

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 457/2011

of 10 May 2011

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of melamine originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

A. PROCEDURE

1. Provisional measures

- (1) By Regulation (EU) No 1035/2010 ⁽²⁾ (the provisional Regulation) the Commission imposed a provisional anti-dumping duty on imports of melamine originating in the People's Republic of China (PRC). The provisional anti-dumping duties ranged from 44,9 % to 65,2 %.
- (2) The proceedings were initiated as a result of a complaint lodged on 4 January 2010 by EU producers Borealis Agrolinz Melamine GmbH, DSM Melamine BV and Zakłady Azotowe Puławy (the complainant), representing a major proportion, in this case more than 50 %, of the total Union production of melamine.
- (3) The investigation of dumping and injury covered the period from 1 January 2009 to 31 December 2009 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the IP (period considered).

2. Subsequent procedure

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to

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

- (5) The Commission sought and verified all information it deemed necessary for its definitive findings. To this end a verification visit was carried out at the premises of the following user company in order to assess the possible impact of the imposition of definitive anti-dumping measures:

— Coveright Surfaces Spain, Martorelles (Barcelona), Spain.

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

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

3. Parties concerned by the proceeding

- (8) In the absence of any comments with regard to the parties concerned by the proceeding, recitals 4 to 10 of the provisional Regulation are hereby confirmed.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (9) It is recalled that in recital 12 of the provisional Regulation the product concerned is defined as melamine, currently falling within CN code 2933 61 00 and originating in the PRC.
- (10) Melamine is a white crystalline powder obtained from urea. It is used mainly in laminates, moulding powders, wood-based panels and coating resins.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 298, 16.11.2010, p. 10.

2. Like product

- (11) One exporting producer reiterated the claim made in recital 65 of the provisional Regulation that the melamine produced and exported from the PRC was in general of a slightly lower quality compared to the melamine produced by the Union industry and could not be used for certain surface applications. The argument of difference in quality was also brought forward by several users located in the Union.
- (12) The investigation has shown that although melamine may vary slightly in colour, it is not sold on the basis of different quality standards, either on the domestic market or on export markets. No evidence was provided which would point to the fact that possible slight variations in melamine would lead to different basic physical and chemical characteristics and end uses. The issue was not raised by the other exporting producers. Moreover, the investigation has also shown that the exporting producer in question was using a similar production process as the Union industry.
- (13) Based on the above, the claim is rejected and it is hereby confirmed that melamine produced and sold by the Union industry in the Union, melamine produced and sold on the domestic market of the PRC and melamine imported into the Union from the PRC, as well as that produced and sold in Indonesia, which served as the analogue country, are considered to be alike within the meaning of Article 1(4) of the basic Regulation.
- (14) In the absence of any other comments regarding the like product, recitals 12 to 15 of the provisional Regulation are hereby confirmed.

C. DUMPING

1. Market economy treatment

- (15) Market economy treatment (MET) was initially refused to all exporting producers that requested it on the grounds that the costs of the major inputs did not substantially reflect market values as required under Article 2(7)(c) of the basic Regulation. As set out in recitals 20 to 24 of the provisional Regulation, the MET investigation determined that this was due to State interference in both the natural gas market and the urea market in the PRC. In addition to this general situation, there were also company-specific reasons for refusing MET as set out in recitals 25 to 28 of the provisional Regulation.
- (16) One exporting producer argued that the urea price in the PRC was in line with the prices in other parts of the world, such as Indonesia and the Middle East, therefore

the conclusion that the costs of major inputs were distorted was not correct.

- (17) However, the initial conclusion that the urea market in the PRC was subject to significant State interference, as set out in recitals 23 and 24 of the provisional Regulation, was not questioned. This element is already sufficient to conclude that criterion 1 of point (c) of Article 2(7) of the basic Regulation is not fulfilled. This conclusion is not affected by the fact that at a certain point in time urea prices in the PRC and in some other parts of the world prices might have been roughly at the same level.
- (18) One exporting group disagreed with the refusal of MET and individual treatment (IT) based on the fact that the Commission did not receive full MET claim forms for all related companies. In its comments on the disclosure, this group offered full cooperation but did not question the fact that one of its related companies did not provide a MET claim form at the same time as the rest of the group. Therefore this claim is rejected.
- (19) In the absence of any other comments concerning MET, recitals 16 to 32 are hereby confirmed.

2. Individual treatment

- (20) It was provisionally established that three of the five exporting producer companies or groups in the PRC met all the requirements for IT.
- (21) The Union industry questioned the decision to grant IT to three groups of companies by arguing that one exporting producer was owned by the Chinese State and another exporting producer had various links at management level to companies that were ultimately controlled by the State. In addition, the extent of State interference was such that it would allow circumvention of the measures with respect to all three exporting producers.
- (22) The investigation has shown that none of the exporting producers initially granted IT were State-owned. In addition, the claim that the management of one exporting producer had links to State-controlled companies was not substantiated. With regard to the possible risk of circumvention, it should be noted that the investigation showed that export prices, quantities, conditions and terms of sale were freely negotiated and determined and that the exporting producers were neither State-owned nor otherwise subject to dominant State influence at management level. Hence it may be concluded that State interference is not such as to permit circumvention of measures.

- (23) In view of the above, the claims of the Union industry are rejected. The initial conclusion that three of the five exporting producers meet all requirements for IT is therefore confirmed.

3. Normal value

(a) Choice of the analogue country

- (24) Indonesia was chosen as the analogue country. The data submitted in the cooperating Indonesian producer's reply were verified *in situ* and found to be reliable and a suitable basis for the normal value.
- (25) One exporting producer questioned the choice of Indonesia as analogue country on the grounds that interested parties had not had the opportunity to comment on this choice. However, since May 2010 the file open for inspection had contained a note explaining why Indonesia had been chosen as analogue country. Thus, as parties had had ample opportunity to comment on this choice, their procedural rights had been respected in full. No further comments were received on the choice of the analogue country.
- (26) It is therefore confirmed that Indonesia is an appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.

(b) Determination of normal value

- (27) It is recalled that normal value was constructed using the cost of manufacturing of the Indonesian producer plus a reasonable amount for SG & A and for profit on the domestic market.
- (28) One exporting producer questioned the level of the constructed normal value, in particular the SG & A and profit that were based on those of the Union industry. However, this method is in line with point (c) of Article 2(6) and considered appropriate. No other data were available that could be used as a basis for SG & A and profit as there were no other exporters or producers subject to investigation in the analogue country and the producer subject to the investigation did not sell any other category of products in the IP.
- (29) Therefore this claim is rejected. Recitals 35 to 45 with regard to the determination of the normal value are hereby confirmed.

(c) Export prices for the exporting producers granted IT

- (30) In the absence of any comments with regard to the determination of the export price, recital 46 of the provisional Regulation is hereby confirmed.

(d) Comparison

- (31) One exporting producer questioned the comparison of the normal value and the export price with regard to the issue of VAT. However, as normal value and export price were compared at the same level of indirect taxation, i.e. VAT included, in line with point (c) of Article 2(10), no change to this method is needed. Therefore recitals 47 and 48 of the provisional Regulation are hereby confirmed.

4. Dumping margins

(a) For the cooperating exporting producers granted IT

- (32) In the absence of any comments with regard to the dumping margins, recital 49 of the provisional Regulation is hereby confirmed.
- (33) On that basis the definitive dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Sichuan Jade Elephant Melamine S&T Co. Ltd	44,9 %
Shandong Liaherd Chemical Industry Co. Ltd	47,6 %
Henan Junhua Development Company Ltd	49,0 %

(b) For all other exporting producers

- (34) In the absence of any comments with regard to the dumping margins recitals 51 to 52 of the provisional Regulation are hereby confirmed.

On this basis the country-wide level of dumping is definitely established at 65,6 % of the CIF Union frontier price, duty unpaid, and recital 53 of the provisional Regulation is hereby confirmed.

D. INJURY

1. Injury

1.1. Union production and Union industry

- (35) In the absence of any comments concerning the Union production and the Union industry, recitals 54 to 56 of the provisional Regulation are hereby confirmed.

1.2. Union consumption

- (36) Some parties claimed that Eurostat figures concerning imports of melamine from the PRC were not reliable in terms of quantity. A verification of Eurostat data

led to minor changes in the import figures and consequently in the Union consumption as shown in the tables below. These changes are not such as to affect the analysis of the Union consumption in recitals 57 to 59 of the provisional Regulation which can thus be confirmed.

Table 1

	2006	2007	2008	IP
Volume (tonnes)	368 873	392 691	326 409	267 226
Indexed	100	106	88	72

Source: Updated Eurostat data and questionnaire replies.

1.3. Imports into the European Union from the country concerned

1.3.1. Volume, price and market share of imports from the PRC

Table 2

Imports from the PRC	2006	2007	2008	IP
Volume (tonnes)	26 962	46 874	37 366	18 482
Indexed	100	174	139	69

Source: Updated Eurostat data.

(37) The above changes in the import volumes of the countries concerned are not as such as to affect the findings in recitals 61 and 62 of the provisional Regulation which can thus be confirmed.

(38) Several users claimed that they did not import melamine from the PRC in 2009 and 2010 because the Chinese prices were too high compared to the prices prevailing in the EU. They were therefore questioning the undercutting by Chinese exporters found during the IP.

(39) As mentioned in recitals 63 and 64 of the provisional Regulation, cooperation from Chinese exporters was low. Hence, the information verified on the spot with the cooperating Chinese companies was used to establish undercutting. As mentioned in recitals 66 and 67 of the provisional Regulation the imports of the cooperating exporting producers were undercutting the Union industry prices during the IP by 10,3 %. Given that no new evidence is provided compared to that available at the time of the imposition of the provisional measures, this claim is rejected.

1.3.2. Price undercutting

(40) Some users claimed that an allowance should be made for extra work involved with the handling of imported

melamine from the PRC. They alleged that the purchase price of Chinese melamine did not include this type of cost.

(41) The examination of this claim showed that there was no reliable basis to establish under what conditions melamine from the PRC was imported and the possible amount of costs which may have been incurred in addition to the purchase price. In addition, no evidence was provided de by the above parties, hence, the claim is rejected.

(42) As was the case at the time of imposition of provisional measures, some parties claimed that the undercutting calculation should be based on Eurostat data instead of the data verified from only 30 % of cooperating Chinese companies.

(43) As mentioned in recital 66 of the provisional Regulation, the data of cooperating exporters was used for the undercutting calculation. This data has been verified and is therefore considered to be more reliable than data retrieved from Eurostat. This claim is therefore rejected.

(44) In the absence of any other comments concerning price undercutting, the methodology described in recitals 66 and 67 of the provisional Regulation to establish price undercutting is hereby confirmed.

1.4. Economic situation of the Union industry

(45) In the absence of any comments regarding the economic situation of the Union industry, recitals 68 to 82 of the provisional Regulation are hereby confirmed.

1.5. Conclusion on injury

(46) In the absence of any comments regarding the conclusion on injury, recitals 83 to 86 of the provisional Regulation are hereby confirmed.

2. Causality

2.1. Preliminary remark

(47) As mentioned in recital 87 of the provisional Regulation it was examined whether the dumped imports of the product concerned originating in the PRC caused injury to the Union industry to a degree that can be considered as material. In addition, 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.

2.2. Effect of the dumped imports

(48) Based on the revised import data shown in table 2 above, the comments made in recitals 88 to 95 of the provisional Regulation remain valid. Overall, imports from

the PRC decreased significantly by 31 % during the period considered following the decrease in Union consumption (-28 %). With regard to prices, the export price verified at the premises of the cooperating Chinese producers was lower than the average import price reported in Eurostat. The verified cooperating Chinese exporters, representing about 30 % of total imports from the PRC, were found to be undercutting the Union industry price during the IP by 10,3 %.

- (49) The investigation revealed that in certain months of the IP the Chinese exporters were selling their surplus of melamine on the Union market when prices were attractive for them, and withdrawing when prices started to fall. This policy of targeted pricing continued to have negative effects on the Union market during the whole IP given that prices may be fixed for a period of three to six months. Thus it is confirmed that the presence of low-priced dumped imports on the Union market played a role in further exacerbating the negative trend in sales prices on the market in the medium term after they withdrew. The low level of sales prices contributed to the dramatic level of losses incurred by the Union industry and was identified as a major factor in the material injury found.
- (50) On this basis, the causal link between the dumped imports and the injury suffered by the Union industry can be confirmed.

2.3. *Effect of other factors*

- (51) On this point, interested parties basically reiterated most of the comments made at the provisional stage. As far as the effect of dumped imports are concerned, some parties claimed again that Eurostat figures should prevail over the data verified at the premises of the cooperating exporting producers. Such a claim would render the on-spot investigations meaningless and could therefore not be accepted. No evidence was provided to show that the data used in this investigation were unreliable. This claim is therefore rejected.
- (52) Some parties claimed that the injury suffered by the Union industry is not caused by the imports from the PRC, but by the global economic crisis. However, there was no evidence submitted by these parties showing that the data used in this investigation was unreliable. In addition, the dumped imports have intensified the effect of the economic crisis and consequently further exacerbated the situation of the Union industry. This claim is therefore rejected.
- (53) The comments received and the evidence provided regarding other factors were not such as to change the conclusion made in recitals 108 to 110 of the provisional Regulation that none of these factors could break the link between the dumped imports and the injury suffered by the Union industry. The provisional

conclusion that dumped imports caused material injury to the Union industry is therefore confirmed.

3. *Union interest*

3.1. *Interest of the Union industry*

- (54) It is recalled that the Union industry is composed of three producers located in different Member States, employing directly over 600 people in activities related to melamine.
- (55) Some users claimed that the employment figures of the complainants were overstated. No evidence was provided to show that the verified data used in this investigation was unreliable and therefore the claim is rejected.
- (56) One user claimed that the Union industry closed production sites due to technical problems, and not as a result of allegedly dumped imports.
- (57) Some plants of the Union industry indeed incurred some technical difficulties, but this was mainly after the IP. Following the imposition of provisional measures, the Union industry has submitted evidence that factories that had been idle due to the dumped imports have recently been reopened. This shows that measures have already had a positive impact on the Union industry.
- (58) It is expected that the imposition of definitive anti-dumping duties against imports originating in the PRC would have a further positive impact on the economic situation of the Union industry and would enable it to regain at least part of its lost profitability.
- (59) In the absence of any other comments with regard to the interest of the Union industry, recitals 112 to 115 of the provisional Regulation are hereby confirmed.

3.2. *Interest of importers*

- (60) In the absence of comments on the interest of importers, it was concluded that the imposition of definitive measures on imports of melamine originating in the PRC would not be against the interests of importers.

3.3. *Interest of users*

- (61) At the provisional stage cooperation by the users was relatively low. Of the 44 questionnaires sent, only seven replies which could be considered meaningful were received. Imports by the cooperating users represented around 10 % of Union consumption. It was concluded at that stage that the impact of the proposed measures would be relatively limited.

- (62) After provisional measures were imposed a verification visit was made to the premises of the main cooperating user in the Union. The investigation showed that the share of melamine in its cost of production is between 8 % and 15 %, depending on the activity. The possible impact of measures may therefore be relatively significant depending on the share of melamine in the costs and the level of profitability, which was relatively low.
- (63) In submissions received from a number of users it was alleged that after the imposition of provisional measures, a shortage of melamine in the Union market occurred and that this led to significant and continuous price increases. Whilst the sales price of melamine was around EUR 900 per tonne during the IP, post IP prices vary between EUR 1 200 and EUR 1 500 per tonne.
- (64) The verification visit carried out at the premises of the cooperating user confirmed that the provisional measures have had an impact on its activities, combined with the price increase which the Union industry has applied to its melamine. Indeed, the Union industry holds a market share of around 85 % in the Union market and thus basically all users are sourcing large part of their melamine from Union producers.
- (65) The information gathered during the investigation also suggests that prices are still expected to increase in the period following the IP. Hence, it would appear to be justified, in the Union interest, to change the form of the provisional measures to limit any further price increase of melamine which would seriously affect the overall users' business.
- (66) Some users claim that in 2010 a melamine shortage developed on the market and that EU producers were not able to meet demand on the Union market and that the imposition of provisional measures increased this shortage.
- (67) Analysis of the available data showed that the melamine market was indeed short for a certain period, but that this was not caused by the provisional duties, but was due to the worldwide evolution of the market.
- (68) Some users claim that the EU producers failed to supply the required quantities of melamine to maintain their production.
- (69) Analysis of the available data showed that the shortage only appeared on the 'spot-market', but that contractual agreed quantities were supplied.
- (70) Moreover, additional production capacity has been put online by the EU producers and by producers in third countries, ensuring a stable supply of melamine to Union users.
- (71) One user claimed that it stopped building a new production plant because it realised that they would no longer be competitive on their main export markets with the level of the provisional measures imposed.
- (72) Some users claimed that if provisional measures are confirmed, the downstream products in the Union will no longer be competitive compared to imports of the same downstream products from the PRC. Hence, these users will either close down or move their production facilities outside the Union.
- (73) One association of users claimed that only the sector of wood-based panel producers generates thousands of jobs so a much higher number compared to the EU melamine producers. Hence the imposition of definitive measures were therefore not in the interest of the Union.
- (74) The parties above did not provide convincing evidence to support their claims, recitals 116 to 121 of the provisional Regulation are therefore hereby confirmed.
- 3.4. Conclusion on Union interest**
- (75) Based on the above, it was concluded that there are no compelling reasons against the imposition of definitive anti-dumping duties against imports of melamine originating in the PRC.
- (76) However, based on the above, it appears to be in the Union interest to change the form of the proposed measures to limit any possible serious impact on the overall users' business which is heavily dependent on melamine supply.
- 4. Definitive anti-dumping measures**
- 4.1. Injury elimination level**
- (77) In the absence of any substantiated comments that would alter the conclusion regarding the injury elimination level, recitals 123 to 127 of the provisional Regulation are hereby confirmed.
- 4.2. Definitive measures**
- (78) In the light of the foregoing, it is concluded to change the form of the measures by imposing definitive measures in the form of a minimum import price (MIP) for the cooperating exporters who are granted IT and a fixed duty of EUR 415 per tonne net product weight for all the others. Imports from the cooperating exporters who are granted IT would be subject to a MIP of EUR 1 153 per tonne net product weight.
- (79) That MIP is based on the normal value established in the analogue country, increased to a CIF Union border price level using export data from the cooperating Chinese exporters and then expressed in EUR/tonne net product weight.

- (80) Where imports are undertaken at a CIF Union border price equal to or above the minimum import price established, no duty would be payable. If imports are undertaken at a lower price, the difference between the actual price and the minimum import price established would become payable.
- (81) Non-cooperating exporters and exporters not granted IT would be subject to the residual duty of EUR 415 per tonne net product weight (based the difference between the non-injurious price as mentioned in recital 126 of the provisional Regulation and the most injurious transaction of a cooperating exporter during the IP) regardless of the import price.
- (82) That form of measures would allow EU producers to recover from the effects of injurious dumping and should also prevent any undue price increases which could have a significant negative impact on the users' business.
- (83) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period of time within which they could make representations following this disclosure. The Union industry subsequently contested the allegations made by the users concerning the shortage of the product concerned as well as the evolution of prices after the IP on the Union market. With regard to the shortage, the Union industry argued that their industry was cyclical and that there were other sources of supply such as Trinidad and Qatar. As to the trend in prices, they contended that the increase had started well before the imposition of provisional measures. However, it cannot be denied that prices have continued to increase since the imposition of the provisional measures and that the imports from other sources are not significant. The comments submitted by other parties were duly considered but were not such as to change the conclusions.
- (84) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product concerned produced by these companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured by any other company not specifically mentioned in Article 1 with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (85) Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, this Regulation will then be amended accordingly by updating the list of companies benefiting from individual anti-dumping duty rates.
- (86) In order to minimise the risks of circumvention, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the following: The presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.
- (87) Should the exports by one of the companies benefiting from the MIP increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of the MIP and the consequent imposition of a duty.
- (88) If market conditions change significantly after the imposition of definitive measures, the Commission may, on its own initiative, review the form of the measures in order to assess whether the measures are achieving the intended results in removing the injury and whether a change in the form of the measures is warranted.
- 4.3. Definitive collection of provisional anti-dumping duties**
- (89) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected,

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of melamine, currently falling within CN code 2933 61 00 and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the product described in paragraph 1 and produced by the companies below shall be as follows:

Company	Minimum import price (EUR/tonne net product weight)	Duty (EUR/tonne net product weight)	TARIC additional code
Sichuan Jade Elephant Melamine S&T Co. Ltd	1 153	—	A986
Shandong Liaherd Chemical Industry Co. Ltd	1 153	—	A987
Henan Junhua Development Company Ltd	1 153	—	A988
All other companies	—	415	A999

For the individually named producers, the amount of the definitive anti-dumping duty applicable to the product described in paragraph 1 shall be the difference between the minimum import price and the net, free-at-Union-frontier price, before duty, in all cases where the latter is less than the minimum import price. For these individually named producers, no duty shall be collected where the net free-at-Union-frontier price, before duty, is equal to or higher than the corresponding minimum import price.

The application of the minimum import price specified for the companies mentioned in this paragraph shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the

requirements set out in the Annex. If no such invoice is presented, the duty applicable to all other companies shall apply.

3. For the individually named producers and in cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁽¹⁾, the minimum import price set out above shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced minimum import price and the reduced net, free-at-Union-frontier price, before customs clearance.

For all other companies and 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 the anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EU) No 1035/2010 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article 3

This Regulation shall enter into force on the day following 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, 10 May 2011.

For the Council
The President
MARTONYI J.

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

