REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 1194/2013

of 19 November 2013

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia

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 after having consulted the Advisory Committee,

Whereas:

A. PROCEDURE

1. Provisional measures

(1) On 27 May 2013, the European Commission ('the Commission') decided to impose a provisional anti-dumping duty on imports of biodiesel originating in Argentina and Indonesia ('the countries concerned') by Regulation (EU) No 490/2013 [2] ('the provisional Regulation').

(2) The proceeding was initiated on 29 August 2012 [3] following a complaint lodged on behalf of Union producers ('the complainants'), representing more than 60 % of the total Union production of biodiesel.

(3) As set out in recital 5 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2011 to 30 June 2012 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2009 to the end of the IP ('the 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 a provisional anti-dumping duty ('provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(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 biodiesel originating in Argentina and Indonesia and the definitive collection of the amounts secured by way of provisional duty ('the definitive disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

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

B. SAMPLING

(8) In the absence of comments concerning the sampling of exporting producers in Argentina and Indonesia the provisional findings in recitals 10 to 14 and 16 to 20 of the provisional Regulation are hereby confirmed.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 141, 28.5.2013, p. 6.
[3] OJ C 260, 29.8.2012, p. 8.

(9) One interested party requested further information on the representativity of the sample of Union producers, both at the stage of provisional selection as set out in recital 23 of the provisional Regulation and at the stage of final selection as set out in recital 83 of the provisional Regulation.

(10) The sample of Union producers provisionally selected consisted of 32,5 % of the production of biodiesel in the Union during the IP. Following the changes explained in recital 24 of the provisional Regulation the final sample consisted of eight companies covering 27 % of Union production. The sample was therefore considered to be representative of the Union industry.

(11) One interested party claimed that two Union producers that were sampled should be removed from the sample due to their relationship with Argentine exporting producers. The alleged relationship was examined prior to the imposition of provisional measures and the Commission's conclusions already published in recital 82 of the provisional Regulation.

(12) All of the alleged links between Argentine exporting producers and the two sampled companies referred to above were examined again, and no direct link between them was found such that either Union producer should be removed from the sample. The sample therefore remained unchanged.

(13) Another interested party claimed that the Commission's procedure for selecting a sample of Union producers was flawed, as the Commission proposed a sample prior to initiation of the investigation.

(14) That claim is rejected. The Commission did not select the final sample until after the initiation of the investigation and entirely in line with the provisions of the basic Regulation.

(15) In the absence of any other claim or comments, the content of recitals 22 to 25 of the provisional Regulation is confirmed.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Introduction

(16) As set out in recital 29 of the provisional Regulation, the product concerned as provisionally defined is fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as included in a blend originating in Argentina and Indonesia, currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 95, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 90 97, 3826 00 10 and ex 3826 00 90 ('the product concerned', commonly referred to as 'biodiesel').

2. Claims

(17) One Indonesian exporting producer claimed that contrary to what was stated in recital 34 of the provisional Regulation, palm methyl ester (PME) produced in Indonesia was not a like product to rapeseed methyl ester (RME) and other biodiesels produced in the Union, or soybean methyl ester (SME) produced in Argentina because of the much higher CFPP of PME which means that it must be blended before use in the Union.

(18) This claim is rejected. PME produced in Indonesia is in competition with biodiesel produced in the Union, which is not just RME but also biodiesel made from palm oil and other feedstocks. PME can be used throughout the Union throughout the year, by blending with other biodiesels before use, in the same way as RME and SME. PME is therefore interchangeable with biodiesel made in the Union and therefore is a like product.

(19) Recital 35 of the provisional Regulation states the claim of one Indonesian producer that fractionated methyl esters should be excluded from the product scope of this proceeding. The same producer maintained this request in its comments on provisional disclosure restating their argument from prior to provisional disclosure.

(20) The Union industry however disputed this claim stating that fractionated methyl esters were biodiesel and should remain within the product scope.

(21) Following comments received after provisional stage, the decision of the Commission in recital 36 of the provisional Regulation is confirmed. Regardless of the fact that various fatty acid methyl esters have different Chemical Abstracts Service ('CAS') numbers; that different processes are used to produce those esters; and that they have possible different uses, fractionated methyl esters are still fatty acid methyl esters and can still be used for fuel use. Given the difficulties of distinguishing one fatty acid methyl ester from another without chemical analysis at the point of importation, and the possibility of circumvention of the duties as a result, with PME biodiesel being declared as fractionated methyl ester made from palm oil, the claim remains rejected.

(22) In recital 37 of the provisional Regulation it is mentioned that one European importer of palm kernel oil fatty acid methyl ester ('PKE') requested that imports of this product be subject to End Use Relief, or otherwise be excluded from the product scope of this proceeding.

(23) The Union industry commented after provisional disclosure on the use of end use relief for imports of PKE and the possibility of circumvention of the duties proposed. They opposed the Commission's authorisation to use such a scheme for relief of anti-dumping duties due to the fungible nature of biodiesel; biodiesel declared for non-fuel use could be used for fuel as it has the same physical properties. PKE can be used for fuel use; the unsaturated fatty alcohol that is made out of PKE can also be further processed into biodiesel; and the control that Customs can apply on imports under End Use Relief is limited and the economic burden resulting from the use of this scheme remains significant.

(24) Following consultations on this issue and in view of the fact that biodiesel declared as for non-fuel use has the same physical properties as biodiesel for fuel use, it is not appropriate to allow End Use Relief for imports of PKE in the present case.

(25) One German importer repeated their request for product exclusion and/or End Use Relief for a particular fatty acid methyl ester manufactured from palm kernel oil (PKE) which was destined for use other than fuel in the EU. The comments made restated their position which had been rejected at provisional stage and no new evidence was provided that would change the conclusion that End Use Relief should not be granted and that PKE should remain within the product scope.

(26) One Indonesian exporting producer also referred to their claim for End Use Relief for fractionated methyl esters and requested End Use Relief for these imports for the manufacture of saturated fatty alcohol. As set out above, all requests for End Use Relief have been denied and the arguments set out by this interested party did not change that conclusion.

3. **Conclusion**

(27) In the absence of other comments regarding the product concerned and the like product, recitals 29 to 39 of the provisional Regulation are hereby confirmed.

D. **DUMPING**

1. **Introductory remarks**

(28) Recitals 44 and 64 of the provisional Regulation explained that both the Argentine and the Indonesian biodiesel markets are heavily regulated by the State and thus domestic sales were not considered as being made in the ordinary course of trade. As a consequence, the normal value of the like product had to be constructed pursuant to Article 2(3) and (6) of the basic Regulation. That finding was not contested by any interested party and is therefore confirmed.

(29) For both Argentina and Indonesia the constructed normal value at provisional stage was calculated on the basis of the companies' own actual (and recorded) production costs during the IP, selling, general and administrative expenses ('SG&A') incurred and a reasonable profit margin. Recitals 45 and 63 of the provisional Regulation noted in particular that the Commission would further examine the claim that the Differential Export Tax systems ('DET') in Argentina and Indonesia distort raw material prices and that, therefore, the recorded costs of production did not reasonably reflect the costs associated with the production of the product concerned.

(30) The further investigation has demonstrated that indeed the DET systems depressed the domestic prices of the main raw material input in both Argentina and Indonesia to an artificially low level, as explained below in recitals 35 onwards for Argentina and recital 66 for Indonesia and, as a consequence, affect the costs of the biodiesel producers in both countries concerned. In view of this finding it is considered appropriate that this cost distortion of the main raw materials should be taken into account in establishing the normal values in both countries, given the particular market situation prevailing both in Argentina and Indonesia.

(31) The General Court has confirmed [1] that when the prices of raw materials are regulated in such a way that they are artificially low on the domestic market, it may be presumed that the cost of producing the product concerned is affected by a distortion. The General Court considered that under such circumstances, the Union institutions are entitled to conclude that one of the items in the records cannot be regarded as reasonable and that, consequently, such item can be adjusted.

[1] See for instance judgment T-235/08 of 7 February 2013 (Acron OAO and Dorogobuzh OAO against the Council).

(32) The General Court also concluded that it is apparent from the first subparagraph of Article 2(5) of the basic Regulation that the records of the party concerned do not serve as a basis for calculating normal value if the costs associated with the production of the product under investigation are not reasonably reflected in those records. In that case, the second sentence of the first subparagraph provides that the costs are to be adjusted or established on the basis of sources of information other than those records. That information may be taken from the costs incurred by other producers or exporters or, when that information is not available or cannot be used, any other reasonable source of information, including information from other representative markets.

(33) In the provisional calculations, the actual domestic purchase price of soya beans and the actual booked cost for crude palm oil was used when computing the costs of production for respectively Argentine and Indonesian producing exporters.

(34) Given that certain costs of production, and namely the costs of the main raw material and (soybean oil and soya beans in Argentina and crude palm oil in Indonesia), were found to be distorted, they were established on the basis of reference prices published by the relevant authorities of the countries concerned. Those prices reflect the level of international prices.

2. **Argentina**

2.1. *Normal Value*

(35) As mentioned above, the Commission has now reached the conclusion that the DET system in Argentina distorts the costs of production for biodiesel producers in that country. The investigation established that during the IP export taxes on raw material (35 % on soya beans and 32 % on soybean oil) were significantly higher than the export taxes on the finished product (nominal rate of 20 % on biodiesel, with an effective rate of 14,58 % taking into account a tax rebate). As a matter of fact, the difference between the export tax on soya beans and biodiesel was 20,42 percentage points, and between soya bean oil and biodiesel was 17,42 percentage points during the IP.

(36) To determine the level of the export tax for soya beans and soya bean oil, the Argentine Ministry of Agriculture, Livestock and Fisheries publishes on a daily basis the FOB price for soya beans and soya bean oil — 'the reference price' ([1]). This reference price reflects the level of international prices ([2]) and is used to calculate the amount of the export tax to be paid to the tax authorities.

(37) The domestic prices follow the trends of the international prices. The investigation established that the difference between the international and the domestic price of soya beans and soya bean oil is the export tax on the product and other expenses incurred for exporting it. The domestic reference prices of soya beans and soya bean oil are also published by the Argentine Ministry of Agriculture as the 'FAS theoretical price' ([3]). The producers of soya beans and soya bean oil therefore obtain the same net price no matter whether they sell for export or domestically.

(38) In conclusion, the domestic prices of the main raw material used by biodiesel producers in Argentina were found to be artificially lower than the international prices due to the distortion created by the Argentine export tax system and, consequently, the costs of the main raw material were not reasonably reflected in the records kept by the Argentinean producers under investigation in the meaning of Article 2(5) of the basic Regulation as interpreted by the General Court as explained above.

(39) The Commission has therefore decided to revise recital 63 of the provisional Regulation and disregard the actual costs of soya beans (the main raw material purchased and used in the production of biodiesel) as recorded by the companies concerned in their accounts and to replace them with the price at which those companies would have purchased the soya beans in the absence of such a distortion.

(40) In order to establish the cost at which companies concerned would have purchased the soya beans in the absence of such a distortion, the Commission took the average of the reference prices of soya beans published by the Argentine Ministry of Agriculture for export FOB Argentina during the IP ([4]).

(41) The association of Argentine exporting producers (CARBIO) and the Argentine authorities claimed that an adjustment to the costs borne by the companies under Article 2(5) of the basic Regulation is only possible when the records, and not the costs incurred by the companies, do not reasonably reflect the costs associated with the production and sale of the product concerned. They stated that in practice the Commission added the export taxes to the price paid by the companies when purchasing soya beans, thus including in the costs of productions an item which is not associated with the production or sale of the product concerned. They

([1]) Resolution 331/2001 of the Ministry of Agriculture, Livestock and Fisheries.

([2]) The main market which is considered to determine the level of the international price of soya beans and soya bean oil is Chicago Board of Trade.

([3]) The FAS theoretical value is calculated by discounting from the official FOB value all costs included in the export process.

([4]) http://64.76.123.202/site/agricultura/precios_fob_-_exportaciones/index.php

added that the General Court's ruling 'Acron' quoted in the disclosure document ([1]) is based on a wrong interpretation of Article 2.2.1.1 of the WTO Anti-Dumping Agreement (ADA), it is currently being appealed before the Court of Justice and in any event the factual considerations are different from those in the present case, since raw material prices in Argentina are not 'regulated' as it is the gas price in Russia and are not distorted but determined freely without any State intervention and therefore there is not a particular market situation in Argentina that would allow the Commission to apply Article 2(5) of the basic Regulation. They declared that the DET system in Argentina is not inconsistent with any trade rules. In addition, CARBIO claimed that, since export taxes were not taken into account when establishing the export price, the Commission did not make a fair comparison between constructed normal value (which takes into account export taxes) and export price (which does not take into account export taxes).

Moreover, they claimed that by referring to the international prices of soya beans as established in the Chicago Board of Trade (CBOT) when constructing normal value, but disregarding the gains or losses linked to the hedging activities at the CBOT when establishing the export price (see below), again the Commission did not make a fair comparison between normal value and export price. Furthermore CARBIO claimed that by mere replacing the costs recorded by the companies under investigation with an international price, the Commission did not take into account the natural competitive advantage of the Argentine producers. Finally, CARBIO complained that the Commission did not take into account the fact that in the absence of the DET in Argentina, the CBOT prices of soya beans would have been much lower.

(42) These claims must be rejected. Even if the facts of the 'Acron' case are not the same as the facts in the present case, the General Court has nevertheless established the principle of law that if the costs associated with the production of the product under investigation are not reasonably reflected in the records of the companies, they do not serve as a basis for calculating normal value. In the 'Acron' case the costs were not reasonably reflected in the records of the company concerned because the gas price was regulated. In the present case it was established that the costs associated with the production of the product concerned are not reasonably reflected in the records of the companies concerned as they are artificially low due to the distortion caused by the Argentine DET system. This holds true regardless of whether or not DET systems in general may be as such contrary to the WTO Agreement. Furthermore, the Commission considers that the General Court based itself on a correct interpretation of the ADA. In fact, in China — Broilers ([2]), the panel found that although Article 2.2.1.1 of the ADA sets up a presumption that the books and records of the respondent shall normally be used to calculate the cost of production, the investigating authority retains the right to decline to use such books if it determines that they are either (i) inconsistent with GAAP or, (ii) do not reasonably reflect the costs associated with the production and sale of the product under consideration. However, when making such a determination to derogate from the norm, the investigating authority must set forth its reasons for doing so. Consistent with this interpretation, in view of the distortion created by the DET system, which creates a particular market situation, the Commission replaced the costs recorded by the companies concerned for the purchase of the main raw material in Argentina with the price that would have been paid in the absence of the established distortion. The fact that from a pure numerical point of view the result is similar does not mean that the methodology applied by the Commission consisted in simply adding the export taxes to the costs of the raw material. International prices of commodities are set based on supply and demand and there is no evidence that the DET system in Argentina affects the CBOT prices. Therefore, all claims and allegations that by using an international price the Commission did not make a fair comparison between normal value and export price are unfounded. The same applies to the claim that the Commission did not take into account the natural competitive advantage of the Argentine producers, because the replacement of the costs recorded by the companies was due to the abnormally low price of raw material in the domestic market, rather than to a comparative advantage.

(43) In recital 45 of the provisional Regulation, it was explained that since domestic sales were not considered as being made in the ordinary course of trade, normal value had to be constructed using a reasonable amount for profit of 15 % pursuant to Article 2(6)(c) of the basic Regulation. Some exporting producers claimed that the percentage used by the Commission as a reasonable profit (15 %) when constructing normal value was unrealistically high and a radical change in the established practice in a number of other investigations in similar commodity-related markets (i.e. where the profit used was about 5 %).

([1]) Judgment T-235/08 of 7 February 2013 (Acron OAO and Dorogobuzh OAO against the Council).

([2]) Panel Report, China — Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States (WT/DS427/R, adopted 25 September 2013), para. 7.164.

(44) This claim must be rejected. First of all, it is incorrect that the Commission uses systematically a 5 % profit margin when constructing normal value. Every situation is assessed on its own merits taking into account the specific circumstances of the case. For example, in the 2009 biodiesel case against the United States, various different profit levels were used with the weighted average profit being well above 15 %. Second, the Commission looked also at the short and medium term borrowing rate in Argentina which is around 14 % according to the World Bank data. It certainly seems reasonable to expect a higher profit margin to be obtained when doing business in the domestic biodiesel markets than the borrowing cost of capital. Furthermore, this profit is even lower than the profit realised during the IP by the producers of the product concerned, albeit that level results from distortions in costs brought about by the DET and domestic biodiesel prices regulated by the State. Therefore, and for the reasons explained above, it is maintained that 15 % profit is a reasonable amount that can be achieved by a relatively new, capital-intensive industry in Argentina.

(45) Following definitive disclosure, CARBIO and the Argentine authorities claimed that (i) the reference to the profit levels in the US case was unjustified; (ii) the reference of the medium-term borrowing rate lacks logic, was never used in the past and if such a benchmark is to be used, it should not be that of Argentina because investments were made in US dollars together with foreign entities; (iii) the profit actually earned by the Argentine producers could not be taken into account due to the particular market situation; and (iv) by comparison the Union industry target profit was set at 11 %.

(46) Those claims must be rejected. The Commission considered that a 15 % profit margin was reasonable for the biodiesel industry in Argentina, since in that country during the IP it was still a young and capital intensive industry. The reference to the profit margin in the US case was made to rebut the claim that the Commission uses systematically a 5 % profit margin when constructing normal value. The reference to the medium-term borrowing rate also was not meant to set a benchmark but to test the reasonableness of the margin used. The same applies to the profit actually earned by the sampled companies. On the other hand, since the purpose of constructing normal value is different from the calculation of the target profit for the Union industry in the absence of dumped imports, any comparison between the two is irrelevant. Therefore, recital 46 of the provisional Regulation is hereby confirmed.

(47) One exporting producer manufactures biodiesel partly in its own plants and partly via a tolling agreement with an independent producer. This exporting producer requested that its cost of production be recalculated using a different weighted average of its own cost of production and of the cost of production of the toller than the one used by the Commission at provisional stage. This request was analysed and found to be justified and the cost of production for the company concerned was recalculated accordingly.

(48) The Commission received other minor company-specific claims but they became moot following the change in methodology of constructing the normal value as explained above. Therefore, the findings in recitals 40 to 46 of the provisional Regulation are, with the modifications explained above, hereby confirmed.

2.2. *Export price*

(49) In recital 49 of the provisional Regulation, it was explained that when export sales were made through related trading companies located inside the Union, adjustments were made to the export price, including for the profit accruing to the related trader in accordance with Article 2(9) of the basic Regulation. For the purpose of that calculation, a level of profit of 5 % for the related trader inside the Union was considered reasonable. Two exporting producers claimed that a 5 % profit margin for the related trader within the Union was too high in the commodity trading business and that either no profit, or a lower percentage should be used (up to 2 % depending on the companies).

(50) No evidence was provided in support of this claim. In these circumstances the 5 % profit level for related traders within the EU is confirmed.

(51) Following definitive disclosure, CARBIO maintained that a profit margin of 5 % was too high in the commodity trading business and referred to a study prepared by KPMG specifically for this purpose and submitted to the Commission on 1 July 2013 following disclosure of the provisional Regulation. The Commission considered that the findings of the study could not be relied upon due to the limitations to the analysis referred to in the study itself, which led to a selection of a limited number of trading companies, half of which were not selling agricultural products. Therefore, the evidence provided is considered to be inconclusive. As a consequence, the 5 % margin of profit for the related traders in the EU is confirmed.

(52) One exporting producer complained that when establishing the export price the Commission did not take into account the so-called 'hedging results', i.e. the gain or losses incurred by the producer when selling and purchasing future contracts of soybean oil at the Chicago Board of Trade (CBOT). The company insisted that hedging is a necessary element of the biodiesel business because of the volatility of raw material price, and that the net revenue for the biodiesel seller is not only the price paid by the purchaser, but also the profit (or loss) of the underlying hedging operations.

(53) That claim must be rejected because Article 2(8) of the basic Regulation clearly provides that the export price shall be the price actually paid or payable for the product when sold for export, regardless of any separate — albeit related — gain or loss linked to hedging practices.

(54) In the absence of any further comments regarding export prices, recitals 47 to 49 of the provisional Regulation are, with the changes mentioned above, hereby confirmed.

2.3. *Comparison*

(55) In recital 53 of the provisional Regulation, it was explained that when export sales were made through related trading companies located outside the EU, the Commission examined whether the related trader should be treated as an agent working on a commission basis and, if so, an adjustment was made in accordance with Article 2(10)(i) of the basic Regulation to take account of a notional mark-up received by the trader.

(56) One company claimed that the profit margin used by the Commission for the related trader outside the EU as a notional mark-up was too high and that a lower profit margin would be more reasonable.

(57) The Commission examined carefully the arguments put forward by the exporting producer, but concluded that in light of the extensive activities carried out by the related traders, a profit margin of 5 % was considered reasonable. Therefore, that claim must be rejected.

(58) In the absence of any other comments regarding comparison, recitals 50 to 55 of the provisional Regulation are hereby confirmed.

2.4. *Dumping margins*

(59) All cooperating Argentine exporting producers requested that if an anti-dumping duty were to be imposed on imports of biodiesel from Argentina, there should be a single duty for all cooperating exporting producers, based on the weighted average of the anti-dumping duties of all exporting producers in the sample. They supported this request by claiming that all sampled producers have commercial or other links among each other, they produce, sell, loan or swap biodiesel to each other and often the product of various companies is loaded together in the same ocean vessel and shipped to the EU and it is no longer possible for customs authorities to identify and distinguish the product of different producers. These peculiar circumstances were said to render the imposition of individual duties impracticable.

(60) Notwithstanding the fact that the request comes from all exporting producers, even including those with a lower individual dumping margin than the weighted average margin, and despite the potential simplification for the customs authorities, this request should be rejected. Indeed, alleged practical difficulties should not be used as an excuse to derogate from the provisions of the basic Regulation unless it is unavoidable. In this case, the companies' practice to swap, borrow or otherwise mingle the product concerned does not in itself render the imposition of individual duties impracticable in the meaning of Article 9(6) of the basic Regulation.

(61) Three companies requested that their names be included in the list of cooperating exporting producers in order to benefit from the anti-dumping duty rate of the cooperating non-sampled companies rather than the residual duty for 'all other companies'.

(62) Two of the three companies were already manufacturing biodiesel for the domestic market or under tolling agreements for other exporting producers during the IP, but they were not themselves exporting to the Union. The third company was not producing biodiesel during the IP since its plant was still under construction at that time.

(63) The Commission considers that the conditions for being considered a cooperating exporting producer are not met in the cases of the three companies referred to above. This applies not only to the company which was not producing biodiesel at all during the IP, but also to the companies which cooperated with the investigation by submitting a sampling form, since in their sampling reply they made it clear that they were producing for the domestic market or for third parties but they were not exporting biodiesel to the Union on their own name.

(64) This request must therefore be rejected and the 'residual' anti-dumping duty should apply to the three companies in question.

(65) Taking into account the adjustments made to the normal value and to the export price as set out above, and in the absence of any further comments, the table in recital 59 of the provisional Regulation is replaced by the following and the definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Dumping margin
Louis Dreyfus Commodities S.A.	46,7 %
Group 'Renova' (Molinos Río de la Plata S.A., Oleaginosa MoreNo Hermanos S.A.F.I.C.I. y A. and Vicentin S.A.I.C.)	49,2 %
Group 'T6' (Aceitera General Deheza S.A., Bunge Argentina S.A.)	41,9 %
Other cooperating companies	46,8 %
All other companies	49,2 %

3. **Indonesia**

3.1. *Normal Value*

(66) As mentioned above in recitals 28 to 34, the Commission has now reached the conclusion that the DET system in Indonesia distorts the costs of production of biodiesel producers in that country and that therefore the costs associated with the production and sale of the product concerned are not reasonably reflected in the records kept by the Indonesian producers under investigation.

(67) The Commission has therefore decided to revise recital 63 of the provisional Regulation and disregard the actual costs of crude palm oil (CPO), the main raw material purchased and used in the production of biodiesel, as recorded by the companies concerned in their accounts and to replace them with the price at which those companies would have purchased the CPO in the absence of such a distortion.

(68) The investigation has confirmed that the price level for the domestically traded CPO is significantly depressed as compared to the 'international' reference price, the difference being very close to the export tax applied to CPO. Since the DET system limits the possibilities to export CPO, it leads to larger quantities of CPO being available on the domestic market, hence putting pressure down on the domestic CPO prices. This constitutes a particular market situation.

(69) During the IP biodiesel exports had an export tax rate between 2 and 5 %. During the same period CPO exports had an export tax rate ranging between 15-20 % while the export tax for RBDPO ranged from 5-18,5 %. The different tariff rates apply according to the corresponding range of reference prices (which follow the international market trends and have nothing to do with quality differences). The export tax for the palm fruit is set at a flat rate of 40 %.

(70) For the reasons mentioned above, recital 63 of the provisional Regulation is revised and the cost of the main raw material (CPO) recorded by the companies concerned has, pursuant to Article 2(5) of the basic Regulation, been replaced by the reference export price (HPE) ([1]) for CPO published by the Indonesian Authorities which is in turn based on published international prices (Rotterdam, Malaysia and Indonesia). This adjustment is made in respect of CPO that was purchased from both related and unrelated companies. The cost of the own produced CPO within the same legal entity is accepted given that no evidence has been found that the cost of the own produced CPO within the same legal entity is affected by the distortion.

(71) All exporting producers from Indonesia as well as the Government of Indonesia claim that the replacement of the costs for CPO, as recorded by the companies, with the Indonesian reference export price for CPO is neither permissible under WTO rules nor under Article 2(5) of the basic Regulation and is hence illegal. In this regard the Government of Indonesia claimed that the Commission wrongly treated the Republic of Indonesia as a non-market economy. The arguments put forward by the companies can be summarised as follows. Firstly, the Commission has not demonstrated any reason to depart from the actual costs recorded or that these costs do not reasonably reflect the costs associated with the production of product concerned but has simply stated that the recorded costs are artificially low compared to international prices and should therefore be replaced.

This is contrary to WTO rules according to which the test for determining whether a particular cost can be used for calculating production costs is whether that cost is associated with the production and sale of the product and not whether that cost reasonably reflect market value. Secondly, even if Article 2(5) of the basic Regulation seemingly allows for an adjustment to be made, the application of that Article would be limited to situations where the State interferes directly on the market by setting or regulating the prices at an artificially low level. However, in this particular case, the

([1]) The HPE price is monthly set by the Indonesian authorities since September 2011 and averages the price information from the previous month from three different sources (i) CIF Rotterdam, (ii) CIF Malaysia, and (iii) the Indonesian commodity exchange market. The HPE price is set on the basis of the same sources but on a FOB basis. For the part of the IP before September 2011 (July-August 2011) only the Rotterdam price was used as the benchmark to establish the HPE for CPO.

Commission alleges that the domestic price of CPO, rather than being regulated by the State, is artificially low simply due to the export tax imposed on CPO. Even if this were to be true, any effect on the domestic price can only be considered as accidental or mere side-effects of the export tax system. Thirdly, the Commission wrongly relies on the Acron judgment to justify the legality of the CPO adjustment. This judgment is currently under appeal and cannot therefore be relied upon as a precedent. In any case, the factual circumstance in Acron was different as it relates to a situation where, contrary to CPO prices in Indonesia which are set freely on the market, the gas prices had been regulated by the State. Finally, the Government of Indonesia claimed that the Article 2(5) adjustment was done solely to increase dumping margins by reason of differences in taxation.

(72) The claim that the adjustment under Article 2(5) of the basic Regulation is illegal under WTO and/or Union rules must be rejected. The basic Regulation has transposed the WTO anti-dumping agreement (ADA) and it is therefore considered that all provisions of this Regulation, including Article 2(5), are consistent with the Union's obligations under ADA. In this respect it is recalled that Article 2(5) of the basic Regulation is applicable to both market and non-market economies equally. As mentioned above (recital 42), the General Court established in the Acron case the principle of law that if the costs associated with the production of the product under investigation are not reasonably reflected in the records of the companies, they do not serve as a basis for calculating normal value and that such costs could be replaced with costs reflecting a price set by market forces pursuant to Article 2(5) of the basic Regulation. The fact that the Acron case concerned prices that were regulated by the State cannot, however, be interpreted as meaning that the Commission is precluded to apply Article 2(5) in respect to other forms of State intervention that distorts, directly or indirectly, a particular market by depressing prices to an artificially low level. The panel in China — Broilers has recently reached a similar conclusion when interpreting Article 2.2.1.1 of the ADA. In the present case the Commission has found that the costs associated with the production of the product concerned are not reasonably reflected in the records of the companies concerned because they are artificially low by virtue of the Indonesian DET system. It was therefore fully justified for the Commission to adjust the costs for COP under Article 2(5) of the basic Regulation. With regard to the claim by the Indonesian Government it is noted that that the Article 2(5) adjustment is based on the demonstrated difference between domestic and international CPO prices and not on any differences in taxation.

(73) Two exporting producers in Indonesia claimed that the Commission has failed to demonstrate that the price of Indonesian domestic CPO is distorted. They argue that Commission's basic assumption that the DET limits the possibilities to export CPO, thereby leading to larger quantities of CPO being available on the domestic market and hence depressing the domestic CPO prices is factually incorrect as CPO is exported in large quantities (70 % of all production). In any event, even if the domestic CPO market would be considered distorted by virtue of the DET, also the HPE price is equally distorted, as it is based on international export prices, which include the export tax. Therefore, the HPE price for CPO cannot be used as an appropriate benchmark price for adjusting the cost of CPO.

(74) Notwithstanding the fact that CPO is exported from Indonesia in large quantities, the investigation has revealed that the domestic price of CPO is artificially low as compared with international prices. Moreover, the price difference found is close to the export tax imposed on DET. It is therefore reasonable to conclude that the low domestic price level is a result of a distortion by virtue of the DET. In addition, international prices of commodities, including CPO, are determined based on supply and demand, reflecting the dynamics of market forces. No evidence have been adduced that would indicate those market forces have become distorted by virtue of the Indonesian DET. The claim that the HPE is an inappropriate benchmark is therefore rejected.

(75) One exporting producer, which was found not to have representative domestic sales (recital 60 of the provisional Regulation) claimed that the Commission had erroneously made the representativity test on the basis of sales by related companies individually instead of the global sales of all companies within the group. It nonetheless acknowledges that this alleged error had no impact on the provisional finding made in respect of it. It is recalled that in respect to this exporting producer all related companies failed individually the representativity test. Therefore, even if this claim was to be founded it is clear that a representativity test on the basis of the totality of domestic sales of the all related companies could not, as acknowledged by the exporting producer, have had an impact on the provisional findings. In the absence of any further comments, recitals 60 to 62 of the provisional Regulation are hereby confirmed.

(76) One party claimed that in relation to recital 63 of the provisional Regulation an overstated SG&A was used for that party. After having examined this claim, it appeared that the SG&A for both domestic and export sales was included in the construction of normal value. The necessary corrections to use the SG&A for only the domestic sales were accordingly made.

(77) One party questioned the construction of normal value and in particular the choice of methodology under Article 2(6) as stated in recital 65 of the provisional Regulation. Article 2(6) provides for three alternative methodologies to establish SG&A and profit in case the actual data of the company cannot be used. This party claimed that these three methodologies must be considered in the order in which they are presented and that therefore Article 2(6)(a) and (b) should be considered first to be applied.

(78) Whereas the provisional Regulation appeared to address only the methodology under Article 2(6)(c), the following recitals elaborate why Article 2(6)(a) and (b) are not applicable in this case.

(79) Article 2(6)(a) is not applicable given that no actual amounts for any of the sampled Indonesian (and Argentinian) companies were established given the fact that they did not have any sales in the ordinary course of trade. Therefore, no data on actual amounts of any other exporter or producer (in the sample) is available to apply Article 2(6)(a).

(80) Article 2(6)(b) is not applicable given that all Indonesian (and Argentinian) companies in the sample do not have sales of products of the same general category of products that are made in the ordinary course of trade.

(81) In relation to Article 2(6)(b), this party also argued that the Basic Regulation is inconsistent with the WTO Regulation to the extent that it contains the requirement in Article 2(6)(b) that the sales should be made in the ordinary course of trade. However, as mentioned in recital 72 above, the basic Regulation has transposed the WTO anti-dumping agreement (ADA) and it is therefore considered that all provisions of this Regulation, including Article 2(6), are consistent with the Union's obligations under ADA and that the sales in the ordinary course of trade element is fully compliant.

(82) Therefore, the choice of applying Article 2(6)(c) in using any other reasonable method to determine a profit margin is confirmed.

(83) Furthermore, several parties considered the 15 % profit margin used when constructing normal value to be excessive. They claim that the provisional Regulation does not explain how the Commission has calculated the 15 % and therefore they assume that the Commission took the 15 % from the profit margin used in the injury calculations. They claimed that in several other cases concerning commodities the Commission used profit margins in the region of 5 %. Several parties suggested using the profit margin of the bioethanol case from the United States. One party also suggested using the lower profit margin of its sales of a blend of biodiesel with mineral diesel. In addition, the Government of Indonesia claimed that it is duplicative to replace the CPO cost under Article 2(5) of the basic Regulation while using at the same time a 15 % profit margin under Article 2(6)(c) which would reflect the profit margin of an undistorted market.

(84) First, it is incorrect that the Commission systematically uses a 5 % profit margin when constructing normal value. Every situation is assessed on its own merits taking into account the specific circumstances of the case. For example, in the 2009 biodiesel proceeding against the United States, various different profit levels were used with the weighted average profit being well above 15 %. Second, given that the short and medium term borrowing rate in Indonesia is around 12 % according to World bank data, it seems reasonable to expect that the profit margin of doing business in the domestic biodiesel market would be higher than the borrowing cost of capital. The reference to the medium-term borrowing rate is not meant to set a benchmark but to test the reasonableness of the margin used. Third, whether or not the sales of a blend of biodiesel with mineral diesel fall under the same general category of products, Article 2(6)(b) of the basic Regulation states, as already mentioned in recital 80 above, that such sales should be made in the ordinary course of trade. Given that the domestic sales of biodiesel are not in the ordinary course of trade, the sales of the blend of biodiesel with mineral diesel is not, mutatis mutandis, considered to be in the ordinary course of trade. Therefore, and for the reasons explained above, 15 % profit is a reasonable amount that can be achieved by a relatively new, capital-intensive industry in Indonesia. The argument of the Government of Indonesia regarding a duplicative effect cannot be accepted since a cost adjustments under Article 2(5) and the reasonable profit under Article 2(6)(c) are two clearly distinct issues. Recital 65 of the provisional Regulation is hereby confirmed.

(85) One party claimed that since the HPE price for CPO is inclusive of international transportation costs and since the purpose of the adjustment of the domestic price of CPO to the level of the international price of CPO is to arrive at an undistorted price of domestic CPO, the HPE price for CPO should be adjusted downwards to exclude transportation costs.

(86) That claim must be rejected. The Commission was considering a number of alternatives for the selection of a most suitable price which should be used as an international reference price. It should be recalled that the Indonesian authorities themselves use the HPE price as a benchmark to calculate the monthly level of export duties. The HPE price as defined by the Indonesian authorities was therefore considered the most appropriate international reference price to be used as a benchmark for establishing the level of distortion of the costs of production of biodiesel in Indonesia.

(87) Two parties submitted that the Commission failed to take into account that they manufacture biodiesel from feedstock which is different than CPO, i.e. Palm Fatty Acid Distillate ('PFAD'), Refined Palm Oil ('RPO') or Refined Palm Stearin ('RST'). By failing to take into account the parties' usage of the actual raw material in their production of biodiesel, the CPO adjustment (as described in recital 70) was applied on the incorrect raw material used and has therefore lead to an incorrect level of the constructed normal value.

(88) Those claims must be rejected. It has to be underlined that the Commission only replaced the cost of CPO purchased, from related and unrelated suppliers, for the production of biodiesel. As regards by-products such as PFAD, RPO and RST which result from the processing of purchased CPO and which are also further processed to produce biodiesel, no adjustments were made.

(89) Three parties claimed that the Commission failed to recognise that their purchase of CPO from related companies should be treated equally to the in-house production and therefore no adjustment pursuant to Article 2(5) should apply (as explained in recital 70 above). The parties claim that transactions within the group were realised at arm's length and should therefore not be adjusted and replaced by an international price. In addition, one exporting producer claimed that the constructed normal value should be calculated on a monthly basis during the IP.

(90) As the internal transfer price cannot be considered reliable it is the Commission's standard practice to verify whether transactions between related parties are indeed made at arm's length. In order to so do, the Commission compares the price between related companies to the underlying market price. Since the underlying domestic market price is distorted the Commission cannot make such verification. Therefore, the Commission has to replace such an unreliable price with a reasonable price that would be applicable under arm's length in normal market conditions. In this case, the international price. With regard to the claim for monthly calculations for the constructed normal value, the information provided and verified did not contain sufficiently detailed information to allow such a calculation. Both claims were therefore rejected.

(91) The Union Industry claimed that the cost of the own produced CPO within the same legal entity should also be adjusted under Article 2(5) of the basic Regulation as it is also affected by the distortion which resulted from the DET.

(92) That claim must be rejected. While the raw materials are being passed along the biodiesel production process at various stages of refinery/processing, the costs of those production stages can be treated as reliable since they are being realised within the same legal entity and the issue of unreliable transfer pricing as described above does not occur.

(93) One exporting producer claimed that the Commission should have deducted so called price allowances from the constructed normal value. That claim cannot be accepted. The constructed normal value was constructed on the basis of costs. It would therefore be inappropriate to make any allowances on the basis of price considerations.

3.2. *Export price*

(94) One party questioned the establishment of the export price, claiming that both the hedging gains and losses should be taken into account and alleging an inconsistent accounting treatment of biodiesel hedging gains and losses.

(95) The claim that both the hedging gains and losses should be taken into account must be rejected. Article 2(8) of the basic Regulation clearly provides that the export price shall be the price actually paid or payable for the product when sold for export, regardless of any separate — albeit related — gain or loss linked to hedging practices. Therefore, the methodology in recitals 66 and 67 of the provisional Regulation are hereby confirmed.

(96) The Commission acknowledges that an inconsistent accounting treatment of the biodiesel hedging gains and losses of one party occurred at the provisional stage. This claim is accepted and the necessary corrections have been made.

(97) In relation to recital 68 of the provisional Regulation, one party claimed that the 5 % profit margin used for related trading companies located inside the Union results in an excessive return on capital and overstates the profit that is usually incurred on sales of biodiesel by unrelated traders. It claims that a typical return on capital corresponds to a profit margin of 1,3-1,8 %.

(98) Given the absence of cooperation by unrelated importers and given the fact that trading companies are service businesses without significant capital investments rendering the return on capital allegation above as irrelevant, the Commission rejects the above claim and considers 5 % profit margin to be reasonable in this case. Recital 68 of the provisional Regulation is therefore confirmed.

(99) In relation to recital 69 of the provisional Regulation, one party claimed that the premium for double-counting biodiesel should be added to the export price, given that this is a mere implementation of the Italian law.

(100) Even if the Commission would accept this claim and add the premiums to the export price, the premiums would have to be deducted again under Article 2(10)(k) in order to compare the export price with the same normal value with due account taken for differences that affect price comparability. Given that in Indonesia there is no premium for double counting biodiesel, the higher export price in Italy would therefore not be directly comparable. That claim is therefore rejected and recital 69 of the provisional Regulation is hereby confirmed.

(101) Following the definitive disclosure that party repeated its claim. No substantial additional arguments were however brought forward as to alter the Commission's assessment. Therefore recital 69 of the provisional Regulation remains confirmed.

(102) After the final disclosure, several exporting producers drew the Commission's attention to alleged clerical errors in the dumping calculations. Those claims were examined and, where warranted, corrections were made to the calculations.

3.3. *Comparison*

(103) In the absence of any comments regarding comparison, recitals 70 to 75 of the provisional Regulation are hereby confirmed.

3.4. *Dumping margins*

(104) Taking into account the adjustments made to the normal value and to the export price as set out in recitals above, and in the absence of any further comments, the definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Dumping margin
PT. Ciliandra Perkasa, Jakarta	8,8 %
PT. Musim Mas, Medan	18,3 %
PT. Pelita Agung Agrindustri, Medan	16,8 %
PT. Wilmar Bioenergi Indonesia, Medan and PT. Wilmar Nabati Indonesia, Medan	23,3 %
Other cooperating companies	20,1 %
All other companies	23,3 %

E. **INJURY**

1. **Union production and Union industry**

(105) The provisional Regulation, in recitals 80 to 82, defined the Union industry and confirmed that three companies were excluded from the definition of the Union industry due to their reliance on imports from the countries concerned, that is to say that they imported significantly more biodiesel from the countries concerned than they produced themselves.

(106) Two further companies were excluded from the definition of the Union industry as they had not produced biodiesel during the investigation period.

(107) Comments were received after publication of the provisional Regulation that other companies should be excluded from the definition of the Union industry for importing biodiesel from the countries concerned, and also because of their relationship to exporting producers in Argentina and Indonesia, thereby shielding themselves from the negative consequences of dumping.

(108) Those comments are rejected. After analysing the claim regarding relationships between exporting producers and the Union industry, it was found that a holding company held shares in both an Argentinian exporting producer and a Union producer.

(109) Firstly, those companies were found to be openly competing with each other for the same customers on the Union market, thereby showing that their relationship did not have any impact on the business practices of either the Argentinian exporting producer or the Union producer.

(110) Following definitive disclosure, an interested party requested information as to the Commission's conclusion that Argentinian exporters and the Union industry were competing for the same clients on the European market. The investigation of Union producers, and the investigation of Argentinian exporters, showed this fact and no evidence has been provided to substantiate any allegation that Argentinian exporters and Union producers had agreed not to compete in sales of biodiesel to end users. The number of end users is relatively small and composed in the main of the large oil refineries, which purchase both from Union producers and importers.

(111) Secondly, the main centre of interest of the Union producer referred to in recital 108 above was found to be within the Union, in particular their production and related sales activities as well as research activities. As a result, the conclusion was that the relationship was not a reason to exclude this company from the definition of the Union industry under Article 4(1)(a) of the basic Regulation.

(112) The fact that some of the Union industry has been importing biodiesel from the countries concerned is in itself not enough to change the definition of the Union industry. As explained in the provisional Regulation, the imports of the Union industry from the countries concerned were made in self-defence. Furthermore, it was found that the centre of interest of some Union producers who imported from the countries concerned remained in the Union — these companies were producing more in volume terms than they were importing and their research functions were carried out in the Union.

(113) One interested party alleged that the Union industry should also contain those companies that were purchasing biodiesel and blending it with mineral diesel, as these blends were also product concerned. This claim is rejected. The product concerned is biodiesel, in pure form or as included in a blend Therefore the producers of the product concerned are producers of biodiesel and not the companies that mix the biodiesel with the mineral diesel.

(114) The definition of the Union industry as set out in recitals 80 to 82 of the provisional Regulation is therefore confirmed, along with the volume of production for the IP as set out in recital 83 of the provisional Regulation.

2. **Union consumption**

(115) After provisional disclosure the Union industry made a small correction to their sales for 2009, thereby adjusting the Union consumption for that year. This correction does not change the trend or the conclusions drawn from the data in the provisional Regulation. Table 1 is corrected below. In the absence of any comments, recitals 84 to 86 of the provisional Regulation are hereby confirmed.

Union consumption	2009	2010	2011	IP
Tonnes	11 151 172	11 538 511	11 159 706	11 728 400
Index 2009 = 100	100	103	100	105

Source: Eurostat, data from the Union industry

3. **Cumulative assessment of the effects of the imports from the countries concerned**

(116) In recitals 88 to 90 of the provisional Regulation the Commission determined that the conditions were met for cumulative assessment of the effects of imports from Argentina and Indonesia. This was challenged by one interested party who alleged that PME from Indonesia was not competing with biodiesel made in the Union on the same basis as SME from Argentina, and that PME was cheaper than Union produced biodiesel as the raw material (or 'feedstock') was cheaper than the feedstock available in the Union.

(117) Those arguments are rejected. Both SME and PME are imported into the Union, and are also manufactured within the Union, and are blended with RME and other biodiesels manufactured within the Union before being sold or blended with mineral diesel. The blenders have the choice of purchasing biodiesel from different feedstocks and different origins to produce their final product, based on the market and the climatic conditions throughout the year. PME is sold in larger quantities during the summer months and smaller quantities during the winter months, but it is still in competition with RME and Union made biodiesel and also SME from Argentina.

(118) Recital 90 of the provisional Regulation is therefore confirmed.

4. **Volume, price and market share of dumped imports from the countries concerned**

(119) One interested party challenged the import data set out in Table 2 of the provisional Regulation, stating that imports from Indonesia were much lower than presented in the table. Import data in Table 2 was based on Eurostat data, which was checked carefully and found to be correct, and in line with the data collected from Indonesian exporters. Biodiesel is a relatively recent product, and the customs codes applicable to imports of biodiesel have changed over recent years. Therefore, when extracting data from Eurostat, codes applicable at the time must be used in order to ensure that the data is accurate. This explains why the interested party's extraction of data is incomplete and it shows lower imports than the full dataset presented in Table 2.

(120) Given the small change in the Union consumption in Table 1, the market share for Argentina for 2009 in Table 2 has also slightly changed, while for Indonesia there was no change. This does not change the trends of the data or the conclusions drawn from them. The market share is corrected below:

	2009	2010	2011	IP
Imports from Argentina				
Market share	7,7 %	10,2 %	12,7 %	10,8 %
Index 2009 = 100	100	135	167	141

Source: Eurostat

5. **Price undercutting**

(121) As set out in recitals 94 to 96 of the provisional Regulation, in order to determine price undercutting, the price of imports from Argentina and Indonesia was compared to the sales price of the Union industry, using data from the sampled companies. In this comparison the biodiesel imported by the Union industry for resale was excluded from the calculations of price undercutting.

(122) Interested parties noted that the methodology used, being a comparison of the Cold Filter Plugging Point ('CFPP'), was not the same as used in a previous anti-dumping investigation involving biodiesel from the USA, where the comparison was made on feedstock.

(123) Unlike the exporting producers in Argentina and Indonesia, the Union industry does not sell biodiesel made from one feedstock, but blends several feedstocks together to produce the final biodiesel that is sold. The final customer is not aware of, nor concerned by, the composition of what they are purchasing once the product meets the required CFPP. What matters for a customer is the CFPP irrespective of which feedstock is used. In these circumstances, it was found to be appropriate in this proceeding to make the price comparison on the basis of the CFPP.

(124) For imports from Indonesia, which are at a CFPP of 13 or above, an adjustment was made, being the difference in price between the Union industry's sales of CFPP 13 and the Union industry's sales of CFPP 0, in order to compare the CFPP 13 and above from Indonesia with the CFPP 0 manufactured and blended in the Union. One Indonesian exporting producer noted that as the sales of CFPP 13 by the Union industry were made in small quantities per transaction, that these prices should be compared to similar sized transactions of CFPP 0. On inspection of transactions of CFPP 0 of a similar quantity per transaction, the difference in price found was in line with the difference using all transactions of CFPP 0, with differences in price both above and below the average price difference. As a result there was no change to the level of price undercutting found in the provisional Regulation in recital 97.

(125) One Indonesian exporting producer requested that the Commission disclose the full Product Control Number ('PCN') of the blends sold by the Union industry — the percentages of each feedstock in the sale made by the Union industry of their own production. Given that the comparison for injury purposes was made solely on the basis of the CFPP, this request was denied.

(126) One interested party claimed that there was a difference in price between biodiesel that met the criteria set out in the Renewable Energy Directive ('RED certified') and biodiesel that did not. It claimed that as imports from Indonesia were not RED certified, and that the price quoted for RED certified biodiesel was higher, an adjustment should be made.

(127) That claim was rejected. Almost all imports from Indonesia during the IP were RED certified. In any case, Member States implemented the sustainability criteria set out in the RED into their national legislation only during the course of 2012, so during most of the IP whether biodiesel was RED certified or not had no effect.

(128) Following definitive disclosure, one Indonesian exporting producer commented on the price undercutting calculations and claimed that PME imports from Indonesia should be compared to all sales of the Union industry. In fact the undercutting calculation has been to compare sales of PME from Indonesia with all sales of the Union industry at CFPP 0, by increasing the price of Indonesian PME imports by a price factor calculated by comparing the CFPP 0 sales of the Union industry with the CFPP 13 sales of the Union industry. The claim is therefore rejected. The claim of the same interested party that the injury calculations included imported product is factually incorrect and is therefore rejected. In any case, imported biodiesel and Union-produced biodiesel were blended together and sold at the same price as blends that did not include any imported biodiesel.

(129) One Indonesian exporting producer also challenged the calculation of post-importation costs. However, those costs were verified as the actual costs of importation of biodiesel minus delivery costs to the final destination and no change is necessary.

6. **Macroeconomic indicators**

(130) As set out in recital 101 of the provisional Regulation, the following macroeconomic indicators were analysed, based on data received covering the entire Union industry: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin and recovery from past dumping.

(131) Following provisional disclosure the Union industry noted that the capacity data that had been used in Table 4 of the provisional Regulation included capacity that had not been dismantled, but was not in such a state that it would have been available for use during the IP, or previous years, to manufacture biodiesel. They separately identified this capacity as 'idle capacity' which should not be counted as capacity available for use. The capacity utilisation figures in Table 4 were therefore understated. After close scrutiny of this resubmitted data, it was accepted and Table 4 is restated below. The capacity utilisation rate, which had been from 43 % to 41 % in the provisional Regulation, was now 46 % to 55 %. The Union industry also corrected the production data for 2009 to produce the table below:

	2009	2010	2011	IP
Production capacity (tonnes)	18 856 000	18 583 000	16 017 000	16 329 500
Index 2009 = 100	100	99	85	87
Production volume (tonnes)	8 729 493	9 367 183	8 536 884	9 052 871
Index 2009 = 100	100	107	98	104
Capacity utilisation	46 %	50 %	53 %	55 %
Index 2009 = 100	100	109	115	120

(132) Recital 103 of the provisional Regulation analysed the previous capacity utilisation data, noting that production increased while capacity remained stable. With the revised data production still increases, but useable capacity decreased during the same period. This shows that the Union industry was reducing available capacity in face of increased imports from Argentina and Indonesia and thereby reacting to market signals. This revised data is now more in line with the public statements of the Union industry and Union producers, stating that during the period under consideration production was stopped in several plants and that the capacity that had been installed was not immediately available for use, or only available for use with significant reinvestment.

(133) Several interested parties questioned the revised capacity and capacity utilisation data. However, no alternatives were provided by any interested party. The revision is based on the revised capacity data provided by the complainant, covering the entire Union industry. The revised data was cross-referenced to publicly available data concerning in particular idle capacity as well as capacity of producers that ceased operations due to financial difficulties. As explained above in Section 6, 'Macroeconomic indicators', the revised data provide a more accurate dataset of capacity available to produce biodiesel during the period under consideration than the dataset originally provided and published in the provisional Regulation.

(134) One interested party stated that the Union industry was not injured, as production volumes rose in line with consumption. This argument is rejected, as other important injury indicators clearly point to the existence of injury, in particular the loss of market share to imports from the countries concerned and the reduced profitability trend leading to losses.

(135) Another interested party argued that the Union industry was not injured if comparing trends only between 2011 and the IP as opposed to comparing the trends during the period from 1 January 2009 to the end of the IP ('the period considered'). Given that the IP covers half of 2011, a comparison between 2011 and IP is not accurate. Besides, for a comparison to be meaningful it is necessary to examine the trends relevant for the injury assessment during a period which is long enough as it was done in the present case. This claim is therefore rejected.

(136) The same interested party noted that the Commission had not published the total sales value of the Union industry in the provisional Regulation and requested that this figure be published. However, all relevant factors mentioned in Article 3(5) of the basic Regulation were examined, allowing a full assessment of injury. Sales value was collected, and verified, from sampled companies, who were representative of the Union industry as a whole.

(137) The same party also noted that the Union industry was able to increase employment and therefore there was no negative effect on the Union industry during the period of investigation.

(138) However, as explained in recital 106 of the provisional Regulation, employment in this capital intensive industry is relatively low. Therefore, small variations in the numbers can cause a large movement in the indexed data. The increase in overall employment does not negate the injury suffered by the Union industry as shown by other indicators.

(139) In the absence of any further comments, recitals 103 to 110 of the provisional Regulation are hereby confirmed.

7. **Microeconomic indicators**

(140) As set out in recital 102 of the provisional Regulation, the following microeconomic indicators were analysed, based on data verified at the sampled Union producers: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital.

(141) In the absence of any relevant comments, recitals 111 to 117 of the provisional Regulation are hereby confirmed.

8. **Conclusion on injury**

(142) Several parties contested the conclusion on injury put forward in the provisional Regulation on the basis that between the year 2011 and the IP some indicators appeared to have improved. While it is true that some indicators showed an upward trend between 2011 and the IP (e.g., production and sales), the industry was not in a position to pass on cost increases during this period as noted in recital 111 of the provisional Regulation. This resulted in a further worsening of the industry's position from losses of 0,2 % in 2011 to losses of 2,5 % in the IP. Therefore, it is considered that, even if the injury analysis were to be limited to the period 2011-IP, the industry would still be found to have suffered material injury.

(143) In the absence of other comments, recitals 118 to 120 of the provisional Regulation are hereby confirmed.

F. **CAUSATION**

1. **Effect of the dumped imports**

(144) One interested party claimed that imports from Argentina could not be a cause of injury, as import volumes have remained stable from 2010 to the end of the IP, decreasing slightly from 2011 to the end of the IP.

(145) This data was taken from Table 2 of the provisional Regulation and is accurate. However the Commission's analysis runs from the start of the period considered to the end of the IP and on that basis imports have risen by 48 %, with an increase of 41 % in market share. In addition, as explained in recital 90 of the provisional Regulation, not only imports from Argentina but also imports from Indonesia were taken into account.

(146) Taking a year-on-year price comparison, the same interested party noted that prices of imports from Argentina rose at a faster pace than the sales prices of the Union industry. However, imports from Argentina still undercut those of the Union industry, which would explain why the Union prices could not rise as quickly.

(147) In the absence of any other comments as regards the effect of the dumped imports, recitals 123 to 128 of the provisional Regulation are hereby confirmed.

2. **Effect of other factors**

2.1. *Imports from third countries other than the countries concerned*

(148) In the absence of comments, the conclusion that imports from other countries did not cause injury, as set out in recital 129 of the provisional Regulation is confirmed.

2.2. *Non-dumped imports from the countries concerned*

(149) Following the application of Article 2(5) as mentioned in recitals 38 and 70 above, no non-dumped imports from the countries concerned were found. Therefore, recital 130 of the provisional Regulation is revised accordingly.

2.3. *Other Union producers*

(150) In the absence of any comments recital 131 of the provisional Regulation is hereby confirmed.

2.4. *Imports made by the Union industry*

(151) As set out in recitals 132 to 136 of the provisional Regulation, the Union industry imported significant quantities of biodiesel from the countries concerned during the period considered, up to 60 % of all imports in the IP from those countries.

(152) One interested party alleged that these imports, far from being in self-defence, were part of a 'carefully matured long-term strategy' by the Union industry to invest in, and source biodiesel from, Argentina.

(153) They also allege that there has never been an economic rationale to import soya bean oil into the Union and process it into biodiesel within the Union, and that it is only economically feasible to process the soya bean oil in Argentina and export the resulting biodiesel.

(154) These claims should be rejected. No evidence of such a 'long-term strategy' has been provided and this has been denied by the Union industry. Clearly if the strategy of the Union industry was to supplement their biodiesel production by producing in Argentina and importing the finished product, it would be nonsensical and illogical to then launch a complaint against such imports.

(155) One interested party repeated that the imports of biodiesel by the Union industry, that were made in self-defence, were in fact made as part of a long-term commercial strategy. This allegation, which was not substantiated, is rejected. No evidence beyond mere allegations has been provided of such a strategy. Also, it would seem illogical for the concerned Union producers to support the complaint and, in some cases, to have increased its capacity in the Union while at the same time have a strategy to fulfil production needs by imports.

(156) The same interested party also argued that the market share of the Union industry should be calculated by including their imports made in self-defence. This submission was rejected as market share calculations have to reflect the sales of the Union industry of goods they produced themselves and not their trading activities in the finished product made in the face of increasing volumes of dumped imports.

(157) The Union industry has also shown that in previous years the importation of soya bean oil — and palm oil — for processing into biodiesel was economically viable. No evidence of the contrary was provided by the interested party. Only with the distortive effect of the differential export tax which makes the export of biodiesel cheaper than the raw materials does import of the finished product become economically sensible.

(158) One interested party alleged that those imports were a cause of injury because only the Union industry had the capacity to blend the SME from Argentina and PME from Indonesia with Union produced biodiesel for resale to diesel refiners. That allegation is incorrect. Blending is a simple operation that many trading companies are capable of doing in their storage tanks. No evidence was provided that only the Union producers are capable of such blending, and the allegation was therefore rejected.

(159) One Indonesian exporting producer further claimed that imports by the Union industry were not made in self-defence and compared data for the calendar year 2011 with data from the IP, which contains six months of the same year. A comparison between the two is therefore not accurate without being able to split the IP into two halves. Therefore this argument is rejected.

(160) In the absence of any other comments as regards the exports by the Union industry, recitals 132 to 136 of the provisional Regulation are hereby confirmed.

2.5. *Capacity of the Union industry*

(161) Recitals 137 to 140 of the provisional Regulation noted that the capacity utilisation of the Union industry remained low throughout the period under consideration, but that the situation of the sampled companies deteriorated during the period while their capacity utilisation did not decrease by the same amount.

(162) The provisional conclusion was therefore that the low capacity utilisation rate, as a constant feature, was not responsible for the injury caused to the Union industry.

(163) One interested party commented on the data in the provisional Regulation, noting that even in the absence of any imports at all capacity utilisation of the Union industry would only have been 53 % during the IP. It also points to the increase in production capacity from 2009 to the end of the IP which has led to a reduction in capacity utilisation during the period under consideration.

(164) However, the interested party did not provide any evidence to show that this low capacity utilisation was causing injury to such an extent as to break the causal link between the dumped imports and the deterioration of the situation of the Union industry. Fixed costs represent only a small proportion (roughly 5 %) of total production costs, which shows that the low capacity utilisation was only one factor of injury, but not a decisive one. Also, one of the reasons for this low capacity utilisation rate is the fact that the Union industry, due to the particular market situation, imported the finished product itself.

(165) In addition, following the inclusion of the revised data on capacity and utilisation, the Union industry decreased capacity during the period considered, and increased capacity utilisation, from 46 % to 55 %. This shows that the capacity utilisation of the Union industry would be significantly higher in the absence of dumped imports than the 53 % mentioned above.

(166) Following definitive disclosure, several interested parties cast doubt on the conclusion that low capacity utilisation was not the decisive factor causing injury. It was alleged that fixed costs in the biodiesel industry were much higher than the small proportion given above. However they gave no evidence to support this allegation and so it is rejected. In any case fixed costs do not bear any relation to capacity utilisation rates. Verification of the sampled companies gave a fixed cost to total cost of production ratio that was between 3 % and 10 % during the IP.

(167) It was also alleged in this respect that the overcapacity of the Union industry was so high that even in the absence of imports it would not be able to be adequately profitable. No evidence was given for this allegation and the fact that the Union industry was profitable in 2009 with a low capacity utilisation suggests that in the absence of dumped imports, their profitability would be even higher.

(168) In addition it was argued that the reduction in capacity of the Union industry was in itself a cause of injury due to the costs of closure of plants and reductions in capacity of plants that continued to operate. This allegation was not substantiated and no evidence was submitted to show that the costs of reducing capacity, or of closing entire plants or companies, concerned significant amounts.

(169) Finally it was alleged with regard to the capacity that any company increasing biodiesel production capacity during the period under consideration would be making an irresponsible business decision. No evidence was provided for this allegation. In addition the fact that some companies were able to increase their capacity in the face of increasing imports of dumped biodiesel from Argentina and Indonesia shows the demand on the market for their particular products.

(170) The revised macroeconomic indicators also show that companies were during the period taking capacity out of possible use, and closer to the end of the IP were starting a process of closing plants that are no longer viable. Also increases in capacity on a company-by-company level are mainly due to the expansion of so-called 'second generation' biodiesel plants, manufacturing from waste oils or hydrogenated vegetable oil ('HVO'). Therefore the Union industry was, and is, in the process of rationalising their capacity to meet the Union's demands.

(171) In the absence of any further comments as regards the capacity of the Union industry, recitals 137 to 140 of the provisional Regulation are hereby confirmed.

2.6. *Lack of access to raw materials and vertical integration*

(172) In the absence of any new comments concerning access to raw materials, recitals 141 to 142 of the provisional Regulation are hereby confirmed.

2.7. *Double-counting*

(173) Recitals 143 to 146 of the provisional Regulation dealt with the allegation that the system of 'double-counting', where biodiesel made from waste oils counts twice towards the blending mandates in some Member States, has caused injury to the Union industry, or at least to those Union producers who manufacture biodiesel from virgin oils.

(174) One interested party mentioned a comment by one Union producer that during 2011 they lost sales to other producers who manufactured biodiesel eligible for double counting.

(175) The negative impact on this one producer was however limited, temporary and only relevant for a part of the investigation period, as the double counting scheme was adopted in the Member State in which the company is located only in September 2011. Given that the financial performance of the sampled companies declined after September 2011, and this company was included in the sample, double counting cannot be considered a source of injury.

(176) As the Union industry is composed of both companies producing biodiesel from waste oils and benefiting from double-counting in some Member States, and also of companies producing biodiesel from virgin oils, the movement in demand remains within the Union industry. Due to a finite supply of used oils which are needed for manufacturing double counting biodiesel, a large increase in production of double-counting biodiesel is difficult. Therefore, there is still a strong demand for first generation biodiesel. No significant imports of biodiesel eligible for double-counting was found during the investigation period, thereby confirming that double-counting is shifting the demand within the Union industry and not generating demand for imports. The Commission received no data from the interested party to show that double counting biodiesel had caused the price of virgin oil biodiesel to fall during the period under consideration. In fact data shows that double counting biodiesel has a small price premium over virgin biodiesel, the price of which is linked to mineral diesel.

(177) The decline in performance of the Union industry, which is composed of both types of producers, cannot be attributed to the double-counting regime in force in some Member States. In particular, the fact that companies in the sample producing double-counted biodiesel are also showing a decline in performance, as mentioned in recital 145 to the provisional Regulation, shows that injury caused by dumped imports is being suffered across the industry.

(178) Several interested parties argued after definitive disclosure that the amounts of double-counted biodiesel were underestimated. However, the amounts of double-counted biodiesel available on the Union market were limited in relation to the total sales of biodiesel during the period under investigation. Also, should a Member State have double-counting in force, the biodiesel that complies to be counted as double-counted is produced in the Union and therefore demand remains within the Union industry. No new evidence was provided that would change this conclusion.

(179) In the absence of any new comments concerning regulatory factors, recitals 143 to 146 of the provisional Regulation are hereby confirmed.

2.8. *Other regulatory factors*

(180) Recitals 147 to 153 of the provisional Regulation address allegations by interested parties that restrictions in Member States, such as quota systems and tax regimes, were designed to restrict imports from the countries concerned, meaning that any injury caused to the Union industry, in particular in some Member States, could not be due to imports.

(181) These arguments were provisionally rejected, among other things because dumped imports from countries concerned are present in most Member States. Besides, after being imported to one Member State, these imports could be transported and sold in other Member States as well.

(182) One interested party noted the small amount of Argentinian biodiesel cleared through French customs controls in 2011, and also the small amount declared as being imported into Germany in the same period.

(183) Firstly, as explained above, biodiesel cleared through customs in one Member State may well be sold in another Member State, making such data unreliable. Second, the sampled companies in France and Germany both were able to demonstrate the price competition between their production and imports from the countries concerned, and the injury that they were suffering as a result.

(184) Another interested party claimed that the withdrawal of schemes designed to benefit the biodiesel industry in many Member States lowered the revenue of biodiesel companies during the period considered, thus leading to injury. They point to in particular the gradual withdrawal of tax incentives in France, and taxes on 'green fuels' in Germany.

(185) However, there is no obvious coincidence in time between these changes and the deterioration in the financial performance of the Union industry. Many of these incentives were directed at users of biodiesel, not manufacturers, and most were still in force during the IP. No evidence has been provided to show that the changes in policy of Member States, moving as they have to mandatory blending requirements, has caused injury to the Union industry.

(186) One Indonesian exporting producer noted the ongoing DG Competition investigation into alleged submission of distorted prices by contributors to Platts oil and biofuels products assessed prices and requested that the subject this investigation be considered as a possible cause of injury. This claim was denied as the investigation is ongoing and no findings have been published.

(187) In the absence of any new comments as regards the policies of Member States, recitals 147 to 153 of the provisional Regulation are hereby confirmed.

3. **Conclusion on causation**

(188) Imports of product concerned from the countries concerned were dumped during the IP and undercut the sales of the Union industry. There is a clear coincidence in time between the increasing volumes of dumped imports and the deterioration of the situation of the Union industry. The dumped imports were in direct competition with the Union industry's production and as a result the Union industry lost profitability and market share during the period under consideration. Whereas it is possible that other factors mentioned above have affected the performance of the Union industry to a certain extent, the fact remains that dumped imports from the countries concerned are causing injury to the Union industry.

(189) No new evidence was provided to change that conclusion that the effect of other factors, considered individually or collectively, was not such as to break the causal link between the dumped imports and the injury suffered by the Union industry. In the absence of any other comments regarding the conclusion on causation, recitals 154 to 157 of the provisional Regulation are hereby confirmed.

G. **UNION INTEREST**

1. **Interest of the Union industry**

(190) In the absence of any comments regarding the interest of the Union industry, recitals 159 to 161 of the provisional Regulation are hereby confirmed.

2. **Interest of unrelated importers and traders**

(191) One Indonesian exporting producer alleged that the proposed duties would have a negative impact on importers and traders, but provided no evidence for their allegation. In fact their claim stated the opposite, which was that the duty could be passed on to users and consumers in higher prices which would presumably lead in fact to no impact whatsoever on importers and traders.

(192) No comments were received from any importers or traders of biodiesel after the publication of provisional measures.

(193) In the absence of any additional new comments as regards the interest of unrelated importers/traders, recitals 162 to 163 of the provisional Regulation are hereby confirmed.

3. **Interest of users and consumers**

(194) One Indonesian exporting producer alleged that the proposed duties would increase the price of biodiesel, and therefore reduce the incentive for consumers to buy vehicles that operate on biofuels.

(195) That allegation is rejected. The main application of biodiesel is to be blended into mineral diesel for sale to consumers, so that they do not need to buy a special vehicle that can run on pure biofuels.

(196) Although the price of the biodiesel element would rise, if that biodiesel was imported from Argentina or Indonesia, as stated in the provisional Regulation, given that the proportion of biodiesel in the diesel sold to consumers is small, the increase in price is also small and not noticeable to the consumer.

(197) The possible effect of the measures on the final price of diesel to the consumer, which are expected to be small as set out above, will not undermine the objectives of the Renewable Energy Directive ('RED').

(198) No users or consumers, or groups or associations representing users or consumers, commented on the provisional Regulation.

(199) In the absence of any additional comments regarding the interest of consumers, recitals 164 to 166 of the provisional Regulation are hereby confirmed.

4. **Interest of suppliers of raw materials**

(200) In the absence of any comments regarding the interest of raw material suppliers, recitals 167 to 169 of the provisional Regulation are hereby confirmed.

5. **Conclusion on Union interest**

(201) No comments were received that would change the analysis of the Union interest as set out in the provisional Regulation, and therefore it is still in the Union interest that measures be imposed. Therefore, recitals 170 to 171 of the provisional Regulation are hereby confirmed.

H. **DEFINITIVE ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(202) Several interested parties contested the use of 15 % as the target profit for the Union industry as set out in recital 175 of the provisional Regulation, stating that this was unrealistically high for the Union biodiesel industry to expect.

(203) However most of these interested parties then suggested replacing the target profit of 15 % with other data from other time periods, or from other investigations, without explaining why one time period, or one investigation, was more appropriate than another.

(204) As explained in the provisional Regulation, the profit margin of 15 % was the profit, expressed as a percentage of turnover, that the Union industry achieved in the absence of dumped imports between 2004 and 2006. This was the last period where profit was made in the absence of dumped imports as since 2006 they have always been present on the Union market, first from the USA and then from Argentina and Indonesia.

(205) However, the Union biodiesel market has matured significantly since 2004-06 in many respects. Between 2004 and 2006, dumped imports had a negligible market share and other imports were also low. During the IP dumped imports had a market share of 19 %. During the period 2004-06 the Union industry consisted of 40 companies, and now this has expanded to over 200, which has raised the level of competition.

(206) Between 2004 and 2006 consumption rose dramatically from 2 million MT to 5 million MT, whereas in the period under consideration consumption rose only slightly, and capacity utilisation, which was 90 % between 2004 and 2006, was 55 % in the IP.

(207) As a consequence, it is considered appropriate to take into account the market developments described above and to adjust target profit accordingly as to reflect the profit that the Union industry could expect to achieve under current market conditions.

(208) Therefore rather than taking the percentage profit, the actual profit for these three years in EUR per MT sold has been calculated. For each year this has been taken to reflect 2011 prices and then averaged. Expressed as a percentage of turnover, the target profit for the Union industry in the IP is 11,0 %.

(209) The injury elimination margin has therefore been recalculated on this basis.

(210) Following definitive disclosure, with regard to the calculation of the injury margin, one interested party argued that the 5,1 % import duty to which RBD palm oil imported into the EU is subject, should be removed from the cost of production of the Union producers. This argument is rejected as this duty represents a cost for Union producers which import palm oil and should therefore be taken into account.

(211) One Indonesian exporting producer challenged the calculation of target profit of the Union industry and the use of data from 2004 to 2006 and then made a suggestion for calculation of the target profit using only the year 2004. However, the previous investigation against imports from the United States determined that an average of the three years was more accurate than using 2004 alone. No arguments were brought forward that would lead to a different conclusion.

(212) Following definitive disclosure the complainants argued that the target profit of 15 % as proposed at provisional stage should be maintained. However the arguments brought forward by the complainants do not relate to the objective for which target profit is to be established, i.e. profit that was realised by the Union industry in the absence of dumped imports. Their argument is therefore rejected.

(213) In the absence of other comments concerning the injury elimination level, the methodology described in recitals 176 to 177 of the provisional Regulation is hereby confirmed.

2. **Definitive measures**

(214) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on imports of the product concerned at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.

(215) Anti-dumping duty rates have been established by comparing the injury elimination margins and dumping margins. Consequently, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, are as follows:

Country	Company	Dumping margin	Injury margin	Anti-dumping duty rate
Argentina	Aceitera General Deheza S.A., General Deheza, Rosario; Bunge Argentina S.A., Buenos Aires	41,9 %	22,0 %	22,0 % (EUR 216,64)
	Louis Dreyfus Commodities S.A., Buenos Aires	46,7 %	24,9 %	24,9 % (EUR 239,35)
	Molinos Río de la Plata S.A., Buenos Aires; Oleaginosa MoreNo Hermanos S.A.F.I.C.I. y A., Bahia Blanca; Vicentin S.A.I.C., Avellaneda	49,2 %	25,7 %	25,7 % (EUR 245,67)
	Other cooperating companies	46,8 %	24,6 %	24,6 % (EUR 237,05)
	All other companies	49,2 %	25,7 %	25,7 % (EUR 245,67)
Indonesia	PT. Ciliandra Perkasa, Jakarta	8,8 %	19,7 %	8,8 % (EUR 76,94)
	PT. Musim Mas, Medan	18,3 %	16,9 %	16,9 % (EUR 151,32)
	PT. Pelita Agung Agrindustri, Medan	16,8 %	20,5 %	16,8 % (EUR 145,14)
	PT Wilmar Bioenergi Indonesia, Medan; PT Wilmar Nabati Indonesia, Medan	23,3 %	20,0 %	20,0 % (EUR 174,91)
	Other cooperating companies	20,1 %	18,9 %	18,9 % (EUR 166,95)
	All other companies	23,3 %	20,5 %	20,5 % (EUR 178,85)

(216) However as the anti-dumping duty will also apply to blends that include biodiesel (in proportion to their biodiesel content by weight), as well as to pure biodiesel, it will be more accurate, and more appropriate for the correct implementation of the duty by Customs authorities of the Member States, to express the duty as a fixed amount in euro per tonne net and apply this to the pure biodiesel imported, or the proportion of biodiesel in the blended product.

(217) Recital 183 of the provisional Regulation noted that imports of biodiesel from the countries concerned was subject to registration, so that if necessary duties could be collected up to 90 days prior to the imposition of provisional measures.

(218) This collection of duties on registered products is only possible if the conditions set out in Article 10(4) of the basic Regulation are met. Having checked the import statistics for imports made after registration, rather than seeing a further substantial rise in imports before the imposition of provisional measures, imports dropped significantly. The conditions are therefore not met and no duties will therefore be collected on registered imports.

(219) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to those companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of product concerned originating in the countries concerned and produced by the companies and thus by the specific legal entities mentioned. Imported product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, 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'.

(220) Any claim requesting the application of these individual company 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 example, that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

(221) 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 biodiesel originating in Argentina and Indonesia and the definitive collection of the amounts secured by way of the provisional duty (definitive disclosure). All parties were granted a period within which they could make comments on the definitive disclosure.

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

3. **Undertakings**

(223) Two Indonesian exporting producers offered similar price undertakings in accordance with Article 8(1) of the basic Regulation. It is noted that in view of the significant price variations of the raw material, the product is not considered suitable for a fixed price undertaking. In this context both companies proposed that the minimum import prices (MIPs) are indexed regularly in relation to the fluctuations of the prices of the crude palm oil (CPO) by applying a coefficient to this raw material cost.

(224) In relation to the offers of two exporting producers, it is noted that in order to establish a meaningfully indexed MIP, this should take into account the numerous additional parameters that play a significant role and demonstrate the volatility of the biodiesel market. Biodiesel is a highly volatile market and the biodiesel business is influenced by various additional factors such as the complexity of the biodiesel trading system, the price differential between gasoil and biodiesel, the volatility and evolution of the vegetable oil markets and the interdependence of the different types of vegetable oils as well as the evolution of the USD/EUR exchange rate. Such factors would require a very complex, multiple indexation on a daily basis for it to be suitable. Therefore the mere indexation only on CPO prices on a monthly basis, as offered, is considered inappropriate and will not achieve the desired result.

(225) In addition, important cross-compensation risks were identified with regard to these Indonesian exporters and their customers as other products besides biodiesel, are also exported to the Union as well as due to the usual practice in this business of loans and swaps of biodiesel, CPO or indeed other products between companies.

(226) Therefore the above factors render the effective implementation and monitoring of undertakings extremely burdensome if not impracticable. Consequently for the reasons stated above, these undertaking offers cannot be accepted.

4. **Definitive collection of provisional anti-dumping duties**

(227) Following definitive disclosure, one interested party claimed that at provisional stage some clerical mistakes occurred in the calculation of the dumping margins and that, in the absence of such mistakes, the dumping margins would have been de minimis. As a consequence, that interested party requested that no provisional anti-dumping duties should be collected. This claim must be rejected as the definitive anti-dumping duty is clearly higher than the provisional duty.

(228) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as included in a blend, currently falling within CN codes ex 1516 20 98 (TARIC codes 1516 20 98 21, 1516 20 98 29 and 1516 20 98 30), ex 1518 00 91 (TARIC codes 1518 00 91 21, 1518 00 91 29 and 1518 00 91 30), ex 1518 00 95 (TARIC code 1518 00 95 10), ex 1518 00 99 (TARIC codes 1518 00 99 21, 1518 00 99 29 and 1518 00 99 30), ex 2710 19 43 (TARIC codes 2710 19 43 21, 2710 19 43 29 and 2710 19 43 30), ex 2710 19 46 (TARIC codes 2710 19 46 21, 2710 19 46 29 and 2710 19 46 30), ex 2710 19 47 (TARIC codes 2710 19 47 21, 2710 19 47 29 and 2710 19 47 30), 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 90 97 (TARIC codes 3824 90 97 01, 3824 90 97 03 and 3824 90 97 04), 3826 00 10 and ex 3826 00 90 (TARIC codes 3826 00 90 11, 3826 00 90 19 and 3826 00 90 30), and originating in Argentina and Indonesia.

[1] European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

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

Country	Company	Duty rate euro per tonne net	TARIC additional code
Argentina	Aceitera General Deheza S.A., General Deheza, Rosario; Bunge Argentina S.A., Buenos Aires	216,64	B782
	Louis Dreyfus Commodities S.A., Buenos Aires	239,35	B783
	Molinos Río de la Plata S.A., Buenos Aires; Oleaginosa MoreNo Hermanos S.A.F.I.C.I. y A., Bahia Blanca; Vicentin S.A.I.C., Avellaneda	245,67	B784
	Other cooperating companies: Cargill S.A.C.I., Buenos Aires; Unitec Bio S.A., Buenos Aires; Viluco S.A., Tucuman	237,05	B785
	All other companies	245,67	B999
Indonesia	PT Ciliandra Perkasa, Jakarta	76,94	B786
	PT Musim Mas, Medan	151,32	B787
	PT Pelita Agung Agrindustri, Medan	145,14	B788
	PT Wilmar Bioenergi Indonesia, Medan; PT Wilmar Nabati Indonesia, Medan	174,91	B789
	Other cooperating companies: PT Cermerlang Energi Perkasa, Jakarta	166,95	B790
	All other companies	178,85	B999

3. The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Regulation (EEC) No 2454/93 [1] the amount of anti-dumping duty, calculated on the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

The amounts secured by way of the provisional anti-dumping duties imposed by Commission Regulation (EU) No 490/2013 on imports of biodiesel originating in Argentina and Indonesia shall be definitively collected.

Article 3

Where any new exporting producer in Argentina or Indonesia provides sufficient evidence to the Commission that:

— it did not export to the Union the product described in Article 1(1) during the investigation period (1 July 2011 to 30 June 2012),

— it is not related to any of the exporters or producers in Argentina or Indonesia which are subject to the measures imposed by this Regulation,

— it has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,

Article 1(2) may be amended by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of the country concerned.

[1] Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

Article 4

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

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

Done at Brussels, 19 November 2013.

For the Council
The President
L. LINKEVIČIUS