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2011/0277 (NLE)

Proposal for a

COUNCIL IMPLEMENTING REGULATION

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the anti-dumping proceeding concerning imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia.

General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

Existing provisions in the area of the proposal

Provisional measures were imposed by Commission Regulation (EU) No 446/2011 (OJ L 122, 11.05.2011, p.47).

Consistency with other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not contain provisions for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The attached proposal for a Council Regulation is based on the definitive findings on dumping, injury, causation and Union interest. It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published no later than 11 November 2011.

Legal basis

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

Subsidiarity principle

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

Other means would not be adequate because the basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas:

A. PROCEDURE

1. Provisional measures

(1) The Commission, by Regulation (EU) No 446/2011[2] ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of certain fatty alcohols and their blends (FOH) originating in India, Indonesia and Malaysia ('the countries concerned').

(2) The proceeding was initiated by Notice of Initiation (NOI) published on 13 August 2010[3] following a complaint lodged on 30 June 2010 by two Union producers, Cognis GmbH (Cognis) and Sasol Olefins & Surfactants GmbH (Sasol), (together reffered to as 'the complainants'). These two companies represent a major proportion, in this case more than 25 % of total Union production of the product investigated.

(3) As set out in recital 9 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2009 to 30 June 2010 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2007 to the end of the IP ('period considered').

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1 OJ L 343, 22.12.2009, p. 51.
2 OJ L 122, 11.5.2011, p. 47.
3 OJ C 219, 13.8.2010, p. 12.

2. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures ('provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(6) Subsequently, all parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). All parties were granted a period within which they could make comments on this final disclosure.

(7) The oral and written comments submitted by the interested parties were considered and taken into account where appropriate.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(8) The product concerned is, as set out in recitals (10) and (11) of the provisional Regulation, saturated fatty alcohols with a carbon chain length of C8, C10, C12, C14, C16 or C18 (not including branched isomers) including single saturated fatty alcohols (also referred to as ‘single cuts’) and blends predominantly containing a combination of carbon chain lengths C6-C8, C6-C10, C8-C10, C10-C12 (commonly categorised as C8-C10), blends predominantly containing a combination of carbon chain lengths C12-C14, C12-C16, C12-C18, C14-C16 (commonly categorised as C12-C14) and blends predominantly containing a combination of carbon chain lengths C16-C18, originating in India, Indonesia, and Malaysia, currently falling within CN codes ex 2905 16 85, 2905 17 00, ex 2905 19 00 and ex 3823 70 00.

(9) After the imposition of provisional measures certain parties complained about the ambiguity of the definition of the product concerned. They claimed that according to the NOI, only linear FOH is included in the product scope, thus excluding FOH containing branched isomers, or branched FOH. Other parties claimed that it does not make sense to exclude FOH containing branched isomers produced from the oxo process because they have the same use and compete with linear FOH in the market.

(10) It has been established that all types of FOH covered by this investigation, as described in recital (8), despite possible differences in terms of raw material used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible variations in the product concerned do not alter its basic definition, its characteristics or the perception that various parties have of it.

(11) Hence, the provisional decision to exclude FOH containing branched isomers from the product scope as mentioned in the NOI and to exclude these companies' production of

branched FOH from the definition of the EU production (including those companies producing FOH from the oxo process) should be maintained. In the absence of any other comments regarding the product concerned, recitals (10) and (11) of the provisional Regulation are hereby confirmed.

2. Like product

(12) It is recalled that it was provisionally determined in recital (13) of the provisional Regulation that linear FOH and branched FOH are not like products and thus the data pertaining to producers producing FOH made of branched isomers should be excluded from the injury analysis.

(13) In the absence of any other comments regarding the like product, recitals (12) and (13) of the provisional Regulation is hereby confirmed.

C. DUMPING

1. India

1.1. Normal Value

(14) In the absence of any comments concerning the determination of normal value, the provisional findings in recitals (14) to (18) of the provisional Regulation are hereby confirmed.

1.2. Export price

(15) In the absence of any comments concerning the determination of export price, the provisional findings in recital (19) of the provisional Regulation are hereby confirmed.

1.3. Comparison

(16) Following provisional and definitive disclosures, both Indian exporting producers reiterated their claim that their sales made to one of the original complainants in the Union during the IP should be ignored when calculating the dumping margin (see recital (22) of the provisional Regulation). The companies based their claim on the fact that Article 9.1 of the WTO Anti-Dumping Agreement provides for the amount of the duty to be imposed to be the full margin of dumping or less. The Indian exporting producers also referred to Article 2.4 of the WTO Anti-Dumping Agreement pursuant to which a fair comparison shall be made between the export price and the normal value. On this basis, they alleged that the complainant had negotiated with them the purchase of very large quantities at very low prices at the same moment when it was preparing the complaint, and that therefore the prices of these transactions had not been set fairly, and for this reason such transactions should not be included in the dumping calculations.

(17) First of all, it should be noted that the fact that the WTO Anti-Dumping Agreement allows for the possibility to impose a duty below the full dumping margin, does not create an obligation to do so. Article 9(4) of the basic Regulation merely imposes an obligation to limit the anti-dumping duty to a level sufficient to remove the injury. Moreover, there was no evidence that the prices had not been freely negotiated

between the parties. An examination of the overall purchases made by the complainant in question also showed that the prices negotiated by the two Indian exporting producers were in line with the prices agreed for purchases of comparable products by the complainant in question from other suppliers. Furthermore, it was established that the complainant was importing from the Indian exporting producers the product concerned for a number of years and not only during the IP. Moreover, one exporting producer stated in an oral hearing chaired by the hearing officer that their prices to the complainant in question were structurally lower than those charged to other customers. In conclusion, there is no evidence that the prices had not been set in a fair way only because of the fact that the sales were made to a complainant and it is confirmed that the claim is rejected.

(18) Following provisional and definitive disclosures, both Indian exporting producers reiterated their claim for an adjustment for currency conversion pursuant to Article 2(10)(j) of the basic Regulation arguing that there was a sustained appreciation of the Indian Rupee (INR) against the Euro (EUR) as from November 2009 which would have a distorting effect on the dumping calculations (see recital (23) of the provisional Regulation). Both exporting producers acknowledged that their sale prices in the second half of the IP were higher than those in the first half of the IP but they claimed that this trend was due exclusively to an increase in the costs of raw materials and to the general improvement in the market conditions following the end of the economic crisis, and did not reflect the appreciation of the INR against the EUR. Moreover, the companies claimed that even if they were able to adjust their prices regularly and at short intervals, they would never be able to predict exactly the developments in the exchange rates for a future period.

(19) The investigation has shown that even though the INR appreciated progressively against the EUR during the second half of the IP, for each Indian exporting producer its prices for sales of the main products to several main customers actually changed on a month to month basis, in particular during the second half of the IP. Therefore, there is no indication that prices for sales to the Union could not have been modified at the same time to reflect also changes in currency exchange rates within 60 days as provided for in Article 2(10) (j) of the basic Regulation and Article 2.4.1 of the WTO Anti-Dumping Agreement. Since, in several cases, prices were changed frequently, any change in exchange rates could also have been reflected. Moreover, this showed that FOH market in general is open to accept frequent changes in prices. Therefore, even in cases where prices were changed less frequently, there is no evidence that this was not because of the business choice made by the parties. The fact that prices can be adapted quickly to reflect modified market situations (in this case, allegedly changes in currency exchange rates) gave the Indian exporting producers the possibility to reflect such changes in their selling prices if they had so wished and apparently done in a number of cases. In view of the above, an adjustment for currency conversions is not warranted and the claim is rejected.

(20) Following provisional disclosure, one Indian exporting producer claimed that an allowance granted under Article 2(10)(b) of the basic Regulation for differences in indirect taxes, which had been made in respect of certain product types, should also have been made in respect of products and blends with chain lengths of C12 and C14 because the duty paid on raw materials used for these products was refunded upon export of the product. However, no information which could be verified on spot was submitted during the investigation, proving that indeed such duties had been

subsequently refunded. Following definitve disclosure, the company claimed that its comments had been misunderstood and that all the raw materials used for the production of products and blends with chain lengths of C12 and C14 had been imported duty free. Since an indirect tax needs to be paid if these raw materials are consequently incorporated into products sold on the domestic market, the company claims an adjustment of the normal value for these specific product types. However, the evidence submitted during the verification shows that the specific raw materials that are needed for the production of the product types with chain lengths C12 and C14 and that were imported duty free during the IP, were sufficient to manufacture only a fraction of the company's export sales of this product during the IP. It is therefore certain that at least two thirds of the exported product with chain lengths C12 and C14 have been manufactured by using raw materials for which import duties had been paid. Since the company has never submitted any evidence showing that any of these raw materials imported duty free was used for export sales to the EU and not for export sales to third countries, the claim is rejected.

(21) In the absence of any other comments in respect of comparison, the content of recitals (20) and (23) of the provisional Regulation is hereby confirmed.

1.4. Dumping margin

(22) In the absence of any comments concerning the dumping margin calculation, the content of recitals (24) to (26) of the provisional Regulation is hereby confirmed.

(23) The amount of dumping finally determined, expressed as a percentage of the CIF net free-at-Union-frontier price, before duty, is as follows:

Company	Definitive dumping margin
Godrej Industries Limited	9,3 %
VVF Limited	4,8 %
All other companies	9,3 %

2. Indonesia

2.1. Normal value

(24) Following provisional and definitive disclosures, one Indonesian exporting producer claimed that in testing the profitability of transactions, the selling, general and administrative (SG&A) expenses, should not have been allocated to individual transactions on the basis of turnover, and that this had led to a number of transactions being found to be unprofitable. The claim was examined, but it was found that matching SG&A expenses to individual transactions on the basis of turnover is more appropriate given the nature of such expenses, which are more value-related rather than volume-related. It should be noted that the total amount of SG&A expenses allocated to each product type remains the same irrespective of which of the two methods is used for matching SG&A expenses to individual transactions. Finally, the transactions for which the exporting producer queried the outcome of the profitability

test, were re-examined and it was confirmed that the transactions were unprofitable. The claim is therefore rejected.

(25) The same Indonesian exporting producer also claimed that in determining the profit level used when constructing normal value, the profit of sales identified as not being in the ordinary course of trade at product type level should not be excluded, since more than 80% of the overall domestic sales were profitable. With regard to this claim, it is recalled that the determination of which sales are in the ordinary course of trade is made at the level of product types, as explained at recitals (29) to (32) of the provisional Regulation, since this is the most appropriate way to accurately match sales prices with the relating costs of production. Furthermore, Article 2(6) of the basic Regulation does not exclude the division of the product investigated into product types where appropriate. Therefore, sales not found to be in the ordinary course of trade are excluded at product type level from the calculation of the profit to be used in constructing the normal value. The claim is therefore rejected.

(26) The same Indonesian exporting producer also claimed that when constructing normal value for certain product types, no deduction for allowances had been made in order to bring the normal values back to an ex-works level. The claim was accepted and the calculation amended accordingly.

(27) In the absence of any other comments concerning the determination of normal value, the provisional findings in recitals (27) to (33) of the provisional Regulation – corrected as indicated at recital (26) above - are hereby confirmed.

2.2. Export price

(28) Following provisional disclosure, one Indonesian exporting producer claimed that no justification had been given for considering the price to its related importer company in the Union as unreliable, and for the construction of the export price, in respect of such sales, under Article 2(9) of the basic Regulation. In this regard, it should be noted that transfer prices between related parties are not considered to be reliable because they could be artificially set at different levels depending on what would be more advantageous for the related companies concerned. For this reason, the construction of the export price under Article 2(9) of the basic Regulation, using a reasonable profit margin independent of the actual profit resulting from transfer prices, avoids any distorting effects that may arise from the transfer prices. The claim is therefore rejected.

(29) For export sales to the Union through related importers located in the Union, following provisional disclosure, both Indonesian exporters claimed that the profit margin used for the construction of the export price pursuant to Article 2(9) of the Basic Regulation was inappropriate. They both argued that the profit which had been used at provisional stage referred to only one partially cooperating importer and had not been verified, and was therefore not reliable. Accordingly, they suggested using a profit of 5% as it was done in other investigations. In consideration of the low level of cooperation by independent importers in this investigation, the claim is accepted and a profit level of 5% was applied, which is in line with profits levels used in previous investigations for the same sector.

(30) In the absence of any other comments in respect of comparison, the content of recitals (34) to (36) of the provisional Regulation – adjusted as explained at recital (29) above - is hereby confirmed.

2.3. Comparison

(31) Following provisional disclosure both Indonesian exporters pointed out that no adjustment should have been made for differences in commissions pursuant to Article 2(10)(i) for sales via the respective related traders in a third country. Both companies argued that their production companies in Indonesia and the respective related traders in Singapore form a single economic entity and that the traders in the third country act as the export department of their related Indonesian companies. However, in both cases domestic sales, as well as some export sales to third countries, are invoiced directly by the manufacturer in Indonesia, and the traders in Singapore receive a specific commission. For one of the Indonesian companies this commission is mentioned in a contract covering only export sales. Moreover, the traders in the third country also sell products manufactured by other producers, in one case also from unrelated producers. Both related traders in Singapore therefore clearly have functions which are similar to those of an agent working on a commission basis. The claim is therefore rejected.

(32) Following definitive disclosure, the Indonesian government and one Indonesian exporting producer reiterated the claim of single economic entity referred to in the previous recital. They argued that in *Matsushita v Council* [4] the Court had previously held that the fact that the producer performs certain sales functions does not mean that a manufacturing company and a trading company cannot constitute a single economic entity. Furthermore, they also claimed that sales to third countries that are carried out by the exporter directly without involving the trader in Singapore only represent a small percentage of export sales and that in the *Interpipe* judgement[5] the Court of First Instance held that small volumes of direct sales by the producer did not support the claim that there was no single economic entity. Finally, they brought forward that in *Canon v Council*[6] the fact that a sales subsidiary also acted as a distributor of products from other companies did not affect the finding of a single economic entity.

(33) Even though in *Matsushita v Council* the Court held that the institutions were in that case entitled to find that a manufacturer, together with one or more distribution companies which it controls, forms an economic entity even though it performs certain sales functions itself, it does not necessarily follow that there is an obligation to always consider a producer and its related sales companies as a single economic entity. Furthermore, unlike the Indonesian exporting producer, the manufacturer in *Matsushita v Council* did not make any direct sales itself. Secondly in the *Interpipe* judgement, the fact that direct sales by the exporting producer represented only a limited percentage of the total sales volume to the EU was only one element analysed

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4 Matsushita Electric Industrial Co. Ltd and Matsushita Electric Trading Co. Ltd v Council of the European Communities, Case C-175/87, Judgement of the Court of 10 March 1992.

5 Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT v Council of the European Union, Case T-249/06, Judgement of Court of First Instance of 10 March 2009.

6 Canon Inc v Council of the European Communities, Case C-171/87, Judgement of the Court of 10 March 1992.

by the Court of First Instance. More importantly, the Court stressed the fact that these direct sales were made to the new Member States for a transitional period only. In contrast, in this case, the available evidence indicates that the sales directly by the producer to certain third countries are not temporary but - at least in principle - structural, i.e. permanent. Moreover, for each producer concerned, those sales represent a considerable percentage of its domestic sales. Finally, in *Canon v Council* the sales of the sales subsidiary of the exporting producer on the domestic market included other products that were only sold under a different brand name but had nevertheless all been produced by the exporting producer itself. The claim is therefore again rejected.

(34) One Indonesian company further claimed that, even if the concept of the single economic entity were not to be accepted, the Commission had imposed a "double margin" by deducting from the export price to independent customers in the Union both a profit for the related importer in the Union as well as a commission for the related trader in the third country. However, the two items were taken into account for different purposes and were deducted separately. As explained in recital (28), for export sales through related importers in the Union, the export price is constructed pursuant to Article 2(9) of the basic Regulation on the basis of the price at which the imported products are first resold to an independent buyer. In these cases an adjustment for the profit accruing shall be made so as to establish a reliable export price at the Union frontier level. On the contrary, the commission for the related trader in the third country was deducted pursuant to Article 2(10)(i) of the basic Regulation. Therefore, the claim is rejected.

(35) The company further claimed that, in case the export price were to be adjusted for the commission of the related trader in the third country pursuant to Article 2(10)(i), an identical adjustment to the normal value should be made, since this trader would also coordinate domestic sales. However, the written contract between the trader and the producer in Indonesia only covers export sales. Moreover, domestic sales are invoiced by the company in Indonesia. The claim is therefore rejected.

(36) In respect of the adjustment pursuant to Article 2(10)(i) of the basic Regulation, it is considered appropriate to use a reasonable profit margin independent of the actual profit resulting from transfer prices in order to avoid any distorting effects that may arise from the transfer prices. Therefore, the actual profit margins of the traders in the third country which were used at provisional stage were replaced by a profit of 5% which is considered a reasonable profit for the activities carried out by trading companies in the chemical sector, as was done in previous cases.[7]

(37) Another Indonesian company claimed that the Commission had deducted twice commission expenses for sales via its related importer in the Union. The company argued that an adjustment for both the related importer's SG&A expenses as well as commission expenses as a direct selling expense was made when constructing the export price pursuant to Article 2(9) of the basic Regulation. Since the commission expenses are already included in the SG&A expenses, this resulted in a double

[7] For instance in Granular polytetrafluoroethylene (PTFE) originating in Russia and the People's Republic of China, OJ L 144, 8.6.2005, p. 11, and in Peroxosulphates (persulphates) originating in the United States of America, the People's Republic of China and Taiwan, ,OJ L 97, 12.4.2007, p. 6

deduction for commission expenses. This claim was found to be justified and the calculation was amended accordingly.

(38) One company reiterated its claim for an adjustment for differences in physical characteristics on the basis that it exports the product concerned in both liquid and solid form to the EU whilst it only sells it in solid form on the domestic market and that the prices for the liquid form are lower than those for the solid form of the product investigated (see recital (39) of the provisional Regulation). To support the claim the company submitted the copy of two invoices for sales to other export markets. However, this evidence could not be verified at this late stage of the proceeding, nor could it be ascertained that the difference shown was applicable to all cases where the above differences in physical characteristics existed. The claim is therefore rejected.

(39) Following provisional disclosure, one Indonesian exporter claimed that the interest rate used for the calculation of credit costs of its related importer in the Union in the provisional Regulation was disproportionate and suggested to use an interest rate based on figures published for the IP by Deutsche Bundesbank. Since the interest rate figure used for the calculation of credit costs for this company in the provisional Regulation was based on information submitted by other parties and therefore reflects their specific financial situation which is not necessarily applicable to the related importer in question, the claim was accepted and the calculation was amended accordingly.

(40) In the absence of any other comments concerning the comparison, the provisional findings in recitals (37) to (40) of the provisional Regulation – adjusted as explained at recitals (36), (37) and (39) above - are hereby confirmed.

2.4. Dumping margin

(41) In the absence of any other comments concerning the dumping margin calculation, the content of recitals (41) and (42) of the provisional Regulation is hereby confirmed.

(42) The amount of dumping finally determined, expressed as a percentage of the CIF net free-at-Union-frontier price, before duty, is as follows:

Company	Provisional dumping margin
P.T. Ecogreen Oleochemicals	7,3%
P.T. Musim Mas	5,4%
All other companies	7,3%

3. Malaysia

3.1. Normal value

(43) Following the provisional disclosure, one of the Malaysian exporting producers claimed that the profitability test in the ordinary course of trade assessment (see recital 46 of the provisional Regulation) should not have been based on the weighted average

annual cost of production but that, given the daily price fluctuations of the main raw-material, individual cost of each domestic transaction should have been used. With regard to this claim it should be underlined that it is the Commission consistent practice to use weighted average cost of production as a benchmark for the profitability test. This format was followed by the company in its reply to the questionnaire and constituted the basis for the on spot verification visit which reconciled the data reported by the company with the company's accounts. The claim to use a transaction based cost of production, which would constitute a significant departure from the normal practice of the Commission, was raised for the first time in the company's comments to the provisional disclosure document and corresponding figures could therefore not be verified on spot. It should also be noted that the individual transaction cost sheets submitted by the company in support of their claim are to large extent based on estimations and therefore fail to represent more accurate and representative costs data than the ones initially reported by the company and verified on spot. Lastly, it should be noted that the structure of the new cost sheet provided does not allow reconciliation with this part of management reports which were verified on spot. Therefore, the claim is rejected.

(44) The Malaysian exporter with no domestic sales (see recital (51) of the provisional Regulation) claimed that the amounts for SG&A costs and for profits used for the calculation of the normal value should not be based on the weighted average of the actual amounts determined for the two other exporting producers selling the like product in the Malaysian market. The company claimed that these figures are not representative, as the company is using different manufacturing methods involving different basic raw material. With regard to this claim it should be recalled that in the calculation of the normal value the company's own manufacturing costs were used. Only the amounts concerning SG&A costs were based on the figures obtained from the two other Malaysian exporting producers. As regards the amount for profit, it was determined as explained in Recital (45) below. Secondly, the company failed to explain the alleged effect of the production method used on SG&A costs. Furthermore, it is noted that only a limited part of the production of the company is based on the allegedly different production method while substantial part of the production is manufactured with the same production process and with use of the same basic raw materials as in the case of the other two Malaysian producers. Therefore, it is concluded that the company failed to demonstrate that the figures used were not representative and the claim in this regard is rejected.

(45) The same Malaysian exporter further claimed that, should the Commission nevertheless use the data from the two other exporters for the purpose of establishing SG&A, such data should be based on the weighted average figures relating to all the domestic transactions of those exporting producers and not only relating to the profitable transactions. In principle this claim was accepted. Thus, as regards SG&A, it is confirmed that the average SG&A costs for all domestic transactions of the two Malaysian exporting producers were used in constructing the normal value. The figures used for this calculation were verified during verification visits in the respective Malaysian companies. As regards the determination of profit, it should be noted that it was not possible to determine an amount for profit on the basis of the amounts incurred and realised by the two other exporting producers. Indeed, such computation results in an overall loss amount. No profit data could therefore be established on that basis. In that respect, the claim by the Malaysian exporter that a

negative amount can be used as a profit amount for the construction of normal value is rejected. Indeed, the concept of profit necessarily implies the existence of a positive amount. It was also considered whether the amount for profit could be established on the basis of the profitable sales of the exporting producer in Malaysia but that approach was rejected as it would have been in contradiction with the WTO findings in the case on Imports of Cotton Type Bed Linen from India[8]. Therefore, pursuant to Article 2(6)(c) of the basic Regulation, the calculation of the profit has to be based on any other reasonable method and, in the absence of any other available data, the long term commercial interest rate in Malaysia was considered as the most appropriate basis for establishing profit. This method was considered conservative, reasonable and the most appropriate within the meaning of Article 2(6)(c) of the basic Regulation. It is noted that the profit margin so established does not exceed the profit realised by other exporting producers on sales of products of the same general category in the domestic market of the country of origin.

(46) In the absence of any other comments concerning the determination of normal value, the provisional findings in recitals (44) to (51) of the provisional Regulation, but for the amendment as explained in the recital (45) above, are hereby confirmed.

3.2. Export price

(47) For export sales to the Union through related importers located in the Union, following provisional disclosure, the two Malaysian exporters claimed that the profit margin used for the construction of the export price pursuant to Article 2(9) of the basic Regulation was inappropriate. One of the companies supported its claims by the IP profitability figures of some of their European unrelated traders. In this regard, it should be noted that these figures cannot be considered representative, as the traders indicated trade in a wide range of chemical products, and in one case the trader is also a producer. Therefore, they are rejected as a reliable benchmark. The second company claimed that its related importer in the EU should not be treated as a distributor but as a related agent and therefore the SG&A cost and profit adjustment in the construction of the export price should not exceed the percentage of commission normally granted to independent agents trading in the sector. The company submitted its agreements with independent agents as a benchmark. The claim was further developed after the definitive disclosure by arguing that in the tungsten electrodes case[9] the profit of a related importer was considered reliable and accepted in the construction of the export price. In reply to this claim it should be noted that Article 2(9) of the basic Regulation does not provide for different treatment between related importers allegedly acting as distributors and importers allegedly acting as agents. Article 2(9) requires adjustments for all costs incurred between importation and resale and for profits accruing. Furthermore, it should be noted the investigation showed that the related company is located in the Union. It handles, *inter alia*, the customer orders and the invoicing of the product concerned produced by its related exporter as well as is responsible for arranging the EU customs clearance. The fact that certain activities are performed by the related exporter prior to importation does not mean that the export price may not be reconstructed on the basis of the resale price to the first independent customer with the necessary allowances being made pursuant to Article 2(9). Differences in functions

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[8] WT/DS141/AB/R, adopted 12 March 2001.

[9] Council Regulation (EC) No 260/2007 of 9.03.2007, O.J. L 72, 13.03.2007, p.1, recital 25.

claimed by the company as compared to other related importers are normally reflected in the SG&A expenses where the Commission used actual data of the company. Therefore, this claim can not be accepted. It should be further noted that in the above-mentioned tungsten electrodes case the related importer was further integrated into the downstream product produced by the related group and was also performing other activities than those of a trading company. Therefore, for such complex structure, the profit of unrelated importers was found not to be representative enough. The situation in that case is not comparable with the situation of the Malaysian related importer in question, which only performs trading functions. Nevertheless, for the reasons explained in recital (29) above, the profit margin in question is adjusted to 5%. In the absence of any other comments concerning the determination of export price, the provisional findings in recitals (52) to (54) of the provisional Regulation, but for the amendment as explained above, are hereby confirmed.

3.3. Comparison

(48) Following the provisional disclosure one Malaysian exporter reiterated its claim (see also recital 57 of the provisional Regulation) that its related importer in the Union is, in fact, the export department of the manufacturer and that there would be excessive deductions in establishing the ex-works export price if full adjustments for SG&A costs and profits, pursuant to Article 2(9) of the basic Regulation, were made. The company claimed that, alternatively, a similar adjustment should be made when calculating the normal value. The claim was reitereted again in the submission after definitive disclosure. However, no new argument was presented which would lead to a change in the conclusions in this regard. In particular, it is recalled that invoices were issued by the related company to customers in the Union and that payments were received by the related company from customers in the Union. Furthermore, it is to be noted that the sales made by the related company included a mark-up. Also, the financial accounts of the related company showed that it bore normal SG&A costs incurred between importation and resale. Therefore, the related company indeed performs the typical functions of an importer. Finally, it should be noted that the producer in Malaysia also performed direct sales to independent clients in the Union and other countries. On the latter issue, the company referred to the *Interpipe* judgement with arguments similar to those raised by the Indonesian exporting producers. For the reasons already explained in recital (33) above, the circumstances of this case are different from the circumstances discussed in the Interpipe judgement. Furthermore, the claim of the Malaysian exporter that the company's independent sales were negotiated by its related importer in the EU acting in the capacity of the export sales department of the Malaysian company contradicts the explanations provided during the verification visit where the key role played by the mother company in Japan was instead underlined in this context. The above findings lead to the conlcusion that the adjustment for SG&A and profit should be maintained and no similar adjustment for the calculation of normal value is justified.

(49) The same company also claimed that the deduction of certain selling expences of its related importer had been made twice in re-constructing the export price. The calculations were checked and, since the claim was found to be justified, were adjusted accordingly.

(50) One of the Malaysian exporters claimed that the comparison between normal value and export price should not be based on product types as identified by product control

numbers (PCN) but on the basis of the companies' own product codes. According to this company, the PCNs used in the investigation would not capture in sufficient detail the specificities of the production process and differences in the costs and prices. In support of this claim the company referred to some of its products which were manufactured by using different production processes and different basic raw materials, which resulted in higher unit costs of production. It should be noted that this claim was neither raised at the provisional stage of the investigation nor during the on spot verification visit. Furthermore, the use of the company's own product codes in the calculation would not solve the problem of different production methods since the same company's production codes were also used for products manufactured under different production processes. Therefore, the claim is rejected.

(51) In the absence of any comments concerning the comparison, the provisional findings in recitals (55) to (58) of the provisional Regulation, but for the amendment as explained in the recital (49) above, are hereby confirmed.

3.4. Dumping margin

(52) Following the provisional disclosure, a Malaysian producer which did not export to the EU commented on recital (60) of the provisional Regulation claiming that there are other producers of the product concerned in Malaysia. In this regard it is noted that the presence of an additional producer in Malaysia, which is not an exporter to EU, does not change the finding with regard to the level of cooperation in Malaysia as no evidence was presented that the investigated companies did not account for all the exports of the product concerned to EU in the IP. Furthermore, the same Malaysian producer criticised the fact that producers, like him, which did not export to the Union in the IP would be subject to the residual duty rate. In this regard it has to be noted that companies which have not exported to the EU during the IP cannot have an individual duty rate. However, as soon as these companies start to export, or enter into an irrevocable obligation to sell to the EU, they may apply for a newcomer review in accordance with Article 11(4) of the basic Regulation which may result in an individual duty margin, if the conditions set up in that article are fulfilled.

(53) One of the Malaysian producers claimed that the CIF value used as a basis for calculating the dumping margin percentage should not be based on the price declared to the customs, but should be calculated back from the resale price, netted of all the post importation costs in the EU. However, since the CIF price was used as the basis of the custom value declarations at Union frontier, and does not appear to have been incorrectly declared, this same price is to be used as the basis for the dumping margin percentage calculation. The company claimed that a time gap exists between related deliveries from Malaysia and custom clearance for the purpose of resales in the EU. However, even if the invoices for custom clearance are issued at a later stage, with prices following the FIFO stock valuation method, it is still the transfer price and not the resale price which is the basis for the calculation of the custom value. Therefore the claim is rejected.

(54) In the absence of any other comments concerning the dumping margin calculation, the content of recitals (59) and (60) of the provisional Regulation is hereby confirmed.

(55) The amount of dumping finally determined, expressed as a percentage of the CIF net free-at-Union-frontier price, before duty, is as follows:

Company	Definitive dumping margin
KL-Kepong Oleomas Sdn. Bhd.	3,3 %
Emery Oleochemicals (M) Sdn. Bhd.	5,3%
Fatty Chemicals Malaysia Sdn. Bhd.	5,7 %
All other companies	5,7 %

D. INJURY

1. Preliminary remarks

(56) After the publication of the provisional Regulation, it was found that minor corrections had to be made to the consumption figures due to a clerical error. This led to minor changes in sales volume, market share of the Union industry and the market share of the countries concerned. These corrections however, have no significant impact on the trends and the conclusions reached with regard to consumption, sales volume, market share of the Union industry and market share of the countries concerned during the period considered in the Union market.

2. Union production and Union industry

(57) As mentioned in recital (62) of the provisional Regulation, it was found that the like product was manufactured by the two complainants and by small producers in the Union. As mentioned in recitals (11) and (12) above, producers producing FOH containing branched isomers were excluded from the definition of the Union production of FOH. Despite the fact explained in recital (58) below, the Union industry as defined in recitals (62) and (63) of the provisional Regulation is confirmed.

(58) One of the two complainants was taken over by a company which is participating in the current proceeding as a user. This complainant took a neutral position after the publication of the provisional Regulation.

(59) Hence, some parties questioned the level of support or standing for the investigation claiming that support for the investigation must hold during the entire investigation.

(60) Analysis of this claim showed that the remaining complainant represents over 40% of the total Union production, thus more than 25% of total Union production and 100% of the Union producers of FOH expressing their support for or opposition to the complaint. Hence, the 25% and the 50% thresholds required by Article 5(4) of the basic Regulation are fully met and standing can be confirmed.

(61) Some parties claimed that since both complainants had imported the product concerned during the IP, they should not be considered part of the Union industry. It was however verified that the percentage of product imported by these companies

from the countries concerned was not substantial in comparison with their production of the like product. Furthermore, these imports were mainly of a temporary nature. It can therefore be confirmed that the core activity of these companies is production and sales of the like product. In consequence recitals (62) to (63) of the provisional Regulation are hereby confirmed.

3. Union consumption

(62) In the absence of comments concerning the Union consumption, recitals (64) to (66) of the provisional Regulation are hereby confirmed.

4. Imports into the Union from the countries concerned and price undercutting

4.1. 4.1 Cumulation

(63) A number of parties argued against the fact that a cumulative assessment was made for the three countries concerned in the provisional Regulation. In their opinion the conditions for cumulation laid down in Article 3(4) of the basic Regulation were not met. Specifically, they argued that the negative undercutting found for one of the countries precluded cumulation. In addition, they submitted that the trends in sales volumes for the three exporting countries differed during the period considered, that access to raw materials and the raw materials used in the three exporting countries were also different. Finally, it was mentioned that export sales from one of the countries concerned were channelled through related companies. In their view, different conditions of competition existed between the countries concerned in the Union market. Article 3(4) of the basic Regulation says that where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports shall be cumulatively assessed only if it is determined that: (a) the margin of dumping established in relation to the imports from each country is more than de minimis as defined in Article 9(3) and that the volume of imports from each country is not negligible; and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Union product.

(a) As explained in paragraph 4.3.2 of the provisional Regulation, the volume of dumped imports for each country concerned was not negligible, and the presence of dumped imports remained significant during the period considered.

(b) It was found that the conditions of competition and the pricing of the countries concerned were similar between the imported products and the like product, in particular during the IP. As explained in recital (127) of the provisional Regulation, the injury elimination levels established for the countries concerned were significantly above the *de minimis* threshold of 2%. Hence, the price undercutting is not exactly reflecting the situation which would occur in a market with effective price competition. Furthermore, the sales channels and the price trends for each of the countries concerned were analysed and found to be similar as shown in the table below. The import prices of the countries

concerned followed a declining trend and were particularly low during the IP compared to the average Union industry's prices.

Imports based on Eurostat (as adjusted to cover only the product concerned)	**2007**	**2008**	**2009**	**IP**
Average price in EUR/tonnes Malaysia	911	944	799	857
Index: 2007=100	100	104	88	94
Annual Δ%		3,6	-15,4	7,3
Average price in EUR/tonnes Indonesia	996	1169	899	912
Index: 2007=100	100	117	90	92
Annual Δ%		17,3	-23,1	1,4
Average price in EUR/tonnes India	997	1141	897	915
Index: 2007=100	100	114	90	92
Annual Δ%		14,4	-21,4	2,1

(64) Consequently, recitals (67) to (70) of the provisional Regulation are hereby confirmed.

4.2. Volume, price and market share of dumped imports from the countries concerned

(65) In the absence of comments concerning volume, price and market share of dumped imports from the countries concerned, recitals (71) to (73) of the provisional Regulation, are hereby confirmed.

4.3. Price undercutting

(66) Parties claimed that there are differences in raw material prices between FOH produced from natural oils and fats and synthetic sources such as crude or mineral oil and that an additional product control number (PCN) criterion should have been introduced in order to consider the differences in cost of production arising from the different production processes. However, PCNs are established on the basis of the individual characteristics of each sub-category of items falling within the definition of the product concerned and not on the basis of the price of each of those items. Moreover, it was found that there is no substantial difference in terms of the basic characteristics of FOH produced from natural oils and fats and FOH made of crude or mineral oil, nor the cost of production difference is such as to warrant a differentiation in terms of PCN. This claim is therefore rejected.

(67) Certain parties claimed that the figure used to reflect the post-importation costs, which are around 3% of the import price, used to establish the level of undercutting by the countries concerned was unclear and did not seem to be appropriate in this case. However, the information verified during the investigation showed that importing parties such as importers and users had to pay such amount of post importation costs in order to release the product concerned for free circulation into the Union market. In addition, the parties did not provide any evidence which would indicate that the post importation costs were not correctly established in this case. Hence, this claim was dismissed. The methodology used to calculate the price undercutting as explained in recitals (74) and (75) of provisional Regulation is hereby confirmed.

5. Economic situation of the Union industry

5.1. Preliminary remarks

(68) Despite the change in ownership mentioned in recital (58) above, it was considered that the data provided by and verified at the premises of the complainant who withdrew, should not automatically be excluded from the injury analysis since its production remains part of the Union production.

(69) Some parties argued that some data provided by the Union industry, in particular regarding their purchases of the product concerned originating in India, Malaysia and Indonesia, should be excluded from the injury analysis and the injury margin calculation because any alleged injury relating to these purchases would be self-inflicted. However, as stated in recital (63) of the provisional Regulation, these purchases were mainly due to the temporary closure of one of the production sites of one producer. Moreover, these purchases were not substantial in comparison with the total production of the complainants. There were therefore no compelling reasons for excluding the purchases of the said producers from the injury analysis or the injury elimination level calculation.

(70) The preliminary remarks as mentioned in recital (76) of the provisional Regulations are hereby confirmed.

5.2. Production, production capacity and capacity utilisation, Sales and market share

(71) In the absence of comments concerning production, production capacity, capacity utilisation, sales and market share of the Union industry, recitals (77) to (81) of the provisional Regulation are hereby confirmed.

5.3. Average unit prices of the Union industry

(72) After the publication of the provisional Regulation, it was found that corrections had to be made to the average unit prices of the Union industry due to a clerical error. The table below shows the modified trend in unit price of the Union industry during the period considered.

Unit price, sales in EU to unrelated	**2007**	**2008**	**2009**	**IP**
Index: 2007=100	100	123	102	96
Annual Δ%		22,6%	-16,9%	-5,3%

Source: questionnaire replies

(73) Contrary to what is mentioned in recital (84) of the provisional Regulation, prices of the Union industry decreased by 4% during the period considered. The decrease was significant from 2008 to 2009 with a further decrease in the IP. Over this period the sales price decreased 22%. The above change has no impact on the conclusion of the economic situation of the Union industry, in the absence of comments regarding the average unit prices of the Union industry, recitals (82) and (83) of the provisional Regulation are hereby confirmed.

5.4. Stocks, Employment, wages and productivity, Profitability, cashflow, investments return on investment and ability to raise capital, growth, magnitude of the actual dumping margin

(74) Some parties claimed that it was not possible that the Union industry suffered injury since companies that are part of the Union industry are vertically integrated and imported the product concerned from third countries. Therefore they could use the imported product for their downstream production and sell their production which is not profitable.

(75) It should be noted that in certain anti-dumping investigations, producers such as steel producers and chemical products manufacturers, included in the definition of the Union industry in these cases, have a downstream activity and that a share of their production of the product concerned is destined for captive use. Nevertheless, in such a situation, the possible existence of material injury to the Union industry is investigated exclusively for the production and sales of the product concerned. In the present case, material injury has been found in the business of the product concerned as explained in recitals (77) to (93) of the provisional Regulation. The parties did not provide any evidence which would show that the findings in these recitals are not correct and that the Union industry did not suffer material injury during the IP. Therefore this claim is rejected.

(76) Some parties claimed that the closure of certain production capacity by the complainants showed a misleading picture of the alleged injury they suffered. They argued that there were other producers in the Union that contributed to the capacity in the Union and that the capacity of the Union industry increased with investments in new capacity. This is hardly indicative of an injured industry. Other parties claimed that the reduction of investment does not mean injury, but means relocation of production out of the EU.

(77) The investigation established in recital (78) of the provisional Regulation that the production capacity of the Union industry increased by 9% in 2008 but that it then decreased by 10% during the IP. This was the result of decisions undertaken in order to face the competition from the countries concerned, and the subsequent temporary closures were also due to the pressure exerted by the dumped imports. With regard to investments, it was established in recital (89) of the provisional Regulation that investments made by the Union industry in the Union decreased by 35% during the period considered. This is one of several injury factors which allowed concluding in recitals (92) and (93) of the provisional Regulation that the Union industry suffered material injury during the IP.

(78) In the absence of other comments concerning stocks, employment, wages and productivity, profitability, cash flow, investments return on investments and ability to

raise capital, growth and magnitude of the actual dumping margin, the recitals (85) to (91) of the provisional Regulation are hereby confirmed.

5.5. Post IP developments

(79) Some parties argued that there was no evidence of material injury suffered by the Union industry and the fact that one of the two original complainants had withdrawn its support to the investigation showed that it was not suffering injury. It was also argued that the injury indicators for the remaining complainant did not show a picture of injury.

(80) It should be noted that the company in question did not oppose to the investigation but took a neutral position. Therefore, as explained in recital (57) above, it was still considered appropriate to keep both Union producers as part of the Union industry.

(81) It was claimed that there has been a marked increase of prices in the post-IP period, and that these price developments in that period will immediately translate into profits for the complainants who themselves announced better results in their public statements for the period 2010-2011.

(82) Some parties insisted that there was a significant improvement in the situation of the Union industry in the post-IP period pointing out that some companies were planning to build new facilities in the EU. It was also claimed that in view of the recent increase in import prices, measures should be suspended or imposed in the form of a minimum import price (MIP).

(83) Events that occurred after the IP shall normally not be taken into account in an anti-dumping investigation. In addition, no evidence that suggests that the mentioned post-IP events are manifest, undisputed and lasting was provided. Concerning any suspension of the definitive measures, this should be seen in the light of post-IP developments which would be of a lasting nature.

(84) As to the imposition of a MIP, as explained below in recitals (123) to (126) it is considered that the circumstances are not such as to warrant it. Therefore all the above claims are dismissed.

6. Conclusion on injury

(85) The Investigation confirmed that most of the injury indicators pertaining to the Union industry showed a declining trend during the period considered. Based on the above, the conclusion reached in recitals (92) and (93) of the provisional Regulation that the Union industry suffered material injury during the IP is confirmed.

E. CAUSATION

1. Effect of the dumped imports

(86) One party observed that the analysis in recital (108) of the provisional Regulation is flawed, because it seems to link an overall and continuous decrease in consumption to the increase in imports, whereas, according to this party, imports from the countries concerned developed in line with consumption.

(87) It should be clarified indeed that, as mentioned in recitals (64) to (66) of the provisional Regulation, consumption overall increased by 2% during the period considered. However, this does not undermine the fact that there was an important overall increase in volume and market share of the low-priced dumped imports from the countries concerned during the period considered (see recital (96) of Provisional Regulation), whereas the market size remained nearly unchanged, and while the Union industry lost an important market share, in particular between 2009 and the IP.

(88) Some parties made the argument that the trends of imports from the countries concerned are not linked to the deterioration of economic situation of the Union industry, in particular sales volume, sales values and profitability. They argue that there was an improvement in profitability of the Union industry when the imports increased in 2008, and then it fell significantly when imports remained stable.

(89) Contrary to the above allegation, the investigation pointed to an overall correlation between the low-priced dumped imports and the injury suffered by the Union industry during the whole period considered (see recitals (95) to (98) of Provisional Regulation) .The investigation also showed that the Union industry could not recover in the period considered due to the increased presence of low-priced dumped imports on the Union market. Hence, the claim should be rejected.

(90) It was also claimed that differences in trends in imports existed depending on the types of alcohol produced by some exporting producers, and that therefore, a separate injury analysis for these alcohols should be performed. However, the different types included in the product scope share the same basic characteristics. The investigation did not reveal any substantial difference between FOH produced from different raw materials. Therefore there are no reasons in this case to establish a separate analysis of the trends per type of alcohol.

(91) It was also argued that injury could not be attributed to India because its imports did not increase during the period considered, in particular when purchases by the Complainants are not taken into account. However, it was found that the imports from India were made at dumped prices in the Union market and that the injury margin was largely above the de minimis level of 2%. Moreover, as explained in recitals (63) to (65) above, the conditions for a cumulative assessment for the countries concerned were met. This claim should thus be rejected.

(92) It was also argued that injury could not be attributed to the companies whose individual undercutting margin was negative, or because of this reason, to imports from Indonesia as a whole.

(93) As explained in recitals (63) to (65) above, all the conditions of a cumulative assessment of the imports concerned were met. Accordingly, the effects the low-priced dumped imports originating in the countries concerned had on the Union industry were assessed jointly for the purpose of the injury analysis and the cause of the injury. Furthermore, the absence of undercutting does not exclude the existence of material injury to the Union industry. Indeed, as explained in recitals (124) to (127) of the provisional regulation it was found that the price charged by the Union industry was not sufficient to cover all production costs and achieve the reasonable margin of profit it could have achieved in the absence of dumped imports during the IP. This claim is therefore rejected.

(94) In the absence of any other comments regarding effects of the dumped imports, recitals (95) to (98) of the provisional Regulation are hereby confirmed.

2. Effects of other factors

(95) Several parties have argued that the real cause of injury suffered by the Union industry should be attributed to the financial crisis, as the main harm to that industry occurred when imports from the countries concerned stabilized. It was also mentioned that the deterioration of the profitability of the Union industry was similar to that observed for other companies operating in the chemical sector.

(96) The crisis played a role in the performance of the Union Industry. Trends in injury factors such as capacity utilization and sales volume show that the situation of the Union Industry worsened with the crisis and somewhat improved with the recovery in the market. However, the investigation showed that the improvement did not allow the recovery of the Union industry which was far from its economic situation that prevailed at the beginning of the period considered. Furthermore, as mentioned in recital (89) above, 2008, just before the financial crisis started, was the year with the highest increase in dumped imports from the countries concerned and the sharpest decrease in sales volume of the Union industry. After that year the Union industry did not recover and the dumped imports continued to be massively present in the Union market. For these reasons it is clear that, regardless of other factors, dumped imports largely contributed to the material injury suffered by the Union Industry during the IP. This claim is therefore rejected.

(97) Several parties also claimed that the real cause of the alleged injury of the Union industry was the imports from other third countries, the decrease in demand, the increased raw material prices and the lack of proper access to these raw materials, wrong strategic decisions taken by the Union industry, the competitive pressure in their downstream market, the decrease in the production of the product concerned destined for captive use, the general change in market conditions and the competitive situation in the Union market.

(98) It is worth mentioning that the above parties were not able to substantiate their claims and to demonstrate that factors other than the low-priced dumped imports from the countries concerned were breaking the causal link between the injury suffered by the Union industry and the dumped imports.

(99) Some parties claimed that the Commission did not analyse the possible impact the sales of branched FOH had on the sales of the product concerned made by the Union industry and the effects it had on its economic situation. The investigation focused on the product as defined in recitals (8) to (12) and no party provided reliable data which would have allowed to assess the possible negative impact the branched FOH had on the economic situation of the Union industry. Hence this claim is rejected.

(100) In the absence of any comments regarding effects of other factors, recitals (99) to (106) of the provisional Regulation are hereby confirmed.

3. Conclusion on causation

(101) The investigation did not point to the fact that there were factors other than the low-priced dumped imports from the countries concerned which were breaking the causal link between the material injury suffered by the Union industry and the dumped imports.

(102) In the absence of any comments regarding conclusion on causation, recitals (107) to (110) of the provisional Regulation are hereby confirmed.

F. UNION INTEREST

1. Union industry

(103) In the absence of any comments with regard to the interest of the Union industry, recitals (112) and (113) of the provisional Regulation are hereby confirmed.

2. Importers

(104) In the absence of comments on the interest of importers, recitals (115) and (116) of the provisional Regulation are hereby confirmed.

3. Users

(105) It is recalled that in order to assess the possible impact of the anti-dumping measures on the Union users the investigation concentrated mainly on the aggregated data provided by five large user companies visited at provisional stage.

(106) On that basis it was provisionally found that the share of the cost of the product concerned in the total cost of production for this group was significant and ranged between 10% and 20% depending on the final product. However, the data available was revised and according to new calculations and the correction of some figures, this range is found to be between 15% and 25%. Similarly, the average profit margin in the business using the product concerned was found to be around 6% for the group of the five visited companies; the new calculations show a higher average profit margin, which is about 7,5%. Finally, the average share of business using the product concerned out of the total business was also corrected. This was provisionally found to be about 22%, whereas according to new calculations, a percentage of 25% was found.

(107) After the publication of the provisional Regulation, a number of users reacted and made comments with regard to the final disclosure. They contested the selection of the five user companies mentioned in recital (118) of the provisional Regulation arguing that the data used to assess the possible impact of the measures on the user industry was not transparent, not based on representative parties and on a low number of parties. It was argued that the analysis should take into consideration the data provided by all cooperating users in the investigation.

(108) However, as mentioned in recitals (117) and (118) of the provisional regulation the 21 cooperating companies represent together around 25% of total EU purchases of the product concerned during the IP, whilst the five companies used to assess the interest of users represented about 18% of these purchases, and 72% of the cooperating users' purchases of the product concerned. Besides being representative in terms of volume of purchase of the product concerned, theses five users constituted a very good

representation of the different business sectors of the users industry. Indeed, the five visited companies are a heterogeneous group that includes not only the first-use producers, i.e. the surfactants producers, but also the users of the surfactants and further downstream users.

(109) Nevertheless, a wider analysis taking into account all information submitted by the cooperating users was carried out. In particular, a specific assessment of the possible impact of anti-dumping duties on the surfactants producers as a separate group was performed since this group could potentially be most affected by the imposition of measures. Another separate analysis has been performed for a second group of users, consisting of all other user companies that cooperated in the investigation.

(110) A simulation assessing the possible effect of an average duty of 5% on imports of FOH on all cooperating users first and then on the two separate groups was performed. The outcome of the simulation showed that the final impact of this average duty on the total cost of production for the business using the product concerned would be of about 0,09% for all users, while the impact of the same duty on the downstream product using the product concerned, for the surfactants' group would be of about 0,05% and on the second group of companies it would be about 0,29%.

(111) The analysis showed as well that the surfactants producers achieved lower profit margins in the sectors using the product under investigation; however, this group imported from the countries concerned only about 2,6% of their total purchases of the product under investigation during the IP. Furthermore, the percentage of the surfactants business using FOH in comparison to their total turnover is about 24%. Hence, even with the application of an average dumping duty of 5%, the final impact on the cost of production of products including the product investigated is very limited and even negligible on their total profitability.

(112) Some surfactant producers nevertheless argued that the anti-dumping duties will prevent them from freely buying their raw materials, thus creating a distortion in their market segment.

(113) As stated in recital (120) of the provisional Regulation, the level of anti-dumping duties and the possible impact on the user industry and on the downstream market, do not create serious barriers to imports of the product concerned. The investigation confirmed that the definitive anti-dumping duties could not create a distortion on the downstream market. At the same time, it should not be difficult for surfactant producers to pass on this rather low increase in cost in the final price of their products. Therefore, the claims that the anti-dumping duties would create distortions in the downstream market are rejected.

(114) After disclosure of definitive findings some users insisted that the Union producers had refused to supply goods to them, and that there were few alternatives of supply. However, as stated in recital (120) of the provisional Regulation, the relatively low level of proposed measures should not preclude the possibility to import the product concerned. Furthermore, the Union producers did not produce at full capacity during the period considered. In addition, imports are also possible from other third countries which are not subject to measures and the Eurostat figures for imports of FOH from the rest of the world after the IP show that these imports are growing, indicating that the alleged risk of lack of supply is unsubstantiated. Therefore, this claim was rejected.

(115) Some users' associations which failed to make themselves known in the deadline foreseen under point 5.3 of the Notice of initiation claimed that their views, especially on the possible impact of the measures on small and medium enterprises and on specific sectors, had not been reflected in the assessment of the Union interest. However, it should be noted that all the comments raised by these associations have been taken into consideration in this investigation. Furthermore, as stated in recital (109) above, the assessment of the Union interest has taken into account all information submitted by the cooperating users. Therefore, this claim has been rejected.

(116) Several parties claimed that the duration of the measures, were these to be imposed, should be limited to a maximum period of two years. According to the basic Regulation, a definitive anti-dumping measure shall normally be imposed for the duration of five years. Since none of the parties demonstrated that a period of two years would be sufficient to counteract the dumping causing injury as demanded in Article 11.1 of the basic Regulation, there seems to be no valid reason to deviate form the standard duration of the length of the measures. Therefore, this claim has been rejected.

(117) In the absence of any other comments on the interest of users, it is confirmed that the imposition of definitive measures on imports of the product concerned would not be against the Union interest, recitals (117) to (121) are thus confirmed.

4. Conclusion on Union interest

(118) Based on the above the conclusion reached in recital (122) of the provisional Regulation can be confirmed. There are no compelling reasons against the imposition of definitive anti-dumping duties on imports of FOH from the countries concerned.

G. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

(119) It is recalled that the profit margin used to calculate the target profit at provisional stage was 7,7%. The complainants have argued that a target profit of 15% would be more appropriate. In this respect, it should be noted that they failed to submit verifiable evidence to support the claim that the target profit was too low. Therefore, it is proposed to confirm the provisional target profit of 7,7% which is based on the profit margin achieved for the whole alcohol business of the one complainant in its last profitable year before the surge of low-priced dumped imports..

(120) Certain parties claimed that 7,7% was not realistic and was too high. They suggested using a lower profit margin between 3 and 5% to establish the injury elimination level. This claim however was not substantiated by any evidence showing that the profit proposed was the one that could be achieved by the Union industry in the absence of dumped imports in the Union market and was thus not accepted.

(121) Certain parties have claimed that the Commission erroneously established the injury elimination level on the basis of the underselling margin, whereas it should have used the undercutting margin. In the present case, it was not considered that the undercutting margin was an appropriate basis to establish the injury elimination level

for the Union industry as it would not reflect the level of price that could be obtained in the absence of dumped imports in the Union market. The claim was thus rejected.

(122) On this basis, the provisional injury margins expressed as a percentage of the CIF Union frontier price, duty unpaid as indicated in recital (127) of the provisional Regulation can be confirmed.

2. Definitive measures

2.1. Form of the definitive measures

(123) As mentioned in recitals (79) to (84) above, some parties claimed inter alia that the current measures should be suspended because post-IP events concerning the price increase of the product concerned in the Union market were manifest, undisputed and lasting. They also argued that any definitive measures should not take the form of an ad valorem duty but rather imposed in the form of a MIP.

(124) It is considered however that in this particular case the circumstances are not such as to warrant the imposition of a minimum import price. This form of the measure could easily be circumvented given the nature of the product concerned and the complex corporate structures of the exporters in question.

(125) However, it is admitted that there is certain price sensitivity in the market for the product at issue and thus it would be reasonable to minimise the impact of the definitive measures on Union users in the event of possible significant price increases of the product concerned. Hence, it is considered appropriate to change the form of the definitive measures from *ad valorem* duties to specific duties.

(126) This form of measures is expected to limit to a certain extent any possible undue negative impact on the users in the case prices would increase significantly and rapidly. If, on the other hand, prices would decrease, the specific duties would still ensure sufficient protection to the Union producers. The specific duties are based on the CIF values of the co-operating companies' EU exports in the IP, converted to EUR using monthly exchange rates, multiplied by the lower of the dumping and the injury margins in accordance with the lesser duty rule.

(127) In this respect, two exporting producers claimed that the yearly average exchange rate should be used instead of the monthly. However, it is noted that in accordance with the standard practice, any conversion of currencies in anti-dumping investigations is made using the monthly exchange rates. This was the cases also for this investigation. The claim was therefore rejected.

(128) The complainant claimed that when establishing the specific duties, current FOH prices and not CIF values during the IP should have been used. It should be noted that specific duties are established based on the dumping and injury calculations for the IP. No substantiated arguments have been put forward to for basing the calculations of the specific duties in this case on a period after the IP. Therefore this claim has been rejected.

2.2. Imposition of the definitive measures

(129) After the publication of provisional measures a potential exporting producer came forward and claimed that the residual duty rate should be set at the level of the highest duty imposed and not of the highest dumping margin found for Indonesia. However, the residual duty is set at the residual dumping or the residual injury margin by applying the lesser duty rule. The claim was therefore rejected.

(130) In the light of the foregoing, it is considered that, in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in respect of imports of the product concerned at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.

(131) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period within which they could make representations subsequent to final disclosure. The comments submitted by the parties were duly considered, and, where appropriate, the findings have been modified accordingly.

(132) The proposed definitive anti-dumping duties are the following:

Country	Company	Definitive specific AD duty (EUR per tonne net)
India	VVF Limited	46,98
	All other companies	86,99
Indonesia	P.T. Musim Mas	45,63
	All other companies	80,34
Malaysia	KL-Kepong Oleomas Sdn.Bhd.	35,19
	Emery Oleochemicals (M) Sdn. Bhd.	61,01
	Fatty Chemical Malaysia Sdn. Bhd	51,07
	All other companies	61,01

(133) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product concerned produced by these companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured by any other company not specifically mentioned in Article 1 with its name and address, 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'.

(134) Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new

production or sales entities) should be addressed to the Commission[10] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, this Regulation will then be amended accordingly by updating the list of companies benefiting from individual anti-dumping duty rates.

3. Undertakings

(135) One Indian as well as one Malaysian exporting producer, together with its related importer, offered a price undertaking in accordance with Article 8(1) of the basic Regulation. Both undertaking offers contained a high number of product groups (determined by the chemical specification), each group subject to a different Minimum Import Price (MIP), with price differences between the groups up to 25% for the Malaysian exporter and up to 100 % for the Indian exporter. In addition, prices varied up to 20% within the individual groups, thus posing a very high risk of cross-compensation. It was also noted that the offer of the Indian exporter did not address the volatility of prices of the product concerned. Additional cross-compensation risks were identified with regards to the Malaysian exporter and its related importer in the Union who did not only source the product concerned from the Malaysian exporter but also from other suppliers. Finally, it would be difficult for customs to determine the chemical specification of the product without individual analysis, thus rendering the monitoring very burdensome, if not impracticable. The undertaking offers were therefore rejected. Following the proposal to change the form of the measures, one exporting producer amended its undertaking offer suggesting an average MIP for all product groups and claiming that there will be no risk of cross-compensation any longer. The other exporting producer simply upheld its offer. However, given the number of product types and the price variation between them, a MIP could completely compromise the effectiveness of the measures. Furthermore, the structure of the companies and of their offers as outlined above still constitutes an obstacle towards accepting an undertaking. The reporting and price regime suggested by one exporter does not address those concerns and in any case would render the monitoring very burdensome, if not impracticable. Consequently, the undertaking offers cannot be accepted.

4. Definitive collection of provisional anti-dumping duties

(136) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released.

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[10] European Commission, Directorate-General for Trade, Directorate H, NERV-105, 1049 Bruxelles/Brussel, BELGIUM.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of saturated fatty alcohols with a carbon chain length of C8, C10, C12, C14, C16 or C18 (not including branched isomers) including single saturated fatty alcohols (also referred to as 'single cuts') and blends predominantly containing a combination of carbon chain lengths C6-C8, C6-C10, C8-C10, C10-C12 (commonly categorised as C8-C10), blends predominantly containing a combination of carbon chain lengths C12-C14, C12-C16, C12-C18, C14-C16 (commonly categorised as C12-C14) and blends predominantly containing a combination of carbon chain lengths C16-C18, currently falling within CN codes ex 2905 16 85, 2905 17 00, ex 2905 19 00 and ex 3823 70 00 (TARIC codes 2905 16 85 10, 2905 19 00 60, 3823 70 00 11 and 3823 70 00 91) and originating in India, Indonesia, and Malaysia.

2. The rate of the definitive anti-dumping duty of the product described in paragraph 1 and produced by the companies below shall be as follows:

Country	**Company**	**Definitive AD duty (EUR per tonne net)**	**TARIC Additional Code**
India	VVF Ltd, Taloja, Maharashtra	46,98	B110
	All other companies	86,99	B999
Indonesia	P.T. Musim Mas, Tanjung Mulia, Medan, Sumatera Utara	45,63	B112
	All other companies	80,34	B999
Malaysia	KL-Kepong Oleomas Sdn. Bhd, Petaling Jaya, Selangor Darul Ehsan	35,19	B113
	Emery Oleochemicals (M) Sdn. Bhd., Kuala Langat, Selangor	61,01	B114
	Fatty Chemical Malaysia Sdn. Bhd. Prai, Penang	51,07	B117
	All other companies	61.01	B999

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92

establishing the Community Customs Code[11], the amount of anti-dumping duty, calculated on the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Commission Regulation (EU) No 446/2011 on imports of certain fatty alcohols and their blends originating in India, Indonesia, and Malaysia shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

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,

For the Council

The President

[…]

[11] OJ L 253, 11.10.1993, p. 1.