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LAMPIRAN

AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members hereby *agree* as follows:

PART I

Article 1

Principles

An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated[1] and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.

Article 2

Determination of Dumping

2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country[2], such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

2.2.1 Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value

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[1]The terms "initiated" as used in this Agreement means the procedural action by which a Member formally commences ...vided in Article 5.

...roduct destined for consumption in the domestic market of the exporting country shall normally be ...quantity for the determination of the normal value if such sales constitute 5 per cent or more of the ...der consideration to the importing Member, provided that a lower ratio should be acceptable where ...tes that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a

only if the authorities[3] determine that such sales are made within an extended period of time[4] in substantial quantities[5] and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

2.2.1.1 For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.[6]

2.2.2 For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

(i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;

(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;

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[3]When in this Agreement the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate senior level.

[4]The extended period of time should normally be one year but shall in no case be less than six months.

[5]Sales below per unit costs are made in substantial quantities when the authorities establish that the weighted average sactions under consideration for the determination of the normal value is below the weighted average he volume of sales below per unit costs represents not less than 20 per cent of the volume sold in ideration for the determination of the normal value.

de for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends vestigation, the most recent costs which can reasonably be taken into account by the authorities during

(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.[7] In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

2.4.1 When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale[8], provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

2.4.2 Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

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at some of the above factors may overlap, and authorities shall ensure that they do not duplicate been already made under this provision.

f sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes le.

2.5 In the case where products are not imported directly from the country of origin but are exported to the importing Member from an intermediate country, the price at which the products are sold from the country of export to the importing Member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

2.6 Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.

Article 3

Determination of Injury[9]

3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both *(a)* the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and *(b)* the consequent impact of these imports on domestic producers of such products.

3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3.3 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that *(a)* the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in paragraph 8 of Article 5 and 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 the imported products and the conditions of competition between the imported products and the like domestic product.

3.4 The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return

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[9] Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

3.6 The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.[10] In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

(ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

(iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless taken, material injury would occur.

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ugh not an exclusive one, is that there is convincing reason to believe that there will be, in the near reased importation of the product at dumped prices.

3.8 With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

Article 4

Definition of Domestic Industry

4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

(i) when producers are related[11] to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;

(ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if *(a)* the producers within such market sell all or almost all of their production of the product in question in that market, and *(b)* the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

4.2 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1(ii), anti-dumping duties shall be levied[12] only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permit the levying of anti-dumping duties on such a basis, the importing Member may levy the anti-dumping duties without limitation only if *(a)* the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 8 and adequate assurances in this regard have not been promptly given, and *(b)* such duties cannot be levied only on products of specific producers which supply the area in question.

4.3 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 1.

4.4 The provisions of paragraph 6 of Article 3 shall be applicable to this Article.

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[11] For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if *(a)* one of ctly controls the other; or *(b)* both of them are directly or indirectly controlled by a third person; ectly or indirectly control a third person, provided that there are grounds for believing or suspecting ationship is such as to cause the producer concerned to behave differently from non-related producers. paragraph, one shall be deemed to control another when the former is legally or operationally in a traint or direction over the latter.

greement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.

Article 5

Initiation and Subsequent Investigation

5.1 Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.

5.2 An application under paragraph 1 shall include evidence of *(a)* dumping, *(b)* injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and *(c)* a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing Member;

(iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 3.

5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on

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[1] In cases where fragmented industries involving an exceptionally large number of producers, authorities may determine an adequate sample by using statistically valid sampling techniques.

behalf of the domestic industry.[14] The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned.

5.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.

5.7 The evidence of both dumping and injury shall be considered simultaneously *(a)* in the decision whether or not to initiate an investigation, and *(b)* thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.

5.9 An anti-dumping proceeding shall not hinder the procedures of customs clearance.

5.10 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

Article 6

Evidence

6.1 All interested parties in an anti-dumping investigation shall be given notice of the information s require and ample opportunity to present in writing all evidence which they consider of the investigation in question.

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re that in the territory of certain Members employees of domestic producers of the like product or employees may make or support an application for an investigation under paragraph 1.

6.1.1 Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply.[15] Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable.

6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters[16] and to the authorities of the exporting Member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5.

6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.

6.3 Oral information provided under paragraph 2 shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in subparagraph 1.2.

6.4 The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.[17]

6.5.1 The authorities shall require interested parties providing confidential information to

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[15]As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting Member or, in the case of a separate customs territory Member l representative of the exporting territory.

d that, where the number of exporters involved is particularly high, the full text of the written application ded only to the authorities of the exporting Member or to the relevant trade association.

re that in the territory of certain Members disclosure pursuant to a narrowly-drawn protective order

furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.[18]

6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.

6.7 In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

6.8 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

6.9 The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

6.10 The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

6.10.1 Any selection of exporters, producers, importers or types of products made under this paragraph shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

cases where the authorities have limited their examination, as provided for in this agraph, they shall nevertheless determine an individual margin of dumping for any

at requests for confidentiality should not be arbitrarily rejected.

exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.

6.11 For the purposes of this Agreement, "interested parties" shall include:

(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;

(ii) the government of the exporting Member; and

(iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.

This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

6.12 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.

6.13 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

6.14 The procedures set out above are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

Article 7

Provisional Measures

7.1 Provisional measures may be applied only if:

(i) an investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;

reliminary affirmative determination has been made of dumping and consequent ury to a domestic industry; and

authorities concerned judge such measures necessary to prevent injury being caused

during the investigation.

7.2 Provisional measures may take the form of a provisional duty or, preferably, a security - by cash deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure, provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

7.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

7.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months. When authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months, respectively.

7.5 The relevant provisions of Article 9 shall be followed in the application of provisional measures.

Article 8

Price Undertakings

8.1 Proceedings may[19] be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.

8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping.

8.3 Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

8.4 If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. In such cases,

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[19] This shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of undertakings except as provided in paragraph 4.

the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

8.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

8.6 Authorities of an importing Member may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

Article 9

Imposition and Collection of Anti-Dumping Duties

9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2.

en the amount of the anti-dumping duty is assessed on a retrospective basis, the ermination of the final liability for payment of anti-dumping duties shall take place soon as possible, normally within 12 months, and in no case more than 18 months, r the date on which a request for a final assessment of the amount of the

anti-dumping duty has been made.[20] Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested.

9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The refund authorized should normally be made within 90 days of the above-noted decision.

9.3.3 In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided.

9.4 When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

(ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined,

provided that the authorities shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.

9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on s, compared to normal duty assessment and review proceedings in the importing dumping duties shall be levied on imports from such exporters or producers while

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at the observance of the time-limits mentioned in this subparagraph and in subparagraph 3.2 may not roduct in question is subject to judicial review proceedings.

the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

Article 10

Retroactivity

10.1 Provisional measures and anti-dumping duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 7 and paragraph 1 of Article 9, respectively, enters into force, subject to the exceptions set out in this Article.

10.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

10.3 If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

10.4 Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.6 A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury, and

(ii) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely seriously undermine the remedial effect of the definitive anti-dumping duty to be lied, provided that the importers concerned have been given an opportunity to nment.

ities may, after initiating an investigation, take such measures as the withholding

of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in paragraph 6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.

10.8 No duties shall be levied retroactively pursuant to paragraph 6 on products entered for consumption prior to the date of initiation of the investigation.

Article 11

Duration and Review of Anti-Dumping Duties and Price Undertakings

11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review.[21] Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period

f final liability for payment of anti-dumping duties, as provided for in paragraph 3 of Article 9, does a review within the meaning of this Article.

of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.[22] The duty may remain in force pending the outcome of such a review.

11.4 The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

11.5 The provisions of this Article shall apply *mutatis mutandis* to price undertakings accepted under Article 8.

Article 12

Public Notice and Explanation of Determinations

12.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Article 5, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.

12.1.1 A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report[23], adequate information on the following:

(i) the name of the exporting country or countries and the product involved;

(ii) the date of initiation of the investigation;

(iii) the basis on which dumping is alleged in the application;

(iv) a summary of the factors on which the allegation of injury is based;

(v) the address to which representations by interested parties should be directed;

(vi) the time-limits allowed to interested parties for making their views known.

12.2 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the termination of a definitive anti-dumping duty. Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

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of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment ragraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate

provide information and explanations under the provisions of this Article in a separate report, they eport is readily available to the public.

12.2.1 A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;

(iv) considerations relevant to the injury determination as set out in Article 3;

(v) the main reasons leading to the determination.

12.2.2 A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of a price undertaking shall contain, or otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information. In particular, the notice or report shall contain the information described in subparagraph 2.1, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers, and the basis for any decision made under subparagraph 10.2 of Article 6.

12.2.3 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 8 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.

12.3 The provisions of this Article shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Article 11 and to decisions under Article 10 to apply duties retroactively.

Article 13

Judicial Review

Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the scope of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.

Article 14

Anti-Dumping Action on Behalf of a Third Country

14.1 An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

14.2 Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

14.3 In considering such an application, the authorities of the importing country shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say, the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports.

14.4 The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the Council for Trade in Goods seeking its approval for such action shall rest with the importing country.

Article 15

Developing Country Members

It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.

PART II

Article 16

Committee on Anti-Dumping Practices

16.1 There is hereby established a Committee on Anti-Dumping Practices (referred to in this Agreement as the "Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members consulting on any matters relating to the operation of the Agreement or the furtherance The WTO Secretariat shall act as the secretariat to the Committee.

ittee may set up subsidiary bodies as appropriate.

16.3 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member, it shall inform the Member involved. It shall obtain the consent of the Member and any firm to be consulted.

16.4 Members shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports shall be available in the Secretariat for inspection by other Members. Members shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form.

16.5 Each Member shall notify the Committee *(a)* which of its authorities are competent to initiate and conduct investigations referred to in Article 5 and *(b)* its domestic procedures governing the initiation and conduct of such investigations.

Article 17

Consultation and Dispute Settlement

17.1 Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.

17.2 Each Member shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Member with respect to any matter affecting the operation of this Agreement.

17.3 If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective is being impeded, by another Member or Members, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultation.

17.4 If the Member that requested consultations considers that the consultations pursuant to paragraph 3 have failed to achieve a mutually agreed solution, and if final action has been taken by the administering authorities of the importing Member to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body ("DSB"). When a provisional measure has a significant impact and the Member that requested consultations considers that the measure was taken contrary to the provisions of paragraph 1 of Article 7, that Member may also refer such matter to the DSB.

17.5 The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon:

(i) a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and

facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.

17.6 In examining the matter referred to in paragraph 5:

(i) in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned;

(ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.

17.7 Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person, body or authority providing the information, shall be provided.

PART III

Article 18

Final Provisions

18.1 No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.[24]

18.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

18.3 Subject to subparagraphs 3.1 and 3.2, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement.

18.3.1 With respect to the calculation of margins of dumping in refund procedures under paragraph 3 of Article 9, the rules used in the most recent determination or review of dumping shall apply.

18.3.2 For the purposes of paragraph 3 of Article 11, existing anti-dumping measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement, except in cases in which the domestic legislation of a Member in force on that date already included a clause of the type provided for in that paragraph.

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ed to preclude action under other relevant provisions of GATT 1994, as appropriate.

18.4 Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Member in question.

18.5 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

18.6 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

18.7 The Annexes to this Agreement constitute an integral part thereof.

ANNEX I

PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 7 OF ARTICLE 6

1. Upon initiation of an investigation, the authorities of the exporting Member and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.

2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting Member should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.

3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting Member before the visit is finally scheduled.

4. As soon as the agreement of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting Member of the names and addresses of the firms to be visited and the dates agreed.

5. Sufficient advance notice should be given to the firms in question before the visit is made.

6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if *(a)* the authorities of the importing Member notify the representatives of the Member in question and *(b)* the latter do not object to the visit.

7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting Member is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

8. Enquiries or questions put by the authorities or firms of the exporting Members and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

ANNEX II

BEST INFORMATION AVAILABLE IN TERMS OF PARAGRAPH 8 OF ARTICLE 6

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.

2. The authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the party to use for its response a computer system other than that used by the party. The authority should not maintain a request for a computerized response if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble. The authorities should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, the failure to respond in the preferred medium or computer language should not be considered to significantly impede the investigation.

4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape), the information should be supplied in the form of written material or any other form acceptable to the authorities.

5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.

rities have to base their findings, including those with respect to normal value, on secondary source, including the information supplied in the application for the stigation, they should do so with special circumspection. In such cases, the authorities icable, check the information from other independent sources at their disposal, such

as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 1138/2011

of 8 November 2011

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

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 referred to as 'the complainants'). These two companies represent a major proportion, in this case more than 25 %, of total Union ...ct investigated.

(3) ...f the provisional Regulation, the ...g and injury covered the period ...0 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).

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

(1)
(2)
(3)

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 Union 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 producers producing FOH made of uld be excluded from the injury

(1 other comments regarding the like d 13 of the provisional Regulation

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 against the euro 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 Indian Rupee against the euro. 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 Indian Rupee appreciated progressively against the euro 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 [illegible] is rejected.

(20) [illegible]isclosure, one Indian exporting [illegible] an allowance granted under [illegible]basic Regulation for differences [illegible] had been made in respect of [illegible]hould 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 definitive 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 Union 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 in 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.

(2 other comments concerning the nal value, the provisional findings of the provisional Regulation — in recital 26 of this Regulation ed.

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 the 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 in recital 29 of this Regulation — 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* [1] 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 [2] 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* [3] 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 Union was only one element analysed 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 never- [illegible] ced by the exporting producer [illegible] fore 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 the 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 [4].

(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

(1) [illegible] *tric Industrial Co. Ltd* and *Matsushita* [illegible] *of the European Communities*, [1992]

(2) [illegible] *olsky Seamless Tubes Plant Niko Tube* [illegible] *sky Tube Rolling Plant VAT* v *Council* [illegible] CR II, p. 383.

(3) [illegible] *Council of the European Communities*,

(4) For instance in Commission Regulation (EC) No 862/2005 of 7 June 2005 imposing provisional anti-dumping duties on imports of granular polytetrafluoroethylene (PTFE) originating in Russia and the People's Republic of China (OJ L 144, 8.6.2005, p. 11) and in Commission Regulation (EC) No 390/2007 of 11 April 2007 imposing a provisional anti-dumping duty on imports of 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).

in a double 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 Union 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 in recitals 36, 37 and 39 of this Regulation — 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:

	Provisional dumping margin
als	7,3 %
	5,4 %
	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's 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 a 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 of this Regulation. 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 [1]. 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 of this Regulation, are hereby confirmed.

(47) Union through related importers 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 Union 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 [2] 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 Union 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 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 abovementioned 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, the profit margin in question is adjusted to 5 %. In the absence of any other comments concerning the determination of export price, the provisional

[1] March 2001.

[2] Council Regulation (EC) No 260/2007 of 9 March 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain tungsten electrodes originating in the People's Republic of China (OJ L 72, 13.3.2007, p. 1).

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 reiterated 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 of this Regulation, 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 Union 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 conclusion 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 expenses of its related importer had been made twice in reconstructing the export price. The calcu- nd, since the claim was found to ted accordingly.

(an exporters claimed that the normal value and export price on product types as identified by ers (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-the-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 recital 49 of this Regulation, are hereby confirmed.

3.4. *Dumping margin*

(52) Following the provisional disclosure, a Malaysian producer which did not export to the Union 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 the Union, 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 the Union 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 Union 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 Union, 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 Union. 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 Union. 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 of this Regu-
cing FOH containing branched
from the definition of the
OH. Despite the fact explained
gulation, the Union industry as
nd 63 of the provisional Regu-

(58) plainants was taken over by a
ipating 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. Therefore 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. *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) of that Regulation 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	1 169	899	912
Index: 2007 = 100	100	117	90	92
		17,3	– 23,1	1,4
	997	1 141	897	915
	100	114	90	92
		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 the 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, 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 the Union 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 by 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.

wages and productivity, profitability, s return on investment and ability to magnitude of the actual dumping

(74) hat it was not possible that the 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 Union.

(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, 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, 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 Union. 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 an MIP, as explained 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 [illegible] during the IP is confirmed.

CAUSATION

the dumped imports

(8[illegible]t the analysis in recital 108 of the [illegible] is flawed, because it seems to link [illegible]uous 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 the 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 the 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, 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, 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 stabilised. 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 utilisation 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, 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 [illegible] by the Union industry during the [illegible] re rejected.

(97) [illegible] med that the real cause of the [illegible] nion industry was the imports [illegible] ies, the decrease in demand, the [illegible] prices and the lack of proper [illegible] terials, 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 Union 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 inves-

(1 the possible effect of an average s of FOH on all cooperating users vo separate groups was performed. simulation showed that the final ge duty on the total cost of business using the product 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, 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 2 years. According to the basic Regulation, a definitive anti-dumping measure shall normally be imposed for the duration of 5 years. Since none of the parties demonstrated that a period of 2 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 of the provisional Regulation 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

(12 claimed that the Commission the injury elimination level on elling margin, whereas it should ng margin. In the present case, it the undercutting margin was an blish 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, 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 an 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 cooperating companies' Union exports in the IP, converted to euro 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 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 anti-dumping duty (EUR per tonne net)
India	VVF Limited	46,98
	All other companies	86,99
Indonesia	P.T. Musim Mas	45,63
	ıer companies	80,34
	ong Oleomas hd.	35,19
	emicals (M) hd.	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 this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and should 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 [1] 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 should 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

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

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, an 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 should be definitively collected to the extent of the amount of the definitive duties imposed by this Regulation. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties should be released,

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 products described in paragraph 1 and produced by the companies below shall be as follows:

Country	Company	Definitive anti-dumping duty (EUR per tonne net)	TARIC Additional Code
Ind		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., Pelabuhan Klang, 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 [1], 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 Regulation (EU) No 446/2011 shall be definitively collected. The amounts secured in excess of the rates of the definitive anti-dumping duty shall be released.

Article 3

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

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

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

Done at Brussels, 8 November 2011.

For the Council
The President
J. VINCENT-ROSTOWSKI

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 1241/2012

of 11 December 2012

amending Implementing Regulation (EU) No 1138/2011 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

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(4) thereof,

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

Whereas:

(1) In August 2010, the Commission, by Notice of Initiation (NOI) published on 13 August 2010 [2], initiated a proceeding with regard to imports of certain fatty alcohols and their blends ('FOH') originating in India, Indonesia and Malaysia ('the countries concerned').

(2) In May 2011, by Regulation (EU) No 446/2011 [3] ('the provisional Regulation'), the Commission imposed a provisional anti-dumping duty on imports of FOH originating in India, Indonesia and Malaysia, and in November 2011 a definitive anti-dumping duty was imposed on the same imports by Council Implementing Regulation (EU) No 1138/2011 [4] ('the definitive Regulation').

(3) On 21 January 2012, PT Ecogreen Oleochemicals, an oducer of FOH, Ecogreen Oleo- Pte. Ltd and Ecogreen Oleo- jointly referred to as 'Ecogreen') ase T-28/12) before the General t of the definitive Regulation as far as the anti-dumping duty with regard to Ecogreen was concerned. Ecogreen contested the adjustment made on the basis of Article 2(10)(i) of the basic Regulation to its export price for the purpose of comparing that export price with the company's normal value.

(4) On 16 February 2012, the Court of Justice rendered its judgment in joined Cases C-191/09 P and C-200/09 P Council of the European Union and European Commission v Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT). The Court of Justice rejected the appeals and cross-appeals of the General Court's judgment in Case T-249/06 Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) v Council of the European Union. The General Court had annulled Article 1 of Council Regulation (EC) No 954/2006 [5] with regard to Interpipe NTRP VAT, inter alia, on the grounds of a manifest error of assessment in making the adjustment based on Article 2(10)(i), and on other grounds with regard to Interpipe Niko Tube ZAT.

(5) Given that the factual circumstances for Ecogreen are similar to those of Interpipe NTRP VAT in respect of the adjustment made pursuant to Article 2(10)(i) of the basic Regulation, in particular the following factors in combination: volume of direct sales to third countries of less than 8 % (1-5 %) of all export sales; existence of common ownership/control of the trader and the exporting producer; the nature of functions of the

(1)
(2)
(3)
(4)

(5) Council Regulation (EC) No 954/2006 of 27 June 2006 imposing definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine, repealing Council Regulations (EC) No 2320/97 and (EC) No 348/2000, terminating the interim and expiry reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and terminating the interim reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and in Croatia and Ukraine (OJ L 175, 29.6.2006, p. 4).

trader and the exporting producer, it is considered appropriate to recalculate the dumping margin of Ecogreen without making an adjustment pursuant to Article 2(10)(i) and to amend the definitive Regulation accordingly.

A. **NEW ASSESSMENT OF THE FINDINGS BASED ON THE JUDGEMENT OF THE GENERAL COURT**

(6) On the basis of eliminating the adjustment pursuant to Article 2(10)(i), the dumping margin established for Ecogreen, expressed as a percentage of the CIF import price at the Union frontier, duty unpaid, is less than 2 % and is therefore considered *de minimis* in accordance with Article 9(3) of the basic Regulation. In the light of this, the investigation should be terminated in respect of Ecogreen without the imposition of measures.

(7) The dumping margin for all companies in Indonesia, other than for the other exporting producer with an individual margin, which was based on that of the cooperating Indonesian exporting producer with the highest dumping margin, should be revised to take account of the recalculated dumping margin of Ecogreen.

B. **DISCLOSURES**

(8) The interested parties concerned were informed of the proposal to revise the rates of anti-dumping duty in two disclosures, one sent on 13 June 2012 and a second disclosure sent on 25 September 2012. All parties were granted a period within which they could make representations subsequent to each disclosure in accordance with the provisions of the basic Regulation.

(9) Comments on the disclosure sent on 13 June 2012 were received from P.T. Musim Mas (PTMM), the second exporting producer in Indonesia, from one producer in the Union, and from one exporting producer in Malaysia. PTMM also asked for an opportunity to be heard by the Commission services and was granted such a hearing.

(10) PTMM, for which an adjustment under Article 2(10)(i) had also been made, argued that the Court judgment in joined Cases C-191/09 P and C-200/09 P should n of its dumping margin, similar reen, without an adjustment being rticle 2(10)(i), as once a single e up of the exporting producer tablished, no adjustments under be made. The company also en of proving that an adjustment vith the Institutions, and that they e case of PTMM. It further alleged s were identical to those of Ecogreen, and any difference in treatment would therefore amount to discrimination.

(11) As regards the comments made by PTMM, it should be noted that it does not follow from the Court judgment in joined Cases C-191/09 P and C-200/09 P that as soon as the existence of a single economic entity is established no adjustment under Article 2(10)(i) of the basic Regulation can be made. The adjustment under Article 2(10)(i) is considered to be justified in the case of PTMM as has been explained in the definitive regulation, in communication with the company and below.

(12) There are a number of differences in the circumstances of the two Indonesian exporting producers, in particular the following in combination: the level of direct export sales made by the producer; the significance of the trader's activities and functions concerning products sourced from non-related companies; the existence of a contract between the trader and producer, which provided that the trader was to receive a commission for the export sales. Given the difference in the circumstances of the two companies the claim of discrimination has to be rejected.

(13) It is noted that PTMM also lodged an application (Case T-26/12) before the General Court for the annulment of the definitive Regulation as far as the anti-dumping duty with regard to PTMM was concerned.

(14) One exporting producer in Malaysia argued that the recalculation of the margin for Ecogreen, without making an adjustment pursuant to Article 2(10)(i), was not supported by the judgment in joined Cases C-191/09 P and C-200/09 P or the facts therein. It pointed out that the General Court, in Case T-249/06, had found a manifest error of assessment in applying Article 2(10)(i) of the basic Regulation in so far as the Council made an adjustment on the export price charged by Sepco in the context of transactions concerning pipes manufactured by Interpipe NTRP VAT, but not those manufactured by Interpipe Niko Tube ZAT. Ecogreen's factual circumstances thus could not simultaneously be similar to those of Interpipe NTRP VAT and of Interpipe Niko Tube ZAT due to a difference in the situation of those two companies.

(15) This argument is accepted. Indeed, Ecogreen's situation is similar to that of Interpipe NTRP VAT. This finding justifies the need for taking the appropriate steps to recalculate the dumping margin for Ecogreen without the Article 2(10)(i) adjustment.

(16) The exporting producer in Malaysia further argued that the situation of Ecogreen as described in the definitive Regulation is not even similar to that of Interpipe NTRP VAT. Upon reassessing the precise factual circumstances of Ecogreen, it is however considered that these are sufficiently similar to those of Interpipe NTRP VAT as such control as found by the General Court for Interpipe NTRP VAT when assessing whether the company carrying out the sales activities is under the control of the exporting producer or whether there is common control has been found for Ecogreen and together with several other factors, as indicated in recital 4, leads to the conclusion that the adjustment under Article 2(10)(i) of the basic Regulation should not have been made.

(17) The same exporting producer in Malaysia, as an alternative to its argument regarding the similarities between the situation of Ecogreen and the circumstances of Case T-249/06, argued that the disclosure sent on 13 June 2012 was insufficient and that additional disclosure should be made of the essential facts and considerations on the basis of which the recalculation for Ecogreen is justified. One producer in the Union also commented that both disclosures referred to in recital 8 were insufficient, and argued that it was deprived of its rights of defence.

(18) In this regard, it is recalled that certain details relating to specific companies which are confidential in nature cannot be disclosed to third parties. However, the nature of the factual circumstances of Ecogreen which are similar to those of Interpipe NTRP VAT, as indicated at recital 5, was disclosed to interested parties on 13 June and 25 September 2012, who were granted a period within which they could make representations subsequent to each disclosure in accordance with the provisions of the basic Regulation.

(19) In response to the second disclosure sent on 25 September 2012, the parties mainly reiterated their claims in their responses to the first disclosure of 13 June 2012.

(20) PTMM has developed its comments based on its main claim that the existence of a Single Economic Entity (SEE) of PTMM and its trader excludes an adjustment under Article 2(10)(i) of the basic Regulation claiming that the Institutions shift the SEE doctrine laid down by the Courts to a functional approach where an analysis of the functions of the related trader would be required.

(21) turns on a point of law that is a ling case.

(22) med that the arguments in recital vincing and do not suffice to differentiate between the circumstances of Ecogreen and PTMM respectively.

(23) In that regard it is sufficient to note that it is settled case-law that different treatment of companies that are not in an identical situation does not amount to discrimination [1]. Against this background each individual case was assessed on its individual merits against the findings in the judgments of Case T-249/09 and joined Cases C-191/09 P and C-200/09 P.

(24) First argument: *Level of direct export sales made by the producer*. PTMM submitted that it has no marketing and sales division and claimed that all the sales carried out directly by the producer in Indonesia (and not by the related trader) were only done so as to comply with legal requirements. The functions of marketing and sales were carried out by its trader in Singapore. For this reason, PTMM claimed that this argument does not justify the adjustment under Article 2(10)(i) of the basic Regulation nor the distinction drawn between PTMM on the one hand and Interpipe NTRP VAT on the other.

(25) Article 2(10) of the basic Regulation stipulates that a fair comparison shall be made between the export price and the normal value at the same level of trade with due account taken of differences which affect price comparability. Where the normal value and the export price as established are not on such a comparable basis, due allowance in the form of adjustments shall be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect prices and price comparability.

(26) On this basis, and as explained in recital 38 of the provisional Regulation, adjustments for, inter alia, differences in commissions between export sales prices and domestic sales prices during the original investigations were considered warranted due to the differences in the sales channels between export sales to the European Union and domestic sales.

(27) The arguments put forward by PTMM do not contradict the first argument, namely that the level of direct export sales made by PTMM is higher than that of Interpipe NTRP VAT and that this fact distinguishes PTMM from Ecogreen. Indeed, given the level of direct export sales, it can only be concluded that PTMM's export sales are performed not only from its related trader in Singapore, but also from Indonesia.

[1] Case C-248/04, Koninklijke Cooperatie Cosun [2006] ECR I-10211, paragraph 72, and Case C-303/05 Advocaten voor de Wereld [2007] ECR I-3633, paragraph 56. Case C-372/06 Asda Stores Ltd v Commissioners of Her Majesty's Revenue and Customs [2007] ECR I-11223, point 62.

(28) Second argument: *Significance of the trader's activities and functions concerning products sourced from non-related companies.* PTMM claimed that, whereas it did not deny that its related trader was involved in a range of different palm oil-based products, PTMM claimed that this argument was flawed, since it was based on activities beyond the scope of original investigation.

(29) In order to assess whether the functions of a trader are not those of an internal sales department but comparable to those of an agent working on a commission basis within the meaning of the judgement of the General Court in Case T-249/06, the trader's activities have to be assessed against the economic reality. There are similarities as regards the functions of the trader with regard to the product concerned and the other products traded. This is confirmed by the fact that, as discussed below in recitals 30 and 31, the relationship between PTMM and its related trader, including the functions of the latter, for most if not all products — including the product concerned — is governed by one single contract without distinguishing among products. It should be noted that the trader's overall activities were based to a significant extent on supplies originating from unrelated companies. The trader's functions are therefore similar to those of an agent working on a commission basis.

(30) Third argument: *The existence of a contract between the trader and producer, which provided that the trader was to receive a commission for the export sales.* PTMM claimed that this contract was a master agreement to regulate transfer prices between related parties to comply with applicable Indonesian/Singapore tax guidelines and internationally accepted guidelines on transfer pricing.

(31) The fact that this agreement can also be used for calculating arm's length prices in accordance with applicable tax guidelines does not contradict the finding that pursuant to the agreement the trader received a commission in the form of a fixed mark-up only for its international and marketing sales activities. Indeed, the very name and the modalities of the agreement justify the finding that the contract was intended to govern the relationship between PTMM and the trader and was not limited to the transfer pricing or tax issues. The contract thus represents circumstantial evidence that the trader's functions are similar to those of an agent working on a commission basis.

(3 uments presented above the Insti- standard of proof required by the y based their findings on direct or evidence. As regards PTMM, and bove, the adjustment made to the to Article 2(10)(i) of the basic

(1 d 181.

Regulation is warranted and the present level of anti-dumping duty should therefore be kept.

C. **CONCLUSION**

(33) On the basis of the above the duty rates applicable to Ecogreen and to all other companies in Indonesia (except P.T. Musim Mas) should be amended. The amended rates should apply retroactively from the date of the entry into force of Implementing Regulation (EU) No 1138/2011 including to any imports subject to provisional duties between 12 May and 11 November 2011. Consequently, the definitive anti-dumping duty paid or entered into the accounts pursuant to Article 1 of Implementing Regulation (EU) No 1138/2011 in its initial version and the provisional anti-dumping duties definitively collected pursuant to Article 2 of the same Regulation in its initial version in excess of the duty rate specified in Article 1(2) of Implementing Regulation (EU) No 1138/2011 as amended by this Regulation should be repaid or remitted. Repayment or remission should be requested from national customs authorities in accordance with applicable customs legislation,

HAS ADOPTED THIS REGULATION:

Article 1

The entry for Indonesia in the table in Article 1(2) of Implementing Regulation (EU) No 1138/2011 is replaced by the following:

Country	Company	Definitive anti-dumping duty (EUR per tonne net)	TARIC Additional Code
'Indonesia	P.T. Ecogreen Oleochemicals Batam, Kabil, Batam	0,00	B111
	P.T. Musim Mas, Tanjung Mulia, Medan, Sumatera Utara	45,63	B112
	All other companies	45,63	B999'

Article 2

The amounts of duties paid or entered into the accounts, pursuant to Article 1 of Implementing Regulation (EU) No 1138/2011 in its initial version and the amounts of provisional duties definitively collected pursuant to Article 2 of the same Regulation in its initial version, which exceed those established by Article 1 of this Regulation, shall be repaid or remitted. Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.

Article 3

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 from 12 November 2011.

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

Done at Brussels, 11 December 2012.

For the Council
The President
A. D. MAVROYIANNIS

WORLD TRADE ORGANIZATION

WT/DS442/1
G/ADP/D94/1
G/L/993
1 August 2012
(12-4241)

Original: English

EUROPEAN UNION – ANTI-DUMPING MEASURES ON IMPORTS OF CERTAIN FATTY ALCOHOLS FROM INDONESIA

Request for Consultations by Indonesia

The following communication, dated 27 July 2012, from the delegation of Indonesia to the delegation of the European Union and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article 17.3of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "Anti-Dumping Agreement"), and Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994"), the Government of Indonesia requests consultations with the European Union with respect to the imposition of definitive and provisional anti-dumping measures by the European Union on the importation of fatty alcohols, and with respect to certain aspects of the investigation underlying these measures.[1]

Indonesia is particularly concerned about the following aspects of the measures at issue:

- The European Union failed to treat the Indonesian exporters' related Singapore sales offices as a single economic entity with their related producer/exporters. Furthermore, the European Union made adjustments to the export price of both Indonesian exporters to reflect both the selling expenses of the Singapore sales offices as well as a "commission" paid to the related Singapore sales offices. Because it did not have a proper factual or legal basis for this double-counting, the European Union appears to have acted inconsistently with:
    - Articles 2.3 and 2.4 of the Anti-dumping Agreement, because it inappropriately adjusted the export price the Indonesian exporters and thereby failed to conduct a fair comparison between the export price and normal value;

[1] The definitive measure was imposed pursuant to *Council Implementing Regulation (EU) No 1138/2011 of 8 November 2011 imposing a definitive antidumping duty and collecting definitively the provisional duty imposed on imports of certain fatty alcohols and their blends originating in India, Indonesia,* 293, 11.11.2011, p.1. The provisional measure was imposed pursuant to *Commission* *446/2011 of 10 May 2011 imposing a provisional anti-dumping duty on imports of certain* *eir blends originating in India, Indonesia, and Malaysia*, OJ L 122, 11.5.2011, p. 47. The *itiated* pursuant to the Notice of initiation of an anti-dumping proceeding concerning *tty* alcohols and their blends originating in India, Indonesia and Malaysia, OJ C 219,

- Article 5.8 of the Anti-Dumping Agreement, because, where the unwarranted adjustment discussed above is eliminated, the dumping margin for the Indonesian exporters falls below the *de minimis* threshold, such that no anti-dumping duties may legally be imposed on those exporters;

- Articles 3.1 and 3.5 of the Anti-Dumping Agreement, because the EU incorrectly calculated the volume of dumped imports and thereby also failed to properly assess the existence of a causal link between dumped imports and the material injury suffered by the domestic industry;

- Article 9.4 of the Anti-Dumping Agreement, because the European Union incorrectly calculated the "all others" rate and inappropriately applies definitive anti-dumping duties to imports from exporters or producers not included in the examination;

- Article 9.2 of the Anti-Dumping Agreement, because the European Union fails to collect anti-dumping duties in the "appropriate amounts"; and

- Article X:3(a) of the GATT 1994, because the European Union failed and continues to fail to administer its laws, regulations, decisions and rulings in a uniform, impartial, and reasonable manner.

- The European Union also inappropriately excluded "branched" fatty alcohols from the scope of the domestic "like" product and, by excluding the production of such "branched" fatty alcohols from the scope of the domestic industry, also incorrectly defined the domestic industry. The European Union thereby appears to have acted inconsistently with:

  - Article 2.6, Articles 3.1 and 4.1 read with Article 2.6, and Articles 3.4 and 3.5 of the Anti-Dumping Agreement, because it incorrectly defined the product under consideration as well as the domestic like product, and failed to provide a reasoned and adequate explanation for its determination.

  - Article 4.1of the Anti-Dumping Agreement, because it incorrectly defined the scope of the domestic industry and failed to provide a reasoned and adequate explanation for its determination.

  - Articles 3.1, 3.2, 3.4, and 3.5of the Anti-Dumping Agreement, because it failed to conduct a proper injury and causation analysis, based on positive evidence and an objective examination of the relevant facts, and based on a correct product and domestic industry definition, and failed to provide a reasoned and adequate explanation for its injury and causation determination.

- The European Union appears to have acted inconsistently with Articles 3.1 and 3.5, third sentence, of the Anti-Dumping Agreement by failing to provide a reasoned and adequate explanation, based on positive evidence and involving an objective ination, of why the injury suffered by the domestic industry was not attributable to known factors, such as, in particular, the effects of sales of branched fatty ols on sales of linear fatty alcohols and the impact of the financial crisis.

- The European Union appears to have acted inconsistently with Articles 3.1, 3.3 and 3.4 of the Anti-Dumping Agreement by cumulating imports from Indonesia, which were subject to negative price undercutting margins, with imports from other countries, which were at prices that undercut the domestic product. The European Union also appears to have acted inconsistently with its own administrative practice in this respect, thereby giving rise to a violation of Article X:3(a) of the GATT 1994.

- The European Union appears to have acted inconsistently with Articles 6.7 and 6.9 of the Anti-Dumping Agreement by failing to provide the Indonesian exporters with the results of the EU's verification visits to the exporters.

It appears to Indonesia that the foregoing cannot be reconciled with Article VI of the GATT 1994, Articles 1 and 18 of the Anti-Dumping Agreement, and the specific provisions cited above. In addition to the legal instruments embodying the measures at issue, this request also covers any amendments, extensions, related instruments or practices, the results of any review proceedings as well as modifications of the original measures triggered by any proceedings under EU law, including proceedings before the European Court of Justice. Indonesia reserves the right to raise additional legal claims or matters during the course of consultations.

Indonesia looks forward to receiving your response to this request. I propose that the date and venue of the consultations be agreed between our two missions.