Commission Implementing Regulation (EU) No 570/2014 of 26 May 2014 terminating the partial reopening of the anti-dumping investigation concerning imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia

COMMISSION IMPLEMENTING REGULATION (EU) No 570/2014

of 26 May 2014

terminating the partial reopening of the anti-dumping investigation concerning imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia

THE EUROPEAN COMMISSION,

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,

Whereas:

A. **EXISTING MEASURES**

(1) The Council, by Implementing Regulation (EU) No 1138/2011[(2)] imposed a definitive anti-dumping duty on imports of certain fatty alcohols and their blends ('FOH') originating in India, Indonesia and Malaysia ('definitive Regulation'). The definitive Regulation was preceded by Commission Regulation (EU) No 446/2011[(3)] imposing a provisional anti-dumping duty on imports of FOH originating in India, Indonesia and Malaysia ('provisional Regulation'). The findings that led to the imposition of the definitive anti-dumping duties will be referred to as 'the findings of the original investigation'.

(2) On 21 January 2012, PT Ecogreen Oleochemicals, an Indonesian exporting producer of FOH, Ecogreen Oleochemicals (Singapore) Pte. Ltd and Ecogreen Oleochemicals GmbH (herein jointly referred to as 'Ecogreen') lodged an application (case T- 28/12) before the General Court for the annulment 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.

(3) 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 annulled Article 1 of Regulation (EC) No 954/2006 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 with regard to Interpipe Niko Tube ZAT on other grounds. On

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 570/2014. (See end of Document for details)*

16 February 2012, the Court of Justice rejected the appeal lodged by the Council and the Commission (Joined Cases C-191/09 P and C-200/09 P).

(4) Given that the factual circumstances for Ecogreen were similar to those of Interpipe NTRP VAT in respect of the adjustment made pursuant to Article 2(10)(i) of the basic Regulation, it was considered appropriate to re-calculate the dumping margin of Ecogreen without making an adjustment pursuant to Article 2(10)(i).

(5) Council Implementing Regulation (EU) No 1241/2012 of 11 December 2012 amending Implementing Regulation (EU) No 1138/2011 imposing a definitive duty and collecting definitively the provisional duty imposed on imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia[(4)] was therefore published on 21 December 2012, with retroactive application as from 12 November 2011 ('amending Regulation').

(6) The dumping margin therein established for Ecogreen was *de minimis* in accordance with Article 9(3) of the basic Regulation. The investigation in respect of Ecogreen was therefore terminated without the imposition of measures. The General Court decided subsequently on 9 April 2013 that there was no need to adjudicate on the action brought in case T-28/12.

(7) Although all the other exporting producers in India, Indonesia and Malaysia remained subject to anti-dumping duties, the findings of the original investigation in particular the injurious effects of the dumped imports should be reassessed in the light of the revised dumping findings contained in the amending Regulation.

B. REASSESSMENT OF THE FINDINGS OF THE ORIGINAL INVESTIGATION

1. Framework of the reassessment

(8) A Notice concerning a partial reopening of the anti-dumping investigation concerning imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia ('countries concerned') was published on 28 February 2013[(5)] ('reopening'). The notice mentioned that the reopening was limited in scope to the examination of the impact the newly established dumping margins may have on the findings relating in particular to injury and causation established in the original investigation ('re-investigation').

(9) The Commission officially advised the exporting producers, the importers and users known to be concerned and the Union industry of the partial reopening of the investigation. Interested parties were given the opportunity to make their views known in writing and to be heard within the time limit set out in the notice.

(10) Several parties argued that it was unclear on which legal basis the Commission reopened the original investigation and which data the Commission would collect to establish the facts and reach conclusions in the current re-investigation.

(11) Parties also claimed that it was not clear what type of investigation was initiated and what the final outcome could be in the context of the level of the definitive

measures, what period would be covered and which aspects of the original investigation were being reassessed.

(12) It is recalled that this reopening is the necessary consequence of the adoption of the amending Regulation, which was itself the result of the findings of the General Court 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.

(13) It is recalled that in the original investigation the so-called investigation period (IP) was the period running from 1 July 2009 to 30 June 2010. The assessment of injury covered the period from 1 January 2007 up to the end of the IP and was referred to as 'the period considered'.

(14) The current re-investigation is focussing on the same IP and the same period considered. The findings reached for these periods during the original investigation as far as injury and causality are concerned are being re-assessed in the light of the newly established dumping margins for the Indonesian exporters in the amending Regulation.

(15) More specifically, and as mentioned in the reopening notice, the aim of the current re-investigation is to determine whether the '*de minimis*' dumping margin established for one exporting producer in Indonesia and the change in the level of the dumping margins for the other Indonesian companies established by the amending Regulation, may have any impact on the findings of the original investigation relating to injury and to causation.

(16) The results of the re-investigation are set out below. As was the case in the original investigation, certain data and information is provided in indexed form in particular to preserve the confidentiality of data originally submitted.

2. Product concerned and like product

(17) It is recalled that the product concerned is the one defined in the original investigation, namely, saturated fatty alcohols with a carbon chain length of C8, C10, C12, C14, C16 or C18 (not including branched isomers) including single saturated fatty alcohols (also referred to as 'single cuts') and blends predominantly containing a combination of carbon chain lengths C6-C8, C6-C10, C8-C10, C10-C12 (commonly categorised as C8-C10), blends predominantly containing a combination of carbon chain lengths C12-C14, C12-C16, C12-C18, C14-C16 (commonly categorised as C12-C14) and blends predominantly containing a combination of carbon chain lengths C16-C18, originating in India, Indonesia, and Malaysia, currently falling within CN codes ex 2905 16 85, 2905 17 00, ex 2905 19 00 and ex 3823 70 00 ('fatty alcohol').

(18) The findings of the amending Regulation do not affect the findings set out in the original investigation concerning the product under consideration and the like product.

3. Dumping

(19) As mentioned in recital (7) of the amending Regulation, the dumping margins 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, were revised to take account of the recalculated dumping margin of Ecogreen.

(20) The dumping margins established in recital (23) of the definitive Regulation for Indian exporting producers and those established in recital (55) for Malaysian exporting producers were not affected by the amending Regulation.

(21) As mentioned in recital (6) of the amending Regulation, the dumping margin for Ecogreen was established at less than 2 % and is therefore below the *de minimis* threshold foreseen in Article 9(3) of the basic Regulation. The imports into the Union made by this exporting producer should thus be considered as non-dumped imports in the re-investigation.

(22) The volume, price and market share of the non-dumped imports made by the said Indonesian exporter developed as shown in the table below during the period considered. As mentioned in recital (16) above, data submitted is indexed.

Imports	**2007**	**2008**	**2009**	**IP**
Tonnes				
Index: 2007 = 100	*100*	*110*	*107*	*115*
Annual Δ %		9,6	– 2,3	7,5
Market Share				
Index: 2007 = 100	*100*	*107*	*110*	*113*
Annual Δ %		6,8	2,9	2,8
Average price EUR/tonne				
Index: 2007 = 100	*100*	*110*	*91*	*91*
Annual Δ %		9,9	– 17,0	0,2

Source: Questionnaire replies.

(23) With reference to the table shown in recital (70) of the provisional Regulation, which was confirmed by recital (64) of the definitive Regulation, and the above table, the investigation showed that the non-dumped imports represented a limited share of the total imports from the countries concerned and that they grew proportionally less than the dumped imports during the period considered. Indeed, the non-dumped

imports represented around 15 %-18 % of the total volume of imports from the countries concerned in 2007 and only around 10 %-13 % during the IP.

(24) The re-investigation shows that the average prices of the non-dumped imports from Ecogreen decreased by 9 % in the period considered but they remained stable between 2009 and the IP.

4. Injury

4.1. *Union production and Union Industry*

(25) The findings set out in recitals (57) to (61) of the definitive Regulation regarding Union production and Union industry are not affected by the re-investigation and are hereby confirmed.

4.2. *Union consumption*

(26) The findings set out in recitals (64) to (66) of the provisional Regulation which were confirmed by recital (62) of the definitive Regulation remain unaffected. It is confirmed that, as shown in the table below, Union consumption of fatty alcohol was fairly stable and increased only slightly by 2 % during the period considered. As mentioned in recital (64) of the provisional Regulation the information concerning consumption was provided in indexed form to preserve the confidentiality of data.

Consumption	**2007**	**2008**	**2009**	**IP**
Index: 2007 = 100	*100*	*102*	*97*	*102*
Annual Δ %		2,2	– 4,8	4,6

4.3. *Imports into the Union from the countries concerned and price undercutting*

4.3.1. Cumulative assessment of dumped imports

(27) As was the case in the original investigation, it was examined whether or not a cumulative assessment of the dumped imports for the three countries concerned was still warranted in accordance with the provisions of Article 3(4) of the basic Regulation in view of the revised dumping margins for Indonesian exporting producers mentioned in recitals (19) and (21) above.

(28) It is recalled that Article 3(4) of the basic Regulation states 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.