Commission Regulation (EU) No 446/2011 of 10 May 2011 imposing a provisional anti-dumping duty on imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia

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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 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 13 August 2010, the European Commission (the Commission) announced, by a notice published in the *Official Journal of the European Union*[(2)] (Notice of initiation), the initiation of an anti-dumping proceeding with regard to imports into the Union of certain fatty alcohols and their blends (the product investigated) originating in India, Indonesia, and Malaysia (the countries concerned).

(2) The anti-dumping proceeding was initiated following a complaint lodged on 30 June 2010 by two Union producers, Cognis GmbH and Sasol Olefins & Surfactants GmbH (the complainants). Both these companies are incorporated under German law, with production sites in Germany, France and Italy. These two companies represent a major proportion, in this case more than 25 % of total Union production of the product investigated. The complaint contained prima facie evidence of dumping of the said product originating in the countries concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

1.2. Parties concerned by the proceeding

(3) The Commission officially advised the complainants, other known Union producers, importers/traders and users known to be concerned, the known exporting producers and representatives of the exporting countries concerned of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of initiation.

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(4) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(5) In view of the large number of importers identified from the complaint, sampling was envisaged for importers in the Notice of initiation in accordance with Article 17(1) of the basic Regulation. Four importers provided the requested information and agreed to be included in the sample within the deadline set in the Notice of initiation. Given this low number of importers who made themselves known, it was decided not to apply sampling.

(6) The Commission sent questionnaires to exporting producers, Union producers, importers and to all users and suppliers known to be concerned as well as to all other parties who requested so within the deadlines set out in the Notice of initiation.

(7) Questionnaire replies were received from 5 Union producers, 2 importers, 21 users in the Union, 2 exporting producer in India, 2 exporting producers in Indonesia and their related traders, and 3 exporting producers in Malaysia and their related traders.

(8) The Commission sought and verified all the information deemed necessary for a preliminary determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:

(a) producers in the Union:
- Cognis GmbH, Germany,
- Cognis France S.A.S., France,
- Sasol Olefins & Surfactants GmbH, Germany;

(b) importers in the Union:
- Oleo solutions Ltd, United Kingdom;

(c) users in the Union:
- Henkel AG & Co., Germany,
- PCC Rokita SA, Poland,
- Procter & Gamble International Operations SA, Switzerland,
- Unilever, Netherlands,
- Zshimmer & Schwarz italiana SpA, Italy;

(d) exporting producers in India:
- Godrej Industries Limited, Mumbai and Taluka Valia,
- VVF Limited, Mumbai;

(e) exporting producers in Indonesia:
- P.T. Ecogreen Oleochemicals and its related companies, Batam, Singapore, Dessau,
- P.T. Musim Mas and its related companies, Medan, Singapore, Hamburg;

(f) exporting producers in Malaysia:

— Fatty Chemical Malaysia Sdn. Bhd. and its related companies, Prai, Emmerich,

— KL-Kepong Oleomas Sdn. Bhd. and its related company, Petaling Jaya, Hamburg,

— Emery Oleochemicals Sdn. Bhd., Telok Panglima Garang.

1.3. **Investigation period**

(9) 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 investigation period (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

(10) The product concerned is 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 (the product concerned), currently falling within CN codes ex 2905 16 85, 2905 17 00, ex 2905 19 00 and ex 3823 70 00.

(11) The product investigated is an intermediary product produced from natural (oleo-chemical) or synthetic (petrochemical) sources, such as natural fats and oils, crude oil, natural gas, natural gas liquids and coal. It is mainly used as an input material for the production of fatty alcohol sulphates, fatty alcohol ethoxylates and fatty alcohol ether sulphates (so-called surfactants). Surfactants are used to produce detergents, household, cleaning and personal care products.

2.2. **Like product**

(12) The product exported to the Union from India, Indonesia and Malaysia, and the product produced and sold domestically in these countries and also the one manufactured and sold in the Union by the Union producers were found to have the same basic physical and technical characteristics as well as the same uses. They are therefore provisionally considered as alike within the meaning of Article 1(4) of the basic Regulation.

(13) During the course of the investigation, certain parties claimed that one of the complainants produced, in one of its production sites, a product which includes branched isomer molecules, not covered by the product scope definition, and that

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therefore such production should not be considered as falling within the like product. It is provisionally determined that this claim is warranted, and therefore the data pertaining to this producer have not been used in the injury analysis. It should be noted that two other companies, one of them cooperating in the investigation, were excluded from the definition of the Union industry for the same reason.

3. DUMPING

3.1. India

3.1.1. *Normal Value*

(14) For the determination of normal value, it was first established for each exporting producer whether its total volume of domestic sales of the like product to independent customers was representative in comparison with its total volume of export sales to the Union. In accordance with Article 2(2) of the basic Regulation domestic sales are considered to be representative when the total domestic sales volume is at least 5 % of the total volume of sales of the product concerned to the Union. It was found that the overall sales by each exporting producer of the like product on the domestic market were representative.

(15) For each product type sold by an exporting producer on its domestic market and found to be directly comparable with the product type sold for export to the Union, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold by the exporting producer concerned on the domestic market to independent customers during the IP represented at least 5 % of its total sales volume of the comparable product type exported to the Union.

(16) It was also examined whether the domestic sales of each product type could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers on the domestic market which were profitable for each exported type of the product concerned during the IP.

(17) For those product types where more than 80 % by volume of sales on the domestic market of the product type were above cost and the weighted average sales price of that type was equal to or above the unit cost of production, normal value, by product type, was calculated as the weighted average of the actual domestic prices of all sales of the type in question, irrespective of whether those sales were profitable or not.

(18) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average price of only the profitable domestic sales of that type made during the IP.

3.1.2. *Export price*

(19) Both exporting producers in India exported the product concerned directly to independent customers in the Union. Export prices were therefore established on the basis of the prices actually paid or payable by these independent customers for the product concerned, in accordance with Article 2(8) of the basic Regulation.

3.1.3. *Comparison*

(20) The normal value and the export price of the exporting producers were compared on an ex-works basis.

(21) For the purpose of ensuring a fair comparison between the normal value and export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments for differences in indirect taxes, transport, insurance, handling, loading and ancillary costs, packing costs, credit costs, and commissions have been made where applicable and justified.

(22) Both exporting producers claimed that their sales made to one of the complainants in the Union during the IP should be ignored when calculating the dumping margin since these sales were made in significant quantities and at strongly negotiated prices. However, there is no legal reason why such exports of the product concerned should be ignored when calculating dumping. The claims by both exporting producers are therefore rejected.

(23) Both exporting producers claimed an adjustment for currency conversion arguing that there was a sustained appreciation of the Indian Rupee (INR) against the Euro (EUR) as from November 2009 which would have a distorting effect on the dumping calculations. The claim related to sales made in EUR from January 2010 onwards and consisted of a request that, for the purposes of converting the value of those sales into INR, the exchange rate of the month in which the sales were made be substituted by the exchange rate of 2 months earlier. Article 2(10)(j) indeed provides for an adjustment for currency conversions under certain circumstances. However, it is noted that the appreciation of the INR only occurred during the second half of the IP. Furthermore, it is noted that both Indian companies frequently increased their prices to their main customers in the Union during that period following a fairly regular pattern, and that the prices made in the Union by the complainants were also steadily increasing during the second half of the IP. There is therefore no clear evidence that the appreciation of the INR was not timely reflected in the prices charged by the Indian exporting producers to their customers in the EU or had an undue penalising effect in the dumping calculations. The claims by both companies were therefore rejected.

3.1.4. *Dumping margin*

(24) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margins for the cooperating Indian exporting producers were established on the basis of a comparison of the weighted average normal value with the weighted average export price.