodity, as appropriate, is possible.

6.5. Vectors present in the area. Where applicable, indication of one of the following options:

(a) the scientific name of the vectors at least at genus level as referred to in Directive 2000/29/EC, or as referred to in the measures adopted pursuant to Article 16(3) of that Directive, or,

(b) if point (a) is not applicable, the scientific name approved by an international organisation and the name of that organisation(s), or,

(c) if neither point (a) nor point (b) is applicable, indication of the scientific name from the most reliable source of information, with reference to that source.

Additional information is possible concerning the density of the vectors, or characteristics of plants important for the vectors.

6.6. Severity of the outbreak. Description of the current extent of infestation, symptoms and the damage caused, and, where appropriate, inclusion of forecasts as soon as this information is available.

6.7. Source of the outbreak. As applicable, indication of the confirmed pathway of the harmful organism into the area, or of the suspected pathway pending confirmation. Attachment of information concerning the confirmed or potential origin of the harmful organism is possible.

7. Official phytosanitary measures.

7.1. Adoption of official phytosanitary measures. Indication of one of the following options, with explanatory notes: (1) Official phytosanitary measures in the form of chemical, biological or physical treatment have been taken; (2) Official phytosanitary measures, other than measures in the form of chemical, biological or physical treatment, have been taken; (3) Official phytosanitary measures will be taken; (4) Decision on whether official phytosanitary measures will be taken is pending; (5) No official phytosanitary measures. In the case of establishment of a demarcated area, indication under options (1), (2) and (3), whether those measures are taken in or outside that area. In case of option (5), indication of the reason for not taking any official phytosanitary measures.

7.2. Date of adoption of the official phytosanitary measures. In case of temporary measures, indication of their expected duration.

7.3. Identification of the area covered by the official phytosanitary measures. Indication of the method used to identify the area covered by the official phytosanitary measures. In case surveys were carried out, the results of those surveys.

7.4. Objective of the official phytosanitary measures. Indication of one of the following options: (1) eradication; (2) containment, in case eradication is impossible.

7.5. Measures affecting the movement of goods. Indication of one of the following options: (1) measures affect import into or movement within the Union of goods; (2) measures do not affect import into or movement within the Union of goods. In the case of option (1), description of the measures.

7.6. Specific surveys. In case surveys are carried out as part of official phytosanitary measures, indication of their methodology, duration and scope.

8. Pest risk analysis/assessment. Indication of the following options: (1) Pest risk analysis is not required (harmful organism is listed in Annex I or Annex II of Directive 2000/29/EC, or is subject to measures adopted pursuant to Article 16(3) of that Directive); (2) Pest risk analysis, or preliminary pest risk analysis, under development (3) Preliminary pest risk analysis exists; (4) Pest risk analysis exists. In case of options (3) and (4), description of the major findings, and attachment of the respective pest risk analysis or indication of the source where that analysis can be found.

9. Links to relevant websites, other sources of information.

10. Member States may request the Commission to submit the information on one or more of the elements of points 1.1, 1.3, 3.1, 4.1 to 4.4, 5.1 to 5.6, 6.1 to 6.7, 7.1 to 7.6 and 8 to the European and Mediterranean Plant Protection Organization.

COMMISSION IMPLEMENTING DECISION

of 16 December 2014

terminating the anti-subsidy proceeding concerning the imports of polyester staple fibres originating in the People's Republic of China, India and Vietnam

(2014/918/EU)

THE EUROPEAN COMMISSION,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ([1]), and in particular Article 14(2) thereof,

Whereas:

1. **PROCEDURE**

1.1. INITIATION

(1) On 19 December 2013, the European Commission ('the Commission') initiated an anti-subsidy investigation with regard to imports into the Union of polyester staple fibres originating in the People's Republic of China, India and Vietnam ('the countries concerned') on the basis of Article 10 of Regulation (EC) No 597/2009 ('the basic Regulation'). It published a Notice of Initiation in the *Official Journal of the European Union* ([2]) ('the Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 4 November 2013 by the European Man-made Fibres Association (CIRFS) ('the complainant') on behalf of seven producers. The complainant represented more than 70 % of the total Union production of Polyester Staple Fibres ('PSF'). The complaint contained prima facie evidence of subsidisation and of resulting material injury that was sufficient to justify the initiation of the investigation.

(3) Prior to the initiation of the proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of the People's Republic of China ('the GOC'), the Government of India ('GOI') and the Government of Vietnam ('GOV') that it had received a properly documented complaint alleging that subsidised imports of PSF originating in their countries were causing material injury to the Union industry. The respective governments were invited for individual consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution.

The People's Republic of China (China)

(4) The GOC did not accept the offer for consultations claiming a misunderstanding concerning the lodging date of the complaint. However, the GOC submitted comments in regard to the allegations contained in the complaint regarding the lack of countervailability of the schemes.

India

(5) The GOI accepted the offer for consultations and the consultation took place. During the consultations, no mutually agreed solution could be arrived at. However, due note was taken of comments made by the GOI regarding the schemes listed in the complaint.

Vietnam

(6) The GOV accepted the offer for consultations and the consultations took place. During the consultations, no mutually agreed solution could be arrived at. However, due note was taken of comments made by the GOV regarding the schemes listed in the complaint.

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[1] (OJ L 188, 18.7.2009, p. 93).

[2] Notice of initiation of an anti-subsidy proceeding concerning imports of polyester staple fibres originating in the People's Republic of China, India and Vietnam (OJ C 372, 19.12.2013, p. 31).

1.2. INTERESTED PARTIES

(7) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainants, other known Union producers, the known exporting producers and the GOC, GOI and GOV, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(8) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(a) Sampling

(9) In view of the apparent high number of exporting producers, Union producers and unrelated importers, all known exporting producers and unrelated importers were asked to make themselves known to the Commission and to provide, as specified in the Notice of Initiation, basic information on their activities related to PSF during the period from 1 October 2012 to 30 September 2013. This information was requested under Article 27 of the basic Regulation in order to enable the Commission to decide whether sampling would be necessary and, if so, to select samples. The authorities of China, India and Vietnam were also consulted.

Sampling of Union producers

(10) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the sales and production volume of PSF during the investigation period and taking into account the geographical spread. This sample consisted of four Union producers. The sampled Union producers accounted for 54 % of the total Union production of PSF.

(11) The Commission invited interested parties to comment on the provisional sample. No comments were received. The sample is representative of the Union industry.

Sampling of importers

(12) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

(13) Eight unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic Regulation, the Commission initially selected a sample of three unrelated importers on the basis of the largest volume of imports into the Union. In accordance with Article 27(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample.

(14) One of the sampled importers withdrew from the sample, informing the Commission that it would not submit a questionnaire reply. Subsequently, the Commission abandoned sampling in view of the limited remaining (non-sampled) importers, which were all requested to submit a questionnaire reply. Two companies who import as well as use the product concerned indicated that they did not want to cooperate as importers but as users. From the remaining five unrelated importers, four questionnaire replies were received.

Sampling of exporting producers in China

(15) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in China to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(16) Initially 23 exporting producers/groups of exporting producers provided the requested information and agreed to be included in the sample. On the basis of the information received from the exporting producers/groups of exporting producers and in accordance with Article 27 of the basic Regulation the Commission initially proposed a sample of the five cooperating exporting producers/groups of exporting producers with the largest volume of exports to the Union during the investigation period. Another two Chinese exporting producers/groups of exporting producers submitted the requested information at a later stage. However, the size of these two Chinese exporting producers/groups of exporting producers was not at such as to change the sample, had they submitted the requested information within the deadline.

(17) Two Chinese exporting producers/groups of exporting producers requested that the sample should be selected on the basis of the raw material used for the production of PSF. Thus they argued that the same number of PSF producers using purified terephthalic acid/mono ethylene glycol ('PTA/MEG') on the one hand and PSF producers using PET flakes on the other hand should be selected for the sample. They argued further that the production processes were different depending on the raw material used and that producers using different raw materials do not compete in the same market. Moreover, it has been claimed that PSF producers that do not use PTA/MEG as raw materials would not benefit from the provision for PTA/MEG for less than adequate remuneration described in the complaint.

(18) The Commission selected the sample based on the largest volume of exports to the Union during the investigation period in accordance with Article 27(1) of the basic Regulation. The sample did also take into account that some of the schemes might not be used by all exporting producers in China. Moreover, it was noted that the sample included companies using both production processes.

(19) Basing the selection of the sample merely on the types of production processes would risk prejudging the outcome of the investigation by assuming that countervailable subsidies will be found with regard to PSF producers using PTA/MEG as raw materials only and not for PSF producers using PET flakes as the raw material. In addition, it was considered that such a selection criteria would have been arbitrary as the consequent sample with an equal number of companies would not be representative in terms of export volume to the Union in line with Article 27(1) of the basic Regulation and therefore the request was rejected.

(20) One of the Chinese exporting producers/group of exporting producers claimed that the sample should be based on export value rather than export volume and asked to be included in the sample. Selecting a sample based on export values would not lead to representative and objective results as prices may be distorted by subsidisation. The Commission had selected the five largest exporting producers/groups of exporting producers in terms of volume, representing 53 % of total export volumes to the Union by the cooperating Chinese exporters. This is considered to be the largest representative volume of exports which can reasonably be investigated within the time available in accordance with Article 27(1) of the basic Regulation. This claim was therefore rejected.

(21) The same party argued that its raw material consisted entirely of recycled textile waste and it did not benefit from any subsidies which may be associated with the use of PTA/MEG. The party claimed that no subsidy margin should be attributed to it which was calculated based on information pertaining to companies which used PTA/MEG as their raw materials. As explained in recital 18 above the sample takes into account that some of the schemes may not be used by all exporting producers in China. Therefore, the request was rejected.

(22) The provisional sample of five exporting producers, as described in recital 16 was therefore confirmed as the final sample.

(23) Following disclosure, the complainant questioned the sampling methodology applied by the Commission. It raised doubts about the representativeness of the 23 cooperating Chinese exporting producers/groups of exporting producers mentioned in recital 16 above in relation to the total quantity of PSF exported from China to the Union. In addition, it considered that a sample made of five companies was not sufficient in view of an alleged number of 150 producers of PSF in China. Moreover, it claimed that the sampling has not taken into consideration the geographical spread of the Chinese producers and the proportion of Chinese producers using the various production processes involved. Finally, the complainant argued that the Commission has not disclosed the actual volume of PSF produced by the sampled Chinese companies and whether the production volume is representative in relation to the total volume of PSF produced in China.

(24) The imports of the 23 cooperating Chinese exporting producers/groups of exporting producers represented 83 % of the total Chinese import volume and cooperation was therefore considered high. As mentioned in recital 16 the Commission selected a sample of five exporting producers/groups of exporting producers that cooperated in the investigation with the largest volume of exports to the Union during the investigation period in accordance with Article 27 of the basic Regulation. On this basis the sample was considered representative. The selected companies were requested to fill in the full questionnaire. In any case, exporting producers not willing to cooperate in the investigation cannot be selected in the sample as the Commission seeks to establish findings based on the information collected from the cooperating exporting producers via their questionnaire responses, which are verified on spot.

(25) Regarding the selection of a sample of exporting producers taking into consideration their geographical spread in China, the complainant did not substantiate its claim. In particular, the complainant did not explain why a sample based on the criterion of geographical spread would have been in accordance with Article 27 of the basic Regulation, which does provide for the option to sample on the basis of largest volume of exports.

(26) As concerns the claim that the sample did not take into account the proportion of Chinese producers using the various production processes involved, it is highlighted that as explained in recital 18 above, the sample included companies using both production processes. In addition, the largest Chinese exporters are using PTA/MEG to produce PSF for the Union market.

(27) Furthermore, while the complainant refers to production rather than exports to the Union, it is noted that the Commission does not need to provide the volume of PSF produced by the sampled Chinese exporting producers/groups of exporting producers as the purpose of the current proceeding is the assessment of subsidisation in relation to the volume of PSF produced in China and exported to the Union.

(28) Therefore, all claims made by the complainant in relation to the sample methodology were rejected.

Sampling of exporting producers in India

(29) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all known exporting producers in India to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of India to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(30) Eight exporting producers in India provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic Regulation, the Commission selected a sample of four companies on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the authorities of India, were consulted on the selection of the sample. No comments were made.

(31) Following disclosure, the complainant referred to the existence of 17 producers of PSF in India and put in question whether a sample of four exporting producers was representative. The Commission confirms that the sample of four Indian exporting producers was considered representative as it covers about 90 % of the total Indian exports to the Union in the investigation period.

Sampling of exporting producers in Vietnam

(32) The Commission asked all known exporting producers in Vietnam to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of Vietnam to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(33) Five exporting producers in Vietnam provided the requested information and agreed to be included in the sample, but one of these companies did not have any export sales to the Union during the investigation period. Therefore, the Commission decided not to investigate this company. In view of the low number of remaining exporting producers, the Commission decided that sampling was not necessary.

(34) Following disclosure, the complainant noted that for Vietnam questionnaire replies were received from three out of the four exporting producers and that the Commission should have sought to achieve the same coverage also for the Chinese and Indian exports. The Commission highlights that the industry situation was quite different in Vietnam given the very limited number of cooperating exporting producers (i.e. three) as opposed to the significant number of exporting producers in China and India. Hence there was a need for sampling in these two latter countries only. The Commission also clarifies that the three cooperating and investigated Vietnamese exporting producers represent over 99 % of the total volume of imports of the product concerned from Vietnam into the Union.

(b) Individual examination

(35) Three exporting producers/groups of exporting producers in China requested individual examination under Article 27(3) of the basic Regulation. Given the number of requests for individual examination and the size of the sample of exporting producers from China, the examination of these requests would have been unduly burdensome. These requests were therefore rejected.

(36) One exporting producer in India requested individual examination under Article 27(3) of the basic Regulation. The examination of this request was accepted. In particular, it was decided that the individual examination in this particular case would not be unduly burdensome and would not prevent completion of the investigation in good time.

(c) Replies to the questionnaire

(37) The Commission sent questionnaires to the representatives of China (including specific questionnaires for banks and producers of PTA and MEG), the representatives of India (including specific questionnaires for banks) and the representatives of Vietnam (including specific questionnaires for banks and producers of PTA and MEG). The Commission further sent questionnaires to five sampled exporting producers in China, five exporting producers (four sampled and one non-sampled) in India, four exporting producers in Vietnam, four Union producers, five unrelated importers and 105 users.

(38) As concerns China, questionnaire replies were received from the GOC (Ministry of Commerce) and the five sampled exporting producers/groups of exporting producers in China. As concerns India, questionnaire replies were received from the GOI (Ministry of Commerce & Industry), the four sampled exporting producers in India and the Indian exporting producer which requested individual examination. As concerns Vietnam, replies were received from the GOV (the Vietnam Competition Authority, the Ministry of Industry and Trade and various banks). One exporting producer, which accounted for a very low volume of exports to the Union, withdrew its cooperation and did not reply to the questionnaire. Questionnaire replies were received from the remaining three exporting producers (two of them belonging to the same group) in Vietnam. Furthermore, four Union producers, four unrelated importers and twelve users submitted questionnaire replies.

(39) Following disclosure, the complainant commented that there seemed to be a lack of proportionality regarding the number of questionnaires sent to the sampled Union producers on the one hand and to the importers and users on the other hand. First and foremost, the number of questionnaires sent to one group of economic actors (Union producers, exporting producers, importers or users) is not indicative for the weight the Commission attributes to their respective situation. The only objective is to obtain the right level and amount of information to make the best possible analysis of subsidy, injury and Union interest.

(40) In this case, questionnaires were sent to the four sampled Union producers, the five sampled Chinese exporting producers, five Indian exporting producers, four Vietnamese exporting producers, five importers and all known users and those users who had made themselves known. Indeed, Article 27 of the basic Regulation does not provide for sampling of users. Moreover, experience from trade defence investigations so far shows that although in certain cases, based on the available information, a large number of users may be contacted, usually only a limited number of them are willing to provide a questionnaire reply. Therefore, the Commission, also in this case, actively sought the cooperation of a maximum number of users.

(d) Verification visits

(41) The Commission sought and verified all the information deemed necessary for a determination of subsidisation, resulting injury and Union interest. Verification visits pursuant to Article 26 of the basic Regulation were carried out at the following State authorities and financial institutions and companies:

Government of China

— Chinese Ministry of Commerce, Beijing, China

Government of India

— Ministry of Commerce & Industry, New Delhi

Government of Vietnam

— Vietnam Competition Authority, Ministry of Industry and Trade, Hanoi

— Ministry of Finance, Hanoi (including verification visits to several banks)

— Thai Binh customs authorities, Thai Binh City, Thai Binh Province

Union producers

— Trevira GmbH, Bobingen, Germany

— Wellman International Ltd, Kells, Ireland

— Greenfiber International S.A., Buzau, Romania

— Silon s.r.o., Sezimovo Ústí, Czech Republic

Importers

— Elias Enterprises Limited, Altrincham, United Kingdom

Users

— Sandler AG, Schwarzenbach/Saale, Germany

Exporting producers in China

— Far Eastern Industries (Shanghai) Ltd, Shanghai

— Jiangsu Huaxicun Co., Huaxi Village, Jiangyin

— Jiangsu Xinsu Chemical Fibre Co., Suzhou

— Xiamen Xianglu Chemical Fibre Co., Xiamen

— Zhejiang Anshun Pettechs Fibre Co., Fuyang

Exporting producers in India

— Bombay Dyeing and Manufacturing Co. Ltd, Mumbai

— Ganesha Ecosphere Limited, Kanpur

— Indo Rama Synthetics Ltd, Nagpur

— Reliance Industries Limited, Mumbai

— Polyfibre Industries Pvt. Ltd, Mumbai

Exporting producers in Vietnam

— Vietnam New Century Polyester Fibre Co. Ltd, Halong City

— Thai Binh Polyester Staple Fibre Joint Stock Company, Thai Thuy Town, Thai Binh Province and Hop Than Co. Ltd, Thai Binh City, Thai Binh Province (jointly referred to as 'Thai Binh Group').

(42) Following disclosure, the complainant argued that most of the Chinese producers are regionally concentrated in the south eastern coastal provinces of Jiangsu and Zhejiang and none of the five verification visits took place in either of these two provinces. In this regard, it is noted that Jiangsu Xinsu Chemical Fibre Co. and Jiangsu Huaxicun Co. are located in Jiangsu province, while Zhejiang Anshun Pettechs Fibre is located in Zhejiang province. Therefore, the claim was rejected.

(43) In addition, the complainant argued that two large Chinese producers, in terms of production capacity, were not included in the sample. In this regard, it is recalled that as explained in recitals 16 and 18 above, the Commission selected the sample based on the volume of exports to the Union and chose the largest five exporters/groups of exporting producers to the Union in accordance with Article 27 of the basic Regulation. The mere fact that there are other large producers of PSF in China does not as such question the representativeness of the sample.

(44) The complainant raised a similar claim for Vietnam, arguing that two major Vietnamese PSF producers were not included in the scope of the investigation. As the Commission explained in recitals 32-34 above, the investigation covered the totality of Vietnamese producers exporting PSF to the Union, and replies were received from three exporting producers representing almost the totality of PSF exports to the Union. The fact that there may exist other major PSF producers in Vietnam that do not export the product concerned to the Union does not bear relevance for the representativeness of the cooperating exporting producers.

1.3. INVESTIGATION PERIOD AND PERIOD CONSIDERED

(45) The investigation of subsidisation and injury covered the period from 1 October 2012 to 30 September 2013 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2010 to the end of the investigation period ('the period considered').

(46) Following disclosure, the complainant commented on the duration of the investigation period, which it considered to be short and therefore to have 'detrimentally affected' the findings of the Commission. The complainant stated that the duration of 12 months ignored that the injury suffered by the Union industry had allegedly been on-going for a period of several years. The complainant was also of the opinion that the subsidies listed in the complaint could not have been adequately analysed using an investigation period of 12 months.

(47) As regards the injury analysis, it needs to be underlined that the Commission assessed the years 2010, 2011, 2012 and the investigation period and not, as the complainant states, only the 12 months of the investigation period. Regarding the determination of subsidisation, the Commission chose, within its margin of discretion and in line with Articles 5 and 11 of the basic Regulation, an investigation period of 12 months. Until disclosure neither the complainant nor any other interested party commented on the duration of the investigation period which was stipulated in the Notice of Initiation and the questionnaires. The Commission considers that an investigation period of 12 months is appropriate to ensure representative findings for the for the purpose of the investigation. Therefore, this claim is rejected.

1.4. DISCLOSURE

(48) On 2 October 2014, the Commission disclosed to all interested parties the essential facts and considerations on the basis of which it intended to terminate the proceeding and invited all interested parties to comment. Comments were received from a user association, the complainant, one Chinese exporting producer and its affiliates, four Indian exporting producers, the GOC and the GOV. The comments made were considered by the Commission and taken into account, where appropriate.

(49) The comments received from the user association addressed the issue of Union interest, which was not assessed as there are no grounds for the imposition of measures.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. PRODUCT CONCERNED

(50) The product concerned is synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning originating in the People's Republic of China, India and Vietnam, currently falling within CN code 5503 20 00 ('the product concerned').

(51) The product concerned can normally be produced either by using PTA (Purified Terephthalic Acid) and MEG (Mono Ethylene Glycol) or by using recycled PET bottle flakes to produce recycled PSF. The product is used in a wide range of applications, for example in clothing, apparel and home furnishings but in the automotive industry, the hygiene and medical industries as well as the construction industry.

2.2. LIKE PRODUCT

(52) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product concerned,

— the product produced and sold on the domestic market of the countries concerned, and

— the product produced and sold in the Union by the Union industry.

(53) The Commission decided that those products are therefore like products within the meaning of Article 2(c) of the basic Regulation.

2.3. CLAIMS REGARDING PRODUCT SCOPE

2.3.1. **PSF made from PTA/MEG and PSF made from recycled PET bottles**

(54) Two government authorities and an association representing exporting producers of one of the countries concerned claimed that PSF made from PTA/MEG and PSF made from recycled PET bottles should be treated as two different products. The claim was based on the difference in main raw materials used as for certain types of PSF, PTA/MEG are used, while for certain other types, flakes made from recycled PET bottles are used instead. Related to this, cost and sales prices were mentioned as important differences. It was also claimed that there are substantial quality differences between PSF made from PTA and MEG and PSF made from recycled PET bottles, impacting the use and application.

(55) PSF made from PTA/MEG and PSF made from recycled PET bottles indeed constitute two different PSF types within the product scope of PSF. Nevertheless, the two types share the same physical and chemical characteristics and their end-uses are basically the same. It is recognised that not all product types are interchangeable, but previous investigations and the current investigation established that there is at least a partial interchangeability and overlapping use across the different product types. The claim was therefore dismissed.

(56) One exporting producer re-iterated in its submission that the use of recycled PET bottles as opposed to the use of flakes made from recycled PET bottles entails a different production process and constitutes a different raw material. The same party also added that the cost and selling price as well as the quality of the PSF produced with recycled PET bottles are significantly lower than those of 'normal PSF'. The Commission maintains that the raw material, be it recycled PET bottles or flakes made from recycled PET bottles, is essentially the same. Compared to PET flakes, the additional steps needed, when using PET bottles, are the sorting and washing of the bottles, followed by the shredding of the bottles into flakes. All subsequent production steps are the same. In addition, the final product has the same characteristics, with the understanding that various grades of quality may exist as was also foreseen in the PCN. Price difference (if any) as a result of various grades of quality is therefore also captured by the PCN. Therefore, this claim is rejected.

2.3.2. **Commodity PSF and specialty PSF**

(57) One government authority and four exporting producers claimed that commodity PSF and specialty PSF are to be treated as different products, due to differences in cost of production, selling prices and use. It was also claimed that the Union industry focuses on speciality PSF as the core type PSF, while the countries concerned mainly supply commodity PSF.

(58) The government authority and the four exporting producers making the claim as described in recital 57 did not provide a definition for specialty PSF.

(59) Specialty PSF, as defined by the sampled Union producers, range from PSF made from a combination of polyester and polyethylene for use in hygiene products, coloured (dyed) PSF, PSF with a specific tenacity, flame retardant PSF, PSF for technical use (such as geotextiles and non-wovens used in the building industry), PSF that is defined, developed and customised together with the customer for specific applications, to PSF used for the automotive industry (specifically visible linings of cars need to be consistent in colour).

(60) Standard PSF, according to the sampled Union producers, cover those PSF that have a wider range of flexibility for its specifications.

(61) With the proposed definition of the specialty PSF type and the commodity PSF type, the two types share the same basic physical, technical and chemical characteristics. The fact that there are several types, grades or qualities does not exclude that they can be regarded as a single product. The possible uses of commodity PSF seem wider than the specialty type of PSF but these differences were insufficient to have them classified as two single products. Although the types of PSF have different characteristics corresponding to their specific purpose, their basic physical characteristics, application and uses are the same.

(62) Furthermore, it needs to be clarified that during the investigation period the specialty PSF types were not the core type of PSF produced by the Union producers. On average, it constituted around 40 % of all PSF types produced by the sampled Union producers, according to their own definition of commodity PSF and specialty PSF.

(63) Following disclosure, one exporting producer resubmitted that the specialty PSF type and the commodity PSF type are not 'like products' and therefore, cannot be examined together. The same party noted that the specialty PSF type and the commodity PSF type differ in end use, in cost of production and sales price. Therefore, it considered it a failure of the Commission not having examined the differences in cost and sales price of the specialty PSF type and the commodity PSF type. It stated that it is unclear how the cost of production and the sales price of the product under investigation have been determined and requested the Commission to examine the underselling analysis after segregating the data for commodity PSF and specialty PSF.

(64) The Commission confirms that PSF is sold in different product types for use in spinning or non-woven applications. For example, PSF can have a mono- or bicomponent composition as well as different specifications such as decitex, tenacity, lustre, quality grade, etc. Such specificities were captured by the PCN, on which the Commission did not receive any comments. It is recognised that commodity and speciality PSF are not interchangeable in all possible applications, but there is a partial interchangeability and overlapping use between different product types. As described in recital 61 and established in earlier proceedings concerning the same product, the physical and chemical characteristics as well as the end-uses of these types are basically the same. All types are based on the same raw materials (PTA/MEG or on recycled PET) which account for over 60 % of the cost of production. To this, additives or additional components can be added to ensure certain specific properties of the fibre. The PCN covers the origin of the raw materials and other elements that have an impact on the cost of production and the sales prices. However, no substantial difference in the production process of commodity and specialty PSF exists. This can be seen in the case of the sampled Union producers, of which none produced exclusively either commodity PSF or specialty PSF. Finally, no consistent and commonly agreed definition of specialty PSF seems to exist. For example, as described in recital 59 PSF used in the hygiene industry is considered by some Union producers as a specialty type. On the contrary, various users and a user association have indicated that the PSF to be used in the hygiene industry for, for example, wet wipes, is a commodity type, although it should preferably not be, for health and safety reasons, of recycled origin. In addition, some Union producers consider PSF types that have particular customer specific requirements (for example, a specific die colour) to be specialty PSF, even though such types may follow the exact same production process and have the same cost of production as any other (commodity) type. Therefore, the Commission could not rely on a self-proclaimed categorisation of commodity versus specialty PSF type and therefore this claim is rejected.

2.3.3. **Other claims made with regards to product scope**

(65) One user and a user association claimed that PSF imported from China is of higher quality than the PSF produced in the Union. One argument provided was that the PSF from the People's Republic of China does not contain hard polymer pieces. Another argument put forward was the brightness of Chinese PSF, while PSF produced in the Union were said to contain grey shades, as most of the Union PSF is PSF made from recycled PET bottles.

(66) The first argument as regards Union PSF containing hard polymer pieces was not substantiated by any evidence. Moreover, the contrary has also been stated in other user submissions and in replies to the user questionnaire (that is to say that PSF produced by Union producer is usually of higher quality than PSF produced by the countries concerned).

(67) As regards the second argument on brightness, the information provided during the investigation confirms that PSF made from PTA/MEG is usually brighter than PSF made from recycled PET bottles (when no pigment and/or brighteners are added during the production process). However, both types of PSF share the same physical and chemical characteristics and their end-uses are basically the same. It should also be noted that in calculating injury, the basic raw material was one of the features which was taken into account. In other words, the imported PSF made from recycled PET bottles would be compared only with Union produced PSF made from recycled PET bottles. Likewise, the imported PSF made from PTA and MEG would be compared only with Union produced PSF made from PTA and MEG.

(68) A user association, exporting producer and government authority claimed that downstream users often demand that products are made using PSF originating in the countries concerned (in particular, China).

(69) No evidence was put forward to support this statement nor to further detail the reasoning behind the insistence on PSF from the three countries concerned (if such an insistence indeed is being put forward by downstream customers).

(70) The user association claimed more specifically that the Union automotive industry accepts only PSF from Chinese origin.

(71) However, it failed to substantiate its claim and demonstrate that PSF produced by Union producers cannot be used by the Union automotive industry. Moreover, verified data have demonstrated that Union producers also sell substantial quantities of PSF to the Union automotive industry, which points to the contrary.

(72) One exporting producer claimed that the PSF made by this exporting producer and the PSF produced by Union producers, although both made from recycled PET bottles, are different products. According to this exporting producer, its PSF is (mainly) produced from recycled PET bottles (not flakes), which follows a different production process and constitutes different raw materials compared to PSF producers using flakes made from recycled PET bottles.

(73) This claim was rejected as well, since PET bottles and PET bottle flakes (which are PET bottles crushed into flakes) are essentially the same raw material albeit in another form.

2.3.4. **Conclusion**

(74) It was therefore concluded that all PSF types covered by the investigation share the same basic physical, technical and chemical characteristics and their end-uses are basically the same.

3. **SUBSIDISATION**

3.1. CHINA

3.1.1. **General**

(75) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by Governmental authorities of China, were investigated:

A. Preferential lending to the PSF industry by state-owned banks and the government entrustment and direction of private bank

B. Government Provisions of goods and services for less than adequate remuneration and the Government entrustment and direction of private suppliers

- Government provision of PTA and MEG for less than adequate remuneration;
- Government provision of land and land-use rights for less than adequate remuneration;
- Government provision of electricity;
- Programme consisting of provision of cheap water.

C. Development Grants and Interest Subsidies for the Textile Sector

- The 'Go Global' Special Fund;
- The Trade Promotion Fund for Agriculture, Light Industry and Textile Products.

D. Direct Tax Exemption and Reduction programmes

- Income tax exemptions on foreign (investment) enterprises;
- Income tax exemptions on dividend income between qualified resident enterprises;
- Income tax reductions for recognised high and new technology enterprises;

— Income tax reductions in special economic zones;

— Income tax reductions for export-oriented enterprises;

— Tax credits of up to 40 % of the purchase value of domestically produced equipment.

E. Indirect Tax and Import Tariff Programmes

— Value added Tax exemptions and import tariff rebates for the use of imported equipment;

— VAT rebates on FIE purchases of Chinese-made equipment.

F. Other Regional/Provincial Programmes

— Tax (and other) exemptions in development zones in the Province of Jiangsu;

— Tax incentives in the City of Changzhou;

— Preferential rents in the City of Changzhou;

— Export incentive programmes in Zhejiang province;

— Technology innovation grants in Zhejiang province;

— Tax and duty incentives in development zones in Guangdong province;

— Export incentives in Guangdong province;

— Reimbursement of legal fees in Guangdong province;

— Foreign trade activities (special) funds programme in Guangdong province;

— Loan interest subsidies to support technological innovation projects in Guangdong province;

— Preferential tax rates in development zones in Shanghai province;

— Preferential infrastructure in Shanghai province;

— Lending and tax policies for export-oriented enterprises in the Province of Shanghai.

(76) The Commission investigated all schemes alleged in the complaint. For each scheme it was investigated whether, pursuant to provisions of Article 3 of the basic Regulation, a financial contribution by the GOC and a benefit conferred to the sampled exporting producers could be established. The investigation revealed that in the present case any benefit found for the investigated schemes is below the applicable *de minimis* threshold in Article 14(5) ([3]) of the basic Regulation. Therefore, it is not considered necessary to conclude on the countervailability of individual schemes.

Details of the schemes and the corresponding benefit rates for individual companies are set out below.

3.1.2. **Specific Schemes**

Schemes not used by sampled Chinese exporting producers during the investigation period

(77) The below schemes were found not to be used by the sampled Chinese exporting producers/groups of exporting producers during the investigation period and therefore no benefit could be established.

— Provision of PTA and MEG for less than adequate remuneration;

— Government provision of electricity for less than the adequate remuneration;

([3]) For the application of Article 14(5), a country is considered as a developing country if it is listed in Annex II of Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1).

— Government provision of cheap water for less than the adequate remuneration;

— The 'Go Global' Special Fund;

— The Trade Promotion Fund for Agriculture, Light Industry and Textile Products;

— Income tax exemptions on foreign (investment) enterprises;

— Income tax reductions for recognised high and new technology enterprises;

— Income tax reductions in special economic zones;

— Income tax reductions for export-oriented enterprises;

— Tax credits of up to 40 % of the purchase value of domestically produced equipment;

— Other Regional/Provincial Programmes.

(78) As concerns the provision of PTA and MEG for less than adequate remuneration, the complaint alleged that the GOC controls certain upstream industries and products so as to provide favourably priced inputs to producers of PSF, namely for PTA and MEG. On this basis PSF producers receive countervailable subsidies through the purchase from State-owned enterprises of government-produced PTA and MEG at below market price and thus at less than adequate remuneration.

(79) However, the investigation revealed that the Chinese exporting producers/groups of exporting producers of PSF were importing most of their PTA and MEG inputs to produce PSF for export under an inward processing system.

(80) Consequently, no subsidies for the sampled companies under this alleged programme could be established.

(81) Following disclosure, the complainant noted that the Commission provided a partial analysis only for one subsidy scheme not used by the sampled Chinese exporting producers during the investigation period that is the provision of PTA/MEG at subsidised prices. With regard to this scheme, the complainant argued that the way the sample was established and the fact that a major PSF producer in China was not covered by the investigation affected the determination of subsidisation for this scheme.

(82) As it was explained in recitals 16 and 18 above, out of the 23 Chinese exporting producers/group of exporting producers that cooperated in the investigation, the Commission selected a sample comprising of the five largest exporting producers/groups of exporting producers which was considered representative within the meaning of Article 27 of the basic Regulation. The Chinese producer to which the complainant referred and which was not included in the sample was not exporting PSF to the Union in significant quantities during the investigation period. Therefore, the non-inclusion of this producer did not affect the representativity of the sample and did not have any significant effect on the conclusions regarding the subsidy scheme in question.

(83) The Commission confirms that it sought information and replies concerning all subsidy schemes alleged in the complaint including those mentioned by the complainant in its comments to the disclosure, but these schemes were found not to be used by the sampled exporting producers/group of exporting producers. In recital 78 the Commission provided additional details on the provision of PTA/MEG for less than adequate remuneration as this subsidy scheme was featured as a major allegation in the complaint possibly conferring a significant countervailable subsidy.

Schemes used by sampled Chinese exporting producers during the investigation period

3.1.3. **Preferential loans to the PSF industry**

(84) The complainant alleged that the producers of PSF benefit from low (subsidised) interest rate loans from policy banks and State-owned commercial banks, pursuant to the GOC policy to provide financial assistance in order to encourage and support to growth and development of the textile and chemical fibre industry.

(a) Legal basis

(85) The following legal provisions provide for preferential lending in China: The Law of the PRC on Commercial Banks (the banking law), The General Rules on Loans promulgated by the People's Bank of China (PBOC) on 28 June 1996 and Decision No 40 of the of the State Council.

(b) Calculation of the subsidy amount

(86) Article 6(b) of the basic Regulation provides that the benefit on preferential loans should be calculated as the difference between the amount of interest paid and the amount that would be paid for a comparable commercial loan which the firm could obtain on the market. The Commission established a market benchmark for comparable commercial loans.

(87) The benchmark was constructed based on the Chinese interest rates, adjusted to reflect normal market risk (i.e. it was considered that all firms in China would be accorded the highest grade of 'Non-investment grade' bonds only (BB at Bloomberg) and an appropriate premium expected on bonds issued by firms with this rating to the standard lending rate of the People's Bank of China was applied).

(88) The benefit to the exporting producers/groups of exporting producers has been calculated by taking the interest rate differential, expressed as a percentage, multiplied by the outstanding amount of the loan, i.e. the interest not paid during the investigation period. This amount was then allocated over the total sales turnover of the cooperating exporting producers.

(c) Conclusion

(89) The benefit established for this scheme ranges between 0 % and 0,50 %.

3.1.4. **Provision of land use rights for less than the adequate remuneration**

(a) Legal basis

(90) The land-use right provision in China falls under Land Administration Law of the People's Republic of China and Real Right Law of the People's Republic of China.

(b) Practical implementation

(91) According to Article 2 of the Land Administration Law, all land is government-owned since, according to the Chinese constitution and relevant legal provisions, land belongs collectively to the people of China. No land can be sold but land-use rights may be assigned according to the law. The State authorities can assign it through public bidding, quotation or auction.

(c) Findings of the investigation

(92) The cooperating exporting producers/groups of exporting producers have reported information regarding the land they hold as well as the relevant land-use rights contracts/certificates, but no information was provided by the GOC about pricing of land-use rights.

(d) Calculation of the subsidy amount

(93) As it was concluded that the situation in China with respect to land-use rights is not market-driven, there appear to be no available private benchmarks at all in China. Therefore, an adjustment of costs or prices in China is not practicable. In these circumstances it is considered that there is no market in China and, in accordance with Article 6(d)(ii) of the basic Regulation, the use of an external benchmark for measuring the amount of benefit is warranted. Given that the GOC failed to submit any proposal for an external benchmark the Commission had to resort to facts available in order to establish an appropriate external benchmark. In this respect it was considered appropriate to use information from the Separate Customs Territory of Taiwan as an appropriate benchmark for reasons set out in recital 94 below.

(94) The Commission considers that the land prices in Taiwan offer the best proxy to the areas in China where the cooperating exporting producers are based. The majority of the exporting producers are located in the eastern part of China, in developed high-GDP (gross domestic product) areas in provinces with a high population density.

(95) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount paid by each company for land use rights and the amount that should have been normally paid on the basis of the Taiwanese benchmark.

(96) In doing this calculation, the Commission used the average land price per square meter established in Taiwan corrected for currency depreciation and GDP evolution as from the dates of the respective land use right contracts. The information concerning industrial land prices was retrieved from the website of the Industrial Bureau of the Ministry of Economic affairs of Taiwan. The currency depreciation and GDP evolution for Taiwan were calculated on the basis of inflation rates and evolution of GDP per capita at current prices in USD for Taiwan as published by the International Monetary Fund in its 2011 World Economic Outlook. In accordance with Article 7(3) of the basic Regulation this subsidy amount (numerator) has been allocated to the investigation period using the normal life time of the land use right for industrial use land in China, i.e. 50 years or 70 years. This amount has then been allocated over the total sales turnover of the sampled exporting producers during the investigation period, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(e) Conclusion

(97) The benefit established for this scheme ranges between 0,02 % and 0,82 %.

3.1.5. **Direct Tax Exemption and Reduction programmes**

3.1.5.1. *Income tax exemptions on dividend income between qualified resident enterprises*

(a) Legal basis

(98) The legal bases of such tax exemption of dividend income are Articles 25-26 of the Enterprise Income Tax Law and Article 83 of the Regulations on the Implementation of Enterprise Income Tax Law.

(b) Practical implementation

(99) This programme consists of a preferential tax treatment for Chinese resident enterprises that are shareholders in other Chinese resident enterprises in the form of tax exemption on income from certain dividends, bonuses and other equity investments for the resident parent enterprises.

(c) Findings of the investigation

(100) On the income tax statement of two sampled exporting producers/groups of exporting producers there is an amount exempted from income tax. This amount is referred to as dividends, bonuses and other equity investment income of eligible residents and enterprises in line with the conditions in Appendix 5 to the Income tax return (Annual Statement of Tax Preferences). No income tax was paid by the relevant companies on these amounts.

(d) Calculation of the subsidy amount

(101) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is considered to be the amount of total tax payable with the inclusion of the dividend income coming from other resident enterprises in China, after the subtraction of what was actually paid with the dividend tax exemption. In accordance with Article 7(2) of the basic Regulation this subsidy amount (numerator) has been allocated over the total sales turnover of the cooperating exporting producers companies during the investigation period, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(e) Conclusion

(102) The benefit established for this scheme ranges between 0 % and 0,06 %.

3.1.6. **Indirect Tax and Import Tariff Programmes**

3.1.6.1. *Value added Tax ('VAT') exemptions and import tariff rebates for the use of imported equipment*

(a) Legal basis

(103) The legal bases of this programme are Circular of the State Council on Adjusting Tax Policies on Imported Equipment, 'Guo Fa No 37/1997', Announcement of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation [2008] No 43, Notice of the NDRC on the relevant issues concerning the Handling of Confirmation letter on Domestic or Foreign-funded Projects encouraged to develop by the State, No 316 2006 of 22 February 2006 and Catalogue on Non-duty-exemptible Articles of importation for either foreign-invested companies or domestic enterprises, 2008.

(b) Practical implementation

(104) This programme provides an exemption from VAT and import tariffs in favour of foreign-invested enterprises or domestic enterprises for imports of capital equipment used in their production. To benefit from the exemption, the equipment must not fall in a list of non-eligible equipment and the claiming enterprise has to obtain a 'Certificate of State-Encouraged projects' issued by the Chinese authorities or by the National Development and Reform Commission in accordance with the relevant investment, tax and customs legislation.

(c) Findings of the investigation

(105) Four of the sampled Chinese exporting producers/groups of exporting producers reported an exemption from VAT and import tariffs for the imported equipment.

(d) Calculation of the subsidy amount

(106) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is considered to be the amount of VAT and duties exempted on imported equipment. The benefit received was amortised over the life of the equipment according the company's normal accounting procedures. In accordance with Article 7(2) of the basic Regulation this subsidy amount (numerator) has been allocated over the total sales turnover of the cooperating exporting producers companies during the investigation period, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(e) Conclusion

(107) The benefit established for this scheme ranges between 0 % and 0,45 %.

3.1.6.2. *VAT rebates on FIE purchases of Chinese-made equipment*

(a) Legal basis

(108) The legal bases of this programme are Circular of State Administration of taxation on the release of the provisional measures for the Administration of tax refunds for purchase domestically-manufactured equipment by FIEs No 171, 199, 20.9.1999; Notice of the Ministry of Finance and the State Administration of Taxation on Stopping the Implementation of the Policy of Refunding Tax to Foreign-funded Enterprises for Their Purchase of Home-made Equipment, No 176 [2008] of the Ministry of Finance.

(b) Practical implementation

(109) This programme provides benefits in the form of VAT refunds for the purchase of domestically produced equipment by FIEs. The equipment must not fall into the Non-Exemptible Catalogue and the value of the equipment must not exceed the total investment limit on an FIE according to the 'trial Administrative Measures on Purchase of Domestically Produced Equipment'.

(c) Findings of the investigation

(110) Two sampled exporting producers/groups of exporting producers submitted detailed information concerning this scheme, including the amount of benefit received.

(d) Calculation of the subsidy amount

(111) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is considered to be the amount of VAT reimbursed on the purchase of domestically produced equipment. The benefit received was amortised over the life of the equipment according the usual industry practice.

(e) Conclusion

(112) The benefit established for this scheme ranges between 0 % and 0,01 %.

3.1.7. **Other Regional/Provincial Programmes**

(113) The investigation confirmed that no benefits had been received under the programmes mentioned in recital 75 by the sampled companies during the investigation period.

3.1.8. **Amount of subsidies**

(114) The amount of subsidies in accordance with the provisions of the basic anti-subsidy Regulation, expressed *ad valorem*, for the Chinese exporting producers ranges between 0,76 % to 1,77 %.

(115) Following disclosure, the complainant argued that it was unclear how the Commission calculated the range of the total subsidy margin. The range of the total aggregated subsidies for the Chinese sampled exporting producers/group of exporting producers expressed *ad valorem* provided in recital 114 represents the lower and higher total subsidy margin of the five sampled Chinese exporting producers/group of exporting producers.

3.1.9. **Conclusion on China**

(116) In view of the *de minimis* amounts of countervailable subsidies for the Chinese exporting producers, measures on imports of PSF originating in China should not be imposed. It has been concluded that the investigation should be terminated with regard to imports originating in the People's Republic of China, in accordance with Article 14(3) of the basic Regulation.

3.2. INDIA

3.2.1. **General**

(117) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by the governmental authorities of India, were investigated:

(1) Focus Market Scheme

(2) Focus Product Scheme

(3) Advance Authorisation Scheme

(4) Duty Drawback Scheme

(5) Export Promotion Capital Goods Scheme

(6) Tax and duty exemptions and reductions in Export Oriented Units and the Special Economic Zones

(7) Export Credit Scheme

(8) Income Tax Exemption Scheme

(9) Incremental Exports Incentivisation Scheme

(10) Duty Free Import Authorisation Scheme

(11) Market Development Assistance Scheme and loan guarantees

(12) Capital Investment Incentive Scheme of the Government of Gujarat

(13) Gujarat Sales Tax Incentive Scheme and Electricity Duty Exemption Scheme

(14) West Bengal Subsidy Schemes — incentives and tax concessions, including grants and the exemption of sales tax,

(15) Maharashtra Package Scheme of Incentives including Maharashtra Electricity Duty Exemption Scheme and Industrial Promotion Subsidy.

Subsidy schemes used by the Indian investigated exporting producers during the investigation period

(118) The investigation found that in the investigation period the following schemes conferred benefit upon the verified exporting producers:

(1) Focus Market Scheme ('FMS')

(2) Focus Product Scheme ('FPS')

(3) Duty Drawback Scheme ('DDS')

(4) Advance Authorisation Scheme ('AAS')

(5) Duty Free Import Authorisation Scheme ('DFIA')

(6) Export Promotion Capital Goods Scheme ('EPCGS')

(7) Maharashtra Package Scheme of Incentives ('PSI')

(119) The schemes specified above under recital 118(1), (2), (4), (5) and (6) are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act' or 'FTP'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. The Foreign Trade Policy document relevant to the investigation period of this investigation is 'Foreign Trade Policy 2009-2014' ('FTP 09-14'). In addition, the GOI also sets out the procedures governing FTP 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 09-14'). The Handbook of Procedures is updated on a regular basis.

(120) The DDS scheme specified above under recital 118(3) is based on section 75 of the Customs Act of 1962, on section 37 of the Central Excise Act of 1944, on sections 93A and 94 of the Financial Act of 1994 and on the Customs, Central Excise Duties and Service Tax Drawback Rules of 1995. Drawback rates are published on a regular basis.

(121) The PSI scheme specified above under (7) is based on 'Package Scheme of Incentives' of 2007 of the Government of Maharashtra, Resolutions No PSI-1707/(CR-50)/IND-8, dated 30 March 2007.

3.2.2. **Focus Market Scheme ('FMS')**

(a) Legal basis

The detailed description of FMS is contained in paragraph 3.14 of FTP 09-14 and in paragraph 3.8 of HOP I 09-14.

(b) Eligibility

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

(c) Practical implementation

(123) Under this scheme exports of all products which includes exports of PSF to countries notified under Tables 1 and 2 of Appendix 37(C) of HOP I 09-14 are entitled to duty credit equivalent to 3 % of the FOB value. As of 1 April 2011, exports of all products to countries notified under Table 3 of Appendix 37(C) ('Special Focus Markets') are entitled to a duty credit equivalent to 4 % of the free on board value. Certain types of export activities are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units. Also excluded from the scheme are certain types of products, e.g. diamonds, precious metals, ores, cereals, sugar and petroleum products.

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

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

(126) Four of the verified exporting producers used this scheme during the investigation period.

(127) Upon disclosure, three of the sampled Indian exporting producers argued that although they were eligible for the benefit they had not applied for it at all for the export sales to the Union and thus no conclusion on the availing of such benefit can be made. Also, they argued that the FMS scheme is geographically related to countries not part of the Union and can thus not be countervailed by the Union. In this respect, the verification visits confirmed that FMS benefit was claimed for exports to third countries as the scheme principally relates to the exports made to third countries. The exporting producers in question were, however, not able to dispute either the practical implementation of the scheme as described under recitals 123 to 125 or that the FMS benefit can be used for the product concerned, namely that duty credits under FMS are freely transferable and can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods. In particular, the party could not dispute the fact that duty credits conferred under FMS on exports to eligible third countries can be used to offset import duties payable on inputs incorporated in product concerned exported to the Union.

(128) Finally, these benefits are booked on an accrual basis in the company accounts on the dates when the export transactions take place, demonstrating that the entitlement to the benefit is created at the time of the export transaction and that there is no doubt that the duty credit obtained will be used at a later stage. Therefore, this claim had to be rejected.

(d) Conclusion on FMS

(129) The FMS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A FMS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the FMS duty credit confers a benefit upon the exporter, because it improves its liquidity.

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

(131) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I point (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. There is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III of the basic Regulation. An exporter is eligible for FMS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply

export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from FMS. Moreover, an exporter can use FMS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products.

(e) Calculation of the subsidy amount

(132) The amount of countervailable subsidies was calculated on the basis of the benefit conferred on the recipient, which is found to exist during the investigation period as booked by the cooperating exporting producer on an accrual basis as income at the stage of export transaction. In accordance with Article 7(2) and (3) of the basic Regulation this subsidy amount (numerator) has been allocated over the export turnover during the investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(133) The subsidy rate established with regard to this scheme during the investigation period for the four companies concerned amounted to 0,15 %, 0,19 %, 0,42 % and 0,63 % respectively.

3.2.3. **Focus Product Scheme ('FPS')**

(a) Legal basis

(134) The detailed description of the scheme is contained in paragraphs 3.15 to 3.17 of the FT-policy 09-14 and chapters 3.9 to 3.11 of the HOP I 09-14.

(b) Eligibility

(135) According to paragraph 3.15.2 of the FT-policy 09-14, exporters of notified products in Appendix 37D of HOP I 09-14 are eligible for this scheme.

(c) Practical implementation

(136) An exporter of products included in the list of Appendix 37D of HOP I 09-14 can apply for FPS Duty Credit scrip equivalent to 2 % or 5 % of FOB value of exports. The product concerned under investigation is listed under Table 1 of Appendix 37D and is entitled to a 2 % duty credit.

(137) FPS is a post export scheme, i.e. a company must export to be eligible for benefits under this scheme. As a result, the company proceeds to file an online application to the relevant authority along with copies of the export order and invoice, the bank receipt showing payment of application fees, copy of the shipping bills and bank realisation certificate for the receipt of payment or foreign inward remittance certificate in the case of direct negotiation of documents. In cases where the original copy of the shipping bills and/or bank realisation certificates have been submitted for claiming benefits under any other scheme, the company can submit self- attested copies quoting the relevant authority where the original documents have been submitted. The online application for FPS credits can cover a maximum of up to 50 shipping bills.

(138) It was found that, in accordance with Indian accounting standards, FPS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods — except capital goods and goods where there are import restrictions. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. FPS credits are freely transferable and valid for a period of 24 months from the date of issue.

(139) All five verified exporting producers used this scheme during the investigation period.

(140) Following disclosure three of the sampled Indian exporting producers argued that although they were eligible for the benefit they had not applied for it for at least some export sales and thus no conclusion on the availing of the benefit can be made. Nevertheless, the exporting producers in question were not able to dispute either the practical implementation as described under recitals 123 to 125 of the scheme or that the FPS benefit can be used for the product concerned, namely that duty credits under FPS are freely transferable and can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods. It is reiterated that these benefits are booked on an accrual basis in the company accounts on the dates when the export transactions take place, demonstrating that the entitlement to benefit is created at the time of the export transaction and that there is no doubt that the duty credit obtained will be used at a later stage.

(d) Conclusion on the FPS

(141) The FPS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. An FPS credit is a financial contribution by the GOI since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the FPS credit confers a benefit upon the exporter because it improves its liquidity.

(142) Furthermore, the FPS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation.

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

(e) Calculation of the subsidy amount

(144) In accordance with Article 3(2) and Article 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient found to exist during the investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At that moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of FPS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, it is considered appropriate to assess the benefit under the FPS as being the sums of the credits earned on export transactions made under this scheme during the investigation period.

(145) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amount as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the total export turnover during the investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(146) The subsidy rates established in respect of this scheme for the five companies concerned during the investigation period amounted to 1,59 %, 1,75 %, 1,77 %, 1,85 % and 1,95 % respectively.

3.2.4. **Duty Drawback Scheme ('DDS')**

(a) Legal Basis

(147) The detailed description of the DDS is contained in the Custom & Central Excise Duties Drawback Rules, 1995 as amended by successive notifications.

(b) Eligibility

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

(c) Practical implementation

(149) An eligible exporter can apply for drawback amount which is calculated as a percentage of the FOB value of products exported under this scheme. The drawback rates have been established by the GOI for a number of products, including the product concerned. They are determined on the basis of the average quantity or value of materials used as inputs in the manufacturing of a product and the average amount of duties paid on inputs. They are applicable regardless of whether import duties have actually been paid or not. The DDS rate for the product concerned during the investigation period was: 3 % until 9 October 2012, 2,1 % between 10 October 2012 and 20 September 2013 and 1,7 % as of 21 September 2013 of the FOB value.

(150) To be eligible to benefits under this scheme, a company must export. At the moment when shipment details are entered in the Customs server (ICEGATE), it is indicated that the export is taking place under the DDS and the DDS amount is fixed irrevocably. After the shipping company has filed the Export General Manifest (EGM) and the Customs office has satisfactorily compared that document with the shipping bill data, all conditions are fulfilled to authorise the payment of the drawback amount by either direct payment on the exporter's bank account or by draft.

(151) The exporter also has to produce evidence of realisation of export proceeds by means of a Bank Realisation Certificate (BRC). This document can be provided after the drawback amount has been paid but the GOI will recover the paid amount if the exporter fails to submit the BRC within a given delay.

(152) The drawback amount can be used for any purpose.

(153) It was found that in accordance with Indian accounting standards, the duty drawback amount can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.

(154) Two of the verified exporting producers used DDS during the investigation period.

(d) Conclusion on DDS

(155) The DDS provides subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation. The so-called duty drawback amount is a financial contribution by the GOI as it takes form of a direct transfer of funds by the GOI. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity on terms which are not available on the market.

(156) The rate of duty drawback for exports is determined by the GOI on a product by product basis. However, although the subsidy is referred to as a duty drawback, the scheme does not have the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. The cash payment to the exporter is not linked to actual payments of imports duties on raw materials, and is not a duty credit to offset import duties on past or future imports of raw materials.

(157) This is confirmed by GOI's circular no 24/2001 which clearly states that '[duty drawback rates] have no relation to the actual input consumption pattern and actual incidence suffered on inputs of a particular exporter or individual consignments […]' and instructs regional authorities that 'no evidence of actual duties suffered on imported or indigenous nature of inputs […] should be insisted upon by the field formations along with the [drawback claim] filed by exporters'.

(158) The payment which takes form of a direct transfer of funds by the GOI subsequent to exports made by exporters has to be considered as a direct grant from the GOI contingent on export performance and is therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(159) In view of the above, it is concluded that DDS is countervailable.

(e) Calculation of the subsidy amount

(160) In accordance with Article 3(2) and Article 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI is liable to the payment of the drawback amount, which constitutes a financial contribution within the meaning of Article 3(1)(a)(i) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of drawback which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, it is considered appropriate to assess the benefit under the DDS as being the sums of the drawback amounts earned on export transactions made under this scheme during the investigation period.

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

(162) Based on the above, the subsidy rates established in respect of this scheme for the two companies concerned in the investigation period amounted to 0,24 % and 2,12 % respectively.

3.2.5. **Advance Authorisation Scheme ('AAS')**

(a) Legal basis

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

(b) Eligibility

(164) The AAS consists of six sub-schemes, as described in more detail in recital 165. Those sub-schemes differ, inter alia, in the scope of eligibility. Manufacturer- exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement sub-schemes. Manufacturer–exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the FTP 09- 14, such as suppliers of an export oriented unit, are eligible for the AAS deemed export sub-scheme. Eventually, intermediate suppliers to manufacturer- exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order ('ARO') and back to back inland letter of credit.

(c) Practical implementation

(165) The AAS can be issued for:

(a) Physical exports: This is the main sub-scheme. It allows for duty-free import of input materials for the production of a specific resulting export product. 'Physical' in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the licence;

(b) Annual requirement: Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can — up to a certain value threshold set by its past export performance — import duty-free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resulting product falling under the product group using such duty- exempt material;

(c) Intermediate supplies: This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter who produces the intermediate product can import duty-free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product;

(d) Deemed exports: This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the FTP 09-14. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an export-oriented unit or to a company situated in a special economic zone ('SEZ');

(e) Advance Release Order ('ARO'): The AAS holder intending to source the inputs from indigenous sources, instead of direct import, has the option to source them against AROs. In such cases the advance authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;

(f) Back to back inland letter of credit: This sub-scheme again covers indigenous supplies to an advance authorisation holder. The holder of an advance authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be validated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

(166) Three verified companies received concessions under the AAS linked to the product concerned during the investigation period. These companies made use of (a), (d) and (e) of the sub-schemes referred to above. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.

(167) For verification purposes by the Indian authorities, an advance authorisation holder is legally obliged to maintain 'a true and proper account of consumption and utilisation of duty-free imported/domestically procured goods' in a specified format (chapters 4.26 and 4.30 and Appendix 23 HOP I 09-14), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under the format of Appendix 23 is true and correct in all respects.

(168) With regard to the use of AAS for physical exports referred to in recital 165(a), used by two verified companies during the investigation period, the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the advanced authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the advanced authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of Standard Input Output Norms ('SIONs') which exist for most products including the product concerned.

(169) Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (24 months with two possible extensions of 6 months each).

(170) The investigation established that the verification requirements stipulated by the Indian authorities were not respected in practice.

(171) Only one of the two verified companies that made use of this sub-scheme maintained a production and consumption register. However, the consumption register did not allow verifying which inputs were consumed in the production of the exported product and in what amounts. Regarding the verification requirements referred to above, there were no records kept by the companies which would prove that the external audit of the consumption register took place. In sum, it is considered that the investigated exporters were not able to demonstrate that the relevant FT-policy provisions were met.

(172) With regard to the use of AAS for ARO referred to in recital 165(e), used by one verified company during the investigation period, the amount of imports allowed under this scheme, is determined as a percentage of the amount of exported finished products. The advance licences measure the units of authorised imports either in terms of their quantity or in terms of their value. In both cases the rates used to determine the allowed duty free purchases are established, for most products including the product covered by this investigation, on the basis of the SIONs. The input items specified in the advance licences are items used in the production of the relevant exported finished product.

(173) The advance licence holder intending to source the inputs from indigenous sources, instead of direct import, has the option to source them against AROs. In such cases the advance licences are validated as AROs and are endorsed to the supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the supplier to the benefits of deemed export such as deemed exports drawback and refund of the so-called terminal excise duty.

(174) The investigation established that the verification requirements stipulated by the Indian authorities were not respected in practice.

(175) With regard to the use of AAS for deemed exports referred to in recital 165(d), used by one verified company during the investigation period, both the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by government officials on the authorisation. The volume of imports allowed under this scheme is determined by the GOI on the basis of SIONs.

(176) The export obligation must be fulfilled within a prescribed time-frame (24 months with two possible extensions of 6 months each) after issuance of the authorisation.

(177) It was established that there were no links between the imported inputs and the exported finished products. Furthermore, it was found that, although mandatory, the applicant did not keep the consumption register referred to in recital 167, verifiable by an external accountant. In spite of the breach of this requirement, the applicant did avail the benefits under AAS.

(d) Conclusion on the AAS

(178) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, namely it constitutes a financial contribution of the GOI since it decreases duty revenue which would otherwise be due and it confers a benefit upon the investigated exporters since it improves their liquidity.

(179) All sub-schemes concerned in the present case are clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under this scheme.

(180) None of the sub-schemes concerned in the present case can be considered permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The GOI did not effectively apply a verification system or a procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). It is also considered that the SIONs for the product concerned were not sufficiently precise and that themselves cannot constitute a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).

(181) Following disclosure one sampled Indian exporting producer argued that the scheme should not be countervailed as the company fulfilled its legal obligation with regard to the independent audits of the input consumption register and this should be considered as a sufficient check for the GOI. Such reasoning cannot be accepted. The GOI verification shall be considered distinct from any obligations imposed on the companies. The verification visit confirmed that the verification system in place on the side of the GOI does not conform to the rules laid down in Annex II (II) 4 of the basic Regulation. Therefore, this claim had to be rejected.

(182) The same party argued that clubbing of licences is legal in India and that the company cannot be disadvantaged by the use of total export turnover instead of the turnover of the product concerned in the calculations of the subsidy margin. However, the legality of clubbing of licences in India as such was irrelevant in this context. The investigation revealed that as a result of clubbing no reasonable allocation of licences corresponding to PSF could be made. Indeed, the benefit at the division level and not at PSF level must have been used in the calculations of the subsidy margin as the verified information did not allow for proper allocation of the use of inputs (used in the production of other products) to PSF only. Therefore, this claim had to be rejected.

(183) The sub-schemes referred to in recital 165 under (a), (d) and (e) are therefore countervailable.

(e) Calculation of the subsidy amount

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

(185) The subsidy amount for the companies which used the AAS was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the sub-scheme during the investigation period (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned during the investigation period as appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(186) The subsidy rates established in respect of this scheme for the three concerned companies for the investigation period amounted to 0,11 %, 1,89 % and 4,31 % respectively.

3.2.6. **Duty Free Import Authorisation ('DFIA')**

(a) Legal basis

(187) The detailed description of the DFIA is contained in paragraphs 4.2.1 to 4.2.47 of the FTP 09-14 and in paragraphs 4.31 to 4.36 of the HOP I 09-14.

(b) Eligibility

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

(c) Practical implementation

(189) The DFIA is a post- and pre-export scheme which allows duty-free imports of goods determined according to SION norms, but which, in case of transferable DFIA, do not have to be necessarily used in the manufacture of the exported product.

(190) The DFIA only covers the import of inputs as prescribed in the SION. The import entitlement is limited to the quantity and value mentioned in the SION, but can be revised by regional authorities on request.

(191) The export obligation is subject to the minimum value addition requirement of 20 %. The exports may be performed in anticipation of a DFIA authorisation, in which case the import entitlement is set in proportion of the provisional exports.

(192) Once the export obligation is fulfilled, the exporter can request the transferability of the DFIA authorisation, which in practice means a permission to sell the duty-free import licence on the market.

(193) One of the verified exporting producers used DFIA during the investigation period.

(d) Conclusion on DFIA

(194) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. It constitutes a financial contribution of the GOI since it decreases duty revenue which would otherwise be due and it confers a benefit upon the investigated exporters since it improves their liquidity.

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

(196) This scheme cannot be considered as permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I point (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. In particular: (i) it allows for *ex-post* refund or drawback of import charges on inputs which are consumed in the production process of another product; (ii) there is no verification system or procedure in place to confirm whether and which inputs are consumed in the production of process of the exported product or whether excess benefit occurred within the meaning of point (i) of Annex I and Annexes II and III to the basic Regulation; and (iii) the transferability of certificates/authorisations implies that an exporter granted a DFIA is under no obligation actually to use the certificate to import the inputs.

(197) Following disclosure one sampled Indian exporting producer argued that the verification system put in place in India is reasonable, effective and in line with commercial practices in India and thus the 'primary' reason to countervail the scheme no longer exists. In contrast to what was claimed, the investigation did not confirm that the verification system in place in India allows verification of whether and which inputs are consumed in the production of process of the exported product or whether excess benefit occurred within the meaning of point (i) of Annex I and Annexes II and III to the basic Regulation. Moreover, the producer did not dispute either that the system allows for *ex-post* refund or drawback of import charges on inputs, which are consumed in the production process of another product nor that the transferability of certificates/authorisations implies that an exporter granted a DFIA is under no obligation actually to use the certificate to import the inputs. Therefore, this claim had to be rejected.

(e) Calculation of the subsidy amount

(198) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties.

(199) According to Article 3(1)(a)(ii) and Annex I(i) of the basic Regulation only when the conditions of Annexes II and III of the basic Regulation are met that the excess remission of duties can be countervailed. However, these conditions were not fulfilled in the present case. Thus, if an adequate monitoring process is not demonstrated, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of unpaid duties (revenue forgone), applies, rather than of any purported excess remission. As set out in Annexes II(II) and III(II) of the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 3(1)(a)(ii) of the basic Regulation, the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

(200) The subsidy amount for the companies which used the DFIA was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the sub-scheme during the investigation period (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned during the investigation period as appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(201) The subsidy rates established in respect of this scheme for the single concerned company for the investigation period amounted to 4,95 %.

3.2.7. **Export Promotion Capital Goods Scheme ('EPCGS')**

(a) Legal basis

(202) The detailed description of EPCGS is contained in chapter 5 of FTP 09-14 as well as in chapter 5 HOP I 09-14.

(b) Eligibility

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

(c) Practical implementation

(204) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate of 3 % applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period. Under FTP 09-14 the capital goods can be imported with a 0 % duty rate under the EPCGS but in such case the time period for fulfilment of the export obligation is shorter.

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

(206) It was found that three companies in the sample received concessions under the EPCGS which could be allocated to the product concerned in the investigation period.

(d) Conclusion on EPCGS

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

(208) Furthermore, EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

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

(e) Calculation of the subsidy amount

(210) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. The subsidy amount for the investigation period was then calculated by dividing the total amount of the unpaid customs duty with the depreciation period. The amount so calculated, which is attributable to the investigation period, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the investigation period in India was considered appropriate for this purpose. Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation to arrive at the subsidy amount as nominator.

(211) In accordance with Article 7(2) and (3) of the basic Regulation, this subsidy amount has been allocated over the appropriate export turnover during the investigation period as the denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(212) Following disclosure two sampled Indian exporting producers requested a re-examination of the calculation of the subsidy amount. They argued that an invalidation of an EPCG licence may occur and result in indigenous procurement of capital goods where Central Excise duty would apply. In this respect however, no explicit reference to the specific invalidated licences was made. Also, this issue was not raised during the investigation, which would have allowed a proper verification of this claim. In any event, the determination of the subsidy amount was based on the verified company's record of inputs purchased under this scheme. Therefore, this claim had to be rejected.

(213) The subsidy rate established with regard to this scheme during the investigation period for the three companies concerned amounted to 0,37 %, 0,40 % and 0,46 % respectively.

3.2.8. **Package Scheme of Incentives**

(a) Legal basis

(214) In order to encourage the dispersal of industries to the less developed areas, the Government of Maharashtra (GOM) has been granting incentives to new expansion units set up in developing regions of the State, since 1964, under a scheme commonly known as the Package Scheme of Incentives. The scheme has been amended several times since its introduction and the versions relevant to the current investigation are the versions of 2001 and 2007. Package Scheme of Incentives of 2001 is dated 31 March 2001 and bears Resolution No IDL-1021/(CR-73)/IND-8. Package Scheme of Incentives of 2007 is dated 30 March 2007 and bears Resolution No PSI-1707/(CR-50)/IND-8.

(b) Eligibility

(215) The abovementioned Resolutions list the categories of industries and enterprises which can be considered eligible for incentives.

(c) Practical implementation

(216) In order to encourage the dispersal of industries to the less developed areas, the Maharashtra Government has provided a package of incentives to new/expansion industrial units set up in the developing region of the Maharashtra State. For the purpose of the Scheme, Annex I to the Resolution classifies the State areas eligible for incentives. However, the incentives under the 2007 Scheme cannot be claimed unless an Eligibility Certificate has been issued under the 2007 Scheme and the beneficiary has complied with the stipulations/conditions of the eligibility certificate. The latter is issued by the Implementing Agency (State bod) with effect from the date of commencement of commercial production of the beneficiary (also called an eligible unit).

(217) The PSI is composed of several sub-schemes, of which the following two conferred benefit upon two verified exporting producer during the investigation period:

— Electricity Duty Exemption (EDE)

— Industrial Promotion Subsidy (IPS)

(218) EDE is granted to eligible new units set up in specified areas for a period specified in the Eligibility Certificates. In the current case the two exporting producers concerned are exempted from the payment of the Electricity Duty respectively for 9 year and 7 years. In other parts of the State, 100 % exported oriented units, Information Technology and Bio-Technology units are exempted from payment of Electricity Duty for a period of 10 years.

(219) During the investigation it was found that one exporting producer located in Maharashtra benefited from the electricity duty exemption sub-scheme during the investigation period.

(220) IPS entitles the beneficiary to a subsidy equivalent to a percentage comprised between 75 % and 100 % of the amount of eligible investments less the amount of benefits derived from other sub-schemes of the PSI scheme, such as the EDE. The benefit is conferred over a period of time specified in the Eligibility Certificate and cannot exceed the amount of VAT tax paid to the State of Maharashtra over the same period. The eligible investments are capital expenditure made in building, plant and machinery.

(221) During the investigation it was found that two exporting producers located in Maharashtra benefited from the IPS sub-scheme.

(222) Following disclosure two sampled Indian exporting producers argued that the IPS sub-scheme offered by the GOM does not apply to the stages of manufacturing, production or export of PSF, either directly or indirectly, and that the benefit is dependent on the amount of domestic taxes paid. They further argued that the objective of the scheme is not to provide benefits to exporting producers but to compensate for the costs born in connection to the backwardness of the region and hence that the scheme cannot be countervailed. Moreover, they claimed that the scheme should be treated as a capital subsidy rather that a recurring subsidy and that the total benefit received should be spread over the normal depreciation period of the subsidised capital. In this respect, the investigation revealed as mentioned in recital 220 that the grant is paid on a yearly basis for the eligible investments which are expenditures made in building, plant and machinery. Such investments are directly related to PSF. The mere fact that the yearly amount that can be claimed is capped by the amount of the domestic taxes paid to the GOM over the same period does not change the fact that the yearly benefit of the GOM constitutes a financial contribution of the GOI which confers a benefit upon the investigated exporting producers. Finally, the grant paid on a yearly basis does not have the feature of the capital subsidy even if an investment in capital goods is at the origin of such payment. Therefore, this claim had to be rejected.

(d) Conclusion on the EDE and IPS

(223) Both sub-schemes are subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation, since they constitute a financial contribution of the GOI which conferred a benefit upon the investigated exporters.

(224) The subsidy sub-schemes are specific within the meaning of Article 4(3) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme to a limited number of enterprises within a designated geographical region.

(225) Consequently, the subsidy should be considered countervailable.

(e) Calculation of the subsidy amount

(226) In accordance with Article 3(2) and Article 5 of the basic Regulation, the amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipient in relation to the product concerned, which is found to exist during the investigation period. This amount (numerator) has been allocated over the total sales turnover of the product concerned of the exporting producer during the investigation period, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported, pursuant to Article 7(2) of the basic Regulation.

(227) The subsidy rate established with regard to the EDE sub-scheme amounted to 0,31 % for the single company availing of this benefit.

(228) The subsidy rate established with regard to the IPS sub-scheme amounted to 1,03 % and 1,91 % respectively during the investigation period for the companies concerned.

3.2.9. **Amount of countervailable subsidies**

(229) Based on the findings, the total amount of countervailable subsidies for the verified exporting producers, expressed ad valorem, were found to range from 4,16 % to 7,65 %, as summarised in the below table.

Table 1

Amount of countervailable subsidies — India

(%)

Scheme / Company	FMS	FPS	DDS	AAS	DFIA	EPCGS	PSI/EDE	PSI/IPS	Total
Bombay Dyeing and Manufacturing Co. Ltd	0,42	1,77	—	—	—	—	0,31	1,91	**4,41**
Ganesha Ecosphere Ltd	—	1,95	0,24	0,11	4,95	0,40	—	—	**7,65**
Indo Rama Synthetics Ltd	0,15	1,75	—	1,89	—	0,37	—	1,03	**5,19**
Polyfibre Industries Pvt. Ltd	0,19	1,85	2,12	—	—	—	—	—	**4,16**
Reliance Industries Limited	0,63	1,59	—	4,31	—	0,46	—	—	**6,99**

3.3. VIETNAM

3.3.1. **General**

(230) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by Government of Vietnam, were investigated:

A. government preferential lending to the PSF industry by state-owned banks and the government entrustment and direction of private banks, and interest rate support;

B. government provision of goods to the PSF industry by state-owned enterprises for less than adequate remuneration;

C. government provision of land for less than adequate remuneration and other land-related benefits;

D. direct tax exemptions and reductions programmes;

E. indirect tax and import tariff programmes;

F. accelerated depreciation on fixed assets;

G. other subsidy programmes, including state, regional, and local government schemes.

(231) The Commission investigated all schemes alleged in the complaint. For each scheme it was investigated whether, pursuant to provisions of Article 3 of the basic Regulation, a financial contribution by the GOV and a benefit conferred to the exporting producers could be established. The investigation revealed that in the present case any benefit found for the investigated schemes is below the applicable *de minimis* threshold in Article 14(5) ([4]) of the basic Regulation. Therefore, it is not considered necessary to conclude on the countervailability of individual schemes.

(232) Nevertheless, for the purpose of clarity and transparency the details of the schemes and the corresponding subsidy rates for individual companies are set out below, without prejudice to whether or not the subsidies are considered to be countervailable. The benefit was calculated in line with Article 6 of the basic Regulation.

3.3.2. **Specific subsidy schemes**

Subsidy schemes not used by the Vietnamese exporting producers during the investigation period

(233) The investigation found that the following schemes were not used by the investigated Vietnamese exporting producers:

(a) government provision of goods to the PSF industry by state-owned enterprises for less than adequate remuneration;

(b) accelerated depreciation on fixed assets;

(c) other subsidy programmes, including state, regional, and local government schemes.

(234) As concerns in particular the government provision of goods to the PSF industry by state-owned enterprises for less than adequate remuneration, the allegation in this regard contained in the complaint was that PTA/MEG, which can be used as main raw material for the production of PSF, was obtained by the Vietnamese producers at subsidised prices. The investigation showed however that none of the investigated exporting producers were using PTA/MEG as main raw material but that they were all using recycled PET bottles or PET bottle flakes instead.

(235) Further to the disclosure, the complainant noted that the Commission provided a partial analysis only for one of them, that is the provision of PTA/MEG at subsidised prices. With regard to this programme, the complainant argued that the way the sample was established and the fact that major PSF producers in Vietnam were not included in the investigation affected the determination on this programme. The complainant also listed other alleged subsidy programmes in Vietnam for which information had been submitted in the complaint.

(236) As the Commission has explained in recitals 32-34 and 42 above, no sampling was necessary for Vietnam as all Vietnamese exporting producers expressed their intention to cooperate, and the replies received from the three cooperating producers covered over 99 % of imports from Vietnam. Therefore, the complainant's arguments concerning sampling are not relevant for the findings of the investigation. In addition, the mere fact that there are other large producers of PSF in Vietnam does not as such question the representativeness of the cooperating exporting producers. The Commission confirms that it sought information and replies on all of the alleged subsidies included in the complaint including the ones mentioned by the complainant in its comments to the disclosure, but these programmes were found not to be used by the cooperating exporters. The Commission provided details on the provision of PTA/MEG as this programme featured as a major allegation in the complaint possibly conferring a significant countervailable subsidy.

Subsidy schemes used by the Vietnamese investigated exporting producers during the investigation period

(237) The below schemes were found to be used by the investigated Vietnamese exporting producers during the investigation period.

([4]) See footnote 3.

3.3.3. **Preferential lending**

3.3.3.1. *Post-investment interest rate support by the Vietnam Development Bank*

(238) The Vietnam Development Bank ('VDB') is a state-owned policy bank established in 2006 under Decision No 108/2006/QD-TTg to implement state policies on development investment credit and export credit. During the investigation period, the Vietnam Development Bank ('VDB') administered a programme for interest rate support on some loans from commercial banks. Within this framework, the Thai Binh Group companies had contracts with the VDB for the support of loans from BIDV and Vietcom Bank.

(239) The legal basis for the programme is Decree No 75/2011/ND-CP from 30 August 2011, which replaces the Decree No 151/2006/ND-CP, Decree No 106/2008/ND-CP and Decree 106/2004 ND-CP. When the contracts have been signed before the application of the Decree No 75/2011, the previous Decrees apply.

(240) The benefit from this programme equals the difference between the interest rates offered by the VDB and interest rates from commercial banks applied on the loans to these two companies. The programme applies to the long and medium term loans from commercial banks used for the financing of investments projects.

(241) The benefit from this scheme ranged between 0 % and of 0,28 %.

3.3.3.2. *Low interest loans granted by some state-owned commercial banks*

(242) The investigation showed that a significant part of the banking sector in Vietnam is state-owned; almost 50 % of the loans in the Vietnamese economy during the investigation period was made by the 5 large state-owned banks ([5]). There are limitations to the foreign ownership of banks established in Vietnam ([6]). Commercial banks are instructed to provide interest rate support to businesses ([7]). The State Bank of Vietnam sets the maximum interest rates which the commercial banks can charge for loans to some entities ([8]). Information on the file shows that the state-owned commercial banks are offering lower interest rates than other banks.

(243) Several laws in Vietnam concerning the banking sector and lending refer to preferential lending. For example, Regulation 1627 of 2001 refers to loans to customers which are subject to preferential credit policy (Articles 20 and 26) or the Law on Credit Institutions refers to concessional credits (Article 27).

(244) The amount of subsidy is calculated in terms of benefit conferred on the recipients, which is found to exist during the investigation period. According to Article 6(b) of the basic Regulation the benefit conferred on the recipients is considered the difference between the amount the company pays on the preferential loan and the amount that the company would pay for a comparable commercial loan obtainable on the market.

(245) The information described in recitals 242 and 243 above point to significant distortions in the Vietnamese financial sector. Therefore the Commission resorted to an external benchmark for the calculation of benefit from preferential loans. As stated in recital 231 above this is without prejudice to the countervailability of the subsidy resulting from preferential lending. Also because of the *de minimis* subsidisation, the Commission did not make any final conclusions whether the banks concerned are public bodies or whether the credit risk assessment performed by the banks is sufficient.

(246) The external benchmark was required to cover loans in VND currency only as no evidence was seen that loans given in USD were subsidised. Of the cooperating companies only the Thai Binh Group received loans in VND. The benchmark was calculated using the lending interest rates of a basket of 48 nations in lower middle income (GDP) countries in the most recent period available (2012). Such countries were chosen because they had a similar GDP to Vietnam. These rates were then adjusted for inflation in the investigation period to produce real interest rates and an average for the 48 countries was calculated for those countries for which data were available. The source of the country interest and inflation rates was the World Bank. The average real interest rate for these lower middle income countries was 8,23 % in the investigation period. This benchmark was compared to the inflation adjusted interest rates of all VND loans for the investigated companies.

([5]) Bank for Agriculture and Rural Development, Vietnam Foreign Commercial Bank, Industrial and Commercial Bank, Bank for Investment and Development of Vietnam and Mekong Housing Bank.

([6]) Article 4 of the Decree 69/2007/ND-CP.

([7]) Articles 2, 3 and 4(a) of Prime Minister Decision No 443/QD-TTf of 4 April 2009.

([8]) E.g. Circular No 102013/TT-NHNN, Article 1.2(b), (c) and (d).

(247) The benefit for this programme ranged between 0 % and 1,34 %.

(248) Following disclosure, the GOV disputed the conclusions on the distortions of the Vietnamese financial system and submitted that the Commission should have assessed whether the state-owned commercial banks are public bodies and whether the credit risk assessment performed by them is sufficient. In GOV's view, this analysis would have affected the conclusion on the existence of a financial contribution and also the use of an external benchmark to establish the benefit conferred by this programme.

(249) As specified in recitals 242-243 above, the information and evidence collected in the investigation show significant distortions in the Vietnamese banking system. Because of these distortions, in line with the rules of the basic Regulation, an external benchmark must be used to determine the amount of benefit (if any). Since the benefits for Vietnamese exporting producers are *de minimis,* the Commission does not consider it necessary to examine whether the banks are public bodies and/or whether the risk assessment is sufficient as clarified in recitals 231 and 232 above.

3.3.4. **Provision of land use rights**

(250) Both cooperating exporting producers were allocated land use rights in special industrial zones. While the Thai Binh Group received the LUR directly from the state, the land to the Vietnam New Century Polyester Fibre Co. Ltd ('VNC') is sub-leased through a partially state-owned company.

(251) Thai Binh Group has three plots of land in the industrial zone. During the investigation period the Group was fully exempted from the payment of rent for two plots. The bases for the exemption are Decree No 121/2010/ND-CP and Decree No 142/2005/ND-CP. The Group also did not pay the rent for the third plot as it is in the administrative process requesting the exemption. The exempted rent rates are well below the rates paid by the Group for other similar plots in close proximity of the industrial zone and seem to be well below the normal prices of land in the region.

(252) VNC did not get a full exemption of land use rights, however it was clear that they were receiving a benefit during the investigation period. VNC sub-leases three plots of land from a partially state-owned company. Although the GOV claimed that these are transactions between private parties, the information on the file is in contradiction with this claim. The investment licence of VNC lists the lease of land as a preferential benefit. In the licence the Quang Ninh's People's Committee obliges VNC to rent the land from this company. Also according to the original contract between the partially state-owned company renting the plot to VNC and the local land authority the subsequent transfer of the land is only possible under certain conditions set by the local land authority. This shows that the state is involved in the land transaction between the two parties.

(253) For the purpose of benefit assessment the Commission compared the low land prices related to transactions in the industrial zones to a benchmark price for similar land. The investigation found indications that the market for land in Vietnam seems to be regulated and is distorted by the government intervention, as there is an exemption or a preferential remuneration for LUR concerning land located in designated industrial zones and/or encouraged business sectors. In this specific case, the Commission found a LUR transaction of a sufficiently reliable nature because the land concerned is located outside any encouraged zone and because the company concerned is active in a sector unrelated to PSF and not encouraged under government policies. The prices in this transaction are used as a benchmark for the benefit assessment, without prejudice to any conclusion on the overall land market situation in Vietnam.

(254) The benefit for this scheme ranged between 0,17 % and 0,37 %.

3.3.5. **Direct tax exemption and reduction programmes**

(255) Both cooperating exporting producers benefited from several direct tax reliefs based on exemptions listed in their investment licences. The legal basis for these exemptions are Decree No 164/2003/ND-CP replaced by Decrees 124/2008/ND-CP and 122/2011/ND-CP, Circular 140/2012, Decree No 164/2003/ND-CP amended ad supplemented by Decree No 152/204/ND-CPDuty and VAT exemption on the imports of machinery.

(256) According to the above legislation the direct tax exemptions and reduction are available, inter alia, to companies located in special industrial zones/parks, or companies which employ a high number of employees, or companies operating in certain sectors of the economy.

(257) The amount of subsidy is calculated in terms of benefit conferred on the recipients which is found to exist during the investigation period. The benefit conferred on the recipients is considered to be the amount of total tax payable according to the normal tax rate, after the deduction of what was paid with the reduced preferential tax rate, or the amount of fully exempted tax respectively. The amounts considered to be a subsidy are based on the most recent annual tax returns. The subsidy was allocated on a total company basis and expressed as a percentage of the CIF Union export turnover.

(258) The benefit for this scheme ranged between 0,11 % and 0,36 %.

3.3.6. **Import duty exemption on imported raw materials**

(259) Both cooperating exporting producers received exemptions from payment of duties on imported raw materials during the investigation period. The legal basis for the exemption is the Law on Import and Export Tax No 45/2005/QH11 implemented by Decree No 87/2010/ND-CP. The rules for inspection and supervision system and procedures are set in Circular 194/2010TT.

(260) The GOV reported in its questionnaire reply that it operates a duty drawback/suspension system. According to the legislation the exemption applies to imported raw materials consumed in the production of the exported products. The duties can be refunded to the extent determined by the ratio of how much of imported raw materials is used in the exported final product.

(261) It was found that during the investigation period both cooperating exporting producers did not receive any economic benefit from this scheme in the investigation period. Although they were exempted from the payment of import duty on raw materials, no excess remission was found in the investigation period. Both companies had relatively small domestic sales of product concerned. Moreover, they sourced a significant share of the main raw materials domestically as the volumes they imported for the production of exported product concerned were not sufficient.

(262) In view of the above it was not considered necessary to conclude whether the reported duty drawback system is in line with the WTO rules and with the Articles of Annex II and Annex III of the basic Regulation.

(263) Further to the disclosure, the GOV supported the Commission findings on this programme. However, it also wished to highlight that the Vietnamese duty drawback system is fully in line with the rules in Annex II and Annex III of the basic Regulation despite the absence of conclusions on this point. The Commission takes note of this position of the GOV. However, given that the benefits for Vietnamese exporting producers are *de minimis*, the Commission restates its position that it does not consider it necessary for the purpose of this investigation to examine whether the duty drawback scheme complies with the rules in Annex II and Annex III of the basic Regulation as explained in recitals 231-232 above.

3.3.7. **Import duty exemption on imported machinery**

(264) Both cooperating exporting producers received exemptions from payment of duties and VAT on imported machinery during the investigation period. The legal basis for the exemption is the Law on Import and Export Tax No 45/2005/QH11 implemented by Decree No 87/2010/ND-CP. The rules for inspection and supervision system and procedures are set in Government Decree No 154./2005/N-CP, Circular 194/2010TT, and Circular 117/2011.

(265) The companies were asked to report machinery imports over a 10 year period. Although it was clear that benefits did accrue to the cooperating exporting producers as a result of this scheme, these were not substantial. This is because the companies' imports of machinery were not important when compared to the turnover of the EU sales of PSF. Also any benefits were diluted by the fact that machinery was amortised over a number of years (usually 10) and therefore the benefit to the investigation period was correspondingly reduced.

(266) The benefit for this scheme ranged between 0,08 % and 0,1 %.

3.3.8. **Amount of subsidies**

(267) The amount of subsidies in accordance with the provisions of the basic anti-subsidy Regulation, expressed *ad valorem*, for the Vietnamese exporting producers ranges between 0,6 % to 2,31 %. The country-wide subsidy margin is the weighted average of the two margins above, i.e. 1,25 %. The subsidies described above were allocated on a total company basis and expressed as a percentage of the CIF Union export turnover.

(268) Further to the disclosure, the complainant argued that it was unclear how the Commission calculated this range of the subsidy margin and why the Commission has not taken the higher end of these margins which would have been above the *de minimis* margin. As the Commission has explained in the previous recital, the range of the total aggregated subsidies for the Vietnamese cooperating exporting producers expressed *ad valorem* varies between a minimum of 0,6 % and a maximum of 2,31 %. However, the calculation of the weighted average of these margins leads to a per country average of the subsidy margin equal to 1,25 %, which is below the *de minimis* threshold. This is the methodology constantly used to calculate the per country average of the subsidy margin in accordance with the relevant rules of the basic Regulation.

3.3.9. **Conclusion on Vietnam**

(269) The country-wide subsidy rate for Vietnam 1,25 %. As this margin is *de minimis*, it has been concluded that the investigation should be terminated with regard to imports originating in Vietnam, in accordance with Article 14(3) of the basic Regulation.

4. **INJURY**

4.1. DEFINITION OF THE UNION INDUSTRY AND UNION PRODUCTION

(270) The like product was manufactured by 18 producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(271) The total Union production during the investigation period was established at around 401 000 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as verified production figures of the sampled cooperating Union producers as well as figures provided by the complainant. As indicated in recital 10, four Union producers were selected in the sample representing 54 % of the total Union production of the like product.

4.2. UNION CONSUMPTION

(272) The Commission established the Union consumption on the basis of the volume of sales of the Union industry on the Union market using the data provided by the complainant and imports from third countries based on Eurostat data.

(273) Union consumption developed as follows:

Table 2

Union consumption (tonnes)

	2010	2011	2012	Investigation period
Total Union consumption	838 397	869 025	837 066	890 992
Index	100	104	100	106

Source: Complaint, Eurostat.

(274) The Union consumption peaked in 2011 due to the hike in cotton prices as a result of difficulties experienced regarding the cotton crop in 2010. The demand for PSF, as a substitute for cotton, increased as a result, but dropped again the following year. In the investigation period, a rise of 6 % in Union consumption is again observed.

4.3. IMPORTS FROM THE COUNTRIES CONCERNED

4.3.1. **Cumulative assessment of the effects of imports from the countries concerned**

(275) The Commission examined whether imports of PSF originating in the countries concerned should be assessed cumulatively, in accordance with Article 8(3) of the basic Regulation.

(276) The subsidy margin established in relation to the imports from the People's Republic of China and Vietnam was below the *de minimis* threshold laid down in Article 8(3)(a) of the basic Regulation.

(277) Therefore, the conditions for cumulation are not met and the causation analysis is thus limited to the effect of the imports from India.

4.3.2. **Volume and market share of the imports from India**

(278) The Commission established the volume of imports on the basis of Eurostat. The market share of the imports was established on the basis of the volume of imports from India as part of the total Union consumption (the latter being determined by all Union sales by Union producers plus all imports of PSF into the Union).

(279) Imports into the Union from India developed as follows:

Table 3

Import volume (tonnes) and market share

	2010	2011	2012	Investigation period
Volume of imports from India (tonnes)	51 258	59 161	63 191	60 852
Index	100	115	123	119
Market share	6,1 %	6,8 %	7,5 %	6,8 %
Index	100	111	123	112

Source: Eurostat.

(280) Overall, imports from India remained rather stable, accounting for a Union market share of between 6 % and 7,5 % in the period considered.

4.3.3. **Prices of the imports from India and price undercutting**

(281) The Commission established the prices of imports on the basis of Eurostat statistics and verified data from cooperating exporters. Price undercutting of the imports was established on the basis of verified data provided by cooperating exporters and cooperating Union producers.

(282) The average price of imports into the Union from India developed as follows:

Table 4

Import prices (EUR/tonne)

	2010	2011	2012	Investigation period
India	1 025	1 368	1 239	1 212
Index	100	134	121	118

Source: Eurostat and verified data from cooperating exporters.

(283) A price hike for PSF was observed for the year 2011, which is the year of the earlier mentioned cotton crisis. Prices decreased in the years after, but remained higher than the price observed for 2010. In the investigation period, the price was 18 % higher than the price for PSF in 2010.

(284) The Commission determined the price undercutting during the investigation period by comparing the weighted average landed import prices per product type of the imports from the sampled cooperating Indian producers to the first independent customer on the Union market, with appropriate adjustments for customs duties and post-importation costs and the weighted average sales prices of the same product types of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level.

(285) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of between 4,1 % and 43,7 % by the imports from India on the Union market.

4.4. ECONOMIC SITUATION OF THE UNION INDUSTRY

4.4.1. **General remarks**

(286) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(287) As mentioned in recital 10, sampling was used for the determination of possible injury suffered by the Union industry.

(288) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the complaint, additional information provided by the complainant during the course of the proceeding and Eurostat. These data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of the duly verified data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(289) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, and productivity.

(290) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. **Macroeconomic indicators**

4.4.2.1. *Production, production capacity and capacity utilisation*

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

Table 5

Production, production capacity and capacity utilisation

	2010	2011	2012	Investigation period
Production volume (tonnes)	362 195	355 240	361 159	401 119
Index	100	98	100	111
Production capacity (tonnes)	492 059	451 310	468 115	466 744
Index	100	92	95	95

	2010	2011	2012	Investigation period
Capacity utilisation	73,6 %	78,7 %	77,2 %	85,9 %
Index	100	107	105	117

Source: Complainant (CIRFS).

(292) The production volume went up by 11 % during the period considered. This increase took place only during the investigation period (which covers the most recent 12 months of the period considered). During the part of the period considered preceding the investigation period (meaning 2011 and 2012) the Union industry's production volume decreased or stagnated.

(293) On the contrary, production capacity underwent a downward trend, with a decrease by 5 % in the investigation period. Coupled with the upward trend of the production volume as described in recital 292, the capacity utilisation increased by 17 %. It needs to be underlined though that the capacity utilisation in 2010, which is used as a basis for the trend analysis, was low for a capital-intensive industry such as the PSF industry and during the investigation period the capacity utilisation rate was at 85,9 %.

4.4.2.2. *Sales volume and market share*

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

Table 6

Sales volume and market share

	2010	2011	2012	Investigation period
Total Sales volume on the Union market (tonnes)	379 840	366 341	344 134	358 130
Index	100	96	91	94
Market share	45,3 %	42,2 %	41,1 %	40,2 %
Index	100	93	91	89

Source: Eurostat, complainant (CIRFS).

(295) The sales volumes on the Union market decreased in 2011 and 2012, but recovered slightly during the investigation period. However, overall a drop by 6 % was still observed vis-à-vis volumes sold in 2010.

(296) The market share of the Union industry decreased significantly throughout the period considered. The largest drop in market share took place in 2011, but the downward trend continued in 2012 and the investigation period, resulting in an overall loss of market share during the period considered of 11 %.

4.4.2.3. *Growth*

(297) Despite the moderate growth in Union consumption during the period considered (plus 6 %) and the increase in production volume by Union producers (plus 11 %), sales by Union producers fell by 6 %.

4.4.2.4. *Employment and productivity*

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

Table 7

Employment and productivity

	2010	2011	2012	Investigation period
Number of employees	1 914	1 935	2 000	2 036
Index	100	101	105	106
Productivity (tonne/employee)	189,3	183,6	180,6	197,0
Index	100	97	95	104

Source: Complainant (CIRFS).

(299) The number of employees rose steadily during the period considered resulting in a 6 % increase, in tandem with the increase in production as demonstrated in recital 292.

(300) Productivity dropped in 2011 and 2012, as the number of employees grew while production volumes stagnated during those years. Overall, it saw an increase during the period considered by 4 %.

4.4.3. **Microeconomic indicators**

4.4.3.1. *Prices and factors affecting prices*

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

Table 8

Sales prices in the Union

	2010	2011	2012	Investigation period
Average unit sales price in the Union on the total market (EUR/tonne)	1 283	1 608	1 509	1 489
Index	100	125	118	116
Unit cost of production (EUR/tonne)	1 453	1 666	1 629	1 542
Index	100	115	112	106

Source: Verified data from sampled Union producers.

(302) The largest increase in sales price in the Union was observed for 2011, when PSF was sold for 25 % more compared the average sales price in 2010. This was the result of the cotton crisis in 2011, when demand for PSF rose as substitute for cotton, which was scarce due to the disappointing crop in 2010. Overall, the sales prices in the Union increased by 16 % during the period considered.

(303) Unit cost of production also increased during the period considered with a peak of 15 % in 2011 due to an increase in petrol prices that year, which is a significant cost driver. The overall increase of the unit cost of production amounted to 6 % during the period considered.

4.4.3.2. *Labour costs*

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

Table 9

Average labour costs per employee

	2010	2011	2012	Investigation period
Average labour costs per employee (EUR)	31 561	31 080	31 661	32 356
Index	100	98	100	103

Source: Verified data from sampled Union producers.

(305) Average labour costs per employee first dropped in 2011, and then slightly increased the years following. For the period considered, an increase by 3 % was observed.

4.4.3.3. *Inventories*

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

Table 10

Inventories

	2010	2011	2012	Investigation period
Closing stocks (tonnes)	15 731	16 400	15 039	19 108
Index	100	104	96	121
Closing stocks as a percentage of production	7,3 %	7,8 %	7,1 %	8,8 %
Index	100	107	97	120

Source: Verified data from sampled Union producers.

(307) The closing stocks increased, with the exception of 2012, and resulted in an overall surge of 21 % in the investigation period. This corresponds to the increase in production volume (overall increase of 11 %), while sales volumes fell during the period considered (an overall decrease of 6 %). These trends were also reflected by the closing stocks as percentage of production.

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

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

Table 11

Profitability, cash flow, investments and return on investments

	2010	2011	2012	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	– 5,4 %	1,0 %	– 0,8 %	0,3 %
Index	– 100	18	– 14	5
Cash flow (EUR)	– 12 068 770	12 017 353	13 048 405	10 725 084
Index	– 100	100	108	89
Investments (EUR)	5 240 603	7 671 607	4 488 296	4 145 991
Index	100	146	86	79
Return on investments	– 25,1 %	5,5 %	– 4,5 %	1,5 %
Index	– 100	22	– 18	6

Source: Verified data from sampled Union producers.

(309) 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. Profitability margins fluctuated during the period considered. Overall, profitability improved by moving from substantially loss making in 2010 to break-even in the investigation period.

(310) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed positively during the period considered.

(311) Investments peaked in 2011 with an increase of 46 % compared to investments made in 2010, but followed a downward trend in the years after. During the period considered, investments fell by 21 %.

(312) The return on investments is the profit in percentage of the net book value of investments. It developed positively during the period considered.

(313) None of the sampled Union producers expressed to have had difficulties raising capital during the period considered.

4.4.4. **Conclusion on injury**

(314) Imports from India remained stable (accounting for a Union market share of between 6 % and 7 % in the period considered). Undercutting was significant (up to 43,7 %).

(315) Most injury indicators improved. The profitability of the Union producers went up by close to 6 percentage points, but the average profit margin was still at an unsatisfactory break-even level of 0,3 % in the investigation period. The capacity utilisation rate increased from 74 % to 86 %. This however was the result of an increase in Union production volumes as well as the decrease in Union capacity. Average sales prices in the Union peaked in 2011, caused by the sharp surge of the cotton and petrol prices. Overall, average Union sales prices increased by 16 % in the period considered. Return on investment and cash flow developed positively. Employment also increased during the period considered. Signs of recovery were thus observed in a still injurious situation.

(316) The following injury indicators developed negatively during the period considered: the Union market share of Union producers dropped from 45,3 % to 40,2 % as Union sales volumes fell by 6 %. The level of investments decreased overall with the exception of 2011. Capacity, as mentioned in recital 293, declined by 5 % during the period considered.

(317) Overall, the situation of the Union industry can still be described as injurious, although it has clearly improved over the last years. On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 8(4) of the basic Regulation.

(318) Commenting on the disclosure, the complainant stated that it considered the stability of the Indian market share in the Union market the result of substantial subsidisation. The Commission indeed found countervailable subsidies (see recital 229), but no causal link to the injurious situation of the Union industry could be established (see recitals 319-323).

5. **CAUSATION**

(319) In accordance with Article 8(5) of the basic Regulation, the Commission examined whether the subsidised imports from India caused material injury to the Union industry. In accordance with Article 8(6) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the subsidised imports from India was not attributed to the subsidised imports. These factors are imports from other third countries, export performance of the Union industry and consumption.

5.1. EFFECTS OF THE SUBSIDISED IMPORTS

(320) In view of the findings of below *de minimis* subsidisation with regard to China and Vietnam (see recitals 76 and 231), the conditions for cumulation are not met. The causation analysis is therefore limited to the effect of the imports from India.

(321) During the period considered the Union industry saw its market share declining from 45,3 % to 40,2 %, while the market share of Indian imports remained rather stable between 6 % and 7 %. Consumption grew by 6 % during the period considered. The Union industry was thus not able to benefit from this growth in terms of market share, but this is not likely to be attributed to the Indian market share, which remained constant.

(322) Average Eurostat prices for PSF from India were lower than average PSF prices from most other countries, but it is important to note that there are large differences in qualities and product types. In any event, precise type-by-type comparisons demonstrated significant undercutting with regard to imports from India.

(323) Despite the significant undercutting, it cannot be concluded that Indian imports have resulted in the injury. Indeed, the market share decrease of the Union industry (minus 5,1 percentage points) cannot be attributed to the development of Indian import volumes as their market share remained fairly stable (up by 0,7 percentage points only during the period considered). Moreover, average prices of imports from India have increased by 18 % over the period considered. The prices of Indian imports do not seem to have resulted in price depression, as the financial situation of the Union industry, though still injurious in the investigation period, has improved significantly over the period considered.

5.2. EFFECTS OF OTHER FACTORS

5.2.1. **Imports from third countries**

(324) The volume of imports from third countries developed over the period considered as follows:

Table 12

Imports from third countries

Country		2010	2011	2012	Investigation period
The Republic of Korea	Volume (tonnes)	129 918	165 365	163 540	181 540
	Index	100	127	126	140
	Market share	15,5 %	19,0 %	19,5 %	20,4 %
	Index	100	123	126	131
	Average price (EUR/tonne)	1 116	1 367	1 361	1 300
	Index	100	123	122	116
Taiwan	Volume (tonnes)	121 656	108 645	100 072	92 423
	Index	100	89	82	76
	Market share	14,5 %	12,5 %	12,0 %	10,4 %
	Index	100	86	82	71
	Average price (EUR/tonne)	1 131	1 416	1 383	1 369
	Index	100	125	122	121
China	Volume (tonnes)	5 198	8 980	23 209	44 651
	Index	100	173	446	859
	Market share	0,6 %	1,0 %	2,8 %	5,0 %
	Index	100	167	447	808
	Average price (EUR/tonne)	1 065	1 279	1 265	1 209
	Index	100	120	119	113
Turkey	Volume (tonnes)	32 921	29 969	34 303	36 908
	Index	100	91	104	112
	Market share	3,9 %	3,4 %	4,1 %	4,1 %
	Index	100	88	104	105

Country		2010	2011	2012	Investigation period
	Average price (EUR/tonne)	1 133	1 466	1 383	1 382
	Index	100	129	122	122
Vietnam	Volume (tonnes)	24 884	25 487	26 410	29 717
	Index	100	102	106	119
	Market share	3,0 %	2,9 %	3,2 %	3,3 %
	Index	100	99	106	112
	Average price (EUR/tonne)	978	1 182	1 175	1 096
	Index	100	121	120	112
Indonesia	Volume (tonnes)	25 902	30 285	24 032	24 699
	Index	100	117	93	95
	Market share	3,1 %	3,5 %	2,9 %	2,8 %
	Index	100	113	93	90
	Average price	1 055	1 329	1 267	1 167
	Index	100	126	120	111
Thailand	Volume (tonnes)	17 548	23 510	17 103	18 952
	Index	100	134	97	108
	Market share	2,1 %	2,7 %	2,0 %	2,1 %
	Index	100	129	98	102
	Average price (EUR/tonne)	1 140	1 449	1 310	1 298
	Index	100	127	115	114
Other imports	Volume (tonnes)	49 272	51 282	41 074	43 120
	Index	100	104	83	88
	Market share	5,9 %	5,9 %	4,9 %	4,8 %
	Index	100	100	83	82
	Average price (EUR/tonne)	1 323	1 681	1 603	1 532
	Index	100	127	121	116

Source: Eurostat.

(325) The largest share of imports (181 540 tonnes, representing a market share of 20,4 %, during the investigation period) comes from the Republic of Korea, which saw its market share increase by 4,9 percentage points during the period considered. Taiwan is the second biggest exporter to the Union. Though imports from Taiwan during the period considered declined (minus 4,1 percentage points), Taiwan still held a market share of 10,4 % in the investigation period. The fourth largest on the list of exporters (following India, which is the third largest) is China, whose market share increased by 4,4 percentage points to a level of 5 %. Imports from other third countries are smaller than imports from India but substantial quantities of PSF are also imported from Turkey, Vietnam, Indonesia and Thailand (all four with rather stable market shares). Collectively, the imports from Turkey, Vietnam, Indonesia and Thailand account for a market share of around 12 % (12,4 % in the investigation period).

(326) The increasing imports from notably the Republic of Korea are worth noting. The Korean imports amounted, during the investigation period, to three times the volumes of Indian imports. They went up by 40 % during the period considered and their market share went up by 4,9 percentage points to 20,4 %. Also imports from China strongly went up, by more than 700 % in volume or 4,4 percentage points in terms of market share. Imports from China undercut also significantly the prices of the Union industry.

(327) On the basis of the above, it can be concluded that, if the injurious situation of the Union industry has been the result of imports, this is rather due to imports from sources other than India.

(328) Following disclosure, the complainant commented that the Commission did not further investigate the export prices of China and Vietnam. It is recalled that *de minimis* subsidy levels were found for both China and Vietnam. The Commission therefore assessed the export prices for these two respective countries in its causality analysis regarding the effect of other factors and indeed did not perform a cumulative assessment of the imports of all three countries concerned by this proceeding, since it was determined that the subsidies found in China and Vietnam were *de minimis* as explained in recital 275-277.

(329) The complainant provided comments on the average price of imports from Korea as well as the (slight) increase in their volume between 2011 and 2012. In view of the overall increase of both the volume and the market share of Korean imports during the period considered and its average prices being lower than the average Union industry sales prices, the Commission maintains that Korean imports are a relevant other factor in the causality analysis.

(330) The complainant also referred to average export prices of the three countries initially concerned by this proceeding and of Korea and Taiwan for the period January to July 2014. This is however not the period considered, which is from 2010 to the end of the investigation period. The comment is therefore rejected.

5.2.2. **Export performance of the Union industry**

(331) The volume and average value of exports of the Union industry developed over the period considered as follows:

Table 13

Export performance of Union producers

	2010	2011	2012	Investigation period
Export volume (tonnes)	31 158	32 204	41 279	36 149
Index	100	103	132	116
Average price (EUR/ tonne)	1 760	1 945	1 924	1 962
Index	100	111	109	112

Source:

Volume: Complainant (CIRFS)

Value: Verified data from sampled Union producers

(332) The Union industry is selling, outside the EU, mainly speciality products, which explains the higher average sales price observed on those markets.

(333) Export volumes of the sampled Union producers increased by nearly 30 % during the period considered with its highest peak in 2012. Average sales prices went up in 2011 and then remained at a stable level until the investigation period.

(334) Despite the good export performance of the sampled Union producers, the absolute volumes exported were relatively small compared to the sales volumes sold in the Union. Their effect was therefore not sufficient to compensate for the difficult and injurious situation on the Union domestic market.

5.2.3. **Consumption**

(335) The Union market for PSF was 838 397 tonnes in 2010 and reached in the investigation period 890 992 tonnes. This implies a market growth of 6 % during the period considered. In other words, there was no decline in demand which could have contributed to the injurious situation of the Union industry.

5.2.4. **Economic crisis**

(336) A user association, the chamber of commerce of one of the countries concerned, and a government authority commented that the injury was caused by the economic crisis. This argument does not hold, as the Union market for PSF grew by 6 % and the average sales price in the Union went up as well by 16 %.

(337) The chamber of commerce also commented that due to the economic crisis the demand for specialty PSF fell, while the demand for commodity PSF grew. It is recalled that specialty PSF and commodity PSF have the same physical and chemical characteristics and their end-uses are basically the same. It is recognised that not all product types are interchangeable, but previous investigations and the current investigation established that there is at least a partial interchangeability and overlapping use across the different product types. The argument is therefore dismissed.

5.2.5. **High capacity utilisation**

(338) One government authority submitted that injury, in terms of loss of market share, could not have been caused by subsidised imports in view of the high capacity utilisation rate of the Union industry. The capacity utilisation of the Union industry indeed went up during the period considered, but at no point did it come close to the limits of the available capacity. At its highest peak, which was in the investigation period, the capacity utilisation rate was 85,9 %. This leaves ample margin to further increase production. However, as sales volumes in the Union of Union producers did not follow the upward trend in consumption, the loss in market share is still considered as one of the indicators for the injurious situation of the Union industry.

5.3. CONCLUSION ON CAUSATION

(339) On the basis of the above the Commission considers that it is not possible to establish a causal link between the injurious situation of the Union industry and the subsidised imports from India. This conclusion is firstly based on the relatively low and only slightly increasing market share of the imports from India (from 6,1 % to 6,8 %), as compared to a much higher but still significantly declining market share of the Union industry (from 45,3 % to 40,2 %). Secondly, imports from certain other countries (Korea, Taiwan, China) have been more voluminous and/or more strongly increasing and therefore, if imports have contributed to the injury suffered by the Union industry, this is to be attributed to imports from those countries rather than to imports from India (see recitals 325-327).

(340) The causal link within the meaning of Article 8(5) and (6) of the basic Regulation between the subsidised imports from India, and the material injury suffered by the Union industry could therefore not be established.

6. **CONCLUSION**

(341) The proceeding should therefore be terminated, as subsidy for the People's Republic of China and Vietnam were found to be *de minimis* and due to the lack of a causal link between injury and subsidy insofar as imports originating in India are concerned.

(342) The Committee established by Article 25(1) of the basic Regulation did not deliver an opinion,

HAS ADOPTED THIS DECISION:

Article 1

The anti-subsidy proceeding concerning imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning currently falling within CN codes 5503 20 00 and originating in the People's Republic of China, India and Vietnam is hereby terminated.

Article 2

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

Done at Brussels, 16 December 2014.

For the Commission

The President

Jean-Claude JUNCKER

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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