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Contents

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

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

[1] Text with EEA relevance

Corrigenda

I

(Legislative acts)

DECISIONS

COUNCIL DECISION No 940/2014/EU

of 17 December 2014

concerning the dock dues in the French outermost regions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 349 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament

Acting in accordance with a special legislative procedure,

Whereas:

(1) The provisions of the Treaty, which apply to the outermost regions of the Union, of which the French overseas departments form part, do not authorise, in principle, any difference in taxation between local products and those from metropolitan France or the other Member States. However, Article 349 of the Treaty envisages the possibility of introducing specific measures for those regions because of the existence of permanent handicaps affecting the economic and social situation of the outermost regions.

(2) Such specific measures must take account of the special characteristics and constraints of those regions, without undermining the integrity and the coherence of the Union legal order, including the internal market and common policies. The permanence and combination of handicaps suffered by the outermost regions of the Union as referred to in Article 349 of the Treaty (remoteness, raw-material and energy dependence, the obligation to build up larger stocks, the small size of the local market combined with a low level of export activity, etc.) increase production costs and, therefore, the cost price of goods produced locally, so that without specific measures they would be less competitive than those produced elsewhere, even taking into account the cost of transporting such goods to the French overseas departments. That would make it harder to maintain local production. For this reason, specific measures need to be taken in order to strengthen local industry by making it more competitive. Until 31 December 2014, Council Decision 2004/162/EC [1] authorises France, in order to restore the competitiveness of products produced locally, to apply exemptions or reductions to the dock dues for certain products produced in the outermost regions of Guadeloupe, French Guiana, Martinique, Réunion and, from 1 January 2014, Mayotte. The Annex to that Decision contains the list of products to which the tax exemptions or reductions may be applied. The difference between the taxation of products produced locally and that of other products may not exceed 10, 20 or 30 percentage points, depending on the product.

(3) France has requested that a system similar to that contained in Decision 2004/162/EC be maintained beyond 1 January 2015. France points out that the handicaps listed above are permanent, that the taxation arrangements

[1] Council Decision 2004/162/EC of 10 February 2004 concerning the dock dues in the French overseas departments and extending the period of validity of Decision 89/688/EEC (OJ L 52, 21.2.2004, p. 64).

established by Decision 2004/162/EC have made it possible to maintain and, in some cases, develop local production, and that those arrangements have not constituted an advantage for the beneficiary companies since, overall, imports of products subject to differentiated taxation have continued to increase.

(4) For each of the outermost regions concerned (Guadeloupe, French Guiana, Martinique, Mayotte and Réunion), France has sent the Commission five series of lists of products for which it proposes applying differentiated taxation of 10, 20 or 30 percentage points, depending on whether or not the products are produced locally. The French outermost region of Saint Martin is not affected.

(5) This Decision implements the provisions of Article 349 of the Treaty and authorises France to apply differentiated taxation to the products for which it has been proven: firstly, that local production exists; secondly, that significant importation of goods (including from metropolitan France and other Member States) exists which could jeopardise the continuation of local production; and thirdly, that additional costs exist which increase the cost price of local production in comparison with products produced elsewhere, compromising the competitiveness of products produced locally. The authorised tax differential should not exceed the proven additional costs. Applying those principles would allow the provisions of Article 349 of the Treaty to be implemented without going beyond what is necessary and without creating an unjustified advantage for local production so as not to undermine the integrity and the coherence of the Union legal order, including safeguarding undistorted competition in the internal market and State aid policies.

(6) In order to simplify the obligations of small enterprises, tax exemptions or reductions should affect all operators whose annual turnover is at least EUR 300 000. Operators whose annual turnover is under that threshold should not be subject to dock dues; however, to balance this, they cannot deduct the amount of that tax borne upstream.

(7) Similarly, coherence with Union law means ruling out the application of a tax differential for food products benefiting from aid under Chapter III of Regulation (EU) No 228/2013 of the European Parliament and of the Council ([1]). That provision prevents the effect of the financial aid to agriculture granted under the specific supply arrangements from being cancelled out or reduced by higher taxation of subsidised products by means of dock dues.

(8) The objectives of supporting the social and economic development of the French overseas departments, already provided for in Decision 2004/162/EC, are confirmed by the requirements regarding the purpose of the dock dues. It is a legal obligation that the revenues from the dock dues are to be incorporated into the resources of the French overseas departments' economic and tax regime and allocated to an economic and social development strategy involving aid for promoting local activities.

(9) It is necessary to extend the period of application of Decision 2004/162/EC by a further six months until 30 June 2015. That period would enable France to transpose this Decision into its national law.

(10) The arrangements are to apply for five years and six months, until 31 December 2020, when the current guidelines on regional State aid will also cease to apply. However, the results of applying those arrangements will first have to be assessed. France should, therefore, present, by 31 December 2017, a report on the application of the taxation arrangements introduced, in order to check the impact of the measures taken and their contribution to the maintenance, promotion and development of local economic activities, in the light of the handicaps affecting the outermost regions. The report should check that the tax benefits granted by France to products produced locally do not go beyond what is strictly necessary and that those benefits are still necessary and proportional. The report should also contain an analysis of the impact of the arrangements introduced on prices in the French outermost regions. On the basis of that report, the Commission should submit a report to the Council and, if necessary, a proposal for adapting the provisions of this Decision in the light of the findings.

(11) In order to avoid any kind of legal vacuum, it is necessary for this Decision to apply from 1 July 2015.

(12) This Decision is without prejudice to the possible application of Articles 107 and 108 of the Treaty.

([1]) Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006 (OJ L 78, 20.3.2013, p. 23).

(13) The purpose of this Decision is to establish the legal framework for the dock dues from 1 January 2015. Given this urgency, an exception should be made to the eight-week period laid down in Article 4 of Protocol No 1 on the role of national parliaments in the European Union annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

1. By way of derogation from Articles 28, 30 and 110 of the Treaty, France is authorised, until 31 December 2020, to apply exemptions or reductions to dock dues in respect of the products listed in the Annex which are produced locally in Guadeloupe, French Guiana, Martinique, Mayotte and Réunion, as outermost regions within the meaning of Article 349 of the Treaty.

Those exemptions or reductions must be in keeping with the economic and social development strategy of the outermost regions concerned, taking account of its Union framework, and contribute to the promotion of local activities while not adversely affecting the conditions of trade to an extent contrary to the common interest.

2. With reference to the rate of taxation applied to similar products not originating in the outermost regions concerned, the application of the total exemptions or reductions referred to in paragraph 1 may not result in differences of more than:

(a) 10 percentage points for the products listed in part A of the Annex;

(b) 20 percentage points for the products listed in part B of the Annex;

(c) 30 percentage points for the products listed in part C of the Annex.

France shall undertake to ensure that the exemptions or reductions applied to the products listed in the Annex do not exceed the percentage strictly necessary to maintain, promote and develop local economic activities.

3. France shall apply the tax exemptions or reductions referred to in paragraphs 1 and 2 to operators whose annual turnover is at least EUR 300 000. Operators whose annual turnover is below that threshold shall not be subject to dock dues.

Article 2

The French authorities shall apply the same taxation arrangements as those applied to products produced locally to products that have benefited from the specific supply arrangements under Chapter III of Regulation (EU) No 228/2013.

Article 3

1. France shall immediately notify the Commission of the taxation arrangements referred to in Article 1.

2. France shall submit, by 31 December 2017, a report on the application of the tax arrangements referred to in Article 1 to the Commission, indicating the impact of the measures taken and their contribution to the maintenance, promotion and development of local economic activities, in the light of the handicaps affecting the outermost regions.

On the basis of that report, the Commission shall submit a report to the Council and, if necessary, a proposal for adapting the provisions of this Decision.

Article 4

In Article 1(1) of Decision 2004/162/EC, the date '31 December 2014' is replaced by the date '30 June 2015'.

Article 5

Articles 1 to 3 shall apply from 1 July 2015.

Article 4 shall apply from 1 January 2015.

Article 6

This Decision is addressed to the French Republic.

Done at Brussels, 17 December 2014.

For the Council
The President
G. L. GALLETTI

ANNEX

A. **List of products referred to according to the classification of the Common Customs Tariff nomenclature** [1]

1. Outermost region of Guadeloupe

0105 11, 0201, 0203, 0207, 0208, 0305 49 80, 0702, 0705 19, 0706 10 00 10, 0707 00 05, 0709 60 10, 0709 60 99, 1106, 2103 30 90, 2103 90 30, 2209 00 91, 2505, 2712 10 90, 2804, 2806, 2811, 2814, 2853 00 10, 3808, 4407 10, 4407 21 to 4407 29, 4407 99, 7003 12 99, 7003 19 90, 7003 20, 8419 19.

2. Outermost region of French Guiana

0105 11, 0702, 0709 60, 0805, 0807, 1006 20, 1006 30, 2505 10, 2517 10, 3824 50, 3919, 3920 43, 3920 51, 6810 11, 7215, 7606 except 7606 91, 9405 60.

3. Outermost region of Martinique

0105 11, 0105 12, 0105 15, 0201, 0203, 0207, 0208 10, 0209, 0305, 0403 except 0403 10, 0405, 0706, 0707, 0709 60, 0709 99, 0710 except 0710 90, 0711, 0801 11 to 0801 19, 0802 90, 0803, 0804 30, 0804 50, 0805, 0809 10, 0809 40, 0810 30, 0810 90, 0812, 0813, 0910 91, 1102, 1106 20, 1904 10, 1904 20, 2001, 2005 except 2005 99, 2103 30, 2103 90, 2104 10, 2505, 2710, 2711, 2712, 2804, 2806, 2811 except 2811 21, 2814, 2836, 2853 00 10, 2907, 3204, 3205, 3206, 3207, 3401, 3808, 3820, 4012 11, 4012 12, 4012 19, 4401, 4407 21 to 4407 29, 4408, 4409, 4415 20, 4421 90, 4811, 4820, 6306 12, 6306 19, 6306 30, 6902, 6904 10, 7006, 7003 12, 7003 19, 7113 to 7117, 7225, 7309, 7310 except 7310 21, 7616 91, 7616 99, 8402 90, 8419 19, 8902, 8903 99, 9406.

4. Outermost region of Mayotte

0407, 0702, 0704 90 90, 0705 19, 0709 99 10, 0707 00 05, 0708 90, 0709 30, 0709 60, 0709 93 10, 0709 99 60, 0714, 0801 11, 0801 12, 0801 19, 0803, 0804 30, 0805 10, 0904 11, 0904 12, 0905, 1806, 2309 90 except 2309 90 96, 3925 10 00, 3925 90 80, 3926 90 92, 3926 90 97, 6901, 6902, 9021 21 90.

5. Outermost region of Réunion

0105 11, 0105 12, 0105 13, 0105 15, 0207, 0208 10, 0208 90 30, 0208 90 98, 0209, 0301, 0302, 0303, 0304, 0305, 0403, 0405 except 0405 10, 0406 10, 0406 90, 0407, 0408, 0601, 0602, 0710, 0711 90 10, 0801, 0803, 0804, 0805, 0806, 0807, 0808, 0809, 0810, 0811, 0812, 0813, 0904, 0909 31, 0910 99 99, 1101 00 15, 1106 20, 1108 14, 1604 14, 1604 19, 1604 20, 1701, 1702, 1903, 1904, 2001, 2002 10, 2004 10 10, 2004 10 91, 2004 90 50, 2004 90 98, 2005 10, 2005 20, 2005 40, 2006, 2007 except 2007 99 97 10, 2103 20, 2103 90, 2104, 2201, 2309 90 except 2309 90 35 and 2309 90 96 90, 2710 19 81 to 2710 19 99, 3211, 3214, 3402, 3403 99, 3505 20, 3506 10, 3808 92, 3808 99, 3809, 3811 90, 3814, 3820, 3824, 3921 11, 3921 13, 3921 90 90, 3925 10, 3926 90, 4009, 4010, 4016, 4407 10, 4409 10, 4409 21, 4409 29, 4415 20, 4421, 4811, 4820, 6306, 6801, 6811 89, 7007 29, 7009 except 7009 10, 7312 90, 7314 except 7314 20, 7314 39, 7314 41, 7314 49 and 7314 50, 7606, 8310, 8418 50, 8418 69, 8418 91, 8418 99, 8421 21 to 8421 29, 8471 30, 8471 41, 8471 49, 8537, 8706, 8707, 8708, 8902, 8903 99, 9001, 9021 21 90, 9021 29, 9405, 9406, 9506 21, 9506 29, 9619.

B. **List of products referred to according to the classification of the Common Customs Tariff nomenclature**

1. Outermost region of Guadeloupe

0302, 0306 15, 0306 16, 0306 19, 0307 91, 0307 99, 0403, 0407, 0409, 0807 11, 0807 19, 1601, 1602 41 10, 1604 20 10, 1806 31, 1806 32 10, 1806 32 90, 1806 90 31, 1806 90 60, 1901 20, 1902 11, 1902 19, 1905, 2105, 2106, 2201 90, 2202 10, 2202 90, 2207 10, 2208 40, 2309 90 except 2309 90 31 30, 2309 90 51 and 2309 90 96 90, 2523 29, 2828, 3101, 3102 90, 3103 90, 3104 20, 3105 20, 3208, 3209, 3305 10, 3401, 3402, 3406, 3917 except 3917 10 10, 3919, 3920, 3923, 3924 10, 3925 10, 3925 30, 3925 90, 3926 90, 4418 10, 4418 20, 4418 90, 4818 10, 4818 20, 4818 30, 4818 90, 4821 10, 4821 90, 4823 40, 4823 61, 4823 69, 4823 70 10, 4910, 4911 10, 6303 12, 6303 91, 6303 92 90, 6303 99 90, 6306 12, 6306 19, 6306 30, 6810 except 6810 11 10, 7213 10, 7213 91 10, 7214 20, 7214 99 10, 7308 30, 7308 40, 7308 90 59, 7308 90 98, 7309 00 10, 7310 10,

[1] Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

7310 21 11, 7310 21 19, 7310 29, 7314 except 7314 12, 7610 10, 7610 90 90, 7616 99 90, 9001 40, 9404 10, 9404 21, 9406 00 20.

2. Outermost region of French Guiana

0201, 0203, 0204, 0206 10 95, 0206 10 98, 0206 30, 0206 80 99, 0207 11, 0207 13, 0207 41, 0207 43, 0208 10, 0208 90 10, 0208 90 30, 0209 10 90, 0209 90, 0210 11, 0210 12, 0210 19, 0210 99, 0302, 0303 89, 0304, 0305 39 90, 0305 49 80, 0305 59 80, 0305 69 80, 0306 17, 0403 10, 0406 10, 0406 40, 0406 90, 0901 except 0901 90, 1601, 1602, 1604 11 to 1604 20, 1605 10 to 1605 29, 1605 52 to 1605 54, 1905, 2001 90 10, 2001 90 20, 2001 90 40, 2001 90 70, 2001 90 92, 2001 90 97, 2006 00 10, 2006 00 31, 2006 00 35, 2006 00 38 81, 2006 00 38 89, 2006 00 91, 2006 00 99 99, 2008 11, 2008 99 except 2008 99 48 19, 2008 99 48 99, 2008 99 49 80, 2103, 2105, 2106 90 98, 2201, 2202, 2208 40, 2309 90 except 2309 90 96 90, 2309 90 96 30, 2309 90 31 30, 2309 90 35, 2309 90 43, 2309 90 41 20, 2309 90 41 80 and 2309 90 51, 2828 90, 3208 90, 3209 10, 3402, 3809 91, 3923 except 3923 10, 3923 40 and 3923 90, 3925, 3926 90, 4201, 4817, 4818, 4819 40, 4819 50, 4819 60, 4820 10, 4821 10, 4823 69, 4823 90 85, 4905 91, 4905 99, 4909, 4910, 4911, 5907, 6109, 6205, 6206, 6306 12, 6306 19, 6307 90 98, 6802 23, 6802 29, 6802 93, 6802 99, 6810 19, 6815, 7006 00 90, 7009, 7210, 7214 20, 7214 99, 7216, 7301, 7306, 7308 10, 7308 30, 7308 90, 7309, 7310 except 7310 21 11 and 7310 21 19, 7314, 7326 90 98, 7411, 7412, 7604, 7607, 7610 10, 7610 90, 7612 10, 7612 90 30, 7612 90 80, 7616 91, 7616 99, 7907, 8211, 8421 21 00 90, 8537 10, 9404 21, 9405 20, 9405 40.

3. Outermost region of Martinique

0210 11, 0210 12, 0210 19, 0210 20, 0210 99 41, 0210 99 49, 0210 99 51, 0210 99 59, 0302, 0303, 0304, 0306, 0307, 0403 10, 0406 10, 0406 90 50, 0407, 0408 99, 0409, 0601, 0602, 0603, 0604, 0702, 0704 90, 0705, 0710 90, 0807, 0811, 1601, 1602, 1604 20, 1605 10, 1605 21, 1605 62, 1702, 1704 90 61, 1704 90 65, 1704 90 71, 1806, 1902, 2005 99, 2105, 2106, 2201, 2202 10, 2202 90, 2208 40, 2309 except 2309 90 96 30, 2517 10, 2523 21, 2523 29, 2811 21, 2828 10, 2828 90, 3101, 3102, 3103, 3104, 3105, 3208, 3209, 3210, 3211, 3212, 3213, 3214, 3215, 3303, 3304, 3305, 3402, 3406, 3917, 3919, 3920, 3921 11, 3921 19, 3923 21, 3923 29, 3923 30, 3924, 3925, 3926 10, 3926 30, 3926 90 92, 4418 10, 4418 20, 4418 90, 4818 10, 4818 20, 4818 30, 4818 90, 4819, 4821, 4823, 4902, 4907 00 90, 4909, 4910, 4911 10, 6103, 6104, 6105, 6107, 6109 10, 6109 90 20, 6109 90 90, 6203, 6204, 6205, 6207, 6208, 6805, 6810 11, 6810 19, 6810 91, 6811 81, 6811 82, 7015 10, 7213, 7214, 7217, 7308, 7314, 7610, 8421 21, 8708 21 90, 8708 99 97, 8716 40, 8901 90 10, 9021 21, 9021 29, 9401 30, 9401 51, 9401 59, 9401 69, 9401 71, 9401 79, 9401 90, 9403, 9404 10, 9404 21, 9405 60.

4. Outermost region of Mayotte

0301, 0302, 0303, 0304, 0305, 4407, 4409, 4414, 4418, 4419, 4420, 4421, 4819, 4821, 4902, 4909, 4910, 4911, 7003, 7005, 7210, 7212 30, 7216 61 90, 7216 91 10, 7301, 7308 30, 7312, 7314, 7326 90 98, 7606, 7610 10, 8310, 9401 69, 9401 90 30, 9403 20 80, 9403 40, 9406 00 31, 9406 00 38.

5. Outermost region of Réunion

0306 11, 0306 16, 0306 17, 0306 21, 0306 26, 0306 27, 0307 11, 0307 19, 0307 59, 0409, 0603, 0604 20 40, 0604 90 91, 0604 90 99, 0709 60, 0901 21, 0901 22, 0910 11, 0910 12, 0910 30, 0910 91 10, 0910 91 90, 1516 20, 1601, 1602, 1605, 1704, 1806, 1901, 1902, 1905, 2005 51, 2005 59, 2005 99 10, 2005 99 30, 2005 99 50, 2005 99 80, 2008 except 2008 19 19 80, 2008 30 55 90, 2008 40 51 90, 2008 40 59 90, 2008 50 61 90, 2008 60 50 90, 2008 70 61 90, 2008 80 50 90, 2008 97 59 90 and 2008 99 49 80, 2105, 2106 90, 2208 40, 2309 10, 3208, 3209, 3210, 3212, 3301 12, 3301 13, 3301 24, 3301 29, 3301 30, 3401 11, 3917, 3920, 3921 90 60, 3923, 3925 20, 3925 30, 4012, 4418, 4818 10, 4819 10, 4819 20, 4821, 4823 70, 4823 90, 4909, 4910, 4911 10, 4911 91, 7216 61 10, 7308 except 7308 90, 7309, 7310, 7314 20, 7314 39, 7314 41, 7314 49, 7314 50, 7326, 7608, 7610, 7616 91, 7616 99 90, 8419 19, 8528 51, 8528 71, 8528 72, 8528 73, 9401 except 9401 10 and 9401 20, 9403, 9404 10, 9506 99 90.

C. **List of products referred to according to the classification of the Common Customs Tariff nomenclature**

1. Outermost region of Guadeloupe

0901 21, 0901 22, 1006 30, 1006 40, 1101, 1701, 2007, 2009 except 2009 11 99 98, 2009 49 99 90, 2009 79 19 90, 2009 89 69 90, 2009 89 73 90, 2009 89 97 99, 2009 90 59 39 and 2009 90 59 90, 2208 70 ([1]), 2208 90 ([1]), 7009 91, 7009 92.

([1]) Only rum-based products under heading 2208 40.

2. Outermost region of French Guiana

1702, 2007, 2009 except 2009 11 99 98, 2009 31 19 99, 2009 49 99 90, 2009 89 36 90, 2009 81 99 90 and 2009 90 98 80, 2203, 2208 70 [1], 2208 90 [1], 4403 49, 4403 99 95, 4407 22, 4407 29, 4407 99 96, 4409 29 91, 4409 29 99, 4418 10 10, 4418 10 90, 4418 20 10, 4418 20 80, 4418 40, 4418 50, 4418 60, 4418 90, 4420 10, 9403 40 10, 9406 00 11, 9406 00 20, 9406 00 38.

3. Outermost region of Martinique

0901 21, 0901 22, 1006 30, 1006 40, 1101 00 11, 1101 00 15, 1701, 1901, 1905, 2006 00 10, 2006 00 35, 2006 00 91, 2007 except 2007 10 99 15, 2007 99 33 15, and 2007 99 39 29, 2008 except 2008 20 51, 2008 50 61 90, 2008 60 50 10, 2008 80 50 90, 2008 93 93 90, 2008 97 51 90, 2008 97 59 90, 2008 99 48 94, 2008 99 48 99, 2008 99 49 80 and 2008 99 99 90, 2009 except 2009 11 99 96, 2009 11 99 98, 2009 19 98 99, 2009 29 99 90, 2009 39 39 19, 2009 39 39 99, 2009 49 30 91, 2009 49 30 99, 2009 49 91 90, 2009 69 51 10, 2009 79 11 91, 2009 79 11 99, 2009 89 97 99 [2], 2009 89 99 99 [2] and 2009 90 59 90 [2], 2203, 2204 29, 2205, 2208 70 [1], 2208 90 [1], 7009 91, 7009 92, 7212 30, 9001 40.

4. Outermost region of Mayotte

0401, 0403, 0406, 1601, 1602, 1901, 1905, 2105, 2201, 2202, 2203, 3301 29 11, 3301 29 31, 3401, 3402, 9404 29 90.

5. Outermost region of Réunion

0905 10, 1512 19, 1514 19 90, 1515 29, 2009 except 2009 11 99 96, 2009 19 98 99, 2009 29 99 90, 2009 39 31 19, 2009 69 19 10, 2009 69 51 10, 2009 79 19 90, 2009 79 98 20, 2009 89 69 90 [1], 2009 89 73 90, 2009 89 97 99 [1], 2009 89 99 99 [1], 2009 90 51 80 and 2009 90 59 [1], 2202 10, 2202 90, 2203, 2204 21 79, 2204 21 80, 2204 21 83, 2204 21 84, 2204 29 83, 2204 29 84, 2206 00 59, 2206 00 89, 2208 70 [2], 2208 90 [2], 2402 20, 7113, 7114, 7115, 7117, 7308 90, 9404 21 10, 9404 21 90, 9404 29 10, 9404 29 90.

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[1] Only rum-based products under heading 2208 40.
[2] Where the Brix value of the produce is higher than 20.

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 27 June 2013

on the conclusion of the Agreement between the European Union and Canada on customs cooperation with respect to matters related to supply chain security

(2014/941/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4) first subparagraph, in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) The Union and Canada should expand their customs cooperation to cover matters of supply chain security and related risk management with a view to increasing end-to-end supply chain security and at the same time facilitating legitimate trade.

(2) In accordance with Council Decision 2012/643/EU [1], the Agreement between the European Union and Canada on customs cooperation with respect to matters related to supply chain security (the 'Agreement') was signed on 4 March 2013, subject to its conclusion.

(3) The position to be adopted by the Union within the EU-Canada Joint Customs Cooperation Committee (JCCC), when called upon to adopt acts having legal effects, should be decided in accordance with the procedure set out in Article 218(9) of the Treaty on the Functioning of the European Union. Where necessary, other positions to be taken by the Union within the JCCC should be established by the Council in accordance with Article 16 of the Treaty on European Union.

(4) The Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and Canada on customs cooperation with respect to matters related to supply chain security (the 'Agreement') is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

[1] OJ L 287, 18.10.2012, p. 1.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to the notification provided for in Article 9 of the Agreement, in order to express the consent of the Union to be bound by the Agreement ([1]).

Article 3

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

Done at Brussels, 27 June 2013.

For the Council
The President
E. GILMORE

([1]) The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT

between the European Union and Canada on customs cooperation with respect to matters related to supply-chain security

THE EUROPEAN UNION and CANADA, (the 'Contracting Parties'),

RECOGNIZING the need to increase end-to-end supply-chain security for Canada and the European Union and at the same time facilitate legitimate trade;

ACKNOWLEDGING the long-standing, close and productive relations between the Customs Authorities of Canada and of the European Union;

RECOGNIZING that these relations can be improved by closer cooperation on container security and other matters related to supply-chain security based, to the greatest extent practicable, on mutual recognition of risk management techniques, risk standards, security controls and trade partnership programmes;

AIMING to provide a framework to explore future cooperative means to enhance supply-chain security practices that would increase customs related efficiencies to ensure end-to-end supply-chain security and to facilitate legitimate trade for the benefit of their respective trade communities;

AIMING to develop a strategy that allows Canada and the European Union to cooperate in the area of cargo inspection;

BUILDING upon the core elements of the World Customs Organization's SAFE Framework of Standards to Secure and Facilitate Global Trade;

REFERRING to the Agreement between the European Community and Canada on Customs Cooperation and Mutual Assistance in Customs Matters, which entered into force on 1 January 1998 (the 'CMAA'), and desiring to expand the scope of that Agreement by means of an agreement on a specific matter, in accordance with Article 23 of the CMAA;

ACKNOWLEDGING that a Joint Customs Cooperation Committee (the 'JCCC') was established under Article 20 of the CMAA to see to the proper functioning of the CMAA and, inter alia, take the measures necessary for customs co-operation in accordance with the objectives of the CMAA and for the expansion of the CMAA with a view to increasing the level of customs cooperation and supplementing it on specific sectors or matters;

HAVE AGREED ON THE FOLLOWING:

Article 1

For the purpose of this Agreement, 'Customs Authority' means:

— in the European Union: the competent services of the European Commission and the customs authorities of the Member States of the European Union;

— in Canada: the governmental administration designated by Canada as responsible for administering its customs laws.

Article 2

The Contracting Parties shall cooperate on matters of supply-chain security and related risk management.

Article 3

The Contracting Parties shall manage this cooperation through their respective Customs Authorities.

Article 4

The Contracting Parties shall cooperate by:

(a) reinforcing the customs-related aspects of securing the logistics chain of international trade while at the same time facilitating legitimate trade;

(b) establishing minimum standards, to the extent practicable, for risk management techniques and related requirements and programmes;

(c) working towards and, where appropriate, establishing mutual recognition of risk management techniques, risk standards, security controls, supply-chain security and trade partnership programmes including equivalent trade facilitation measures;

(d) exchanging information for supply-chain security and risk management; any exchange of information under this Agreement shall be subject to the confidentiality of information and personal data protection requirements set out in Article 16 of the CMAA as well as any confidentiality and privacy requirements set out in the legislation of the Contracting Parties;

(e) establishing contact points for exchanging information for supply-chain security;

(f) introducing, where appropriate, an interface for data exchange, including for pre-arrival or pre-departure data;

(g) developing a strategy that allows the customs authorities to cooperate in the area of cargo inspection;

(h) collaborating, to the extent practicable, in any multilateral fora where issues related to supply-chain security may be appropriately raised and discussed.

Article 5

The JCCC, established under Article 20 of the CMAA, shall see to the proper functioning of this Agreement and shall examine all issues arising from its application. It shall be empowered to adopt decisions to implement this Agreement in accordance with the respective domestic legislation of the Contracting Parties, on aspects, such as data transmission and mutually agreed benefits, of: mutual recognition of risk management techniques, risk standards, security controls and trade partnership programmes.

Article 6

The JCCC shall set up the appropriate working mechanisms, including working groups, to support its work to implement this Agreement and to address in particular the following aspects:

(a) identifying any regulatory or legislative changes required to implement this Agreement;

(b) identifying and establishing measures to enhance information exchange mechanisms;

(c) identifying and establishing best practices, including best practices for the harmonization of advance electronic cargo information requirements with international standards on inbound, outbound and transit shipments;

(d) defining and establishing risk analysis standards for the information required to identify high-risk shipments imported into, transhipped through, or transiting Canada and the European Union;

(e) defining and establishing measures to harmonize risk assessment standards;

(f) defining minimum control standards and methods by which those standards may be met;

(g) improving and establishing standards for trade partnership programmes designed to improve supply-chain security and facilitate the movement of legitimate trade;

(h) defining and carrying out concrete steps to establish mutual recognition of risk management techniques, risk standards, security controls and trade partnership programmes including equivalent trade facilitation measures.

Article 7

1. If difficulties or disputes arise between the Contracting Parties regarding the implementation of this Agreement, the Customs Authorities of the Contracting Parties shall endeavour to resolve the matter through consultation and discussion.

2. The Contracting Parties may also consent to other forms of dispute resolution.

Article 8

1. This Agreement may be amended by agreement in writing of the Contracting Parties.

2. An amendment shall enter into force 90 days after the date on which the second notification is sent, through an exchange of notes through diplomatic channels, indicating that the Contracting Parties have completed their respective internal procedures required for its entry into force.

Article 9

This Agreement shall enter into force on the first day of the month following the date on which the Contracting Parties have notified each other of the completion of the procedures necessary to bring this Agreement into force.

Article 10

1. This Agreement shall remain in force for an unlimited period of time.

2. A Contracting Party may terminate this Agreement by serving a notice of termination through diplomatic channels on the other Contracting Party.

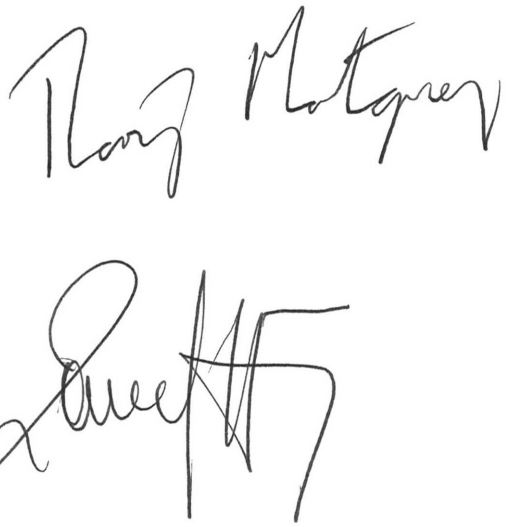
3. This termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination.

4. If this Agreement is terminated, any decisions of the JCCC will remain in effect, unless the Contracting Parties decide otherwise.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

Done at Brussels, in two original copies, this 4th day of March 2013, in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish languages, each version being equally authentic.

За Европейския съюз
Por la Unión Europea
Za Evropskou unii
For Den Europæiske Union
Für die Europäische Union
Euroopa Liidu nimel
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Per l'Unione europea
Eiropas Savienības vārdā –
Europos Sąjungos vardu
Az Európai Unió részéről
Għall-Unjoni Ewropea
Voor de Europese Unie
W imieniu Unii Europejskiej
Pela União Europeia
Pentru Uniunea Europeană
Za Európsku úniu
Za Evropsko unijo
Euroopan unionin puolesta
För Europeiska unionen



За Канада
Por Canadá
Za Kanadu
For Canada
Für Kanada
Kanada nimel
Για τον Καναδά
For Canada
Pour le Canada
Per il Canada
Kanādas vārdā –
Kanados vardu
Kanada részéről
Għall-Kanada
Voor Canada
W imieniu Kanady
Pelo Canadá
Pentru Canada
Za Kanadu
Za Kanado
Kanadan puolesta
För Kanada

REGULATIONS

COUNCIL REGULATION (EU, Euratom) No 1377/2014

of 18 December 2014

amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 2007/436/EC, Euratom on the system of the European Communities' own resources

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 322(2) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Court of Auditors ([1]),

Whereas:

(1) Pursuant to Article 10(4) to (8) of Council Regulation (EC, Euratom) No 1150/2000 ([2]), the Commission is to calculate and inform Member States of adjustments to the own resources based on value added tax referred to in point (b) of Article 2(1) of Council Decision 2007/436/EC, Euratom ([3]) ('VAT resource') and on gross national income (GNI) referred to in point (c) of Article 2(1) of that Decision ('additional resource') in time for them to enter these adjustments in the Commission's account referred to in Article 9(1) of Regulation (EC, Euratom) No 1150/2000 on the first working day of December.

(2) Under exceptional circumstances, these adjustments may result in very high amounts which may exceed substantially, as regards some Member States, two monthly twelfths to be made available as VAT resources and the additional resource, and in total, for all Member States, half of aggregate monthly twelfths.

(3) For some Member States the obligation to make available such high amounts may represent a high financial burden which may cause a severe fiscal strain on those Member States, particularly towards the end of the year.

(4) Therefore, Member States should have the possibility to request the postponement of the making available of these amounts until the first working day of September of the following year if certain conditions are met.

(5) Without prejudice to the existing obligation to make available the requested amounts to the Commission account, any Member State which decides to apply this option should transmit a request to the Commission, well in advance of the first working day of December, containing the date or dates of making available the adjustments, in order to allow an efficient management of the Union's cash requirements. Any delay in making available those adjustments on the date or dates communicated to the Commission should give rise to interest under the conditions of Article 11 of Regulation (EC, Euratom) No 1150/2000.

(6) The amounts to be made available on the first working day of December 2014 as a result of adjustments are of an unprecedented size, a situation that could not have been foreseen when Regulation (EC, Euratom) No 1150/2000 was adopted.

([1]) Opinion of 27 November 2014 (not yet published in the Official Journal).
([2]) Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/EC, Euratom on the system of the European Communities' own resources (OJ L 130, 31.5.2000, p. 1).
([3]) Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources (OJ L 163, 23.6.2007, p. 17).

(7) In order to prevent this exceptional and unforeseen situation from creating unreasonably heavy budgetary constraints on Member States just before the year-end, the option provided for in this Regulation should be applicable for adjustments which, pursuant to Regulation (EC, Euratom) No 1150/2000, had to be entered in the Commission's accounts on the first working day of December 2014. In this regard, the Member States wishing to benefit from that option have already transmitted a formal request with a payment schedule to the Commission before the first working day of December 2014.

(8) Regulation (EC, Euratom) No 1150/2000 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 10 of Regulation (EC, Euratom) No 1150/2000, the following paragraph is inserted:

'7a. Notwithstanding the rules laid down in paragraphs 4 to 7 of this Article, a Member State may, by formal request to the Commission, enter in the account referred to in Article 9(1) amounts to be credited to the Commission pursuant to those paragraphs until the first working day of September of the following year, if one of the following conditions is fulfilled:

(a) the Member State concerned would have to enter in the account referred to in Article 9(1) on the first working day of December an amount exceeding two twelfths of the total for that Member State in the budget for VAT resources and the additional resource, as referred to in paragraph 3, first subparagraph, of this Article, as applicable on 15 November of the same year, or

(b) Member States in total would have to enter in the account referred to in Article 9(1) on the first working day of December a total amount exceeding one half of a twelfth of the total in the budget for VAT resources and the additional resource, as referred to in paragraph 3, first subparagraph, of this Article and applying the exchange rates defined in that subparagraph, as applicable on 15 November of the same year.

Member States may only apply the first subparagraph of this paragraph if they have transmitted the formal request to the Commission before the first working day of December with a payment schedule, containing the date or dates of entry of the amount of the adjustments in the account referred to in Article 9(1).

Upon receipt of a formal request the Commission shall confirm that the conditions set out in point (a) or (b) of the first subparagraph and in the second subparagraph have been fulfilled and shall notify the Member States accordingly.

Any delay in entering the amount of the adjustments in the account referred to in Article 9(1) on the date or dates communicated to the Commission under the second subparagraph of this paragraph shall give rise to the payment of interest by the Member State concerned under the conditions set out in Article 11.'.

Article 2

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

It shall apply to amounts to be entered into the accounts referred to in Article 9(1) of Regulation (EC, Euratom) No 1150/2000 after 30 November 2014.

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

Done at Brussels, 18 December 2014.

For the Council

The President

S. GOZI

COMMISSION DELEGATED REGULATION (EU) No 1378/2014

of 17 October 2014

amending Annex I to Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Annexes II and III to Regulation (EU) No 1307/2013 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 ([1]), and in particular Article 58(7) thereof,

Having regard to Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 ([2]), and in particular Articles 6(3) and 7(3) thereof,

Whereas:

(1) In accordance with Article 11(6) of Regulation (EU) No 1307/2013, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Ireland, Greece, Spain, Italy, Cyprus, Latvia, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia, Finland, Sweden and the United Kingdom notified the Commission by 1 August 2014 of their decisions taken under Article 11 of that Regulation, including the estimated product of reductions for the calendar years 2015 to 2019.

(2) In accordance with Article 7(2) of Regulation (EU) No 1307/2013, the estimated product of the reduction of payments notified by Member States and referred to in Article 11(6) of that Regulation is to be made available as Union support for measures under rural development programming. As a result, Annex I to Regulation (EU) No 1305/2013 and Annex III to Regulation (EU) No 1307/2013 need to be adapted according to the amounts notified by Member States.

(3) In addition, in certain cases the product of the reduction of payments may be null due, in particular, to the structures of agricultural holdings in Member States and the anticipated distribution of direct payments and the possibility for Member States to apply Article 11(2) of Regulation (EU) No 1307/2013. Accordingly, Belgium, Luxembourg, Malta, Austria, Slovenia and Finland notified the Commission of their estimated product of reduction which is null for all the calendar years 2015 to 2019.

(4) Belgium, Germany, France, Croatia, Lithuania and Romania have decided to make use of Article 11(3) of Regulation (EU) No 1307/2013.

(5) In accordance with Article 136a(1) of Council Regulation (EC) No 73/2009 ([3]) and Article 14(1) of Regulation (EU) No 1307/2013, Belgium, the Czech Republic, Denmark, Germany, Estonia, Greece, the Netherlands and Romania notified the Commission by 1 August 2014 of their decision to transfer a certain percentage of their annual national ceilings for calendar years 2015 to 2019 to rural development programming financed under the European Agricultural Fund for Rural Development (EAFRD) as specified in Regulation (EU) No 1305/2013.

(6) In accordance with the third subparagraph of Article 136a(2) of Regulation (EC) No 73/2009 and Article 14(2) of Regulation (EU) No 1307/2013, Hungary notified the Commission by 1 August 2014 of its decision to transfer to direct payments a certain percentage of the amount allocated to support for measures under rural development programming financed under the EAFRD in the period of 2016 to 2020 as specified in Regulation (EU) No 1305/2013.

([1]) OJ L 347, 20.12.2013, p. 487.
([2]) OJ L 347, 20.12.2013, p. 608.
([3]) Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ L 30, 31.1.2009, p. 16).

(7) Annex I to Regulation (EU) No 1305/2013 and Annexes II and III to Regulation (EU) No 1307/2013 should therefore be amended accordingly,

(8) As this Regulation is essential for a smooth and timely adoption of rural development programmes, it is appropriate that it enters into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) No 1305/2013 is replaced by the text in Annex I to this Regulation.

Article 2

Annexes II and III to Regulation (EU) No 1307/2013 are replaced by the text Annex II to this Regulation.

Article 3

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, 17 October 2014.

For the Commission
The President
José Manuel BARROSO

ANNEX I

'ANNEX I

BREAKDOWN OF UNION SUPPORT FOR RURAL DEVELOPMENT (2014 TO 2020)

(current prices in EUR)

	2014	2015	2016	2017	2018	2019	2020	TOTAL 2014-2020
Belgium	78 342 401	78 499 837	91 078 375	97 175 076	97 066 202	102 912 713	102 723 155	647 797 759
Bulgaria	335 499 038	335 057 822	337 270 538	340 409 994	339 966 052	339 523 306	338 990 216	2 366 716 966
Czech Republic	314 349 445	312 969 048	345 955 782	344 509 078	343 033 490	323 242 050	321 615 103	2 305 673 996
Denmark	90 287 658	90 168 920	136 397 742	144 868 072	153 125 142	152 367 537	151 588 619	918 803 690
Germany	1 221 378 847	1 219 851 936	1 407 185 642	1 404 073 302	1 400 926 899	1 397 914 658	1 394 588 766	9 445 920 050
Estonia	103 626 144	103 651 030	111 192 345	122 865 093	125 552 583	127 277 180	129 177 183	823 341 558
Ireland	313 148 955	313 059 463	313 149 965	313 007 411	312 891 690	312 764 355	312 570 314	2 190 592 153
Greece	605 051 830	604 533 693	705 210 906	703 471 245	701 719 722	700 043 071	698 261 326	4 718 291 793
Spain	1 187 488 617	1 186 425 595	1 186 659 141	1 185 553 005	1 184 419 678	1 183 448 718	1 183 394 067	8 297 388 821
France	1 404 875 907	1 635 877 165	1 663 306 545	1 665 777 592	1 668 304 328	1 671 324 729	1 675 377 983	11 384 844 249
Croatia	332 167 500	282 342 500	282 342 500	282 342 500	282 342 500	282 342 500	282 342 500	2 026 222 500
Italy	1 480 213 402	1 483 373 476	1 491 492 990	1 493 380 162	1 495 583 530	1 498 573 799	1 501 763 408	10 444 380 767
Cyprus	18 895 839	18 893 552	18 897 207	18 894 801	18 892 389	18 889 108	18 881 481	132 244 377
Latvia	138 327 376	150 968 424	153 066 059	155 139 289	157 236 528	159 374 589	161 491 517	1 075 603 782
Lithuania	230 392 975	230 412 316	230 431 887	230 451 686	230 472 391	230 483 599	230 443 386	1 613 088 240
Luxembourg	14 226 474	14 272 231	14 318 896	14 366 484	14 415 051	14 464 074	14 511 390	100 574 600

(current prices in EUR)

	2014	2015	2016	2017	2018	2019	2020	TOTAL 2014-2020
Hungary	495 668 727	495 016 871	489 265 618	488 620 684	488 027 342	487 402 356	486 662 895	3 430 664 493
Malta	13 880 143	13 965 035	13 938 619	13 914 927	13 893 023	13 876 504	13 858 647	97 326 898
Netherlands	87 118 078	87 003 509	118 496 585	118 357 256	118 225 747	118 107 797	117 976 388	765 285 360
Austria	557 806 503	559 329 914	560 883 465	562 467 745	564 084 777	565 713 368	567 266 225	3 937 551 997
Poland	1 569 517 638	1 175 590 560	1 193 429 059	1 192 025 238	1 190 589 130	1 189 103 987	1 187 301 202	8 697 556 814
Portugal	577 031 070	577 895 019	578 913 888	579 806 001	580 721 241	581 637 133	582 456 022	4 058 460 374
Romania	1 149 848 554	1 148 336 385	1 176 689 135	1 186 544 149	1 184 725 381	1 141 925 604	1 139 927 194	8 127 996 402
Slovenia	118 678 072	119 006 876	119 342 187	119 684 133	120 033 142	120 384 760	120 720 633	837 849 803
Slovakia	271 154 575	213 101 979	215 603 053	215 356 644	215 106 447	214 844 203	214 524 943	1 559 691 844
Finland	335 440 884	336 933 734	338 456 263	340 009 057	341 593 485	343 198 337	344 776 578	2 380 408 338
Sweden	257 858 535	258 014 757	249 223 940	249 386 135	249 552 108	249 710 989	249 818 786	1 763 565 250
United Kingdom	667 773 873	752 322 030	755 698 156	755 518 938	755 301 511	756 236 113	756 815 870	5 199 666 491
Total EU-28	13 970 049 060	13 796 873 677	14 297 896 488	14 337 975 697	14 347 801 509	14 297 087 137	14 299 825 797	99 347 509 365
Technical assistance	34 130 699	34 131 977	34 133 279	34 134 608	34 135 964	34 137 346	34 138 756	238 942 629
Total	14 004 179 759	13 831 005 654	14 332 029 767	14 372 110 305	14 381 937 473	14 331 224 483	14 333 964 553	99 586 451 994’

ANNEX II

'ANNEX II

National ceilings referred to in Article 6

(in thousand EUR)

Calendar year	2015	2016	2017	2018	2019	2020
Belgium	523 658	509 773	502 095	488 964	481 857	505 266
Bulgaria	721 251	792 449	793 226	794 759	796 292	796 292
Czech Republic	844 854	844 041	843 200	861 708	861 698	872 809
Denmark	870 751	852 682	834 791	826 774	818 757	880 384
Germany	4 912 772	4 880 476	4 848 079	4 820 322	4 792 567	5 018 395
Estonia	114 378	114 562	123 704	133 935	143 966	169 366
Ireland	1 215 003	1 213 470	1 211 899	1 211 482	1 211 066	1 211 066
Greece	1 921 966	1 899 160	1 876 329	1 855 473	1 834 618	1 931 177
Spain	4 842 658	4 851 682	4 866 665	4 880 049	4 893 433	4 893 433
France	7 302 140	7 270 670	7 239 017	7 214 279	7 189 541	7 437 200
Croatia [1]	183 035	202 065	240 125	278 185	316 245	304 479
Italy	3 902 039	3 850 805	3 799 540	3 751 937	3 704 337	3 704 337
Cyprus	50 784	50 225	49 666	49 155	48 643	48 643
Latvia	181 044	205 764	230 431	255 292	280 154	302 754
Lithuania	417 890	442 510	467 070	492 049	517 028	517 028
Luxembourg	33 604	33 546	33 487	33 460	33 432	33 432
Hungary	1 345 746	1 344 461	1 343 134	1 343 010	1 342 867	1 269 158
Malta	5 241	5 241	5 242	5 243	5 244	4 690
Netherlands	749 315	736 840	724 362	712 616	700 870	732 370
Austria	693 065	692 421	691 754	691 746	691 738	691 738
Poland	3 378 604	3 395 300	3 411 854	3 431 236	3 450 512	3 061 518
Portugal	565 816	573 954	582 057	590 706	599 355	599 355
Romania	1 599 993	1 772 469	1 801 335	1 872 821	1 903 195	1 903 195
Slovenia	137 987	136 997	136 003	135 141	134 278	134 278
Slovakia	438 299	441 478	444 636	448 155	451 659	394 385
Finland	523 333	523 422	523 493	524 062	524 631	524 631
Sweden	696 890	697 295	697 678	698 723	699 768	699 768
United Kingdom	3 173 324	3 179 880	3 186 319	3 195 781	3 205 243	3 591 683

[1] For Croatia, the national ceiling for calendar year 2021 shall be EUR 342 539 000 and for 2022 shall be EUR 380 599 000.

ANNEX III

Net ceilings referred to in Article 7

(in million EUR)

Calendar year	2015	2016	2017	2018	2019	2020
Belgium	523,7	509,8	502,1	489,0	481,9	505,3
Bulgaria	720,9	788,8	789,6	791,0	792,5	798,9
Czech Republic	840,1	839,3	838,5	856,7	856,7	872,8
Denmark	870,2	852,2	834,3	826,3	818,3	880,4
Germany	4 912,8	4 880,5	4 848,1	4 820,3	4 792,6	5 018,4
Estonia	114,4	114,5	123,7	133,9	143,9	169,4
Ireland	1 214,8	1 213,3	1 211,8	1 211,4	1 211,0	1 211,1
Greece	2 109,8	2 087,0	2 064,1	2 043,3	2 022,4	2 119,0
Spain	4 902,3	4 911,3	4 926,3	4 939,7	4 953,1	4 954,4
France	7 302,1	7 270,7	7 239,0	7 214,3	7 189,5	7 437,2
Croatia [1]	183,0	202,1	240,1	278,2	316,2	304,5
Italy	3 897,1	3 847,3	3 797,2	3 750,0	3 702,4	3 704,3
Cyprus	50,8	50,2	49,7	49,1	48,6	48,6
Latvia	181,0	205,7	230,3	255,0	279,8	302,8
Lithuania	417,9	442,5	467,1	492,0	517,0	517,0
Luxembourg	33,6	33,5	33,5	33,5	33,4	33,4
Hungary	1 276,7	1 275,5	1 274,1	1 274,0	1 273,9	1 269,2
Malta	5,2	5,2	5,2	5,2	5,2	4,7
Netherlands	749,2	736,8	724,3	712,5	700,8	732,4
Austria	693,1	692,4	691,8	691,7	691,7	691,7
Poland	3 359,2	3 375,7	3 392,0	3 411,2	3 430,2	3 061,5
Portugal	565,9	574,0	582,1	590,8	599,4	599,5
Romania	1 600,0	1 772,5	1 801,3	1 872,8	1 903,2	1 903,2
Slovenia	138,0	137,0	136,0	135,1	134,3	134,3
Slovakia	435,5	438,6	441,8	445,2	448,7	394,4
Finland	523,3	523,4	523,5	524,1	524,6	524,6
Sweden	696,8	697,2	697,6	698,7	699,7	699,8
United Kingdom	3 169,8	3 176,3	3 182,7	3 191,4	3 200,8	3 591,7’

[1] For Croatia, the net ceiling for calendar year 2021 shall be EUR 342 539 000 and for 2022 shall be EUR 380 599 000.

COMMISSION IMPLEMENTING REGULATION (EU) No 1379/2014

of 16 December 2014

imposing a definitive countervailing duty on imports of certain filament glass fibre products originating in the People's Republic of China and amending Council Implementing Regulation (EU) No 248/2011 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ([1]), and in particular Article 15 thereof, and Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ([2]), and in particular Articles 9(4) and 11(3) thereof,

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Council Implementing Regulation (EU) No 248/2011 ([3]), the Council imposed a definitive anti-dumping duty on imports of certain continuous filament glass fibre products currently falling within CN codes 7019 11 00, ex 7019 12 00 and 7019 31 00 and originating in the People's Republic of China.

2. Initiation of the anti-subsidy investigation

(2) On 12 December 2013, the European Commission (the Commission), announced the initiation of an anti-subsidy proceeding with regard to imports into the European Union of certain filament glass fibre products originating in the People's Republic of China ('the PRC' or 'the country concerned') by a notice published in the *Official Journal of the European Union* (the Notice of Initiation of the anti-subsidy investigation) ([4]).

(3) The investigation was initiated by the Commission following a complaint lodged on 28 October 2013 by the European Glass Fibre Producers Association (APFE) (the complainant) on behalf of producers representing more than 25 % of the total Union production of certain filament glass fibre products. The complaint contained prima facie evidence of subsidisation of certain filament glass fibre products and of material injury caused by it, which the Commission considered sufficient to justify the initiation of an investigation.

(4) In accordance with Article 10(7) of Regulation (EC) No 597/2009 (the basic anti-subsidy Regulation), the Commission notified the government of the PRC prior to the initiation of the investigation that it had received a properly documented complaint alleging that subsidised imports of certain filament glass fibre products originating in the PRC were causing material injury to the Union industry. The Commission invited the government of the PRC for consultations with the aim of clarifying the situation as regards the content of the complaint and arriving at a mutually agreed solution.

(5) The government of the PRC accepted the offer for consultations which were subsequently held on 5 December 2013. During the consultations, no mutually agreed solution could be found. However, the Commission took due note of comments made by the government of the PRC regarding the schemes listed in the complaint. Following the consultations, a written submission was received from the government of the PRC on 9 December 2013.

([1]) OJ L 188, 18.7.2009, p. 93.
([2]) OJ L 343, 22.12.2009, p. 51.
([3]) Implementing Regulation (EU) No 248/2011 of 9 March 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain continuous filament glass fibre products originating in the People's Republic of China (OJ L 67, 15.3.2011, p. 1).
([4]) Notice of Initiation of an anti-subsidy proceeding concerning imports of certain filament glass fibre products originating in the People's Republic of China (OJ C 362, 12.12.2013, p. 66).

(6) Additional consultations were offered to the government of the PRC in regard to additional schemes that were identified during the course of the investigation. The government of the PRC however did not accept the offer as they claimed to have been provided insufficient information in regard to these schemes.

3. **Parallel request for a partial interim review of the anti-dumping measures in force**

(7) The Commission received a request for the initiation of a partial interim review of the anti-dumping measures in force ([1]), limited in scope to the examination of injury, pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009 (the basic anti-dumping Regulation). The request was lodged on 28 October 2013 also by the APFE, on behalf of Union producers representing more than 25 % of the total Union production of certain filament glass fibre products.

(8) Having determined that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced, on 18 December 2013, by a notice published in the *Official Journal of the European Union* (Notice of Initiation of the anti-dumping partial interim review) ([2]) the initiation of a partial interim review under Article 11(3) of the basic anti-dumping Regulation.

(9) One exporting producer claimed that existing measures imposed by Council Implementing Regulation (EC) No 248/2011 are null and void as far as it is concerned and that the current review investigation concerning the existing measures imposed by that regulation should therefore be terminated. It argued that the existing measures are in breach of the WTO Anti-Dumping Agreement since this exporting producer was refused individual treatment under the provisions of Article 9(5) of the basic anti-dumping Regulation as they existed at the time of adoption of that regulation. In support of its claim it refers to the WTO Appellate Body Report of 28 July 2011 in case DS397 ([3]).

(10) Following the WTO Appellate Body Report of 28 July 2011 in case DS397, Article 9(5) of the basic anti-dumping Regulation was amended. ([4]) The amendment applies to all investigations initiated following its entry into force, which was 6 September 2012. With regard to exporting producers subject to measures that were already in force before that date the Commission published a Notice on 23 March 2012 ([5]) inviting any exporting producer in non-market economy countries to request a review if they considered that the measures to which they are subject should be reviewed in the light of the Appellate Body Report mentioned above. The Implementing Regulation (EU) No 248/2011 was specifically mentioned in that Notice. The Commission did not receive such request for a review from this exporting producer, nor did the exporting producer request an interim review in accordance with Article 11(3) of the basic Regulation.

(11) Therefore the validity of the existing measures is not at stake and the claim is rejected.

4. **Investigation period and period considered applicable to both investigations**

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

(13) The injury analyses performed in both the anti-subsidy and the anti-dumping partial interim review are based on the same definition of the Union industry, the same representative Union producers and the same investigation period and led to identical conclusions unless otherwise specified. This was considered appropriate in order to streamline the injury analysis and to reach consistent findings in both investigations. For this reason, comments on injury aspects put forward in any one of these proceedings were taken into account in both investigations.

([1]) Implementing Regulation (EU) No 248/2011, OJ L 67, 15.3.2011.

([2]) Notice of Initiation of a partial interim review of the anti-dumping measures applicable to imports of certain filament glass fibre products originating in the People's Republic of China (OJ C 371, 18.12.2013, p. 19).

([3]) Appellate Body report, European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China, WT/DS397/AB/R, p. 152

([4]) Regulation (EU) No 765/2012 of the European Parliament and of the council of 13 June 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ L 237, 3.9.2012, p. 1).

([5]) Notice regarding the ruling of the Dispute Settlement Body of the World Trade Organisation adopted on 28 July 2011 (OJ C 86, 23.3.2012, p. 5).

5. **Parties concerned by the investigations**

(14) In both Notices of Initiation, the Commission invited interested parties to contact it in order to participate in both investigations. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the authorities of the PRC, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of both investigations and invited them to participate.

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

6. **Sampling**

(16) The Commission announced in both Notices of Initiation that it might limit to a reasonable number the exporting producers in the PRC, the unrelated importers and Union producers that would be investigated by selecting samples in accordance with Article 17 of the basic anti-dumping Regulation and Article 27 of the basic anti-subsidy Regulation.

6.1. *Sampling of Union producers applicable to both investigations*

(17) In both Notices of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of production in the Union and sales volumes on the Union market of the like product during the IP and geographical spread. This sample consisted of manufacturing plants of three Union producers located in Belgium, France and Slovakia ([1]), representing around 52 % of the total Union production and 49 % of all sales on the Union market. Therefore, the sample was considered representative for the Union industry. The Commission invited interested parties to comment on the provisional sample.

(18) During the investigations, the government of the PRC alleged that a different sampling methodology for the Union producers was applied in the original anti-dumping investigation than the one in the current investigations without motivation. The government of the PRC stated (i) that the Commission had already selected a sample prior to the initiations, therefore, the Commission decided prior to the initiations that a sample was necessary, (ii) that in the original investigation all parties that wished to be included in the sample had to provide information to the Commission within 15 days from initiation, while in the present case, the producers already included in the sample are not required to do so, (iii) that parties that wished to be included in the sample were not provided in both Notices of Initiation with any information on what information they are required to provide in order to be included in the sample and that no information as regards the production and sales volume represented by the sampled producers had been provided, (iv) that the used selection criterion *'this sample represents the largest representative volume of producers which can reasonably be investigated with the time available'* was not included in Article 17 of the basic anti-dumping Regulation and a sample selected on this basis was not consistent with this provision.

(19) In both Notices of Initiation the Commission explained that in view of the large number of Union producers and in order to complete the investigations within the time limits, it resorted to sampling and a provisional sample was at the same time proposed. The same methodology, i.e. the application of sampling, was used as in the previous investigation. The use of a provisional sample did not change the methodology but merely allowed to be more efficient as it allowed gaining time while fully respecting the rights of defence. Indeed, the Commission gave opportunity to other Union producers who consider that there are reasons why they should be included in the sample to contact the Commission or to any other interested parties to submit any other relevant information with regard to the sample. The final sample should take into account all comments received, if any. As no comments were received on the proposed sample, the provisional sample was confirmed. As to the second claim, the producers who were provisionally selected for the sample had filled in the standing form which included the necessary information for the Commission to select a provisional sample. The standing form and the replies have been available for inspection in the non-confidential file. As to the third claim, parties that wished to be included were invited to contact the Commission within 15 days of the date of the publication of both Notices of Initiation and they had the opportunity to consult the non-confidential file where the standing forms could be found.

([1]) 3B Fibreglass SPRL, Owens Corning Fibreglass France and Johns Manville Slovakia a.s.

These standing forms contained information on production and sales volume. The fourth claim is also unfounded because Article 17(1) of the basic anti-dumping Regulation clearly refers to the largest representative volume which can reasonably be investigated within the time available.

(20) Following the definitive disclosure, the government of the PRC reiterated its claims as to the alleged procedural inconsistency in the selection of the Union producers' sample prior to both initiations and highlighted that: (i) the Commission's justification of meeting the investigation deadlines is unsustainable since Article 17(2) of the basic anti-dumping Regulation and Article 27(2) of the basic anti-subsidy Regulation clearly envisage sampling after both initiations and pursuant to comments within three weeks of both initiations, (ii) a provisional sample is discriminatory or un-objective and would have worked as a demotivating factor for the other Union producers to come forward, and (iii) the Commission's failure to provide the other Union producers three weeks to come forward.

(21) Article 17(2) of the basic anti-dumping Regulation and Article 27(2) of the basic anti-subsidy Regulation state that 'preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation'. As to the first claim, the basic anti-dumping Regulation and basic anti-subsidy Regulation do not prevent the Commission from suggesting at the time of initiation a provisional sample on which the parties are invited to comment. Moreover, given that the Union producers (or at least a large part of them) are supporting the complaint and taking into account the information obtained in the standing forms, the Commission had the necessary information with regard to the Union industry at its disposal to select a provisional sample at initiation stage. This knowledge makes the sampling exercise of Union producers different from the one applied to exporting producers. As to the second and third claim, the Notices of Initiation stated that Union producers who consider that they should be included in the sample must contact the Commission within 15 days. The Commission does not see how this infringes the basic Regulation or can be considered discriminatory, un-objective, let alone demotivating.

(22) The government of the PRC claimed that the sample is not representative because no company with significant captive production had been included and therefore a part of the domestic industry had simply not been assessed.

(23) This claim is rejected as the sampled Union producers indeed had captive sales. Moreover, the government of the PRC did not indicate which Union producer should have been included and which one should have been excluded.

(24) One exporting producer claimed that the Union producers' sample was not representative as none of the sampled Union producers produced/sold chopped strand mats.

(25) Indeed, the sampled entities of the three Union producers did not produce chopped strand mats but they did produce filament mats as well as the other main product types. Therefore, the sampled entities were considered to be representative, also because they represented around 52 % of the total Union production, 49 % of all sales on the Union market, and represented a good geographical spread. The fact that one of the wide varieties of product types was not produced by the sampled Union producers does not alter this conclusion.

6.2. *Sampling of importers applicable to both investigations*

(26) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in both Notices of Initiation.

(27) Given that only two unrelated importers replied to the sampling form, no sampling was necessary.

6.3. *Sampling of exporting producers in the PRC applicable to both investigations*

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

(29) Eight exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic anti-subsidy Regulation and Article 17(1) of the basic anti-dumping Regulation, the Commission selected a sample of three exporting producers based on the largest representative volume of exports which could reasonably be investigated within the time available. In accordance with Article 27(2) of the basic anti-subsidy Regulation and Article 17(2) of the basic anti-dumping Regulation, all known exporting producers concerned, and the authorities of the country concerned, were invited to comment on the provisionally selected sample. No comments were made. The Commission thus decided to retain the proposed sample and all interested parties were accordingly informed of the finally selected sample.

(30) The sample of exporting producers or groups of exporting producers is the following:

— Chongqing Polycomp International Corporation ('CPIC'),

— Jiangsu Changhai Composite Materials Holding Co., Ltd ('OCH') and its related companies; Changzhou New Changhai Fiberglass Co., Ltd ('NCH') and Changzhou Tianma Group Co., Ltd ('Tianma'). These three companies are referred to as the 'Jiangsu Changhai Group',

— Jushi Group Co., Ltd, and its related companies; Jushi Group Chengdu Co., Ltd and Jushi Group Jiujiang Co., Ltd. These three companies are referred to as the Jushi Group.

(31) The sample represented 78 % of the total export sales from the PRC in volume to the Union during the IP, based on the replies to the sampling forms.

7. **Questionnaire replies and verification visits**

(32) The Commission sent questionnaires to the government of PRC, all Chinese exporting producers that had so requested, as well as to the sampled Union producers, users and trade associations that made themselves known within the time limits set out in both Notices of Initiation.

(33) Questionnaire replies were received from the government, three sampled Chinese exporting producers, from the three sampled Union producers, from 14 users and from two unrelated importers. However, the reply of one of the users was insufficient which did not allow the Commission to carry out a meaningful analysis of these data despite having sent several reminders.

(34) Moreover, an association representing the glass industries 'Glass Alliance Europe' came forward as an interested party on behalf of its members and submitted a position statement.

(35) Written submissions were also received from several associations of users, notably the 'Danish Wind Industry Association', the 'Danish Plastics Federation' and the 'Groupement de la Plasturgie Industrielle et des Composites (GPIC)', as well as from Siemens Wind Power AG.

(36) In addition, the China Chamber of Commerce for Import/Export of Light Industrial products & Arts-Crafts (CCCLA) submitted comments.

(37) The Commission sought and verified all the information deemed necessary for the determination of subsidisation, of injury and of the Union interest. Verification visits pursuant to Article 16 of the basic anti-dumping Regulation and Article 26 of the basic anti-subsidy Regulation were carried out at the government of PRC and at the premises of the following companies:

Union producers:

— 3B Fibreglass SPRL, Belgium,

— Owens Corning Fibreglass France, France,

— Johns Manville Slovakia a.s., Slovakia.

Exporting producers in the PRC:

— Chongqing Polycomp International Corporation,

— Jiangsu Changhai Composite Materials Holding Co., Ltd,

— Changzhou New Changhai Fiberglass Co., Ltd,

— Changzhou Tianma Group Co., Ltd,

— Jushi Group Co., Ltd,

— Jushi Group Chengdu Co., Ltd,

— Jushi Group Jiujiang Co., Ltd.

Traders related to the exporting producers located in the PRC:

— China National Building Materials and Equipment Import and Export Corporation (CMBIE),

— China National Building Materials International Corporation (CNBMIC).

Traders related to the exporting producers located in the Union:

— Jushi Italia Srl,

— Jushi Spain SA,

— Jushi France SAS.

Unrelated imports:

— Helm AG, Germany.

Users:

— Basell Polyolefine, Germany,

— DSM, The Netherlands,

— DuPont de Nemours, Belgium,

— Exel Composites, Belgium,

— Fiberline Composites, Denmark,

— Formax, United Kingdom,

— Polyone, Germany,

— Vestas Wind Systems, Denmark.

(38) The government of the PRC claimed, in summary, that its rights of defence in relation to access to the file open for inspection by interested parties were violated because information was missing from the non-confidential file without 'good cause' being shown or sufficiently detailed summaries had not been provided, or exceptionally, the reasons for not providing a non-confidential summary had not been given.

(39) The Commission considered that the non-confidential file open for inspection by interested parties contained sufficient information in order to allow interested parties to inspect the data that was used by the Commission in its analysis and the claim was therefore considered unfounded. The government was informed of the reasons why the Commission considered that the claims were unfounded.

(40) Following the definitive disclosure, the government of the PRC as well as one exporting producer reiterated that the confidentiality provision was used too extensively and requested disclosure of the product types sold by the Union producers as well as the total quantities per PCN.

(41) The Commission considers that there was no breach of the rights of defence as all exporting producers have received a specific disclosure of the PCNs produced by the sampled Union producers on which there was competition with the PRC. Therefore this claim was rejected.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(42) The product concerned by both investigations is the same as the product defined in the Council Implementing Regulation (EU) No 248/2011 and described in both Notices of Initiation, namely chopped glass fibre strands, of a length of not more than 50 mm; glass fibre rovings, excluding glass fibre rovings which are impregnated and coated and have a loss on ignition of more than 3 % (as determined by the ISO Standard 1887); and mats made of glass fibre filaments excluding mats of glass wool ('the product concerned' or 'filament glass fibre products'), currently falling within CN codes 7019 11 00, ex 7019 12 00 and 7019 31 00 (the latter code replaced 7019 31 10 on 1.1.2014) and originating in the PRC.

(43) The product concerned is the raw material most often used to reinforce thermoplastic and thermoset resins in the composites industry. The resulting composite materials (filament glass fibre reinforced plastics) are used in a large number of industries: automotive industry, electric/electronics, wind mill blades, building/construction, tanks/pipes, consumer goods, aerospace/military, etc.

(44) There are three basic types of filament glass fibre products covered by this proceeding — namely chopped strands ([1]), rovings ([2]) and mats ([3]) (other than of glass wool). The investigation has shown that, despite differences in appearance and possible differences in final applications of various types, all the different types of the product concerned share the same basic physical, chemical and technical characteristics and are basically used for the same purposes.

2. **Product exclusion requests**

2.1. *CN code 7019 31 90*

(45) Following the publication of both Notices of Initiation, CCCLA commented that both Notices of Initiation referred to CN code 7019 31 10, whereas the complainant referred to CN code 7019 31 00 and that the latter code no longer exists. They stated that the products previously classified within CN code 7019 31 00 are now classified under two different CN codes: 7019 31 10 (glass fibre mats of filaments) and 7019 31 90 (glass fibre mats of other). Given that the present investigations cover certain filament glass fibre products, the CCCLA believes that the products classified under CN code 7019 31 90, namely 'mats made of glass fibre with no filament', should be excluded from the scope of the product concerned.

(46) This claim is beside the point because such product is not product concerned in the first place.

(47) The complainant referred to the CN code ex 7019 31 00 and explicitly stated that glass wool mats (i.e. other mats or mats made of glass fibre with no filament) are excluded. This is why 'ex' is mentioned before the CN code.

(48) Both Notices of Initiation were published in December 2013 and stated 'currently falling within CN codes […] 7019 31 10'. Given that from 1 January 2012, the products previously falling under CN code 7019 31 00 were divided into CN codes 7019 31 10 and 7019 31 90, the Notice of Initiation does not include 'mats made of glass fibre with no filament' as it stated 'currently falling under CN codes […] 7019 31 10'.

(49) The current Regulation however states 'currently falling within CN codes […] 7019 31 00' given that the two CN codes 7019 31 10 and 7019 31 90 were merged again as from 1 January 2014 given that the CN code 7019 31 90 stayed in practice empty (as glass fibre mats of other, namely glass wool mats, were rather classified under the CN code 7019 39 00).

(50) Therefore, the claim for the exclusion of the CN code 7019 31 90 is not relevant.

([1]) Chopped strands are continuous glass strands chopped to a desired length and available with a wide variety of surface treatments to ensure compatibility with most resin systems. These can be dry use chopped strands or wet use chopped strands.
([2]) Rovings are continuous glass strands, gathered together, without any mechanical twist and wound, to form a tubular cylindrical package.
([3]) Mats of filament are chopped or continuous bonded strands.

2.2. *Texturised rovings*

(51) One user requested texturised rovings ([1]) to be removed from the product scope based on the fact that the Union filament glass fibre manufactures do not produce them.

(52) However, three companies in the Union were identified as producers of texturised rovings with enough capacity to supply market needs. The investigations showed that, despite possible differences in final applications, all the different types of the product concerned share the same basic physical, chemical and technical characteristics and are basically used for the same purposes. The request to exclude texturised rovings from the product scope is therefore denied.

(53) Following the definitive disclosure, the government of the PRC claimed that texturised rovings should be excluded as (i) only one Union producer supplied texturised rovings to the market in limited quantities and that therefore any imports of such products could not injure the Union industry, (ii) the fact that texturised rovings are different from direct rovings as the latter have better cross directional strength of a pultruded composite profile and a different production process and (iii) contrary to what was done in the original anti-dumping investigation in the context of yarns, the Commission considers that the limited substitutability is not a significant factor to permit the exclusion of texturised rovings.

(54) As to the first claim, the Commission reiterates that there are several producers in the Union that have the capacity to supply the market needs of texturised rovings, but only one is currently selling this product type. The argument of the government of the PRC that only one Union producer is actually selling the product is rather an indication of injury as this means that users have switched to other suppliers outside the Union, in particular from the PRC.

(55) As to the second claim, the production process for texturised rovings is identical to the one of 'normal' rovings, with the exception that there is one extra step of blowing air inside the roving, which requires only relatively inexpensive additional equipment and does not change the essential technical and physical characteristics of the product. The texturised roving merely appears somewhat bushier than the 'normal' roving.

(56) As to the third claim, the Commission followed the same approach as in the previous investigation where texturised rovings were also part of the product concerned and a request to exclude them was rejected. No arguments were brought forward that would lead to a different conclusion.

(57) The request to exclude texturised rovings from the product scope is therefore denied.

2.3. *Products on which the Union industry does not face competition from the PRC*

(58) The government of the PRC requested that products on which the Union industry does not face competition from Chinese imports (as stated in the non-confidential version of the anti-subsidy complaint), be removed from the product scope. The referred products were wet use chopped strands (WUCS) and mats.

(59) WUCS have a limited shelf life and higher transport costs due to the additional weight of the water content. WUCS are nevertheless globally traded. The investigation has shown that, despite some difference in appearance and possible differences in final applications, all the different types of the product concerned share the same basic physical, chemical and technical characteristics and are basically used for the same purposes. WUCS and mats, like any other product types of the product concerned, are used as reinforcement material. Moreover, the claim of the government of the PRC that some Chinese filament glass fibre products are not yet present in large quantities on the Union market does not preclude a change in future business behaviour as to exports of these particular types. Therefore, the request to exclude these products from the product scope is denied.

([1]) Texturised rovings are rovings which are unwound from one bobbin onto another and in that process voluminised/texturised by a texturising machine that blows air inside the direct roving strand.

(60) Following the definitive disclosure, the government of the PRC claimed that (i) only one Union producer is producing WUCS and that therefore any imports of such products could not injure the Union industry, (ii) the Union producers are not suffering any injury on the above mentioned products as the Union industry claimed in the open version of the complaint that they can make a profit of above 8 %-10 % on those products, (iii) the fact that WUCS have a higher water content, limited shelf life and a different production process and therefore physically and chemically different from the normal chopped strands and (iv) contrary to what was done in the previous investigation in the context of yarns, the Commission considers that the limited substitutability is not a significant factor to permit the exclusion of the WUCS and the mats.

(61) The first claim is rejected as several Union producers sell WUCS and therefore the Union industry is not excluded from injury on this product type.

(62) As to the second claim, the fact that some product types at certain points in time are profitable is not sufficient reason to exclude those product types. In addition, WUCS are imported into the Union in much lower quantities than the other filament glass fibre products. The profit margin for this sole product type is therefore not representative for the product concerned.

(63) As to the third claim, the product concerned is not defined by reference to its water content. The water content of WUCS does therefore not justify its exclusion. In addition, the production process of WUCS is the same as the one for dry use chopped strands (DUCS), with one production step less which consists of the drying phase.

(64) As to the fourth claim, the Commission followed the same approach as in the previous anti-dumping investigation where WUCS were also part of the product concerned. No arguments were brought forward that would lead to a different conclusion.

(65) Therefore, the request to exclude WUCS from the product scope is denied.

3. **Like product**

(66) Similar to the previous anti-dumping investigation, the product concerned and the filament glass fibre products produced and sold on the domestic market of the PRC, as well as the filament glass fibre products produced and sold in the Union by the Union industry were found to have the same basic physical, chemical and technical characteristics and uses. Therefore, these products are like products for the purposes of the present investigations within the meaning of Article 1(4) of the basic anti-dumping Regulation and Article 2(c) of the basic anti-subsidy Regulation.

C. **SUBSIDY**

1. **Introduction**

(67) The 12th Five Year Plan for National Economic and Social Development of the PRC highlights the strategic vision of the government of the PRC for improvement and promotion of key industries, includes, amongst others, the production of glass fibre products. In particular, Chapter 9, of the 12th Five Year Plan, which concerns the transformation and upgrade of the manufacturing industry states:

> *'We will focus on developing new materials such as photovoltaic glass, ultra-thin substrate glass, special glass fibre and, special ceramics.'*

(68) Section 3 of Chapter 9 of the abovementioned Plan concerning the technological upgrading of enterprises states specifically that the government of PRC '*…will encourage enterprises to become better able to develop new products, raise the technological content and value added of their products and update and upgrade their products more quickly.*'

(69) Moreover Chapter 10, Section 1 of the same Plan stipulates the following:

> *'The development focus for the new material industry will be on new functional materials, advanced structural materials, high-performance fibres and the composite material made from them, and general-purpose basic materials*'.

(70) The importance of innovation and new materials in general is clearly spelled out both in the '12th Five Year Industrial Technology Innovation Programme' as well as in the 'National Long-term Science and Technology Development Plan (2006-2020)'.

(71) In addition, 'The Industrial Restructuring Guidance Catalogue 2011' (Decision No 9) explicitly mentions as an encouraged industry '*Wire drawing of E-glass fibre furnace […], development and production of high-performance fibreglass and its product*.' Also, the 'Guideline Catalogue For Foreign Investment Industries', which lists industries in which foreign investments are encouraged ([1]), refers explicitly to the production of fibreglass products and special fibreglass.

(72) The government of the PRC claimed that these plans are only guidance and not binding. However, as it is clearly stated in the 12th Five Year Plan it is legally binding:

'This Plan, upon deliberation and approval by the National People's Congress, bears legal validity.'

(73) Following disclosure, the government of the PRC argued that the product concerned is only standard fibre glass products (E-glass) and not the more technologically advanced high performance glass fibre (special purpose fibre glass or S-glass). Therefore, the product concerned by this investigation falls outside the scope of encouraged industries since only special fibre glass or high performance fibres are among those industries that are encouraged. The government of the PRC refers amongst others to the 12th Five Year Plan which only refers to 'high performance fibres' and 'special fibreglass'.

(74) First, the product concerned is certain products of filament glass fibre. The product definition makes no distinction whether those products are made of standard fibre glass fibres (hereafter referred to as E-glass) or special glass fibre (s-glass). Second, no interested party came forward with a product exclusion request claiming that special fibre glass should not be part of the product scope. Third, the government of the PRC did not dispute the fact that the government is encouraging the development of 'special glass fibres'. Indeed, even standard fibre glass products are referred to as an industry for which foreign investments are encouraged (see recital 71).

(75) In any event, even if one were to accept that only the development of high performance fibreglass (e.g. S-glass) is encouraged by the government of PRC, the investigation did not reveal any distinction between a standard fibre glass industry on the one hand and a special fibre glass industry on the other hand. On the contrary, fibre glass products, whether made from E-glass or from a high performance glass fibre, such as S-glass, are all produced by the same fibre glass industry. In this regard the Commission found, in particular, that all the sampled Chinese exporting producers use both standard fibre glass (E-glass) as well as high performance glass fibre (e.g. S-glass) in their production process, and that there is no mechanism in place to limit the support provided, be it in the form of preferential loans or provision of land use rights, to one segment of the production. It follows that the explicit encouragement for developing high performance glass fibre products cannot, either by law or by fact, exclude the basic fibre glass industry from the overall strategic policy to encourage enterprises to become better able to develop new products, raise the technological content and value added of their products and update and upgrade their products more quickly.

(76) It follows from the above that the claim that the product concerned does not form part of the encouraged industry is ill-founded and is therefore rejected.

(77) In addition, 'Decision No 40 of the State Council on Promulgating and Implementing the "Temporary Provisions on Promoting the Industrial Structure Adjustment"' (which, together with 'Temporary Provisions on Promoting the Industrial Structure Adjustment' are referred to as 'Decision No 40') states that the government of the PRC will actively support the development of different types of industries ([2]).

(78) Although Decision No 40 does not explicitly refer to the filament glass fibre industry or more generally to the new material industry, it nevertheless instructs all financial institutions to provide credit support to encouraged projects only and envisages the implementation of 'other preferential policies on the encouraged projects' ([3]). It can therefore be concluded that the provisions of the Decision No 40 were applicable to the filament glass fibre industry.

([1]) Chapter XIV, point 6 of the Catalogue for industries which encourages foreign investments refers to fibre glass products explicitly: 'Production of fibreglass products and special fibreglass'.
([2]) Chapter II, Article 5 of the Temporary Provisions on Promoting the Industrial Structure Adjustment.
([3]) Chapter III, Article 17 of the Temporary Provisions on Promoting the Industrial Structure Adjustment.

(79) The government of the PRC claimed that Decision No 40 only implies that encouraged industries should receive credit support 'according to the credit principles' and that it cannot be inferred that such support should be given on a preferential basis.

(80) The investigation has shown that the sampled companies benefited from the preferential lending policies. Indeed some of the loss making companies continued to obtain financing on preferential terms. The Commission therefore rejects the government of the PRC's assertion that lending to the filament glass fibre industry was done 'according to the credit principles'. The key point remains that according to Decision No 40, all financial institutions shall provide credit to encouraged industries, which includes the filament glass fibre industry, and that that support is de facto provided on preferential terms.

(81) Furthermore, the 'National Outline for the Medium and Long-term Science and Technology Development (2006-2020)' undertakes to *'give the first place to policy finance', 'encourage financial institutions to grant preferential credit support to major national scientific and technological industrialisation projects',* to *'Encourage financial institutions to improve and strengthen financial services to high-tech enterprises'* and to *'implement the preferential tax policies to promote the development of high-tech enterprises'*.

(82) Filament glass fibre production falls under the description of a high technology enterprise, as is shown by the number of manufacturers with New and High Technology status in PRC. Indeed the investigation revealed that some of the sampled companies received the certificate of High and New Technology Enterprises, which could benefit from the preferential treatment outlined in the 'National Outline for the Medium and Long-term Science and Technology Development (2006 — 2020)' referred to above.

2. **Non-cooperation and use of facts available**

2.1. *The application of the provisions of Article 28(1) of the basic anti-subsidy Regulation to one exporting producer*

(83) During the verification visit to one of the companies in the PRC, it was revealed that the company had replaced the audited financial statement that had been originally submitted to the Commission in its reply to the anti-subsidy questionnaire. The company did not voluntarily disclose this information and the existence of a different audited financial statement was only revealed when the company was asked to provide an original copy of the financial statement. In addition, this new statement was only made available in Chinese. Since circulating two sets of audit financial statements is in breach of International Standards on Auditing (No 560: concerning 'subsequent events'), the verification team emphasised that this was a serious concern as it cast doubts about the credibility of the submitted financial statements. The company explained that the audited financial statements initially submitted in the reply to the questionnaire had contained errors and had therefore been replaced by a new version issued by the same auditing company and backdated and re-issued with the same sequential number as the original financial statements report which had been destroyed.

(84) After the verification visit and once the translation of the 'second' set of financial statements were available, the Commission sent a letter to the company outlining the specific and detailed reasons why it considered that some of the data provided in the questionnaire could not be deemed as verified. The company was informed that the Commission may decide to base its findings on facts available pursuant to Article 28(1) of the basic anti-subsidy Regulation and was granted the opportunity to comment.

(85) The company provided its comments both in writing as well as during a hearing with the Hearing Officer. Its response indicated the existence of yet another (third) audited financial statements (in the format used for listed companies). Although there did not appear to be substantial differences between the 'second' and the 'third' statements, the latter was however much more detailed, and comprehensive. It had already been issued and albeit available to the company during the verification visit [1] also the existence of this financial statement was not disclosed to the Commission in a timely manner during the verification. Contrary to the other financial statements, this 'third' version listed explicitly and in detail all subsidies (including their legal basis) that the company had received during the IP. Therefore, an examination of this financial statement would have been very useful during the verification visit in order to countercheck all the information submitted concerning the individual subsidy schemes received by the company.

[1] The 'third' set of audited financial statements was dated 15 May 2014 whereas the verification visit at the company's premises took place on 29-30 May 2014.

(86) The audited financial statements is an essential document for allowing a proper verification of the information provided by the company to the Commission in respect of, amongst others, grants, loans, land-use rights, tax deferrals, etc.

(87) As outlined above the company's cooperation was not forthcoming and created a serious impediment to a proper verification of the information submitted to the Commission, which could not therefore properly verify the information received concerning, amongst others, the level of subsidies received by the company. As a consequence, the Commission could not reach a reasonably accurate finding, in particular with regard to the level of subsidies received.

(88) It is considered that the company provided misleading information and failed to cooperate adequately. The Commission therefore decided to apply the provisions of Article 28(1) of the basic anti-subsidy Regulation. Since the company was part of a group the provisions of Article 28(1) of the basic anti-subsidy Regulation was applicable to the entire group.

(89) However, as for establishing the level of subsidisation for the group, the Commission used the actual data of the two companies within the group that had cooperated fully in both investigations and which information was considered reliable in regard to their levels of subsidisation. Regarding the company within the group, which provided misleading information, the determination of the level of subsidisation was based on facts available. In establishing the level of subsidisation for that legal entity, the facts available used by the Commission were the highest level of subsidisation found for each subsidy scheme for any of the legal entities belonging to the sampled companies or group of companies referred to in recital 30 and which had fully cooperated in the investigation.

(90) Following disclosure, the complainant claimed that the methodology used for the calculation of the level of subsidisation of the group was not correct. It argued that since the subsidy margin of the group is the sum of the highest subsidy margins found for each subsidy scheme for any of the cooperating companies it should be much higher.

(91) This claim is based on a misunderstanding. The methodology used for the calculation of the level of subsidisation, described in recital 89 above, was applied only to the company (within the group) which provided misleading information and not to the group as a whole. The claim was therefore rejected.

(92) The company which provided misleading information was not exporting the product concerned. Within the group, exports of the product concerned were made by one of its related companies. The latter however cooperated fully in both investigations and provided reliable information about the group's export price. Therefore, the submitted information was used for the Commission's definitive findings in that proceeding.

(93) Following disclosure, the exporting producer claimed that the Commission erred in applying the provisions of Article 28(1) of the basic anti-subsidy regulation.

(94) First, it was argued that in the letter sent to the company in which the Commission outlined the detailed reasons for the proposed application of the provisions of Article 28(1) of the basic anti-subsidy regulation, it never stated that it could not verify the information concerning subsidies. Therefore the Commission cannot rely on this argumentation in its definitive conclusions as the company had not been given the opportunity to comment on that argument.

(95) This claim cannot be accepted. The Commission in the letter did state explicitly that it 'cannot conclude that the information concerning the level of subsidies received by [the company] was verified'. In any event, the company was fully informed of the reasons for applying the best facts available in the final disclosure document and granted the opportunity to comment thereon, which it also did.

(96) Second, the exporting producer argued that even if the Commission were to apply the provisions of Article 28(1) of the basic anti-subsidy regulation the Commission should not refer to the data of other companies as the basis for determining the level of subsidisation but should rather base itself on the company's actual set of audited financial statements as it is still the 'most appropriate' and 'most suited' information about the company's level of subsidisation.

(97) As explained in recitals 83-88 above the Commission has serious doubts as to the credibility of the submitted financial statements and could therefore not rely on those in order to verify the level of subsidisation for different schemes and/or subsidy programmes such as preferential loans and land-use rights at less than adequate remuneration. Indeed, reliable audited financial statements are crucial for verifying the accuracy and completeness of information otherwise provided. Therefore, the Commission had to resort to the best facts available to determine the level of subsidisation, which in this case was verified information on relevant subsidy schemes from other cooperating entities. This claim is therefore rejected.

(98) The company also claimed that the Commission mistakenly applied international accounting standards (IAS) as a criterion to reject the set of audited financial statements According to the company a distinction should be made between the role of a set of audited financial statements and the relevance of IAS in an assessment of market economy treatment in anti-dumping proceedings, on the one hand, and anti-subsidy proceedings, on the other hand. A violation of IAS cannot constitute a reason to apply the provisions of Article 28(1) of the basic anti-subsidy regulation.

(99) The Commission notes that the breach of international accounting standards that was discovered during the investigation was not per se the reason for applying the provisions of Article 28(1) of the basic anti-subsidy regulation. The reason was the fact that different versions of the set of audited financial statements were provided to the Commission which cast doubts on their credibility and hence led the Commission to the conclusion that other information regarding the level of subsidisation could not be verified. This claim is therefore rejected.

(100) The company also claimed that the Commission's methodology of calculating its subsidy margin which consisted in taking the highest countervailing rate for each scheme as found for each cooperating legal entity (and not each group) was unjustified. The company claimed that this methodology is flawed since companies within the same group may decide to concentrate subsidies in one specific entity to the benefit of the entire group.

(101) As explained in recital 89, in the calculation of the level of subsidisation within the group, the Commission used the actual data of the two other companies within the group that had cooperated in both investigations when calculating the level of subsidisation for the whole group. The facts available applied only to the one legal entity within the group which provided misleading information. In order to determine the level of subsidisation of a legal entity within the group, the Commission found that it was most appropriate to base the calculations at the same level within the corporate structure and take the highest level of subsidisation found for any of the legal entities (within the group if applicable) belonging to the sampled companies or groups of companies. This claim is therefore rejected.

2.2. *The application of the provisions of Article 28(1) of the basic anti-subsidy Regulation to State-owned banks*

(102) The Commission did not receive cooperation from any of the State-owned banks in the PRC. They were invited to provide the necessary information for the purposes of the anti-subsidy investigation by completing a questionnaire. Therefore, the Commission notified the government of the PRC that it would consider basing its findings on facts available pursuant to Article 28(1) of the basic anti-subsidy Regulation as far as the information related to the State-owned banks was concerned.

(103) In the reply to the Commission's letter and subsequently following disclosure, the government of the PRC objected to the application of Article 28(1) of the basic anti-subsidy Regulation as far as the information which was requested from the State-owned banks was concerned. It argued that a large amount of information was provided by the government of the PRC in this investigation. However, the Commission found that that information could not substitute entirely a reply by the State-owned banks to the specific questionnaires. The government of the PRC did not dispute the fact that the state owned banks had not submitted a reply to the questionnaire, neither that the banks were State-owned. Therefore, the Commission had to rely on the facts available for its findings concerning the state owned banks.

3. **Schemes investigated**

(104) The Commission sent questionnaires to the government of the PRC, which included questionnaires intended for the State-owned banks, and the sampled exporting producers, requesting information on the schemes that allegedly involved the granting of subsidies to the filament glass fibre industry. The following schemes were investigated:

(a) Preferential policy loans, guarantees and insurances to the filament glass fibre industry:

— Preferential policy loans

— Export credit subsidy programmes

— Export guarantees and insurances for new materials

— Benefits from access to offshore holding companies and loan repayments by government

(b) Grant programmes:

— Subsidies for development of 'famous brands' and 'China world top brands'

— Central government grants

— Sub-central government grants

— Funds for outward expansion of industries in Guangdong Province

(c) Government provision of resources at less than adequate remuneration (LTAR)

— Government provision of power,

— Government provision of water

— Government provision of raw materials

— Government provision of land for LTAR

(d) Income and other direct tax exemption and reduction programmes

— 'Two Free, Three Half' programme for Foreign Invested Enterprises (FIEs)

— Income Tax reductions for export-oriented FIEs

— Income Tax benefits for FIEs based on geographic location

— Local Income Tax exemption and reduction programmes for 'productive' FIEs

— Tax reductions for FIEs purchasing Chinese-made equipment

— Tax offsets for research and development by FIEs

— Tax refunds for reinvestment of FIE profits in export oriented enterprises

— Preferential tax programmes for FIEs recognised as High or New Technology Enterprises

— Tax reductions for High and New Technology Enterprises involved in designated projects

— Preferential Income Tax policy for enterprises in the Northeast Region

— Guangdong Province tax programmes

— Dividend exemption between qualified resident enterprises

— Reduced corporate tax rates

(e) Indirect tax and import tariff programmes:

— VAT exemptions for use of imported equipment

— VAT rebates on FIEs' purchases of Chinese-made equipment

— VAT and tariff exemptions for purchases of fixed assets under the Foreign Trade Development Programme

4. **Preferential policy loans, other financing, guarantees and insurance**

4.1. *Preferential loans*

(a) Introduction

(105) Findings with regard to State-owned banks were made on the basis of facts available in accordance with Article 28(1) of the basic anti-subsidy Regulation as explained in section C.2.2.

(b) Legal basis

(106) The following legal provisions provide for preferential lending in the PRC: *The Law of the PRC on Commercial Banks* (the banking law) [2003], *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.

(c) Findings of the investigation

Existence of a subsidy

(107) Whilst the Chinese authorities have provided only limited information concerning shareholding/ownership of banks in the PRC the investigation has, based on facts available, established that the Chinese financial market is characterised by significant government influence and control. When analysing whether banks possess, are vested with or exercise government authority (i.e. they are public bodies) the Commission used all available information concerning not only government ownership of the banks but also other characteristics such as government presence on the board of directors, government influence and control over banks activities, the pursuit of government policies or interests and whether bank entities were created by statute.

(108) From the available information it is concluded that the fully State-owned banks with a board of directors dominated by the government of the PRC hold the highest market share and are the predominant players in the Chinese financial market. State-owned banks are subject to legal rules which require them, inter alia, to carry out their loan business according to the needs of the national economy, provide credit support to encouraged projects ([1]) or give priority to the development of high and new technology industries ([2]).

(109) Another sign of State involvement in the Chinese financial market is the role played by the PBOC in setting specific limits on the way interest rates are set and fluctuate. ([3]) Financial institutions are requested to provide loan rates within a certain range of the benchmark loan interest rate of the PBOC. For preferential loans the interest rates are not allowed to float upwards. Limits on the loans interest rates together with the ceilings imposed on deposit rates create a situation in which the banks have guaranteed access to cheap capital (because of the deposit rates regulation) and are able to lend to the selected industries at favourable rates in accordance with the governmental policy of directing banks to act in a particularly supportive manner to certain encouraged and/or high-tech industries, such as the filament fibre glass fibre industry.

(110) The Commission sought clarifications from the government of the PRC on the definition and wording stated in the Circular 251 as well as to its preceding legislation (Circular of the PBOC concerning expansion of Financial Institution's Loan Interest Rate Float Range — YinFa [2003] No 250). However, as described in Section C.2.2 above, the government of the PRC did not provide these Circulars. The government of PRC claimed however that Circular 250 has been repealed by Circular 251 and that the floor lending rates have been abolished as from July 2013 and therefore there is no State involvement in the banking sector.

([1]) Decision No 40, Article 17.

([2]) Law of the PRC on Scientific and Technological Progress (Order No 82) (Article 18). which provides that 'The State shall encourage financial institutions to carry out the business of hypothecation of intellectual property rights, encourage and give guidance to such institutions in supporting the application of scientific and technological advances and the development of high and new technology industries by granting loans, etc., and encourage insurance agencies to introduce insurance products in light of the need for development of high and new technology industries'.

([3]) PBOC's Circular on the Issues about the Adjusting Interest Rates on Deposits and Loans-Yinfa (2004) No 251 ('Circular 251').

(111) The abolition of the floor lending rates occurred however during the investigation period. Accordingly, the PBOC influenced the setting of interest rates by State-owned banks for the main part of the investigation period. In addition, the investigation did not show any immediate effect from the abolition on the loans received by the sampled producers. In any case the floor on interest rates that existed during the investigation period is not the sole argument as to why the Commission considers State-owned banks as public bodies.

(112) The findings established in the anti-subsidy investigations concerning Solar Panels ([1]) and Solar Glass ([2]), where it was established that State-owned banks in the PRC act as public bodies (see recitals 158 to 168 of the solar panels Regulation and recital 73 of the Solar Glass regulation) are also facts available in this investigation with regard to the public body status of the state owned banks. These facts are summarised as follows:

— State-owned banks hold the highest market share and are the predominant players on the market in the PRC,

— on the basis of facts available State-owned banks are controlled by the government by means of ownership and administrative control of their commercial behaviour including limits on interest rates they can offer,

— the banking law and other laws and Regulations require banks to lend according to the needs of the national economy, provide credit support to encouraged projects, and give priority to new and high technology enterprises.

(113) On the basis of the above, it is concluded that State-owned banks perform government functions on behalf of the government of the PRC, namely mandatory promotion of certain sectors of the economy in line with state planning and policy documents. The extensive government ownership in the State-owned banks confirms that the banks are controlled by the government in the exercise of their public functions. The government of the PRC exercises meaningful control over State-owned banks through the government's omnipresent involvement in the financial sector and the requirement for State-owned banks to follow government policies. State-owned banks are therefore considered to be public bodies because they possess, are vested with, and exercise, governmental authority.

(114) Following disclosure the government of the PRC disputed this conclusion stating that the Commission had not set out the reasons why they considered that State-owned banks were public bodies. The Commission is satisfied that the facts set out in the above recitals justify the conclusion that State-owned banks are public bodies.

(115) While the overwhelming majority of the loans received by the sampled exporting producers are provided by State-owned banks, the investigation revealed that a small amount of loans is provided by privately-owned banks. The Commission therefore analysed whether privately-owned banks in the PRC are entrusted and/or directed by the government of the PRC to provide preferential loans to filament glass fibre producers, within the meaning of Article 3(1)(a)(iv) of the basic anti-subsidy Regulation.

(116) Article 34 of the banking law states that private banks are also instructed to 'carry out their loan business upon the needs of national economy and the social development and with the spirit of state industrial policies' ([3]).

(117) The investigation showed that for the sampled exporting producers the interest rates applied by State-owned and private banks were in general at very similar levels. This indicates that State-owned banks, which are the predominant actors on the banking and lending market in the PRC, set the interest rate levels and that private banks are simply following the rates set by State-owned banks (public bodies).

(118) In these circumstances, it is concluded that private banks do not set their rates independently from State interference and that the lending strategy of the privately owned banks is directed by the government of the PRC.

(119) Following disclosure the government of the PRC disputed the Commission's interpretation of Article 34 of the banking law, stating that 'the Commission is reading into Article 34 a meaning which is clearly not attributable to it'. The government of the PRC has drawn the Commission's attention to other articles of the Banking Law, namely Articles 4, 5 and 7, which serve to ensure that loans are made without interference and after a credit assessment.

([1]) OJ L 325, 5.12.2013, p. 66.
([2]) OJ L 142, 14.5.2014, p. 32.
([3]) Article 34 of the Commercial Banking Law.

(120) The Commission acknowledges that these Articles exist but considers that they should be understood and read in light of the provisions of Article 34. In this respect it is recalled that neither the government of the PRC, nor the banks or the sampled companies concerned were able to demonstrate that loans were made without interference or with a proper credit assessment. On the contrary, the investigation revealed that one of the exporting producers was incurring losses but nevertheless succeeded in receiving loans from banks at normal interest rates without any mark-up for risk related to its difficult financial situation.

(121) The Commission therefore concludes that privately owned banks are entrusted or directed by the government to provide preferential financing in a similar manner that the one provided by State-owned banks and thus, a financial contribution exists within the meaning of in Article 3(1)(a)(iv) of the basic anti-subsidy Regulation.

Specificity

(122) With respect to the banks that provided loans to the cooperating exporting producers, the majority of them are State-owned banks and ultimately controlled by the government of the PRC. These include the major commercial and policy banks in the PRC like the China Development Bank, the EXIM Bank, the Agricultural Bank of China, the Bank of China, the China Construction Bank and the Industrial and Commercial Bank of China.

(123) Moreover, the Commission notes that the government of the PRC directs preferential lending to a limited number of industries. For instance, Decision No 40 states that the government of the PRC will actively support the development of new materials industries and the filament glass fibre industry is considered as a new material industry. Also, all financial institutions are instructed to provide credit support only to encouraged projects, the category in which the filament glass fibre projects belong. That decision also promises the implementation of '*other preferential policies on the encouraged projects*'.

(124) The government of the PRC claimed the Commission wrongfully relied on decision 40 since the product concerned is not classified as an encouraged industry. Moreover even if it was accepted that the industry is encouraged the government claimed that the reliance on Decision No 40 cannot extend to an industry which is not listed in Decision No 9 ('Industrial Restructuring Guidance Catalogue 2011').

(125) The sampled exporting producers belong to the categories of encouraged industries as established above (recitals 67-76) as well as to the high and new technology industries. In addition, contrary to the government's claim, special fibre glass and its products as well as furnaces for e-glass production are explicitly listed in Chapter XII point 6 of Decision No 9. ([1]) The claim is therefore unfounded.

Benefit

(126) A benefit exists to the extent that government loans, or loans from private bodies entrusted or directed by the government, are granted on terms more favourable than the recipient could actually obtain on the market.

The necessity to rely on a benchmark

(127) The Commission purported to verify the credit risk assessments carried out by the banks that lent money to the sampled exporting producers during the investigation period. Some of the exporting producers were incurring losses. They nevertheless succeeded in receiving loans from banks at the benchmark rate without any mark-up for risk related to their worsening financial situation. Therefore, the Commission has reasons to question whether loans to filament glass fibre companies were based on a diligent risk assessment, and the interest rate set as a result of such an exercise.

(128) As explained above, since the loans provided by Chinese banks reflect substantial government intervention in the banking sector and do not reflect rates that would be found in a functioning banking market, an appropriate market benchmark has been constructed using the method described below. Furthermore, due to the lack of cooperation by the government of the PRC, the Commission has also resorted to facts available in order to establish an appropriate benchmark interest rate.

([1]) '*Wire drawing of E-glass fibre furnace […], development and production of high-performance fibreglass and its product.*'

(129) When constructing an appropriate benchmark for RMB denominated loans, it is considered reasonable to apply Chinese interest rates, adjusted to reflect normal market risk. Indeed, in a context where the exporters' current financial state has been established in a distorted market of bank loans and there is no reliable information from the Chinese banks on the measurement of risk and the establishment of credit ratings, it is considered necessary not to take the creditworthiness of the Chinese exporters at face value, but to apply a mark-up to reflect the potential impact of the Chinese distorted market on their financial situation.

(130) The same situation applies for the loans denominated in foreign currencies. The BB rated corporate bonds with relevant denominations issued during the IP were used as a benchmark.

(131) As explained above, both the government of the PRC and the cooperating exporting producers were requested to provide information on the lending policies of the Chinese banks and the way loans were attributed to the exporting producers. Such information was however not provided. Accordingly in view of this lack of co-operation, given the totality of facts available, and in line with the provisions of Article 28(6) of the basic anti-subsidy Regulation, it is deemed appropriate to consider that all firms in China would be accorded the highest grade of 'Non-investment grade' bonds only (BB at Bloomberg) and apply the appropriate premium expected on bonds issued by firms with this rating to the standard lending rate of the People's Bank of China.

(132) Therefore to calculate the benchmark interest rate for loans to the sampled companies during the IP, a risk premium was calculated by using the difference between interest rates on bonds issued by companies with BB ratings and bonds issued by companies with AAA ratings (which is the credit rating on bonds issued by the PRC), as recorded by Bloomberg. This risk premium was then added to the published lending rates of the PBOC for BB rated bonds taking into account the duration of the loans.

(133) The benefit to the exporting producers was then calculated as the difference between the interest actually paid in the IP by the companies and the interest that would have been paid if the benchmark interest rate would have applied to the loans. This benefit was then expressed as a percentage of the total turnover of each cooperating exporting producer.

(134) Following disclosure the government of the PRC claimed that the Commission should not have referred to any benchmark for the calculation of the benefit as it claimed that loans were granted on market terms and therefore no benefit was conferred.

(135) As explained in recitals 127-130, the market for bank loans in the PRC is distorted and therefore the Commission considers that resorting to a benchmark is fully justified.

(136) Moreover the government of the PRC claimed that the Commission's choice of this particular benchmark was not sufficiently reasoned.

(137) The Commission considers that when constructing an appropriate benchmark for loans, it is considered reasonable to apply Chinese interest rates, adjusted to reflect normal market risk. Indeed, in a context where the exporters' current financial state has been established in a distorted market and there is no reliable information from the Chinese banks on the measurement of risk and the establishment of credit ratings, it is considered necessary to apply a mark-up to reflect the potential impact of the Chinese distorted market on their financial situation.

(d) Conclusion

(138) On the basis of the findings of the investigation, the Commission concludes that the filament glass fibre industry in the PRC benefited from preferential loans during the IP, both from State-owned banks and from private banks. The financing of the filament glass fibre industry constitutes a subsidy within the meaning of the basic anti-subsidy Regulation as there is

(a) a financial contribution by government as set out in Article 3(1)(a)(i);

(b) entrustment and direction by government as set out in Article 3(1)(a)(iv); and

(c) a benefit is thereby conferred as required by Article 3(2).

(139) In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, this subsidy is countervailable.

(e) Calculation of the subsidy amount

(140) Article 6(b) of the basic anti-subsidy 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. As stated, in the absence of any meaningful risk assessment, the Commission established a market benchmark for comparable commercial loans.

(141) The benefit was calculated for the IP as the difference between the interest actually paid during the IP, and the interest that would have been paid using the benchmark.

(142) One of the exporting producers claimed that the Commission had used the wrong interest rate actually paid by the company for one loan when calculating the benefit. This claim was accepted and the Commission revised the calculation. The revised calculation had however no effect on the subsidy margin found.

(143) The subsidy margins calculated for the sampled exporting producers based on this methodology are as follows:

Preferential loans	
Company Name	Subsidy margin
Chongqing Polycomp International Corporation	6,3 %
Jiangsu Changhai Composite Materials Holding Co., Ltd [1]	2,6 %
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	7,4 %

[1] The calculation of the subsidy margin for this group was based on facts available as explained in recital 89.

4.2. *Other preferential lending schemes*

(144) During the IP, no financial contribution was received by the sampled exporting producers under the remaining preferential lending schemes mentioned in section C.3 above.

5. **Grant programmes**

(145) No financial contribution was received by the sampled companies from 'Famous Brands', 'China World Top Brands' or 'Funds for Outward Expansion of Industries in Guangdong Province' programmes during the IP.

5.1. *Specific grant programmes and grants*

(a) Introduction

(146) The sampled companies received one-off grants from various government authorities at different levels resulting in the receipt of a benefit during the IP. These grants are considered as falling under the grant programmes allegations in the complaint as the complaint alleged that producers of filament glass fibre received one-off grants from provincial and local government bodies and that these conferred a benefit as the monies were received without adequate consideration.

(147) The Commission offered consultations with the government of the PRC regarding these specific grants.

(148) The government of the PRC opposed the consultations claiming that this would not be in line with the Agreement on Subsidies and Countervailing Measures ('ASCM') as such consultations should take place prior to the initiation of the investigation and that it would be putting a disproportionate burden on the Chinese authorities to verify the information concerning every single scheme.

(149) Most of the grants concerned negligible amounts. Therefore, the Commission did not investigate these any further.

(150) However, the Commission investigated one particular, relatively large grant for the purpose of building dormitories to the company employees that had been provided to one of the sampled companies and is considered linked to the grant programmes allegations in the complaint.

(b) Conclusion

(151) The ad hoc character of the grant mentioned above clearly demonstrated that it was not available to other companies and was therefore specific as defined in Article 4(2)(a) of the basic anti-subsidy Regulation On the basis of the evidence collected with regard to the receipt of this grant and in the absence of any other information, the Commission consider this grant to be a subsidy within the meaning of Article 3(1)(a)(i) and (2) of the basic anti-subsidy Regulation and a benefit was thereby conferred to the exporting producer concerned.

(152) Following disclosure, the company that received the grant claimed that the grant was given to the company for renovation of fixed assets, which are amortised in 50 years. Therefore, this subsidy should be allocated over a period of 50 years and only the proportion of 1/50 which corresponds to the benefit received during the IP should be taken into account in the calculation of the subsidy margin.

(153) The company did not provide any evidence justifying a depreciation period of 50 years for investment in fixed assets, in this case a building used as a dormitory for staff. The actual period of depreciation of a company's fixed assets is normally much shorter and corresponds to a period of 10 to 20 years. On this basis the benefit incurred by this grant is negligible and should therefore not be countervailed.

6. **Direct tax exemption and reduction programmes**

6.1. *The 'two free, three half' programme for foreign invested enterprises*

(a) Introduction

(154) The 'two free, three half' programme entitles foreign invested enterprises ('FIEs') to pay no corporate income tax for the first two years, and to pay only 12,5 % rather than 25 % for the next three years.

(b) Legal basis

(155) The legal basis of this programme is Article 8 of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (the 'FIE Tax Law') and Article 72 of the Rules for the Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises According to the government of the PRC this programme was terminated under Article 57 of the Enterprise Income Tax Law ('EIT Law') of 2008 with a transition period until the end of 2012. The law therefore makes clear that there would be a benefit under this scheme in the tax year 2012.

(c) Findings of the investigation

(156) This 'two free, three half' scheme conferred benefits on companies during the financial year 2012, after which, according to the government of the PRC, the scheme has been withdrawn. In any case, none of the sampled companies is a foreign owned enterprise which could be eligible for this tax scheme during the IP.

(d) Conclusion

(157) No financial contribution was received by the sampled companies under this programme during the IP. The investigation furthermore established that the scheme has indeed been withdrawn by the government of the PRC.

6.2. *High and New Technology Enterprises*

(a) Introduction

(158) This programme allows companies that can show that they meet a certain set of criteria to be recognised as a 'High and New Technology Enterprise' to receive a reduction to 15 % on their corporate income tax, as compared to the standard rate of 25 %.

(b) Legal basis

(159) The legal bases of this programme are Article 28(2) of the Enterprise Income Tax Law of 2008 ('the EIT law'), along with the 'Administrative Measures for the Determination of High and New Technology Enterprises' (Guo Ke Fa Huo [2008] No 172); and Article 93 of the Regulations on the Implementation of Enterprise Income Tax Law, along with the Notice of the State Administration of Taxation on the issues concerning the Payment of Enterprise Income Tax by High and New Technology Enterprises (Guo Shui Han [2008] No 985).

(c) Findings of the investigation

(160) This scheme applies to High and New Technology Enterprises recognised as such by the government of the PRC. To be eligible for this scheme enterprises shall have core independent intellectual property rights and must meet the following requirements which are set out in the legal basis and summarised as follows:

(a) their production is included in the scope of the products in the 'High-Tech Fields with Key State Support';

(b) their total expenses for R & D shall account for 3-6 % of total sales income;

(c) their income from high and new technology products shall account for over 60 % of the total sales income;

(d) the personnel engaged in R & D shall account for 10 % of the total staff;

(e) the other requirements set by the '2008 Administrative Measures for High and New Tech Enterprises' are met.

(161) Some of the sampled exporting producers were found to be using this scheme, and thereby only paying 15 % corporate income tax rather than 25 %. These companies had applied to be New and High Technology Enterprises and received official notification that they had met the criteria of the scheme and would therefore be entitled to complete their corporate tax returns accordingly.

(d) Conclusion

(162) The Commission considers that this scheme is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic anti-subsidy Regulation because there is a financial contribution in the form of revenue foregone by the government of the PRC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(163) This subsidy is specific as defined in Article 4(2)(a) of the basic anti-subsidy Regulation since it is limited to the enterprises receiving the certification of High and New Tech Enterprises and complying with all the requirements of the 2008 administrative measures. The sampled exporting producers concerned received such certification. No objective criteria for the eligibility were established by the legislation or the granting authority.

(164) After disclosure, the government of the PRC challenged the Commission's conclusions, maintaining that the eligibility criteria were objective and apply equally to all companies in the PRC. Therefore they do not fulfil the criterion of specificity.

(165) The Commission does not accept this claim. The grant is only available to companies with specific characteristics (High and New technology enterprises) and not to all industries and all sectors. Furthermore, eligibility is also not automatic but depends on the grant of a High and New Technology Enterprise certificate, which is released after a discretionary procedure by the competent authority. Therefore the scheme is specific in nature.

(166) The Commission therefore considers this subsidy as countervailable.

(e) Calculation of the subsidy amount

(167) The Commission has calculated the amount of countervailable subsidy as the difference between the amount of tax normally paid during the IP and the amount of tax actually paid during the IP by the companies concerned.

High and New Technology Enterprises	
Company Name	Subsidy margin
Chongqing Polycomp International Corporation	0,0 %
Jiangsu Changhai Composite Materials Holding Co., Ltd (1)	1,3 %
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	0,8 %

(1) The calculation of the subsidy margin for this group was based on facts available as explained in recital 89.

6.3. *Income tax reductions for FIEs purchasing Chinese-made equipment*

(a) Introduction

(168) This programme allows a company to claim tax credits on the purchase of domestic equipment if a project is consistent with the industrial policies of the Government of the PRC. A tax credit up to 40 % of the purchase price of domestic equipment may apply to the incremental increase in tax liability from the previous year.

(b) Legal basis

(169) The legal bases of this programme are the Provisional measures on enterprise income tax credit for investment in domestically produced equipment for technology renovation projects of 1 July 1999 and the Notice of the State Administration of Taxation on Stopping the Implementation of the Enterprise Income Tax Deduction and Exemption Policy of the Investments of an Enterprise in Purchasing Home-made Equipment, No 52 [2008] of the State Administration of Taxation, effective 1 January 2008.

(c) Findings of the investigation

(170) The government of the PRC claimed that this programme has been terminated as from January 2008 according to the mentioned Notice No 52. The investigation has revealed however that one of the sampled companied has benefited from this programme during the IP.

(d) Conclusion

(171) This programme constitutes a subsidy as it provides a financial contribution in the form of revenue forgone by the government of the PRC according to Article 3(1)(a)(ii) of the basic Regulation. This programme provides a benefit to the recipients for an amount equal to the tax saving in the meaning of Article 3(2) of the basic anti-subsidy Regulation. This subsidy is specific under Article 4(4)(b) of the basic anti-subsidy Regulation since the tax saving is contingent on the use of domestic over imported goods.

(e) Calculation of the subsidy amount

(172) The Commission has calculated the amount of countervailable subsidy as the difference between the amount of tax normally paid during the IP and the amount of tax actually paid during the IP by the companies concerned.

(173) The subsidy rate established with regard to this subsidy during the IP for the Jiangsu Changhai Group amount to 0,2 %.

(174) Following disclosure, one exporting producer claimed that it was not eligible for any financial contribution under the scheme 'Income tax reductions for FIEs purchasing Chinese-made equipment' as it is not a foreign-invested company. Therefore the Commission erroneously attributed a benefit under this scheme to it on the basis of facts available. It also claimed that minor calculation mistakes were found. Both claims were accepted and the calculation of the subsidy margin was revised accordingly.

6.4. *Other direct tax exemption schemes and reduction programmes*

(175) The tax offset for R & D was also investigated. This measure concerned however negligible amounts. Therefore, the Commission did not investigate it any further.

(176) During the IP, no financial contribution was received by the sampled exporting producers under the remaining tax exemption programmes mentioned in section C.3 above.

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

7.1. *VAT exemptions and import tariff rebates for the use of imported equipment*

(a) Introduction

(177) This programme provides an exemption from VAT and import tariffs in favour of FIEs 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 project issued by the Chinese authorities or by the NDRC in accordance with the relevant investment, tax and customs legislation.

(b) Legal basis

(178) The legal bases of this programme are Circular of the State Council on Adjusting Tax Policies on Imported Equipment, Guo Fa No 37/1997, Notice of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation on the Adjustment of Certain Preferential Import Duty Policies, 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 FIEs or domestic enterprises, 2008.

(c) Findings of the investigation

(179) All sampled companies benefited from this scheme.

(d) Conclusion

(180) This programme is considered to provide a financial contribution in the form of revenue forgone by the government of the PRC within the meaning of Article 3(1)(a)(ii) as FIEs and other eligible domestic enterprises are relieved from payment of VAT and/or tariffs which would be otherwise due. It therefore confers a benefit on the recipient companies in the sense of Article 3(2) of the basic anti-subsidy Regulation. The programme is specific within the meaning of Article 4(2)(a) of the basic anti-subsidy Regulation since the legislation pursuant to which the granting authority operates limits its access to enterprises that invest under specific business categories defined exhaustively by law and belonging either to the encouraged category or the restricted category B under the *Catalogue for the guidance of industries for foreign investment and technology transfer* or those which are in line with the *Catalogue of key industries, products and technologies the development of which is encouraged by the State*.

(181) Following disclosure the government of the PRC challenged the Commission's conclusions, maintaining that the eligibility criteria were objective and apply equally to all companies in the PRC. Therefore they do not fulfil the criterion of specificity. The government of the PRC did not however point to any particular provisions in the legislation substantiating its views and did not provide any conclusive evidence that eligibility is automatic.

(182) The Government of the PRC as well as one of the exporting producers also claimed that the Commission cannot countervail any possible VAT benefits that may have been received by the three sampled companies as VAT exemptions granted in the past could no longer be availed of with effect from the year 2009. Therefore, even assuming the 5 to 10-year average depreciation period for the imported equipment in question, the alleged benefit would either expire prior to the imposition of the measures or be unlikely to continue during the full five-year period of the measures.

(183) The Commission notes that the depreciation period of some of the imported equipment is much longer than 10 years and could last 15 or 20 years in some cases. In any event, the Commission did not countervail any benefit arriving from any of the purchases after 2009 of imported equipment. Moreover, the government of the PRC acknowledges that the companies could still benefit from the scheme 'slightly afterwards' from the imposition of the measures. This argument is therefore rejected.

(e) Calculation of the subsidy amount

(184) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of VAT and duties exempted on imported equipment. In order to ensure that the countervailable amount only covered the IP period the benefit received was amortized over the life of the equipment according the exporting producer's normal accounting procedures.

(185) The subsidy rate established with regard to this scheme during the IP for the sampled exporting producers amounts to:

VAT exemptions and import tariff rebates for the use of imported equipment	
Company/Group	Subsidy Rate
Chongqing Polycomp International Corporation	0,5 %
Jiangsu Changhai Composite Materials Holding Co., Ltd [1]	0,1 %
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	0,5 %

[1] The calculation of the subsidy margin for this group was based on facts available as explained in recital 89.

7.2. *Other indirect tax exemption schemes and reduction programmes*

(186) No financial contribution was received by the sampled exporting producers from the remaining indirect tax exemption programmes mentioned in section C.3 above during the IP.

8. **Government provision of goods and services for less than adequate remuneration**

8.1. *Provision of raw materials, provision of electricity, provision of water*

(187) No subsidies were found to be linked to the purchase of raw materials, water or electricity by the sampled exporting producers during the IP.

8.2. *Provision of land use rights*

(a) Introduction

(188) Companies are not allowed to purchase land outright in the PRC, but only purchase a land use right from local authorities.

(b) Legal basis

(189) The Land Administration Law of the PRC states that all land belongs to the people, and cannot be bought or sold, but sets out the conditions by which land use rights can be sold to businesses by bidding, quotation or auction.

(c) Findings of the investigation

(190) In principle a system of auction would allow the market to judge the price of a particular land use right, and therefore the price would be set independently. However, the government of the PRC stated that in any case they set floor prices for each grade of land (land is graded from 1 to 15 based on the quality of the land parcel) below which the price for the land use right cannot fall.

(191) The government of the PRC also controls the supply of land, by restricting by quota the area of land for which land use rights can be sold for industrial or residential purposes, by province and by year.

(192) In any case, for each and every land use right purchase by the sampled exporting producers, the Commission found no evidence of an auction process that independently set the price of the land use right. The exporting producer awarded the land bid the starting price, and, as it was the only bidder, it was awarded the land use right. Following disclosure the Government of the PRC stated that it disagrees with the Commission's findings that there is no functioning market for the sale of land use right in the PRC. It however did not provide any new arguments to support this view.

(193) The findings of the investigation confirm that the situation concerning land provision and acquisition in the PRC is unclear and non-transparent and the prices are often arbitrarily set by the authorities. The authorities set the prices according to the Urban Land Evaluation System which instructs them among other criteria to consider also industrial policy when setting the price of industrial land ([1]).

(194) Also, the independent publicly available information suggests that the land in the PRC is provided for below the normal market rates ([2]).

(195) In effect therefore the sampled companies paid the price set by the government of the PRC. The land use right is provided at less than adequate remuneration when compared to a market benchmark, which is set out in section (e) below.

(196) The situation concerning land in the PRC is also discussed in the IMF Working Paper which confirms that the provision of land use rights to Chinese industries does not respect market conditions ([3]).

(d) Conclusion

(197) The Commission concludes that the provision of land use rights by the government of the PRC should be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic anti-subsidy Regulation in the form of provision of goods conferring a benefit upon the companies. As the investigation did not reveal the existence of a functioning market for the sale of land use rights in the PRC the use of an external benchmark (see section (e) below) demonstrates that the amount paid for land use rights by the sampled exporters is below the market rate.

(198) The subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic anti-subsidy Regulation because Decision No 40 of the State Council requires that public authorities ensure that land is provided to encouraged industries, of which filament glass fibre is one as explained in details in recitals 67 to 82. Article 18 of Decision No 40 makes clear that industries that are 'restricted' will not have access to land use rights.

(e) Calculation of the subsidy margin

(199) The benefit is the difference between the price paid for the land use right, and an appropriate external benchmark.

([1]) Council Regulation (EU) No 215/2013 of 11 March 2013, recital 116.
([2]) George E. Peterson, Land leasing and land sale as an infrastructure-financing option, World Bank Policy Research Working Paper 4043, at 7 November 2006, IMF Working Paper (WP/12/100), An End to China's Imbalances, April 2012, p. 12.
([3]) IMF Working Paper (WP/12/100), An End to China's Imbalances, April 2012, p. 12.

(200) The Commission considers Chinese Taipei as a suitable external benchmark for the following reasons:

(a) the comparable level of economic development, GDP and economic structure in Chinese Taipei and a majority of the provinces and cities in the PRC where the sampled exporting producers are based;

(b) the physical proximity of the PRC and Chinese Taipei;

(c) the high degree of industrial infrastructure in both Chinese Taipei and many provinces of the PRC;

(d) the strong economic ties and cross border trade between Chinese Taipei and the PRC;

(e) the high density of population in many of the provinces of the PRC and in Chinese Taipei;

(f) the similarity between the type of land and transactions used for constructing the relevant benchmark in Chinese Taipei with those in the PRC; and

(g) the common demographic, linguistic and cultural characteristics between Chinese Taipei and the PRC.

(201) Following disclosure the Government of the PRC disputed the use of Chinese Taipei as a benchmark claiming that the population density in Chinese Taipei is many times higher than in the PRC which makes the land situation and prices in the two countries not comparable. The Commission considers however that for the many reasons spelled out in the previous recital the benchmark has been selected on a reasonable basis.

(202) Moreover following disclosure one of the sampled exporting producers suggested that the use of Chinese Taipei was not suited to the economic conditions in the particular province in which they were located, but did not suggest an alternative. It also claimed that physical proximity between the PRC and Taipei should not be considered as a valid criterion for the selection of this particular benchmark but failed to substantiate its claim. Given the lack of alternative benchmark suggestions, the use of Chinese Taipei is confirmed.

(203) Taking all these factors into account, the Commission concluded that land use right prices in the PRC, if market conditions prevailed, for the sampled exporting producers, would be very similar to land prices in Chinese Taipei.

(204) Average land prices in Chinese Taipei for 2012 were taken from the Industrial Bureau of the Ministry of Economic Affairs and adjusted backwards for inflation and GDP growth to fix a benchmark price for land in each calendar year. As land use rights are valid for 50 years and depreciated on this basis, the benefit in the IP will be 1/50 of the difference between the benchmark price and the actual price paid.

(205) The subsidy rate established for provision of land at less than adequate remuneration is as follows:

Provision of land at LTAR	
Company Name	Subsidy margin
Chongqing Polycomp International Corporation	2,9 %
Jiangsu Changhai Composite Materials Holding Co., Ltd [1]	1,6 %
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	1,6 %

[1] The calculation of the subsidy margin for this group was based on facts available as explained in recital 89.

9. **Conclusion on subsidisation**

(206) The Commission calculated the amount of countervailable subsidies in accordance with the provisions of the basic anti-subsidy Regulation for the investigated companies scheme by scheme, and added these figures together to calculate a total subsidy amount for each exporting producer for the IP.

(207) To calculate the overall subsidy margins below, the Commission first calculated the percentage subsidisation, being the subsidy amount over total company's turnover. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the IP.

(208) The subsidy amount per tonne of product concerned exported to the Union during the IP was then calculated, and the margins below calculated as a percentage of the *Costs, Insurance and Freight* ('CIF') value of the same exports per tonne.

(209) In accordance with Article 15(3) of the basic anti-subsidy Regulation, the total subsidy margin for the cooperating companies not included in the sample is calculated on the basis of the total weighted average subsidy margin established for the cooperating exporting producers in the sample with the exclusion of the Group to which the exporting producer subject to the provisions of Article 28(1) belongs.

Company Name	Subsidy margin
Chongqing Polycomp International Corporation	9,7 %
Jiangsu Changhai Composite Materials Holding Co., Ltd [1]	5,8 %
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	10,3 %
Other cooperating companies	10,2 %

[1] The calculation of the subsidy margin for this group was based on facts available as explained in recital 89.

D. **INJURY**

1. **Union production and Union industry**

(210) The like product was manufactured by eight producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic anti-dumping Regulation and Article 9(1) of the basic anti-subsidy Regulation.

(211) The total Union production during the investigation period was established between 530 000 and 580 000 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry as provided by APFE. As indicated in recital 17, manufacturing plants of three Union producers were selected in the sample representing 52 % of the total Union production of the like product.

(212) On the basis of the information included in the complaint/request for review where the actual macroeconomic indicators of the complainants/applicants were disclosed, and the fact that only a very limited number of Union producers did not form part of the complainants/applicants, it appears appropriate not to disclose the actual aggregated macroeconomic indicators related to all of the Union producers since it would be feasible for any interested party to discern the missing company-specific figures of the non-complainants/applicants.

(213) Following the definitive disclosure, the government of the PRC objected to the confidential treatment and the provision of ranges for the total Union consumption and the other macroeconomic injury indicator data.

(214) Following the request to do so and when a good cause was given, the Commission has the obligation to respect the confidential data of the producers which were not the complainants. The disclosure of the precise macroeconomic indicators would allow identifying confidential data of such producers and would harm their interests. The claim is therefore rejected.

2. **Union consumption**

(215) The Commission established the Union consumption on the basis of (i) the volume of sales of the Union industry on the Union market based on data provided by APFE and (ii) imports from third countries based on data extracted from Eurostat (Comext).

(216) Union consumption developed as follows:

Table 1

Union consumption (metric tonnes)

	2010	2011	2012	IP
Total Union consumption	700 000 – 750 000	680 000 – 730 000	710 000 – 760 000	720 000 – 770 000
Index (2010 = 100)	*100*	*97*	*101*	*103*

Source: Data provided by APFE; Eurostat (Comext).

(217) Between 2010 and the IP, the Union consumption increased by 3 %.

(218) Following the definitive disclosure, one user claimed that the union consumption dropped almost 30 % in 2009. In that perspective, they claim that a 3 % increase from 2010 is not significant. However, the Commission did not qualify this increase as significant but noted that consumption increased over the period considered.

3. **Imports from the country concerned**

3.1. *Volume and market share of dumped and subsidised imports*

(219) The below analysis encompasses both the dumped and the subsidised imports following the identical sampled producers in the PRC and the identical IP period.

(220) The volume of the imports from the PRC of the product concerned developed as follows:

Table 2

Import volume (metric tonnes), market share

	2009	2010	2011	2012	IP
Volume of imports (tonnes)	98 916	152 514	109 172	125 781	130 958
Index (2010 = 100)	*65*	*100*	*72*	*82*	*86*
Index (2009 = 100)	*100*	*154*	*110*	*127*	*132*
Market share	13 % - 18 %	19 % - 24 %	13 % - 18 %	15 % - 20 %	15 % - 20 %
Index (2010 = 100)	*87*	*100*	*73*	*81*	*83*
Index (2009 = 100)	*100*	*115*	*84*	*93*	*97*

Source: Eurostat (Comext).

(221) The volume of imports from the PRC decreased by 14 % over the period considered and their market share by 17 %. However, 2010 is not a suitable reference year and import trends would be more accurately analysed when also looking at the preceding year 2009, as shown in the table above. 2010 was characterised by significant Union importers' stockpiling of Chinese filament glass fibre products prior to the imposition of the provisional duties in September 2010. Indeed the investigation revealed that during the first nine months of 2010 much larger quantities than usual were imported from the PRC. Imports from the PRC amounted to around 99 000 tonnes in 2009, whereas in 2010 they were above 152 000 tonnes and then dropped in 2011 to around 109 000 tonnes. The trend shows a clear increase in imports from 2009 onwards. As from 2011 Chinese imports increased by 20 % in volume terms which resulted in regained market share of 2 percentage points.

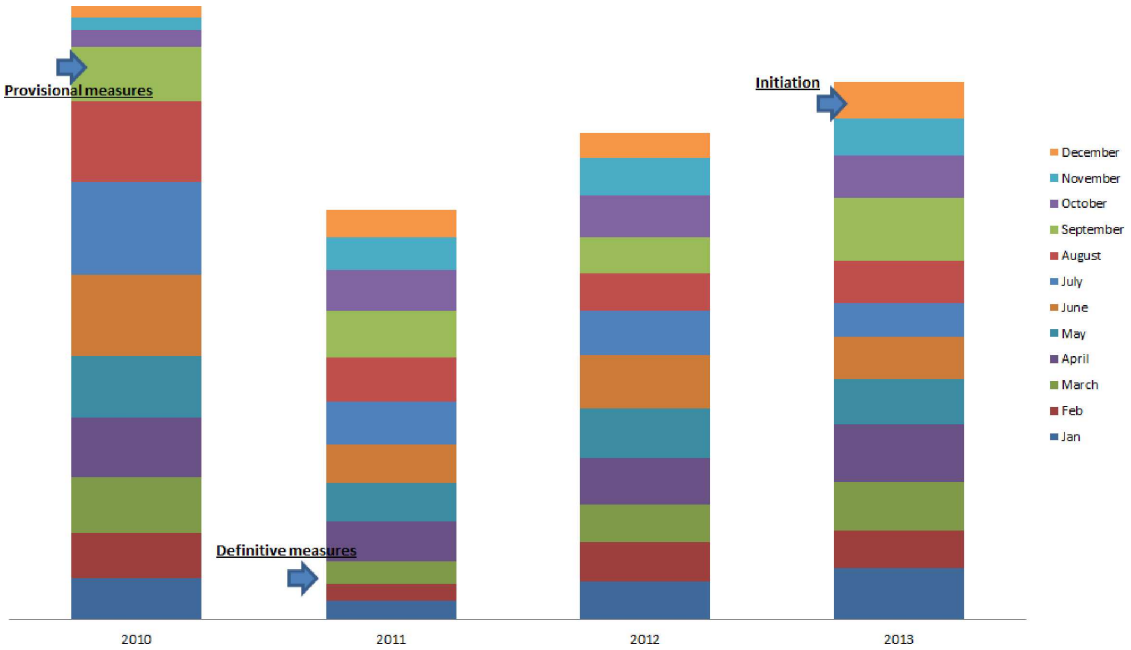
(222) Several parties reiterated their claims that imports from the PRC and its market share decreased between 2010 and the end of the IP, and that therefore no significant increase in imports has been demonstrated as required by Article 3(2) of the ADA and Article 15(2) of the ASCM. Furthermore, they claim that 2009 is not an appropriate reference year for the following reasons: i) there is no legal basis in the anti-dumping and anti-subsidy basic Regulation and the *Mexico-Steel Pipes and Tubes Panel* held that '*an investigating authority is precluded from using temporal subsets within a period*', ii) there is no evidence for the claim that the imports in 2010 were the result of stockpiling and iii) 2009 data has not been considered for any other aspect of the injury assessment, which rendered the assessment therefore not objective.

(223) As to the first and the third claim, the basic anti-dumping Regulation and basic anti-subsidy Regulation, being the applicable law, do not detail which period should be considered in order to analyse trends. Therefore there is no reason why the year 2009 could not be considered in order to analyse the trends of the imports from the PRC. This does not make the analysis un-objective, on the contrary, it further completes the analysis made with regards to the situation of the Union industry. Only with regard to the specific injury indicators related to the Chinese imports, the year 2009 was taken into consideration in addition to the period considered as explained above in 219. For the other injury indicators, there was no objective reason why not all years of the period considered could be fully taken into account.

(224) As to the second claim, the stockpiling effect is shown very clearly in the monthly import data obtained from the database as set up in line with Article 14.6 of the basic anti-dumping Regulation (see graph 1 below) ([1]). Prior to the imposition of provisional measures, imports of the product concerned from the PRC strongly increased in the second and third quarter of 2010 (for consumption before the end of 2010/beginning of 2011 due to the limited shelf life). This did not correspond to a similar increase in consumption, which indicates that these imports were made with the purpose of stockpiling in anticipation of the measures to be imposed. The government of the PRC did not provide another explanation for this increase and therefore the Commission can reasonably consider that stockpiling took place prior to the imposition of provisional measures at the end of 2010. This is further demonstrated by the fact that the level of monthly imports of the PRC in the period between the provisional and definitive measures (fourth quarter of 2010 and first trimester of 2011) was very low. When the measures were lowered at the definitive stage (in March 2011), the monthly import levels increased again to a stable level.

Graph 1

Imports of the product concerned from the PRC (Monthly quantity)



Source: Article 14(6) database

([1]) The 14(6) database by DG TRADE contains data on imports of products subject to anti-dumping or anti-subsidy measures or investigations, both from the countries concerned by the proceeding and from other third countries, at the level of the 10-digit TARIC codes.

3.2. *Prices of dumped and subsidised imports*

(225) Chinese import prices (excluding anti-dumping duties in force) developed as follows:

Table 3

Import prices

	2010	2011	2012	IP
Average CIF price (EUR/tonne)	911	877	892	834
Index (2010 = 100)	*100*	*96*	*98*	*92*

Source: Eurostat (Comext).

(226) The Chinese CIF import prices (excluding anti-dumping duties in force) evolved from 911 EUR/tonne to 834 EUR/tonne during the period considered. This represents a 8 % decrease over the period considered.

(227) The government of the PRC and a user claimed that a comparison of average import prices in the absence of an analysis of the product mix was misleading. The government of the PRC further stated that the majority of the imports from the PRC consisted of the cheapest product type, that is to say rovings.

(228) Contrary to the claim, the product mix was fully taken into account in the analysis as the Commission compared the selling prices of the Chinese exporting producers with those of the sampled Union producers per product type. The same approach was used in the original investigation.

(229) Following the definitive disclosure, the government of the PRC requested Chinese import prices per product type in table 3, given that data per product type was used for the undercutting and injury margin calculations.

(230) The average Chinese import price from table 3 is used to demonstrate the trend over the period considered. For this purpose of showing trends, the use of average prices is appropriate. For the determination of the undercutting and injury margin calculations, data per product type was used.

(231) In order to determine price undercutting during the IP, the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices per product type of the imports from the sampled Chinese producers to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for customs duties, anti-dumping duties and post-importation costs. The price comparison was made on a type-by-type basis for transactions at the same level of trade. The result of the comparison was expressed as a percentage of the sampled Union producers weighted average ex-works price during the investigation period. It showed for a major Chinese exporter to the Union an undercutting margin of 2 % despite the current anti-dumping measures (and custom duties) that were added to the import price. The vast majority of other imports were made at price levels comparable to Union prices.

(232) Following the definitive disclosure, one exporting producer claimed that there were some inaccuracies with the CIF values of 3 PCN's.

(233) The claim was correct and the Commission has adjusted the respective CIF values which led to a small change in the undercutting and underselling margins for this exporting producer (see recital 440).

(234) Several parties claimed that there was no significant price undercutting during the IP. They stated that an undercutting margin of 2 % for a single exporter is almost a *de minimis* one and cannot be considered as significant. In addition, they refer to Commission practice where limited price undercutting or price undercutting of 6 % was held to have no effect on the general price level in the Union due to the limited volume of exports.

(235) Despite the current anti-dumping duties, there is still undercutting. The reference to Commission practice is misleading. In the case of 'dense sodium carbonate' ([1]), the 6 % price undercutting was held to have had practically no effect on general price levels because of the limited volume of imports combined with a market share of 1,4 % by the exporting country. In comparison, the market share of the PRC in the IP is between 15 % and 20 %. The 'certain laser optical reading systems' ([2]) case referred to limited price undercutting for the imports concerned in view of (i) major increase in the Union consumption (129 %) and (ii) the nature of the product concerned, a non-homogeneous product with a great variety of features and technical differences and subject to rapid technological development. In the current investigations, the market of the product concerned is of a totally different nature and hence the magnitude of the price undercutting has to be considered in that particular market context. The product concerned is a basic homogeneous reinforcement product in a market which is rather stable. Such a market is more sensitive to price differences and even a smaller price difference can have a major impact on the market. The fact that no major undercutting took place does therefore not change the Commission's conclusions. On the contrary, this element was fully taken into account in the assessment. In any event, each case is assessed on its own merits and the injury picture consists of many indicators and none can have a decisive importance.

4. **Economic situation of the Union industry**

(236) In accordance with Article 3(5) of the basic anti-dumping Regulation and Article 8(4) of the basic anti-subsidy Regulation, the examination of the impact of the dumped and 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.

(237) As mentioned in recitals 17 to 25, sampling was used for the determination of possible injury suffered by the Union industry.

(238) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data provided in the complaint and in the review request as well as in subsequent submissions and cross-checked where possible with statistics. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of 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.

(239) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping and subsidy margins, and recovery from past dumping or subsidisation.

(240) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

5. **Macroeconomic indicators**

5.1. *Production, production capacity and capacity utilisation*

(241) A variation in yearly production is common to the Union industry given that the furnaces have to be rebuilt every 7 to 10 years, which creates a higher production volume in the previous year to build stock, and a lower production volume in the year when the furnace is out of order for the rebuild. Whenever a furnace is out of order for a rebuild, the production capacity of that given year will also be lower.

([1]) Commission Decision of 7 September 1990 terminating the review of the anti-dumping measures concerning dense sodium carbonate originating in the United States of America, OJ 1999, L 283, p. 38.

([2]) Commission Decision of 21 December 1998 terminating the anti-dumping proceeding concerning imports of certain laser optical reading systems, and the main constituent elements thereof, for use in motor vehicles, originating in Japan, Korea, Malaysia, the People's Republic of China and Taiwan (OJ 1999, L 18, p. 62).

(242) Bearing in mind these caveats, the total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 4

Production, production capacity and capacity utilisation

	2010	2011	2012	IP
Production volume (in tonnes)	560 000 – 610 000	580 000 – 630 000	510 000 – 560 000	530 000 – 580 000
Index	*100*	*103*	*92*	*95*
Production capacity (in tonnes)	670 000 – 720 000	680 000 – 730 000	650 000 – 700 000	640 000 – 690 000
Index	*100*	*101*	*97*	*96*
Capacity utilisation	84 %	86 %	81 %	84 %
Index	*100*	*102*	*95*	*99*

Source: Data provided by APFE.

(243) In the context of increasing Union consumption (by 3 %), the Union industry's production of the like product decreased between 2010 and the IP by 5 %. The production capacity also decreased between 2010 and the IP, in the region of 4 %. The capacity utilisation stayed fairly stable over the period considered with the exception of a drop in 2012.

(244) A production drop by 11 percentage points and a production capacity drop by 4 percentage points can be noted between 2011 and 2012. This was the result of the restructuring of the Union industry and the closure of some of its plants. The filament glass fibre producer Ahlstrom ceased production at the end of 2011 and the Owens Corning Vado Ligure plant in Italy closed its plant in 2012 as they were not able to recover from the dumped imports. The Union Industry believes however that after restructuring and once a level playing is re-established, it can remain a viable industry, which explains why the Union industry still invests in rebuilding the existing furnaces.

(245) Following the definitive disclosure, the government of the PRC claimed that the Commission referred to a shorter than average lifespan for the furnaces and that there are therefore considerable inefficiencies in the Union producers' investments and/or usage of the furnaces.

(246) It was demonstrated that furnace rebuilding decisions by the Union industry were taken based on production and energy efficiency considerations. There were no indications that the lifespan of the furnace as applied by the sampled Union producers, was not a good practice in the industry and in line with the requirements of the product mix.

(247) Several parties claimed that a longer period than 2010 till the IP has to be considered specifically because of the furnace rebuilt costs, which would affect all the macro- and micro economic indicators. The government of the PRC stated that no data or information was given on the years in which the Union producers undertook furnace rebuilds.

(248) Furnace rebuilds are inherent to the industry and recurrent. They are essential to ensure the continuity of the operations and to maintain the capacity. R & D investments made are directly linked to the operational capacity and

to enable to develop tailor made products for the client's needs. Therefore, these investments are not exceptional to the period considered. Whatever the timespan considered, there will always be effects of furnace repairs or rebuilds on the production volume. Company specific information when rebuilds have taken place is considered confidential.

(249) One user also claimed that the Union industry was able to avoid any damaging effect (of subsidised and dumped imports) as the capacity utilisation stayed fairly stable over the period from 2010 till the end of the IP.

(250) The production of the like product is a continuous process which cannot be adapted to short term fluctuations in demand. The fairly stable capacity utilisation has to be seen in the light of a declining production capacity. Therefore, the claim is rejected.

5.2. *Sales volume and market share*

(251) The free market sales volumes of the Union industry on the Union market as well as the captive market sales volumes on the Union market and the respective market shares developed over the period considered as follows:

Table 5

Sales volume and market share

	2010	2011	2012	IP
Free market sales volume on the Union market (in tonnes)	420 000 – 470 000	390 000 – 440 000	400 000 – 450 000	420 000 – 470 000
Index	*100*	*94*	*96*	*99*
Market share of free market sales	58 % - 63 %	56 % - 61 %	55 % - 60 %	56 % - 61 %
Index	*100*	*96*	*95*	*97*
Captive market sales volume on the Union market (in tonnes)	20 000 – 70 000	30 000 – 80 000	30 000 – 80 000	30 000 – 80 000
Index	*100*	*114*	*123*	*121*
Market share of captive market sales	4 % - 9 %	5 % - 10 %	5 % - 10 %	5 % - 10 %
Index	*100*	*117*	*122*	*118*

Source: Data provided by APFE.

(252) During the period considered the Union industry free market sales volume of filament glass fibre products (that is to say to unrelated customers) decreased slightly by 1 % over the period considered. However, in the context of an increase of Union consumption by 3 %, this resulted in a decrease of the Union industry's market share from 58 % - 63 % in 2010 to 56 % - 61 % during the IP. The lower sales volume in 2011 is a result of the stockpiling effect of Chinese imports in 2010, which gradually came on the market in 2011.

(253) During the period considered, the captive market sales of the Union industry represented between 11 % and 14 % of the total sales (free market and captive) of the Union industry on the Union market. The captive market sales have an increasing trend between 2010 and 2012, where after it stabilises in the IP. The increase in captive market sales between 2010 and 2011 is limited when looked at in absolute figures.

5.3. *Employment and productivity*

(254) The Union producers' employment and productivity developed over the period considered as follows:

Table 6

Employment and productivity

	2010	2011	2012	IP
Number of employees	3 450 – 3 950	3 350 – 3 850	3 200 – 3 700	3 000 – 3 500
Index	*100*	*97*	*95*	*89*
Productivity (unit/employee)	153	163	150	164
Index	*100*	*106*	*98*	*107*

Source: Data provided by APFE.

(255) The employment level of the Union producers shows that the Union industry tried to rationalize production throughout the period considered with the objective of reducing manufacturing costs. Indeed, over the period considered the number of employees decreased by 11 %.

(256) The combined effect of a change in the number of employees and the production volume over the same period considered, has resulted in an increase of the productivity of the Union producers' workforce, measured as output (tonnes) per person employed per year, of 7 % between 2010 and the IP.

5.4. *Growth*

(257) As stated in recital 217 above, the Union consumption increased over the period considered by 3 %. Given the many applications of the like product, it is expected by the Union industry and the users that this growth pattern will continue in the near future.

5.5. *Magnitude of the dumping and subsidy margin and recovery from past dumping or subsidisation*

(258) The Union industry had been suffering injury due to dumped imports from the PRC until 2011 when duties were put in force. The duties in force against imports from the PRC were designed to provide a level playing field where the Union industry could compete fairly with these imports and recover from the injury suffered.

(259) However, this has not happened. The Union industry is now again loss making and continued to lose market share, even though consumption in the Union has risen. Imports from the PRC continued to come in at very low prices and gained market share. The market share of Chinese imports was in the investigation period 3 percentage points above the level prior to the imposition of the duties. ([1]) The Union industry restructured and closed some of its plants (see recital 244 above). Recovery from past dumping has clearly not taken place.

(260) Given the magnitude of the volume, market share and prices of the dumped and subsidised imports from the PRC, and taken into account the existing dumping margins (9,6 % and 29,7 %) ([2]), the impact on the Union industry's situation can be considered to be significant.

([1]) Implementing Regulation (EU) No 248/2011 (OJ L 67, 15.3.2011, p. 6), recital 64.
([2]) Implementing Regulation (EU) No 248/2011 (OJ L 67, 15.3.2011, p. 6), recital 54.

(261) Since this is the first anti-subsidy investigation regarding the product concerned, recovery from past subsidy is not an issue in the assessment.

6. **Microeconomic indicators**

6.1. *Prices*

(262) The weighted average unit sales prices of the sampled Union producers in the Union developed over the period considered as follows:

Table 7

Sales prices on the free market and on the captive market in the Union

	2010	2011	2012	IP
Average ex works unit selling price on the free market in the Union (EUR/tonne)	1 061	1 144	1 070	1 035
Index (2010 = 100)	*100*	*108*	*101*	*98*
Average ex works unit selling price on the captive market in the Union (EUR/tonne)	1 006	1 031	1 027	989
Index (2010 = 100)	*100*	*103*	*102*	*98*

Source: Data of the sampled Union producers.

(263) Unit sales prices on the free market fell by 2 % over the period considered. As provisional duties entered into force in September 2010, the Union industry was able to increase its prices in 2011. However, as from 2011 the unit sales prices fell by 10 %.

(264) As to the unit sales prices on the captive market (that is to say transfer prices), they followed the same trend as the unit sales prices on the free market whereby the Union industry increased its selling prices on the captive market in 2011 where after those unit sales prices fell by 4 %.

6.2. *Average unit production costs*

(265) The unit cost of production developed over the period considered as follows:

Table 8

The unit cost of production

	2010	2011	2012	IP
Unit cost of production (EUR/tonnes)	964	990	1 032	976
Index (2010 = 100)	*100*	*103*	*107*	*101*

Source: Data of the sampled Union producers.

(266) The unit average cost of production increased between 2010 and 2012. After 2012, the unit average cost of production decreased again almost to the level of 2010. The peak in 2012 is attributed to a particular investment situation by one of the Union producers in the sample. Over the whole period considered, the unit average cost of production increased by only 1 %.

(267) Several users claimed that a particular company situation should not justify general conclusions. The conclusion regarding the unit cost of production was that it is fairly stable. The peak of 2012 did not change the general conclusions.

(268) The unit cost of production is based on the overall production volume of the sampled Union producers. The unit sales price in Table 7 is based on sales in the Union to unrelated customers. Hence, the two indicators have a different basis and are not directly comparable.

(269) Following the definitive disclosure, the CCCLA claimed that it is essential for the Commission to provide enough comparable data to assess whether the variation of production costs could explain the slight decrease in Union sales prices.

(270) These two indicators have a different basis and whereas the absolute figures are not directly comparable, their trends are.

6.3. *Labour costs*

(271) 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	IP
Average wages per employee (EUR)	40 518	41 590	42 310	42 917
Index (2010 = 100)	*100*	*103*	*104*	*106*

Source: Data of the sampled Union producers.

(272) The average labour costs per employee had a gradual increasing trend (+ 6 %) during the period considered. This was in line with the labour cost index in the countries where the sampled producers are located. ([1])

6.4. *Inventories*

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

Table 10

Inventories

	2010	2011	2012	IP
Closing stocks (in tonnes)	18 539	46 585	50 198	52 805
Index (2010 = 100)	*100*	*251*	*271*	*285*

Source: Data of the sampled Union producers.

(274) The closing stock first increased significantly in 2011 and then continued to increase over the period considered.

(275) The government of the PRC claimed that stock variations reported in the data provided by APFE highlighted unreported sales and did not indicate injury when compared to Chinese imports.

([1]) Ycharts.com

(276) The claim should be disregarded. The Commission performed the analysis of the microeconomic indicators such as stock levels on the basis of actual data provided by the sampled Union producers. The investigation of the sampled Union producers did not reveal any unreported sales.

(277) Following the definitive disclosure, one user claimed that 2010 is not a suitable reference year as the stock levels were unusually low compared to the period 2006 till October 2009 (the period of investigation of the original anti-dumping investigation).

(278) The claim is rejected as the sampled entities in the current investigations are different from the sample in the previous investigation and hence the data is not comparable. The Commission limited its examination to the period considered, in particular with regard to microeconomic data, and does not have data at its possession with regard to stock levels of the sampled Union producers in the period prior to the period considered. The government of the PRC stated that stock levels in 2011 are also higher in view of a 3 % decrease in Union consumption that year. However, this element does not have an effect on the trend over the period considered.

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

(279) 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	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	3 %	2 %	– 6 %	– 4 %
Index (2010 = 100)	*100*	*66*	*– 200*	*– 134*
Cash flow (EUR)	32 847 910	10 978 839	– 1 297 704	14 660 203
Index (2010 = 100)	*100*	*33*	*– 4*	*45*
Investments (EUR)	7 729 022	9 721 478	30 738 820	32 511 238
Index (2010 = 100)	*100*	*126*	*398*	*421*
Return on investments	2 %	2 %	– 4 %	– 3 %
Index (2010 = 100)	*100*	*69*	*– 184*	*– 137*

Source: Data of the sampled *Union producers*.

(280) The Commission established the profitability of the sampled Union producers by expressing the pre-tax profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. During the period considered the profitability of the sampled Union producers decreased considerably from 3 % to – 4 %.

(281) The net cash flow is the ability of the Union producers to self-finance their activities. The cash flow has decreased significantly over the period considered (– 55 %).

(282) The level of investments made by the sampled Union producers followed an increasing trend over the period considered. The increase was more significant in 2012 and the IP. The high investment costs were in view of furnace rebuilds. In this capital intensive industry, furnaces have to be rebuilt every 7 to 10 years and the costs associated with rebuilding a furnace can amount to EUR 8 million — EUR 13 million (range given for reasons of confidentiality). Investments also include substantial structural investment costs related to the alloy consumption from the bushings and its recurrent rebuilding.

(283) The return on investment is the profit in percentage of the net book value of investments. The return on investment followed clearly the negative trend of the profitability. The deterioration of the return on investment is a clear indication of the deterioration of the economic situation of the Union industry during the period considered.

(284) The above fragile financial situation was in spite of the increased consumption during the period considered as described in recital 217 above, and the efforts of the Union industry to rationalize production costs, as described in recitals 244 above and 337 below.

(285) The investigations did not reveal any serious difficulties encountered by the sampled Union producers in raising capital.

(286) Following the definitive disclosure, several parties noted that the investment levels were that high for the periods 2012 and the IP, that these high investment costs could be the reason as to why the Union industry was unprofitable in the IP. The government of the PRC also claimed that the reduced profitability is directly related to the increase in cost of production and the loss in production resulting from the rebuilding of furnaces.

(287) Firstly, the EUR 32 million of investments in the IP from 1 October 2012 to 30 September 2013 partly overlaps with the EUR 30 million in the year 2012. Secondly, the investments made in those periods were essential for furnace rebuilds and are recurrent to the business and considered being made within the ordinary course of business as set out in recitals 241-250. Thirdly, the level of investments had an impact on the results of the Union industry because it is generating additional costs. However, the main effects of the investments are reflected in the balance sheet and not in the Profit & Loss statement, showing the recurrent standard depreciation costs, and hence cannot explain in itself the loss-making situation. As to the claim of the government of the PRC, furnace rebuilds are planned carefully in advance. Continuity of supply to customers is ensured by building buffer stocks. Finally, the impact of these investments on costs and company results are spread out over several years.

(288) In addition, several parties argued that (i) the higher investment costs are reflected in the lower return on investment for the years 2012 and the IP (given that some of the investments do not yield immediate returns) and (ii) it is unreasonable to take a two year snapshot overburdened by heavy investments and conclude that the Union industry has deteriorated on that basis.

(289) The investments in the furnaces are not exceptional to the period considered. The investigation revealed that since 2004 furnace investments have been taking place nearly every year by the Union industry. Therefore, whatever the timespan considered, there will always be effects of furnace repairs or rebuilds on the production volume and on the return on investment. The deterioration of the profitability of the sampled Union producers indicated that they were not able to charge prices for the like product allowing for essential investments for the continuity of the business.

(290) The government of the PRC claimed that an industry will first use available cash before using borrowed funds and that therefore it is normal that the cash flow deteriorated when the sampled Union producers invested heavily in 2012 and the IP. Moreover, they claim that a loss making industry could not have invested as much as the sampled companies did.

(291) The filament glass fibre industry is a global business with financing mechanisms that extend beyond the financial remit of the sampled Union producers. Investment situations do not necessarily have an impact on the cash flow. Therefore these claims are rejected.

7. **Conclusion on the situation of the Union industry**

(292) The findings of the investigations confirm that the Union industry suffered material injury as defined by Article 3(5) of the basic anti-dumping Regulation and Article 8(4) of the basic anti-subsidy Regulation.

(293) The imposition of anti-dumping measures allowed the Union industry to raise its prices in 2011. At the same time, efforts were undertaken by the Union industry to increase efficiency and productivity. Even though Union consumption has been on the rise, the Union industry had no choice but to lower its unit sales prices again as of 2012 in order to maintain its market share.

(294) The analysis of the price undercutting, see recital 231, and the declining trend in the sales price of the Union producers, see recital 263, clearly shows that the Union producers have tried to compete on price with Chinese imports and have closed the price gap. However, this has led to a strong deterioration of the Union producers' financial results with the Union industry reporting losses since 2012. This situation is not sustainable in the short to medium run.

(295) Other indicators also developed negatively, even after the imposition of measures against the PRC, such as production, production capacity, employment, inventories and cash flow.

(296) The findings of both investigations also confirm that the changed circumstances that justified the initiation of the partial interim anti-dumping review, namely the restructuring and the closure of some of the Union plants as explained in recital 244 above, are of a substantial and lasting nature. Following the closure of a plant, the plant is fully dismantled. Moreover, setting a new furnace is highly capital and time consuming and cannot be realized in the short run. The time and costs to set up a new plant with furnaces should therefore not be underestimated. Restructuring and closing some of the plants can therefore be considered as substantial and of a lasting nature.

(297) Several parties claimed that there were clear signs of lack of injury. The claims are addressed in the following recitals.

(298) The CCCLA stated that one of the Union producers, 3B Fibreglass, was acquired in 2012 by the Binani group and that the overall performance of the Union industry must be good as no rational economic operator would invest in an industry which is not performing. They also quote the 2013 Annual report of Braj Binani that *'the overall performance of the 2 manufacturing units at Belgium and Norway is considered good'*. In addition, the CCCLA also stated that the turnover of two Union producers increased between 2010 and the IP and that the Union industry is therefore clearly not suffering any injury.

(299) The Indian Binani Group indeed acquired 3B Fibreglass in 2012. However, irrespective of the individual business motivations of the Binani Group, the Commission refers to its findings of the investigation that the Union industry has lost market share and profitability. The quote should be put into context and reads in full: *'The overall performance of the 2 manufacturing units at Belgium and Norway is considered good and capacity was partially constrained to cope with the lower market demand. The production ramp up to normal efficiencies went on well. Average realization was however, on the lower side due to cheap Asian imports.'*

(300) The claim that the Union industry is not suffering injury, because two Union producers had an increased turnover between 2010 and the IP, is misleading and not correct. The CCCLA based itself for this analysis on turnover expressed in kg. However, drawing conclusions by only looking at higher sales quantities is not accurate as it does not take into account the price level of those sales and therefore the impact on the profitability of the company.

(301) The government of the PRC claimed that as APFE members are investing in capacity increases in and outside the Union (e.g. the PRC, Russia, India and Tunisia), there is a clear sign of lack of injury.

(302) This injury investigation is linked to the performance of the Union producers on the Union market. As seen in table 4 above, the Union industry had a slight capacity increase in 2011 of 1 % where after the capacity reduced by 5 percentage points towards the end of the IP. Therefore, there is no capacity increase in the Union. However, given that many filament glass fibre producers are multinational companies, it is no surprise that these companies also invest outside the Union when there is a business opportunity. Investing in extra capacity outside the Union is done to fulfil the needs of emerging markets and with the prospect of making a profit. Setting up plants in these regions also fits into the picture of being close to these customers. However, the business decision to set up

a plant outside the Union or not, stands completely separate from the fact that the Union producers are suffering injury. Similar allegations on large investments made by the Union industry are addressed in the section on self-inflicted injury below.

(303) Several parties claimed that there is absence of injury given that some Union producers announced that their prices of the like product will increase as from January 2014 in order to compensate for the continued rise in raw material, energy and transportation costs.

(304) First, price levels in 2014 relate to post IP events. Second, the Union industry has been absorbing over the last years the majority of such price increases via productivity increases. However, there comes a point that further productivity increases are much harder to implement in the short term. Given that in the IP the Union industry was loss making and absorption of these price increases is no longer possible, at a certain point in time it becomes inevitable that such increases need to be passed on to customers whereby the risk exists that further market share might be lost. On the basis of the above, the claims were rejected.

E. **CAUSATION**

1. **Introduction**

(305) In accordance with Article 3(6) and Article 3(7) of the basic anti-dumping Regulation and Article 8(6) and Article 8(7) of the basic anti-subsidy Regulation, it was examined whether the dumped and subsidised imports from the PRC had caused injury to the Union industry to a degree that enabled it to be classified as material.

(306) Known factors other than the dumped imports, which could at the same time have injured the Union industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped and subsidized imports.

1.1. *Effect of dumped and subsidized imports*

(307) The investigations showed that, despite the anti-dumping measures in force, the dumped and subsidised imports from the PRC increased in terms of volume (32 %) during the period considered, taking 2009 as a reference year. This resulted in an increase in the PRC's market share from 13 % — 18 % in 2009 to 15 % — 20 % by the end of the IP.

(308) At the same time, and despite the increase in consumption, the Union industry saw its market share decreasing by three percentage points during the period considered.

(309) The average prices of the dumped and subsidized imports decreased by 8 % between 2010 and the IP, and were lower than those of the Union industry during the same period.

(310) The Union industry was still profitable during 2010 and 2011 and became loss making afterwards which coincided with the increase in dumped and subsidised imports from the PRC. Even after lowering its sales price, the Union industry did not succeed in maintaining its market share. This price decrease was at the expense of profitability, leading to a loss-making situation.

(311) Based on the above, it is concluded that the price level of the dumped and subsidised imports from the PRC together with the increase in volume, had a considerably negative impact on the economic situation of the Union industry and therefore played a decisive role in the material injury suffered by the Union industry.

(312) Following the definitive disclosure, several parties claimed that there is a lack of analysis proving that Chinese imports caused the depressed pricing by the Union industry and the injury suffered and that the Commission merely relies on coincidence in time in its analysis. These parties refer to the China X-Ray Equipment panel report: *'The Panel acknowledges that an overall correlation between dumped imports and injury to the domestic industry may support a finding of causation. However, such a coincidence analysis is not dispositive of the causation question; causation and correlation are two distinct concepts. In the circumstances of this case, […], the causation question is not resolved by such a general finding of coincidence'*. ([1])

([1]) Panel report — China — Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union — WT/DS425/R, para. 7.247.

(313) However, the conclusions are based on an analysis of an extensive list of indicators. As set out above in section D, the examination of the impact of the dumped and subsidized imports included an evaluation of all relevant economic facts and indices having a bearing on the state of the Union industry. Many indicators pointed to an injurious situation. In such situation the only reason for the Union industry to lower prices is to keep market share, or at least not to lose further market share, when it is facing competition on price. After the imposition of the original measures, the Union industry managed to increase its prices in 2011, but in the following years had to lower its prices whereas the cost of production did not go down. As further detailed in recitals 320-335 below, exports from third countries were mainly made at high prices over the whole of the period considered, and third country market share remained fairly stable and went even down as from 2011. Therefore the Union industry did not lower its prices because of the imports from third countries, but because of the low dumped and subsidized imports from the PRC. Since 2011, only imports from the PRC increased significantly, only imports from the PRC took away market share from the Union industry, and only import prices from the PRC went down. On this basis, the Commission concluded that the depressed pricing by the Union industry and the injury suffered were caused by the increase in the dumped and subsidized imports from the PRC. Other factors that might break this causal link are analysed below.

(314) The CCCLA and the government of the PRC claimed that there is absence of price depression or price suppression as *'the sales price decrease of the Union producers is not significant since it only peaked at 2 % during the period considered'*. Several parties also claimed that a 1 % decrease in Union sales, a 2 % increase in the market share of the imports from the PRC and a 3 % decrease in the Union industry's market share does not justify the proposed drastic measures.

(315) The Commission reiterates as stated above that following the provisional duties of September 2010, the Union industry was able to increase its prices in 2011. However, as from 2011 the unit sales prices fell by 10 %. Therefore, there is clearly a significant drop in sales prices. Even though there are anti-dumping measures in force, the Union industry continued to suffer from a decrease in sales volume, price and market share, whereas at the same time the Chinese imports increased its sales volume and market share to a level significantly higher than the investigation period of the original investigation. Normally, once measures are imposed, the Union industry is supposed to recover from the effects of past dumping or subsidisation. This was clearly not the case. Following some signs of recovery immediately after the imposition of measures, the situation of the Union industry further deteriorated in the course of the period considered.

(316) One unrelated importer stated that there was no need for the Union producers to decrease prices to the extent they have done, as the Union market had more demand than supply. The government of the PRC claimed that the decrease in Union sales prices as well as the decrease in Chinese import prices cannot be seen in isolation from the global price developments of the product concerned and are in line with the normal course of the market. In addition, the government of the PRC claims that the Commission did not verify whether the market would permit price increases in 2011 (after the imposition of measures in the previous investigation) when seen against the global context and if so, to what extent. Moreover, the Commission has incorrectly refused to accept evidence provided on post-IP price increases by the Union producers and they refer hereby to the *Solar glass* and *Personal fax machine* cases. ([1])

(317) The Commission considered that the statement that demand exceeded supply was not substantiated. The loss in market share and the increase in stock levels do not indicate that demand was higher than supply, but rather the contrary. As to the claim of the government of the PRC, the price developments considered are related to sales on the Union market and not on a global level. On the Union market, the competition between the like product and the product concerned is at price level. As demonstrated above, the price decrease cannot be attributed to other factors than this price competition (in view of a fairly stable cost of production and of Union consumption). Furthermore, the government of the PRC did not provide further information on the global price developments. Therefore, this claim was found to be unsubstantiated. As to the claim on post IP price increases, post IP events go beyond the scope of this investigation. In any event, no substantive evidence of actual price increases which would have materialised after the IP, has been provided. Therefore, this claim is rejected.

(318) In addition, the CCCLA claimed that the average Chinese import price decrease of 8 % as referred to in recital 226 should have taken account of the prices adjusted for customs duty and handling, the anti-dumping duty,

([1]) Commission Implementing Regulation (EU) No 471/2014 of 13 May 2014 imposing definitive countervailing duties on imports of solar glass originating in the People's Republic of China, OJ [2014] L142/23, Recital 319.
Council Regulation (EC) No 495/2002 of 18 March 2002 repealing Regulation (EC) No 904/98 with respect to the imposition of a definitive anti-dumping duty on imports into the Community of personal fax machines originating in the People's Republic of China, Japan, the Republic of Korea, Malaysia, Singapore, Taiwan and Thailand, OJ [2002] L78/1, Recital 12.

the profit margin for importers and the SG&A costs supported by importers. Those adjusted prices would then be at comparable levels with the Union sales prices, as stated in table 7, and could therefore not have played a decisive role in the material injury suffered by the Union industry.

(319) For the indicator analysis the CIF value of the exporting producers' sales of table 3 is compared with the ex-works price of the Union producers of table 7. This method is accurate for analysing trends. For the undercutting and injury margin calculations, adjusted prices were used indeed as explained in recital 231 above. In this respect, the Commission stresses that the undercutting is only one indicator to be looked at, but that all of the injury indicators should be taken together for the analysis. Therefore the claim is rejected.

1.2. *Effects of other factors*

1.2.1. Imports from other countries

(320) The volume of imports from third countries, the average unit prices and the market share during the period considered are shown in the table below.

Table 12

Import volume (metric tonnes), average unit prices (EUR/tonne)

		2010	2011	2012	IP
Total third countries	Volumes (Tonnes)	128 378	182 601	183 446	174 553
	Index (2010 = 100)	*100*	*142*	*143*	*136*
	Market share	14 % - 19 %	22 % - 27 %	21 % - 26 %	20 % - 25 %
Malaysia	Volumes (Tonnes)	37 919	70 847	60 931	60 841
	Av. price/Tonne (EUR)	980	1 029	998	958
	Market share	2 % - 7 %	7 % - 12 %	5 % - 10 %	5 % - 10 %
Norway	Volumes (Tonnes)	25 204	30 496	33 277	30 781
	Av. price/Tonne (EUR)	1 167	1 044	1 006	944
	Market share	0 % - 5 %	1 % - 6 %	1 % - 6 %	1 % - 6 %
Turkey	Volumes (Tonnes)	18 430	20 017	23 235	19 233
	Av. price/Tonne (EUR)	1 199	1 231	1 064	1 067
	Market share	0 % - 5 %	0 % - 5 %	0 % - 5 %	0 % - 5 %

Source: Eurostat (Comext).

(321) Besides the PRC, the product concerned is imported mainly from Malaysia, Norway and Turkey. Some minor imports also come from Mexico, the United States and Taiwan. The overall market share of the third countries was characterised by a sharp increase between 2010 and 2011. Subsequently, the market share decreased in the IP.

(322) The majority of imports from third countries (with the exception of some small quantities from Taiwan) were priced significantly higher than the Chinese imports. Moreover, the overall average prices of imports from other countries were higher than or similar to the Union industry's prices.

(323) Malaysia accounted for the largest share of the third country imports into the Union (40 %). However, the imports from Malaysia were limited to one type of filament glass fibre products, namely chopped strands. Malaysia's market share on the Union market increased over the period considered. On average, the chopped strands import prices from Malaysia were also higher than those from the PRC and nearly as high as those from the Union industry. In addition, Malaysian prices did not prevent the prices of the Union producers to increase between 2010 and 2011 when provisional duties were imposed against the PRC. If Malaysian prices were truly inflicting material injury on the Union industry, the Union producers could not have increased their prices when the provisional anti-dumping duties were imposed on imports from the PRC. Imports from Malaysia are competing with Union industry production but have been a stable factor throughout the period considered, in terms of price, product type and quantities.

(324) Imports from Norway accounted for the second largest share of third country imports into the Union. Norway's market share on the Union market stayed stable over the period considered. The average import prices per product type from Norway have been higher than those from the PRC. These Norwegian imports are mainly rovings made by one single company belonging to the same group as one of the Union producers. Moreover, all of the Norwegian production is sold through the Union producer. Hence we do not consider Norway to be third country competition.

(325) Imports from Turkey accounted for the third largest share of third country imports into the Union. Turkey's market share on the Union market stayed stable over the period considered. On average, the import prices per product type of the like product were also significantly higher than those from the PRC.

(326) The government of the PRC also stated that Union stocks increased in 2011 following a massive increase in imports from third countries, whilst imports from the PRC decreased in the same year.

(327) Indeed, between 2010 and 2011 the Chinese imports decreased and the third country imports increased. However, the Union industry was still profitable during 2010 and 2011 and became loss making afterwards which coincided with the increase of dumped and subsidised imports from the PRC. Third country imports decreased after 2011 and can therefore not be the reason why the Union industry became loss making subsequently. For the above reasons, it is reasonable to conclude that whereas part of the imports from other countries might have affected negatively the Union industry, it has not been to the extent as to break the causal link between dumped and subsidised imports from the PRC and the injury to the Union industry.

(328) Following the definitive disclosure, several parties claimed that the product mix as used for the undercutting analysis (price comparisons between Chinese and Union producers) has not been used for imports from third countries. The government of the PRC explicitly requested details on the product mix of the third country imports which are not discernible from Eurostat statistics.

(329) The Commission did take the product mix fully into account for the analysis of the third country imports by comparing the third country prices per product type with the corresponding Union prices per product type. Given that for the three third countries there is only one producer, no specific data could be disclosed for confidentiality reasons.

(330) The government of the PRC claimed that the Commission's conclusion that a part of the third country imports may have affected the situation of the Union producers but did not break the causal link is not objective, nor based on a reasoned analysis.

(331) The three main third countries that exported the like product to the Union were Malaysia, Norway and Turkey. As already stated above, the Malaysian imports were focused on one product type with comparable price levels to the Union industry. The Norwegian producer is not considered to be third country competition for the reasons stated above. The market share of the Turkish imports has stayed stable and relatively low in volume over the period considered. The claim that third country imports have broken the causal link is herewith rejected.

(332) The government of the PRC also claimed that the Commission neglected the effects of the imports from Taiwan and Mexico which show significant changes in prices and volumes.

(333) Given the limited volumes of imports from Taiwan and Mexico, these imports could not have broken the causal link.

(334) In addition, the government of the PRC claimed that the Commission neglected in its analysis of Chinese stockpiling the fact that between 2010 and 2011 the third country imports increased with more than 40 %.

(335) The statistics (see recital 224) show that stockpiling of Chinese products took place in the second and third quarter of 2010 (for consumption before the end of 2010/beginning of 2011 due to the limited shelf life). The increase in third country imports has been recorded in 2011, when the stockpiling effect had run out and when measures against imports from the PRC entered into force, which turned out to be beneficial for third country producers. Therefore this claim is rejected.

1.2.2. Cost of production

(336) Several parties stated that the increase in the cost of production of the Union industry, mainly due to the increase in raw materials, energy, transportation and personnel costs impacted negatively the profitability of the Union industry. One party also identified the failure of the customers to return bobbins as an important cost factor, without further developing the cost impact. They supported these claims by providing quotes from the Union producers that they were indeed facing cost increases.

(337) The Union industry faced indeed cost increases in raw materials, energy, transportation and personnel cost. However, as can be seen in table 8 above, the average cost of production for the Union industry per tonne increased only by 1 % between 2010 and the IP. This means that the Union industry was able to offset most cost increases via efficiency gains and a higher productivity. Therefore, it is concluded that the increase in the cost of production did not contribute to the injury and therefore, could not break the causal link.

(338) Following the definitive disclosure, several parties reiterated their claims without bringing new arguments forward.

1.2.3. Development of consumption

(339) As mentioned above, Union consumption increased by 3 % between 2010 and the IP. Consumption is expected to increase further given the new applications in which the like product is used, as was stated both by the Union industry and many users. However, the Union industry was not able to maintain its market share and it lost part of it, while dumped and subsidised imports from the PRC have been increasing their market share since 2011. Therefore, the changes in consumption in the Union could not have broken the causal link between injury and the dumped and subsidised imports from the PRC.

1.2.4. Insufficient production capacity and stocks in the Union

(340) The government of the PRC claimed that injury, if any, is caused by the insufficient production capacity of the Union producers. The government of the PRC referred to a number of financial statements by Union producers. The 2010 financial statements of 3B Fibreglass state that *'our limited production capacities have not allowed them to take additional market shares'* and *'have forced us to deal with the evolution of demand of our clients with a limited level of inventory'*. The 2011 financial statements of 3B Fibreglass state that *'the signs of redress of the economy in 2010 were confirmed in the first half of 2011 but the production performance levels of the company being lower than expected in the first trimester, have not allowed us to fully benefit from the uptake in activity and have led us to limit our contractual engagements in 2011'*. The 2011 financial statements of Lanxess state that *'In 2011, the glass fibre production at Lanxess was operating at maximum capacity'* and *'In the second quarter of 2012, the planned shutdown of furnace 1 will take almost 10 weeks and the annual production will thus be 14 % lower in 2012'*.

(341) The stock levels in 2010 were indeed low, see table 10 above. This was the result of a reduction in the level of production in 2009 when several production lines were dismantled, temporarily closed or curtailed in view of the price erosion and loss of market share caused by the dumped imports from the PRC. ([1]) However, the Union industry has increased its stock levels by more than 150 % in 2011 and continued increasing it ever since. Referring to statements of some scare inventory for only the year 2010 is not appropriate, instead a trend should be discerned for the whole period considered.

(342) In addition, some of the quotes refer to reduced production performance levels as a result of furnace repairs/rebuilds. As explained in recital 241 above, such repairs/rebuilds are inherent to this sector and it is customary to build up stock in view of repairing/rebuilding a furnace allowing a continuation of supply to key customers.

(343) Moreover, the Union industry could invest in more capacity if there would be a fair level playing field allowing the Union industry to make a profit that justifies and allows capacity expansion.

(344) Union production capacity and stocks are not considered to be insufficient and hence, could not have contributed to the injury and therefore could not have broken the causal link between dumped and subsidised imports and the injury suffered by the Union industry.

1.2.5. Impact of the economic crisis

(345) Several parties claimed that the injury suffered by the Union industry was caused by the economic crisis which had resulted in a sharp decline in demand by the user industries (such as the automotive industry and the wind energy market).

(346) The government of the PRC quoted several Union producers such as the 2010 financial statements of European Owens Corning Fibreglass SPRL ('EOCF') where it said that *'This decrease is partly explained by the strong dependence of this activity on the wind energy market, the degradation of which has continued because of the difficulty of the actors involved in this market to finance new projects'*, the 2011 financial statements of Lanxess where it said that *'Following the introduction of anti-dumping measures against Chinese imports LANXESS was able to increase its selling prices. In the second half of 2011, however, we note a decrease of 16 % compared to 2010 because of the downward economic trend'* and the 2012 financial statements of EOCF where it said that the turnover of 2012 *'is mainly due to the continuing economic crisis that does not allow them to operate at full capacity'*.

(347) Indeed, a drop of 3 % in Union consumption of filament glass fibre products could be observed between 2010 and 2011. However, by the end of the IP, Union consumption had increased again by 6 percentage points.

(348) The quote that one of the companies had to lower its prices by 16 % in the second half of 2011 as compared to 2010, only gives a partial view on the situation of 2011. The investigation revealed an increase of 8 % in the unit price for the full year of 2011 (as compared to 2010).

(349) In addition, whereas the Union industry was still profitable during 2010 and 2011, it became loss making afterwards which coincided with the increase in dumped and subsidised imports from the PRC undercutting the prices of the Union industry.

(350) The economic downturn between 2010 and 2011 could be considered as contributing to a deterioration of the economic situation of the Union industry. However, the economic downturn does not explain the loss making situation of the Union industry in 2012 and the IP. The main losses occurred only after the economic downturn in a period when consumption was increasing again.

([1]) Commission Regulation (EU) No 812/2010 (OJ L 243, 16.9.2010, p. 47), recital 69.

(351) As to the 2011 Owens Corning quote, it is important to note that the quote comes from EOCF which is Owens Corning's trading entity for all of their businesses in Europe and the Middle East. In addition to the like product, EOCF also sold during that period non-woven products, fabrics, roofing products (shingles) and insulation products, which are not covered by the proceeding. This quote is therefore not specific to the like product on the Union market.

(352) As to the 2012 Owens Corning quote, it refers specifically to the fabrics business conducted by EOCF in one of its plants. Given that fabrics are not part of the like product, this quote is not relevant.

(353) Given the above circumstances, the economic downturn might have affected negatively the Union industry but not to such an extent that it could break the causal link between the dumped and subsidised imports and the injury suffered by the Union industry.

1.2.6. Competitiveness of dumped and subsidised imports from the PRC

(354) Some parties claimed that the outdated technology of the Union industry as compared to the modern technology applied by the Chinese exporting producers caused injury, rather than dumping or subsidising of the product concerned.

(355) However, the investigation confirmed that the Union industry has up to date production processes as well. The claim that the state of the Union industry's technology would break the causal link between the dumped and subsidised imports and the injury suffered by the Union industry is therefore rejected.

1.2.7. Self-inflicted injury

(356) Several parties claimed that the injury might be self-inflicted as (i) the prices offered by Union producers in 2014 were lower than the quotes such parties received from Chinese exporting producers, as (ii) investments made by the applicants in recent years contradict injury, as large investments are difficult to reconcile with a notion of an industry suffering injury and did not lead to a higher market share for the Union industry, as (iii) investments made by the applicants might have been in the restructuring and installing of additional capacity for the production of the 'wrong' filament glass fibre products, for example products for which there is more limited demand, and not for example for chopped strands for which the parties claim there was significant demand and in fact a potential supply shortage in the Union.

(357) Regarding the first claim on lower prices offered by Union producers, it should be noted that this allegation consists of a post IP event and price levels in 2014 could not be considered. Moreover, given that furnaces operate 24 hours a day and that it is very costly to slow down production, the Union industry has been trying to keep market share by selling at lower prices and therefore still covering part of its fixed costs.

(358) As regards the large investments done by the Union industry over the recent years, it should be reminded that in this capital intensive industry, furnaces have to be rebuilt every 7 to 10 years and the costs associated with rebuilding a furnace can amount to EUR 8 million — EUR 13 million (range given for reasons of confidentiality). A good part of the other, more structural high investment costs is linked to the alloy consumption from the bushings and the consequent rebuilding of bushings. Therefore, these investments are inherent to the industry and are necessary to maintain the current capacity. Investments which are dedicated to R & D are also necessary in order to stay in the market and to fulfil the client's needs.

(359) As to the third claim on allegedly 'wrong' investments for other products than chopped strands, it should be noted that (i) the Union industry restructured in view of being able to offer a wide variety of products. No evidence was provided that such type of restructuration was not economically viable, and (ii) the ceased production of chopped strands that took place due to restructuring over the recent years was transferred to another production plant that was converted.

(360) The government of the PRC claimed that Union producers were keeping stock of imports from third countries and quoted the 2011 financial statements of one of the Union producers that stated that: *'Merchandise inventories (EUR 21,4 million at 31 December 2011) are increasing due to global slowdown experienced in our business during the second half of the year, the stock consisting up to 75 % of finished products imported from companies of the* […][our] *group outside of Europe, the rest being mainly materials and products necessary for the Fabrics activity'*.

(361) The increase in this Union producer's 2011 reported stock levels is explained by a stock-up to supply one of its non-EU plants when the latter had a furnace rebuild in 2012. No imports from other non-EU plants would have been done if those products for the non-EU plant could have been produced in the Union.

(362) Following the definitive disclosure, the government of the PRC requested to make clear if such imports were from the PRC or elsewhere and how much the volumes were. However, the sampled Union producers did not purchase the product concerned from the PRC in the period considered.

(363) The government of the PRC also claimed that the injury might be self-inflicted as the Union producer 3B Fibreglass decided to rebuild stock for BASF in 2011 at times when there was insufficient production. They quote hereby from 3B Fibreglass's 2011 financial statements: *'to rebuild our stocks for BASF and to face the repair in cold of oven No 2.'*.

(364) However, it is normal business behaviour to secure stock to be able to fulfil contractual obligations with key accounts. Moreover, the quote also refers to a planned furnace repair which requires to make stock provisions to be able to supply the customers (and to fulfil 3B's contractual supply agreements to its customers) during the repair.

(365) In view of the above, the claim of self-inflicted injury that would break the causal link between the dumped and subsidised imports and the injury suffered by the Union industry is therefore rejected.

1.2.8. Export sales of the Union producers and relocations to be closer to markets

(366) The government of the PRC claims that the alleged injury, if any, was caused by the decision to relocate to the location of the user industries. They add that this does not only happen at the Union level but also on a global scale. The Government of the PRC states that the Union producer P+D expanded its activities in Russia and India, the Union producer 3B in Tunisia, the Union producer PPG in the PRC and the Union producer Ahlstrom shifted its production from Europe to the PRC in early 2011 to better serve the growing wind energy markets in Asia and the PRC in particular.

(367) Given that many filament glass fibre producers are multinational companies, it is no surprise that these companies also invest outside the Union when there is a business opportunity. Investing in extra capacity outside the Union is done to fulfil the needs of emerging markets and with the prospect of making a profit. Setting up plants in these regions does indeed fit into the picture of being close to these customers. However, a business decision to set up or not a plant outside the Union stands completely separate from the fact that the Union producers are suffering injury.

(368) Following the definitive disclosure, the government of the PRC reiterated its claim that large overseas investments have taken production, jobs and export sales away from the Union and therefore caused injury.

(369) This claim is not substantiated. Filament glass fibre producers operate according to a regional proximity model where clients are supplied by production plants in their respective region. The indicators related to capacity and employment do not show that potential large overseas investments were made to the detriment of the Union operations.

(370) The government of the PRC also claimed that the decreases in the Union industry's export sales had serious negative effects which were not analysed by the Commission.

(371) In the present investigations, the weight of the export sales of the Union industry (to related and unrelated customers) accounted between 11 % and 13 % of the total sales of the Union industry (to related and unrelated customers) over the period 2010 till the end of the IP. Similarly, during the original anti-dumping investigation this weight fluctuated between 10 % and 14 % from 2006 till September 2009. Given that the fluctuations of the export volumes are not significant and in line with export volumes of the previous anti-dumping investigation, the evolution of export sales did not have serious negative effects as claimed above.

(372) For the above reasons, export sales of the Union producers and relocations did not contribute to the injury and therefore cannot break the causal link between dumped and subsidised imports and the injury suffered by the Union industry.

1.2.9. EUR/USD exchange rate

(373) The government of the PRC claimed that Chinese supplies involve risks linked to higher logistics complexity and exchange rate fluctuations and that therefore customers are reluctant to become overly exposed to such risks. One user stated that Chinese filament glass fibre product prices are strongly dependent on the exchange rate between EUR and USD. Given that the USD has gradually become weaker in comparison to the EUR since the 2000, allegedly this could have broken the causal link.

(374) Indeed, in early 2000, the EUR was weaker as compared to the USD than today. However, it should be noted that the EUR/USD exchange rate was fairly stable over the period considered. During the period considered the profitability of the sampled Union producers decreased nevertheless considerably from 3 % to -4 %. Even if the EUR/USD exchange rate could be considered as contributing to the injury, this cannot in any way diminish the damaging injurious effects of low priced dumped imports from the PRC in the Union market over the period 2011 till the end of the IP.

(375) Therefore, the EUR/USD exchange rate did not contribute to the injury and could not break the causal link between dumped imports and the injury suffered by the Union industry.

1.3. *Conclusions on causation*

(376) In conclusion, the above analysis has demonstrated that there was an increase in the volume and market share of the dumped and subsidised imports from the PRC. The pressure exercised by the increase of the dumped and subsidised imports on the Union market did not allow the Union industry to set its sales prices in line with normal market conditions and the recorded cost increases. Even after lowering its sales price, the sampled Union producers did not succeed in maintaining market share. This price decrease was at the expense of profitability, leading to a non-sustainable loss-making situation.

(377) The analysis above has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. Based on this analysis, the conclusion is that the dumped and subsidised imports from the PRC have caused material injury to the Union industry within the meaning of Article 3(6) of the basic anti-dumping Regulation and Article 8(5) of the basic anti-subsidy Regulation.

(378) The known factors other than the dumped and subsidised imports have been assessed in line with Article 3(7) of the basic anti-dumping Regulation and Article 8(6) of the basic anti-subsidy Regulation. None of these factors, analysed both individually and cumulatively, were found to break the causal link between the dumped and subsidised imports and the injury suffered by the Union industry.

(379) Following the definitive disclosure, the government of the PRC claimed that the Commission only dismissed the arguments of the interested parties instead of examining all known factors other than the dumped imports which are causing injury to the Union industry.

(380) The Commission has looked into the effect of the following other factors: imports from other countries, cost of production, development of consumption, production capacities and stocks, economic crisis, competitiveness of imports from the PRC, self-inflicted injury, export sales of the Union producers and relocations, and EUR/USD exchange rate. The investigation did not reveal any other factors that could possibly break the causal link.

F. **UNION INTEREST**

(381) In accordance with Article 31 of the basic anti-subsidy Regulation, the Commission examined whether, despite the conclusion on injurious subsidisation, compelling reasons existed for concluding that it was not in the Union interest to adopt measures in this particular case. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

(382) All interested parties were given the opportunity to make their views known pursuant to Article 31(2) of the basic anti-subsidy Regulation. The Commission sent questionnaires to 5 independent importers and to 34 users. Eventually, 2 importers and 13 users submitted a complete questionnaire reply within the time limits set. In addition, several users and associations of users came forward in the course of the investigation with letters expressing opposition to any possible measures in this case. The government of the PRC and the CCCLA also brought submissions forward with claims against any possible measures in this case.

(383) In the original anti-dumping investigation the imposition of measures was considered not to be against the interest of the Union. As the interim review is limited to injury, the Union interest findings at the time remain valid. The below analysis therefore concerns the anti-subsidy investigation.

1. **Interest of the Union industry**

(384) The existing anti-dumping measures have not led to a reduction in dumped imports from the PRC and have not offered relief to the Union industry. As mentioned above, the Union industry continued suffering material injury following the price erosion caused by dumped imports from the PRC. Not imposing measures would most likely lead to a continuation of the negative trend of the financial situation of the Union industry. The situation of the sampled Union producers was particularly marked by a decrease in profitability from + 3 % in 2010 to – 4 % by the end of the IP. Any further decline in performance would ultimately lead to cuts in production lines and more closures of production sites, which would therefore threaten employment and investments in the Union.

(385) The imposition of measures would restore fair competition on the market. The Union industry's downward trend in profitability is the result of its difficulty in competing with the subsidised, low-priced, imports originating in the PRC. It is expected that the imposition of anti-subsidy measures would therefore put an end to the price depression and loss of market share and that the sales price of the Union industry will start to recover, resulting in an improvement of the Union industry's profitability towards levels considered necessary for this capital intensive industry.

(386) Measures would give the Union industry the opportunity to recover from the injurious dumping found during the investigation.

(387) Accordingly, it is concluded that the imposition of anti-subsidy measures would clearly be in the interest of the Union industry.

(388) Following the definitive disclosure, one industry association claimed that increased measures would not bring any relief to the Union industry given that the original measures of 2011 apparently did not have any effect.

(389) The Commission rejects this claim and refers to the recitals above where is concluded that not imposing increased measures would most likely lead to a continuation of the negative trend of the financial situation of the Union industry.

2. **Interest of importers**

(390) As indicated above, sampling was not applied for the unrelated importers and two unrelated importers fully cooperated in this investigation by submitting a questionnaire reply. Activities related to the product concerned represent only a minor part of the overall turnover of the two importers (less than 0,5 %). They both opposed a potential increase in anti-dumping measures as they considered that it could lead to a cessation of imports of the product concerned from the PRC.

(391) Together, the imports declared by these two importers represented a considerable share of all imports from the PRC in the IP and hence are considered to be representative of importers in the Union. No other importers have cooperated by submitting a questionnaire reply or substantiated comments. On that basis, it is concluded that, given the limited share of the product concerned in the overall activity of the importers, the imposition of measures will not have significant negative effects on the overall interest of the Union importers.

3. **Interest of users**

(392) The like product is used for a large number of applications such as automotive industry, wind energy turbines, marine, transportation, and aerospace and infrastructural applications. Cooperation was obtained from a large variety of users which were grouped according to the sector of operation: manufacturers of compounds, manufacturers of composite materials, multiaxial fabric weavers and wind turbine manufacturers. This allowed the Commission to assess the impact of increased measures on different types of users.

(393) Cooperating users purchased around 13 % of the product concerned from the PRC during the IP. Accordingly, the large majority of the like product was purchased from other sources such as third countries and the Union industry. Only a few of them bought the product concerned exclusively from the PRC.

(394) There is a wide range of downstream industries using the like product and they also differ in size, ranging from global companies to SME. From the information submitted during the investigation it further appears that the Union users' industry employs a significant number of people estimated at 100 000 people although no comprehensive and substantiated data has been submitted.

3.1. *Possible impacts of measures on users' profitability*

(395) Overall, based on the questionnaire replies, the filament glass fibre user industries were found to be in relatively good shape. Indeed, most of the cooperating users reported profits on the sales of their products using the product concerned throughout the period considered. Whereas only a couple of users reported a loss on this activity during the IP, the profit of most others was ranging between 2 % and 22 %. Therefore, even under the current measures the user industries were still able to make a profit.

(396) Based on the data received, a user impact analysis was carried out for each of the user groups.

(397) The investigation revealed that, depending on the characteristics of the various user industries, the ability to pass on any increase in duty to their customers is different and hence, the impact of an increase in duty on the profit margin will be different for each user industry.

(398) In summary, the imposition of combined measures would result in a decrease of the profit of the users by less than one percentage point for the vast majority of the user industries, with the exception of the multiaxial weaver industry. For the latter, the share of the product concerned in the costs of production is higher than for the other user industries considered. Hence, these particular users will be affected more significantly than the other users assessed.

(399) Based on the above analysis, it is highly likely that the users in the compounding, composites and wind turbines industries can absorb part or the entirety of the cost increase. Moreover, they might also be able to pass on part of the increased costs to their customers. In this respect, one major user active in the wind turbine manufacturing commented that it settled with the conclusions of the investigation and that it will absorb the duties.

(400) This overall limited impact on profitability also means that the employment at the user industry level is not threatened by the proposed increase of the duties to the extent as alleged by several users.

(401) In any event, any potential negative effect would be mitigated by the continued access for users to third country imports. The imposition of measures does not preclude the users from sourcing from different suppliers.

(402) Following the definitive disclosure, several users claimed that the arguments of the users were dismissed on the basis of qualitative statements only. They also claimed that the decrease of their profit margin is much higher than one percentage point as stated in recital 398 above, especially when considered on an individual product basis.

(403) These claims are dismissed for the following reasons. On the basis of data provided by the users, the Commission carried out detailed calculations to assess the quantitative impact of an increase in measures on the user's profitability. The industries using the product concerned are heterogeneous and show a great deal of differences in terms of size (ranging from SMEs to Multinational Enterprises), their dependence on the product concerned and the applications of their final product and their customer base (small to large companies, sales in the Union versus export sales). As already explained above in recital 398, the Commission recognises that some user segments will be more impacted than others. Based on the data provided by the cooperating users, the share of the product concerned used, purchased from the PRC, was rather limited (less than 13 % — see recital 393). Furthermore, the share of the product concerned from the PRC in the total cost of production was on average also limited, i.e. less than 4 %. The latter is significantly higher for the multiaxial weaver examined though. The impact of an increase in duties was calculated under the assumptions that a similar volume of glass fibre would be purchased from the PRC as reported in the IP, and that the Chinese imports' prices would be subject to duties

of some 30 %, even though the large majority of Chinese exporting producers will be subject to lower duties. Under these assumptions, the calculations showed that, on average for all cooperating users, the impact of an increase in price of the product concerned originating in the PRC on profitability will be less than one percentage point as stated above.

3.2. *Lack of interchangeability*

(404) It was claimed by several users that many of the filament glass fibre products needed by the user industry could not be purchased off-the-shelf. Instead, suppliers would need to go through a lengthy and complicated qualification process which could take 6 to 12 months, without a guarantee of success. Therefore, to change supplier in order to avoid paying duties would be costly, impossible in the short term and risky from a technological point of view.

(405) In this respect, it is recognised that, in particular applications, the characteristics of the product concerned can indeed result in a lengthy qualification process which includes testing. However, also in view of the comments received from several users, at this moment, multiple sources exist in most cases. Moreover, the investigation found that users usually have multiple supply options as a fall-back position and often have qualified the product of several suppliers in order not to be dependent on just one supplier. It should also be recalled that measures are not meant to deny certain suppliers' access to the Union market — as any measure proposed is only meant to restore fair trade and correct a distorted market situation.

(406) Therefore, it is unlikely that imposing measures on the product concerned from the PRC will result in a temporary cessation of raw material supply to the user industry.

3.3. *Inability to pass on cost price increases and increased competition from non-Union downstream products*

(407) Several users claimed that they are facing fierce competition from non- Union producers and hence, would not be in a position to pass on the product concerned price increases to their customers as this will lead to a loss in sales. Given the diversity among the user companies, the ability to pass on potential cost increases to the customers will be different from one type of user to another. Nonetheless, on the basis of the data in the questionnaire replies, for users not in a position to pass on most of the cost increase, in most cases, their turnover and profitability would be affected only to a limited extent.

(408) Several users expressed the concern that the imposition of anti-subsidy duties would create a competitive disadvantage towards non-Union suppliers which have access to the product concerned without measures. Users claim to be in competition with imports from the PRC on their downstream markets. The imposition of combined measures would further exacerbate the competition situation. In view of these circumstances, it was argued that it would not be possible to pass on a price increase in their raw material to the customers. It was argued further that this would lead to the relocation of the production outside of the Union triggering important losses of employment.

(409) It should be noted that the fact that the imposition of anti-subsidy measures might trigger more competition, cannot be a reason for not imposing measures, if warranted. These investigations concern a specific product. Any user industry is fully entitled to resort to the Union trade law and request an anti-dumping investigation for their products. In addition, corporate location decisions depend on a large number of factors. It is unlikely that a relocation decision depends solely on duties on one raw material.

(410) Several parties claimed that the Union producers are global foreign-owned companies and that most of the composite companies are, however, small or medium size and locally owned. These SMEs claimed that an increase in duties will trigger job losses. Also the CCCLA claimed that job losses will occur in the Union when users will relocate due to the increase in duties. In addition, one user also stated that any relocation by the users will lead also to lower sales for the Union industry.

(411) The Commission equally considers all jobs in the Union, regardless of the ownership and the size of the company. In this respect, the Commission refers also to recitals 400 and 403. In addition, the Commission considers the claims on relocation, potential job losses, and lower sales for the Union industry as speculative and unsubstantiated.

(412) Several parties stated that products are currently manufactured in the Union for the global market in competition with third countries. One user stated that it can import the product concerned under inward processing control without paying anti-dumping duties as long as the finished product that they manufacture is then exported outside the Union. However, the result of this is that this user can offer their non-Union customers more competitive prices than their Union customers.

(413) Indeed, users can make use of importing the product concerned under inward processing control without paying the anti-dumping duties as long as the finished product that they manufacture is then exported outside the Union. This does however not alter the conclusions of the Commission in this investigation.

3.4. *Shortage of supply*

(414) One user stated that the Union industry is not in a position to fully meet demand in the Union in particular with respect to certain types of large orders of tailor-made filament glass fibre products. In addition, that user states that most likely due to limited Union production capacities, no Union producer would be willing to dedicate a large part of its capacity supplying a single customer. Another user stated that there is no excess supply of chopped strands and that excluding the PRC from the Union market would lead, especially in view of a rise in demand, to significant supply problems in the Union market. The government of the PRC quotes the Union producer 3B that no new melting capacity has been installed in the industry since 2002, and that in order to meet market needs, particularly in Europe, there is a need for an additional production capacity of 200 000 tonnes.

(415) In this respect, it should first be noted that the purpose of anti-subsidy measures is to remedy unfair trading practices having an injurious effect on the Union industry and to re-establish a situation of effective competition on the Union market, not to eliminate imports. The measures as proposed are not such as to close the Union market for the exporting producers from the PRC even at non-injurious prices, and will therefore allow the continued presence of imports of chopped strands, as well as other filament glass fibre products from the PRC on the Union market.

(416) As concerns the ability of the Union industry to cater to any potential shortage of chopped strands, the current level of capacity utilisation of the Union industry allows for some additional production by the Union industry.

(417) Chopped strands, just as any other product types of the product concerned, could also be imported into the Union from third countries such as Malaysia.

(418) Moreover, Chinese filament glass fibre producers have been setting up plants in closer proximity to the Union (Egypt and Bahrain) as a basis for supplying the Union market.

(419) In view of the above, it can be concluded that a potential shortage of supply of chopped strands can be addressed by extended capacity utilisation of the Union industry, by imports from other sourcing countries as well as by continuing imports from the PRC at a non-injurious price.

(420) On the basis of the sections above, it is concluded that the overall effect of the imposition of combined measures on the Union downstream industries is limited, and would not outweigh the positive effect of the measures for the Union industry.

(421) Following the definitive disclosure, one industry association stated that it is difficult to understand that the Union producers have idle capacity whereas there is a shortage of glass fibre with price increases on the Union market. Several parties reiterated their claims that imposing further measures will lead to shortage of supply from Union producers.

(422) For the period considered, the investigation has not revealed any shortage of supply. As to potential future supply shortages, the Commission considers that an increase in duties does not prevent imports into the Union from the PRC and from third countries as set out above.

4. **Conclusion on Union interest**

(423) On the basis of the above, it is expected that the imposition of combined measures would provide an opportunity for the Union Industry to improve its situation through increased sales prices and market share. While some negative effects may occur in the form of cost increases for certain users, they are likely to be outweighed by the expected benefits for the Union industry and their suppliers.

(424) Therefore, it is concluded that on balance, no compelling reasons existed against the imposition of measures on imports of the product concerned originating in the PRC.

(425) Following the definitive disclosure, several parties claimed that the consequences of the proposed measures are underestimated. They claim that the Commission places more credence on the claim from a small group of glass-fibre manufacturers than on the resistance from a much larger, but fragmented group of mainly small and medium-sized sub-suppliers who have not had a real opportunity to respond with the same clout.

(426) These claims are rejected as ample opportunities have been given to users to come forward during the investigation. Many have done so and their data has been thoroughly examined and taken into account. Importance has been given to all interested parties during the investigation.

G. **DEFINITIVE ANTI-DUMPING AND ANTI-SUBSIDY MEASURES**

(427) On the basis of the conclusions reached by the Commission on subsidy, injury, causation and Union interest, definitive measures should be imposed to prevent further injury being caused to the Union industry by dumped and subsidised imports.

1. **Injury elimination level**

(428) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.

(429) The injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports. As in the original investigation, a target profit of 5 % was used.

(430) A target profit of 10 %-12 % has been requested by APFE. APFE claimed the target profit for the analysis should take into account the need for a highly capital intensive industry to achieve a satisfactory return on capital employed as expected by investors. APFE also refers to a Stern Business School of New York University report which calculated the weighted average costs of capital (WACC), combining the cost of equity and the cost of debt for various industry sectors. ([1]) The Stern report calculates the average WACC for the filament glass fibre industry at between 8,3 % and 8,4 %. In addition, APFE refers to the profit of 8.3 % used in the China solar glass case ([2]). They further claim that considering that equity and debt costs are somewhat higher in the Union than the US, the rate for the Union would be slightly higher, in the range of 10 % to 12 %.

(431) The actual profit made during the period considered cannot be used given that there were still significant volumes of dumped imports coming in from the PRC despite the current duties in force.

([1]) http:/…/pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/wacc.htm
([2]) Commission Implementing Regulation (EU) No 470/2014, recital 136 (OJ L 142, 14.5.2014, p. 15).

(432) In the solar glass case from the PRC, 8,3 % target profit was used as this was the average profit achieved by the sampled Union producers in 2010 when the imports of the product concerned were still small and therefore could not have distorted the normal conditions of competition yet (i.e. a profit not affected by dumped imports yet).

(433) While it is undisputable that the Union industry is a highly capital intensive industry, APFE was not able to demonstrate that the target profit based on the WACC of the Stern Report meets the applicable test. Therefore the claim was rejected.

(434) Following the definitive disclosure, APFE argued that the findings about the target profit should be revised given that the Union industry is capable of achieving profit levels above 5 % in relation to product types, such as wet use chopped strands (WUCS) for nonwovens and WUCS for gypsum, where they can compete fairly with imports from third countries and where they do not face aggressive underselling by dumped and subsidised Chinese filament glass fibre products.

(435) A target profit of 5 % was used in the previous investigation. In the absence of substantiated arguments regarding changed market conditions which would justify a higher target profit, this target profit has been maintained.

(436) In addition, whereas WUCS, like any other types of the product concerned, are used as reinforcement material, WUCS have a limited shelf life and higher transport costs due to the weight of the water content (see recital 63). WUCS are imported into the Union in much lower quantities than the other filament glass fibre products. The profit margin for this sole product type is therefore not representative for the product concerned.

(437) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the sampled exporting producers from the PRC, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

(438) Following the definitive disclosure, one exporting producer claimed that there were some inaccuracies with the CIF values of 3 PCN's.

(439) Upon verification, the Commission has adjusted the respective CIF values which led to a small change in the undercutting and underselling margins for this exporting producer.

(440) As a result, the following injury elimination levels have been established:

Company	Injury elimination level
Jushi Group	24,8 %
Jiangsu Changhai Group	4,9 %
Chongqing Polycomp International Corporation	29,6 %
Other cooperating companies	26,1 %

(441) One user claimed that all the facts remained the same and that therefore, the only way the Commission can reach a conclusion that the injury allegedly caused by imports from the PRC has worsened is if the Commission were to employ a different methodology in calculating the injury margin as compared to the original investigation.

(442) The facts have not remained the same. Therefore, applying the methodology of the original investigation, the calculation of the current injury margin is leading to a different result, in view of a change in the underlying data, such as the costs, prices and losses.

(443) Following the definitive disclosure, one exporting producer wondered what change in circumstances would justify a PCN-based calculation of injury margin as opposed to the simple average price-to-price comparison as made in the original investigation.

(444) The Commission considers that the basic methodology of the current investigations is the same as the one applied in the previous investigation. Sampling was applied and any comparison was carried out on a like-to-like basis. A PCN-based calculation of the injury margin allowed for a more detailed and accurate calculation, but this cannot be considered as a change in methodology.

(445) The same exporting producer also stated that chopped strand mats made from glass fibre filaments form part of the product concerned but that the injury margin calculation does not reflect PCN's for chopped strand mats. The exporting producer wondered if (i) the Union producers were not producing any longer those chopped strand mats and (ii) why the Commission did not seem to have had in the past any difficulty in finding a substitute to a major product type for the purpose of an injury margin calculation even if there was no exact match on a PCN basis.

(446) The product concerned does indeed include chopped strand mats and some (entities of) Union producers produce these mats. The sampled Union producers produced types of mats which were not imported from the PRC during the IP. However, overall, the PCN matching was high and therefore there was no need to resort to any substitutes.

(447) In addition, this exporting producer wondered i) why a level of trade ('LOT') adjustment was necessary and to whom the Union producers actually sell their products, and ii) why, for Chinese sales, EU transportation costs to the warehouse and warehousing costs were not taken into account in the injury margin.

(448) Sales by the sampled Union producers are made predominantly directly to the end-users. For the sampled Chinese exporters, this was not the case. More sales were going via distributors or other intermediate sales channels. Hence, bringing all sales to the level of an end-user sale was deemed to make prices more comparable. According to standard methodology, the undercutting calculation takes into account post-importation costs whereas the injury margin is based on the CIF value of the Chinese export sales.

(449) The exporting producer also wondered why the existing anti-dumping duty is not included in the injury margin as including this duty in the CIF value would be consistent with the applied price undercutting methodology.

(450) The injury elimination margin as presented in this Regulation reflects the full margin necessary to eliminate the injury. When the existing anti-dumping margin would have been included in the injury elimination margin, one would have only obtained a partial elimination margin.

(451) Following definitive disclosure, the complainant claimed that due to the fact that Jiangsu Changhai Group was found not to be fully cooperating with the investigation (see section C. 2.1. above), the information related to Jiangsu Changhai Group's export price was unreliable and therefore, it should not be used in the calculation of the injury margin. The complainant argued that the group's export price may be flawed in the event it is being established based on the company's costs of production which could not have been properly verified because of the company's lack of full cooperation with the investigation. The group's export price should rather be established on facts available pursuant to Article 18(1) of the basic anti-dumping Regulation and to Article 28(1) of the basic anti-subsidy Regulation.

(452) As explained in recital 92, within the group, the product concerned was not exported by the company which provided misleading information but only by OCH. The latter however cooperated fully in both investigations and provided reliable information about the group's export price (e.g. invoices were provided and were verified by the Commission on spot). Therefore, the Commission has no reason to question the group's export price. The calculation of the injury margin was done based on the actual verified export price — as appearing on the sales invoices — irrespective on how it was being set and whether it was based on any of the company's costs of production. This claim was therefore rejected.

2. **Definitive measures**

(453) The anti-subsidy investigation was carried out in parallel with the review of the anti-dumping measures, limited to injury. In view of the use of the lesser duty rule, and the fact that the definitive subsidy margins are lower than the injury elimination level, the Commission should, in accordance with Article 15 of the basic anti-subsidy Regulation, impose the definitive countervailing duty at the level of the established definitive subsidy margins and then impose the definitive anti-dumping duty up to the relevant injury elimination level.

(454) On the basis of this methodology and of the facts of the case, in particular the fact that the measures are limited by the injury margin, the Commission considers that no 'double-counting' issue arises in this case.

(455) Given the high rate of cooperation of Chinese exporting producers, the 'all other companies' duty was set at the level of the highest duty to be imposed on the companies sampled or cooperating in the investigations. The 'all other companies' duty will be applied to those companies which had not cooperated in the investigations.

(456) For the other cooperating non-sampled Chinese exporting producers listed in Annex I, the definitive duty rate is set at the weighted average of the rates established for the cooperating exporting producers in the sample, with the exclusion of the Group to which the exporting producer subject to the provisions of Article 28(1) belongs.

(457) Following the definitive disclosure, one exporting producer requested to qualify for individual treatment under Article 9(5) of the basic anti-dumping Regulation, and to receive an individual dumping margin calculation.

(458) However, given that the partial interim review is limited to the injury, the dumping margins as established in the previous anti-dumping investigation remain unchanged. The request for an individual dumping margin was therefore rejected.

(459) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Chinese exporter	Dumping margin (established in original investigation)	Subsidy margin	Injury elimination level	Countervailing duty	Anti-dumping duty
Jushi Group	29,7 %	10,3 %	24,8 %	10,3 %	14,5 %
Jiangsu Changhai Group	9,6 %	5,8 %	4,9 %	4,9 %	0 %
Chongqing Polycomp International Corporation	29,7 %	9,7 %	29,6 %	9,7 %	19,9 %
Other cooperating companies	29,7 %	10,2 %	26,1 %	10,2 %	15,9 %
All other companies duty rates				10,3 %	19,9 %

(460) The individual company anti-dumping and anti-subsidy duty rate specified in this Regulation was established on the basis of the findings of the present investigations. Therefore, it reflects the situation found during these investigations with respect to the company concerned. This duty rate (as opposed to the countrywide duty applicable to 'all other companies') is thus exclusively applicable to imports of products originating in the country concerned and produced by the company mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(461) A company may request the application of the individual duty rate if it changes subsequently the name of its entity. The request must be addressed to the Commission. ([1]) The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.

(462) In order to ensure a proper enforcement of the anti-dumping duty, the duty level for all other companies should not only apply to the non-cooperating exporting producers, but also to those producers which did not have any exports to the Union during the IP.

3. **Undertaking**

(463) One Chinese exporting producer offered a price undertaking in accordance with Article 8(1) of the basic anti-dumping Regulation and Article 13(1) of the basic anti-subsidy Regulation. The undertaking offer contained Minimum Import Prices (MIPs) for several main product types and sub product types of the product concerned.

(464) The Commission considers that the product concerned exists in a multitude of sub product types and grades whereby the difference of prices vary up to 700 %. Therefore there is a high risk for cross-compensation. Within one product type, prices also can range up to 550 % depending on the sub product types. Moreover, the different MIP's as proposed by the Chinese exporting producer were well under the non-injurious price and would therefore not remove the injury as suffered by the Union industry.

(465) In view of the above, for customs, it would not be possible to distinguish the specification without individual analysis of each transaction imported in order to determine into which MIP group the product would fall, thus rendering the monitoring very burdensome, if not impracticable.

(466) In addition, the company exports to the Union also other products which are not subject to measures. Accordingly, there exists a risk for compensation if those products are sold to the same customers. Some of its Union customers are related companies which trade also with other related companies from outside the Union. These complex trade and business links create further potential risks of cross-compensation.

(467) Based on the above, the undertaking offer was rejected.

(468) The Committee established by Article 15(1) of the basic anti-dumping Regulation did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

(1) A definitive countervailing duty is hereby imposed on imports of chopped glass fibre strands, of a length of not more than 50 mm; glass fibre rovings, excluding glass fibre rovings which are impregnated and coated and have a loss on ignition of more than 3 % (as determined by the ISO Standard 1887); and mats made of glass fibre filaments excluding mats of glass wool, currently falling within CN codes 7019 11 00, ex 7019 12 00 (TARIC codes 7019 12 00 21, 7019 12 00 22, 7019 12 00 23, 7019 12 00 25, 7019 12 00 39) and 7019 31 00 and originating in the People's Republic of China.

(2) The rate of the definitive countervailing duty applicable to the net, free-at-Union-frontier price before duty, of the product described in paragraph 1 and manufactured by the companies listed below shall be as follows:

Company	Definitive countervailing duty (%)	TARIC additional code
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	10,3	B990

([1]) European Commission, Directorate-General for Trade, Directorate H, Office CHAR 04/039, 1049 Bruxelles/Brussel, Belgique/België.

Company	Definitive countervailing duty (%)	TARIC additional code
Changzhou New Changhai Fiberglass Co., Ltd; and Jiangsu Changhai Composite Materials Holding Co., Ltd; Changzhou Tianma Group Co., Ltd	4,9	A983
Chongqing Polycomp International Corporation	9,7	B991
Other cooperating companies listed in Annex I	10,2	
All other companies	10,3	A999

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

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

Article 2

Article 1 of Council Implementing Regulation (EU) No 248/2011 is hereby replaced by the following.

(1) A definitive anti-dumping duty is hereby imposed on imports of chopped glass fibre strands, of a length of not more than 50 mm; glass fibre rovings, excluding glass fibre rovings which are impregnated and coated and have a loss on ignition of more than 3 % (as determined by the ISO Standard 1887); and mats made of glass fibre filaments excluding mats of glass wool, currently falling within CN codes 7019 11 00, ex 7019 12 00 (TARIC codes 7019 12 00 21, 7019 12 00 22, 7019 12 00 23, 7019 12 00 25, 7019 12 00 39) and 7019 31 00 and originating in the People's Republic of China.

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

Company	Definitive anti-dumping duty (%)	TARIC additional code
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	14,5	B990
Changzhou New Changhai Fiberglass Co., Ltd; Jiangsu Changhai Composite Materials Holding Co., Ltd; Changzhou Tianma Group Co., Ltd	0	A983
Chongqing Polycomp International Corporation	19,9	B991
Other cooperating companies listed in Annex 1	15,9	
All other companies	19,9	A999

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

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

Article 3

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 the Member States in accordance with the Treaties.

Done at Brussels, 16 December 2014.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX I

Cooperating exporting producers not included in the sample:

Name	TARIC additional code
Taishan Fiberglass Inc.; PPG Sinoma Jinjing Fiber Glass Company Ltd	B992
Xingtai Jinniu Fiberglass Co., Ltd	B993
Weiyuan Huayuan Composite Material Co., Ltd	B994
Changshu Dongyu Insulated Compound Materials Co., Ltd	B995
Glasstex Fiberglass Materials Corp.	B996

ANNEX II

A declaration signed by an official of the entity issuing the commercial voice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3) and Article 2(3):

1. The name and function of the official of the entity issuing the commercial invoice.
2. The following declaration: 'I, the undersigned, certify that the (volume) of filament glass fibre products sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the PRC. I declare that the information provided in this invoice is complete and correct'.
3. Date and signature.

COMMISSION IMPLEMENTING REGULATION (EU) No 1380/2014

of 17 December 2014

amending Regulation (EC) No 595/2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ([1]), and in particular Articles 81(1) and 83(4) in conjunction with Article 4 thereof,

Whereas:

(1) Regulation (EU) No 1308/2013 of the European Parliament and of the Council ([2]) has repealed and replaced Regulation (EC) No 1234/2007 as from 1 January 2014. However, Article 230(1)(a) of Regulation (EU) No 1308/2013 provides that, as regards the system of milk production limitation, Section III of Chapter III of Title I of Part II of Regulation (EC) No 1234/2007 as well as Article 55, Article 85 thereof and Annexes IX and X thereto continue to apply until 31 March 2015.

(2) In order to avoid any doubts as regards the obligations of purchasers and producers in relation to the last milk quota year 2014/2015, as well as the obligation to collect the surplus levy after 31 March 2015, it is appropriate to clarify Article 15(1) of Commission Regulation (EC) No 595/2004 ([3]) by making reference to the applicable provisions of Regulation (EC) No 1234/2007.

(3) 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

In Article 15 of Regulation (EC) No 595/2004, paragraph 1 is replaced by the following:

'1. Before 1 October each year, purchasers and, in the case of direct sales, producers liable for the levy shall pay the competent authority the amount due in accordance with rules laid down by the Member State, purchasers being responsible for collecting the surplus levy on deliveries due by producers pursuant to Article 79 of Regulation (EC) No 1234/2007, in accordance with Article 81(1) of that Regulation.'

Article 2

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

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

Done at Brussels, 17 December 2014.

For the Commission

The President

Jean-Claude JUNCKER

([1]) OJ L 299, 16.11.2007, p. 1.

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

([3]) Commission Regulation (EC) No 595/2004 of 30 March 2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector (OJ L 94, 31.3.2004, p. 22).

COMMISSION IMPLEMENTING REGULATION (EU) No 1381/2014

of 22 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, 22 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	76,1
	EG	176,9
	IL	69,8
	MA	90,5
	TN	241,9
	TR	107,1
	ZZ	127,1
0707 00 05	IL	241,9
	TR	147,2
	ZZ	194,6
0709 93 10	MA	80,1
	TR	142,0
	ZZ	111,1
0805 10 20	AR	35,3
	MA	68,6
	TR	57,7
	UY	32,5
	ZA	50,8
	ZW	33,9
	ZZ	46,5
0805 20 10	MA	69,1
	ZZ	69,1
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	94,1
	JM	161,9
	MA	75,3
	TR	76,6
	ZZ	102,0
0805 50 10	TR	71,9
	US	236,5
	ZZ	154,2
0808 10 80	BR	59,0
	CA	135,6
	CL	80,3
	NZ	90,6
	US	99,6
	ZA	54,1
	ZZ	86,5

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0808 30 90	CN	98,8
	US	141,4
	ZZ	120,1

(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

COUNCIL DIRECTIVE 2014/112/EU

of 19 December 2014

implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF)

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 155(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Management and labour, hereinafter referred to as 'the social partners', may, in accordance with Article 155(2) of the Treaty on the Functioning of the European Union (TFEU), jointly request that agreements concluded by them at Union level in matters covered by Article 153 TFEU be implemented by a Council decision on a proposal from the Commission.

(2) By letter of 10 December 2007, the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF) informed the Commission of their desire to enter into negotiations in accordance with Article 155(1) TFEU with a view to concluding an agreement at Union level.

(3) On 15 February 2012, EBU, ESO and ETF concluded a European Agreement concerning certain aspects of the organisation of working time in inland waterway transport ('the Agreement').

(4) The Agreement included a joint request that the Agreement be implemented by means of a Council decision on a proposal from the Commission in accordance with Article 155(2) TFEU.

(5) The appropriate instrument for implementing the Agreement is a directive.

(6) The Commission has informed the European Parliament of its proposal.

(7) The Commission drafted its proposal for a Directive, in accordance with its Communication of 20 May 1998 on adapting and promoting the social dialogue at Community level, taking into account the representative status of the signatory parties and the legality of each paragraph of the Agreement.

(8) In order to contribute to a coherent legal framework with regard to the organisation of working time, the implementation of this Directive should take into account existing Union legislation and, given the content of the Agreement, in particular Directive 2003/88/EC of the European Parliament and of the Council [1]. That Directive lays down minimum health and safety requirements for the organisation of working time, including that of workers in the inland waterway transport.

(9) It should be possible for the Member States to entrust social partners, at their joint request, with the implementation of this Directive, provided the Member States take all steps necessary to ensure that the objectives of this Directive can be met.

[1] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).

(10) For the purposes of Article 14 of Directive 2003/88/EC, this Directive and the Agreement annexed hereto lay down more specific requirements relating to the organisation of the working time for mobile workers in inland waterway transport than those of that Directive.

(11) This Directive should apply without prejudice to any Union legislation which is more specific or which grants a higher level of protection to mobile workers in inland waterway transport.

(12) This Directive should not be used to justify a reduction in the general level of protection of workers in the fields covered by the Agreement.

(13) This Directive and the Agreement annexed hereto lay down minimum standards. The Member States and the social partners should be able to maintain or introduce more favourable provisions.

(14) This Directive respects the fundamental rights and principles recognised by in the Charter of Fundamental Rights of the European Union, and in particular Article 31 thereof.

(15) Since the objectives of this Directive, which is intended to protect health and safety of workers in a predominantly cross-border sector, cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(16) The implementation of the Agreement contributes to achieving the objectives under Article 151 TFEU.

(17) According to the settled case-law of the Court of Justice of the European Union ([1]), the fact that an activity referred to in a directive does not yet exist in a Member State cannot release that Member State from its obligation to adopt laws or regulations in order to ensure that all the provisions of the directive are properly transposed. Both the principle of legal certainty and the need to secure the full implementation of directives in law and not only in fact require that all Member States reproduce the rules of the directive concerned within a clear, precise and transparent framework providing for mandatory legal provisions. Such an obligation applies to Member States in order to anticipate any change in the situation existing in them at a given point in time and in order to ensure that all legal persons in the Community, including those in Member States in which a particular activity referred to in a directive does not exist, may know with clarity and precision, what are, in all circumstances, their rights and obligations. According to case-law, it is only where transposition of a directive is pointless for reasons of geography that it is not mandatory. Member States should in such cases inform the Commission thereof.

(18) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ([2]), Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive implements the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded on 15 February 2012 by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF), as set out in the Annex hereto.

Article 2

1. Member States may maintain or introduce provisions more favourable than those laid down in this Directive.

([1]) See, inter alia, the Judgment of the Court of Justice of 14 January 2010 in Case C-343/08, Commission v Czech Republic ([2010] ECR I-275).
([2]) OJ C 369, 17.12.2011, p. 14.

2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This shall be without prejudice to the rights of Member States and social partners to lay down, in the light of changing circumstances, legislative, regulatory or contractual arrangements different from those prevailing at the time of the adoption of this Directive, provided that the minimum requirements laid down in this Directive are complied with.

3. The application and interpretation of this Directive shall be without prejudice to any Union or national provision, custom or practice providing for more favourable conditions for the workers concerned.

Article 3

Member States shall determine what penalties are applicable when national provisions enacted pursuant to this Directive are infringed. The penalties shall be effective, proportionate and dissuasive.

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2016 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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.

Article 5

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

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 19 December 2014.

For the Council
The President
S. GOZI

ANNEX

European agreement concerning certain aspects of the organisation of working time in inland waterway transport

Whereas:

(1) Directive 2003/88/EC concerning certain aspects of the organisation of working time lays down general minimum standards which, with the exception of the areas set out in Article 20(1) (daily rest, breaks, weekly rest, duration of night work), also relate to the organisation of working time in inland waterway transport. However, as these regulations do not take the specific working and living conditions in the inland waterway transport sector sufficiently into account, more specific rules are necessary, pursuant to Article 14 of Directive 2003/88/EC.

(2) These more specific rules should safeguard a high level of health and safety for workers in the inland waterway transport sector.

(3) Inland waterway transport is an international form of transport characterised first and foremost by cross-border activities on the European inland waterway transport network. The European inland waterway transport sector should therefore work towards creating homogeneous framework conditions for the labour market in this sector and preventing unfair competition based on differences between statutory working time structures.

(4) In view of the importance of the transport sector for economic competitiveness, the European Union has set itself the goal of encouraging those modes of transport which use less energy, are more environmentally friendly or safer ([1]). Inland waterway transport is an environmentally friendly mode of transport with available capacity which can make a sustainable contribution to removing freight from Europe's roads and railways.

(5) The organisation of work varies within the sector. The number of workers and their working time on board varies depending on the way in which the work is organised, the undertaking concerned, the geographical area of operation, the length of the voyage and the size of the craft. Some vessels sail continuously, i.e. 24 hours a day, with the crew working shifts. By contrast, medium-sized undertakings in particular tend to operate their vessels 14 hours a day for five or six days per week. In the inland waterway transport sector, the working time of a worker on board is not the same as the operating time of a craft.

(6) One of the special features of the inland waterway transport sector is that it is possible for workers to have not only their place of work but also their accommodation or living quarters on board the vessel. It is therefore usual for workers to spend rest periods on board. Many workers in the inland waterway transport sector, especially those who are a long way from home, work several consecutive days on board in order to save on travelling time and then be able to spend several days at home or at another place of their own choosing. With a 1:1 pattern, for example, a worker has the same number of rest days and working days. For this reason the number of consecutive working days on board and the number of rest days can be correspondingly higher than is the case in land-based employment.

(7) Average working time in the inland waterway transport sector usually includes a significant amount of on-call time (for example as a result of unplanned waiting time at locks or during the loading and unloading of the craft), which may also occur during the night. The maximum daily and weekly working times which are laid down may therefore be longer than those stipulated in Directive 2003/88/EC.

(8) At the same time it must be recognised that the workload in inland waterway transport is influenced by several factors, such as noise, vibration and the organisation of working time. Without prejudice to the provisions of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ([2]), provision is made for annual health checks to protect workers, taking into account the specific working conditions in this sector.

(9) Account should be taken of the additional demands made on crew members during night work by limiting the maximum permissible number of night-time hours and by organising work appropriately.

([1]) See Communication from the Commission on the promotion of inland waterway transport 'Naiades', COM(2006) 6 final, 17.1.2006.
([2]) OJ L 183, 29.6.1989, p. 1.

(10) The inland waterway transport sector not only employs workers but also uses self-employed workers ([1]). Self-employed status is determined in line with the applicable national law.

(11) The working and living conditions on passenger vessels differ from those in other forms of inland waterway transport and thus special provisions are warranted. The different social environment, different work activities and seasonal nature of this sub-sector of the European inland waterway transport sector are reflected in differences in the way in which work is organised.

Pursuant to the Treaty on the Functioning of the European Union, and in particular Articles 154 and 155(2) thereof, the undersigned jointly request that this agreement concluded at EU level be implemented by a Council decision on a proposal by the Commission. The signatory parties have agreed the following:

Paragraph 1

Scope

1. This agreement shall apply to mobile workers employed as members of the navigation personnel (crew members) or in another function (shipboard personnel) on board a craft operated within the territory of a Member State in the commercial inland waterway transport sector.

2. Inland waterway transport operators shall not be considered workers within the meaning of this agreement, even if they have the status of workers in their own undertaking.

3. This agreement shall be without prejudice to national or international provisions concerning the safety of shipping that apply to mobile workers and to the persons referred to in Paragraph 1.2.

4. Where there are differences in respect of rest periods for mobile workers between this agreement and any national or international provisions concerning the safety of shipping, those provisions that offer a higher degree of protection to the health and safety of workers shall take precedence.

5. Mobile workers who are employed on board a craft operated within the territory of a Member State outside the commercial inland waterway transport sector and whose working conditions are the subject of collective bargaining and wage agreements concluded between employers' and workers' organisations may be covered by this agreement after these employers' and workers' organisations have been consulted and have given their consent, where the provisions of this agreement are more favourable to workers.

Paragraph 2

Definitions

For the purposes of this agreement, the following definitions apply:

(a) 'craft' means a vessel or item of floating equipment;

(b) 'passenger vessel' means a day trip or cabin vessel constructed and equipped to carry more than 12 passengers;

(c) 'working time' means the time during which a worker is scheduled to work or must be available to work (on-call time) on and for the craft on the instructions of the employer or the employer's representative;

(d) 'rest time' means the time outside working time; this term covers rest periods on a moving craft, on a stationary craft, and on land. It does not include short breaks (of up to 15 minutes);

(e) 'rest day' means an uninterrupted rest period of 24 hours which the worker spends in a place of his own choosing;

(f) 'inland waterway transport operator' means any person operating vessels for commercial purposes in the inland waterway transport sector for their own account;

(g) 'work schedule' contains the planned working days and rest days communicated to the worker in advance by the employer;

([1]) See Communication from the Commission COM(2010) 373 final, 13.7.2010: Reaffirming the free movement of workers: rights and major developments, section 1.1.

(h) 'night time' means the time between 23:00 and 06:00;

(i) 'night worker' means

(aa) on the one hand, any worker who, during night time, works at least three hours of their daily working time as a normal course;

(bb) on the other hand, any worker who is likely during night time to work a certain proportion of their annual working time, as defined at the choice of the Member State concerned:

(aaa) by national legislation, following consultation with the two sides of industry,

or

(bbb) by collective agreements or agreements concluded between the two sides of industry at national or regional level

(j) 'shift worker' means any worker whose work schedule is part of shift work;

(k) 'shipboard personnel' is defined in accordance with definition No 103 in Article 1.01 of Annex II to Directive 2006/87/EC ([1]);

(l) 'mobile worker' means any worker employed as a member of travelling personnel by an undertaking which operates transport services for passengers or goods by inland waterway; and references to 'workers' in this agreement shall be interpreted accordingly;

(m) 'season' means a period of no more than nine consecutive months out of 12 months in which activities are tied to certain times of the year as a result of external circumstances, e.g. weather conditions or tourist demand.

Paragraph 3

Working time and reference period

1. Without prejudice to Paragraph 4, the working hours standard is based on an eight-hour day.

2. Working time may be extended in accordance with Paragraph 4 provided that an average of 48 hours per week is not exceeded within 12 months (the reference period).

3. The maximum working time in the reference period is 2 304 hours (calculation basis: 52 weeks minus a minimum four weeks' leave x 48 hours). Periods of paid annual leave and periods of sick leave shall not be included in the calculation of the average or shall be neutral. Rest time entitlements resulting from statutory public holidays shall also be deducted.

4. For employment relationships with a duration of less than the reference period, the maximum permissible working time shall be calculated pro rata.

Paragraph 4

Daily and weekly working time

1. Working time shall not exceed:

(a) 14 hours in any 24-hour period; and

(b) 84 hours in any seven-day period.

2. If, according to the work schedule, there are more working days than rest days, an average weekly working time of 72 hours shall not be exceeded over a four-month period.

([1]) Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels and repealing Council Directive 82/714/EEC (OJ L 389, 30.12.2006, p. 1-260).

Paragraph 5

Working days and rest days

1. No more than 31 days may be worked consecutively.

2. If, according to the work schedule, the number of working days is no more than the number of rest days, consecutive working days shall be followed immediately by the same number of consecutive rest days. Exceptions to the number of consecutive rest days to be granted immediately shall be allowed on condition that:

   (a) the maximum number of 31 consecutive working days is not exceeded, and

   (b) the minimum number of consecutive rest days referred to in 3.a), 3.b) or 3.c) is granted immediately after the consecutive working days worked, and

   (c) the extended or exchanged period of working days is balanced out within the reference period.

3. If, according to the work schedule, there are more working days than rest days, the minimum number of consecutive rest days which immediately follow the consecutive working days shall be:

   (a) 1st to 10th consecutive working day: 0,2 rest days per consecutive working day (e.g. 10 consecutive working days = 2 rest days);

   (b) 11th to 20th consecutive working day: 0,3 rest days per consecutive working day (e.g. 20 consecutive working days = 5 rest days);

   (c) 21st to 31st consecutive working day: 0,4 rest days per consecutive working day (e.g. 31 consecutive working days = 9,4 rest days).

   Partial rest days shall, in this calculation, be added to the minimum number of consecutive rest days and granted only as full days.

Paragraph 6

Seasonal work on passenger vessels

Notwithstanding the provisions of paragraphs 4 and 5 of this agreement, the following provisions may be applied to all workers employed on board a passenger vessel during the season:

1. Working time shall not exceed:

   (a) 12 hours in any 24-hour period; and

   (b) 72 hours in any seven-day period.

2. Workers shall be credited with 0,2 rest days per working day. At least two rest days shall actually be granted during every period of 31 days. The remaining rest days shall be granted by agreement.

3. Taking the previous subparagraph and Paragraph 3, subparagraph 4 into account, rest days shall be granted and the average working time of 48 hours adhered to in accordance with Paragraph 3 on the basis of collective agreements or agreements between the two sides of industry or, failing that, by national legislation.

Paragraph 7

Rest periods

Workers shall have regular rest periods which are sufficiently long and continuous and the duration of which is expressed in units of time in order to ensure that, as a result of fatigue or irregular working patterns, workers do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term.

Rest periods shall not be less than:

(a) 10 hours in each 24-hour period, of which at least six hours are uninterrupted, and

(b) 84 hours in any seven-day period.

Paragraph 8

Breaks

Any worker whose daily working time exceeds six hours is entitled to a rest break, the details of which, including duration and the terms on which it is granted, shall be laid down in collective agreements or agreements between the two sides of industry or, failing that, by national legislation.

Paragraph 9

Maximum working time during night time

Based on a night time of seven hours, the maximum weekly working time during night time shall be 42 hours per seven day period.

Paragraph 10

Annual leave

Every worker shall be entitled to paid annual leave of at least four weeks, or to a corresponding proportion thereof if the period of employment is less than one year, in accordance with the conditions for entitlement to and granting of such leave laid down by national legislation and/or national practice.

The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

Paragraph 11

Protection of minors

1. Workers under the age of 18 shall be covered by the provisions of Directive 94/33/EC on the protection of young people at work ([1]).

2. By way of exception, Member States may, by legislative or regulatory provision, authorise work by young people over the age of 16 who are no longer subject to compulsory full-time schooling under national law during the period in which night work is prohibited under Directive 94/33/EC if this is necessary in order to achieve the objective of a recognised training course and provided that they are allowed suitable compensatory rest time and that the objectives set out in Article 1 of Directive 94/33/EC are not called into question.

Paragraph 12

Verifications

1. Records shall be kept of each worker's daily working time and rest time, in order to be able to verify compliance with the provisions of Paragraphs 3, 4, 5, 6, 7, 9, 10, 11 and 13.

2. These records shall be kept on board until at least the end of the reference period.

3. The records shall be examined and endorsed at appropriate intervals (no later than by the end of the following month) jointly by the employer or employer's representative and by the worker.

([1]) OJ L 216, 20.8.1994, p. 12.

4. The records shall contain the following minimum information:

   (a) name of the vessel,

   (b) name of the worker,

   (c) name of the competent boatmaster,

   (d) date,

   (e) working day or rest day,

   (f) beginning and end of the daily working or rest periods.

5. Workers shall be given a copy of the endorsed records relating to them. They shall keep these with them for one year.

Paragraph 13

Emergency situations

1. The boatmaster of a vessel or his representative shall have the right to require a worker to perform any hours of work necessary for the immediate safety of the craft, persons on board or cargo or for the purpose of giving assistance to other vessels or persons in distress.

2. In accordance with subparagraph 1, the boatmaster or his representative may require a worker to perform any hours of work necessary until the normal situation has been restored.

3. As soon as is practicable after the normal situation has been restored, the boatmaster or his representative shall ensure that all workers who have performed work in a scheduled rest period are provided with an adequate period of rest.

Paragraph 14

Health assessment

1. All workers shall be entitled to an annual health assessment free of charge. During this assessment, particular attention shall be paid to identifying symptoms or conditions which could be a result of work on board with minimum daily rest periods and/or minimum rest days in accordance with Paragraphs 5 and 6.

2. Night workers suffering from health problems recognised as being connected with the fact that they perform night work shall be transferred whenever possible to day work to which they are suited.

3. The free health assessment shall comply with medical confidentiality.

4. The free health assessment may be performed under the national health system.

Paragraph 15

Safety and health protection

1. Night workers and shift workers shall have safety and health protection appropriate to the nature of their work.

2. Appropriate protection and prevention services or facilities with regard to the safety and health of night workers and shift workers shall be equivalent to those applicable to other workers and available at all times.

Paragraph 16

Pattern of work

An employer who intends to organise work according to a certain pattern takes account of the general principle of adapting work to the worker, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate, depending on the type of activity, and of safety and health requirements, especially as regards breaks during working time.

Paragraph 17

Closing provisions

1. More favourable provisions

   This agreement shall be without prejudice to the right of Member States

   (a) to maintain or introduce legislative or regulatory provisions; or

   (b) to facilitate or permit the application of collective agreements or agreements between the two sides of industry

   which are more favourable to the protection of the health and safety of workers than the provisions set out in this agreement.

2. Non-regression clause

   The implementation of this agreement shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers covered by this agreement.

3. Follow-up to the agreement

   Both sides of industry shall monitor the implementation and application of this agreement in the context of the sectoral dialogue committee for inland waterway transport, particularly with regard to occupational health issues.

4. Review

   The parties shall review the above provisions two years after the end of the implementation period laid down in the Council Decision putting this agreement into effect.

Done at Brussels, 15 February 2012.

European Barge Union (EBU)

European Skippers Organisation (ESO)

European Transport Workers' Federation (ETF)

DECISIONS

COUNCIL DECISION

of 17 December 2014

appointing a German member of the European Economic and Social Committee

(2014/942/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal of the German Government,

Having regard to the opinion of the European Commission,

Whereas:

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

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

HAS ADOPTED THIS DECISION:

Article 1

Mr Gerhard HANDKE, *Generaldirektor des Bundesverbandes Großhandel, Außenhandel, Dienstleistungen — BGA*, is hereby appointed as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2015.

Article 2

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

Done at Brussels, 17 December 2014.

For the Council
The President
G. L. GALLETI

[1] OJ L 251, 25.9.2010, p. 8.

COUNCIL IMPLEMENTING DECISION

of 19 December 2014

on the appointment of the Chair, the Vice-Chair and the further full-time members of the Single Resolution Board

(2014/943/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 [1], and in particular Article 56(6) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Regulation (EU) No 806/2014 entered into force on 19 August 2014.

(2) In order to ensure a swift and effective decision-making process in resolution matters, the Single Resolution Board established by Article 42(1) of Regulation (EU) No 806/2014 ('the Board') is to be a specific Union agency with a specific structure corresponding to its tasks.

(3) The composition of the Board should ensure that due account is taken of all relevant interests at stake in resolution procedures. Taking into account the tasks of the Board, a Chair, a Vice-Chair and four further full-time members of the Board should be appointed.

(4) Pursuant to Article 56(7) of Regulation (EU) No 806/2014, the term of office of the first Chair of the Board appointed after the entry into force of that Regulation is three years, renewable once for a period of five years. Pursuant to Article 56(5) of Regulation (EU) No 806/2014, the term of office of the Vice-Chair and the four further full-time members of the Board is five years.

(5) On 19 November 2014, the Commission provided a shortlist of candidates for the appointment of the Chair, the Vice-Chair and the four further full-time members of the Board to the European Parliament, in accordance with Article 56(6) of Regulation (EU) No 806/2014. On 5 December 2014, the Commission submitted to the European Parliament a proposal for the appointment of the Chair, the Vice-Chair and the four further full-time members of the Board. The European Parliament approved this proposal on 16 December 2014,

HAS ADOPTED THIS DECISION:

Article 1

1. The following person is hereby appointed full-time member of the Single Resolution Board for a term of office of three years as from the entry into force of this Decision:

Ms Elke KÖNIG, Chair.

2. The following persons are hereby appointed full-time members of the Single Resolution Board for a term of office of five years as from the entry into force of this Decision:

— Mr Timo LÖYTTYNIEMI, Vice-Chair

— Mr Mauro GRANDE, Strategy and Coordination Director

— Mr Antonio CARRASCOSA, Resolution Planning Director

— Ms Joanne KELLERMANN, Resolution Planning Director

— Mr Dominique LABOUREIX, Resolution Planning Director.

[1] OJ L 225, 30.7.2014, p. 1.

Article 2

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

Done at Brussels, 19 December 2014.

For the Council
The President
S. GOZI

COMMISSION DECISION

of 11 June 2014

on State aid SA.26818 (C 20/10) (ex N 536/08 & NN 32/10) granted by Italy to the Stretto airport anagement company SO.G.A.S.

(notified under document C(2014) 3571)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2014/944/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ([1]), and having regard to their comments,

Whereas:

1. PROCEDURE

(1) On 27 October 2008, the Italian authorities notified the Commission of the Region of Calabria's intention to grant aid in the form of capital injections to cover operational losses made by SO.G.A.S. SpA Società per la Gestione dell'Aeroporto dello Stretto ('SO.G.A.S.' or 'the recipient'): SO.G.A.S. is the company managing the Stretto or 'Strait' airport, which is the airport of Reggio Calabria.

(2) In the course of the preliminary examination the Commission became aware of other measures benefiting the same recipient which appeared to constitute unlawful State aid. The Commission therefore included those measures in its investigation.

(3) As the Commission had information suggesting that the State support had in fact been granted before the Commission could assess its compatibility with the internal market, it registered the case as non-notified aid, under the number NN 32/10.

(4) The Commission requested additional information regarding the notified measure on 27 November 2008, 23 February 2009 and 19 May 2009. Italy replied on 14 January 2009, 26 March 2009 and 9 October 2009.

(5) By letter dated 20 July 2010, the Commission informed Italy that it had decided to initiate the formal investigation procedure laid down in Article 108(2) of the TFEU in respect of the aid to SO.G.A.S. ('the opening decision').

(6) The Commission's decision to initiate the investigation was published in the *Official Journal of the European Union* ([2]). The Commission there called on interested parties to submit their comments.

(7) By letter dated 19 November 2010 the recipient submitted its comments on the opening decision. On 20 December 2010 the Commission forwarded the recipient's comments to the Italian authorities and asked for their reaction. The Commission sent a reminder on 8 March 2011, and received Italy's observations on 29 April 2011. The Commission received no other comments from interested parties.

(8) The Italian authorities submitted comments on the opening decision by letters dated 23 September 2010 and 15 December 2010.

([1]) OJ C 292, 28.10.2010, p. 30.
([2]) See footnote 1.

(9) By letter dated 30 March 2012 the Commission requested additional information on the measures under investigation. The Italian authorities provided the information requested by letter of 30 April 2012.

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. **The recipient**

(10) The beneficiary of the measures is the manager of Reggio Calabria airport, SO.G.A.S.

(11) SO.G.A.S. is a limited company incorporated under Italian law in March 1981 and wholly owned by public bodies.

(12) Traffic at the airport increased from 272 859 passengers in 2004 to 571 694 passengers in 2012 ([3]).

2.2. **The contested measures**

(13) The measure notified by Italy is an injection by the Region of Calabria of EUR 1 824 964 in capital to cover losses incurred by SO.G.A.S. in 2004 and 2005.

(14) In June 2005 and June 2006 SO.G.A.S.'s public shareholders decided to cover the losses SO.G.A.S. had incurred in the two previous years (EUR 1 392 900 in 2004 and EUR 2 257 028 in 2005) by means of *pro rata* capital injections. At the time the Region of Calabria owned 50 % of the shares in the company, the remainder being held by the Municipality of Reggio Calabria, the Province of Reggio Calabria, the Province of Messina, the Municipality of Messina, Reggio Calabria Chamber of Commerce and Messina Chamber of Commerce.

(15) According to the information available to the Commission at the time of the opening decision, *pro rata* capital injections had already been carried out by the Province of Reggio Calabria, the Municipality of Messina, the Municipality of Reggio Calabria and Messina Chamber of Commerce.

(16) In 2006 SO.G.A.S. made further losses of EUR 6 018 982. In December 2007 SO.G.A.S.'s shareholders decided to convert the reserves of the company into capital and to reduce the capital to cover the remaining losses. However, this would take the capital below the minimum level required by Italian law for airport management companies. To bring the capital back into line with the legal requirements, SO.G.A.S.'s shareholders agreed to increase the capital by EUR 2 742 919. The capital was increased by converting bonds previously subscribed by some of the shareholders, for a total of EUR 2 274 919. The Region of Calabria was not among the shareholders that held the convertible bonds, and its stake in the capital of the company fell from 50 % to 6.74 %.

2.3. **Granting authority**

(17) For the measures at issue here the granting authority is the Region of Calabria.

(18) As explained above, public funds were also provided to SO.G.A.S. by the Province of Reggio Calabria, the Municipality of Reggio Calabria, the Province of Messina, the Municipality of Messina, Reggio Calabria Chamber of Commerce and Messina Chamber of Commerce, in the form of *pro rata* capital injections to cover the losses incurred in 2004, 2005 and 2006 and to bring the capital back into line with the legal requirements.

2.4. **Budget**

(19) The Italian authorities notified the injections of EUR 1 824 964, proportional to the Region of Calabria's stake in SO.G.A.S., which had been approved in June 2005 and June 2006. In addition, as explained above, the other public shareholders covered losses likewise amounting to EUR 1 824 964. There was a further injection of EUR 2 742 919 in December 2007.

(20) The total budget of the measures under assessment is therefore EUR 6 392 847.

([3]) According to publicly available information.

2.5. **Domestic court proceedings**

(21) The Region of Calabria decided not to put into effect the capital injections decided by the shareholders in June 2005 and June 2006 until there had been a decision by the Commission authorising them, and SO.G.A.S. brought proceedings against the Region before the Ordinary Court (*Tribunale*) of Reggio Calabria. The Court ruled in favour of SO.G.A.S., and a challenge lodged by the Region was dismissed in May 2009.

(22) Whilst acknowledging the Commission's competence to decide whether a State aid measure was compatible with the internal market, the Court considered that national courts had jurisdiction to decide whether a measure constituted State aid. The Court ruled that the public financing given in this case did not constitute State aid, because it was not liable to distort competition or to affect trade between Member States. The Court also observed that the principle of an investor in a market economy was satisfied, because at the time the aid was granted, irrespective of the losses incurred in 2004 and 2005, there were reasonable prospects of profitability in the long term.

(23) The Region challenged the ruling of the Court on the ground that the measure constituted State aid and consequently should not be implemented until the Commission had adopted an authorising decision. In December 2009 the Italian authorities informed the Commission that this action had been rejected and that no further procedural steps could be taken to oppose granting of the public contribution to SO.G.A.S.

3. **GROUNDS FOR INITIATING THE FORMAL INVESTIGATION**

(24) In the opening decision, the Commission took the preliminary view that the *pro rata* injections carried out by the Region and the other public shareholders to cover losses incurred in 2004 and 2005, and the capital injection decided by SO.G.A.S.'s shareholders in December 2007, amounted to State aid, on the following grounds:

(a) they consisted in a transfer of funds to SO.G.A.S. from a number of regional and local authorities, namely the Region of Calabria, the Province of Reggio Calabria, the Municipality of Messina and the Municipality of Reggio Calabria, or local autonomous bodies set up under public law, namely the Reggio Calabria Chamber of Commerce and the Messina Chamber of Commerce; they therefore involved State resources and were imputable to the State;

(b) they did not comply with the principle of an investor in a market economy, and thus conferred a selective advantage on SO.G.A.S.;

(c) they were liable to distort competition and affect trade between Member States.

(25) The Commission took the preliminary view that the disputed measures were incompatible with the internal market. First, Italy had explicitly stated that SO.G.A.S. was not entrusted with the provision of any service of general economic interest ('SGEI'). Second, the Italian authorities had confirmed that the measures did not relate to any specific airport investment; the Commission concluded, on a preliminary basis, that the compatibility of the measures could not be assessed under the criteria laid down by the guidelines on financing of airports and start-up aid to airlines departing from regional airports ('the 2005 aviation guidelines') ([4]). Third, notwithstanding their claim that SO.G.A.S. was a firm in difficulty within the meaning of the guidelines on State aid for rescuing and restructuring firms in difficulty ('the R&R guidelines') ([5]), the Italian authorities had also indicated that the measures were not part of a restructuring plan and that no such plan existed. Last, the Commission took the view that the measures were not compatible with the guidelines on national regional aid for 2007–2013 (hereinafter 'the regional guidelines') ([6]), which provided the framework for the assessment of aid granted on the basis of Article 107(3)(a) and (c) TFEU.

(26) As regards the legal actions brought in the Italian courts against the Region's refusal to pay its *pro rata* contribution pending authorisation by the Commission under the State aid rules, the Commission considered that, given the primacy of EU law over national law, and as long as the notification had not been formally withdrawn, Italy was bound to comply with the standstill clause laid down by Article 108(3) TFEU. The Commission therefore took the view that by virtue of the primacy of the standstill obligation in Article 108(3) TFEU the position taken by the national courts should have been disregarded, and that the Italian authorities should not have put the notified measure into effect as long as the State aid procedure was pending.

([4]) OJ C 312, 9.12.2005, p. 1, paragraphs 53–63.
([5]) OJ C 244, 1.10.2004, p. 2.
([6]) OJ C 54, 4.3.2006, p. 13.

4. COMMENTS FROM INTERESTED PARTIES

(27) The only interested party from whom the Commission received comments was the recipient, SO.G.A.S., which supported and supplemented the arguments submitted by the Italian authorities during the formal investigation.

4.1. The presence of aid

(28) SO.G.A.S. submitted that the measures under assessment did not constitute State aid because the criteria laid down in Article 107(1) TFEU were not all met. More specifically, SO.G.A.S. claimed that the measure: (i) did not affect trade between Member States, or in the alternative (ii) did not confer a selective economic advantage on SO.G.A.S. and (iii) did not distort or threaten to distort competition.

(29) SO.G.A.S. argued that the disputed measures were granted under normal market conditions and therefore complied with the market economy investor principle. They were in line with Articles 2446 and 2447 of the Italian Civil Code, which required the shareholders of a limited company that had lost over one third of its capital to compensate its losses in order to avoid the winding-up of the company. Failure on the part of the shareholders to cover the losses of SO.G.A.S., an airport management company, would have entailed the withdrawal (within the meaning of Article 13 of Ministerial Order (*DM*) No 521 of 12 November 1997) of the partial management of Stretto airport, which had been entrusted to SO.G.A.S. under Article 17 of Decree-law No 67 of 1997, and would have made it impossible in future to secure the full concession for the management of the airport, for which an application had been made to the Ministry of Transport. It was reasonable to suppose, therefore, that a private investor facing a similar choice would have acted in the same manner in order to increase the value of their shareholding.

(30) The recipient pointed out that the Ordinary Court of Reggio Calabria had commissioned an independent valuation of the company in June 2008, which estimated that the value of the company fell in a range between EUR 12 million and EUR 17 million.

(31) To evidence the company's prospects of profitability, the recipient submitted to the Commission a business plan drawn up for SO.G.A.S. in October 2008 by an external consultant, which forecast that the company would return to viability in 2013.

(32) A call for tenders for the partial privatisation of SO.G.A.S. had been published in July 2007. A bid for the acquisition of 35 % of SO.G.A.S.'s capital had been submitted by an Italo-Argentine consortium (*associazione temporanea di imprese* or '*ATI*'). The bid was considered economically disadvantageous by SO.G.A.S.'s shareholders. In March 2010 a new call for tenders for 35 % of SO.G.A.S.'s shares was published. According to SO.G.A.S. the two expressions of interest received in response, together with the initial bid from the consortium, showed that the market economy investor principle was satisfied.

(33) SO.G.A.S. also argued that the Commission was wrong to conclude that passengers using Stretto airport could also use in Catania, Lamezia Terme or Crotone airports, depending on their place of residence, and that the disputed measures consequently had the potential to distort competition between airport managers.

(34) First, Stretto airport and Catania, Lamezia Terme and Crotone airports were regional point-to-point airports whose catchment areas did not overlap. Nor did Stretto airport compete with any other airport in Italy or the Union. The particular geographical and infrastructural features of Calabria excluded any potential overlap between the catchment area of Stretto airport and those of neighbouring Italian airports. Lamezia Terme airport was more than 130 km away, at approximately one hour's driving time from Stretto. There was no rapid direct link between Stretto and Crotone airport, which was over three hours away. Catania airport was located in a different geographic region, at a distance of over 130 km, with a travelling time by car of 1hr30–1hr40.

(35) SO.G.A.S. provided a table showing a correlation index between the incoming flow of passengers at Stretto airport and those at Lamezia Terme, Crotone and Catania. The table showed, it said, that passengers travelling by Stretto airport constituted a new component in regional traffic. A closure of the airport would therefore result in the loss of part of the demand for air transport services, rather than in a redistribution to other airports. SO.G.A.S. also submitted a table to show that the measures under scrutiny had indeed created new demand for air transport services in the area, resulting in positive benefits both for air carriers interested in starting up new routes between Stretto and other domestic and EU airports, and for other airports, which found themselves handling increased demand.

(36) SO.G.A.S. rejected the Commission's preliminary finding that the measures had the potential to distort competition between airlines. The public financing had not been transferred to any air carrier through the granting of lower landing fees or other favourable terms. Landing charges and other operating conditions at the airport were set by the competent authority and did not leave any discretion to the airport manager. Finally, SO.G.A.S. contended that Stretto was served mainly by Alitalia (which provided six of the eight daily flights), and that there was no indication that charter or low-cost carriers were interested in starting up new routes departing from Stretto airport.

(37) SO.G.A.S. concluded that in assessing the impact of the measure on competition and trade between Member States, the Commission should have taken greater account of the specific circumstances, and should have found that the measure did not constitute State aid.

4.2. **The compatibility of the aid**

(38) On the question whether the measures could be held compatible under Article 107(3)(c) TFEU, SO.G.A.S. argued that the public financing under assessment was aimed at maintaining the operational continuity of the airport manager and the development of certain economic activities. This objective was justified by the fact that small airports did not generally generate sufficient revenues to cover the costs required to comply with safety and security requirements. In addition, Stretto airport, given the characteristics of the airport infrastructure and the consequent restrictions imposed by the national civil aviation authority ENAC ([7]), would have great difficulty in hosting charter and low cost airlines.

(39) In particular, in accordance with ENAC's parameters, Stretto airport was classed as a level II airport. This classification was based on the dimensions of the infrastructure, rather than on passenger volumes; it required airports with low passenger levels to incur the same costs in order to meet safety standards as airports with over a million passengers.

(40) Without the public financing under investigation, the airport would have been forced to exit the market, with negative consequences at regional level for the mobility of residents. This would also have prevented the shareholders from obtaining any return on their investment.

(41) Finally or in the alternative, SO.G.A.S. contended that Commission Decision 2005/842/EC ([8]) on services of general economic interest was applicable in the present case, and that the measures could in any event be held compatible with the internal market and exempted from the notification requirement on that basis.

(42) SO.G.A.S. argued that since the traffic at the airport did not exceed a million passengers a year in the reference period, the management of the airport was a service of general economic interest ('SGEI') within the scope of Article 2(1)(d) of Decision 2005/842/EC. SO.G.A.S. pointed out that under Decree-law No 250 of 25 July 1997, local authorities could hold shareholdings only in companies which were entrusted with a service of general economic interest. SO.G.A.S. had always been owned by local authorities in Calabria and Messina, which was presumptive evidence that the management of the airport qualified as an SGEI. In order to show that the management of the airport was indeed an SGEI, SO.G.A.S. submitted decisions of the Municipality of Reggio Calabria dated 27 July 2010 and 19 June 2010 which made reference to the importance of the airport services at regional level.

(43) Public service compensation was limited to the losses incurred by the airport manager in providing the SGEI, and therefore complied with the necessity and proportionality principles laid down by Article 5(1) of Decision 2005/842/EC. As for the absence of any act effectively entrusting the SGEI to the airport manager, SO.G.A.S. proposed that an agreement be drafted that would eliminate any doubt that the four Altmark ([9]) conditions were fulfilled in the case of Stretto airport.

([7]) Ente Nazionale per l'Aviazione Civile.
([8]) Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 312, 29.11.2005, p. 67.
([9]) Judgment of the Court of Justice in Case C-280/00 *Altmark* [2003] ECR I-7747.

5. COMMENTS FROM THE ITALIAN AUTHORITIES

(44) In the opening decision the Commission noted that Italy had confirmed that SO.G.A.S. had not been formally entrusted with the provision of an SGEI, so that the compatibility of the disputed measures could not be assessed under the SGEI rules.

5.1. The question whether the airport's activities constitute an SGEI

(45) In the course of the investigation Italy contended that the measures under assessment constituted compensation for the provision of SGEIs by SO.G.A.S. In the absence of evidence to the contrary, the Italian authorities argued, an *ex post* assessment could conclude that in SO.G.A.S.'s case the EU requirements for SGEIs were met.

(46) Italy considered that the line taken by the Commission gave undue weight to the formal rather than the substantive requirements for SGEIs. In support of this claim, Italy provided a cursory assessment of the four Altmark criteria. Italy contended that SO.G.A.S. had in fact been entrusted with a public service mission. The mission was confirmed, directly and indirectly, by several administrative acts issued by the local authorities. Italy provided the minutes of a meeting of the municipal executive of Reggio Calabria that took place on 17 October 2007, at which the executive decided to subsidise the airport manager's losses, and the minutes of meetings of the same body that took place on 16 June 2009 and 31 December 2009, which it said showed that the activities of the the airport did constitute SGEIs. The minutes of the meeting of 17 October 2007 state that 'the Region of Calabria had taken the view that certain activities of Reggio Calabria airport were necessary for the provision of a service of general economic interest, and had imposed a number of public service obligations on SO.G.A.S. in order to ensure that the public interest was properly served; in such cases, the airport manager could be subsidised by the authorities for the additional costs arising out of the discharge of those obligations, which were such that it could not be ruled out that the overall management of the airport might be considered a service of general economic interest'.

(47) In more general terms, the Region of Calabria was party to a Protocol for the development of Lamezia Terme, Crotone and Reggio Calabria airports, which made it clear that airport services were public services essential to the economic and social development of the region, and consequently that they could be financed by means of EU, national or regional funds.

(48) Italy also emphasised that on 28 December 2008 the airport manager asked the shareholders to cover its losses specifically by virtue of its public service obligation, and argued that no private operator would provide the service of management of the airport on purely commercial terms. The first test in *Altmark* was therefore satisfied.

(49) The parameters on the basis of which the compensation was calculated could easily be inferred from SO.G.A.S.'s balance sheet, which provided a transparent statement of the operating costs. Public financing was limited to the amount of the losses, with no extra margin given to the recipient.

(50) With regard to the third Altmark test, Italy contended that in the case of public services the actions of a public shareholder were not comparable to those of a private investor. The conduct of a public body could be justified by objectives in the public interest which prevented the application of the market economy investor principle. In this case the conduct of the public shareholders was not motivated by commercial considerations, and consequently could not be compared to that of a market investor. Italy concluded that the third Altmark test, which appeared to require the application of the market economy investor principle, was not relevant in the case under scrutiny.

(51) Italy said that since SO.G.A.S.'s activities constituted a service of general interest, the capital injections could be considered compensation for the provision of such services, on the basis of an *ex post* assessment, and therefore did not constitute State aid.

5.2. The compatibility of the aid

(52) Italy stated that, were the measures be considered State aid, they should in any event be held compatible under Article 2(1) of Decision 2005/842/EC.

5.3. **No distortion of competition**

(53) Italy referred to paragraph 39 of the 2005 aviation guidelines, which stated that 'funding granted to small regional airports (category D) is unlikely to distort competition or affect trade to an extent contrary to the common interest'.

(54) The Italian authorities further argued that the airport's activities were not profitable. This was evidenced by the fact that, although the initial intention to partially privatise the company had been widely advertised, the procedure had ultimately been unsuccessful. Given that potential investors had to undertake to cover the losses expected in the following years, as stated in the business plan published in the tender, and given that the sole offer received was not considered economically advantageous, it was clear that the activity was by its nature loss-making. In addition, the fact that bidders were not prepared to cover potential future losses to an unlimited extent, but only up to pre-established limits, proved that there was no market attractive to investors, and this in turn meant that the measures could have no impact on trade between Member States.

6. **ITALY'S OBSERVATIONS ON THE COMMENTS SUBMITTED BY INTERESTED PARTIES**

(55) By letter dated 27 April 2012, the Italian authorities, on behalf of the Region of Calabria, sent the Commission observations on SO.G.A.S.'s comments.

(56) Italy supported SO.G.A.S.'s arguments, including SO.G.A.S.'s contention that the measures under assessment related to an SGEI, which in Italy's view meant that they could not be considered State aid.

(57) Italy also argued that the measures did not distort competition or affect trade between Member States.

7. **ASSESSMENT OF THE AID**

7.1. **The existence of aid**

(58) Article 107(1) of the TFEU states that except where otherwise provided in the TFEU 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the provision of certain goods, in so far as it affects trade between Member States, shall be incompatible with the internal market.'

(59) The criteria laid down in Article 107(1) are cumulative: the measures under scrutiny will constitute State aid within the meaning of Article 107(1) TFEU only if all the abovementioned conditions are fulfilled. Thus the financial support must

(a) be granted by the State or through State resources,

(b) favour certain undertakings or the production of certain goods,

(c) distort or threaten to distort competition, and

(d) affect trade between Member States.

(60) In its judgment in the *Leipzig-Halle airport* case ([10]), the General Court held that the construction and operation of a civil airport constituted an economic activity. The only exception is for certain activities which as a rule fall within the exercise of public powers and so cannot be considered economic activities. The State financing of such activities falls outside the scope of the State aid rules. There is no doubt, therefore, that SO.G.A.S. is an undertaking for the purpose of State aid law, in that it manages Stretto airport and offers airport services against remuneration to the economic operators (notably airlines) active in the airport.

7.1.1. *State resources*

(61) The concept of State aid applies to any advantage granted directly or indirectly, financed from public resources and granted by the State itself or by an intermediary body acting by virtue of powers conferred on it by the State. Thus it applies to all advantages granted by regional or local bodies of Member States, whatever their status and description ([11]).

([10]) Judgment of the General Court in Joined Cases T-443 and T-455/08 *Freistaat Sachsen and others* v *Commission* [2011] ECR II-1311.
([11]) Judgment of the Court of Justice in Case 248/84 *Germany* v *Commission* [1987] ECR 4013; judgment of the General Court in Joined Cases T-267/08 and T-279/08 *Région Nord-Pas-de-Calais and Communauté d'agglomération du Douaisis* v *Commission* [2011] ECR II-0000, paragraph 108.

(62) In paragraphs 27 and 28 of the opening decision the Commission noted that the measures under assessment consisted in a transfer of funds to SO.G.A.S. from several regional and local authorities, namely the Region of Calabria, the Province of Reggio Calabria, the Municipality of Messina and the Municipality of Reggio Calabria. The Commission therefore took the view that the disputed measures involved State resources and were imputable to the State. The Commission also considered the resources of the Italian chambers of commerce to be State resources. The chambers of commerce were public bodies, governed by public law, according to which they formed part of the public administration and were entrusted with public functions, and the Commission accordingly considered that their decisions were imputable to Italy. On that basis the resources of Messina Chamber of Commerce constituted State resources, and their transfer could be imputed to the State. In the course of the investigation neither Italy nor any interested party contested this preliminary finding.

(63) The Commission therefore confirms that all the measures under assessment were granted through State resources and are imputable to the State.

7.1.2. *Selective economic advantage*

(64) The public funding is selective, as it benefits a single undertaking, SO.G.A.S. It covers the losses incurred by SO.G.A.S. in conducting its ordinary business.

(65) In so far as the construction and operation of airport infrastructure is an economic activity, the Commission takes the view that public financing granted to SO.G.A.S., a manager of such infrastructure, which covers costs that the airport manager would normally have to bear itself, confers an economic advantage on SO.G.A.S., as it reinforces its market position and prevents market forces from having their normal effect ([12]).

(66) Although at the preliminary stage Italy stated that the airport had not been formally entrusted with the provision of an SGEI, the Commission notes that following the adoption of the opening decision Italy reconsidered its position, and claimed that the disputed public financing did in fact represent public compensation for the discharge of public service obligations ([13]).

(67) In its judgment in *Altmark* the Court of Justice set out the following tests for determining whether compensation for the provision of an SGEI conferred an advantage caught by Article 107 TFEU ([14]):

(1) the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined ('the first Altmark test');

(2) the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner ('the second Altmark test');

(3) the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations ('the third Altmark test');

(4) where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations ('the fourth Altmark test').

7.1.2.1. The first Altmark test

(68) The requirement of the first Altmark test coincides with the requirement laid down in Article 106(2) TFEU that the service must be clearly entrusted and defined ([15]).

([12]) Judgment of the Court of Justice in Case C-301/87 *France* v *Commission* [1990] ECR I-307, paragraph 41.

([13]) The observations submitted by the Italian authorities in the course of the formal investigation into the measures under scrutiny differ from the arguments they put forward before the Commission decided to open the formal investigation. In particular, the Commission said in the opening decision that Italy had confirmed that SO.G.A.S. had not been formally entrusted with the provision of an SGEI, and for this reason the compatibility of the disputed measures could not be assessed under the SGEI rules. In the course of the investigation, Italy stated that SO.G.A.S. had in fact been entrusted with the provision of an SGEI, and argued that the measures being analysed by the Commission constituted lawful compensation for the provision of a public service.

([14]) Case C-280/00 [2003] ECR I-7747.

([15]) Communication from the Commission: European Union framework for State aid in the form of public service compensation, paragraph 47 (OJ C 8, 11.1.2012, p. 15).

(69) First of all, Article 106(2) TFEU applies only to 'undertakings entrusted with the operation' of an SGEI. The Court of Justice has consistently underlined the need for an act entrusting the service ([16]). An entrustment act is necessary in order to define the obligations of the undertaking and of the State. In the absence of such an official act, the specific task of the undertaking is not known, and it cannot be determined what might be fair compensation ([17]). The need for a clear definition of the SGEI is therefore inherent in and inseparable from the idea of entrustment, and thus derives directly from Article 106(2) TFEU. When a service is entrusted to an undertaking, logically, it also needs to be defined.

(70) As long ago as the 2001 communication on services of general economic interest, the Commission drew attention to the link between the definition of entrustment and the necessity and proportionality of the compensation given for performing the SGEI under Article 106(2) TFEU ([18]). Paragraph 22 of the communication stated that 'in every case, for the exception provided for by Article 86(2) to apply, the public service mission needs to be clearly defined and must be explicitly entrusted through an act of public authority … This obligation is necessary to ensure legal certainty as well as transparency vis-à-vis the citizens and is indispensable for the Commission to carry out its proportionality assessment.' Entrustment and definition are thus a logical prerequisite of any meaningful assessment of the proportionate level of any compensation. The Union law courts have consistently underlined the need for a clear definition of public service obligations for the application both of the Altmark exception and of Article 106(2) TFEU ([19]).

(71) The 2005 Community framework for State aid in the form of public service compensation ([20]) confirms this approach. Paragraph 8 of the Framework states that public service compensation that constitutes aid within the meaning of Article 107(1) TFEU may be declared compatible with the internal market if the conditions laid down in the Framework are satisfied. Those conditions include, in particular, entrustment of the SGEI by way of one or more official acts which among other things specify the precise nature and duration of the public service obligations, the parameters for calculating, controlling and reviewing the compensation, and the arrangements for avoiding and repaying any overcompensation (paragraph 12 of the framework).

(72) The 2011 communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest ([21]) also states that the SGEI and the public service obligations must be clearly defined beforehand. According to paragraph 51 of the communication, 'for Article 106(2) of the Treaty to apply, the operation of an SGEI must be entrusted to one or more undertakings. The undertakings in question must therefore have been entrusted with a special task by the State. Also the first Altmark criterion requires that the undertaking has a public service obligation to discharge. Accordingly, in order to comply with the Altmark case-law, a public service assignment is necessary that defines the obligations of the undertakings in question and of the authority.' Paragraph 52 states that the public service task must be assigned by way of one or more acts that must at least specify the content and duration of the public service obligations; the undertaking and, where applicable, the territory concerned; the nature of any exclusive or special rights assigned to the undertaking by the authority in question; the parameters for calculating, controlling and reviewing the compensation; and the arrangements for avoiding and recovering any overcompensation.

([16]) Case 127/73 *Belgische Radio en Televisie* v *SABAM and Fonior* [1974] ECR 313, paragraphs 19 and 20; Case 66/86 *Ahmed Saeed Flugreisen and Silver Line Reisebüro* v *Zentrale zur Bekämpfung unlauteren Wettbewerbs* [1989] ECR 803, paragraphs 55–57; Case 7/82 *GVL* v *Commission* [1983] ECR 483; Case 172/80 *Züchner* v *Bayerische Vereinsbank* [1981] ECR 2021.

([17]) Point 5.1 of the Commission staff working document of 20 November 2007 'Frequently asked questions in relation with Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, and of the Community Framework for State aid in the form of public service compensation — Accompanying document to the Communication on "Services of general interest, including social services of general interest: a new European commitment"', available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007SC1516:EN:HTML

([18]) Commission communication on services of general interest in Europe ('the 2001 SGEIs Communication') (OJ C 17, 19.1.2001, p. 4).

([19]) Case C-280/00 *Altmark* [2003] ECR I-7747, paragraph 87; Case T-137/10 *CBI* v *Commission,* 7 November 2012, not yet reported, paragraphs 97 and 98.

([20]) OJ C 297, 29.11.2005, p. 4.

([21]) OJ C 8, 11.1.2012, p. 4.

(73) However, the Italian authorities argue that the Commission approach is excessively formalistic, and that SO.G.A. S. was in fact entrusted with an SGEI; here they rely for the most part on documents postdating the approval of the measures at issue.

(74) According to Italy the fact that the management of Stretto airport constitutes an SGEI can be inferred from several regional decisions making reference to the public interest attached to airport services and their instrumental role in the economic development of the region. But those regional decisions do not provide any explicit definition of the alleged SGEI entrusted to the airport manager or any rules governing compensation. In addition, the acts in question were adopted from 2007 onwards, and therefore came after the alleged inception of the services of general economic interest, i.e. after the airport's activities in 2004–2006. Nor has Italy made available to the Commission any other document outlining the scope of the presumed public service obligations imposed on the recipient which predates 2004.

(75) The Commission therefore considers that in the case at issue the alleged SGEI has not been properly entrusted to the recipient.

(76) The Commission cannot accept the Italian authorities' argument that an SGEI can be compensated legitimately even where the service has not been defined *ex ante* as an SGEI and entrusted to the recipient on that basis. If that were the case Member States would be left free to reconsider the need to impose public service obligations at their own discretion *ex post*. Once an undertaking incurred operational losses, Member States could entrust that undertaking with public service obligations and grant compensation, as a means to support the undertaking, irrespective of any *ex ante* assessment of the actual need to provide the service in the general interest. This approach cannot be reconciled with the requirement that SGEIs must be entrusted to the undertaking concerned by way of one or more official acts, setting out among other things the nature and duration of the public service obligations, the parameters for calculating, controlling and reviewing the compensation, and the necessary arrangements for avoiding and repaying any overcompensation. The Italian authorities' claim that airport services are essential to the economic development of the region is not enough to show that the recipient was correctly entrusted with the SGEI, because the public service obligations and the rules governing compensation were not defined transparently in advance.

(77) Moreover, to do as the Italian authorities suggest, and consider that Member States may entrust SGEIs *ex post*, would give more favourable treatment to Member States that had acted in breach of the notification and standstill obligations. Such Member States would be able to argue that aid granted to an undertaking illegally was in fact necessary to cover the costs of a public service that happened to have been provided by the recipient without however being defined or entrusted to the undertaking beforehand. But Member States that set out to comply with their obligation to notify would have to entrust and define the SGEI clearly *ex ante*, in order to comply with the SGEI rules and the *Altmark* case-law.

(78) This would create an incentive for Member States not to notify new State aid, contrary to the well-established principle that Member States that do not notify State aid cannot be treated more favourably than Member States that do ([22]).

(79) In summary, the Commission concludes that the first Altmark test is not satisfied; the Commission also takes the view that the other Altmark tests are not satisfied either, for the reasons set out below.

7.1.2.2. The second Altmark test

(80) Parameters for the calculation of compensation have not been established in advance. The acts which according to the Italian authorities entrust the services do not detail the services to be provided by the recipient, and do not establish any mechanism for granting compensation for the public task allegedly entrusted to it.

7.1.2.3. The third Altmark test

(81) According to the third Altmark test, the compensation received for the discharge of public service obligations cannot exceed what is necessary to cover all or part of the costs incurred, taking into account the relevant receipts and a reasonable profit for discharging those obligations.

([22]) Case 301/87 *France* v *Commission* [1990] ECR 307, paragraph 11; Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to 6/98 and T-2323/98 *Alzetta Mauro and others* v *Commission* [2000] ECR II-2319, paragraph 79, with further references; Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 *Regione autonoma della Sardegna and others* v *Commission*, 20 September 2011, not yet reported, paragraph 91.

(82) The Commission cannot accept Italy's argument that because the financing was confined to offsetting operating losses the airport received only the public financing required for the discharge of public service obligations. A fundamental principle of the assessment of proportionality of compensation is that only the net costs incurred by the public operator for the discharge of the public service obligations may give rise to compensation. In the absence of a clear definition of the obligations imposed on the recipient, the Commission cannot unequivocally determine what costs should have been taken into account in the calculation of the compensation.

(83) Even where the overall management of an airport can be considered an SGEI, some activities which are not directly linked to the basic activities, including the construction, financing, use and renting of land and buildings for offices, storage, hotels and industrial enterprises located within the airport, and for shops, restaurants and car parks, fall outside the SGEI, and consequently cannot be subsidised under the rules on SGEIs. The Italian authorities have not provided any evidence to show that there has been no subsidisation of activities not directly linked to the core activities of the airport, as required by paragraphs 34 and 53(iv) of the 2005 aviation guidelines.

7.1.2.4. The fourth Altmark test

(84) The fourth Altmark test states that if compensation is not to comprise aid it must be limited to the minimum necessary. This test is deemed to be satisfied if the recipient of the compensation has been chosen following a tender procedure, or, failing that, if the compensation has been calculated by reference to the costs of an efficient undertaking.

(85) In the present case the recipient was not chosen following a public tender procedure. Nor has Italy given the Commission any proof that the level of compensation has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the means to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations. The Commission therefore considers that it cannot be concluded that the public financing at issue was determined on the basis of the costs of an efficient undertaking.

(86) Consequently, the Commission cannot find that the recipient provided the services at the least cost to the community.

(87) For the sake of completeness, the Commission observes that in the course of the investigation the recipient argued that that the measures complied with the market economy investor principle. Although the airport manager had recorded losses, it could fairly be presumed that the activity would yield a return.

(88) Contrary to the recipient's contention, the Commission points out, first of all, that Italy has not in the course of the investigation argued that the State invested in the airport manager in the expectation that it would be profitable, and has in fact maintained that the market economy investor principle is not applicable in the present case (see paragraph 49).

(89) Second, for an assessment on the basis of the market economy investor principle, it is necessary to determine whether, in similar circumstances, a private investor would have behaved in a similar way. The Court of Justice has held that although the conduct of a private investor with which that of a public investor pursuing economic policy aims must be compared need not be the conduct of an ordinary investor laying out capital with a view to realising a profit in the relatively short term, it must at least be the conduct of a private holding company or a private group of undertakings pursuing a structural policy — whether general or sectoral — and guided by prospects of profitability in the longer term ([23]). In order to examine whether or not the State has adopted the conduct of a prudent investor operating in a market economy, it is necessary to place oneself in the context of the period during which the financial support measures were taken in order to assess the economic rationality of the State's conduct, and thus to refrain from any assessment based on a later situation ([24]). According to settled case-law, if a Member State relies on the market economy investor principle during the administrative proceedings, it must, where there is doubt, establish unequivocally and on the basis of objective and verifiable evidence that the measure implemented falls to be ascribed to the State acting as shareholder. That evidence must show clearly that, before or at the same time as conferring the economic advantage, the Member State concerned took the decision to make an investment, by means of the measure actually implemented, in the public undertaking ([25]).

([23]) See in particular Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraphs 20–22.
([24]) Judgment in *Stardust Marine*, paragraph 71.
([25]) See Case C-124/10 P *Commission* v *EDF*, paragraphs 82 and 83, and Joined Cases T-268/08 and T-281/08 *Land Burgenland (Austria) and Austria* v *Commission*, paragraph 155.

(90) The Commission cannot accept the recipient's claim that the measures under assessment were guided by the company's prospects of profitability, as outlined by the business plan aimed at restoring it to viability which was drawn up in 2008, after the measures in question had been decided. The Commission considers that a private investor would inject fresh capital into a company whose capital had dropped below the legal limit, such as SO.G.A.S., only if at the time of the injection the investor could expect the company to return to viability within a reasonable time. Given that neither the Italian authorities nor SO.G.A.S. have provided any concrete evidence dating from the time the measures were taken showing that the public authorities wanted to invest, and could reasonably expect an economic return on their investment that would have been acceptable to a private investor, and given that Italy has expressly confirmed that the market economy investor principle does not apply in the present case, the Commission concludes that the measures do not comply with the market economy investor principle.

7.1.2.5. Conclusion

(91) The Commission finds that none of the four tests set out by the Court of Justice in the *Altmark* case is satisfied here, and that the measures do not comply with the market economy investor principle. Consequently, the Commission concludes that the disputed measures, i.e. the capital injections to cover SO.G.A.S.'s losses in 2004, 2005 and 2006, confer an economic advantage on SO.G.A.S.

7.1.3. *Distortion of competition and effect on trade between Member States*

(92) With regard to distortion of competition, Italy points out that according to the 2005 aviation guidelines, 'funding granted to small regional airports (category D) is unlikely to distort competition or affect trade to an extent contrary to the common interest'. But this provision is concerned with the assessment of the compatibility of State aid under Article 107(3)(c) TFEU, and does not try to say that public funding of small airports does not constitute State aid within the meaning of Article 107(1).

(93) Moreover, paragraph 40 of the 2005 aviation guidelines also states that 'beyond these general indications, it is not possible to establish rules covering every possible case, particularly for airports in categories C and D. For this reason any measure which may constitute State aid to an airport must be notified so that its impact on competition and trade between Member States can be examined, and, where appropriate, its compatibility'.

(94) Stretto airport is is located at the southern end of the Italian peninsula and is one of three airports in the Region of Calabria. Traffic at the airport has constantly remained below a million passengers ([26]). At the time the measures under scrutiny were put into effect the airport therefore belonged to category D, 'small regional airports', for purposes of the 2005 aviation guidelines. However, the passenger traffic handled by the airport doubled from 2004 to 2012.

(95) The market for the management and operation of airports, including small regional airports, is a market open to competition, in which a number of private and public undertakings are active throughout the Union. This is illustrated by the fact that Italy set out to partially privatise Stretto airport and to that end published a call for tenders in 2007 that was open to undertakings from any EU Member State (see paragraph 32). The public funding of an airport manager may therefore distort competition in the market for airport infrastructure operation and management. Moreover, airports can compete with each other to attract traffic even if they have different catchment areas. To some extent, and for some passengers, different destinations are substitutable. Public funding of airports can therefore distort competition and have an effect on trade in the air transport market across the Union.

(96) At the material time Stretto airport mainly served domestic destinations and two international routes — Paris and Malta — and owing to the funds received the airport was able to stay on the market and significantly expand its operations; the Commission accordingly takes the view that the measures at issue may have distorted competition and affected trade between Member States.

7.1.4. *Conclusion on the existence of aid*

(97) The Commission concludes that the capital injections granted to SO.G.A.S. by its public shareholders to cover the losses it incurred in 2004, 2005 and 2006 constitute State aid within the meaning of Article 107(1) TFEU.

([26]) Public figures.

7.2. **The lawfulness of the aid**

(98) The measures under investigation were put into effect before formal approval by the Commission; hence Italy did not comply with the standstill obligation in Article 108(3) TFEU.

7.3. **The compatibility of the aid**

7.3.1. *Compatibility under the SGEI rules*

(99) SO.G.A.S. argues that the aid is compatible with the internal market under Article 106(2) TFEU.

(100) Article 106(2) provides that 'undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.'

(101) That Article provides for an exception to the prohibition of State aid contained in Article 107 TFEU to the extent that the aid is necessary and proportional to ensure the performance of the SGEI under acceptable economic conditions. Under Article 106(3) it is for the Commission to ensure application of this Article, among other things by specifying the conditions under which it considers that the criteria of necessity and proportionality are fulfilled.

(102) Prior to 31 January 2012, the Commission's policy for applying the exception in Article 106(2) TFEU was set out in the Community framework for State aid in the form of public service compensation ('the 2005 SGEIs Framework') ([27]) and Decision 2005/842/EC.

(103) On 31 January 2012 a new SGEIs package entered into force, which included the European Union framework for State aid in the form of public service compensation (2011) ('the 2011 SGEIs Framework') ([28]) and Commission Decision 2012/21/EU ([29]).

7.3.1.1. Compatibility under Decision 2005/842/EC

(104) The measures were taken in June 2004, June 2005 and December 2007. The recipient argues that the measures were exempted from the notification requirement by Decision 2005/842/EC.

(105) Decision 2005/842/EC declared that State aid in the form of public service compensation granted to undertakings in connection with SGEIs was compatible if it complied with the conditions the Decision set out. In particular, the Decision declared compatible State aid in the form of public service compensation to airports i) for which annual traffic does not exceed a million passengers, or ii) with an annual turnover before tax of less than EUR 100 million during the two financial years preceding that in which the service of general economic interest was assigned, if the airport receives annual compensation for the service in question of less than EUR 30 million ([30]).

(106) Decision 2005/842/EC applied only to aid under the form of public service compensation in connection with genuine services of general economic interest. In order to qualify for the exemption, public service compensation for the operation of an SGEI had also to comply with detailed conditions set out in Articles 4, 5 and 6 of the Decision ([31]).

(107) Article 4 of Decision 2005/842/EC required that the SGEI be entrusted to the undertaking concerned by way of one or more official acts specifying, among other things, the nature and the duration of the public service obligations, the parameters for calculating, controlling and reviewing the compensation, and the arrangements for avoiding and repaying any overcompensation. Article 5 of the Decision stated that the amount of compensation was not to exceed what was necessary to cover the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit. Finally, Article 6 of the Decision required Member States to carry out regular checks to ensure that undertakings were not receiving compensation in excess of the amount determined in accordance with Article 5.

([27]) OJ C 297, 29.11.2005.
([28]) OJ C 8, 11.1.2012.
([29]) Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3).
([30]) Article 2(1)(a).
([31]) See Article 10 of the Decision for dates of entry into force, and in particular the application of Article 4(c), (d) and (e) and Article 6.

(108) For the reasons set out in section 7.1.2.1, the Commission finds that neither the recipient nor the Italian authorities have shown that SO.G.A.S. was entrusted with clearly defined public service obligations. Nor have they shown that the acts allegedly entrusting the service on which they relied set out any parameters for calculating, controlling and reviewing the compensation, or any arrangements for avoiding and repaying any overcompensation. The requirements of Articles 4, 5 and 6 of Decision 2005/842/EC relating to the content of the entrustment acts are therefore not met.

(109) The Commission consequently takes the view that the cover provided for the losses of the manager of Stretto airport was not compatible with the internal market or exempted from the notification requirement under Decision 2005/842/EC.

(110) In the same way, in the absence of a clear definition of the public service obligations imposed on SO.G.A.S., the measure cannot be considered compatible with the internal market and exempt from the requirement of prior notification on the basis of Article 10(b) of Decision 2012/21/EU either. The Commission has therefore considered whether the measure can be considered compatible with the internal market on the basis of paragraph 69 of the 2011 SGEIs Framework, according to which 'The Commission will apply the principles set out in this Communication to unlawful aid on which it takes a decision after 31 January 2012 even if the aid was granted before this date'.

7.3.1.2. Compatibility under the 2011 SGEIs Framework

(111) Paragraph 16 of the 2011 SGEIs Framework sets out the requirements for an SGEI to be considered validly entrusted. Paragraph 16(a) states that the act entrusting the service must indicate the content and duration of the public service obligations. Therefore, for the same reasons already set out in section 7.1.2.1, the aid measures at issue cannot be considered compatible under the 2011 SGEIs Framework. In particular, the overall management of the airport has not been clearly entrusted to the recipient as an SGEI. No legal document has been provided to the Commission that clearly defines in advance the SGEI entrusted to the recipient or the recipient's entitlement to compensation. Nothing has been submitted to the Commission to show that paragraphs 17 and 18 of the 2011 SGEIs Framework have been complied with.

(112) The Commission therefore takes the view that the aid measure under examination cannot be declared compatible with the internal market under Article 106(2) TFEU.

(113) For the sake of completeness the Commission would point out that according to paragraph 9 of the 2011 SGEIs Framework, SGEI compensation granted to firms in difficulty must be assessed under the guidelines on State aid for rescuing and restructuring firms in difficulty ('the R&R guidelines').

(114) During the earlier stages of the case Italy argued that SO.G.A.S. was a firm in difficulty within the meaning of the R&R guidelines. However, Italy also maintained that the measures under assessment were not part of a restructuring plan and that no such plan existed. In its opening decision, therefore, the Commission considered that the measures could not be deemed compatible with the R&R guidelines.

(115) In the course of the formal investigation Italy no longer claimed that the airport manager was in difficulty at the time the aid measures were taken, and that the aid could therefore be deemed compatible on the basis of the R&R guidelines.

(116) There is therefore no evidence that might enable the Commission to assess the compatibility of the measures on the basis of the R&R guidelines, and the Commission consequently cannot declare them compatible with the internal market under the R&R guidelines.

7.3.2. **Compatibility under the new aviation guidelines**

(117) On 31 March 2014, the Commission adopted a communication setting out guidelines on State aid to airports and airlines ('the new aviation guidelines') [32]. The new aviation guidelines apply to operating aid granted to airports before 31 March 2014.

[32] OJ C 99, 4.4.2014, p. 3.

(118) Operating aid granted before the entry into force of the new aviation guidelines may be declared compatible to the full extent of uncovered operating costs provided that the following conditions are met:

— contribution to a well-defined objective of common interest: this condition is fulfilled among other things if the aid increases the mobility of EU citizens and the connectivity of the regions or facilitates regional development ([33]),

— need for State intervention: the aid should be targeted towards situations where such aid can bring about a material improvement that the market itself cannot deliver ([34]),

— existence of incentive effect: this condition is fulfilled if it is likely that, in the absence of operating aid, and taking into account the possible presence of investment aid and the level of traffic, the level of economic activity of the airport concerned would be significantly reduced ([35]),

— proportionality of the aid amount (aid limited to the minimum necessary): in order to be proportionate, operating aid to airports must be limited to the minimum necessary for the aided activity to take place ([36]),

— avoidance of undue negative effects on competition and trade ([37]).

(119) According to the Italian authorities, the Region of Calabria faces critical difficulties caused by its outlying geographical position and underdeveloped freight mobility, largely as a result of the lack of adequate infrastructure. Italy has stated that the measures under scrutiny are part of a wider project of enhancement of the transport network in Calabria. The measures would enable SO.G.A.S. to improve the infrastructure and the services offered by the airport, in the light of the new regional strategy aimed at improving the transport network and guaranteeing improved access to the region.

(120) The Commission accordingly takes the view that the operating aid granted to SO.G.A.S. has contributed to the achievement of an objective of common interest by improving accessibility, connectivity, and regional development through the development of safe and reliable air transport infrastructure.

(121) According to the new aviation guidelines, smaller airports may have difficulties in ensuring the financing of their operation without public funding. Paragraph 118 of the new aviation guidelines states that airports with annual passenger traffic below 700 000 passengers per annum may not be able to cover their operating costs to a substantial extent. Traffic at Stretto airport has constantly remained below 700 000 passengers. The Commission therefore considers that the aid was necessary, in that it allowed an improvement in the connectivity of the Region of Calabria that the market would not have delivered by itself.

(122) Without the aid the activity of the recipient would have been significantly reduced if not terminated altogether. At the same time, the aid did not exceed the amount required to cover operating losses, and consequently did not exceed the minimum necessary for the aided activity to take place.

(123) No other airport is located in the same catchment area ([38]): as shown above, the closest airport is situated more than 130 km away. Moreover, Italy has confirmed that the airport infrastructure has been made available to all airlines on non-discriminatory terms. Neither in the information at the disposal of the Commission nor in the comments submitted by interested parties in the course of the investigation has it been suggested that there was any discrimination in access to the infrastructure.

(124) The Commission concludes that the conditions for compatibility laid down by the new aviation guidelines are met.

7.3.3. **Conclusion on the compatibility of the aid**

(125) The Commission concludes that the notified aid measure is compatible with the internal market under Article 107(3)(c) TFEU.

([33]) Paragraphs 137 and 113 of the new aviation guidelines.
([34]) Paragraphs 137 and 116 of the new aviation guidelines.
([35]) Paragraphs 137 and 124 of the new aviation guidelines.
([36]) Paragraphs 137 and 125 of the new aviation guidelines.
([37]) Paragraphs 137 and 131 of the new aviation guidelines.
([38]) The 'catchment area of an airport' is defined by the new aviation guidelines as a geographic market boundary that is normally set at around 100 km or around 60 minutes' travelling time by car, bus, train or high-speed train.

(126) This finding is reached under the rules on State aid, and is without prejudice to the application of other provisions of EU law such as EU environmental legislation.

8. **CONCLUSIONS**

(127) The Commission finds that Italy has implemented the aid in question unlawfully, in breach of Article 108(3) TFEU. In the light of the assessment set out above, however, the Commission has decided not to raise objections to the aid, on the ground that it is compatible with the internal market under Article 107(3)(c) TFEU and with the new aviation guidelines,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy has granted to the Stretto airport management company SO.G.A.S. SpA, amounting to EUR 6 392 847, is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 June 2014.

For the Commission
Joaquín ALMUNIA
Vice-President

COMMISSION IMPLEMENTING DECISION

of 19 December 2014

concerning certain protective measures in relation to highly pathogenic avian influenza of subtype H5N8 in Germany

(notified under document C(2014) 10261)

(Only the German text is authentic)

(Text with EEA relevance)

(2014/945/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ([1]), and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ([2]), and in particular Article 10(4) thereof,

Whereas:

(1) Avian influenza is an infectious viral disease in birds, including poultry. Infections with avian influenza viruses in domestic poultry cause two main forms of that disease that are distinguished by their virulence. The low pathogenic form generally only causes mild symptoms, while the highly pathogenic form results in very high mortality rates in most poultry species. That disease may have a severe impact on the profitability of poultry farming.

(2) Avian influenza is mainly found in birds, but under certain circumstances infections can also occur in humans even though the risk is generally very low.

(3) In the event of an outbreak of avian influenza, there is a risk that the disease agent might spread to other holdings where poultry or other captive birds are kept. As a result it may spread from one Member State to other Member States or to third countries through trade in live birds or their products.

(4) Council Directive 2005/94/EC ([3]) sets out certain preventive measures relating to the surveillance and the early detection of avian influenza and the minimum control measures to be applied in the event of an outbreak of that disease in poultry or other captive birds. That Directive provides for the establishment of protection and surveillance zones in the event of an outbreak of highly pathogenic avian influenza.

(5) Germany notified the Commission of an outbreak of highly pathogenic avian influenza of subtype H5N8 in a holding on its territory where poultry are kept and it immediately took the measures required pursuant to Directive 2005/94/EC, including the establishment of protection and surveillance zones, which should be defined in Parts A and B of the Annex to this Decision.

(6) The Commission has examined those measures in collaboration with Germany, and it is satisfied that the borders of the protection and surveillance zones, established by the competent authority in that Member State, are at a sufficient distance to the actual holding where the outbreak was confirmed.

(7) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade being imposed by third countries, it is necessary to rapidly describe the protection and surveillance zones established in relation to highly pathogenic avian influenza in Germany at Union level.

([1]) OJ L 395, 30.12.1989, p. 13.
([2]) OJ L 224, 18.8.1990, p. 29.
([3]) Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (OJ L 10, 14.1.2006, p. 16).

(8) Accordingly, the protection and surveillance zones in Germany, where the animal health control measures as laid down in Directive 2005/94/EC are applied, should be defined in this Decision and the duration of that regionalisation fixed.

(9) 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

Germany shall ensure that the protection and surveillance zones established in accordance with Article 16(1) of Directive 2005/94/EC comprise at least the areas listed in Parts A and B of the Annex to this Decision.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 19 December 2014.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

PART A

Protection zone as referred to in Article 1:

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 29 of Directive 2005/94/EC
DE	**Germany**	**Postal code**	**Area comprising:**	**9 January 2015**
		26676 Barßel	**In the municipality of Barßel, district of Cloppenburg, Lower Saxony:** From the crossing of the railway line with the eastern border of the municipality of Barßel following the border of that municipality in a southern, then western and northern direction until the railway line in Elisabethfehn and from there along the railway line in an eastern direction until the starting point at the crossing of the railway line with the eastern border of the municipality.	
		26689 Apen **26188 Edewecht**	**In the municipalities of Apen and Edewecht, district of Ammerland, Lower Saxony:** From the crossing of the district border with the Kortemoorstraße, Kortemoorstraße, Hübscher Berg, Lohorster Straße, Wittenberger Straße, Edewechter Straße, Rothenmethen, Kanalstraße, Am Voßbarg, agricultural road between 'Am Voßbarg' and 'Am Jagen', Am Jagen, Edewechter Straße, Ocholter Straße, Nordloher Straße, railway line in the direction of Barßel until the district border following that border in a south-eastern direction until the crossing between the district border and Kortenmoorstraße. The protection zone comprises the poultry holdings on both sides of any street forming a borderline of the zone.	

PART B

Surveillance zone as referred to in Article 1:

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
DE	**Germany**	**Postal code**	**Area comprising:**	**18 January 2015**
		26676 Barßel **26683 Saterland** **26169 Friesoythe**	**In the district of Cloppenburg, Lower Saxony:** From the crossing of the B 401 with B 72 in a northern direction along the B 72 until the district border and then along that border in an eastern and south-eastern direction until the L831 in Edewechterdamm, and from there along the L 831 (Altenoyther Straße) in a south-western direction until the Lahe-Ableiter and along that in a north-western direction until the Buchweizendamm, along that following the Ringstraße, Zum Kellerdamm, Vitusstraße, An der Mehrenkamper Schule, Mehrenkamper Straße and the Lindenweg until the K 297 (Schwaneburger Straße) and along that in a north-western direction until the B 401 and along that in a western direction to the starting point at the crossing of the B 401 with the B 72.	

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
		26689 Apen **26160 Bad Zwischenahn** **26188 Edewecht** **26655 Westerstede**	**In the municipalities of Apen, Bad Zwischenahn, Edewecht and the town of Westerstede, district of Ammerland, Lower Saxony:** From the crossing of the district border and the Edamer Straße, Edamer Straße Hauptstraße, Auf der Loge, Zur Loge, Lienenweg, Zur Tonkuhle, Burgfelder Straße, Wischenweg, Querensteder Straße, Langer Damm, An den Feldkämpen, Pollerweg, Ocholter Straße, Westerstede Straße, Steegenweg, Rostruper Straße, Rüschendamm, Torsholter Hauptstraße, Südholter Straße, Westersteder Straße, Westerloyer Straße, Strohen, In der Loge, Buernstreet, Am Damm, Moorweg, Plackenweg, Ihausener Straße, Eibenstraße, Eichenstraße, Klauhörner Straße, Am Kanal, Aper Straße, Stahlwerkstraße, Ginsterweg, Am Uhlenmeer, Grüner Weg, Südgeorgsfehner Straße, Schmuggelpadd, Wasserzug Bitsche respectively the district border, Hauptstraße, along the district border in a south-eastern direction until the crossing of the district border and the Edamer Straße. The surveillance zone comprises the poultry holdings on both sides of any street forming a borderline of the zone.	
		26847 Detern	**In the municipality of Jümme, part Detern, district of Leer, Lower Saxony:** At the starting point of the district border Cloppenburg-Leer on the B72 at the height of Ubbehausen in a northern direction at the corner of 'Borgsweg' and 'Lieneweg' further in an northern direction onto the 'Deelenweg' following that into the 'Handwiserweg'. Following that in a north-eastern direction onto the 'Barger Straße' and further in a northern direction onto the Street 'Am Barger Schöpfswerkstief'. Following that street first in an eastern and then in a northern direction onto the street 'Fennen' and following that street in a northern direction onto the Street 'Zur Wassermühle'. In a northern direction across the Jümme following the Aper Tief until at the height of the 'Französischer Weg' onto the 'Osterstraße'. From there towards the district border to Ammerland and following that until the starting point at Ubbehausen.	

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2014 OF THE EU-SERBIA STABILISATION AND ASSOCIATION COUNCIL

of 17 December 2014

replacing Protocol 3 to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, concerning the definition of the concept of 'originating products' and methods of administrative cooperation

(2014/946/EU)

THE EU-SERBIA STABILISATION AND ASSOCIATION COUNCIL,

Having regard to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part [1], signed in Luxembourg on 29 April 2008, and in particular Article 44 thereof,

Having regard to Protocol 3 to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, concerning the definition of the concept of 'originating products' and methods of administrative cooperation,

Whereas:

(1) Article 44 of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part ('the Agreement') refers to Protocol 3 concerning the definition of the concept of 'originating products' and methods of administrative cooperation ('Protocol 3'), which lays down the rules of origin and provides for cumulation of origin between the Union, Serbia, Turkey and any country or territory participating in the Union's Stabilisation and Association Process.

(2) Article 39 of Protocol 3 provides that the Stabilisation and Association Council established by Article 119 of the Agreement may decide to amend the provisions of that protocol.

(3) The Regional Convention on pan-Euro-Mediterranean preferential rules of origin [2] ('the Convention') aims to replace the protocols on rules of origin currently in force among the countries of the pan-Euro-Mediterranean area with a single legal act. Serbia and other participants to the Stabilisation and Association Process from the Western Balkans were invited to join the system of pan-European diagonal cumulation of origin in the Thessaloniki agenda, endorsed by the European Council of June 2003. They were invited to join the Convention by a decision of the Euro-Mediterranean Ministerial Conference of October 2007.

(4) The Union and Serbia signed the Convention on 15 June 2011 and 12 November 2012, respectively.

(5) The Union and Serbia deposited their instruments of acceptance with the depositary of the Convention on 26 March 2012 and 1 July 2013, respectively. Consequently, in application of Article 10(3) of the Convention, the Convention entered into force in relation to the Union and Serbia on 1 May 2012 and on 1 September 2013, respectively.

(6) Where the transition towards the Convention is not simultaneous for all Contracting Parties within the cumulation zone, it should not lead to any less favourable situation than previously under Protocol 3.

(7) Protocol 3 should therefore be replaced by a new protocol making reference to the Convention,

[1] OJ L 278, 18.10.2013, p. 16.
[2] OJ L 54, 26.2.2013, p. 4.

HAS ADOPTED THIS DECISION:

Article 1

Protocol 3 to Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, concerning the definition of the concept of 'originating products' and methods of administrative cooperation is replaced by the text set out in the Annex to this Decision.

Article 2

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

It shall apply from 1 February 2015.

Done at Brussels, 17 December 2014.

For the Stabilisation and Association Council

The Chairman

J. JOKSIMOVIĆ

ANNEX

Protocol 3

concerning the definition of the concept of 'originating products' and methods of administrative cooperation

Article 1

Applicable rules of origin

For the purpose of implementing this Agreement, Appendix I and the relevant provisions of Appendix II to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin [1] ('the Convention') shall apply.

All references to the 'relevant agreement' in Appendix I and in the relevant provisions of Appendix II to the Convention shall be construed so as to mean this Agreement.

Article 2

Dispute settlement

Where disputes arise in relation to the verification procedures of Article 32 of Appendix I to the Convention that cannot be settled between the customs authorities requesting the verification and the customs authorities responsible for carrying out this verification, they shall be submitted to the Stabilisation and Association Council.

In all cases the settlement of disputes between the importer and the customs authorities of the importing country shall take place under the legislation of that country.

Article 3

Amendments to the Protocol

The Stabilisation and Association Council may decide to amend the provisions of this Protocol.

Article 4

Withdrawal from the Convention

1. Should either the European Union or Serbia give notice in writing to the depositary of the Convention of their intention to withdraw from the Convention according to Article 9 thereof, the European Union and Serbia shall immediately enter into negotiations on rules of origin for the purpose of implementing this Agreement.

2. Until the entry into force of such newly negotiated rules of origin, the rules of origin contained in Appendix I and, where appropriate, the relevant provisions of Appendix II to the Convention, applicable at the moment of withdrawal, shall continue to apply to this Agreement. However, as of the moment of withdrawal, the rules of origin contained in Appendix I and, where appropriate, the relevant provisions of Appendix II to the Convention shall be construed so as to allow bilateral cumulation between the European Union and Serbia only.

Article 5

Transitional provisions — cumulation

1. Notwithstanding Article 3 of Appendix I to the Convention, the rules on cumulation provided for in Articles 3 and 4 of Protocol 3 to this Agreement, as adopted by the European Union and Serbia on concluding the Agreement [2], shall continue to apply between the Parties to this Agreement until the Convention has become applicable for all Contracting Parties to the Convention listed in those Articles.

2. Notwithstanding Articles 16(5) and 21(3) of Appendix I to the Convention, where cumulation involves only EFTA States, the Faroe Islands, the European Union, Turkey and the participants in the Stabilisation and Association Process, the proof of origin may be a movement certificate EUR.1 or an origin declaration.

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[1] OJ L 54, 26.2.2013, p. 4.
[2] OJ L 278, 18.10.2013, p. 16.

DECISION No 1/2014 OF THE JOINT COMMITTEE ESTABLISHED UNDER THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE ONE PART, AND THE SWISS CONFEDERATION, OF THE OTHER, ON THE FREE MOVEMENT OF PERSONS

of 28 November 2014

amending Annex II to that Agreement on the coordination of social security schemes

(2014/947/EU)

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons ([1]) ('the Agreement') and in particular Articles 14 and 18 thereof,

Whereas:

(1) The Agreement was signed on 21 June 1999 and entered into force on 1 June 2002.

(2) Annex II to the Agreement on the coordination of social security schemes was replaced by Decision No 1/2012 of the Joint Committee of 31 March 2012 ([2]).

(3) Annex II to the Agreement should be updated to take account of the new legal acts of European Union legislation that has come into force since then, in particular amendments to Regulation (EC) No 883/2004 of the European Parliament and of the Council ([3]) and Regulation (EC) No 987/2009 of the European Parliament and of the Council ([4]) brought about by Commission Regulation (EU) No 1244/2010 ([5]), Regulation (EU) No 465/2012 of the European Parliament and of the Council ([6]) and Commission Regulation (EU) No 1224/2012 ([7]).

(4) Account should also be taken of the decisions and recommendations adopted by the Administrative Commission for the Coordination of Social Security Systems to implement Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 subsequent to the entry into force of Decision No 1/2012 of the Joint Committee.

(5) Annex II to the Agreement should be updated in line with changes to the relevant legal acts of the European Union,

HAS DECIDED AS FOLLOWS:

Article 1

Annex II to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons ('the Agreement') is amended as set out in the Annex to this Decision.

([1]) OJ L 114, 30.4.2002, p. 6.
([2]) OJ L 103, 13.4.2012, p. 51.
([3]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).
([4]) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).
([5]) Commission Regulation (EU) No 1244/2010 of 9 December 2010 amending Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ L 338, 22.12.2010, p. 35).
([6]) Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ L 149, 8.6.2012, p. 4).
([7]) Commission Regulation (EU) No 1224/2012 of 18 December 2012 amending Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ L 349, 19.12.2012, p. 45).

Article 2

This Decision is established in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic.

Article 3

This Decision shall enter into force on the first day of the second month following its adoption by the Joint Committee.

Done at Brussels, 28 November 2014.

For the Joint Committee

The Chairman

Mario GATTIKER

ANNEX

Annex II to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons is amended as follows:

(1) in Section A: Legal acts referred to, point 1, the words 'as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 amending Regulation (EC) No 883/2004 on the coordination of social security systems and determining the content of its Annexes ([1])' shall be replaced by the following:

'as amended by:

— Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its Annexes (*);

— Commission Regulation (EU) No 1244/2010 of 9 December 2010 amending Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 (**);

— Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (***);

— Commission Regulation (EU) No 1224/2012 of 18 December 2012 amending Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 (****).

(*) OJ L 284, 30.10.2009, p. 43.
(**) OJ L 338, 22.12.2010, p. 35.
(***) OJ L 149, 8.6.2012, p. 4.
(****) OJ L 349, 19.12.2012, p. 45.';

(2) in Section A: Legal acts referred to, point 1, under the heading 'For the purposes of this Agreement, Regulation (EC) No 883/2004 shall be adapted as follows:', the entry in letter h, point 1 the words 'Federal Supplementary Benefits Act of 19 March 1965' shall be replaced by the following:

'Federal Supplementary Benefits Act of 6 October 2006';

(3) in Section A: Legal acts referred to, point 2, the following is inserted after the words 'Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems ([2])':

'as amended by

— Commission Regulation (EU) No 1244/2010 of 9 December 2010 amending Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 (*);

— Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (**);

— Commission Regulation (EU) No 1224/2012 of 18 December 2012 amending Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 (***).

(*) OJ L 338, 22.12.2010, p. 35.
(**) OJ L 149, 8.6.2012, p. 4.
(***) OJ L 349, 19.12.2012, p. 45.';

([1]) OJ L 284, 30.10.2009, p. 43.
([2]) OJ L 284, 30.10.2009, p. 1.

(4) in Section A: Legal acts referred to, point 2, under the heading 'For the purposes of this Agreement, Regulation (EC) No 987/2009 shall be adapted as follows:', the following words shall be deleted:

'Arrangement between Switzerland and Italy of 20 December 2005 fixing the special procedures for the reimbursement of health care benefits';

(5) in Section B: Legal acts of which the Contracting Parties shall take due account, the following is added after point 21:

'(22) Decision of the Administrative Commission for the Coordination of Social Security Systems No E2 of 3 March 2010 concerning the establishment of a change management procedure applying to details of the bodies defined in Article 1 of Regulation (EC) No 883/2004 of the European Parliament and of the Council which are listed in the electronic directory which is an inherent part of EESSI (*),

(23) Decision of the Administrative Commission for the Coordination of Social Security Systems No E3 of 19 October 2011 concerning the transitional period as defined in Article 95 of Regulation (EC) No 987/2009 of the European Parliament and of the Council (**),

(24) Decision of the Administrative Commission for the Coordination of Social Security Systems No H6 of 16 December 2010 concerning the application of certain principles regarding the aggregation of periods under Article 6 of Regulation (EC) No 883/2004 on the coordination of social security systems (***),

(25) Decision of the Administrative Commission for the Coordination of Social Security Systems No S8 of 15 June 2011 concerning the granting of prostheses, major appliances and other substantial benefits in kind provided for in Article 33 of Regulation (EC) No 883/2004 on the coordination of social security systems (****),

(26) Decision of the Administrative Commission for the Coordination of Social Security Systems No U4 of 13 December 2011 concerning the reimbursement procedures under Article 65(6) and (7) of Regulation (EC) No 883/2004 and Article 70 of Regulation (EC) No 987/2009 (*****).

(*) OJ C 187, 10.7.2010, p. 5 (Electronic Exchange of Social Security Information).
(**) OJ C 12, 14.1.2012, p. 6.
(***) OJ C 45, 12.2.2011, p. 5.
(****) OJ C 262, 6.9.2011, p. 6.
(*****) OJ C 57, 25.2.2012, p. 4.';

(6) in Section C: Legal acts of which the Contracting Parties shall take note, the following is added after point 2:

'(3) Recommendation of the Administrative Commission for the Coordination of Social Security Systems No S1 of 15 March 2012 concerning financial aspects of cross-border living organ donations (*).

(*) OJ C 240, 10.8.2012, p. 3.'.

CORRIGENDA

Corrigendum to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code

(Official Journal of the European Communities L 302 of 19 October 1992)

On page 32, in Article 166, point (a), first line:

for: 'Community goods are considered, …',

read: 'Non-Community goods are considered, …'.

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