COMMISSION DECISION

of 27 June 2012

terminating the anti-dumping proceeding concerning imports of certain concentrated soy protein products originating in the People's Republic of China

(2012/343/EU)

THE EUROPEAN COMMISSION,

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

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

After consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. *INITIATION*

(1) On 19 April 2011, the Commission announced, by a notice published in the *Official Journal of the European Union* [2] ('notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports of certain concentrated soy protein products originating in the People's Republic of China ('PRC' or 'the country concerned').

(2) The proceeding was initiated as a result of a complaint lodged on 7 March 2011 by Solae Europe S.A. ('the complainant') representing a major proportion, in this case more than 25 %, of the total Union production of certain concentrated soy protein products [3]. The complaint contained evidence of dumping of the said product and of material injury resulting there from, which was considered sufficient to justify the initiation of a proceeding.

2. *PARTIES CONCERNED BY THE PROCEEDING*

(3) The Commission officially advised the complainant, the other known Union producer, the exporting producers and the representatives of the PRC, importers, suppliers and users known to be concerned, as well as their associations, 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.

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

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

(6) In view of the apparent high number of exporting producers and unrelated Union importers, sampling was envisaged in the notice of initiation, in accordance with Article 17 of Regulation (EC) No 1225/2009. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers and unrelated Union importers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period from 1 January 2010 to 31 December 2010 ('the investigation period' or 'the IP'). The authorities of the PRC were also consulted on the sampling of exporting producers.

2.1. SAMPLING OF EXPORTING PRODUCERS

(7) Twenty exporting producers provided the information requested in the sampling exercise and offered cooperation within the deadlines. The EU sales volumes reported by these (groups of) exporting producers represented around 90 % of the imports concerned during the investigation period. Therefore, the cooperation was considered high.

(8) Given the high number of (groups of) exporting producers which indicated their willingness to cooperate, it was decided that sampling was necessary with regard to exporting producers.

(9) The Commission selected, in accordance with Article 17 of the basic Regulation, a sample based on the largest representative volume of exports which could reasonably be investigated within the time available. The sample thus selected initially consisted of two groups of related companies, representing, inter alia, five individual

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ C 121, 19.4.2011, p. 71.
[3] In spite of its relation with a Chinese group of exporting producers, the complainant is considered to constitute a Union producer, especially since available evidence indicates that exports by that related group to the EU are very limited.

producers and accounting for 40 % to 50 % of the export volume of the product concerned from the PRC to the EU during the investigation period. After indications had been received that these two groups would possibly need to be treated as a single entity for the purpose of imposing an anti-dumping duty (see recital 41), the sample was expanded by including a third group of exporting producers, thus accounting for 45 % to 60 % of Chinese imports. In accordance with Article 17(2) of the basic Regulation, the parties concerned and the Chinese authorities were consulted on the initial selection as well as the later expansion of the sample. Two related exporting producers objected to the expansion of the sample as they argued that, if the sample had to be expanded, they would qualify better as a third group of exporting producers to be included in the sample. It should be underlined that, in accordance with the provisions of Article 17(1) of the basic Regulation, the proposed new sample consisted of the three groups of exporting producers with the largest EU sales volumes of the product concerned during the IP. Moreover, the EU sales volumes of the product concerned during the IP by the two related producers which claimed that they should have been selected as a third group were very small, representing less than 10 % of such volumes of the selected third group. Therefore it was confirmed that the representativity of the expanded sample was best served by the proposed three groups. No further objections were raised.

2.2. SAMPLING OF IMPORTERS

(10) After examination of the information submitted, and given the high number of importers which indicated their willingness to cooperate, it was decided that sampling was necessary with regard to unrelated importers.

(11) Seven unrelated importers, accounting for 20 % of the total imports of the product concerned into the Union, agreed to be included in the sample. Three importers, accounting for around 17 % of the total imports from the PRC and almost 90 % of imports of the cooperating importers, were selected for the sample. In accordance with Article 17(2) of the basic Regulation, the parties concerned were given the opportunity to comment on the selection of the sample. No objections were raised. One of the sampled importers stopped its cooperation and did not provide a questionnaire reply.

2.3. QUESTIONNAIRE REPLIES AND VERIFICATIONS

(12) In order to allow the sampled groups of exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent them MET/IT claim forms. In this respect, two sampled groups of companies requested MET pursuant to Article 2(7) of the basic Regulation, whereas the remaining sampled group of companies requested IT pursuant to Article 9(5) of the basic Regulation.

(13) MET/IT claim forms were also sent to non-sampled (groups of) exporting producers which had stated their intention to request individual examination as per Article 17(3) of the basic Regulation.

(14) The Commission sent questionnaires to the sampled exporting producers as well as to the non-sampled exporting producers which had stated their intention to request individual examination, to the complainant and the other known Union producer, to the sampled importers, and to all known users.

(15) After having requested information from producers in the possible analogue countries Brazil, Israel and the United States of America ('the USA'), questionnaires were also sent to the producers that had offered cooperation in Brazil and Israel for the purpose of establishing normal value for companies to which MET could not be granted (see recitals 60 to 64 below).

(16) Full questionnaire replies were received from the three sampled groups of exporting producers in the PRC, one Brazilian producer, one Israeli producer, one Union producer (with one production facility in Belgium and another one in Denmark), two (out of three) sampled importers and four users in the EU. Another Brazilian producer submitted an incomplete reply.

(17) In addition, claims for individual examination (IE) as per Article 17(3) of the basic Regulation were received from one non-sampled exporting producer ('applicant A') and one group of related non-sampled exporting producers (jointly 'applicant B') [1]. After having analysed the information submitted by the sampled parties, as well as these requests including duly completed questionnaires, it was considered that the number of (groups of) exporting producers to be investigated in the sample alone was so large that additional IEs would be unduly burdensome and would prevent completion of the investigation in good time. Therefore, the applicants were informed that their request for an individual examination was rejected.

(18) Applicant B contested this determination not to consider its request for IE. It submitted that this refusal would be contrary to Article 17(3) of the basic Regulation and Article 6.10 of the Anti-Dumping Agreement (ADA), as interpreted recently by the WTO Dispute Settlement Body in the Fasteners case [2]. Secondly, such refusal would be contrary to the fundamental principle of proportionality.

[1] For information, it is noted that applicant B is related to the complainant.

[2] WTO Report of the Appellate Body of 15 July 2011, WT/DS397/AB/R, *European Communities — definitive anti-dumping measures on certain iron or steel fasteners from China*.

(19) As concerns the first argument, Article 17(3) of the basic Regulation as well as Article 6.10 of the ADA explicitly allow the investigating authority not to consider requests for IE if the number of exporters and/or producers involved is so large as to make such a determination impracticable. The WTO Appellate Body Report in the Fasteners case clarified that timely requests for IE should 'as a rule' be accepted unless this would be 'unduly burdensome' ([1]). In this case, the verification of the questionnaire replies and the replies to the MET claim forms of the applicants for IE would entail on-the-spot investigations at one company (applicant A) and two other companies (those forming part of applicant B). During these on-the-spot investigations, compliance with the provisions of Article 2(7)(c) would need to be verified as well as all these entities' reported structure, costs (including production costs and purchases), sales and profitability. In view of the large number of entities already investigated within the sample, to add an additional applicant would indeed have been unduly burdensome and would have seriously jeopardised the completion of the investigation in good time. Therefore, the decision not to accept these requests for individual examination is justified by the law and not in breach with the principle of proportionality.

(20) After being informed that an IE would be too burdensome, applicant B later proposed to withdraw its MET claim if it would be agreed to examine it for IT. Because it alleged to have made only one small export transaction during the IP and would no longer claim MET, it argued that the Commission would not need to conduct an on-the-spot verification in the PRC to make a dumping determination and that it would be enough to verify that single export transaction while verifying the questionnaire reply of the complainant in the EU. On this basis, the exporter argued that granting individual examination would not be burdensome.

(21) However, if IE were granted, an on-the-spot verification of applicant B would be necessary, since without on-the-spot verification in the PRC of both producers in the group, the existence of other sales to the EU during the IP could not be excluded. Such verification would have been unduly burdensome given the size of the sample with three big groups of companies. The request was therefore rejected.

(22) The decision not to accept the requests for individual treatment has been maintained. In view of the grounds cited above, it has been definitively decided that requests for individual examination could not be granted as they would render the investigation unduly burdensome and would prevent the completion of the investigation in good time.

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

(a) Exporting producers in the PRC:

— Gushen Biological Technology Group Co. Ltd and its related companies, Dezhou,

— Shandong Crown Soya Protein Co. Ltd and its related companies, Shenxian, Qingdao, Yucheng,

— Shandong Sinoglory Health Food Co. Ltd and its related companies, Liaocheng, Qingdao;

(b) Union producer:

— Solae Europe, with production facilities in:

— Belgium, Ieper (Solae Belgium), and

— Denmark, Aarhus (Solae Denmark);

(c) Producers in the analogue country:

— Bremil Industria De Produtos Alimenticios Ltda., Arroio do Meio,

— Solae do Brasil Ind. Com. Alimentos Ltda., Esteio, Sao Paulo.

3. *INVESTIGATION PERIOD*

(24) The investigation of dumping and injury covered the period from 1 January 2010 to 31 December 2010 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 2007 to the end of the investigation period ('period considered').

4. *FINDINGS AT THE INTERIM STAGE*

(25) At the interim stage it was considered that the imposition of provisional measures would not be appropriate in particular in view of the need to further analyse the causal link between the dumped imports of certain concentrated soy protein products from the PRC and the injury suffered by the Union industry.

([1]) See aforementioned Report of the Appellate Body of 15 July 2011, recital 319.

5. *SUBSEQUENT PROCEDURE*

(26) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided not to impose provisional measures ('interim disclosure'), several interested parties made written submissions making known their views on the interim findings. The parties who so requested were granted the opportunity to be heard.

(27) The Commission continued to seek information it deemed necessary for its final findings. In addition to the verifications mentioned in recital 23 above, a further verification was carried out at the premises of Kerry in Bristol, UK, one of the importers and users of soy proteins which cooperated in the investigation.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. *PRODUCT CONCERNED*

(28) The product concerned was defined in the notice of initiation as concentrated soy protein products, containing by weight 65 % or more of proteins (N × 6,25) calculated on the dry matter by excluding added vitamins, minerals, amino acids and food additives, originating in the PRC ('the product concerned' or 'CCSPP') and currently falling within CN codes ex 2106 10 20, ex 2106 90 92, ex 2309 90 10, ex 2309 90 99 (ex 2309 90 96 as from 1 January 2012) and ex 3504 00 90.

(29) Within the above product scope, two main product groups can be distinguished: (i) soy protein concentrates ('SPCs' or 'concentrates' including simple/basic concentrates and further processed concentrates), which have a protein content of more than 65 % but less than 90 %; and (ii) isolated soy proteins ('ISPs' or 'isolates'), which have a protein content of 90 % or more.

(30) It was also established that whereas the simple concentrate is a fairly basic product with low value added, isolates and further processed concentrates require substantially more processing and are consequently higher value added products.

(31) The product scope as described above includes also simple (not further processed) concentrates for animal feed. These were produced in the period considered in the EU by one plant of the complainant located in France and by another company, ADM, based in the Netherlands.

(32) Following the interim disclosure the complainant requested a change of the product scope by eliminating concentrates used for animal feed. The complainant opposed the approach proposed in the interim document and argued that exclusion of data from the French plant that closed in 2009 (i.e. in the middle of the period considered) resulted in an inconsistency in the remaining data (with ADM data still included). Consequently, the sales and market share of EU producers of the product under investigation were artificially inflated.

(33) The complainant argued that given relatively stable demand, some of the supply provided by the Solae French plant until it closed in 2009 was taken over by their competitor in the EU, ADM. Consequently, disregarding the data from the French plant led to a misleading comparison of year 2008 data, when ADM had only a smaller share of the market for animal concentrates, with the IP data, when AMD had a much bigger share of that market.

(34) In particular, the complainant provided information on technical and chemical differences between the concentrates for animal feed on the one hand and other concentrates and isolates on the other hand. Also, different distribution channels are used for these subgroups. In addition, concentrates for animal feed fall within a different CN code than other concentrates (for food) and isolates.

(35) Following the submission of the complainant, one exporter disagreed with the request to limit the product scope. However, this exporter misunderstood the request and had considered that the request was to exclude all the soy protein concentrates, while in fact it refers only to simple SPC for animal feed. In addition, the exporter provided no factual reasoning as to why the request would be unfounded.

(36) It is also noted that, based on the information collected during the investigation, imports of soy protein concentrates for animal feed account for less then 1 % of the total Chinese imports in the Union of the product under investigation (as originally defined).

(37) Given the above, and in particular the clear technical, chemical and market related differences, it is considered appropriate to limit the product scope by excluding simple soy protein concentrates of a kind used in animal feeding. Consequently, the product concerned is concentrated soy protein products, excluding such products of a kind used in animal feeding, and containing by weight 65 % or more of proteins (N × 6,25) calculated on the dry matter by excluding added vitamins, minerals, amino acids and food additives, originating in the PRC ('the product concerned' or 'CCSPP') and currently falling within CN codes ex 2106 10 20, ex 2106 90 92 and ex 3504 00 90.

(38) The product concerned is mainly used in the food industry in meat applications and meat substitutes. Other food applications include salad dressings, soups, beverage powders, energy bars, non-dairy creamers, frozen desserts, whipped toppings, infant formulas, breads, breakfast cereals, pastas etc. Due to its functionalities, the product concerned also has some specific applications including adhesives, asphalts, resins, cleaning materials, cosmetics, inks, leather, paints, paper coatings, pesticides/fungicides, plastics, polyesters and textile fibres.

(39) Despite some differences in possible final applications, the different types of the product concerned, concentrates and isolates, all share the same basic physical and chemical characteristics. They are therefore considered to constitute one single product.

2. *LIKE PRODUCT*

(40) The product concerned and certain concentrated soy protein products produced and sold on the domestic market of the PRC, and on the domestic market of Brazil, which served as an analogue country, as well as certain concentrated soy protein products produced and sold in the Union by the Union industry were found to have the same basic physical, chemical and technical characteristics and uses. Therefore, these products are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

1. *RELATIONSHIP BETWEEN SINOGLORY GROUP AND GUSHEN GROUP*

(41) The sampled exporting producers consisted of Shandong Crown Soya Protein Co. Ltd and its related companies ('Crown Group'), Gushen Biological Technology Group Co. Ltd and its related companies ('Gushen Group') and Sinoglory Health Food Co. Ltd and its related companies ('Sinoglory Group'). At an early stage of the investigation it was considered that Gushen Group and Sinoglory Group might have to be treated as related exporters. However, following the explanations provided by the exporters concerned, it was finally decided to consider Gushen Group and Sinoglory Group as separate entities for the purpose of this investigation.

2. *MARKET ECONOMY TREATMENT (MET)*

(42) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(43) Briefly, and for ease of reference only, these criteria are set out in summarised form below:

1. Business decisions and costs are made in response to market conditions and without significant State interference;

2. Accounting records are independently audited, in line with international accounting standards and applied for all purposes;

3. There are no significant distortions carried over from the former non-market economy system;

4. Legal certainty and stability is provided by bankruptcy and property laws; and

5. Currency exchanges are carried out at the market rate.

(44) MET was claimed by the Crown Group and the Sinoglory Group.

(45) For both the Crown and the Sinoglory Groups, the Commission sought all information deemed necessary and verified the information submitted in the MET claim forms and all other information deemed necessary, at the premises of the companies in question.

(46) The investigation established that both groups did not meet the requirements of the criteria set forth in Article 2(7)(c) of the basic Regulation to be granted MET.

(47) In particular, the companies from both groups failed to meet criteria 1, 2, and 3.

FIRST GROUP

(48) In the case of one group, one producer in the group did not meet criterion 1 because of the existence of an obligation to sell all its products on the international market. Even though the company claimed that this provision was not binding, the company actually has never sold on the domestic market (with the exception of a minor sale in 2007). As for criterion 2, several accounting problems were found for both producers in the group. Moreover, one of the companies in the group did not submit any MET claim form. Furthermore, one company in the group let out part of its land without any record of the rental receipts in its accounts since no invoices or proofs of payment for these payments were issued. When it moved to a new production site and part of its equipment became idle, no test for impairment was made. Finally, when one of the companies in the group bought a new piece of land, it received a government transfer to be used as compensation for the villagers who had to move. However, this payment was not used for that purpose but to reduce the cost of the land use right. Regarding criterion 3, the two producers in the group swap raw material from a common supplier without any proper documentation or records, on the basis of very

informal arrangements without any adjustments for price differences or fees: this constitutes a form of barter trade. Furthermore, one producer could use the land belonging to its majority shareholder without any payments for several years. According to that company, this was possible because the related land use rights had been acquired for a very low price by the parent company in the context of its privatisation.

(49) Following disclosure of the detailed MET findings and the interim disclosure, the group reiterated earlier claims that one of the two producers should not be considered as legally related to the rest of the group. However, concerning this claim, it was found that the two producers were pursuing a coordinated commercial and industrial strategy together with the rest of the group, including the barter trade practices mentioned at recital 48 above. The claim is therefore rejected.

(50) The group also claimed that the sales restriction for one of its producers was only mentioned in its Articles of Association, and not in the business license or certificate of approval. According to the company, the restriction was therefore not binding. Moreover, it was claimed that the company which had not submitted a MET claim form was not a producing or trading company but rather a payment agent and that the group had applied its best efforts to provide all information available.

(51) However, as mentioned above, the producer in question clearly complied with the sales restriction. Moreover, the Articles of Association are part of the documents that are submitted for approval to the authorities when the company is set up and therefore it is clear that the content of these documents forms the basis for the actual operations of the company. Finally, concerning the company which did not submit a MET claim form, this company was actually found to be involved in certain aspects relating to the export sales of the product in question and should have therefore submitted a MET claim form. Therefore, both claims are rejected.

SECOND GROUP

(52) In the case of the other group, one of the exporting producers was also subject to a limitation of its sales, whereby 70 % of its production should be sold for export, and therefore did not comply with criterion 1. As for criterion 2, a number of problems concerning depreciation of assets and changes in accounting policies were found. As for criterion 3, the value attributed to two plots of land in one of the companies' accounts varies significantly, and it is considered that by acquiring a plot of land at a price clearly below market value, the company received a hidden subsidy. Moreover, another company in the group benefited from free rental of a piece of land for one year and has acquired land use rights at a price lower than the market value. Finally a number of intra-group guarantees were not disclosed in the notes to the accounts, in violation of IAS 24.

(53) Following disclosure of the detailed MET findings and the interim disclosure, the group claimed that de facto sales of the two producers were not subject to any sales restriction. According to the companies, the fact that their respective export volumes were in line with the restrictions in their Articles of Association was only due to the supply-demand balance on the soy protein market. They underlined that these restrictive provisions had been removed from these texts soon after the IP. Moreover, regarding criterion 2, the group claimed that apart from minor accounting mistakes, it had fully complied with Chinese GAAP which they are required to implement rather than IAS. With respect to the land use rights, the group claimed that the different value of the two plots of land was due to the levelling costs of one of the two plots. Finally, it was stressed that the free rental of another plot of land was due to some administrative delays before the land use right could actually be acquired and that, anyhow, the value of the exemption was only minor if compared to the company's operational income.

(54) Regarding criterion 1, the Articles of Association are part of the documents that are submitted to the authorities and approved when the company is set up. The fact that the company complied with the sales restrictions is considered to be due to a requirement to do so and it is clear that the content of these documents forms the basis for the actual operations of the company. Moreover it is underlined that the removal of the restrictions from the Article of Association took place after the IP and is therefore irrelevant for this investigation. Regarding criterion 2, it was clear that the accuracy and reliability of the records could not be confirmed. In addition, the company's accounting records should be audited in line with international accounting standards which could not be confirmed during the verification. With respect to criterion 3, no evidence could be submitted during the on-the-spot verification in order to substantiate the levelling costs for the plot of land in question. Finally, independently of the explanations brought forward, the fact remains that one of the companies rented its land for free during a certain period of time and therefore benefited from a subsidy. The comments were therefore not of a nature to change the MET findings. Those findings are hereby confirmed.

3. *INDIVIDUAL TREATMENT (IT)*

(55) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation. Briefly, and for ease of reference only, these criteria are set out below:

— in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits,

— export prices and quantities, and conditions and terms of sale are freely determined,

— the majority of the shares belong to private persons. State officials appearing on the Boards of Directors or holding key management positions shall either be in minority or it must be demonstrated that the company is none the less sufficiently independent from State interference,

— exchange rate conversions are carried out at the market rate, and

— State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

(56) The Gushen Group only claimed IT. This claim was examined and no element was found to indicate that the company did not comply with the abovementioned criteria. It was therefore concluded that Gushen Group could be granted IT.

(57) Assessment was also made for the Crown Group and Sinoglory Group, since MET was not granted to these companies. In both cases, no element was found to indicate that the companies did not comply with the abovementioned criteria. It is therefore concluded that both company groups could be granted IT.

(58) Following the final disclosure, the complainant expressed its disagreement with the granting of IT to the sampled exporter groups. However, in view of the non-imposition of measures it has not been necessary to examine this further.

4. *NORMAL VALUE*

(59) As explained in recital 46, MET was not granted to the two sampled groups that had requested it. The third sampled group had not applied for MET. Therefore, in accordance with Article 2(7) of the basic Regulation, normal value for all groups was established on the basis of the prices or constructed value in an analogue country.

(a) ***Analogue country***

(60) In the notice of initiation, the Commission indicated its intention to use the USA as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited interested parties to comment on this.

(61) A number of comments were received and other countries were proposed as an alternative, in particular Brazil and Israel. The main argument submitted against the USA as an analogue country was that in the USA the product concerned would be made from genetically modified soy beans, whereas this would not be the case in the PRC. The use of genetically modified (GM) soy beans would potentially result in the product being used by different users and/or processing industries. It was also mentioned by an exporting producer that the US subsidiary of the complainant would have a dominant position on the US market, resulting in inflated domestic sales prices.

(62) In view of these comments received, the Commission sought cooperation from all known CCSPP producers in Brazil, Israel and the USA by asking them a number of key questions on their production, sales and local markets and asking them whether they would be willing to provide more detailed information on their costs and prices, if their country would be selected as an analogue country. Only one US producer and two Brazilian producers replied by providing the requested information and offering further cooperation. At a later stage, an Israeli producer also submitted a full questionnaire response. The Commission also endeavoured to obtain information on the aforementioned and other potential markets by other means.

(63) The information thus collected was carefully analysed. It was confirmed that the US product was predominantly made from GM soy beans, as opposed to CCSPP from the PRC, Brazil or Israel. However, no conclusion could be drawn with regard to the impact of that difference in main raw materials on product characteristics, uses, cost or price. Furthermore, although the Brazilian market had an import duty of 14 %, there were significant volumes of imported CCSPP in Brazil competing with the locally produced product. In fact, the two Brazilian producers, which both offered cooperation, were accounting, roughly, for three quarters of the consumption in Brazil, whereas the US market appeared to be clearly dominated by two very large domestic producers, of which only one had offered cooperation. Therefore, although the total size of the US market was bigger, there appeared to be stronger conditions of competition in Brazil, with two large domestic producers and significant imports. Moreover, overall, the domestic sales volumes of the cooperating Brazilian producers appeared to be of the same order of magnitude as the volume of sales to the EU by the sampled Chinese producers, and the product ranges comparable. Finally, it was found that the Brazilian domestic market was significantly bigger than the Israeli one.

(64) On the basis of the above, Brazil was selected as an analogue country. This selection is confirmed.

(b) ***Determination of normal value***

(65) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers was established on the basis of the verified information received from the producers in the analogue country. Where product types in the domestic market of the analogue country were not made in the ordinary course of trade or where no resembling types were sold, the normal value was constructed pursuant to Article 2(3) and 2(6) of the basic Regulation.

(66) Following the interim disclosure the calculations were further refined to also take into account comments submitted by the parties.

5. *EXPORT PRICE*

(67) The exporting producers made export sales to the Union either directly to independent customers or through related trading companies located in the PRC. The export price was therefore in all cases established pursuant to Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

(68) Following the interim disclosure the calculations were further refined to also take into account comments submitted by the parties.

6. *COMPARISON*

(69) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments for discounts, transport, insurance, handling, loading and ancillary costs, packing, credit costs, and indirect taxation were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

7. *DUMPING MARGINS*

(70) The definitive dumping margins were expressed as a percentage of the CIF Union frontier price, duty unpaid.

(71) For each of the three cooperating groups of exporting producers in the sample, a dumping margin was established on the basis of a comparison of the weighted average normal value in the analogue country with the weighted average export price, in accordance with Article 2(11) and (12) of the basic Regulation.

(72) For the cooperating non-sampled companies the dumping margin was calculated as an average of the three sampled groups of companies.

(73) Given the high level of cooperation in the investigation, with cooperating companies representing around 90 % of all imports from the PRC during the IP, for any non-cooperating companies, the country-wide margin was established using the highest of the margins found for the sampled groups of companies.

(74) On this basis, the definitive levels of dumping established are as follows:

Company	Dumping margin
Crown Group	59,4 %
Gushen Group	55,8 %
Sinoglory Group	67,0 %
Cooperating non-sampled companies	61,3 %
Other companies	67,0 %

D. **INJURY**

1. *INTRODUCTORY REMARKS*

(75) Following the revision of the product scope (exclusion of concentrates for animal feed), one company — ADM in the Netherlands, whose production is limited to concentrates for animal feed — is no longer considered to form part of the Union industry. Consequently, only the complainant (Solae) manufactured the like product in the Union during the investigation period. Solae has currently two manufacturing sites in the EU — one in Belgium producing soy protein isolates and another in Denmark producing soy protein concentrates (the basic SPC and further processed high value concentrates for which the basic SPC serves as an intermediate product). Another manufacturing site of Solae in Boudreaux, France, that manufactured and marketed only simple concentrates for animal feed closed down at the beginning of 2009.

(76) As far as the production in the EU is concerned, the investigation revealed that Solae's manufacturing process is based exclusively on a tolling agreement with its Swiss mother company, Solae Europe. Under this agreement Solae Belgium and Solae Denmark process the raw material provided by Solae Europe against a service fee. Throughout the process, Solae Europe remains the only proprietor of the raw materials, any intermediate products and the finished goods.

(77) Given that the ownership of the raw material and finished goods remains with the principal, the tolling arrangements are legally different from other possible production arrangements. However, in the current case, the value added by those companies in the EU amounts to over 50 % of the cost of manufacturing. This share of value added reflects, also, the technological and capital investments based in the Union. The net value of such investments in the EU is significant and the industry employs an important number of persons in the Union.

(78) It should also be noted that the tolling operations in the EU would constitute 'the last substantial transformation' and, as such, confer EU origin to the products.

(79) Due to the foregoing, it was therefore concluded that an economic activity like that performed by Solae Belgium and Solae Denmark in the EU could be potentially threatened by dumping practices and could thus warrant protection irrespective of the legal nature of such activity (tolling or a different production arrangement). In the light of the above, it was concluded to consider Solae Belgium and Solae Denmark as Union producers that form part of the Union industry within the meaning of Article 4(1) and Article 5(4) the basic Regulation.

(80) Following the interim disclosure, one exporter commented that tolling companies do not qualify as Union producers and have no standing in anti-dumping investigations. The exporter argued that given that the ownership of the raw material and finished goods remained with Solae Europe registered in Switzerland (i.e. outside of the EU), Solae Belgium and Solae Denmark could not be considered Union producers and did not warrant protection from the dumping practices.

(81) The exporter pointed out that in previous cases, such as one concerning imports of plastic sacks and bags originating in the PRC ([1]), the institutions decided to exclude two Chinese companies from a sample of exporting producers because they had not themselves produced a large amount of declared exported products, but had in fact processed them for other exporting producers.

(82) It is noted that the situation in the case relied upon by the exporter is not comparable to the one in the present case. First, the Chinese companies in the plastic sacks and bags case mentioned above had their own (non-tolled) output (but the sales of own produced products were too small for the companies to be included in the sample), while in the present situation Solae Belgium and Solae Denmark work exclusively with the tolling arrangement.

(83) In addition, while Solae Belgium and Solae Denmark are fully owned by Solae Europe, the investigation of the Chinese companies excluded from the sample did not establish any ownership relation with other exporting producers for which they processed the products.

(84) The exporter in its submission also referred to another past investigation, namely that concerning imports of glycine originating in the PRC ([2]), where the Commission treated some Chinese companies as traders rather than producers, as the activity they carried out was found not to qualify as production.

(85) It is noted in this regard that the glycine case does not support the exporter's argument either, as in that case the exporting Chinese companies simply conducted some processing operations which did not change the chemical composition or the physical characteristics of the product under consideration. This is a completely different situation from the one at hand where the operations conducted by the EU companies convert soy beans or soy flakes into soy proteins and not only change the chemical composition or the physical characteristics of the material but also add significant value to the final product.

(86) The exporter also argued that the centre of the decision making process for the entire tolling production in the Union is exclusively within a non-EU company and that the entire fate of the tolling companies is completely and exclusively dependant on their Swiss mother company. The exporter added that in a different case, concerning imports of vinyl acetate originating in the USA ([3]), the Commission excluded an EU producer from the definition of the Union industry due to its relationship with a company in a targeted country.

(87) Another party also suggested that in analysing the issue of tolling arrangement and its qualification as production, issues like placement of headquarters, centre of interest and commitment to the EU market should be analysed in a manner similar to the analysis of related companies while defining the Union industry.

(88) Indeed, Solae as a group has structural links with its Swiss mother company and further corporate links with US companies. It is not a novelty in anti-dumping proceedings that companies with strong EU presence have such structural, capital or corporate links outside the EU. However, such structural and corporate links outside the EU cannot undermine the conclusion that complainants qualify as EU producers.

(89) It is noted that such arguments would be relevant for the purposes of Article 4(1)a of the basic Regulation and the definition of the Union industry only in case Solae Europe would be a company in a targeted country, i.e. the PRC in this case. This is clearly not the case, and consequently the exporter's argument is irrelevant.

(90) In addition, it is reiterated that the ownership of the material used and/or of the finished product is not the decisive criterion in order to define a Union producer. While tolling is legally different from other production arrangements, toll-producing companies may be considered Union producers.

(91) This approach is consistent with earlier practice of the institutions, like for example in the expiry review concerning imports of furfuryl alcohol originating in the PRC ([4]).

([1]) OJ L 270, 29.9.2006, p. 4.
([2]) OJ L 118, 19.5.2000, p. 6.
([3]) OJ L 209, 17.8.2011, p. 24.
([4]) OJ L 323, 10.12.2009, p. 48.

(92) It is reiterated that in the current case the value added by the companies in the EU amounts to over 50 % of the cost of manufacturing. This share of value added reflects the technological and capital investments based in the Union. The net value of such investments in the EU is significant and the industry employs an important number of persons in the Union.

(93) In conclusion, Solae Belgium and Solae Denmark are considered Union producers that form part of the Union industry within the meaning of Article 4(1) and Article 5(4) the basic Regulation and will be thereafter referred to as the 'Union industry'.

(94) The total Union production within the meaning of Article 4(1) of the basic Regulation was established on the basis of the questionnaire reply of the complainant.

(95) Given that the Union industry comprises only one producer, the data below is presented in an indexed format in order to preserve confidentiality, pursuant to Article 19 of the basic Regulation.

2. *UNION CONSUMPTION*

(96) The Union consumption was established on the basis of the sales volumes of the Union industry's tolled output destined for the Union market, the import volumes on the Union market obtained from Eurostat, and estimates by the complainant.

(97) The CN codes covering certain concentrated soy protein products cover a broader range of products, and not only the product under investigation. Based on an extensive research and market knowledge, the complainant made estimates of the value and volume of the imports of the product under investigation to the Union. These estimates were examined in the course of the investigation and are considered to be reliable. The Commission services received no comments with an alternative proposal which could call into question the use of these estimates for the purpose of this investigation.

(98) One party claimed that the methodology of calculating imports has not been sufficiently explained. Those criticisms, however, have not been further substantiated. The party was critical of the Commission's approach without however suggesting a more suitable or reliable alternative. The criticism related mainly to the fact that the party was not able to comment. It is recalled that the non-confidential version of the complaint, setting out the exclusion methodology, was available in the non-confidential file as from the initiation of the proceeding.

(99) It is recalled that the Commission services cross checked the data provided in the complaint and could not establish anything that would undermine the reasonableness of the method chosen. Further, in view of the fact that parties did not propose an alternative method of exclusion, their comments were considered as unsubstantiated.

(100) Throughout the period considered the demand on the Union market decreased by 8 %. More specifically, the Union consumption remained stable between 2007 and 2008, decreased by 8 % in 2009 and remained stable in the IP.

Table 1

Union consumption	2007	2008	2009	IP
Volume (in tonnes)	Business confidential data			
Index (2007 = 100)	*100*	*100*	*92*	*92*

Source: Questionnaire replies from the Union industry and complainant's estimates based on Eurostat data.

3. *IMPORTS FROM THE COUNTRY CONCERNED*

(a) ***Volume***

(101) The volume of imports of the product concerned increased by 15 % over the period considered and reached 20 117 tonnes in the IP. More specifically, imports from the PRC remained stable between 2007 and 2008, before increasing by 26 percentage points in 2009, when they reached their peak. It is noted that the imports from the PRC dropped by some 9 percentage points in the IP.

Table 2

	2007	2008	2009	IP
Volume of dumped imports from the country concerned (tonnes)	17 495	17 557	22 017	20 117
Index (2007 = 100)	*100*	*100*	*126*	*115*
Market share of dumped imports from the country concerned — indexed	100	100	136	125

Source: Complainant's estimates based on Eurostat data.

(b) ***Market share of the imports concerned***

(102) The index reflecting the evolution of market share held by the dumped imports from the PRC increased by 25 % throughout the period considered. It remained stable between 2007 and 2008, but increased by 36 % in 2009. In the IP it decreased by 11 percentage points.

(c) ***Prices***

(i) **Price evolution**

(103) The average import price increased overall by 37 % in the period considered. More specifically, it increased initially by as much as 48 % between 2007 and 2008, then dropped in 2009 by 11 percentage points and remained at that level in the IP. The average price of imports from the PRC in the IP was EUR 1 569 per tonne.

Table 3

	2007	2008	2009	IP
CIF price of imports from the PRC (EUR/tonne)	1 149	1 704	1 570	1 569
Index (2007 = 100)	*100*	*148*	*137*	*137*

Source: Complainant's estimates based on Eurostat data.

(ii) **Price undercutting**

(104) For the purpose of analysing price undercutting, the weighted average sales prices of the Union producer to unrelated customers on the Union market, adjusted, in particular for credit costs, delivery costs, packaging and commissions, to an ex-works level, were compared with the corresponding weighted average CIF prices of the cooperating exporters from the PRC to the first independent customer on the Union market, adjusted to cover all costs related to customs clearance, i.e. customs tariff, and post-importation costs (landed price).

(105) The comparison showed that during the IP, the imports of the product concerned undercut the Union industry's prices by around 12 %.

Company	Undercutting
Crown Group	11,1 %
Gushen Group	9,6 %
Sinoglory Group	15,0 %

(106) One party commented that of course the level of price undercutting has only been calculated for the IP and that previous levels of undercutting are not known. However, the party suggested, given that between 2007 and the IP, Chinese import prices have increased by significantly more than Union industry prices, it might be inferred that price undercutting has been falling.

(107) Indeed, it is recognised that while between 2007 and the IP, Chinese import prices have increased by 37 %, the Union industry prices have increased by only 15 % (see recital 119 below). Consequently, it is clear that with regard to average prices, the gap between Chinese and EU prices has been narrowed between 2007 and the IP.

4. *SITUATION OF THE UNION INDUSTRY*

(108) Pursuant to 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 factors and indices having a bearing on the state of the Union industry during the period considered.

(109) For the purpose of the injury analysis, the injury indicators have been established on the basis of the information collected from the duly verified full questionnaire reply by the complainant.

(a) ***Production***

(110) The Union production decreased by 14 % between 2007 and the IP. More specifically, it decreased by 8 % in 2008 before even further decreasing by another 15 percentage points in 2009. However, there was a clear improvement between 2009 and the IP, when the production increased by 9 percentage points.

Table 4

	2007	2008	2009	IP
Production (tonnes)	Business confidential data			
Index (2007 = 100)	*100*	*92*	*77*	*86*

Source: Questionnaire replies.

(b) ***Production capacity and capacity utilisation***

(111) The production capacity of the Union producer remained stable throughout the period considered.

Table 5

	2007	2008	2009	IP
Production capacity (tonnes)	Business confidential data			
Index (2007 = 100)	*100*	*100*	*100*	*100*
Capacity utilisation	Business confidential data			
Index (2007 = 100)	*100*	*92*	*77*	*86*

Source: Questionnaire replies.

(112) The index reflecting evolution of the capacity utilisation decreased by 14 % in the period considered. Between 2007 and 2008 it decreased by 8 % and by another 15 percentage points in 2009. It then increased by 9 percentage points in the IP. The trend for the utilisation rate reflects the development of the production over the period considered, given that the production capacity remained stable.

(113) It is noted that despite an overall decrease, capacity utilisation remained relatively high and in the IP was above 80 %.

(c) ***Sales volume***

(114) The sales volume of the Union industry to unrelated customers on the EU market decreased in the period considered by 8 %. The sales decreased by 9 % between 2007 and 2008 and by a further 5 percentage points in 2009. However, there was a clear improvement between 2009 and the IP, when the sales increased by some 6 percentage points.

Table 6

	2007	2008	2009	IP
EU sales (tonnes)	Business confidential data			
Index (2007 = 100)	*100*	*91*	*86*	*92*

Source: Questionnaire replies.

(d) ***Market share***

(115) Overall, during the period considered, the Union industry maintained its market share. More specifically, the index decreased by as much as 9 % between 2007 and 2008, but already in 2009 it rebounded by 1 percentage point and increased by another 7 percentage points in the IP.

Table 7

	2007	2008	2009	IP
Market share of the Union industry	Business confidential data			
Index (2007 = 100)	*100*	*91*	*92*	*99*

Source: Questionnaire replies from the Union industry and complainant's estimates based on Eurostat data.

(e) ***Growth***

(116) Between 2007 and the IP, whilst the Union consumption decreased by 8 %, the volume of sales also decreased by 8 %, and the Union industry's market share remained stable.

(f) ***Employment***

(117) Employment decreased by 7 % between 2007 and the IP. It increased modestly between 2007 and 2008 before a sharp 10 percentage point decline in 2009. However, employment increased again by 2 percentage points in the IP.

Table 8

	2007	2008	2009	IP
Employment (persons)	Business confidential data			
Index (2007 = 100)	*100*	*101*	*91*	*93*

Source: Questionnaire replies.

(g) ***Productivity***

(118) Productivity, measured as output (tonnes) per employee per year, decreased by 7 % in the period considered. This drop reflects the fact that production decreased at a faster pace than the employment. Still, it is noted that between 2009 and the IP the productivity increased by 8 percentage points reflecting the increase in the production at an even higher pace than the increase in the employment.

Table 9

	2007	2008	2009	IP
Productivity (tonnes per employee)	Business confidential data			
Index (2007 = 100)	*100*	*91*	*85*	*93*

Source: Questionnaire replies.

(h) ***Factors affecting sales prices***

(119) The average sales prices of the Union producers increased by some 15 % in the period considered. The average price increased in 2008 and 2009 (by 8 % and 10 percentage points respectively), before decreasing slightly in the IP by 3 percentage points. In general, the prices of CCSPP are heavily dependent on the costs of major raw materials (i.e. soy beans or soy bean flakes) and energy. Together they account for a major proportion of the manufacturing cost. It is noted that the market for soy bean is volatile and characterised by significant annual or even monthly fluctuations.

(120) Given the significant variations of the selling prices between the different types of the product under investigation, the evolution of the average sales prices should be looked at with caution as any change in the average price is heavily influenced by any change in the product mix.

Table 10

	2007	2008	2009	IP
Unit price EU market (EUR/tonne)	Business confidential data			
Index (2007 = 100)	*100*	*108*	*118*	*115*

Source: Questionnaire reply.

(i) ***Magnitude of the dumping margin***

(121) Given the volume, market share and prices of the imports from the PRC, the impact on the Union industry of the actual margins of dumping cannot be considered negligible.

(j) ***Stocks***

(122) The level of closing stocks remained overall stable between 2007 and the IP. It is noted that stocks represent a rather small portion of the annual production and therefore the relevance of this indicator in the injury analysis is limited.

Table 11

	2007	2008	2009	IP
Closing stock (tonnes)	Business confidential data			
Index (2007 = 100)	*100*	*90*	*110*	*99*

Source: Questionnaire reply.

(k) ***Wages***

(123) The annual labour cost increased by 7 % between 2007 and IP. It increased by 5 % between 2007 and 2008 before decreasing by 2 percentage points in 2009 and later increasing by 4 percentage points in the IP.

Table 12

	2007	2008	2009	IP
Annual labour cost (EUR)	Business confidential data			
Index (2007 = 100)	*100*	*105*	*103*	*107*

Source: Questionnaire reply.

(l) ***Profitability and return on investments***

(124) During the period considered, the profitability of the sales of the like product on the EU market to unrelated customers, expressed as a percentage of net sales, was fluctuating considerably. While in 2007 and 2009 the Union industry achieved profits, it suffered losses in 2008 and in the IP. The oscillating profitability may be a reflection of the fluctuations on the soy bean market.

Table 13

	2007	2008	2009	IP
Profitability of EU (% of net sales)	Business confidential data			
Index (2007 = 100)	*100*	*– 89*	*10*	*– 45*
ROI (profit in % of net book value of investments)	Business confidential data			
Index (2007 = 100)	*100*	*– 160*	*– 9*	*– 109*

Source: Questionnaire reply.

(125) The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the profitability trend.

(m) ***Cash flow and ability to raise capital***

(126) The net cash flow from operating activities fluctuated significantly in the period considered. Starting from a positive figure in 2007, it deteriorated in 2008 when it became negative, but improved again in 2009 only to become negative once more in the IP. Overall, cash flow broadly followed the profitability trend.

(127) There were no indications that the Union industry encountered difficulties in raising capital, mainly due to the fact that it is incorporated in a larger group.

Table 14

	2007	2008	2009	IP
Cash flow (EUR)	Business confidential data			
Index (2007 = 100)	*100*	*– 93*	*24*	*– 7*

Source: Questionnaire reply.

(n) ***Investments***

(128) The annual investments in the production of the like product increased by 4 % between 2007 and 2008 before increasing further by 29 percentage points in 2009. It decreased slightly by 5 percentage point in the IP. Overall, investments increased by 28 % in the period considered.

Table 15

	2007	2008	2009	IP
Net investments (EUR)	Business confidential data			
Index (2007 = 100)	*100*	*104*	*133*	*128*

Source: Questionnaire reply.

5. *CONCLUSION ON INJURY*

(129) The analysis of the data shows that overall the Union industry decreased its production, capacity utilisation, sales, employment and productivity during the period considered. Also, wage cost increased.

(130) At the same time this negative picture is mitigated by the fact that most of these indicators have experienced positive development between 2009 and the IP (2010). In particular between 2009 and 2010 (IP) production and capacity utilisation increased by 9 percentage points; EU sales and market share increased by 6 and 7 percentage points respectively; employment increased by 2 percentage points, while productivity increased by as much as 8 percentage points.

(131) Also, the market share of the Union industry overall remained stable in the period considered. While it dropped in 2008 it increased already in 2009. In 2010 it reached a level very close to that of 2007.

(132) Profitability, as well as return on investment and cash flow (both closely related to the profitability), all show a mixed picture of the economic situation of the Union industry. While overall (between 2007 and the IP) they decrease, they also oscillate significantly and show the volatile character of the market.

(133) Net investment was clearly increasing between 2007 and 2009 (by 33 %) and experienced only a small decrease (by 5 percentage points) in 2010 (IP).

(134) Also, the actual level of losses suffered by the Union industry in the IP is relatively moderate.

(135) In the light of the foregoing, it is concluded that the Union industry has suffered some injury. However, given the relatively insignificant level of actual losses suffered by the Union industry in the IP, and signs of recovery towards the end of the period considered, that injury cannot be characterised as material within the meaning of Article 3(5) of the basic Regulation.

(136) Following the disclosure of the final findings, the complainant argued that the injury in this case should be considered as material because in some other cases with allegedly similar circumstances (i.e. positive trends observed towards the end of the period considered) [1] the findings were different. The complainant also argued that looking at the later part of the period considered and drawing conclusions from signs of recovery in that period is incompatible with WTO law [2].

(137) It is noted in this regard that each case has to be judged on its own merits. In this particular case, the investigation not only established clear signs of recovery of the Union industry towards the end of the period considered, but also the magnitude of the negative trends was relatively limited. For example the market share of the Union industry remained stable and relatively high overall, capacity utilisation fell slightly but remained at a level above 80 %, and investments increased. By contrast, in *Oxalic acid* [3] there was, for instance, a loss of Union industry market share of 9 % in the IP compared with the first year of the injury investigation period [4]. In *Citric acid* [5] there was a similar loss of market share and there was a decrease of investments [6].

(138) With regard to WTO obligations, the panel report quoted refers to a completely different situation in which the investigating authority analysed only partial data from only 6 months of each of three consecutive years and based its findings on this incomplete analysis. The situation in the case at hand is obviously different as the injury analysis covers full year data from four consecutive years and additionally there is some emphasis on the fact that by the end of that four-year period there was a positive development in many of the trends analysed compared to the year before the IP.

(139) Given the above, it is definitively concluded that any injury suffered by the Union industry is not characterised as material within the meaning of Article 3(5) of the basic Regulation.

E. **CAUSATION**

1. *INTRODUCTION*

(140) Without prejudice to the determination with regard to the lack of material injury and under the hypothesis that the injury suffered by the Union industry could have been characterised as material, the Commission examined the potential causal link.

(141) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission examined whether any injury suffered by the Union industry has been caused by the dumped imports from the country concerned. Furthermore, known factors other than the dumped imports, which might have injured the Union industry, were examined to ensure that any injury caused by those other factors was not attributed to the dumped imports.

[1] The complainant quotes in particular *Oxalic acid from India and China* (OJ L 275, 20.10.2011, p. 1) and *Citric acid from China* (OJ L 143, 3.6.2008, p. 13).

[2] The complainant refers to the Final Report of the Panel in dispute WT/DS331/R Mexico — Anti-dumping duties on steel pipes and tubes from Guatemala.

[3] OJ L 106, 18.4.2012, p. 1.

[4] See Commission Regulation (EU) No 1043/2011 imposing provisional duties (OJ L 275, 20.10.2011, p. 1), recital 77.

[5] OJ L 323, 3.12.2008, p. 1.

[6] See Commission Regulation (EC) No 488/2008 imposing provisional duties (OJ L 143, 3.6.2008, p. 13), at respectively recitals 68 and 72.

2. *EFFECTS OF THE DUMPED IMPORTS*

(142) The imports of the product concerned increased overall by 15 % between 2007 and the IP and their corresponding market share increased by 25 % despite the contracting demand on the Union market. Those developments generally coincided with the weakened economic situation of the Union industry. While the Union industry managed to keep its market share, the Chinese imports gained over 5 percentage points.

(143) On that basis it would appear, at first sight, that there is a causal link between imports from the PRC and any injury suffered by the Union industry.

(144) However, a more detailed analysis of the effects of dumped imports on the situation of the Union industry does not appear to show a clear correlation. For example, while the imports from the PRC hardly increased between 2007 and 2008 (recital 101) and their CIF import price went up by 48 percentage points (recital 103), the Union industry in 2008 nevertheless suffered significant losses and lost some market share. By contrast, while the Chinese imports increased by 26 % between 2008 and 2009, and their CIF import price went down by 11 percentage points, the Union industry kept its market share and recovered from the 2008 losses. Also between 2009 and the IP while imports from the PRC maintained their presence on the Union market, the situation of the Union industry clearly improved as discussed above in the injury analysis.

(145) This lack of correlation between imports from the PRC and the trends of the injury indicators suggests strongly that other factors contributed and possibly caused any injury suffered by the Union industry. This question will be further explored below.

3. *EFFECTS OF OTHER FACTORS*

(146) The other factors which were examined in the context of causation are: (i) the contraction in Union demand, probably partly related to the financial and economic crisis in the years 2008/2009; and (ii) the volatility of the soy bean market.

(i) **Contraction in Union demand, probably partly related to the financial and economic crisis of 2008/2009**

(147) A drop in Union consumption could be observed in the period considered, namely by 8 % if one compares 2007 with 2010 (the IP). Many of the injury factors developed largely in line with that factor. For instance, the sales volume of the EU industry also dropped by 8 % if one compares the aforementioned two periods. Other examples are employment — 7 % less in 2010 than in 2007 — and productivity — also 7 % less in 2010 than in 2007. It is therefore clear that the contraction in demand, whatever its underlying cause, was a major factor in the developments of the state of the Union industry.

(148) Although the reason for the contraction in demand is not directly relevant for causation analysis, it may well be that it was caused, at least in part, by the financial and economic crisis. In this context, it is noted that demand dropped in particular between 2008 and 2009. Because of its coincidence in time, the 8 percentage points' decrease between 2008 and 2009 was in all likelihood linked to the economic crisis. Consequently, it could be argued that the injury suffered by the Union industry was caused by the economic crisis and the resulting decline in demand.

(149) It is also noted that Solae Belgium recognises in its annual report from 2009 that lower income from financial assets caused by the financial crisis have had a negative impact on the company's financial situation.

(150) It is also reiterated that the Union industry improved its economic situation between 2009 and the IP. This improvement clearly coincides with the general economic recovery.

(151) Given the above, it is considered that the contraction in demand, probably partly caused by the economic crisis, was a major cause of any injury suffered by the Union industry.

(152) Following the final disclosure, the complainant claimed that the financial and economic crises did not cause the injury, but did not provide any convincing argument in this regard and simply referred to a number of other cases [1] where the findings were different.

(153) In this regard, it is reiterated that each case has to be judged on its own merits. In this particular case the fact remains that while there is a lack of clear correlation between dumped imports and the situation of the Union industry, the contraction in demand, probably partly caused by the economic crisis, did contribute to the poor situation of the Union industry. In fact, at least to some extent, as explained above, this was explicitly recognised in the annual report of Solae Belgium of 2009.

(154) Nevertheless, important differences can be noted between the cases referred to by the complainant and the present case. A number of those differences are listed in the following recitals.

[1] *Open mesh fabrics of glass fibres from the PRC* (OJ L 43, 17.2.2011, p. 9); *Oxalic acid from India and the PRC* (OJ L 275, 20.10.2011, p. 1); *Glass fibre from the PRC* (OJ L 67, 15.3.2011, p. 1) and *Ceramic tiles from the PRC* (OJ L 70, 17.3.2011, p. 5).

(155) In the Oxalic acid case [1], although some indicators indeed marked a positive development between 2009 and the IP, the market share of the Union industry decreased, whereas in the present case it increased almost to the level of 2007 [2]. Furthermore, the Oxalic acid case does not show a year-on-year absence of correlation between dumped imports from the countries concerned and the trends of the injury indicators, which is characteristic of the present case. The profitability trends are also different. Notably, in the present case the profitability fluctuates considerably. Finally, in the present case the market is highly volatile.

(156) In the Open mesh fabrics of glass fibres case [3], the market share of the Union industry decreased every year, and overall by 12 percentage points [4]. At the same time the market share of Chinese imports consistently grew year on year, and overall by 12,4 percentage points [5]. In the present case, the market share of Chinese imports increased up to 2009 in order to then decrease between 2009 and the IP. At the same time, the Union industry's market share decreased already in 2008 in order to then bounce back almost to the 2007 level.

(157) In the Glass fibres case [6] the market share of dumped imports consistently grew year on year, and overall by 6,3 percentage points [7].

(158) In the Ceramic tiles case [8], the market share of the dumped imports was increasing steadily [9]. Furthermore, the evolution of stocks was very different. In the Ceramic tiles case the increase in stocks was a telling injury factor [10]. Finally, the investigation in the Ceramic tiles case showed that despite recovery in the construction sector, the indicators of the Union industry continued to show a downward trend [11].

(159) Finally, in the Fatty alcohol case [12], the development of the injury indicators between 2009 and the IP differed from the present case (e.g. employment decreased) [13], and the volume and market share of dumped imports increased between 2009 and the IP [14].

(160) Consequently, the claim of the complainant must be rejected.

[1] OJ L 275, 20.10.2011, p. 1.
[2] Ibid, recital 75.
[3] OJ L 43, 17.2.2011, p. 9.
[4] Ibid, recital 75.
[5] Ibid, recital 66.
[6] OJ L 67, 15.3.2011, p. 1.
[7] Ibid, recital 64.
[8] OJ L 70, 17.3.2011, p. 5.
[9] Ibid, recital 73.
[10] Ibid, recitals 93-95 and 125.
[11] Ibid, recital 124.
[12] OJ L 122, 11.5.2011, p. 47.
[13] Ibid, recital 85.
[14] Ibid, recital 70.

(ii) **Volatility of the soy bean market**

(161) It has been shown above that the Union industry's profitability oscillates significantly and indicates a volatile character of the market.

(162) That volatility is closely linked with the fluctuations on the raw materials market. The spot market for the main raw material — soy beans — is traditionally characterised by significant monthly and annual fluctuations [15], while prices for the final product — CCSPP — tend to be rather stable (as they are based on longer term contracts). Consequently, the level of profitability for the product under investigation is heavily dependent on the prevailing situation on the soy bean market.

(163) In this context it is noted that indeed there was a significant soy bean price hike in 2008 that had an important impact on the profitability and the overall situation of the Union industry. The complainant itself recognised that the soy bean price hike did contribute to its poor situation in 2008.

(164) Given the above, it is clear that the volatility of soy bean market also was a major cause of any injury suffered by the Union industry.

(165) Following the final disclosure, the complainant claimed that the volatility of soy bean prices could not break the causal link either and was only relevant for the 2008 losses. However, no substantiated evidence was presented in this respect.

(166) It is noted that soy bean price hikes coincide with the poor financial performance of the Union industry and, given that high soy bean prices were considered to be the main cause of 2008 losses, there is no particular reason why the 2010 losses coinciding with another hike of the soy bean prices should be treated differently.

(167) Consequently, the claim of the complainant must be rejected.

4. *CONCLUSION ON CAUSATION*

(168) Other factors, and in particular the contraction in demand (probably partly caused by the economic crisis of 2008/2009) and the volatile character of the main raw material market were important causes of any injury to the Union industry.

[15] Publicly available data (see, for example, http://www.indexmundi.com) show that monthly price variations for soy beans can be as high as +/– 15 %.

(169) Therefore, even under the hypothesis that the Union industry suffered material injury, since those other factors break the causal link, it cannot be concluded that any injury was caused by the dumped imports from the PRC.

F. **UNION INTEREST**

(170) Since it was found above that the Union industry is not suffering injury that can be qualified as material, and that in any case other factors break the causal link between the dumped imports and that injury, it is not necessary to examine the Union interest.

G. **TERMINATION OF THE PROCEEDING**

(171) In view of the conclusions reached with regard to lack of material injury suffered by the Union industry and with regard to the absence of causal link, in accordance with Article 9 of the basic Regulation, the proceeding should be terminated without the imposition of measures.

(172) All parties concerned were informed of the final findings and the intention to terminate the proceeding and were given an opportunity to comment. Their comments were considered but they have not altered the conclusions reached above,

HAS ADOPTED THIS DECISION:

Article 1

The anti-dumping proceeding concerning imports of certain concentrated soy protein products originating in the People's Republic of China is hereby terminated.

Article 2

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

Done at Brussels, 27 June 2012.

For the Commission

The President

José Manuel BARROSO