REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 157/2013

of 18 February 2013

imposing a definitive anti-dumping duty on imports of bioethanol originating in the United States of America

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 from the European Commission after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 25 November 2011, the European Commission ('the Commission') announced, by a notice ('NOI') published in the *Official Journal of the European Union* [2], the initiation of an anti-dumping proceeding ('AD proceeding' or 'the proceeding') with regard to imports into the Union of bioethanol originating in the United States of America ('USA' or 'the country concerned').

(2) On the same day, the Commission announced, by a notice published in the *Official Journal of the European Union* [3], the initiation of an anti-subsidy proceeding with regard to imports into the Union of bioethanol originating in the USA and commenced a separate investigation ('AS proceeding'). This proceeding was terminated on 21 December 2012 without imposition of countervailing measures.

(3) The AD proceeding was initiated following a complaint lodged on 12 October 2011 by the European Producers Union of Renewable Ethanol Association (ePURE) ('the complainant') on behalf of producers representing more than 25 %, of the total Union production of bioethanol. The complaint contained *prima facie* evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.

1.2. Parties concerned by the proceeding

(4) The Commission officially advised the complainant, other known Union producers, the exporters/producers in the USA, importers, and other parties known to be concerned, and the authorities of the USA of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

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

1.2.1. *Sampling of exporters/producers in the USA*

(6) In view of the potentially large number of exporters/producers in the USA, sampling was envisaged in the notice of initiation in accordance with Article 17 of the basic Regulation.

(7) In order to enable the Commission to decide whether sampling would be necessary and if so, to select a sample, exporters/producers in the USA were asked to make themselves known within 15 days from the date of the initiation of the investigation and to reply to a sampling form providing, as specified in the notice of initiation, basic information on their activities related to production and sales of bioethanol during the period from 1 October 2010 to 30 September 2011 ('the investigation period' or 'the IP').

(8) The relevant US authorities were also consulted for the selection of a representative sample.

(9) More than 60 exporters/producers made themselves known and provided the requested information within the 15 days deadline.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ C 345, 25.11.2011, p. 7.
[3] OJ C 345, 25.11.2011, p. 13.

(10) In accordance with Article 17 of the basic Regulation, the Commission selected a sample based on the largest representative quantity of exports of bioethanol to the Union which could reasonably be investigated within the time available. The sample selected consisted of six US bioethanol producers ('US sample').

(11) During the investigation it was found that the production of one producer included in the US sample was not exported to the Union in the IP. This company was therefore removed from the sample.

(12) Despite the fact that the other sampled producers mentioned exports of bioethanol to the Union in their sampling form, the investigation showed that none of them exported bioethanol to the Union market. In fact they were selling domestically to unrelated traders/blenders which then blended it with gasoline and resold it domestically and for export in particular to the Union. During the investigation on-spot, it became clear that in fact, contrary to the impression that had resulted from the information provided by the sampled US producers in their sampling forms, those producers were not systematically aware whether or not their production was intended for the Union market or any other destination including the US market and had no knowledge of the traders/blenders sales prices. In effect, this means that the US producers of bioethanol are not the exporters of the product concerned to the Union. The exporters are in fact the traders/blenders. Hence, the data collected and verified at the level of the US sample at provisional stage did not allow establishing whether or not US bioethanol was exported at dumped prices to the Union during the IP.

(13) No anti-dumping measures could thus be imposed at that time.

(14) In order to identify the exports of bioethanol to the Union, the US sample relied mainly on data provided to them by the unrelated blenders/traders which were not investigated at provisional stage. Although at provisional stage one such trader cooperated in the investigation and provided additional data, that data was not sufficient to establish precisely and reliably the necessary data for the purpose of calculating dumping margins.

(15) In order to complete the dumping investigation, it was thus considered necessary to rather base it on the data of traders and blenders which were actually exporting the product concerned to the Union.

(16) Dumping questionnaires were thus sent to the eight largest US traders/blenders that were identified during the investigation of the US sample. These traders/blenders represent over 90 % of total exports of bioethanol to the Union. Two agreed to cooperate in the investigation and their exports represent about 51 % of total exports of bioethanol to the Union during the IP.

1.2.2. *Sampling of Union producers*

(17) In view of the potentially large number of Union producers, sampling was envisaged in the notice of initiation in accordance with Article 17 of the basic Regulation.

(18) In the notice of initiation the Commission announced that it had provisionally selected a sample of Union producers ('EU sample'). This sample consisted of five companies and groups, out of the 19 Union producers that were known prior to the initiation of the investigation. The sample was selected on the basis of the production volume of bioethanol during the investigation period and the location of the known producers. This sample represented 48 % of the total estimated Union production during the IP.

(19) But the investigation revealed that the groups included in the EU sample consisted of a large number of companies or single entities producing and selling the like product. In this case it would have meant to investigate 13 companies and it was not possible to investigate all of them given the time available for the investigation. It was thus decided to re-examine the data available for the selection of a representative sample. It was considered that the sample should be based on the largest individual producing entities in the Union and in the groups taking also into account a certain geographical spread amongst Union producers.

(20) Hence, a definitive EU sample of six individual producers was ultimately selected based on representativity in terms of the production and sales volume of bioethanol during the IP and the geographical location of the producer. These producers located in Belgium, the Netherlands, France, UK, Sweden and Germany represent 36 % of the total estimated Union production and 44 % of the total production reported by the companies that submitted data for the selection of a sample. This sample was deemed to be representative for the examination of possible injury to the Union industry.

(21) Interested parties were given the opportunity to comment on the appropriateness of the choice of the sample.

(22) Some parties claimed that the EU sample was less representative than the one originally selected which included complete groups of companies. In their view, an objective analysis of the situation of the Union industry could only be made by including all companies which are part of groups in the sample. They alleged in particular that costs and revenues could be allocated to certain companies of a group which are not visited and may thus not be reflected in the injury analysis.

(23) In this respect it should be noted that the Commission duly considered and examined the data provided by all sampled and non-sampled companies and in particular the companies belonging to groups, in order to ensure that all costs and revenues involved in the production and sale by the companies selected in the sample had been fully and correctly reflected in the injury analysis.

(24) Some parties contested the inclusion in the EU sample of Union producers which were in a start-up phase. They also claimed that one company with important idle capacity in 2011, located in a Member State that did not implement the Renewable Energies Directive ('RED') ([1]), should not have been included in the sample. It was also claimed that in case these companies would be finally included in the sample, the Commission should adjust their data in order to account for these extraordinary circumstances.

(25) It is considered that the fact that companies recently started or resumed operations does not preclude them from being part of the sample. The inclusion of these companies is not in contravention with the criteria for the selection of a sample as laid down in Article 17 of the basic Regulation. With regard to the adjustment of their data, parties did not provide any specific issue or substantiated evidence to support their claim, nor a basis on how to make the claimed adjustment.

(26) Furthermore, the investigation did not reveal any cost, such as for example accelerated depreciations, which should be adjusted to correct any distortion due to the start-up of activity. Hence, this claim is rejected.

(27) Some parties also disputed the fact that one company that was provisionally selected in the EU sample and located in a Member State with high consumption and production of bioethanol was no longer part of the EU sample. They claimed that this economic situation of this company was good and suggested that this was the reason for its exclusion from the sample. They further argued that the selection of the sample had been skewed towards finding injury. According to these parties the Commission should have sent so-called mini-questionnaires to all producers to collect the relevant data in order to select a sample.

(28) With regard to the sending of mini-questionnaires, it should be noted that, prior to the selection of the sample, the Commission requested information from all Union producers known to be concerned in order to collect the relevant data for the purpose of the selection of a sample. As mentioned in point 5.2.1 of the NOI, this information was available as from the date of the initiation of the investigation in the file for inspection by interested parties and was not such as to show the state of the economic situation of the respondents. Hence, the Commission had sufficient relevant information at its disposal to select a representative sample respecting the criteria of Article 17 of the basic Regulation but could not make any result-oriented selection of companies. The above claims were therefore rejected.

(29) Finally, it was claimed that the sample should have included companies producing bioethanol from sugar beet since production from this raw material can be much more profitable than production from, for example, wheat. Even though this claim was not substantiated, the information available has shown that bioethanol produced from sugar beet represents only a minor part of total Union production, around 12 % in 2011, and that two of the companies included in the sample partially use sugar beet as feedstock to produce bioethanol. Therefore, the claim is rejected.

(30) Based on the above, it is considered that the sample selected as explained above for the purpose of the injury analysis is representative for the Union industry.

1.2.3. *Sampling of unrelated importers*

(31) In view of the potentially large number of importers involved in the proceeding, sampling was envisaged for importers in the notice of initiation in accordance with Article 17 of the basic Regulation.

(32) Only three importers provided the requested information and agreed to be included in the sample within the deadline set in the notice of initiation. In view of the limited number of cooperating importers, sampling was not deemed to be necessary.

1.2.4. *Questionnaire replies and verifications*

(33) The Commission sent questionnaires to all parties known to be concerned. Questionnaires were thus sent to the sampled USA exporters/producers, the sampled Union producers, the three cooperating unrelated importers in the Union and to all users known to be concerned by the investigation.

(34) Replies were received from the sampled USA exporters/producers, the sampled Union producers, two unrelated importers and four users.

(35) The Commission sought and verified all the information provided by interested parties and deemed necessary for the purposes of a definitive determination of dumping, resulting injury and Union interest.

(36) Verification visits were carried out at the premises of the following companies:

([1]) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources (OJ L 140, 5.6.2009, p. 16).

Exporters/producers in the USA

— Marquis Energy LLC, Hennepin, Illinois

— Patriot Renewable Fuels LLC, Annawan, Illinois

— Platinum Ethanol LLC, Arthur, Iowa

— Plymouth Energy Company LLC, Merrill, Iowa

— POET LLC, Wichita, Kansas and Sioux Falls, South Dakota

Unrelated trader in the USA

— Bio Urja Trading LLC, Houston, Texas

Related trader in Switzerland

— Cargill International SA, Geneva

Producers in the Union

— Abengoa Energy Netherlands B.V., Rotterdam, the Netherlands

— BioWanze S.A., Wanze, Belgium

— Crop Energies Bioethanol GmbH, Mannheim, Germany

— Ensus, Yarm, United Kingdom

— Lantmännen Energi/Agroetanol, Norrköping, Sweden

— Tereos BENP, Lillebonne, France

Unrelated importers in the Union

— Shell Trading Rotterdam B.V., Rotterdam, the Netherlands

— Greenergy Fuels Limited, London, United Kingdom

Users in the Union

— Shell Nederland Verkoopmaatschappij B.V. Rotterdam, the Netherlands

1.3. **Investigation period and period considered**

(37) The investigation of dumping and injury covered the period from 1 October 2010 to 30 September 2011. The examination of trends relevant for the assessment of injury covered the period from January 2008 to the end of the IP ('the period considered').

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(38) The product concerned is bioethanol, sometimes referred to as 'fuel ethanol', i.e. ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union), denatured or undenatured, excluding products with a water content of more than 0,3 % (m/m) measured according to the standard EN 15376, but including ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union) contained in blends with gasoline with an ethyl alcohol content of more than 10 % (v/v) originating in the USA, currently falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 12 21, ex 2710 12 25, ex 2710 12 31, ex 2710 12 41, ex 2710 12 45, ex 2710 12 49, ex 2710 12 51, ex 2710 12 59, ex 2710 12 70, ex 2710 12 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 90 97.

(39) Bioethanol can be produced from various agricultural feedstocks, such as sugar cane, sugar beet, potatoes, manioc and corn. In the USA a distinction on the basis of the various feedstocks is made, as described below:

(a) The Conventional Biofuel (mainly produced from corn feedstock and commonly called corn ethanol) which is defined as a renewable fuel derived from corn starch produced from facilities that commenced construction after the date of enactment of the Energy Independence and Security Act in December 2007 ([1]) and which must achieve in the future a 20 % reduction in greenhouse gas ('GHG') emissions compared to baseline lifecycle GHG emissions of gasoline and diesel.

(b) The Advanced Biofuel which is defined as a renewable fuel other than ethanol derived from corn starch, which is derived from renewable biomass and has lifecycle GHG emissions, as determined by the Energy Policy Act ('EPA') Administrator, that are at least 50 % less than baseline GHG emissions. This term includes 'cellulosic biofuels' such as bioethanol and 'biomass-based diesel'. The schedule for Advanced Biofuels includes the schedule for Cellulosic Biofuels, Biomass-Based Diesel, and Undifferentiated Advanced Biofuels.

(40) More specifically, Cellulosic Biofuel ([2]) is defined as a renewable fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass and that has lifecycle GHG emissions, as determined by the EPA Administrator, that are at least 60 % less than the baseline lifecycle GHG emissions. Cellulosic biofuels include cellulosic bioethanol. There are researches and pilot projects largely supported by the US Federal Government for producing Advanced Biofuels and in particular cellulosic bioethanol, produced in particular out of agricultural and forestry wastes. According to US officials and publicly available data ([3]), the production of this type of bioethanol will reach around 4 billion

([1]) See www.ethanol.org — RFS (Renewable fuels standard) under the Energy Independence and Security Act of 2007.
([2]) See US Internal Revenue Code (IRC) — sec. 40(b)(4) point E.
([3]) See www.ethanol.org — RFS (Renewable fuels standard) under the Energy Independence and Security Act of 2007.

litres in 2014 and more than 50 billion litres by 2021. Production of cellulosic bioethanol was negligible in the IP.

(41) During the investigation period up to now corn has been the main feedstock used in the USA, while the main feedstock used in the Union is wheat.

(42) The investigation showed that bioethanol is generally sold in its pure form to blenders/traders which blend [1] it with gasoline in particular to produce high-level blends which are exported or sold on the domestic market for further blending and used for fuel consumption. Blending is not a very complex operation and may be accomplished by mixing the products in special tanks adding the desired percentages of bioethanol and gasoline.

(43) To identify the various types of bioethanol, bioethanol blends or mixtures in use around the world, ethanol fuel mixtures have 'E' numbers which describe the percentage of ethanol fuel in the mixture by volume. For example, E85 is 85 % anhydrous ethanol and 15 % gasoline. Low ethanol blends, from E5 to E25, are also known as gasohol, though internationally the most common use of the term gasohol refers to the E10 blend. Blends of E10 or less have been used in more than twenty countries around the world by 2011, led by the USA, where almost all retail gasoline sold in 2010 was blended with 10 % of bioethanol.

(44) The investigation showed that all types of bioethanol are considered to be biofuels under the current National Renewable Fuel Standard program (RFS1) established under the Energy Policy Act of 2005, which amended the Clean Air Act by establishing the first national renewable fuel standard. The U.S. Congress gave the US Environmental Protection Agency (EPA) the responsibility to coordinate with the US Department of Energy, the US Department of Agriculture, and stakeholders to design and implement this program.

(45) As a result of their energy policy the USA became the largest worldwide producer of bioethanol as from 2005 accounting for 57,5 % of global production. In 2009, the requirements under the EPA ensured that at least 11 billion US gallons of renewable fuels were produced, in particular to keep up with the targets established by the Energy Independence and Security Act of 2007. The large-scale production also allowed US producers to become exporter of bioethanol to other markets, including the Union.

(46) Based on official sources, market and publicly available information [2], all types of bioethanol and bioethanol in blends, namely mixtures of bioethanol with mineral gasoline as explained in recital 43 above, which are produced in the USA and sold either in the USA or exported are considered to be bioethanol fuels and are part of a legislative package concerning energy efficiency and renewable energy and alternative fuels in the USA.

(47) It has been found that all types of bioethanol and bioethanol in blends covered by this investigation, despite possible differences in terms of feedstock 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 minor variations in the product concerned do not alter its basic definition, its characteristics or the perception that various parties have of it.

(48) Some parties claimed that the definition of the product concerned was not clear, in particular because it did not allow for distinguishing the bioethanol for fuel applications from that destined for other applications. Hence, they claimed that the investigation should cover ethanol for all uses and ethanol from all sources, including synthetic ethanol that competes with bioethanol for industrial use.

(49) Another party claimed the opposite, namely that the investigation should only cover bioethanol for fuel applications and that bioethanol for industrial use should thus be excluded.

(50) In this context, it is noted that the product concerned should primarily be defined on the basis of its basic physical, technical and chemical characteristics and not its uses or applications. A product which has various applications may indeed have the same or similar basic characteristics notwithstanding its further use and in certain circumstances it may be necessary to deepen the analysis of the product definition and the product scope in the light of the specificity of the industry and the market.

[1] The investigation showed that to avail the alcohol mixture credit, as defined in Sec. 40(b)(3) of the IRC in the USA it sufficed to blend neat bioethanol with as little as 0,1 % of gasoline.

[2] For instance: (a) the information published by the American Coalition for Ethanol (ACE) on the web; (b) the Energy Policy Act (EPA) of 2005, in particular P.L. 109-58; (c) the Energy Independence and Security Act of 2007 (P.L. 110-140, H.R.6) which amended and increased the Renewable Fuels Standard (RFS) requiring 9 billion gallons of renewable fuels use in 2008 and 13,9 billion gallons in 2011; (d) fact sheets issued by the US Department of Energy under the Clean cities actions etc.

(51) In the present case, it was clear that the notice of initiation did not intend to cover synthetic ethanol in the product definition. Synthetic ethanol has different characteristics than bioethanol and does not correspond to the above criteria linked to the definition of the product concerned. There is no producer that focuses on the production of that product which took part in this investigation. Therefore, synthetic ethanol cannot be included in the definition of the product concerned and is outside the scope of the investigation. Contrary to the suggestion made by some parties, this clarification does not lead to a change in the scope of the investigation or the definition of the product concerned and did not have any impact on the quality of the data used.

(52) Bioethanol for fuel application and bioethanol destined to other applications may have similar characteristics. However, during the investigation dumping was examined at the level of USA operators which produced or blended bioethanol for fuel application, namely bioethanol to be included in a fuel mixture. Similarly, the investigation of Union producers focussed on bioethanol destined to fuel applications and not for other uses. Hence, bioethanol destined to applications other than fuel should not be covered by the scope of this investigation.

(53) The importers which will not use the imported USA bioethanol for fuel application have the possibility to make a declaration subject to the end use provisions as established by the Implementing provisions embedded in Articles 291 to 300 of the Union Customs Code ([1]).

2.2. **Like product**

(54) It was found that bioethanol manufactured by the Union industry and sold on the Union market have similar basic physical, chemical and technical characteristics when compared to bioethanol exported to the Union from the USA.

(55) As described in recital 39 above, bioethanol can be produced from various feedstocks. However, the investigation did not point to the fact that the feedstock used would lead into any differences in the characteristics of the end-product. It was found that the product concerned produced in the USA in particular from corn and exported to the Union is interchangeable with that produced in particular from wheat and sold in the Union by Union producers. In addition, there are no significant differences, if any, in the uses and the perception by operators and users in the market concerning bioethanol.

(56) It is therefore confirmed that bioethanol produced and sold in the Union and the product concerned exported from the USA should be considered to be alike within the meaning of Article 1(4) of the basic Regulation.

(57) Some of the sampled US producers claimed that the bioethanol produced and sold on the USA market is not like the product concerned, since it does not strictly correspond to the wording of the product description as laid out in the notice of initiation. Effectively, the types bioethanol sold on the USA market have a water content above the threshold of 0,3 % and corresponds to the USA standard (ASTM) rather than EN 15376.

(58) However, the investigation showed that bioethanol produced for sales on the US market largely shares the same basic physical, chemical and technical characteristics as the product concerned. Article 1(4) of the basic Regulation stipulates that a like product should not necessarily be alike in all respects to the product concerned, but it could be a product that although not alike in all respects, has characteristics closely resembling those of the product concerned. This is the case for the bioethanol sold in the US market and the bioethanol exported to the Union. There are precedents where products were considered to be like the product concerned in spite of certain differences ([2]).

(59) It was therefore decided to reverse the provisional finding and consider that the ASTM bioethanol sold in the US market is a like product to the product concerned within the meaning of Article 1(4) of the basic Regulation.

3. **DUMPING**

3.1. **Introduction**

(60) As explained in recitals 6 to 16 above, in order to investigate the possible existence of dumping, the investigation covered producers of bioethanol, on the one hand, and traders/blenders which were exporting the product concerned to the Union market, on the other hand.

(61) Pursuant to Article 9(5) of the basic Regulation, the regulation imposing the duty shall specify the duty for each supplier or if that is impracticable, the duty for the supplying country concerned.

(62) Certain producers claimed that it was possible to identify and trace their products when sold to US operators for export, in particular to the Union. They referred to the

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

([2]) For instance, the Council Regulation (EC) No 2961/95 on persulphates holding that the Chinese product was 'like' the EU one in spite of quality differences in purity and iron content (OJ L 308, 21.12.1995, p. 61, recital 10). See also the ruling of the General Court in T-2/95, Industrie des Poudres Sphériques, where the Court held that 'the institutions could lawfully reach the conclusion that Chinese and Russian calcium metal were 'like' EU calcium metal, in spite of differences in oxygen content which made the EU product unsuitable for a particular specific application, representing 11 % of EU consumption (T-2/95 paras. 202-221)'. This point was not challenged on appeal (C-458/98 P).

certification process foreseen by the RED but they could not in particular make the link between their sales in the US market and the exports made by other operators to the EU. As mentioned in recital 12 above and 63 below, these producers were also not aware of the level of the export price to the Union.

(63) In the present case it was found that the structure of the bioethanol industry and the way the product concerned was produced and sold in the US market and exported to the Union, made it impracticable to establish individual dumping margins for US producers. More specifically, the producers in the US sample did not export the product concerned to the Union and the investigated traders/blenders sourced bioethanol from various producers, blended it and sold it in particular for export to the Union, hence, contrary to allegations made by the above parties, it was not possible to trace all purchases individually and compare the normal values with the relevant export prices and it is not possible to identify the producer at the moment of the export to the Union. In other words, each shipment made to the EU contains bioethanol produced by various US producers in the US and not only by the US sample. Moreover, the investigation also showed that the price level at which the US sample charged their US customers in the USA was not in line with the actual price paid or payable for the product concerned when exported to the Union.

(64) Therefore, it is considered that a countrywide dumping margin should be established.

3.2. **Normal value**

(65) For the determination of normal value in accordance with Article 2(2) of the basic Regulation, the Commission first established whether the domestic sales of the product concerned by the two cooperating traders/blenders to independent customers were made in representative volumes, i.e. whether the total volume of such sales represented at least 5 % of the total export sales volume to the Union during the IP.

(66) Given that the sales of the like product in the domestic market were made in sufficient quantity, normal value was determined on the basis of the price paid or payable to the two aforementioned traders/blenders, in the ordinary course of trade, by independent customers in the USA.

3.3. **Export price**

(67) The cooperating traders/blenders provided data which allowed establishing an export price on the basis of their prices that are actually paid or payable in accordance with Article 2(8) of the basic Regulation. For those transactions for which the imports into the Union were made through a related trading company, the export price was constructed on the basis of the first resale price of the related trader to independent customers in the Union, pursuant to Article 2(9) of the basic Regulation.

(68) As regard the sales made via the related trader located in Switzerland, selling, general and administrative costs (SG&A) and profit were not deducted from the export price as they were considered not to be costs between importation and resale in the Union. The investigation showed that the principal activity of the related trader consisted of cash management for the 'sugar' business unit to which biofuels belong and the hedging of the risks inherent in the agricultural business by concluding derivative contracts on both over the counter and organised financial markets.

(69) Some US producers claimed that it is the institutions constant practice to take the exporter's sales price to the first independent customer as the export price to use for dumping calculations. In this case, this price would be the US producers' sales price to US unrelated traders/blenders. However, as mentioned in recitals 62 and 63 above, none of the US producers of bioethanol exported the product concerned to the Union and they were not aware of the level of the export price to the EU. Hence, their domestic price cannot be used as it is not an export price paid or payable for the product concerned in the Union. Their claim cannot therefore be accepted.

3.4. **Comparison**

(70) The comparison between the weighted average normal value and the weighted average export price per product type established for the cooperating traders/blenders was made on an ex-works basis, taking into account, in accordance with Article 2(10) of the basic Regulation, differences in factors which were demonstrated to affect prices and price comparability. One trader/blender claims that the data on domestic sales was not representative. As the trader/blenders failed to provide data on all domestic sales, the calculation is based on the ones provided in the questionnaire and during the on-spot visit.

(71) One trader/blender argues that the calculation of the domestic sales price should be based on spot market data from the NYMEX. The Commission considers that verified data from the two trader/blenders is more reliable.

(72) For this purpose, due allowance in the form of adjustments was made for differences in transport, insurance, handling, loading and ancillary costs where applicable and justified.

(73) The product concerned and the like product present the particularity that traders/blenders have received a subsidy mainly in the form of excise tax credits during the IP on their sales of bioethanol blends. The method used to establish normal value and export price is a method where the actual sales prices, domestic and export of the said traders/blenders are fully taken into account. Hence, a comparison of sales made by traders/blenders in the US market and export prices of traders/blenders to the EU, in order to calculate the level of dumping on the product concerned, eliminates any possible impact the subsidy may have had on prices, since the subsidy equally affected both domestic and export sales during the IP. One trader/blender claimed that it had not received a subsidy for its domestic sales. However, it fails to provide proof for this claim; the claim is also difficult to reconcile with information provided by the US authorities on the use of the subsidy.

3.5. **Dumping**

(74) As provided for in Article 2(11) of the basic Regulation, the weighted average normal value by product type was compared to the weighted average export price of the corresponding product type of the product concerned. Based on that comparison, the cooperating unrelated traders/blenders were found to have engaged in dumping practices.

(75) The weighted average dumping margin of 9,5 % was established based on the aggregated data of the cooperating traders/blenders, and represents the countrywide dumping margin for the USA.

(76) Some of the US producers included in the sample claimed that in the case of imposition of definitive anti-dumping measures, they expected to obtain their individual duty margin. In the light of the contents of recitals 6 to 16 and the reasoning in recitals 60 to 64 above, this claim cannot be accepted as the investigation confirmed that for these operators, in particular because they did not have any exports to the Union during the IP, it was not possible to trace their products when exported to the Union and they had generally no idea of the timing of the export and of the price paid or payable by Union importers, hence an export price and a dumping margin could not be reliably established for these producers.

(77) Certain producers requested more information on the dumping calculations established for the two cooperating traders/blenders. However, it should be considered on the one hand that the information requested contains business secret information and cannot therefore be disclosed to other parties than the party concerned. On the other, it is constant practice of the institutions to disclose the general method used to establish dumping to all parties for which no individual data was used in the calculations. This method was described in the general disclosure document sent to all parties.

4. **INJURY**

4.1. **Union production and Union industry**

(78) The Union production was established on the basis of a market report provided by the complainant during the investigation. The total Union production of the like product stated in this report was compared with the information provided by the 17 cooperating Union producers. A small difference of around 5 % was found between the two sets of data. This is explained by the fact that some relatively small non-cooperating Union producers did not submit production information. On this basis, the total Union production was estimated at 3,42 million tonnes during the IP. The Union producers accounting for the total Union production constitute the Union industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation and will therefore be referred to as the 'Union Industry'.

4.2. **Union consumption**

(79) Union consumption was established on the basis of the total Union production of the Union industry, adding the volume of imports from third countries established on the basis of the best available statistics, whereas the stock variation and exports of the Union industry as reported by the Union industry were deducted. Some parties claimed that the statistics used to establish consumption were not complete because significant imports of bioethanol from other third countries, especially in the IP, were not taken into consideration. They also considered that the volume of imports from the US was overestimated by the Commission and that figures for consumption and market share were therefore unreliable.

(80) These claims were analysed and cross-checked with the information available. Regarding the imports from other countries, the parties did not provide any evidence regarding the volumes of imports of the product concerned. Nevertheless, imports from other countries were taken into consideration in the estimation of the imports. For the volume of US imports, a clerical error was found in the estimation of US imports during the IP. Hence, the volume of imports has been reassessed and adjusted where necessary. However, this has no impact on the conclusions reached in the injury and causality assessments.

(81) Regarding the imports of the product concerned, it should be underlined that there is no specific customs Combined Nomenclature codes for the product concerned. Moreover, the Combined Nomenclature

codes where the product concerned can be declared to the customs authorities include other products in addition to the product concerned.

(82) For the imports of bioethanol blends, the verified questionnaire responses of the unrelated importers have shown that most of the imports were declared at customs under the TARIC code 3824 90 97 99. However, the volume of imports cannot be obtained directly from Eurostat because this TARIC code includes various chemical products in addition to the product concerned.

(83) Regarding the imports declared under the Combined Nomenclature codes 2207 10 00 and 2207 20 00, it was not possible to differentiate between the product concerned and other products not concerned by the investigation due to the absence of sufficient information regarding the product imported.

(84) Therefore, in the absence of complete imports details retrievable from Eurostat, it was decided to use also other sources of information for the purpose of establishing the imports of the product concerned in the Union market.

(85) In order to get the best estimate of the imports of the product concerned originating in the USA, it was considered that the most reliable basis were the statistics provided by the US International Trade Commission (ITC). The volumes of exports reported correspond to the US tariff codes 2207 10 60 and 2207 20 00.

(86) A reasonable approach was adopted to estimate these imports and all the quantities reported by the US International Trade Commission were taken into consideration for establishing the US imports into the Union market.

(87) The estimate concerning the imports in the Union originating from Brazil was based on the following sources of information: reports issued by the United Kingdom Renewable Fuels Agency for the imports in the United Kingdom; extractions of customs import detailed database provided by the Netherlands, Sweden and Finland and by Eurostat. For the Netherlands, Sweden and Finland, the volume of imports was estimated on the basis of the importer and exporter names and the product description when available. To estimate these imports, a conservative approach was adopted. All the quantities reported were taken into consideration for the calculation of the imports.

(88) Finally, Eurostat was also used to estimate the residual imports into the Union for the Member States other than those mentioned in recital 87 above. An adjustment to the import volumes was applied on the basis of the percentage of bioethanol used as fuel in the Union. The source of this adjustment can be found in the complaint. This percentage was obtained from the annual ethyl alcohol balance published by the European Commission ([1]). The percentage of bioethanol used for fuel in the Union was 54 % in 2008, 66 % in 2009, and 68 % in 2010. For the IP, the percentage of 2010 was used for the purpose of estimating the relevant imports made during the IP.

(89) For the estimation of the imports from other origins, the sources of information used were Eurostat and the extractions of customs import detailed database provided by the Netherlands, Sweden and Finland. The same methodology as that used to establish Brazilian imports was used.

(90) Regarding the calculation of the CIF average unit price for imports from the USA and from Brazil, the source of information is the extraction of customs import detailed database provided by the Netherlands, Sweden and Finland. And for the USA, also data from the verified unrelated importer questionnaire was used. For the USA, the CIF average prices for 2008 and 2009 were estimated on the basis of the average price reported by the US ITC for these years, expressed in relation with the CIF average price unit obtained for 2010.

(91) The stock variation was established on the basis of the Union industry information provided by the complainant.

(92) On this basis Union consumption was found to have developed as follows:

	2008	2009	2010	IP
Total Union production (tonnes) (A)	2 153 118	2 797 948	3 274 665	3 389 503
Total imports from third countries including the country concerned (tonnes) (B)	1 252 705	1 130 703	859 605	1 031 226
Total exports from Union industry to non-EU countries (tonnes) (C)	26 263	41 023	53 085	59 633

([1]) OJ C 225, 18.9.2009, p. 13, OJ C 176, 2.7.2010, p. 6, OJ C 236, 12.8.2011, p. 16.

	2008	2009	2010	IP
Stock variation [1] (tonnes) (C)	0	4 730	– 8 415	– 5 458
Union Consumption (tonnes)	3 379 559	3 882 897	4 089 600	4 366 554
Index: 2008 = 100	100	115	121	129

Source: (A) market report, (B) Eurostat, the US International Trade Commission, the UK Renewable Fuels Agency and customs import database provided by the Netherlands, Sweden and Finland; (C) complaint, questionnaire replies from the sampled Union producers, Union industry information provided in the complaint.

[1] It is assumed that there was no stock variation in 2008.

(93) During the period considered, the Union consumption increased significantly, by 29 %. This increase was stimulated by the implementation of the Renewable Energies Directive (RED) in the Member States which established growth targets for the consumption of renewable energies.

4.3. **Imports into the Union from the country concerned**

4.3.1. *Volume, market share and price of imports from the country concerned*

(94) In terms of volume, market share and price, imports into the Union from the USA developed as follows during the period considered:

	2008	2009	2010	IP
Volume of imports from the USA (tonnes) (A)	63 406	53 332	348 868	686 185
Index: 2008 = 100	100	84	550	1 082
Market share (%)	1,9	1,4	8,5	15,7
Index: 2008 = 100	100	73	454	837
Average price in EUR/tonne (B)	590,6	552,5	542,5	626,7
Index: 2008 = 100	100	94	92	106

Source: (A) export volume declared by the US International Trade Commission, (B) Customs import database provided by the Netherlands, Sweden Finland and a verified unrelated importers' questionnaire reply.

(95) Imports from the USA significantly increased, in terms of volume, from 63 406 tonnes to 686 185 tonnes during the period considered. Similarly, the market share held by the US exporters in the Union significantly increased from 1,9 % to 15,7 % over this period.

(96) Although the average US import prices increased by 6 % over the period considered, prices charged by US exporters were consistently lower than the average Union producers' prices as explained in recital 117 below. This systematic price undercutting practiced by the US exporters explains the significant increase in market share they achieved over the period considered.

4.3.2. *Price undercutting of imports from the country concerned*

(97) For the purpose of assessing any price undercutting during the IP, the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices per product type of the US exporters charged to the first independent customer on the Union market, established on a CIF basis. In order to allow a fair price comparison, the appropriate adjustments for the existing customs duties and post-importation costs were applied to the US price.

(98) The results of this comparison, when expressed as a percentage of the sampled Union producers' sales prices during the investigation period, showed consistent price undercutting of 5,6 % on average. This price undercutting indicates the price pressure which was exerted by the imports from the country concerned on the Union market, in particular during the IP.

4.4. **Economic situation of the Union industry**

4.4.1. *Preliminary remarks*

(99) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators for an assessment of the state of the Union industry over the period considered.

(100) The injury analysis with regard to macroeconomic data such as production, production capacity, capacity utilisation, sales volume, market share, growth, inventories, employment, productivity and magnitude of the dumping margin is based on the data of the Union industry as a whole from ePURE.

(101) The injury analysis with regards to microeconomic data such as prices, profitability, cash flow, investment, return on investment, ability to raise capital, wages and inventories have been established on the basis of data provided by the sampled Union producers through verified questionnaire replies.

(102) The bioethanol industry is still in a start-up phase in the Union. Companies have recently invested in new production facilities or have expanded existing capacities to meet the growing demand in the Union. The fact that new producers started production during the period considered led to positive developments for indicators such as production, production capacity, sales volume and employment.

(103) The investigation also showed that this type of industry needs a certain time, between two to three years from the moment of start-up, to reach normal levels of production.

4.4.2. *Production, production capacity and capacity utilisation*

	2008	2009	2010	IP
Production volume (tonnes)	2 153 118	2 797 948	3 274 665	3 389 503
Index: 2008 = 100	100	130	152	157
Production capacity (tonnes)	3 443 766	3 992 640	4 670 076	4 734 915
Index: 2008 = 100	100	116	136	137
Capacity utilisation (%)	63	70	70	72
Index: 2008 = 100	100	112	112	114

Source: based on data from the Union industry provided by the complainant.

(104) As a result of the RED, Union production grew significantly in the period considered, by around 57 %. From 2008 to 2010 the Union production increased by 36 % but subsequently, the growth rate slowed down significantly and was only 3,5 % in the IP compared to 2010.

(105) Production capacity increased by 37 % during the period considered and followed a similar pattern as production.

(106) Capacity utilisation increased by 14 % during the period considered and this increase was achieved in the beginning of the period considered. Given the start-up phase of certain Union producers in 2009, it was expected that capacity utilisation would have increased further as producers normally need between two to three years from the start-up to reach normal levels of production, as explained in recital 103 above. This has however not been the case.

(107) The investigation thus confirmed that several companies in the EU started operation in the beginning or during the period considered due to the expected publication of the RED. This led to positive developments in particular for the above injury factors especially in the period up to 2010. But the situation in the Union market changed in coincidence with the surge of US dumped imports in 2010 and the growth in activity expected during the IP did not materialise.

4.4.3. *Sales volume and market share*

	2008	2009	2010	IP
Sales volume (tonnes)	2 035 367	2 650 526	3 117 410	3 229 326
Index: 2008 = 100	100	130	152	159
Market share (%)	60,2	68,3	76,2	74,0
Index: 2008 = 100	100	113	126	122

Source: based on data from the Union industry provided by the complainant

(108) Sales volume of the Union industry increased by 59 % and 13,8 percentage points of market share were gained during the period considered. Sales volume grew steadily between 2008 and 2010 but between 2010 and the IP the sales volume grew less than consumption which increased by 6,8 % in that period.

(109) Similarly, the Union industry market share increased until 2010 but then decreased during the IP. In the period between 2010 and the IP, whilst the US imports almost doubled their market share, gaining 7,2 percentage points, the Union industry lost 2,2 percentage points.

4.4.4. *Growth*

(110) Union consumption increased significantly during the period considered, by 29,2 %. Although sales volume and market share also increased during this period, the Union industry did not fully benefit from this growth in consumption, in particular as from 2010. From 2010 up to the IP, growth in sales volume of the Union industry slowed down and market share decreased compared to the previous years.

(111) Some parties claimed that the growth pattern shown by certain indicators during the period considered do not reflect the situation of an injured industry. However, as explained above, the investigation showed that the slowdown of growth of the Union industry in 2010 and in the IP coincided with the surge of low-priced dumped imports from the USA.

4.4.5. *Employment and productivity*

	2008	2009	2010	IP
Number of employees	2 331	2 419	2 523	2 552
Index: 2008 = 100	100	104	108	109
Productivity (unit/employee)	924	1 157	1 298	1 328
Index: 2008 = 100	100	125	141	144

Source: based on data from the Union industry provided by the complainant

(112) Employment increased by 9 % in the period considered. More specifically, it grew by 8 % from 2008 to 2010 but increased only marginally by 1 % during the IP. This trend reflects the trend for capacity and production in the Union.

(113) The productivity of the Union industry workforce was measured as the output per person employed in one year. It increased significantly over the period considered by 44 %, reflecting the learning effect and increase in efficiency during and after the start-up phase.

4.4.6. *Magnitude of the actual dumping margin*

(114) Given the volume, market share and prices of the dumped imports from the country concerned, the impact on the Union industry of the dumping margins established during the IP cannot be considered to be negligible.

4.4.7. *Recovering from the effects of past dumping*

(115) This issue is not relevant in this case due to the absence of past dumping effects.

4.4.8. *Average unit prices of the Union industry*

	2008	2009	2010	IP
Unit prices (EUR)	702,59	634,88	657,41	768,59
Index: 2008 = 100	100	90	94	109

Source: questionnaire replies of sampled Union producers.

(116) Prices of the Union industry increased overall by 9 % during the period considered. They decreased in 2009 as compared to 2008 but then steadily increased until the end of the IP. However, the investigation showed that the price increases were not sufficient to allow the Union Industry to cover its costs. The gap between the sale prices and the costs further increased in particular during the IP. This situation coincides with the increased presence of low-priced US dumped imports in the Union market.

(117) The investigation showed that Union industry's prices remained higher (up to 23 %) than those of the dumped imports from the USA over the period considered.

4.4.9. *Profitability, cash flow, investments, return on investment and ability to raise capital*

	2008	2009	2010	IP
Net profit before tax (EUR)	– 33 305 225	1 343 823	– 33 932 738	– 82 070 168
Index: 2008 = – 100	– 100	4	– 102	– 246

	2008	2009	2010	IP
Profitability of Union sales (% of net sales)	– 11,65	0,33	– 5,72	– 9,74
Index: 2008 = – 100	– 100	3	– 49	– 84
Cash flow (EUR)	– 2 528 061	34 783 260	48 733 697	36 832 646
Index: 2008 = – 100	– 100	1 376	1 928	1 457
Cash flow in % of Union Sales to unrelated parties	– 0,9	8,7	8,2	4,4
Index: 2008 = – 100	– 100	980	930	494
Investments (EUR)	330 441 830	86 279 988	38 710 739	23 018 175
Index: 2008 = 100	100	26	12	7
Return on investment (%)	– 10	2	– 88	– 357
Index: 2008 = – 100	– 100	15	– 870	– 3 538

Source: Questionnaire replies of sampled Union producers

(118) Profitability of the Union industry was established both in absolute amounts (net profit before tax) and by expressing the pre-tax net profit or loss as a percentage of the turnover of the sales of the like product. The profitability of the Union industry has been negative during the period considered with the exception of 2009, when the companies in the sample managed to break even.

(119) Return on investments followed a similar pattern, staying well behind the necessary returns to allow the Union industry to survive.

(120) Cash flow was negative in 2008 and improved in 2009 and 2010. During the IP, however, cash flow started to decrease again, reflecting a worsening in the Union industry's ability to self-finance its activities.

(121) The evolution of profitability, cash flow and return on investment during the period considered limited the ability of the Union industry to invest in its activities and undermined its development as clearly demonstrated by the 93 % decrease in investments over this period.

4.4.10. *Wages*

	2008	2009	2010	IP
Wages (EUR)	45 066 253	57 253 228	68 711 959	76 030 008
Average labour costs per employee (EUR)	75 691	81 233	88 638	99 646
Index: 2008 = 100	100	107	117	132

Source: Questionnaire replies of sampled Union producers

(122) Wages increased by 32 % over the period considered, reflecting the productivity gains of the employees.

4.4.11. *Inventories*

	2008	2009	2010	IP
Closing stocks (tonnes)	34 585	24 022	38 649	31 408
Index: 2008 = 100	100	69	112	91
Stock in relation to production (%)	8,3	3,5	3,8	2,5

Source: Questionnaire replies of sampled Union producers

(123) Stock levels slightly decreased during the period considered.

4.5. **Conclusion on injury**

(124) The investigation has shown that the surge in low-priced dumped imports in the Union market occurred in 2010 and in particular during the IP. In that period, certain injury indicators pertaining to the economic situation of the Union industry improved, but the growth was not in line with the increase in consumption during the period considered and the improvements were thus not sufficient to allow the Union industry to develop its activities.

(125) As is normal in a new and growing activity, certain indicators, such as sales volume, production, and capacity utilisation showed a positive trend during the period considered. This is explained by the fact that new Union producers entered the market in that period. Nevertheless, the investigation showed that the situation in the Union market, as from 2010 when the surge of low-priced imports occurred, did not allow Union producers to reach a sufficient activity and price level in order to develop and to sustain the important investments made in the period considered.

(126) It was found that the low-priced imports constantly undercut the prices of the Union industry. The level of prices did not allow that industry to cover its costs and realise the cash flow and profits, which are necessary to develop the activities.

(127) Indeed, the injury indicators related to the financial performance of the Union industry, such as profitability, cash flow and return on investment deteriorated or remained far below the normal level. This seriously affected the Union industry's ability to raise capital and to further invest in its activities.

(128) In the light of the foregoing, it was considered that the Union industry suffered material injury during the IP within the meaning of Article 3(5) of the basic Regulation.

5. **CAUSATION**

5.1. **Introduction**

(129) In accordance with Article 3(5) and (6) of the basic anti-dumping Regulation, it was examined whether the dumped imports of the product concerned originating in the country concerned caused injury to the Union industry; Known factors other than the dumped imports, which could at the same time be injuring the Union industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

5.2. **Effect of the dumped imports**

(130) As mentioned above, Union consumption grew substantially during the period considered, by 29,2 %. However, the dumped imports from the country concerned significantly increased in volume, i.e. from 1,9 % share of the Union market at the beginning of the period considered to 15,7 % during the IP. This clearly exerted pressure on the Union industry, particularly from 2010 until the end of the IP, when these imports more than doubled. From 2010, and in particular during the IP, large volumes of low-priced imports from the USA were present on the Union market and were undercutting the prices of the Union industry. This situation did not allow the industry to develop as expected during the IP.

(131) Some parties have argued that the situation of the Union industry improved precisely from 2010 to the IP, coinciding with the doubling of imports from the USA. As explained above in recitals 102 and 107, the fact that many Union producers started to enter the market during the period considered led to positive trends in certain injury factors, such as production and sales volume. However, the Union industry lost market share in the IP compared to 2010 while at the same time the Union market experienced the highest increase of US dumped imports. The existence of price undercutting and price pressure led to the deterioration of the general financial situation, in particular the profitability, of the Union industry.

(132) The low-priced imports thus have played a significant role in the material injury suffered by the Union industry during the IP.

5.3. **Effect of other factors**

(133) The following known factors, other than the dumped imports, which might have injured the Union industry, were examined to ensure that any injury caused by those factors was not attributed to the dumped imports: the imports from other countries, the export performance of the Union industry, the impact of the economic crisis and other factors such as the raw material prices fluctuations, development of demand and alleged internal problems of companies in the Union industry.

5.3.1. *Imports from other countries (Brazil)*

(134) According to the information available, apart from Brazil, there was no other country exporting the product

concerned to the Union in significant quantities in the period considered. In terms of prices, Brazilian import prices have remained well below those of the Union producers'. However, imports from Brazil, clearly showed a decreasing trend in volume (– 81 %), and market share (– 25,8 %) during the period considered. In consequence, since the import volumes were reduced to such a low level during the IP, they cannot be considered to have broken the causal link between the low-priced imports from the USA and the injury of the Union industry during the IP.

	2008	2009	2010	IP
Volume of imports originating from Brazil (tonnes)	1 022 980	884 020	396 249	195 342
Index: 2008 = 100	100	86	39	19
Market share of imports from Brazil (%)	30,3	22,8	9,7	4,5
CIF average unit price (EUR/tonne of imports)	560,8	496,2	580,8	622,4
Index: 2008 = 100	100	88	104	111

Source: Eurostat, the UK Renewable Fuels Agency, customs import database provided by the Netherlands, Sweden and Finland and the complaint.

(135) Parties claimed that imports from Brazil remained above the *de minimis* level throughout the period considered, and that they were made at dumped prices on the Union market. They further argued that imports from the USA, only replaced the market share left by the Brazilian imports. The imports from the USA can therefore allegedly not be considered to be the cause of the material injury of the Union industry.

(136) As explained above, Brazilian imports decreased significantly in the period considered. Their market share decreased from 30,3 % to 4,5 % at a time when consumption significantly increased. Given the price level practiced by Brazilian exporters in the Union market, it cannot be excluded that the presence of Brazilian bioethanol contributed to some extent to the injury of the Union industry. However, it is considered that these imports were reduced to such a level during the IP that they cannot be regarded as a major cause of that injury. Indeed, in period between 2010 and the IP, whilst imports from Brazil decrease by about 200 000 tonnes, the dumped imports from the USA increased by over 330 000 tonnes. It is thus considered that the presence of the Brazilian bioethanol in the Union market, in particular during the IP, cannot be such as to break the causal link established between the dumped imports from the USA and the injurious situation of the Union industry in that period.

5.3.2. *Export performance of the Union industry*

	2008	2009	2010	IP
Sales volume for export (tonnes)	26 263	41 023	53 085	59 633

Source: Complaint and questionnaire replies of sampled Union producers

(137) The investigation showed that small volumes of bioethanol were exported by the Union industry during the IP at prices largely above those practiced on the Union market. This has led to the conclusion that the export performance is not a factor that broke the causal link between the injury suffered by the Union industry and the dumped imports from the country concerned.

5.3.3. *The impact of the economic crisis*

(138) The economic crisis was not found to have had a negative impact on the Union industry. Consumption of bioethanol in the Union experienced its biggest increase in 2009, the year generally considered to be the worst year of the economic crisis. In the same period, production and sales by Union producers also increased.

(139) Based on the above, it is considered that the economic crisis did not break the causal link between the low-priced imports from the country concerned and the material injury suffered by the Union industry.

5.3.4. *Other factors*

(140) Parties have also mentioned other factors that could have broken the causal link such as the fluctuation of the raw material prices, the development of demand which was lower than expected, a regulatory framework in the Union that allegedly plays against Union producers and certain alleged internal problems of Union producers.

(141) Regarding the fluctuations in the raw material prices, both prices of corn and wheat were found to be volatile during the period considered. The investigation showed that most producers however hedge this risk through a specific price setting mechanism with their suppliers or through the financial markets. Hence even if prices of feedstock did differ in particular from 2008 until 2010, when the price for corn was lower than

the price of wheat, feedstock prices in the second half of the IP were more or less the same. This indicates that any price difference is reduced to a minimum and is not of a lasting nature.

(142) Some parties have claimed that the implementation of the RED in Member States has been too slow and that consumption lagged behind the targets established by the mentioned Directive. But, even if initial targets were not fully met within the period considered the fact that consumption has grown significantly, namely by 29,2 %, in that period is a positive factor that cannot be ignored in the analysis. In any event, the alleged slow implementation of the RED cannot justify the presence of high volumes of low-priced dumped imports in the Union market undercutting the prices of the Union industry and causing injury to that industry. Hence, the claim is rejected.

(143) Parties have also argued that the Union industry alone could not meet Union demand as a result of regulatory uncertainty and that the system of certification is very slow and thus undermine the benefits for the certified Union producers. Some parties have finally argued that the fact that many Union producers suffered internal problems during the period considered explains any injury they suffered. These claims were however not substantiated and the investigation did not confirm that these claims were founded. Nevertheless, it should be pointed out that the investigation showed that any alleged low level of the Union production was mainly justified by a low level of sales prices in the Union market which was largely affected by the surge of low-priced US dumped imports undercutting the Union producers' prices, in particular during the IP. It appeared that EU producers had no other choice than stopping production as prices did not even allow them to cover the cost of the raw material in particular during the IP. Hence, the above unsubstantiated claims are not such as to break the causal link between the dumped imports and the injurious situation of the Union industry during the IP.

(144) It is thus concluded that all the above factors could not break the causal link between the injury suffered by the Union industry and the dumped imports from the USA.

(145) Parties finally mention the fact that during the IP, a considerable number of imports were declared under CN heading 3824, attracting a low customs duty. After the end of the IP, the level of the respective customs duty was raised. They consider that the injury was caused by the low customs duty, and not by dumping. In this regard, it suffices to say that customs duties may change at any time, and that this argument therefore cannot put into question the presence of injury during the investigation period.

5.4. **Conclusion on causation**

(146) The above analysis demonstrated that there was a substantial increase in the volume and market share of the low-priced imports originating in the country concerned over the period considered. In addition, it was found that the prices of these imports were below the prices charged by the Union industry on the Union market.

(147) This increase in volume and market share of the low-priced imports from the country concerned coincided with an overall and continuous increase of consumption in the Union and also with negative results of the Union industry during the period considered. The exporters from the country concerned managed to increase their market share by systematically undercutting Union industry's prices. At the same time, the Union industry was not able to reach sustained positive levels of profitability despite its increase in activity.

(148) The examination of the other known factors which could have caused injury to the Union industry revealed that these factors do not appear to be such as to break the causal link established between the dumped imports from the country concerned and the injury suffered by the Union industry.

(149) Based on the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports, it was concluded that the dumped imports from the USA have caused material injury to the Union industry within the meaning of Article 3(5) of the basic Regulation.

6. **UNION INTEREST**

6.1. **Preliminary remark**

(150) In accordance with Article 21 of the basic Regulation, it was examined whether, despite the conclusion on injury caused by the dumped imports from the country concerned, compelling reasons existed for concluding that it was not in the Union interest to adopt anti-dumping measures in this particular case. The analysis of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users of the product concerned.

6.2. **Interest of the Union industry**

(151) The investigation has shown that the Union industry suffered material injury caused by the dumped imports from the USA. In the absence of measures to correct the trade distorting effects of these imports, a further deterioration in the Union industry's economic situation appears to be very likely.

(152) It is expected that the imposition of anti-dumping duties will restore effective trade conditions on the Union market, allowing the Union industry's prices to reflect its cost of production. It can be expected that the imposition of measures would also enable the Union industry to increase sales volume and thus gain the market share lost due to the presence of dumped imports. This in turn will have a further positive impact on its financial situation and profitability.

(153) It was therefore concluded that the imposition of anti-dumping measures on imports of the product concerned originating in the USA would not be against the interest of the Union industry.

6.3. **Interest of importers**

(154) Two companies sent responses to the questionnaire intended for unrelated importers in the Union. Verification visits took place at the premises of these cooperating importers. For both companies visited, the bioethanol business constitutes only a small part of their total turnover (less than 5 %). In addition, they both indicated that they would be able to pass on any price increase to their customers, the users.

(155) Based on the information available, it was concluded that the imposition of measures would not have a significant negative impact on the importers.

6.4. **Interest of users**

(156) Four companies sent responses to the questionnaire intended for users in the Union. Verification visits took place at the premises of one of them.

(157) For the company visited, the bioethanol business represents a small part of its turnover, less than 5 %. The company has made an impact assessment considering a blend of E5 and calculated that a duty of 100 EUR/m^3 would result in a price increase of 0,005 EUR/litre at the pump.

(158) As concerns the other three users, on the basis of data contained in their questionnaire replies, it is clear that the impact would be limited as well. For one company, the volumes purchased from the country concerned are quite limited and the imposition of an antidumping duty would only lead to a minimal impact on its profitability.

(159) The other two cooperating users are related and have declared that any imposition of antidumping duties can be passed on to their customers. They also made clear that they have sufficient choice in the sources of supply and that they do not depend on US imports.

(160) Parties have claimed that there is not sufficient capacity in the Union to meet total demand and that the Union will need imports to secure its bioethanol needs. The verified capacity figures show that there was idle capacity in the Union given in particular the low level of sale prices. In consequence, the Union producers would be able to increase their production to fulfil the growing demand particularly when trade distortions are removed from the market. Furthermore, it is expected that new plants will be constructed and will come into operation in the near future, reducing any alleged risk of shortage in the Union.

(161) In view of the above, it was concluded that the effect of anti-dumping measures against imports of the bioethanol from the USA would not have a significant negative impact on the users in the Union.

6.5. **Conclusion on Union interest**

(162) In view of the above, it was concluded that overall, based on the information available concerning the Union interest, there are no compelling reasons against the imposition of anti-dumping measures on imports of bioethanol originating in the USA.

7. **DEFINITIVE ANTI-DUMPING MEASURES**

7.1. **Injury elimination level**

(163) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.

(164) For the purpose of determining the level of these measures, account was taken of the dumping margins and the amount of duty necessary to eliminate the injury sustained by the Union industry, without exceeding the dumping margins found.

(165) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on sales of the like product in the Union.

(166) In this case, given the observations made in particular in recitals 102 and 103 above, it is considered that the target profit for the Union industry, should be based on

the profit achieved when the imports from the USA were negligible, i.e. the average pre-tax profit margin of one of the sampled Union producers in 2008 and 2009, a producer which was not in a start-up phase at that time. It is thus considered that a margin of 6,8 % of turnover is reasonable and could be regarded as an appropriate minimum which the Union industry could have expected to obtain under normal trade conditions in the absence of injurious dumping during the IP.

(167) On this basis, a non-injurious price was calculated for the Union industry for the like product. The non-injurious price was obtained by adjusting the sales prices of the sampled Union producers by the actual profit/loss made during the IP and by adding the above mentioned profit margin.

(168) The necessary price increase was then determined on the basis of a comparison of the weighted average import price of the cooperating exporting producers in the USA, as established for the price undercutting calculations, with the non-injurious price of the products sold by the Union industry on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the average total CIF import value.

7.2. **Form and level of the duties**

(169) 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 on 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. Accordingly, all duty rates should be set at the level of the dumping margins found.

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

	Dumping margin	Injury margin	Definitive duty
Country-wide dumping margin (%)	9,5	31,1	9,5

(171) In view of the fact that the anti-dumping duty will also apply to blends containing by volume more than 10 % (v/v) of bioethanol, in proportion to their bioethanol content, it is considered appropriate for the effective implementation of the measure by the customs authorities of the Member States to determine the duty as a fixed amount on the basis of the pure bioethanol content.

(172) The anti-dumping duty rate specified in this Regulation was established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation. This country-wide duty applicable to all companies is applicable to imports of the product concerned originating in the USA.

(173) While it was initially envisaged limiting the duration of measures to 3 years due to the perceived dynamic market developments regarding the product concerned this issue was reassessed following the comments received from interested parties. The complainants in particular claimed that it would be too early to assume at this stage a major change in the market patterns as the shift to new generation bioethanol may very likely take a considerable amount of time and should not be taken into account in the current proposal. Likewise, it would also be premature to assume what the outcome and the impact of some of the regulatory proposals currently discussed would be for all the operators in the market. After examining these arguments it was considered that it was not appropriate to depart from the normal period of validity of measures as provided in Article 11(2) of the basic Regulation. This is without prejudice to the possibility for any interested party to ask for a review should the circumstances so warrant pursuant to Article 11(3).

8. **REGISTRATION**

(174) The Commission has received requests from the complainant for registration of imports of bioethanol originating in the USA. According to Article 14(6) of the basic Regulation, the Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the Union industry which contains sufficient evidence to justify such action. The complainant argued that, since registration was imposed in the parallel anti-subsidy proceeding on imports of bioethanol originating in the USA [1], such conditions were automatically met.

(175) However, it should be underlined that the registration in the parallel anti-subsidy proceeding has been made in a completely different set of circumstances. As indicated in recital 10 to the Regulation (EU) No 771/2012, despite positive findings of countervailing subsidisation and material injury caused thereby to the Union industry during the investigation period, the Commission decided not to adopt provisional countervailing duties because it was provisionally found that the main subsidy scheme in force during the investigation period had ceased, in the sense that it no longer conferred a benefit at the time provisional measures would have been imposed. However, there was evidence that the USA might reinstate the main subsidy scheme found to be countervailable in the coming months with retroactive effects. In that event, the Commission considered that

[1] Commission Regulation (EU) No 771/2012 (OJ L 229, 24.8.2012, p. 20).

it would have been entitled to adopt (and eventually collect) provisional countervailing duties in the present investigation. Thus, in order to preserve the European Union's rights under these special circumstances, the Commission decided to direct the Custom authorities to register imports. This specific set of circumstances does not apply in the current AD proceeding,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of bioethanol, referred to as 'fuel ethanol', i.e. ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union), denatured or undenatured, excluding products with a water content of more than 0,3 % (m/m) measured according to the standard EN 15376, but including ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union) contained in blends with gasoline with an ethyl alcohol content of more than 10 % (v/v) intended for fuel uses currently falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 12 21, ex 2710 12 25, ex 2710 12 31, ex 2710 12 41, ex 2710 12 45, ex 2710 12 49, ex 2710 12 51, ex 2710 12 59, ex 2710 12 70, ex 2710 12 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 90 97 (TARIC codes 2207 10 00 12, 2207 20 00 12, 2208 90 99 12, 2710 12 21 11, 2710 12 25 92, 2710 12 31 11, 2710 12 41 11, 2710 12 45 11, 2710 12 49 11, 2710 12 51 11, 2710 12 59 11, 2710 12 70 11, 2710 12 90 11, 3814 00 10 11, 3814 00 90 71, 3820 00 00 11 and 3824 90 97 67) and originating in the United States of America.

2. The rate of the definitive anti-dumping duty applicable to the product described in paragraph 1 shall be EUR 62,3 per tonne net. The anti-dumping duty shall be applicable in proportion, by weight, of the total content of pure ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union) (bioethanol content).

3. Products described in paragraph 1 shall be exempted from the definitive anti-dumping duty if they are for other uses than as use for fuel. Exemption shall be subject to the conditions laid down in the relevant provisions of the European Union with a view to customs control of the use of such goods (see Articles 291 to 300 of Commission Regulation (EEC) No 2454/93).

4. 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 Regulation (EEC) No 2454/93 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.

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

Article 2

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

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

Done at Brussels, 18 February 2013.

For the Council
The President
S. SHERLOCK