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

COUNCIL IMPLEMENTING REGULATION (EU) No 1138/2011

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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 production of the product investigated.

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

2. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures (provisional

disclosure), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.

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

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

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

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

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

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

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

(11) Hence, the provisional decision to exclude FOH containing branched isomers from the product scope as mentioned in the NOI and to exclude these companies' production of branched FOH from the definition of the 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 data pertaining to producers producing FOH made of branched isomers should be excluded from the injury analysis.

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

C. **DUMPING**

1. **India**

1.1. *Normal value*

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

1.2. *Export price*

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

1.3. *Comparison*

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

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

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

(18) Following provisional and definitive disclosures, both Indian exporting producers reiterated their claim for an adjustment for currency conversion pursuant to Article 2(10)(j) of the basic Regulation arguing that there was a sustained appreciation of the Indian Rupee 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 warranted and the claim is rejected.

(20) Following provisional disclosure, one Indian exporting producer claimed that an allowance granted under Article 2(10)(b) of the basic Regulation for differences in

indirect taxes, which had been made in respect of certain product types, should also have been made in respect of products and blends with chain lengths of C12 and C14 because the duty paid on raw materials used for these products was refunded upon export of the product. However, no information which could be verified on spot was submitted during the investigation, proving that indeed such duties had been subsequently refunded. Following 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