

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2023/111

of 18 January 2023

**imposing a definitive anti-dumping duty on imports of fatty acid originating in Indonesia**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(1)</sup> ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

**1. PROCEDURE****1.1. Initiation**

- (1) On 30 November 2021, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of fatty acid originating in Indonesia ('the country concerned') on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* <sup>(2)</sup> ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 18 October 2021 by the Coalition against Unfair Trade in Fatty Acid ('the complainant' or 'CUTFA'). The complaint was made on behalf of the Union industry of fatty acid in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.
- (3) On 13 May 2022, the Commission initiated an anti-subsidy investigation with regard to imports of fatty acid originating in Indonesia. It published a Notice of Initiation in the *Official Journal of the European Union* <sup>(3)</sup>.

**1.2. Interested parties**

- (4) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the authorities of Indonesia, known importers and users, about the initiation of the investigation and invited them to participate.
- (5) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (6) Hearings were held with a biodiesel producer, Campa Iberia SAU ('Campa') and its related company, IM Biofuel Italy S.r.l. ('IMBI'), (collectively called 'Campa/IMBI'), and a sampled Union producer, AAK AB ('AAK').

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> Notice of initiation of an anti-dumping proceeding concerning imports of fatty acid originating in Indonesia (OJ C 482, 30.11.2021, p. 5).

<sup>(3)</sup> Notice of initiation of an anti-subsidy proceeding concerning imports of fatty acid originating in Indonesia (OJ C 195, 13.5.2022, p. 11).

### 1.3. Comments on initiation

- (7) The Commission received comments on initiation from the exporting producers P.T. Musim Mas ('Musim Mas') and its related exporter P.T. Intibenua Perkasatama ('IBP') (collectively called 'Musim Mas group'), P.T. Wilmar Nabati Indonesia ('Wilmar'), P.T. Nubika Jaya and P.T. Permata Hijau Palm Oleo (collectively called 'Permata group'), and the Government of Indonesia ('GOI').
- (8) The Musim Mas group, Wilmar and the GOI claimed that the definition of the product under investigation in the complaint was too broad as it included fatty acids that were not the target of the complaint (such as fatty acid used for the production of biodiesel, palmitic acids used for animal feed, vegetable oleic acid used for food and fatty acids derived from coconut oil). The GOI claimed that the failure of the complainant to correctly define the product scope in the complaint would have an effect on the validity of the complaint and justification to initiate the investigation.
- (9) It was further claimed that due to the broad definition of the product under investigation, the data in the complaint (such as production, production capacity, employment, sales, market share, profit, causation and Union industry) was incomplete as it was compiled only for the types of fatty acid that were targeted by the complainant.
- (10) Furthermore, the Musim Mas group and Wilmar claimed that the imports from Indonesia were overstated in the complaint as they include fatty acid imported into the Union for biodiesel production and other fatty acids not used in food, cosmetics, personal care and pharmaceutical applications such as palmitic acids. As a result, the consumption and the market shares stated in the complaint were not correct.
- (11) Moreover, it was claimed that the price of imports from Indonesia in the complaint was understated as it included lower-priced fatty acid produced from waste and by-products which are used for biodiesel production. Consequently, the undercutting margins were also not correct.
- (12) Finally, the Musim Mas group and the GOI claimed that because of the issues with the product concerned and the like product, the initiation of the investigation was based on unreliable, incomplete and inaccurate information. Consequently, also the investigation suffers from the same issues as the complaint and therefore the investigation should be terminated.
- (13) The product definition in the complaint and in the Notice of Initiation was based on the information available to the complainant at the time the complaint was prepared and lodged. There was at that time no information that the product as defined might cover types of fatty acid not produced by the complaining industry. This matter came to the fore after initiation and was adequately addressed as explained below in recitals (91) to (102) and (108) to (124). As to the injury data contained in the complaint, the allegations summarised in recital (9) are factually incorrect or based on a misunderstanding. Indeed, the injury data in the complaint relate to the product concerned. The product definition was based upon the product produced by the complainant and reflected the targeted product scope. The injury analysis was based on the targeted product scope, which was the actual product that the complainant wanted to cover. Therefore, the data in the complaint with regard to the injury analysis was complete, which has been confirmed by the investigation.
- (14) The Indonesian import figures reflected in the complaint were based upon the information available to the complainant at that time. The Commission carefully examined the accuracy and adequacy of the information provided by the complainant and reached the conclusion that the different fatty acid types shared the same basic characteristics, meaning that they belong to the same product category. At the same time, the basic characteristics of the product concerned allowed to separate it from other product types to the extent that these could be considered to be different and belong to another category of fatty acid. It therefore appeared, at initiation stage, that the product definition proposed by the complainant met all the relevant statutory requirements.
- (15) This is not called into question by the fact that information and evidence collected after initiation gave rise to a clarification of the product scope after initiation, as well as to appropriate product exclusion as stated in recitals (94) to (124). The data in the complaint was in line with the clarifications provided by the Commission in recital (91). Therefore, the claims were rejected.

- (16) Wilmar claimed that the complaint contained insufficient evidence in support of a finding of material injury or threat thereof to the Union producers. In particular, it was stated that production and capacity utilisation did not show injury, and also that the employment and investments have increased and do not reflect injury. Furthermore, it was claimed that the price undercutting allegations in the complaint were not conclusive as the Union producers increased their selling prices substantially. It was also stated that the complaint was silent on the complainant's profitability data. Furthermore, it was stated that there was also no threat of injury as the Indonesian capacities were overstated and the domestic demand was rising.
- (17) The Commission recalls that Article 5(2) of the basic Regulation requires a complaint to contain the information on changes in the volume of the allegedly dumped imports, the effect of those imports on prices of the like product on the Union market and the consequent impact of the imports on the Union industry, as demonstrated by relevant (not necessarily all) factors and indices having a bearing on the state of the Union industry, such as those listed in Articles 3(3) and 3(5) of the basic Regulation, as reasonably available to the complainant. Not all factors must show deterioration in order for material injury to be established.
- (18) In that regard, the complaint showed an overall injurious trend in both the macro and micro indicators. The analysis indicated a decrease in production and capacity utilisation. With respect to the increases in the selling prices of Union producers, the Commission considered that such increases would not be sufficient to put into question the complainants' claims on undercutting, and that they partially reflected the increase in the cost of raw materials. With respect to the information on the complainant's profitability, Wilmar's claim was factually incorrect. The complaint included sufficient information, in the form of indices, on the negative evolution of profit margins of the Union industry. The information was considered confidential because of the limited number of complaining and supporting Union producers, and the high business sensitivity of such data. The complaint furthermore set out that the reason for the increase in investment was not linked to capacity building, but to national environmental requirements. Even though the employment marginally increased, the Commission considered that overall the complaint did provide sufficient evidence tending to show the existence of an injurious situation of the Union industry. Finally, with respect to Indonesian capacities and domestic demand, the complainant did provide evidence that the Indonesian production was larger than its local demand and consumption. In addition, a lower level of capacities and a rising domestic demand would not be sufficient to disprove the existence of material injury. Therefore, the claims were rejected.
- (19) The Musim Mas group and Wilmar also claimed that the complaint was not representative of the Union production of fatty acid as it did not include any data from the Union biodiesel producers who also produce fatty acids in substantial quantities.
- (20) In this respect, the Commission notes that fatty acid produced as a by-product of biodiesel production was not included in the scope of the investigation. A note clarifying this point was included in the file by the Commission on 21 January 2022. Therefore, there was no issue with respect to the representativity of the Union industry in the complaint. Thus, the claim was rejected.
- (21) The Musim Mas group and Wilmar also claimed that the Union producers which were related to Indonesian producers of fatty acid or Malaysian exporters of fatty acid to the Union should be excluded from the definition of the Union industry as such companies were subject to a conflict of interest and in this case it was stated that the Commission should re-evaluate whether the remaining complainants would meet the necessary threshold for the complaint.
- (22) The Commission notes that in the pre-initiation analysis, no reason for exclusion of any producers in the Union was found. As regards Union producers related to Malaysian exporters of fatty acid, the Musim Mas group and Wilmar did not explain what is the nature of the alleged 'conflict of interest', why it should give rise to an exclusion of these producers from the definition of the Union industry, and what would be the legal basis for such exclusion. Therefore, the claim was rejected.
- (23) The Musim Mas group also claimed that the Malaysian and Indonesian governments have adopted a similar policy concerning the export duty on crude palm oil ('CPO') and crude palm kernel oil ('CPKO'), and if this policy was causing injury to the Union industry, then the investigation should cover Malaysia as well. It was further claimed that the objective of the complainant was to block the imports from Indonesia to the advantage of the Malaysian companies who are related to the Union producers.

- (24) The complaint assessed the imports from Malaysia. However, according to the information available to the complainant, the import volume from Malaysia was much lower than the volume from Indonesia and showed a small decrease from 2018 until March 2021. Moreover, the Malaysian imports were made at a price above the target price of the Union industry and could have not caused any injury. Therefore, the claim was rejected.
- (25) The Musim Mas group and Wilmar also claimed that the complainant wrongly attributed all the alleged injury suffered by the Union industry to the imports from Indonesia. Furthermore, the Musim Mas group claimed that any causal link between the alleged injury suffered by the Union industry and the imports from Indonesia was also affected by the issues mentioned in recital (8). Wilmar claimed that other causes of injury broke the causal link that the complaint attempted to establish, such as: (1) the increase of the Union producers' main raw material, tallow, in biofuels production, (2) the impact of the Covid-19 pandemic on the automotive sectors, (3) inefficiencies in the Union industry caused by a lack of investments in novel and better equipment, (4) the Union industry's performance in terms of punctuality and quality, (5) excessive production costs as a result of inflated labour costs, (6) the geographically disadvantageous location of production facilities, which increased the cost of access to the raw materials and affected export opportunities, and (7) regulatory developments including the entry into force of the 3-MCPD legal requirements.
- (26) The complaint did include an analysis of other factors that might have affected the causal link between the alleged dumped imports from Indonesia and the injurious situation of the Union industry, i.e. other imports, the cost of raw materials, and exports by the Union industry. However, none of the other factors did attenuate the causal link in the complaint. This was sufficient evidence reasonably available to the complainant tending to show that the apparent material injury was not caused by other factors. During the investigation, interested parties are offered the opportunity to put forward more detailed claims regarding other factors that might have affected the causal link and which are assessed by the Commission.
- (27) The Musim Mas group also stated that because of the wrong definition of the product concerned and the corresponding like product, the complaint did not consider the Union interest with respect to producers, users and importers of fatty acids which do not compete with fatty acids manufactured by the complainant (such as the Union biodiesel industry and consumers of imported fatty acids not used in food, cosmetics, personal care and pharmaceutical applications, including palmitic acids and fatty acids produced from coconut oil).
- (28) Article 5(2) of the basic Regulation does not require the complainant to include information on Union interest in the complaint, and the Union interest test is not relevant for the initiation of the investigation. In any event, as stated in recital (20), fatty acid produced as a by-product of biodiesel production was not covered by the complaint/investigation.
- (29) Wilmar claimed that the complaint did not include sufficient evidence justifying the application of Article 7(2a) of the basic Regulation. In particular, it stated that the export levy, introduced with the purpose of financing the Oil Palm Plantation Fund, served as a legitimate revenue-generating tax on competitive commodities and the complainant's allegation that the export levy had a price distorting effect on CPO and CPKO prices were unfounded. Furthermore, it claimed that the complaint failed to establish that the export tax and export levy operate as a dual-system that functioned as an export restraint, and that the alleged maximum price of CPO and CPKO and the system of tenders organized by the State-owned companies under the name of P.T. Perkebunan Nusantara (collectively referred to as 'PTPN') did not depreciate domestic CPO prices. The prices accepted by PTPN resulted from competitive tenders and the system of tenders amounted to a transparent price mechanism similar to other exchange-traded markets. According to them, there was no evidence that PTPN intentionally set prices artificially low. PTPN sells to the highest bidder and the prices that PTPN can get in public tenders will not only depend on the price at which PTPN would like to sell, but also the price that purchasers are willing to pay. Therefore, Wilmar claimed that the price, which PTPN eventually accepted, was a market price, reflecting supply and demand in Indonesia. Moreover, the fact that CPO prices in Indonesia were lower than in other international markets did not demonstrate that prices were artificially low, as Indonesia was the largest CPO producer in the world. Finally, it was stated that alleged price differences between the domestic prices for CPO and CPKO and international prices were misguided as the complainant has used two different and inconsistent benchmarks, i.e. for CPO the Malaysian domestic price and for CPKO CIF Rotterdam port prices. Wilmar and the Musim Mas

group stated that the complainant should have used one benchmark for both CPO and CPKO. Wilmar stated that the alleged price differences of 14 % for CPO and 11 % CPKO fell short of the 'significantly lower' threshold required by Article 7(2a) of the basic Regulation.

- (30) The Commission disagreed with this claim. The complainant was not required to establish that the export tax and export levy operate as a dual-system that functioned as an export restraint. The export tax is one of the distortions on raw materials mentioned in Article 7(2a) of the basic Regulation. Regarding the benchmarks, the complainant used the most representative benchmark available to it, which was considered appropriate by the Commission at the complaint stage. Furthermore, the Commission found that the price difference in this case as presented in the complaint was 'significantly lower' within the meaning of Article 7(2a) of the basic Regulation. Therefore, the claim was rejected.
- (31) The Permata group claimed that the complainant erred in stating that the goal of the export tax was to contribute to the Indonesian policy aimed at transitioning the Indonesian economy towards the production of high-value goods, such as oleochemical products. According to the Permata group, the export tax was introduced with the specific purpose of securing local demand for, and ensuring the price stability of, cooking oil. Therefore, Permata group submitted that no raw material distortions existed within the meaning of Article 7(2a) of the basic Regulation because the export tax was not designed or introduced with the purpose of keeping CPO and CPKO prices at an artificially low level for the benefit of the oleochemical products.
- (32) The Commission noted that the analysis on the existence of raw material distortions takes into consideration the effects of the distortions on the price of the raw materials, irrespective of the purpose of the measures which cause the distortions. Thus, the claim was rejected.
- (33) In conclusion, the Commission recalled that the legal standard of evidence required for a complaint makes it clear that the quantity and quality of information in the complaint is not the same as that required for a definitive determination at the end of an investigation. As explained in recital (13), at initiation stage, the product definition proposed by the complainant was considered to meet all relevant statutory requirements. The existence of the elements necessary to adopt a measure or to terminate a proceeding is then gradually confirmed as the investigation moves forward. It is therefore not excluded that changes will occur between the stage of the complaint and the conclusion of the investigation. In view of this, the Commission disagreed that there had been any issues related to the information provided in the complaint which would merit the termination of the investigation.
- (34) Overall, the Commission's analysis confirmed that none of the elements mentioned above, whether factually correct or not, were sufficient to call into question the conclusion that the complaint contained sufficient evidence tending to show the existence of dumping of fatty acids imported from Indonesia causing injury to the Union Industry. These aspects were established on the basis of the best evidence available to the complainant at the time the complaint was lodged, and were found sufficiently representative and reliable for the purposes of initiating an investigation.

#### 1.4. Sampling

- (35) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

##### 1.4.1. Sampling of Union producers

- (36) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of Article 17 of the basic Regulation, establishing as main criteria the representativity in terms of production and sales volume of the like product in the Union in the period between 1 October 2020 to 30 September 2021. This sample consisted of four Union producers, which accounted for 61 % of estimated total volume of production and 63 % of sales. The Commission invited interested parties to comment on the provisional sample and did not receive any comments. The sample was confirmed and deemed to be representative of the Union industry.

##### 1.4.2. Sampling of importers

- (37) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

- (38) None of the unrelated importers provided the requested information and agreed to be included in the sample. In view of the absence of replies, the Commission decided that sampling was not necessary.

#### 1.4.3. *Sampling of exporting producers in Indonesia*

- (39) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in Indonesia to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of Indonesia to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (40) Sixteen exporting producers in the country concerned, belonging to eight groups, provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three exporting producers, belonging to two groups, on the basis of the largest representative volume of exports to the Union which could be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were consulted on the selection of the sample. No comments were received.

#### 1.5. **Individual examination**

- (41) Nine exporting producers in Indonesia, belonging to seven groups, requested individual examination under Article 17(3) of the basic Regulation. The Commission informed the non-sampled exporting producers that they were required to provide a questionnaire reply if they wished to be examined individually. Two non-sampled groups of exporting producers provided a questionnaire reply.
- (42) Due to the complexity of the investigation and the complex structure of the sampled exporting producers<sup>(4)</sup> (one of the two groups of exporting producers included two producers in Indonesia and a trader in Singapore, whereas the other one was part of a multinational corporation with a complex distribution channel) the Commission concluded it was not possible to grant individual examination and finalise the investigation within the statutory deadline.
- (43) In its comments following final disclosure (as defined in recital (57)), the Permata group claimed that the Commission violated the provisions of Article 17(3) of the basic Regulation and Article 6.10.2 of the WTO Anti-Dumping Agreement ('ADA'). In particular, the Permata group claimed that the Commission rejected its individual examination request based on the complexity of the investigation and on the complex structure of the sampled exporting producers, and not based on the number of exporters or producers requesting the individual examination, which would make individual examinations unduly burdensome and would prevent the completion of the investigation in due time. Furthermore, the Permata group argued that its individual examination would not be unduly burdensome and would not prevent the timely completion of the investigation as the Commission still had 5 months until the deadline for the imposition of definitive measures. Furthermore, the Permata group added that the initial delay in the investigation due to the definition of the product scope was not due to the Permata group and could not result in the deprivation of Permata group's procedural rights.
- (44) The Commission noted that indeed it rejected the two individual examination requests based on the fact that these individual examinations would have been unduly burdensome. In fact, despite the mistaken reference to 'sampled exporting producers' in recital (42), it was clear from the context and the sentences immediately before and after that the correct reference was to the two 'non-sampled exporting producers' requesting individual examination, and as such recital (42) must be read. The sentence in brackets in the same recital clarified that the exporting producers mentioned were indeed the Permata group ('one of the two groups of exporting producers included two producers in Indonesia and a trader in Singapore') and P.T. Unilever Oleochemical Indonesia ('Unilever Indonesia' – 'the other one was part of a multinational corporation with a complex distribution channel'), which both requested individual examination. The Commission thus applied the right legal test in its assessment and confirmed that it was not possible to grant individual examination due to the complexity of the investigation and the complex structure of the non-sampled exporting producers requesting individual examination, which would have made the individual examination unduly burdensome, so that the timely completion of the investigation could have been jeopardised.
- (45) In fact, the Commission further noted that, despite the number of groups of exporting producers submitting the questionnaire reply for individual examination being limited to two, their complex structure would have involved the verification of several entities. In order to grant individual examination, the Commission would have had to verify all producers, related traders and importers involved in the sale of the product concerned to the Union, and analysed all their distribution channels, as done for the sampled exporting producers. Irrespective of the initial

<sup>(4)</sup> The wording 'sampled exporting producers' should read 'non-sampled exporting producers requesting individual examination', as explained in recital (44).

delay in the investigation due to the definition of the product scope, such verification and analysis, in particular involving more than one group with a complex structure, would have been unduly burdensome. Indeed, the 5 months mentioned by the Permata group in recital (43) are not fully dedicated to the investigation and findings stage of the procedure, as such procedures include several months of administrative proceedings (processing comments, holding hearings, internal approvals, consultations with other Commission's services, translation, etc.). All these factors as well as the complexity of the companies involved (which will dictate the time necessary to conduct a proper analysis of each exporting producer) need to be taken into account together. Moreover, in this connection, it must be considered that the two sampled companies also had highly complex structures that required the dedication of significant investigative and administrative resources in order to sample them and obtain accurate results. Thus, the Commission cannot be faulted for having decided not to take on board two additional groups and running the risk of not being able to finalise and publish the results of the investigations on time. Therefore, this claim was rejected.

- (46) In its comments following the additional final disclosure (as defined in recital (58)), Permata group reiterated previous comments and claimed that Unilever Indonesia appeared to no longer pursue its individual examination request. Therefore, the Commission's workload would have been even more limited.
- (47) The Commission noted that this claim was factually incorrect and was therefore rejected, since Unilever Indonesia reiterated its request up to the hearing following the final disclosure, as recalled in the following recital.
- (48) During the hearing following final disclosure, Unilever Indonesia and Unilever Europe BV ('Unilever') argued that the timing of the investigation could not be a reason for rejecting Unilever Indonesia's request for an individual examination, given the detrimental effects that anti-dumping measures could have on Unilever's business in Europe.
- (49) The Commission noted that it is in its rights to reject individual examination requests when they would be unduly burdensome and they would prevent the completion of the investigation in good time. As explained above, granting the individual examination to the Permata group and Unilever Indonesia would have been indeed unduly burdensome, so that the completion of the investigation in good time would have been jeopardised.

#### 1.6. Questionnaire replies and verification visits

- (50) The complainant provided in the complaint sufficient evidence of raw material distortions in Indonesia regarding the product concerned. Therefore, as announced in the Notice of Initiation, the investigation covered those raw material distortions to determine whether to apply the provisions of Article 7(2a) and 7(2b) of the basic Regulation with regard to Indonesia. For this reason, the Commission sent additional questionnaires to the Government of Indonesia.
- (51) The Commission made questionnaires available online <sup>(5)</sup> for Union producers, importers, users and exporting producers on the day of initiation. In addition, the Commission sent a questionnaire to CUTFA.
- (52) The Commission received questionnaire replies from CUTFA, the GOI, four Union producers: Oleon N.V. ('Oleon'), KLK Emmerich GmbH ('KLK'), AAK, Cailà & Parés S.A. ('Cailà & Parés'), four users: Peter Greven Nederlands C.V., Peter Greven GmbH & Co. KG (collectively called 'Greven group'), Schill + Seilacher 'Struktol' GmbH and Schill + Seilacher GmbH (collectively called 'Schill + Seilacher group'), three sampled exporting producers: Musim Mas, IBP and Wilmar, their related traders: Inter-Continental Oils & Fats Pte. Ltd ('ICOF Singapore'), Wilmar Trading Pte. Ltd, Volac Wilmar Feed Ingredients Ltd, and their related importers: ICOF Europe GmbH, IMBI, and Wilmar Europe Trading B.V. ('WETBV').
- (53) The Commission sought and verified all the information deemed necessary for a determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies/organisations:

#### ***Union producer association***

— Coalition against Unfair Trade in Fatty Acid

<sup>(5)</sup> [https://trade.ec.europa.eu/tdi/case\\_details.cfm?id=2564](https://trade.ec.europa.eu/tdi/case_details.cfm?id=2564)

**Union producers**

- Oleon N.V., Ertvelde, Belgium
- KLK Emmerich GmbH, Emmerich am Rhein, Germany
- AAK AB, Malmö, Sweden
- Cailà & Parés S.A., Barcelona, Spain

**Exporting producers in Indonesia**

- P.T. Musim Mas and P.T. Intibenua Perkasatama, Medan and Dumai
- P.T. Wilmar Nabati Indonesia, Medan

**Related traders in Singapore**

- Inter-Continental Oils & Fats Pte. Ltd, Singapore
- Wilmar Trading Pte. Ltd, Singapore

**Related trader in the United Kingdom**

- Volac Wilmar Feed Ingredients Ltd, Royston

**Related importers in the Union**

- ICOF Europe GmbH, Hamburg, Germany
- Wilmar Europe Trading B.V., Rotterdam, Netherlands.

**1.7. Investigation period and period considered**

- (54) The investigation of dumping and injury covered the period from 1 October 2020 to 30 September 2021 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2018 to the end of the investigation period ('the period considered').

**1.8. Non-imposition of provisional measures**

- (55) Given the technical complexity of the case, the Commission decided not to impose provisional measures and to continue the investigation.
- (56) On 1 July 2022, in accordance with Article 19a(2) of the basic Regulation, the Commission informed Member States and all interested parties that no provisional duties would be imposed on imports of fatty acid originating in Indonesia and that the investigation would continue.

**1.9. Disclosure**

- (57) On 1 August 2022, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of fatty acid originating in Indonesia ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure. The Commission received comments from the GOI, the exporting producers Musim Mas group, Wilmar, P.T. Ecogreen Oleochemicals ('Ecogreen'), Unilever Indonesia, the users IMBI, Procter & Gamble International Operations SA ('P&G'), Greven group, Schill + Seilacher group, Henkel Global Supply Chain B.V. ('Henkel'), Kapachim S.A. ('Kapachim'), Evonik Industries AG ('Evonik'), Quaker Chemical Corporation ('Quaker Houghton'), Omya GmbH ('Omya'), Stéarinerie Dubois Fils ('Stéarinerie Dubois'), NYCO Group ('NYCO'), DHW Deutsche Hydrierwerke GmbH Rodleben ('DHW'), E&S Chemie SAS ('E&S') and Unilever.
- (58) On the basis of these comments, the Commission modified some of the considerations on the basis of which it intended to impose a definitive anti-dumping duty and informed all interested parties thereof ('additional final disclosure' and 'second additional final disclosure') on 4 October 2022 and 28 November 2022 respectively.

- (59) Comments on the additional final disclosure were received from Wilmar, Musim Mas, Permata group, Stéarinerie Dubois and Henkel and on the second additional final disclosure were received from Wilmar, Musim Mas and Permata group. Although the Commission requested interested parties to provide comments limited exclusively to the additional final disclosures, Musim Mas, Permata group, Wilmar, Henkel and Stéarinerie Dubois reiterated their claims submitted after the final disclosure.
- (60) Following final disclosure interested parties were granted an opportunity to be heard according to the provisions stipulated under point 5.7 of the Notice of Initiation. Hearings on final disclosure took place with Musim Mas group, Wilmar, Ecogreen, Unilever, Greven group, Schill + Seilacher group and AAK. Additionally, further to the request of Greven group, a hearing with the Hearing Officer in trade proceedings was held. The Hearing Officer found that the rights of defence of interested parties were respected in this proceeding.

#### 1.10. Withdrawal of the complaint

- (61) On 24 August 2022 CUTFA withdrew the complaint.
- (62) Comments on the withdrawal of the complaint were received from the GOI, Musim Mas, Wilmar, P.T. Soci Mas and P.T. Energi Sejahtera Mas (collectively called 'SOCI/ESM'), Ecogreen, P&G, Omya and Stéarinerie Dubois.
- (63) The GOI stated that given the withdrawal of the complaint the Commission should immediately terminate the investigation for lack of legal standing. In this regard the GOI referred to Article 5.4 of WTO ADA which allegedly requires the fulfilment of the legal standing to justify the investigation. Furthermore, according to the GOI, the investigation would not be supported by more than 50 % of the production output of the like product produced by the Union industry, and not even by 25 % of the total Union producers of the like product, in view of the withdrawal of the complaint and considering that KLK, one of the largest Union producers, in a first letter dated 15 August 2022 considered that the proposed anti-dumping duties could create turbulences in the supply of fatty acid from Asia, and then opposed the imposition of anti-dumping measures altogether in a second letter dated 19 August 2022.
- (64) At the outset, the Commission notes that Article 5.4 of WTO ADA refers to the initiation of the investigation. Therefore, the Commission needs to have legal standing only at the initiation of the investigation. Furthermore, the 50 % threshold and the 25 % threshold in Article 5.4 of WTO ADA refer to different groups of Union producers. Contrary to what stated by the GOI in its submission, the 50 % threshold relates solely to the relative weight of the Union producers supporting the complaint within the group of Union producers supporting or opposing it. Instead, the 25 % threshold refers to the 'total production of the like product produced by the domestic industry' and relates to the percentage of Union producers which support the complaint out of that total Union production. Furthermore, the Commission recalled that, according to established case-law<sup>(6)</sup>, Article 5.4 of WTO ADA does not place any obligation on the proceeding authorities of a Member, in this case the Commission, to terminate an anti-dumping investigation in progress when the level of support for the complaint falls below a minimal threshold of 25 % of domestic production. Indeed, this article concerns only the degree of support for the complaint necessary for the Commission to be able to initiate a proceeding. *A fortiori*, this applies also to the 50 % threshold. This interpretation is confirmed by the wording of Article 9(1) of the basic Regulation, concerning the withdrawal of the complaint, which employs the verb 'may'. Thus, even if the complaint is withdrawn by the Union industry, the Commission is not placed under an obligation to terminate the proceeding, but merely has the option to do so. Thus, this claim was rejected.
- (65) Furthermore, the GOI claimed that, due to the withdrawal of the complaint and the opposition to the measures of KLK, the injury analysis carried out by the Commission did not cover the Union industry, understood as the 'domestic industry' which, pursuant to Article 4(1) of the WTO ADA, should refer to the domestic producers of the like product as a whole or to the major proportion of the total domestic production of the like product.

<sup>(6)</sup> Panel Report, *Mexico – Steel Pipes and Tubes*, WT/DS331/R, adopted 24 July 2007, DSR 2007:IV, p. 1207, para. 7.347. In line with WTO case-law, also EU Courts adopted the same stance in respect with the parallel provision enshrined in Article 5(4) of the basic Regulation, notably in the judgment of 10 March 2009, *Interpipe Niko Tube and Interpipe NTRP v Council*, T-249/06, EU:T:2009:62, para. 139.

- (66) The Commission observed that the concept of ‘domestic industry’ used for the purposes of determining injury does not necessarily have to comprise the same domestic producers as those making up the domestic industry taken into account in order to ascertain whether the complaint enjoyed sufficient support in accordance with Article 5(4) of the WTO ADA. Indeed, Article 5(4) of the WTO ADA concerns the issue of standing and does not address the separate question of what constitutes a major proportion under Article 4(1) of the WTO ADA <sup>(7)</sup>. In addition, Article 4(1) of the WTO ADA does not preclude producers which did not support the complaint or which did not cooperate in the investigation from being included in the definition of the domestic industry <sup>(8)</sup>. Moreover, the injury analysis carried out by the Commission covered the whole Union industry regardless of the support or the cooperation of each individual Union producer. Therefore, this claim was rejected.
- (67) The GOI, Wilmar, Musim Mas, SOCI/ESM, Stéarinerie Dubois, P&G, and Omya argued that the letters of KLK and the withdrawal of the complaint showed that the imposition of anti-dumping duties would be against the Union interest. In particular, Wilmar, P&G and Stéarinerie Dubois argued that following the withdrawal of the complaint, the Commission should terminate the investigation based on Article 9(1) of the basic Regulation since the imposition of the measures would be against the Union interest. Furthermore, Wilmar referred to two investigations <sup>(9)</sup> terminated by the Commission after the withdrawal of the complaint, as well as to the *Polyester staple fibres (PSF)* case <sup>(10)</sup>, where the Commission analysed five factors before concluding that it was not in the Union interest to continue the investigation. Ecogreen stated that the withdrawal of the complaint demonstrated that the termination of the investigation would be in the Union interest. Musim Mas stated that the withdrawal of the complaint and the two letters by KLK mentioned in recital (63), which confirm that KLK was not injured by imports from Indonesia, confirm that the Union industry was not injured by imports from Indonesia.
- (68) The Commission recalled that the withdrawal of an anti-dumping complaint is governed by Article 9(1) of the basic Regulation, which provides that ‘(w)here the complaint is withdrawn, proceedings *may* be terminated unless such termination would not be in the Union’s interest’ (emphasis added). The General Court interpreted the provisions of Article 9(1) of the basic Regulation, inter alia, in the judgment in *Philips Lighting Poland and Philips Lighting v Council*, not challenged on appeal <sup>(11)</sup>. The General Court acknowledged that the Union institutions enjoyed wide discretion to continue or terminate an investigation following a withdrawal and clarified that the Union interest strictly speaking only needs to be taken into account if the Commission is considering termination; in such case, the Commission must check that termination is not against the Union interest. In this context, the recent investigations that the Commission decided to terminate after the withdrawal of the complaint have no general value of binding precedent and correspond instead to a case-by-case analysis. Furthermore, the Union interest analysis performed by the Commission in the *PSF* investigation did not concern the continuation of the case but rather its termination. Moreover, in the current investigation the Commission carried out an injury analysis of the whole Union industry and the investigation showed that the Union industry was suffering material injury which were caused by the imports from Indonesia at dumped prices as stated in recitals (180) to (372). A simple statement in a letter from one Union producer, without any supporting evidence, does not contradict the Commission’s findings of the investigation. Therefore, these claims were rejected.
- (69) Based on the above considerations, the Commission decided to continue the investigation despite the withdrawal of the complaint and examine whether the comments made further to the final disclosure would invalidate its findings that the conditions justifying the imposition of measures were met. As explained later in this regulation, the Commission came to conclusion that the conditions for the imposition of definitive measures remain fulfilled.

<sup>(7)</sup> Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R, adopted 28 July 2011, DSR 2011:VII, p. 3995, para. 425.

<sup>(8)</sup> *Idem*, paras. 430 and 454.

<sup>(9)</sup> Commission Implementing Decision (EU) 2019/1146 of 4 July 2019 terminating the anti-dumping proceeding concerning imports of hot-rolled steel sheet piles originating in the People’s Republic of China (OJ L 181, 5.7.2019, p. 89) and Commission Implementing Decision (EU) 2019/266 of 14 February 2019 terminating the anti-dumping proceeding concerning imports of solar glass originating in Malaysia (OJ L 44, 15.2.2019, p. 31).

<sup>(10)</sup> Commission Decision 2007/430/EC of 19 June 2007 terminating the anti-dumping proceeding concerning imports of synthetic staple fibres of polyesters (PSF) originating in Malaysia and Taiwan and releasing the amounts secured by way of the provisional duties imposed (OJ L 160, 21.6.2007, p. 30) (*PSF Decision*).

<sup>(11)</sup> Judgment of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council*, T-469/07, EU:T:2013:370, para. 87. In this case, the application was not withdrawn. Rather, some Union producers that supported the application when they were contacted before initiation (‘standing exercise’) later on decided to change position and to express opposition to measures in the course of the investigation itself. As a result, the level of opposition to the case became higher than the level of support in terms of Union production. The Commission eventually decided that it was entitled to continue the investigation and impose measures in such circumstances by analogy with the withdrawal of the complaint pursuant to Article 9(1) of the basic Regulation.

## 2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product under investigation

(70) The product under investigation is fatty acids with a carbon chain length of C6, C8, C10, C12, C14, C16 or C18 with an iodine value below 105 g/100 g and with a ratio of free fatty acids to triglycerides (degree of split – DoS) of at least 97 %, including:

- single fatty acid (also referred to as ‘pure cut’), and
- blends containing a combination of two or more carbon chain lengths

excluding fatty acid certified by a voluntary scheme <sup>(12)</sup> for the production of sustainable biofuels, bioliquids and biomass fuels recognized by the European Commission pursuant to Article 30(4) or a national certification scheme established pursuant to Article 30(6) of Directive (EU) 2018/2001 of the European Parliament and of the Council <sup>(13)</sup>, currently falling within CN codes ex 2915 70 40, ex 2915 70 50, ex 2915 90 30, ex 2915 90 70, ex 2916 15 00, ex 3823 11 00, ex 3823 12 00, ex 3823 19 10 and ex 3823 19 90 (TARIC codes: 2915 70 40 95, 2915 70 50 10, 2915 90 30 95, 2915 90 70 95, 2916 15 00 10, 3823 11 00 20, 3823 11 00 70, 3823 12 00 20, 3823 12 00 70, 3823 19 10 30, 3823 19 10 70, 3823 19 90 70 and 3823 19 90 95)

(71) In the Notice of Initiation, the term DoS was not included in the definition of the product under investigation. However, after the comments received from parties as explained in recitals (80) to (90), on 21 January 2022, through a Note for the file, the Commission confirmed the product scope as defined in the Notice of Initiation, clarifying that only fatty acids with a DoS of at least 97 % was covered by the investigation.

(72) Fatty acids are products of chemical transformation of any vegetable oil, including palm kernel oil and palm oil, or animal fat. As such, they rarely occur as free molecules in nature, and are rather obtained through distillation and fractionating of oils and fats.

(73) Fatty acid is used in a wide range of applications, and can thus be found in numerous common products, for example several food products, animal feed, soaps, detergents, pharmaceuticals, cosmetics and other personal and homecare products.

### 2.2. Product concerned

(74) The product concerned is the product under investigation originating in Indonesia (‘the product concerned’).

### 2.3. Like product

(75) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

- the product concerned;
- the product under investigation produced and sold on the domestic market of the country concerned; and
- the product under investigation produced and sold in the Union by the Union industry.

(76) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

(77) In its comments following final disclosure, Stéarinerie Dubois argued that the product concerned and the product produced and sold by the Union industry on the Union market are not like products, in particular, because there is no Union market for the product under investigation produced by the Union industry that is compliant with REACH <sup>(14)</sup>, Kosher and Halal requirements.

<sup>(12)</sup> The list of voluntary schemes and national certification schemes recognized by the Commission is available at: [https://energy.ec.europa.eu/topics/renewable-energy/bioenergy/voluntary-schemes\\_en](https://energy.ec.europa.eu/topics/renewable-energy/bioenergy/voluntary-schemes_en)

<sup>(13)</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast) (OJ L 328, 21.12.2018, p. 82), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02018L2001-20220607&qid=1657211934884>

<sup>(14)</sup> REACH Legislation. The consolidated version of the Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) incorporates all of the amendments and corrigenda to REACH until the date marked in the first page of the regulation.

- (78) Article 1(4) of the basic Regulation states the 'like product' means a product that is identical or as characteristics closely resembling those of the product under consideration. The Commission found that the product produced and sold in the country concerned, and the product produced and sold in the Union by the Union industry, share the same main basic physical, chemical and technical characteristics. Furthermore, the Union industry is producing large quantities of fatty acid that are in compliance with REACH legislation and/or Kosher and/or Halal requirements, as stated in recital (337). The Commission therefore confirms that the product concerned and the products produced and sold in the Union market by the Union industry are like products.

#### 2.4. Claims regarding product scope

- (79) The Commission received comments on product scope from Musim Mas group, Wilmar, AAK, Campa/IMBI, EBB (the European Biodiesel Board), ASSITOL (Italian association of biodiesel producers), APPA Biocarburantes (Spanish association of biofuels producers), Neste (producer of renewable diesel), and two related companies of Ecogreen, Indonesian producer of fatty alcohol: DHW, producer of polyols, fatty esters, fatty amines and unsaturated fatty alcohols, and E&S, producer of fatty esters, ethoxylates and sulfonates. The complainant also provided comments in this regard.

##### 2.4.1. Palm fatty acid distillate, palm oil mill effluent, palm acid oil and fatty acid as by-product

- (80) Neste requested confirmation from the Commission that palm fatty acid distillate ('PFAD') did not fall within the scope of the investigation. PFAD is a bio-based waste and residue raw material derived from the refining of food-grade palm oil used to produce renewable diesel and other renewable products.
- (81) Wilmar requested clarifications whether palm oil mill effluent ('POME') fell within the product scope of the investigation. POME is a wastewater stream arising from the physical milling process of palm oil production and it is a feedstock used in the production of biofuels. POME consists mostly of water and a small percentage of oil and solid matter.
- (82) AAK requested the exclusion of palm acid oil from the scope of the investigation when reference to CN code 3823 19 90 was made. In particular, the company claimed that palm acid oil, which falls under that CN code, was not the same as a fatty acid, and that it contained a significant share of oil that prevents it from being used as a fatty acid. It was explained that palm acid oil is a by-product of the upstream refinery operations and is used as an input for the production of stearic acids which were covered by the investigation.
- (83) Campa/IMBI and EBB stated that biodiesel producers were also fatty acid producers as they produced fatty acid as a by-product during the biodiesel production process. In particular, it was stated that the refining process of the crude oil generated a waste called 'fatty acid distillate'. Furthermore, fatty acid is obtained as a residue when biodiesel is manufactured through the transesterification of refined oil and methanol.
- (84) In reply to these claims, the complainant confirmed that the fatty acid types used in the biodiesel production were not intended to fall under the scope of the investigation. In this respect, the complainant stated that these fatty acids could be differentiated because of differences in the production processes (oleochemical purposes and not those related to the biodiesel production). According to the complainant, the two types of fatty acid are different products that are not in competition with each other and cannot form part of the single product concerned.
- (85) Furthermore, the complainant explained that producing oleochemical fatty acids involved a key process necessary to break apart the triglycerides to release and separate the fatty acids and the glycerines to obtain a highly purified product of at least 97 % fatty acids and only maximum 3 % of non-split fat. This process is called 'splitting'. In order to obtain an almost 100 % pure product, fatty acid is further subject to distillation or fractionation process, which aim at eliminating the remaining non-split fat and any remaining impurities. Both distilled and fractionated fatty acid fall under the product scope provided that these products meet the iodine value threshold of 105 g/100 g.
- (86) The complainant further explained that the process to produce biodiesel consisted in refining the oil in order to remove impurities but no splitting operation occurred. Several fatty acid distillate products such as FAD (fatty acid distillate), PFAD, PKFAD (palm kernel fatty acid distillate) are generated in the biodiesel production process as by-products.

- (87) Therefore, the complainant argued that the DoS or splitting value, which indicates the percentage of split fatty acid in the oil, constituted a clear and objective dividing line to distinguish the product under investigation from other fatty acid types not concerned by the investigation. The DoS is calculated by dividing the acid value by the saponification value. The acid value (or neutralization value) and the saponification value were defined in the complaint. The complainant explained that while the DoS criterion had been contemplated at complaint stage, the reason it had not been retained as such (i.e. expressed as acid value over saponification value) was because all oleochemical fatty acids under the product scope shared this characteristic of having a fatty acid content of at least 97 %.
- (88) According to the complainant, the fatty acids used in the biodiesel production have much lower DoS values (between 81 % and 97 %). Based on the above, the complainant argued that the value of 97 % DoS should be considered as a cut-off criterion to differentiate between fatty acids.
- (89) AAK expressed its support of the complainant's approach.
- (90) Wilmar argued that the acid value used in the calculation of DoS would be the most appropriate manner to differentiate fatty acids. It claimed that the DoS was not as precise as a fixed limit based on the acid value. Wilmar asked the Commission to include the acid value in the product control number ('PCN').
- (91) As stated in recital (71), the Commission took note of the comments provided by interested parties on the product scope and it clarified, through a Note to the file, that only fatty acids with a DoS of at least 97 % was covered by the investigation. Therefore, PFAD, POME, palm acid oil which falls under CN code 3823 19 90, and fatty acid obtained as by-product in the manufacturing process of biodiesel, were not covered by the investigation, as their DoS is lower than 97 %. The Commission also invited interested parties to identify any quantities of fatty acid with DoS of at least 97 % imported for the purpose of biodiesel production and to specify any distinctive physical, chemical and/or technical characteristics of this type of fatty acid as opposed to fatty acid for other applications.
- (92) Wilmar argued that, as the introduction of the 97 % DoS threshold changed significantly the product scope, the complaint should be rejected as containing insufficient evidence of either dumping or injury. Furthermore, it claimed that the data in the complaint was based on a different product definition than the one used for the purpose of the current investigation.
- (93) The Commission disagreed with this claim. The clarification provided with the introduction of the 97 % DoS in the definition of the product scope, as explained in recital (71), did not change either the product scope or the complaint as it merely clarified and better described the product captured by the complaint. Therefore, the claim was rejected.

#### 2.4.2. Fatty acid produced from palm waste and used for biodiesel production

- (94) EBB, the Musim Mas group and Campa/IMBI stated that biodiesel producers used fatty acid produced from waste to produce biodiesel. Campa/IMBI and the Musim Mas group stated that fatty acid used to produce biodiesel in an esterification<sup>(15)</sup> production plant required as main raw materials fatty acids with DoS values of at least 97 %, and therefore the fatty acid used by Campa/IMBI for the production of biodiesel would still be covered by the investigation after the clarification provided by the Commission in recital (91). Campa/IMBI, the Musim Mas group and EBB stated that the end-use was the only relevant criterion to distinguish between fatty acids covered by the investigation and fatty acids used for biodiesel production. Furthermore, it was stated that the certification document was key to understand the end-use of the product. In particular, the fatty acid required by the cosmetic, pharmaceutical, chemical or food industries are designed to meet various certification requirements (such as Kosher, Halal, GMP+, FSSC 22000, RSPO certification, ISO 9001, ISO 14001, ISO 45001), while biodiesel producers only require a certification to comply with the Renewable Energy Directive (EU) 2018/2001 (RED II) (a voluntary scheme recognised by the European Commission pursuant to the RED II, such as ISCC EU or 2BSVS, or a national certification scheme established pursuant to the RED II). It was also stated that the Union industry did not, nor was capable of producing fatty acid with high DoS value destined for biodiesel production falling within the ambit of RED II, which encouraged the use of advanced feedstock in this regard. Campa/IMBI also stated that it imported this type of fatty acid through TARIC code 3823 19 30 89, which was neither included in the complaint nor in the Notice of Initiation.

<sup>(15)</sup> A process that allows through a catalyst to use directly fatty acids (instead of using oils) and methanol to manufacture biodiesel.

- (95) Campa/IMBI and EBB asked for confirmation from the Commission that fatty acids used for biodiesel production were not covered by the investigation. In particular, it was stated that the definition of the product scope covered the fatty acid used by Campa/IMBI used for the production of biodiesel. Furthermore, it was stated that the complaint did not list Union biodiesel producers as fatty acid importers or users, and that biodiesel was not among the uses of the product concerned listed in the complaint.
- (96) Similarly, ASSITOL and APPA Biocarburantes expressed opposition to the use of DoS value to define the fatty acid covered by the investigation as it did not exclude all fatty acid used for biodiesel production. They argued that another mechanism should be adopted, namely based on the end-use of the product according to Article 254 of the Union Custom Code.
- (97) In this regard, ASSITOL and Campa/IMBI requested the Commission to publish a Notice amending the Notice of Initiation.
- (98) The Commission could not confirm whether the fatty acid with DoS of at least 97 % produced from waste was product concerned without assessing whether it shared the same basic physical, technical and chemical characteristics, had the same use and if it was in competition with the like product. Furthermore, the raw materials is not a decisive factor for excluding a product type from the product scope of the investigation if the final products are the same and share the same basic physical, technical and chemical characteristics.
- (99) The verification visit conducted in the premises of the exporting producer in Indonesia, indeed revealed that the distilled fatty acids imported by IMBI were produced either from by-products such as PFADs, or from different palm waste raw materials.
- (100) During the verification visit in Indonesia, the Commission assessed the physical characteristics of the product (such as appearance, odour, titer, colour), the technical characteristics (such as type and grade, quality, material forms, colour stability) and chemical characteristics (such as acid value, saponification value, iodine value and fatty acid composition) of the distilled fatty acid produced from waste as compared to the other type of fatty acid. However, the investigation revealed that distilled fatty acids produced from waste have very similar physical, technical and chemical characteristics as the fatty acids produced from CPO and CPKO. Therefore, the investigation did not reveal any basic physical, technical or chemical characteristic differentiating distilled fatty acid manufactured from waste from the other type of fatty acid.
- (101) Furthermore, the investigation revealed that distilled fatty acid produced from waste is covered by Union legislation on the promotion of the use of energy from renewable sources (RED II<sup>(16)</sup>) establishing that biodiesel produced from fatty acid using waste materials or by-products may be taken into account by EU Member States for the targets established by the RED II<sup>(17)</sup>. Pursuant to the RED II<sup>(18)</sup>, in order for the biodiesel to be accounted by EU Member States for their sustainability targets, its feedstock, in this case the distilled fatty acids, must be certified to ensure the respect of sustainability and chemical standards.
- (102) On this basis, the Commission found that fatty acids with DoS of at least 97 % produced from waste and certified by a voluntary scheme recognized by the Commission pursuant to Article 30(4) of the RED II<sup>(19)</sup> or a national certification scheme established pursuant to Article 30(6) of the RED II<sup>(20)</sup>, while sharing the same characteristics with other fatty acids, have different uses and are not in competition with the like product. The Commission also confirmed that these fatty acids produced from waste have not been included in the complaint. Therefore, the Commission concluded that those fatty acids were not part of the product concerned and, therefore, they were excluded from the investigation. As a consequence, the imports of such fatty acids from, inter alia, the sampled exporting producer IBP, part of the Musim Mas group, which were being imported by IMBI, was found not to be concerned by this investigation.
- (103) These further clarifications of the product scope, in addition to those published through a Note to the file as referred to in recital (71), are reflected in the definition of the product under investigation as set out in recital (70).

<sup>(16)</sup> See Directive (EU) 2018/2001.

<sup>(17)</sup> See Directive (EU) 2018/2001.

<sup>(18)</sup> See Directive (EU) 2018/2001.

<sup>(19)</sup> See Directive (EU) 2018/2001.

<sup>(20)</sup> See Directive (EU) 2018/2001.

#### 2.4.3. Other types of fatty acid

- (104) Ecogreen affiliates, DHW and E&S, requested the exclusion of fatty acid C6 (Trade name: Ecoric 6), C8-C10 (Trade name: Ecoric 80), C16-C18, C18 unsaturated (Trade name: Ecoric 68 TA) and C18:1 (Trade name: Ecoric 18W) from the product scope. They claimed that these types of fatty acid were produced by their related exporting producer Ecogreen during the manufacturing process of fatty alcohol, and that they had certain unique characteristics and could not be produced with the same quality by the Union producers. DHW and E&S stated that the first three fatty acids in particular were only exported by Ecogreen to its affiliates in Europe for internal further processing because of quality stability, supply continuity and the established certification chain. In particular, DHW and E&S stated that Ecoric 6 could only be produced from CPKO and pure coconut oil in a very small volume. Furthermore, DHW and E&S stated that there were other C6 acids available in the Union but were produced by fermentation which was not usable for Ecogreen. In addition, they claimed that Ecoric 80 was mostly produced from CPKO and coconut oil, and was used to produce fatty esters, which after treatment by DHW using a particular patent, would result in an ester with high quality in terms of taste, smell and colour stability. Ecoric 68 TA was derived from CPKO, the carbon chain distribution was similar to the fatty acid from tallow, and was used to produce tallow-free fatty amines. Ecoric 18W was used to produce esters that had good cold temperature behaviour, better colour for the end product and less by-products. Finally, they stated that animal based oleic acid was forbidden in their ester plants due to strict kosher rules.
- (105) In response, the complainant opposed the exclusion of these types of fatty acid, arguing that it would affect the entire scope of the product under investigation as the product exclusion requested by Ecogreen affiliates covered the entire chain length of the fatty acids concerned, from C6 to C18. Moreover, the complainant argued that contrary to the claims of DHW and E&S, the Union producers were capable of producing and were in fact supplying these type of fatty acids to Ecogreen affiliates as these products were not 'unique' for the Ecogreen group and in fact were interchangeable with the fatty acids produced by the Union industry.
- (106) The Commission concluded that the Union industry produced similar fatty acids and therefore the products requested by DHW and E&S to be excluded from the product scope were in competition with the Union industry and caused injury. Therefore, the Commission rejected this exclusion request.
- (107) In its comments following final disclosure, Ecogreen reiterated its exclusion request stated in recital (104). Ecogreen argued that, contrary to the claim of the complainant, its exclusion request did not cover the entire chain length of the fatty acids covered by the investigation, as C12 (Lauric acid), C14 (Myristic acid), C16 (Palmitic acid), C18 saturated (Stearic acid) as well as their blend products were not part of their exclusion request. Moreover, with respect to the products included in the exclusion request, Ecogreen claimed that there are no like products produced by the Union industry. In particular, Ecogreen argued that its Ecoric 6 products include a particular organic compound that cannot be found in the C6 acids produced by the Union industry. Furthermore, Ecogreen argued that the Union industry used a completely different production process for C6, C8-C10, C16-C18 and C18 (unsaturated) products. In particular for C6, Ecogreen argued that the Union industry used fermentation and that neither the Ecogreen group nor its customers have ever approved the fermentation process as a manufacturing process for fatty acid, as this might affect the basic characteristics of the fatty acids produced. For its C18:1 product, Ecogreen argued that it is of particularly high quality, and that Union users of this product have quality agreements in place, obliging them to supply their customers with esters that are produced with C18:1 fatty acid meeting strict specifications.
- (108) The Commission agreed that the product exclusion request of Ecogreen did not cover all possible carbon chain lengths of fatty acids concerned, but nevertheless it covered a substantial subset thereof. In any event, for the products that were included in the exclusion request, Ecogreen did not substantiate its claim that there are no 'like products' produced by the Union industry. As regards the organic compound that allegedly distinguishes its C6 product from the respective products produced by the Union industry, Ecogreen has not provided evidence to demonstrate its relevance, including on the concentration of this substance in the product and on how it affects its basic characteristics and uses. Moreover, as no information about this substance, including its name, has been disclosed in the open version of the submission, other interested parties have been unable to provide comments on these aspects. As regards the alleged differences in the production process, the Commission recalls that, in principle, production processes are not relevant when assessing whether products are 'like'. In this particular case, Ecogreen did not provide concrete evidence on how they would affect the basic characteristics of the final

product. In particular for fermentation, Ecogreen itself presents the alleged differences in the basic characteristics of the product resulting from this process as a mere possibility, rather than as an established fact supported by evidence. In view of the above, the Commission rejected this exclusion request.

- (109) AAK requested the Commission to exclude food grade oleic acid from the product scope of the investigation. AAK claimed that while oleic acid was covered by the investigation, two types of oleic acid could be distinguished: industrial grade oleic acid and food grade oleic acid. AAK stated that while the two grades have the same basic chemical properties, as the food grade is used in the production of food products, its production process must comply with stricter standards, i.e. the level of contaminants in the acid must not exceed a certain level as set out by the EU's Foodstuffs Regulation <sup>(21)</sup>. AAK also claimed that food grade oleic acid was considerably more expensive than the industrial grade, could not be substituted by industrial grade oleic acid and the Union industry was not able to supply increased quantities. AAK stated that there were only marginal imports of food grade oleic acid from Indonesia and therefore they could not cause injury to the Union industry. AAK stated that it was probably the only Union importer of any significant volumes of food grade oleic acid from other countries. AAK also stated that according to their information, there were no plants producing oleic acid in Indonesia that met the strict requirements of maximum level of contaminants in foodstuff. AAK stated that the increased prices of potential food grade oleic acid imports from Indonesia would as a result increase Union users' prices for all categories of oleic acid also from Malaysia, which would negatively affect the activity of AAK. AAK suggested that the food grade oleic acid could be excluded by referring to the maximum levels of benzo(a)pyrene and contents of trans fatty acid, which were officially sanctioned thresholds set out in the EU's Foodstuffs Regulation.
- (110) In response to the above claim, the complainant expressed its opposition to exclude food grade oleic acid from the scope of the investigation. In this respect, the complainant claimed that food grade oleic acid shared the same basic physical, chemical and technical characteristics as the other products under the scope of the investigation and therefore, the exclusion of this group of products would lead to a high risk of circumvention of the measures. In addition, the complainant maintained that the producers using food grade oleic acid were also users of technical grade oleic acid and therefore a distinction based on end-use would not avoid the risk of circumvention. Also, the complainant argued that food grade oleic acid was available from other sources of imports not targeted by the investigation and therefore there was no risk of shortage of supply.
- (111) In this respect, the Commission concluded that food grade oleic acids had similar basic physical, technical and chemical characteristics as the industrial grade oleic acid. Although food grade oleic acid was subject to stricter quality and purity requirements, it had the same carbon chain length as oleic acid used for industrial applications. The price difference between the two grades is not *per se* a key element for product exclusion. Furthermore, the Union industry is indeed producing food grade oleic acid and other sources of supply exists such as Malaysia. In view of this, the Commission rejected the exclusion request.
- (112) In its comments following final disclosure, AAK reiterated its request to exclude food grade oleic acid from the product scope of the investigation. AAK criticised the Commission for not properly addressing its claims and claimed it used inconsistent criteria in its decision to exclude fatty acid meant for biodiesel production as compared to food grade oleic acid. In particular, AAK claimed that in recital (102) the Commission's conclusion of excluding fatty acid produced from waste was based on the fact that this particular fatty acid had different uses and was not in competition with the like product while sharing the same characteristics with other fatty acids. On the other hand, for not excluding food grade oleic acid from the product scope of the investigation, the Commission concluded in recital (111) that food grade oleic acids have similar basic physical, technical and chemical characteristics as the industrial grade oleic acid with the same carbon chain length. Furthermore, AAK stated that food grade oleic acid and industrial grade oleic acid have different uses and are not in competition with each other, and that the Commission's statement that both types have similar physical, chemical and technical characteristics was not supported by the facts and unsubstantiated in the regulation. Finally, AAK claimed that had the Commission done similar analysis for food grade and industrial grade oleic acid, it would have found differences in type, grade and quality between the two types.

<sup>(21)</sup> Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJ L 364, 20.12.2006, p. 5).

- (113) The Commission disagreed with these claims. First, as concerns fatty acid made of waste, as stated in recital (102), fatty acid made of waste was not supposed to be covered by the investigation. However, because it shared the same physical, technical and chemical characteristics with other fatty acids, it was unintentionally caught by the product definition. In order to make sure the investigation and potential measures were correctly conducted and applied, the Commission investigated in depth this particular product before confirming that indeed it should not have been investigated/covered by measures, as explained in recitals (98) to (102). This is in contrast with fatty acids for food applications (such as food grade oleic acid), which were covered by the complaint and for which the complainants provided evidence of dumping, injury and causal link, which was confirmed during the investigation. Second, the criticism expressed by AAK is based on a misunderstanding of the factual and legal situation with regards to the exclusion request of food grade oleic acid. Even if industrial and food grades oleic acid were considered two different types of fatty acid as claimed by AAK, that would have no bearing on the Commission's findings. The Union industry produces and sells food grade oleic acid, there are potentially imports of food grade oleic acid from Indonesia <sup>(22)</sup>, which could be in direct competition with the product sold by the Union industry and, consequentially, causing injury. Thus, there is no reason why the Commission would conclude that an exclusion of food grade oleic acid is warranted. In fact, the logical conclusion must be the exact opposite: it is not possible to exclude food grade oleic acid without undermining the remedial effects of the measures to be imposed.
- (114) AAK also stated that the marginal Union production of food grade oleic acid and the existence of one other third country supplying the product did not support the continued inclusion of food grade oleic acid in the product scope of the investigation. In particular, AAK stated that in product scope determinations, the Commission in the past gave weight to the fact that the Union production of a product type was limited. In this regard, AAK referred to the anti-dumping investigation on imports of synthetic staple fibres of polyesters ('PSF') originating in Malaysia and Taiwan <sup>(23)</sup>. AAK also referred to a product scope review concerning the anti-dumping measures on imports of grain oriented flat-rolled products of silicon-electrical steel ('GOES') originating in the United States of America and Russia, claiming that a thin variant of this product was excluded because no producer had a direct interest in producing it.
- (115) In addition to the two companies mentioned by the AAK in the submission, a third Union producer offers food grade oleic acid to the Union market <sup>(24)</sup>. Furthermore, the Commission noted that in respect of this product, supply can also be obtained from suppliers from Malaysia. Therefore, the claim was rejected.
- (116) AAK and the Musim Mas group requested the exclusion of palmitic acid used for animal feed from the product scope. AAK is a producer of palmitic acid in the Union. However, its total demand exceeds its production capacity. It was stated that pure palmitic acid, with carbon chain length C16, was produced from CPO and CPKO. According to them, tallow could not be used as a raw material for producing palmitic acid for animal feed production, as EU animal feed legislation prohibited the use of animal fat in feed for ruminants <sup>(25)</sup>. It was further stated that European production of palmitic acid was negligible with only two other Union producers of palmitic acid, namely KLK and IOI Oleo GmbH. AAK estimated that the demand in the Union of palmitic acid was 45 000 tonnes per year. AAK stated that pure palmitic acid was not substitutable with other fatty acids, nor could other fatty acids replace palmitic acid. Furthermore, it was stated that fatty acids made from rapeseed/canola, which allegedly is the main raw material available in the Union, were not suitable for animal feed as it did not support cow milk production, as palmitic acid does. According to AAK, Union producers lack the incentives to produce palmitic acid in significant quantities due to the low demand for stearic acid, as these products are produced in parallel. AAK suggested that this exclusion could be implemented by removing C16 from the product definition.
- (117) In response to the claims Cailà & Parés stated that it could produce 17 000 tonnes of palmitic acid per year once the level playing field is restored on the Union market, which Cailà & Parés stated constituted a significant share of the Union demand.

<sup>(22)</sup> The Taric code for oleic acid does not differentiate by grade, while there are imports of oleic acid in the Union from Indonesia.

<sup>(23)</sup> Decision 2007/430/EC, recital 40.

<sup>(24)</sup> [https://www.ioioleo.de/wp-content/uploads/2021/01/IOI\\_BASIC\\_OLEO.pdf](https://www.ioioleo.de/wp-content/uploads/2021/01/IOI_BASIC_OLEO.pdf)

<sup>(25)</sup> Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ L 300, 14.11.2009, p. 1).

- (118) In view of the above, the Commission accepted the argument that the profitability of palmitic acid production is associated with the demand for stearic acid. However, it took the view that restoring a level playing field in the Union for all fatty acids, including palmitic and stearic acids, would likely restore also the Union producers' incentives to produce palmitic acid in significant quantities, including palmitic acid suitable for animal feed. Furthermore, there are other sources of supply for palmitic acid such as Malaysia. On this basis, and taking into account the information provided by Cailà & Parés on its production capacity that is higher than the volume of imports from Indonesia and also higher than the demand of AAK, the Commission rejected the request for the exclusion of palmitic acid.
- (119) In their comments following final disclosure, the Musim Mas group and AAK reiterated their request to exclude palmitic acid from the product scope. Both companies questioned Cailà & Parés' capability to increase its palmitic acid production after the imposition of the anti-dumping measures. In particular, the Musim Mas group stated that it was a speculative claim, without any evidentiary support. AAK reiterated that the production of palmitic acid was coupled with the production of pure stearic acid and that there was no market for the latter in the Union as the main use of pure stearic acid was the production of AKD (Alkyl-Ketene-Dimer) wax, which was no longer produced in the Union.
- (120) The Commission did not accept these arguments, neither on technical capacity nor on incentives to produce palmitic acid. As regards technical capacity, the Commission confirmed during the verification visit at Cailà & Parés' premises that the overall capacity of the company for fatty acid production was significantly higher than its stated capacity for the production of palmitic acid (including the respective co- or by- products) and it did not reveal any obvious bottlenecks that could be specific for an increased production of palmitic acid. As regards incentives, and as stated in recital (118), the investigation confirmed that palmitic acid production is coupled with the production of stearic acid. However, contrary to what AAK suggested, the latter is not limited to pure stearic acid. For Cailà & Parés in particular, the co-products of palmitic acid production are other types of stearic acid which are sold in significant quantities in the Union. Therefore, the Commission maintains that the imposition of measures on fatty acids, including palmitic acids and stearic acids, would likely also restore incentives for the production of palmitic acid in the Union.
- (121) The Musim Mas group also argued that palmitic acid was not intended to be covered by the complaint as the complaint intended to address fatty acids for human consumption, and not for animal consumption. Moreover, according to the Musim Mas group, Union production of palmitic acid was unsuitable for animal feed applications because it used tallow as feedstock, and therefore could not meet certain requirements, such as Kosher and Halal. The Musim Mas group concluded that the Commission rejected the exclusion request merely due to the possibility of shifting the supply of palmitic acid to Malaysia.
- (122) The Commission did not accept these arguments. In addition to 'food', the complaint explicitly makes reference to 'feed' <sup>(26)</sup>, as an application of the products in its scope. Furthermore, the investigation has shown that Union producers use vegetable oils, including palm oil, for their palmitic acid production. Finally, the Commission notes that, as shown above, rather than relying merely on other non-Union producers, it has also assessed the ability and incentives of the Union industry to increase its palmitic acid production.
- (123) The Musim Mas group stated that as there was no export duty or export levy on coconut oil, the fatty acid produced from coconut oil should not be the target of the complaint.
- (124) The Commission notes that although the complaint alleges distortions of CPO and CPKO due to export duty and export levy for the purposes of Article 7(2a) of the basic Regulation, the complaint and the investigation cover all types of fatty acid covered by the product definition, and not only the types produced from CPO and CPKO. In any event, the investigation did not reveal any type of fatty acid being exported from Indonesia to the EU that was produced only from coconut oil. Therefore, the claim was rejected.
- (125) In their comments following final disclosure, NYCO asked the Commission to exclude from the product scope C8-C10 fatty acids. In this regard, NYCO stated that C8-C10 fatty acids are a very specific form of fatty acid produced in limited quantities in the Union. This fatty acid was also imported from Indonesia and Malaysia. NYCO submitted that since September 2021 there was a worldwide shortage of C8-C10 fatty acid on the market, resulting in a significant price increase of this fatty acid. NYCO claimed that the imposition of anti-dumping duties on this product would have very negative consequences on its global competitiveness and profitability and asked the Commission to exclude this fatty acid from the product scope.

<sup>(26)</sup> Complaint, par. 41.

- (126) The Commission noted that comments on the product scope should have been submitted in the early stages of the investigation, in order to allow sufficient time to assess their merit and to give the opportunity to other interested parties to react to them. Furthermore, NYCO did not submit any basic physical, chemical and technical characteristics that could differentiate this type of fatty acid from the other types of fatty acids covered by the investigation. As regards the substantive points of the request, and in particular in relation to Union interest, these are addressed in recital (470). In view of these considerations, the claim was rejected.
- (127) In their comments following final disclosure, Wilmar stated the product covered by measures should explicitly exclude any products covered by Taric codes excluded from the calculation of imports.
- (128) The Commission confirmed that the description of product concerned above was compatible with the calculation of imports. The Taric codes used to describe the product are given for information only.

### 3. DUMPING

#### 3.1. Normal value

- (129) According to Article 2(1) of the basic Regulation, 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'.
- (130) The Commission first examined whether the total volume of domestic sales for each sampled cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. On this basis, the total sales by each sampled exporting producer of the like product in the domestic market were found representative.
- (131) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for both exporting producers.
- (132) The Commission then examined whether the domestic sales by each sampled exporting producer in its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The Commission established that the domestic sales of certain product types were not representative for both sampled exporting producers.
- (133) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (134) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
  - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (135) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the IP.
- (136) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the IP, if:
- (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type: or
  - (b) the weighted average price of this product type is below the unit cost of production.
- (137) The analysis of domestic sales showed that at least 80 % of the domestic sales of each product type was profitable and that their weighted average sales price was higher than the cost of production. Accordingly, the normal value was calculated as a weighted average of the prices of all domestic sales for those product types during the IP.

- (138) For certain product types for which there were no or insufficient sales of a product type of the like product in the ordinary course of trade or where a product type was not sold in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation, unless it was considered more appropriate to use the price of a sufficiently comparable product type sold on the domestic market which could be adjusted for differences in physical characteristics for the purposes of ensuring a fair comparison with the relevant export price, as indicated in recital (145).
- (139) For certain product types, normal value was constructed by adding the following to the average cost of production of the like product of the cooperating sampled exporting producers during the investigation period:
- (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the cooperating sampled exporting producers on domestic sales of the like product, in the ordinary course of trade, during the IP; and
  - (b) the weighted average profit realised by the cooperating sampled exporting producers on domestic sales of the like product, in the ordinary course of trade, during the IP.
- (140) For the product types not sold in representative quantities on the domestic market, the average SG&A expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types were added. For the product types not sold at all on the domestic market, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.

### 3.2. Export price

- (141) The sampled exporting producers exported to the Union through related companies acting as an importer in the Union.
- (142) Thus, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and for profits accruing.
- (143) As to the profit margin, due to the non-cooperation of any unrelated importer as stated in recital (38), the Commission decided to resort to the profit margin used in a previous proceeding concerning another chemical product manufactured by a similar industry and imported under similar circumstances, namely a profit margin of 6,89 % <sup>(27)</sup> established in the recent PVA investigation.

### 3.3. Comparison

- (144) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.
- (145) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for differences in physical characteristics, handling, loading and ancillary expenses, freight in the country concerned, domestic insurance, domestic ocean freight, freight in the Union, credit costs, bank charges, ocean freight, ocean insurance, packing expenses, warranty and guarantee expenses, and commissions.
- (146) An adjustment under Article 2(10)(i) was made for sales through related trading companies. It was found that the functions of the traders in Singapore and the United Kingdom were similar to those of an agent. Those traders were looking for customers, established contact with them, bore the responsibility of the selling process, received a mark-up for their services, and traded a broad array of goods other than the product concerned. The adjustment consisted of the SG&A of the trading companies and the profit stated in recital (143).

<sup>(27)</sup> Commission Implementing Regulation (EU) 2020/1336, of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ L 315, 29.9.2020, p. 1), recital (352).

- (147) In their comments following final disclosure, Wilmar claimed that it formed a single economic entity with its related trader in Singapore, WTPL and therefore no adjustments on the basis of Article 2(10)(i) of the basic Regulation should be made for sales made by WTPL. In the confidential version of its submission, Wilmar elaborated on its claim in more detail. Furthermore, Wilmar claimed that even if Wilmar and WTPL did not form a single economic entity, the conditions for the application of Article 2(10)(i) of the basic Regulation were not satisfied in case of Wilmar sales through WETBV and Volac Wilmar Feed Ingredients Ltd ('VWFI'). Wilmar stated that it was WETBV and VWFI – and not WTPL – that looked for customers, established contact with them, bore the responsibility of the selling process and received a mark-up for their services. Wilmar referred to the sales contracts, purchase orders, invoices, bills of lading, clearance documents, clearance confirmations and bank statements that are all addressed to WETBV and VWFI, and not to WTPL. WTPL thus had no involvement in sales made by WETBV and VWFI to unrelated parties in the EU and thus did not perform any functions similar to those of an agent. Therefore, there should be no adjustment for WTPL's SG&A and profit for EU sales that Wilmar made through WETBV and VWFI. Wilmar also referred to the anti-dumping investigation of imports of mixtures of urea and ammonium nitrate originating in Russia<sup>(28)</sup>. In that investigation, a Russian exporter had sold the product under investigation first to a related trader in Switzerland that subsequently re-sold it to the related importer in the EU, and the Commission adjusted the sales prices to an unrelated customer in the EU only for the SG&A and profit of the related importer in the EU under Article 2(9) of the basic Regulation, but not for the profit of the related trader in Switzerland. In their comments following the additional disclosure, Wilmar claimed that as the Commission used the methodology from the *Biodiesel* investigation (referred to in recital (163)) for P.T. Musim Mas for the calculation of export price, based on the principle of non-discrimination, the Commission should also use for WINA the methodology in the *Biodiesel* investigation and in particular construct an export price without deductions of WTPL's SGA and profit.
- (148) The Commission carefully reviewed the comments by Wilmar received following final and additional disclosures, and on the basis of all relevant factors, considered that the evidence put forward by Wilmar justified treating Wilmar and WTPL as a single economic entity.
- (149) Furthermore, Wilmar contested the use of the profit margin of 6,89 % stated in recital (143) claiming that it was outdated, did not take into account the recent market development such as significant fluctuations of raw material prices and transport costs and was not applicable to the product concerned.
- (150) As explained in recital (38), no unrelated importers cooperated in the current investigation. Therefore, in the absence of any alternative data on file which could be used, the Commission decided to use the profit margin established in the recent PVA investigation. This profit margin is the most objective basis available for the purpose of arriving at a satisfactory estimate of an arm's length and therefore reasonable export price, based on detailed sales data for a similar product. The Commission noted that Wilmar did not suggest other alternatives. Therefore, the claim was rejected.
- (151) Wilmar also stated that the profit margin established in the PVA investigation was for an unrelated importer in the Union and therefore it claimed that it was inapplicable in the present case for the adjustment of profits of a trader in a third country, whose activity is different than the one of an importer in the Union.
- (152) It is the Commission practice to use the profit of an unrelated importer in the Union as a proxy for a profit of a trader in a third country in the absence of any alternative data on file which could be used. The Commission noted that Wilmar did not suggest other alternatives. Therefore, the claim was rejected.
- (153) In relation to the construction of the normal value for the PCN (product control number) whose sales were considered not to be in the ordinary course of trade by reason of price, Wilmar claimed that the Commission should have calculated the profit margin on the basis of all domestic sales including the sales pertaining to the PCN for which the normal value needed to be constructed. According to Wilmar, since overall for all PCNs taken together, profitable domestic sales account for more than 80 % of total domestic sales, all the domestic sales have to be considered to be in the ordinary course of trade.

<sup>(28)</sup> Commission Implementing Regulation (EU) 2019/1688 of 8 October 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America (OJ L 258, 9.10.2019, p. 21).

- (154) The Commission noted that Wilmar's argument is intrinsically contradictory and, in any event, is mixing two provisions of the basic Regulation. First, as to the intrinsic contradiction, Wilmar's argument loses sight of the fact that the ordinary course of trade test is conducted at the level of each PCN. The purpose is to determine, for each PCN, whether the relevant sales are in the ordinary course of trade in relation to the relevant costs. In the case at hand, it is because the sales of the said PCN were considered not to be in the ordinary course of trade that the normal value for that PCN needed to be constructed. While Wilmar does not contest that conclusion reached on the basis of Article 2(4), third subparagraph, it argues that the very same sales should nevertheless be used for the computation of a profit margin in the ordinary course of trade pursuant to Article 2(6). The Commission disagreed. Sales that were lawfully considered not to be in the ordinary course of trade and could therefore be excluded from the normal value determination (which Wilmar does not contest) cannot subsequently be used to compute a profit margin in the ordinary course of trade. Therefore, the claim was rejected.
- (155) Wilmar also claimed that for the product types sold on both the domestic and export market, when constructing the normal value, the Commission should have used the data of cost of production for export (table EUCOP and not DMCOP). In this regard Wilmar referred to the judgment in joined cases C273/85 and C-107/86 <sup>(29)</sup>, which stated in paragraph 16 that 'the purpose of constructing the normal value is to determine the selling price of a product as it would be if that product were sold in its country of origin or in the exporting country'.
- (156) The Commission noted that the same judgment in the same paragraph states that 'Consequently, it is the expenses relating to sales on the domestic market which must be taken into account', and therefore the cost of production on the domestic market. Furthermore, it is recalled that normal value is the price paid or payable, in the ordinary course of trade, by independent customers in the exporting country and therefore for constructing the normal value the Commission must use the cost of production for the product sold on the domestic market and not the exported ones. Therefore, the claim was rejected.
- (157) Wilmar also claimed that the related sales of its importer in the Union should be excluded from the calculation of the dumping margin, arguing that it was the Commission's standard practice to exclude sales made to related parties for captive use from the dumping margin calculation, as it is impossible in such cases to establish an export price on the basis of the price at which the imported product was first resold to independent customers in the Union in accordance with Article 2(9) of the basic Regulation.
- (158) The Commission disagreed with this claim. The Commission does not have such a practice. In fact, pursuant to the Appellate Body compliance report in *EC – Fasteners (DS397)* <sup>(30)</sup>, the dumping calculations must cover 100 % of export transactions. Furthermore, as specified in Article 2(9) of the basic Regulation, if the products are not resold to an independent buyer, the price may be established on any reasonable basis. Therefore, in view of the fact that the volume of these sales represent around 1 % of total exports to the Union, and as the related price is slightly lower than the unrelated price, the Commission revised the calculation of the export price by using the price to unrelated customers as a proxy for the price to related customers for the same product types.
- (159) Wilmar also claimed that the SG&A expenses of its related importer in the Union should be determined without the financial costs. In the confidential version of its submission, Wilmar elaborated in more details this claim.
- (160) The Commission disagreed with this claim. More details regarding the Commission's assessment were provided to Wilmar in its specific disclosure as it included business confidential information.
- (161) Wilmar also claimed that the Commission deducted twice certain expenses of WETBV, once as an allowance in the calculation of the export price and then as included in the SG&A. In the confidential version of its submission, Wilmar elaborated in more details on this claim.
- (162) This claim was found to be justified and therefore the Commissions agreed to revise the calculation of the export price accordingly.

<sup>(29)</sup> Judgment of 5 October 1988, *Silver Seiko Limited and others v Council of the European Communities*, joined cases C-273/85 and C-107/86, EU:C:1988:466, para 16.

<sup>(30)</sup> Appellate Body Report, *EC – Fasteners (China) (Article 21.5 – China)*, WT/DS397/AB/RW and Add.1, adopted 12 February 2016, DSR 2016:I, p. 7, paras. 5.260-5.282.

- (163) In their comments following final disclosure, the Musim Mas group claimed that in view of the fact that the Commission concluded in recitals (388) to (400) that the cost of production of domestic sales was distorted by the Indonesian government's export duties and levies imposed on crude palm oil and crude palm kernel oil along with a maximum price, this meant that also the profit margin resulting from comparing the cost of production for domestic sales with the domestic sales was distorted and could not be used as the profit margin for constructed normal value. In this regard the Musim Mas group referred to the *Biodiesel* investigation<sup>(31)</sup> in which the Commission did not use the actual profit of domestic sales. Furthermore, the Musim Mas group stated that the Commission used a 6 % profit as a benchmark for its analysis of the Union industry, while it used a profit margin nine times higher to construct normal value. Therefore, Musim Mas group stated that the Commission used an unreasonable profit margin for constructing normal value. Furthermore, Musim Mas group stated that, as the Commission used distorted costs to calculate a distorted profit, this resulted in a distorted dumping margin higher than the injury margin, which in turn created a situation whereby the Commission could invoke Article 7(2a) of the basic Regulation to investigate those same costs and conclude that those costs were distorted. Therefore, Musim Mas group stated that the Commission should either use an undistorted profit rate for constructing normal value in its dumping calculation before applying Article 7(2a), or not apply Article 7(2a) at all.
- (164) The Commission disagrees with this claim. Musim Mas is mixing different provisions of the basic Regulation, i.e. Article 2(1) to (7) for the determination of the normal value, and Article 7(2a) for setting the level of measures. The Commission normally cannot disregard the actual profit of the exporters of domestic sales for the construction of normal value in a country, unless it can be rejected pursuant to Articles 2(6) or 2(6a) of the basic Regulation. Furthermore, Article 7(2a) of the basic Regulation does not cover the calculation of the normal value. Article 7(2a) allows the Commission to set the measures at the level of the dumping margin in situations where the complainant claimed the existence of raw materials distortions and the investigation confirms such allegations. The normal value is calculated in isolation of this provision. Therefore, the Commission cannot disregard the profit margin of the domestic sales made in the ordinary course of trade. As regards the methodology used by the Commission in the *Biodiesel* investigation mentioned by the Musim Mas group, it is highlighted that this methodology was rejected by both the General Court in *Musim Mas v Council*<sup>(32)</sup>, *Pelita Agung Agrindustri v Council*<sup>(33)</sup> and *Wilmar Bioenergi Indonesia and Wilmar Nabati Indonesia v Council*<sup>(34)</sup>, and the WTO Panel in *EU – Biodiesel (Indonesia)*<sup>(35)</sup>. As regard the profit margin of 6 % referred to by the Musim Mas group, this is the target profit of the Union industry which is a different concept than the profit margin of the domestic sales made in the ordinary course of trade for the exporters. The target profit is the minimum profit provided for in the basic Regulation for the calculation of the target price and the injury margin. Therefore, the claim was rejected.
- (165) The Musim Mas group also stated that ICOF Singapore serves as the marketing unit of Musim Mas Holdings ('MMH') and its subsidiaries. MMH is the ultimate corporate parent of various entities. Therefore, according to the Musim Mas group, MMH is a consolidated corporate legal entity which constitutes a single economic entity. Furthermore, it was stated that Musim Mas was 95 % owned by Musim Mas Resources which in turn is 99,95 % owned by MMH. ICOF Europe is a 100 % subsidiary of ICOF Singapore. Furthermore, the Musim Mas group stated that all accounts, including profit and loss information were consolidated into MMH. Therefore, it was stated that, as MMH is a single economic entity, the profit used by the Commission in calculating the dumping rate for the Musim Mas group should be inclusive of all profit for MMH and its subsidiary as Musim Mas, ICOF Singapore and ICOF Europe are all subsidiaries of MMH. Therefore, the Commission should not deduct the 6,9 % profit for sales made through ICOF Europe because this would result in a duplicative adjustment of profit resulting from the profit in constructed normal value, or the profit generated from sales made on the domestic market. Furthermore, it was stated that as regards ICOF Singapore, the Commission should not have deducted the hypothetical profit of 6,9 % and the actual SG&A of ICOF Singapore. In this regard, the Musim Mas group referred to the *Biodiesel* investigation where the Commission deducted ICOF Singapore's actual mark-up for biodiesel.

<sup>(31)</sup> 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 (OJ L 315, 26.11.2013, p. 2).

<sup>(32)</sup> Judgment of 15 September 2016, *Musim Mas v Council*, T-80/14, EU:T:2016:504, para. 94.

<sup>(33)</sup> Judgment of 15 September 2016, *Pelita Agung Agrindustri v Council*, T-121/14, EU:T:2016:500, para. 74.

<sup>(34)</sup> Judgment of 15 September 2016, *Wilmar Bioenergi Indonesia and Wilmar Nabati Indonesia v Council*, T-139/14, EU:T:2016:499, para. 101.

<sup>(35)</sup> Panel Report, *EU – Biodiesel (Indonesia)*, WT/DS480/R and Add.1, adopted 28 February 2018, DSR 2018:II, p. 605, paras. 8.1(a) to (d).

- (166) The Commission disagreed with the Musim Mas group's claim that Musim Mas and ICOF Singapore form a single economic entity. The Commission did not consider that Musim Mas had demonstrated, based on all relevant factors, that Musim Mas and ICOF Singapore formed a single economic entity. In fact, the investigation revealed that the sales between Musim Mas and ICOF Singapore were governed by a framework agreement. Moreover, as recalled in recital (146), ICOF Singapore traded a large array goods other than the product concerned, and it was not a party to any of the domestic sales of Musim Mas. More details regarding the Commission's assessment were provided to Musim Mas in its specific disclosure as it included business confidential information.
- (167) However, in view of this framework agreement, the Commission revised the calculation of the export price for the sales via ICOF Singapore by deducting the actual mark-up from the export price instead of the profit of unrelated importer and the SG&A of ICOF Singapore.
- (168) As concerns the export sales via the related importer ICOF Europe, the Commission disagrees with the claim that no profit of unrelated importer and SG&A should be deducted. As ICOF Europe is an importer in the Union, the export price of its Union sales should be established pursuant to Article 2(9) of the basic Regulation.

### 3.4. Dumping margins

- (169) For the sampled cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (170) On this basis, the definitive weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin (%)
P.T. Musim Mas	46,4
P.T. Wilmar Nabati Indonesia	15,2

- (171) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers.
- (172) On this basis, the definitive dumping margin of the cooperating exporting producers outside the sample is 26,6 %.
- (173) For all other exporting producers in Indonesia, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the country concerned to the Union in the IP, that were established on the basis of the methodology explained in recital (195).
- (174) The level of cooperation in this case was high because the exports of the cooperating exporting producers covered the totality of imports during the IP. On this basis, the Commission decided to establish the dumping margin for non-cooperating exporting producers at the level of the sampled company with the highest dumping margin.
- (175) The definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin (%)
P.T. Musim Mas	46,4
P.T. Wilmar Nabati Indonesia	15,2
Other cooperating companies	26,6
All other companies	46,4

- (176) In their comments following final disclosure, the Greven group claimed that the Commission was not transparent enough with the calculation of the dumping margins and it should disclose more information on this.
- (177) The Commission disagreed with this claim. The calculation methodology is fully explained in recitals (129) to (175). However, the Commission cannot disclose the calculations of the individual dumping margins of the sampled exporting producers to other interested parties as those calculations include confidential information. The Commission has disclosed the details of the calculations to the sampled exporting producers and they were able to provide comments in this regard. The Commission addressed these comments in recitals (147) to (168) and revised the calculations when appropriate. Therefore, this claim was rejected.
- (178) The Greven group also argued that the high difference between the dumping margins of the two sampled exporting producers did not seem reasonable.
- (179) The dumping margins of the two sampled exporting producers have been calculated based on their own sales and cost data which was verified during the on-spot verification visit at their premises. The fact that for one exporting producer the dumping margin was higher than for the other one is irrelevant. Therefore, the claim was rejected.

#### 4. INJURY

##### 4.1. Definition of the Union industry and Union production

- (180) The investigation showed that 15 producers in the Union were manufacturing the like product during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (181) The total Union production during the investigation period was established at around 872 000 tonnes. The Commission established that figure on the basis of the macro data contained in the questionnaire supplied by CUTFA. The sampled Union producers represented around 61 % of the total Union production of the like product.
- (182) Wilmar and the Musim Mas group claimed that certain Union producers should be excluded from the definition of the Union industry because of a relationship with Indonesian and Malaysian producers of the product concerned. In particular, Wilmar and the Musim Mas group stated that KLK, a sampled Union producer, was part of a Malaysian group related to a fatty acid producer in Indonesia. Wilmar and the Musim Mas group also stated that Oleon was related to a Malaysian producer of fatty acid, Oleon Asia-Pacific Sdn Bhd and Oleon Port Klang Sdn Bhd, who exported to the Union and was in competition with the imports of Indonesia. The GOI also requested the Commission to examine this claim.
- (183) The examination of the above claim showed that KLK imported limited quantities of fatty acid from Indonesia and that less than 5 % of its Union sales were resales of imported products. Furthermore, the fact that Oleon was related to a company in Malaysia is not relevant for the current investigation as this investigation covers imports from Indonesia. The Commission, therefore, found no grounds to exclude this company from the definition of the Union industry, either on the grounds of being an importer of fatty acid, or because of its relationship to companies in Indonesia or Malaysia.
- (184) Wilmar also claimed that Temix International – Temix Oleo was part of the same group of companies as P.T. Sinar Mas Agro Resources and Technology Tbk which is an Indonesian exporting producer. Golden Agri Resources Ltd held 92 % stake in P.T. Sinar Mas and 25 % in Temix Oleo S.r.l. Therefore, Wilmar claimed that on the basis of this relationship, Temix Oleo S.r.l should be removed from the definition of the Union industry.
- (185) However, it should be noted that Temix International – Temix Oleo was not a sampled producer and data relating to this company has only been used to establish macroeconomic trends, such as sales and production volumes. As such data could not be distorted by a relationship with an exporting producer, it was not considered appropriate to examine this matter further.

##### 4.2. Union consumption

- (186) The Commission established the Union consumption on the basis of the verified Union industry data supplied by CUTFA concerning the sales in the EU free market and the transfers for captive use by all 15 producers included in the definition of the Union industry. Import volumes from all countries were obtained from Eurostat.
- (187) Fatty acids are normally sold on the free market but can also be used as an intermediate material for the manufacture of downstream products. The Commission found that around 11 % of the Union producers' production of the like product was destined for captive use. These quantities were simply transferred (without invoicing), and/or delivered at transfer prices, within the same company or groups of companies for further downstream processing.

- (188) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire product activity and determined the production destined for captive use and that for the free market.
- (189) Table 1 below shows that only a small part of the total Union industry's production was destined for captive use during the period considered. It also shows that the captive market was stable at around 8 % of consumption in that period. For the sake of completeness, and where appropriate, the figures for the small captive market are shown, and separately analysed as part of the overall assessment of the relevant injury indicator. For other indicators, such as production, capacity, productivity, employment and wages, the figures quoted below relate to the whole activity and no separation of figures was considered to be necessary.
- (190) Union consumption developed as follows:

Table 1

**Union consumption tonnes**

	2018	2019	2020	Investigation period
Total Union consumption	1 278 072	1 295 034	1 240 681	1 219 265
<i>Index</i>	100	101	97	95
Captive market	92 607	92 409	87 133	94 575
<i>Index</i>	100	100	94	102
Free market consumption	1 185 465	1 202 625	1 153 549	1 124 691
<i>Index</i>	100	101	97	95

Source: CUTFA and Eurostat

- (191) The free market consumption in the Union decreased by 5 % during the period considered. A detailed analysis shows that from 2018 to 2019 the Union market increased by 1 % from around 1,19 to 1,20 million tonnes and in 2020 it fell by 4 % to around 1,15 million tonnes. In the IP, free market consumption fell by a further 2,5 % to reach 1,12 million tonnes.
- (192) The fluctuation and overall decrease over the period considered was due to the development in certain sectors of users, such as home care, often due to factors relating to the Covid-19 pandemic in particular in 2020 and the IP. Apart from this temporary phenomenon, the Union producers considered that demand for fatty acids in the Union market was in general stable.
- (193) The trends and development in the total market (namely including captive use) were very similar to those observed in the free market.
- (194) Developments in the captive market are shown and analysed at Table 5 below.

### 4.3. Imports from the country concerned

#### 4.3.1. Volume and market share of the imports from the country concerned

- (195) The Commission established the volume of imports on the basis of Eurostat figures collected for the CN and Taric codes mentioned in the Notice of Initiation. In order to obtain reliable import data for the product concerned, the import figures available were adjusted because not all codes were fully related to the product concerned. For import codes partially related to the product concerned, a percentage was obtained from the Taric codes set up at the date of the Notice of Initiation. The data covered the period from December 2021 to April 2022. For such codes, a percentage was calculated for both imports from Indonesia and those from third countries. For all countries, a further 2 % deduction to the import volume was applied to cover imports which were recorded under the relevant codes but which were below 97 % in terms of the DoS. The 2 % figure was calculated on the basis of the sampling form replies of the cooperating exporting producers, which revised the sampling form replies after the Commission clarified the product scope as stated in recital (71).
- (196) The above methodology for calculating imports was described in a Note to the file, dated 2 June 2022, and interested parties were given the opportunity to comment on it. The volume of imports does not include the fatty acid that was excluded from the product scope of the investigation.

- (197) Several interested parties commented on the Note but did not object to the methodology as such, nor did they suggest an alternative methodology to reliably establish the import volumes of the fatty acids concerned by the investigation.
- (198) CUTFA suggested that the adjustment of 2 % was not appropriate, arguing that the Commission's methodology relying on percentages already took account of fatty acids with a DoS value of at least 97 %.
- (199) The Commission noted that at least until the end of April 2022, the description of the codes listed in the complaint did not cover the DoS criterion. Therefore, the suggestion to abandon the 2 % adjustment was not justified and could not be accepted.
- (200) The market share of the imports from all third countries was established on the basis of the total imports established per country and compared to the free market consumption shown in Table 1 above.
- (201) Imports into the Union from the country concerned developed as follows:

Table 2

**Import volume (tonnes) and market share**

	2018	2019	2020	Investigation period
Volume of imports from the country concerned (tonnes)	202 755	228 139	231 243	228 156
<i>Index</i>	100	113	114	113
Market share of free market (%)	17,1	19,0	20,0	20,3
<i>Index</i>	100	111	117	119

Source: Eurostat and CUTFA

- (202) The volume of dumped imports from the country concerned increased from around 203 000 tonnes to around 228 000 tonnes over the period considered, an overall increase of 13 %. Import quantities rose by 11 % in 2019, but after that remained stable at around 230 000 tonnes. The information collected during the investigation suggested that some exporting producers experienced problems relating to the Covid-19 pandemic, including supply chain issues (see in particular recital (266)).
- (203) Nevertheless, the market share of those imports increased in all years, from 17,1 % to 20,3 % over the period considered, an overall increase of 3,2 percentage points or by 19 %.

#### 4.3.2. Prices of the imports from the country concerned and price undercutting/price depression

- (204) The Commission established the prices of imports on the basis of Eurostat figures. The relevant imports were identified using the methodology explained in recital (195). These figures were crosschecked to the figures of the sampled exporting producers, confirming the same trends.
- (205) The weighted average price of imports into the Union from the country concerned developed as follows:

Table 3

**Import prices (EUR/tonne)**

	2018	2019	2020	Investigation period
Indonesia	912	765	805	1 023
<i>Index</i>	100	84	88	112

Source: Eurostat

- (206) Import prices from Indonesia increased from 912 to 1 023 EUR/tonne over the period considered, a rise of 12 %. Prices fell by 12 % from 2018 to 2020 but then rose by 27 % from 2020 to the IP. These developments should be seen in the light of the worldwide raw material price increase in that period, which is the main reason for the increase in costs. As shown in Table 7, the increase in raw material prices was the main reason for the increases of the Union prices. Similarly, the unit costs of production of Indonesian exporters also increased in the IP as compared to 2020 due to an increase in their raw materials prices.
- (207) The Commission determined the price undercutting during the investigation period by comparing:
- (i) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level;
  - (ii) and the corresponding weighted average prices per product type of the sampled Indonesian exporting producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.
- (208) Where the sale from the sampled Indonesian exporting producers to the first independent customer in the Union market was made through a related sales company based in the Union, the price of the import was established on a CIF basis, by adjusting the sales price to the first independent customer. All costs incurred between the importation and resale, including the SG&A of the related importer and the profit margin as established in recital (143), applying Article 2(9) of the basic Regulation by analogy, were taken into account.
- (209) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of over 20 %. The actual figures calculated are not recorded here for reasons of confidentiality (as they are based on two companies only), but have been disclosed to the cooperating exporting producers concerned and are within the range of 11 % to 29 %. All sales of the sampled Union producers were made directly to independent customers, without related selling entities. One sampled exporting producer sold also directly to independent customers in the Union, without the participation of its related selling entities in the Union. As regards the other exporting producer, the majority of its sales were made through a related selling entity in the Union. No interested party disputed the existence of significant undercutting.
- (210) The Commission further considered other price effects, in particular the existence of significant price depression. Already in the beginning of the period considered, the sales prices and profitability of the Union industry were low (see profitability figures in Table 10). In 2019, the Union industry was forced to decrease its prices further, incurring losses. But for the dumped imports, which showed their highest increase in 2019 and remained at elevated levels in 2020 and the IP, the Union industry would likely have been able to keep its prices at least at the level needed to sell without losses in 2019 and 2020. During 2020 and the IP, Union's sales prices increased (in parallel with the increase in the costs of production), but again at levels that resulted in losses in 2020 and only marginal profitability in the IP. The Union producers consistently lost market share between 2019 and IP. Thus, the dumped imports were capable of exercising significant price pressure on Union sales, preventing Union producers from increasing prices to accommodate costs increases in a way that would have allowed them to obtain reasonable profits.

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

##### *4.4.1. General remarks*

- (211) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (212) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the macro questionnaire supplied by CUTFA. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the four sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

- (213) The macroeconomic indicators were produced by CUTFA based on a report of LMC International Ltd <sup>(36)</sup>, an independent company conducting market research in the agriculture and agribusiness sectors, including oleochemical products such as fatty acids ('report data'). The report data has wider scope than the fatty acids covered by this investigation and is widely used by the oleochemical industry. To distinguish the like product from other products, CUTFA used additional information on quantities of raw materials used, relying on the fact that the like product was produced only with specific raw materials, such as palm oil, palm kernel oil or tallow. The products not covered by the investigation use other raw materials, such as rapeseed oil or soya oil. By using this methodology, it was possible to establish the quantity of production and sales of both the product under investigation and other products. Report data was available for the period 2018-2020. Data for the IP was estimated pro rata, based on developments in production and sales of the companies which made their data directly available to CUTFA. Data for other indicators, mentioned below, was also established using the same company data. The calculations made by CUTFA were verified and the macro data was crosschecked with the data collected by the Commission from the sampled Union producers, which represent 61 % of total Union production.
- (214) Wilmar queried why the macro data submitted by CUTFA was lower in volume than the report data, which was available widely to the oleochemical industry.
- (215) This was because of the necessary adjustments, explained in recital (213), made by CUTFA to exclude products out of product scope.
- (216) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (217) The four sampled producers were the source of the data of the microeconomic indicators.
- (218) The microeconomic indicators are: average unit prices, unit cost of production, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

#### 4.4.2. Macroeconomic indicators

##### 4.4.2.1. Production, production capacity and capacity utilisation

- (219) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 4

#### Production, production capacity and capacity utilisation

	2018	2019	2020	Investigation period
Production volume (tonne)	936 063	924 837	862 055	872 185
<i>Index</i>	100	99	92	93
Production capacity (tonne)	1 161 964	1 134 616	1 097 798	1 118 314
<i>Index</i>	100	98	94	96
Capacity utilisation (%)	80,6	81,5	78,5	78,0
<i>Index</i>	100	101	97	97

Source: CUTFA

- (220) For reasons of efficiency, Union production of the product under investigation is planned for 24 hours per day except in periods of normal maintenance. However, in some cases and to a certain extent, the investigation showed that other products can be produced on the same production facilities. Production is based on orders. Table 4 indicated a spare capacity of around 20 % each year.

<sup>(36)</sup> <https://www.lmc.co.uk/oleochemicals/>

- (221) Throughout the period considered the production volume of the Union industry decreased by 7 %. A detailed analysis shows that this fall in production took place mainly in 2020.
- (222) The Union production capacity was calculated on the basis of an achievable maximum production in the long-term, taking into account maintenance. During the period considered, Union production capacity decreased by 4 %. This decrease reflects a reallocation of capacity to other products because of reduced orders of fatty acids. Yet, the Union industry was unable to fully replace the production of fatty acids with other products.
- (223) During the period considered, despite a 4 % reduction in production capacity, Union capacity utilisation fell by 3 %.

#### 4.4.2.2. Sales volume and market share

- (224) The Union industry's sales volume and market share developed over the period considered as follows:

Table 5

#### Sales volume and market share

	2018	2019	2020	Investigation period
Total Sales volume on the Union market including captive use (tonne)	947 561	943 413	875 893	862 863
<i>Index</i>	100	100	92	91
Market share (including captive use) (%)	74,1	72,8	70,6	70,8
<i>Index</i>	100	98	95	95
Captive use	92 607	92 409	87 133	94 575
<i>Index</i>	100	100	94	102
Captive use as a % of total market sales	9,8	9,8	9,9	11,0
<i>Index</i>	100	100	102	112
Free market sales	854 953	851 004	788 760	768 288
<i>Index</i>	100	100	92	90
Market share of free market sales (%)	72,1	70,8	68,4	68,3
<i>Index</i>	100	98	95	95

Source: CUTFA

- (225) The trend of Union industry sales (including captive use) was similar to production over the period considered. This is because production in this industry is driven by sales orders. Storage space is typically limited, and stocks of finished goods can over time deteriorate in quality or fall outside specifications. Therefore, inventories are normally kept at very low volumes.

- (226) Throughout the period considered, the total Union sales volume of the Union industry decreased by 9 %.
- (227) Union sales volume on the free market decreased by 10 % over the period considered. From 2018 to 2019 Union sales volumes were stable. However, from 2019 to the IP these volumes decreased by 10 %.
- (228) The Union's industry captive market (expressed as a percentage of its total Union sales including captive use) was around 10-11 % throughout the period considered.
- (229) The market share of Union sales on the free market decreased from 72,1 % to 68,3 % over the period considered, a fall of 3,9 percentage points or by 5 %.

### **Growth**

- (230) Bearing in mind that the Union industry lost 5 % of market share over the period considered, and its sales on the free market fell by 10 %, it is clear that no growth took place, but rather it was a period of contraction in both absolute terms and in relation to the free market consumption.

#### 4.4.2.3. Employment and productivity

- (231) Employment and productivity developed over the period considered as follows:

Table 6

#### **Employment and productivity**

	2018	2019	2020	Investigation period
Number of employees (FTE)	945	914	952	898
<i>Index</i>	100	97	101	95
Productivity (tonne/employee)	990	1 012	906	971
<i>Index</i>	100	102	91	98

Source: CUTFA

- (232) The Union industry employment fell by 5 % over the period considered on a full time equivalent (FTE) basis.
- (233) Productivity in terms of tonnes per employee fell in 2020, but overall remained largely stable over the period considered.

#### 4.4.2.4. Magnitude of the dumping margin and recovery from past dumping

- (234) All dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was considered substantial, given the volume and prices of imports from the country concerned.
- (235) This is the first anti-dumping investigation regarding fatty acid. Therefore, no data were available to assess the effects of possible past dumping.

## 4.4.3. Microeconomic indicators

## 4.4.3.1. Prices and factors affecting prices

- (236) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 7

**Sales prices and unit cost of production in the Union**

	2018	2019	2020	Investigation period
Average unit sales price on the free market (EUR/tonne)	879	770	861	1 101
<i>Index</i>	100	88	98	125
Unit cost of production (EUR/tonne)	856	764	861	1 056
<i>Index</i>	100	89	101	123

Source: Sampled Union producers

- (237) Sales on the Union market to unrelated customers were made to both independent traders and to end-users in a large number of user sectors. Prices to both types of customers and to the various sectors were set in the same way and at a similar level.
- (238) Sales prices on the Union market to unrelated parties (in the free market) increased from 879 EUR/tonne to 1 101 EUR/tonne over the period considered, an increase of 25 %. These sales prices fell by 12 % in 2019, but increased by 12 % in 2020 and 28 % in the IP.
- (239) This apparent positive trend should be seen in the context of important increases in raw material costs. During the IP, these costs represented more than 70 % of the full unit production cost. This unit cost of production increased by 23 %, over the period considered, namely at a rate similar to the average sales prices increase in the free Union market.

## 4.4.3.2. Labour costs

- (240) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 8

**Average labour costs per employee**

	2018	2019	2020	Investigation period
Average labour costs per employee (EUR)	81 344	85 487	89 010	87 188
<i>Index</i>	100	105	109	108

Source: Sampled Union producers

- (241) The average labour costs per employee increased by 8 % over the period considered. Developments in salaries were negotiated with labour unions and other employee related costs were set by national administrations.

## 4.4.3.3. Inventories

(242) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 9

**Inventories**

	2018	2019	2020	Investigation period
Closing stocks (tonnes)	21 784	23 066	23 708	19 013
<i>Index</i>	100	106	109	87
Closing stocks as a percentage of production	3,8	4,1	4,5	3,6
<i>Index</i>	100	108	116	93

Source: Sampled Union producers

(243) The stocks of the sampled Union producers decreased by 23 % over the period considered. However, closing stocks as a percentage of production were low throughout the period. As mentioned in recital (225) above, this is because the fatty acid industry generally operates on a production to order basis and stocks are kept at a low level because they can deteriorate in quality or change specifications. This indicator is therefore of a lesser importance in the overall injury analysis.

## 4.4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(244) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 10

**Profitability, cash flow, investments and return on investments**

	2018	2019	2020	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	1,9	- 0,5	- 2,1	2,5
<i>Index</i>	100	- 27	- 108	128
Cash flow (EUR)	27 037 404	12 370 885	- 1 239 176	22 774 816
<i>Index</i>	100	46	- 5	84
Investments (EUR)	7 394 509	11 769 077	10 473 680	8 531 863
<i>Index</i>	100	159	142	115
Return on investments (%)	9,0	0,6	- 4,4	12,1
<i>Index</i>	100	7	- 48	134

Source: Sampled Union producers

(245) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the sampled producers remained low, namely below 3 %, throughout the period considered and even declined from 1,9 % in 2018 to - 2,1 % in 2020. In the investigation period, profitability recovered to 2,5 %, although it remained at low levels. The slight recovery in the IP was because customers in the Union market were more likely to accept price increases from Union producers as exporting producers were impacted by the supply chain crisis in the context of the COVID-19 pandemic.

(246) The development of profitability, when seen together with the sales prices and production cost in Table 7 and the low prices of the Indonesian imports, shows evidence of significant price suppression. The Union industry was unable to raise its prices to sufficiently reflect cost increases in order to sell at reasonably profitable prices. This meant that the profitability of the Union industry remained low throughout the period considered, when

Indonesian dumped imports already started at a high penetration (17,1 % market share) and were able to increase in volume by 22 % and reach a 20,3 % market share as shown at Table 2. In addition, despite significant raw material price increases, the average price of these imports increased by only 12 % as shown at Table 3. Over the same period, Union industry prices had to increase by 25 % only to sustain costs. As also concluded in recital (210), there was continuous downward pressure exerted by imports from Indonesia (both in terms of constant high volumes and in terms of low prices) already from the beginning of the period considered. Indeed, Indonesian prices were consistently lower than Union industry prices as of 2019 and possibly before (see recital (302)). This resulted in depressed and inadequate profit levels throughout the period considered and, in particular, during the investigation period.

- (247) Wilmar made comments on the lack of price suppression, however, its conclusion was based on indexed trends, rather than on the actual level of profitability of the Union producers.
- (248) The Commission found that the conclusions reached by Wilmar were incorrect as it did not take into account the penetration of the dumped imports during the whole period considered and the resulting low profitability levels of the Union industry. Therefore, the claim was dismissed.
- (249) Musim Mas group submitted the annual reports of two Union producers and argued that the information contained therein, in particular the indicators of profitability during the IP, shows a lack of injury to these companies.
- (250) In this respect, the Commission notes that the scope of these reports is substantially wider than the business of the two Union producers related to the product under investigation. Therefore, the claim was rejected.
- (251) The net cash flow reflects the ability of the Union producers to self-finance their activities. The trend in net cash flow developed in a similar manner to the return on turnover, falling in 2019 and 2020 and experiencing a modest increase in the IP. Overall, the cash flow showed a negative trend over the period considered, it decreased by 16 %.
- (252) The return on investments is the profit as a percentage of the net book value of investments. The trend in return on investments also developed in a similar manner to the return on turnover, falling in 2019 and 2020 and experiencing a modest increase in the IP.
- (253) The sampled Union producers continued to invest during the period considered, as demonstrated by the investment figures above. Investments were between 7 and 12 million EUR per year and were mainly made in order to make efficiency gains and maintain existing facilities. The Union industry is serving a diverse customer base, which has continuously developing requirements. The Union industry has to remain flexible in its ability to manufacture the range and quantity of products it can offer to the market. Such investments are threatened by a decreasing ability to raise capital.
- (254) The investigation also showed that other investments to increase capacity had not gone ahead as planned during the period considered. Whilst those investments are essential to ensure the perennity of the industry, all sampled companies, including those that are part of larger groups, had to delay investments in that period. The inadequate level of the return on investments also jeopardises the future ability of the Union industry to raise capital and thus its survival in the medium and long term.

#### 4.4.4. Conclusion on injury

- (255) The development of stocks and captive use showed a modest improvement in the period considered. The increase in captive consumption was limited to 2 % and stock levels decreased. The investigation showed that the captive use is not directly affected by the dumped imports and that stocks are less relevant for the fatty acid industry, which is mainly working on orders. This means that these factors are not key factors in the injury analysis.
- (256) Some other indicators, such as sales prices, profitability, return on investment and investment, showed an apparently positive trend during the period considered. The investigation, however, showed that the positive development of sales prices was related to the development in raw material prices, which significantly increased in that period. Also, the modest improvement in profitability and return on investment did not change the fact that the performance during the period considered remained at a level that was inadequate to ensure the viability of the Union industry in the medium and long-term (see also recitals (266) to (269)).
- (257) In fact, the low profitability, when seen together with the trends in sales prices and costs of production is a clear demonstration of price suppression. In particular, throughout the period considered, when the dumped imports remained at increased levels and low prices, the Union industry was unable to raise prices to a level that would allow it to cover its costs and reach the target profit margin (6 %).

- (258) Despite keeping investments as high as possible in order to maintain efficiency, the Union industry was clearly not delivering sufficient profits to encourage investments to develop their businesses during the period considered and, in particular, in the investigation period. The deterioration in the economic situation of the Union industry took place in a market with a relatively stable consumption (the decline in consumption in 2020 and the IP were largely temporary because of the impact of the Covid-19 pandemic). The Union industry market share declined by 5 % over the period considered, from 72,1 % in 2018 to 68,3 % in the IP.
- (259) Although, the injury in this investigation consisted mainly of price and performance indicators such as profitability and ability to raise capital, the Union industry also suffered a decline in the volume indicators examined. Production, capacity, capacity utilisation, sales volume and market share on the Union market all declined over the period considered. Furthermore, declines were also seen in employment and productivity, which were related to the lower levels of production and sales volume.

#### *Comments after disclosure*

- (260) In its comments following final disclosure, the GOI commented on certain injury indicators and concluded that the Union industry was not injured over the period considered. This opinion was made on the basis that: (1) Table 4 showed an increase in production and capacity from 2020 to the IP; (2) Table 5 showed an increase in market share, including captive use, from 2020 to the investigation period, (3) Table 7 showed an increase in selling price over the period considered which was followed by an increase in profits from – 2,1 % in 2020 to 2,5 % in the IP, (4) Table 9 showed a decrease in stocks over the period considered, and (5) Table 10 showed an increase in profitability, cash flow and return on investment from 2020 to the investigation period. The GOI also claimed that the Commission used arbitrarily a target profit of 6 % without any basis and that that the increase in profit of the Union industry from – 2,1 % in 2020 to 2,5 % in the investigation period was significant, unprecedented and it was achieved during the Covid-19 pandemic. Wilmar claimed that the Commission did not analyse Table 10 correctly, claiming that profitability increased over the period considered and was high in the investigation period.
- (261) The Commission disagreed with the claim that the relevant data failed to show material injury. As mentioned in recital (202), while during the period considered consumption decreased by 5 %, the volume of imports from Indonesia increased by 13 %. Indonesian imports also managed to increase their market share in such a context. Furthermore, as explained in recital (192), Union consumption is generally stable<sup>(37)</sup> and is expected to recover following the temporary decrease of 2020 and the IP, which was due to factors relating to the Covid-19 pandemic<sup>(38)</sup>.
- (262) Similarly, as concerns market share of the Union industry, the market share including captive use indeed increased from 70,6 % to 70,8 %. However, the market share of the Union industry sales on the free market, which is the relevant indicator, decreased from 68,4 % in 2020 to 68,3 % in the investigation period. During the whole period considered the market share of the Union industry sales on the free market continuously decreased from 72,1 % in 2018 to 70,8 % in 2019, to 68,4 % in 2020 and to 68,3 % in the IP. Contrary to this, at the same time, the market share of the Indonesian imports continuously increased from 17,1 % in 2018 to 19,0 % in 2019, to 20 % in 2020, and to 20,3 % in the investigation period.
- (263) Likewise, the claim concerning the increase of the average selling price must be seen in the context of a significant increase of the cost of raw material, as explained in recital (256). Furthermore, as explained in recital (243), the closing stocks as a percentage of production remained rather stable over the period considered and the industry operated on a production to order basis, so stocks were kept at a low level.
- (264) The allegation about the performance indicators in Table 10 ignored the full context. For example, the level of cash flow in the period considered constantly decreased from 2018 to 2020, turning negative in 2020. In the investigation period, the cash flow increased and became positive as the Union industry managed to increase its profits as explained in recital (251) and (266). However, the cash flow in the IP was still substantially below the levels of cash flow in 2018. Overall, the cash flow decreased by 16 %.

<sup>(37)</sup> IHS Markit chemical economics handbook, published June 2021: 'Mainland China, Western Europe, and North America are the major consuming markets. The historical growth in the consumption of fatty acids has approximated GDP growth in the regions of their consumption' (<https://ihsmarkit.com/products/natural-fatty-acids-chemical-economics-handbook.html>).

<sup>(38)</sup> Industry ARC Fatty Acid Market Forecast (2021-2026): 'Furthermore, because of the covid-19 epidemic, the production, consumption, imports, and exports of Fatty Acid were also hindered. These multiple consequences of the covid-19 pandemic stretched the troubles for the Fatty Acid market in 2020. However, the demand for Fatty Acid is set to improve by the year-end of 2021, owing to the boosting personal and home care sectors.' (<http://www.industryarc.com/Report/15848/fatty-acid-market.html>).

- (265) As concerns the level of the target profit, the Commission considered that using a 6 % as the minimum profit was appropriate. Article 7(2c) of the basic Regulation considers 6 % as the minimum level of profitability to be expected under normal conditions of competition for the calculation of the injury margin. This level was set on the basis of the long-term profitability figures established for the industries in the Union. No evidence was put forward that such a level was manifestly inappropriate for the industry at issue (see recital (268)). Therefore, this claim could be dismissed on this basis.
- (266) Nevertheless, the Commission noted that the profit of the Union industry was slightly above break-even only in 2018 (1,9 %) and in the IP (2,5 %), whereas it was negative in 2019 and 2020 (– 0,5 % and – 2,1 % respectively). Furthermore, the positive level reached during 2021, which covers 9 months of the investigation period, must be seen in the context of significant supply chain disturbances on the market derived from the COVID-19 pandemic and severely affecting Indonesian exports to the Union. Fatty acid supply to the Union was hindered by vessel delays from Asia, caused by a lack of cargo ships, tankers and workers resulting from Covid-19, and extreme hikes in freight costs as a result <sup>(39)</sup>. These temporary disturbances affected prices globally in the industry, as well as imports from Indonesia, which decreased in absolute terms between 2020 and the IP. As a result, the Union industry explained that it was able to benefit from these specific temporary disturbances on the market by increasing prices to profitable levels on the Union market without major sacrifices to their market share. Overall, the Union industry's profitability oscillated around the breakeven point during the whole period considered, the volume of imports from Indonesia were significant and their market share increased significantly from 17,1 % and 20,3 % despite a slightly decreasing consumption. All the factors clearly show that profitability of the Union industry has been negatively affected throughout the period considered by the dumped Indonesian imports, and the peak in profitability at 2,5 % during the IP, was reached in a context of supply issues for Indonesian exporters, mainly due to the aftermath of Covid-19.
- (267) The profitability in Table 10 is calculated based on the cost of goods sold of the fatty acid produced and sold on the Union market to unrelated customers by the Union industry. While the Union industry in general produces based on orders, there are still small stocks as indicated in Table 9. Therefore, in an industry with small inventories, there is a small difference between unit cost of production and unit cost of goods sold. It follows, that although in 2019 and 2020, the Union industry average unit selling price was higher or equal to the average unit cost of production, the Union industry incurred losses as indicated in Table 10.
- (268) As for the standard level of profit of fatty acid in normal conditions of competition, the GOI did not explain why the profit level of 2,5 % achieved by the industry in the IP was allegedly sufficient. Also, the GOI failed to substantiate which level of profit should be used instead when criticising the legally mandated 6 % threshold used by the Commission, and it also failed to explain the alleged impact of Covid-19 pandemic on the level of profitability. The Commission noted that there is no other evidence on file on the level of historical profitability of the fatty acid industry in the absence of dumped imports from Indonesia that would support the GOI's assertion that the 2,5 % profitability was sufficient, or undermine the choice of the 6 % level of profit used. By contrast, the Commission's findings were supported by publicly available information and information on the open file. The Commission noted that according to a report prepared by the European Chemical Industry Council ('CEFIC') regarding, among other things, the profitability of the broader European chemical industry for 2020, the gross operating surplus <sup>(40)</sup> as a percentage of turnover in the chemical industry is around 11 %. Furthermore, based on the statistics collected by CSIMarket <sup>(41)</sup>, the pre-tax margins of a chemical manufacturing industry in 2021 was around 13 %. Moreover, in their comments on final disclosure, the Greven group stated that the EBIT margins (earnings before interest and taxes) of the chemical industry in Europe in 2020 was around 7 % (see in more detail recital (294)). Thus, on the basis of available evidence, the Commission considered that the Union industry did not reach a profitability level in accordance with normal market conditions of competition throughout the entire period considered.

<sup>(39)</sup> OFI Magazine, Strong demand forecast for oleochemicals, 9 July 2021, <https://www.ofimagazine.com/news/strong-demand-forecast-for-oleochemicals>

<sup>(40)</sup> Gross operating surplus (GOS), or profits, is defined as value added minus personnel costs. It is the surplus generated by operating activities after the labour factor input has been compensated for. GOS in chemicals accounts for 11 % of turnover, <https://www.francechimie.fr/media/52b/the-european-chemical-industry-facts-and-figures-2020.pdf>

<sup>(41)</sup> CSIMarket, Chemical Manufacturing Industry Profitability, [https://csimarket.com/Industry/industry\\_Profitability\\_Ratios.php?ind=101&hist=4](https://csimarket.com/Industry/industry_Profitability_Ratios.php?ind=101&hist=4)

- (269) Even more significantly, the Commission noted that, as explained in recitals (253) and (254), the investments made by the Union industry were limited over the period considered, focusing on efficiency gains and maintaining a smooth running of the existing facilities. The Union industry, because of the negative or low profitability level throughout the period considered, was unable to undertake required investments to innovate and achieve required efficiency and productivity gains to be able to compete in the market. The Union industry is serving a diverse customer base which has continuously evolving requirements. During the period considered, the depreciation expenses represented only around 2 % of the cost of production. An increase of the depreciation expenses following investments to 4 % of cost of production would make the Union industry break even in the scenario that it will manage to maintain the higher prices of the investigation period, which is highly unlikely given the reasons for which these prices increased in the IP. Therefore, the profit level achieved by the industry throughout the period considered is insufficient to undertake the required level of investment needed in this sector. All these elements squarely contradicted the GOI's unsubstantiated assertions on the required profitability level of the Union industry.
- (270) Finally, the Commission noted that its analysis was complete and comprehensive, because it covered all 4 years and all injury indicators required by Article 3(5) of the basic Regulation. In addition, the Commission used all data in its analysis whether developments were positive or negative. The Commission, therefore, demonstrated that its conclusion of material injury was legally and economically sound. Therefore, these claims were rejected.
- (271) The GOI also claimed that the finding of injury was inconsistent with the letter of KLK dated 19 August 2022 which commented on competition between KLK and Indonesian exporting producers and KLK's profitability.
- (272) The Commission rejected this claim as the letter is from a single Union producer and does not constitute a full assessment of injury. Such a statement, therefore, cannot override the Commission's conclusions on material injury.
- (273) The GOI also claimed that although fatty acid used for the production of biodiesel was excluded from the product scope, the Commission failed to adjust the import statistics accordingly.
- (274) The Commission rejected this claim, confirming that the import statistics do not include the imported quantities of fatty acid produced from waste and used for biodiesel production.
- (275) Wilmar claimed that the developments of production and capacity utilisation shown at Table 4 were not injurious.
- (276) The Commission noted that production fell by 7 % over the period considered and capacity utilisation by 3 % as mentioned in Table 4. Wilmar did not assess these trends in their proper context. In a market with a decreased consumption by 5 % in the period considered, the imports from Indonesia increased by 13 % and their market share increased from 17,1 % in 2018 to 20,3 % in the investigation period. Therefore, the Commission rejected the claims concerning production and capacity utilisation.
- (277) Wilmar claimed that the Commission was wrong to state that stock levels shown at Table 9 were of lesser importance in the injury analysis and claimed that lower stocks were a sign of increased sales.
- (278) The Commission noted that sales volumes fell throughout the analysis period as shown in Table 5. Also, bearing in mind the low closing stock levels, which were below 4,5 % of production volumes throughout the period, the Commission maintained its views on stock issues in the overall injury analysis.
- (279) Wilmar claimed that the developments of investments and return on investment shown at Table 10 were not injurious.
- (280) As concerns investments, the claim was addressed in recital (269). The return on investments is the value of the total profit of the product under investigation divided by the value of the total fixed assets used for the production of the product under investigation. During the period considered, the value of the total fixed assets was rather stable. Therefore, the trend of the return of investment follows the trend of the profitability. It follows that between 2018 and 2020 the return on investment decreased. In the investigation period the return

of investment increased as the profitability of the Union industry increased as compared to the previous years. However, as explained in recital (266), the increase in profitability in the investigation period was only temporary. The Commission therefore maintained its conclusion that investment levels were inadequate for the future survival of the Union industry (see recitals (253), (254) and (269)) and therefore this claim was rejected.

- (281) In their comments following final disclosure the Musim Mas group claimed that there was no injury to the Union industry during the IP. Indeed, this group requested the Commission to focus the injury analysis on the investigation period claiming that in that year there were positive developments in production, production capacity, market share, average prices, return on investment, cash flow, profitability and stocks. In particular, the Musim Mas group pointed out that profitability was at its highest in the investigation period (2,5 %).
- (282) The Commission must carry out the injury assessment for the entire period considered and not only during the investigation period. The methodology suggested by the Musim Mas group, like the assessment of the GOI and Wilmar above, would not represent a full and accurate analysis of the injury situation of the Union industry as required by Article 3 of the basic Regulation. The small increase in production volume (1,2 %), production capacity (1,9 %), and the decrease in stocks was due to the temporary increase in profitability, as explained in recital (266). The cash flow and return of investment followed the development of profitability. The market share of the Union industry on the free market decreased in the IP as compared to 2020 from 68,4 % to 68,3 %. The selling price of the Union industry increased in line with the increased unit cost of production due to the increase in raw materials prices, which was rendered possible by the temporary supply disruptions and the effects of the COVID-19 pandemic in particular during the IP. Therefore, the claim was rejected.
- (283) The Musim Mas group also questioned the undercutting (mistakenly referred to by the Musim Mas group as 'underselling') calculations of the Indonesian imports arguing that the disclosure document regarding average unit values, in Tables 3 and 7, indicates a much more modest price effect on the Union industry's prices, namely from an overcutting of 4 % in 2018 to a modest undercutting of 7 % in the IP.
- (284) This exporting producer reached a conclusion on price undercutting based on a straight comparison of the average import price of Indonesian producers to the Union with the average price of the Union industry, ignoring that all exporters and all producers in the Union have product mixes that can differ significantly. In order to reach more reliable undercutting margins, prices should be compared for comparable product types at the level of the exporting producers, where the dataset is available. During the IP, the exporter claim that price undercutting was 7 % on an average basis, whereas the comparison at product type level revealed an undercutting margin above 20 %. The comments of the exporter concerning undercutting margins were rejected.
- (285) In their comments following final disclosure CUTFA agreed with the Commission's conclusions regarding injury and pointed out that the analysis of sales prices, undercutting, underselling, price suppression, unit costs and performance indicators such as return on turnover demonstrated that the Union industry had suffered injury over the period concerned. CUTFA also pointed to the Commission's analysis of volume indicators such as production, capacity, capacity utilisation, sales volume and market share, which demonstrated that the Union industry suffered injury also in respect of volume indicators. Furthermore, CUTFA confirmed that slight improvement in profitability in the IP had not created a sustainable and competitive situation for the Industry on the Union market.
- (286) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation during the investigation period.

## 5. CAUSATION

- (287) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These factors are: imports from other sources than Indonesia, the export performance of the Union industry, developments in captive use, developments in consumption, raw material issues and alleged inefficiencies of the Union industry.

### 5.1. Effects of the dumped imports

- (288) As shown in Table 2, the volume of dumped imports from Indonesia increased from around 203 000 tonnes in 2018 to around 228 000 tonnes in the investigation period, an increase of 13 %. In terms of market share, the increase over the same period was from 17,1 % to 20,3 %, an increase of 19 %. These observations coincided with a 10 % decrease in the Union industry sales on the free market and a fall of market share from 72,1 % to 68,3 %, a fall of 5 %. In that period, the sales on the smaller captive market were stable. The investigation showed that dumped imports have also increased steadily on a year-on-year basis in terms of volume and market share. In absolute terms, the increase in import volumes in 2019 did not continue at the same pace in 2020 and in the IP because of problems relating to the Covid-19 pandemic. Nevertheless, despite a 5 % fall in consumption over the period considered, it is evident that it has been mainly imports from Indonesia which improved their situation on the market despite exporters experiencing supply difficulties as stated in recital (202).
- (289) As explained in recital (210), imports from Indonesia had caused a depression on prices of the Union industry already in the beginning of the period considered. Moreover, in a context of a significant worldwide fluctuations in raw material costs, Union producers have been unable to adjust their prices in a way that would allow them to reach reasonable profit levels, or even to remain profitable at all.
- (290) The penetration of Indonesian imports over the period considered was possible because the product under investigation is a commodity and price plays a major role in the decision making of customers. The coincidence in time between the deterioration in the economic situation of the Union industry and the significant presence of dumped imports from Indonesia, undercutting the Union industry's prices, and suppressing EU market price levels, confirms a causal link between the two.
- (291) Finally, as explained above, supply problems for the exporting producers temporarily lessened the pressure on the Union industry in the investigation period. This allowed the Union industry to increase prices to a level whereby some profit was made, but not sufficiently to allow them to reach a reasonable profit level under normal conditions of competition.
- (292) Furthermore, the Commission found that between 2018 and 2020, when consumption in the free market decreased by 3 %, Indonesian imports grew by 14 % and prices were reduced by 12 %. In the same period, the Union industry saw its sales volume shrinking by 8 % and its prices reduced by 2 %. This led to financial losses, which also affected the financial situation of the Union industry in the investigation period where pressure from dumped imports persisted.
- (293) In their comments following final disclosure CUTFA agreed with the Commission's analysis of causation in light of the injury indicators and price comparisons established above and the volumes, market share and prices of the imports from Indonesia. CUTFA pointed out that the price pressure exerted by the imports from Indonesian had prevented adequate price increases needed due to the increase in raw material prices. In addition, CUTFA mentioned that the increase of imports from Indonesia had contributed to the injury suffered.
- (294) In their comments following final disclosure, the Greven group commented on the profitability of the Union industry, arguing that it followed the general trend of the European chemical industry over the period considered. To support this argument, the Greven group provided a chart with the EBIT margins (earnings before interest and taxes) of the European chemical industry, which showed a decline of 33,9 % or 3,4 percentage points, from 10,4 % in 2018 to 7,0 % in 2020. In light of this information, the Greven group concluded that the profitability decline of the Union industry must be considered as average for the European chemical industry and therefore, it was immaterial and could be attributed to factors other than the dumped imports from Indonesia.
- (295) The Commission noted that the Greven group used for comparison the period from 2018 to 2020. Considering as a starting point the actual Union industry profitability of 1,9 % in 2018, a decline of 33,9 % would mean a drop to 1,26 % in 2020. Instead, the Union industry profitability dropped to negative levels (- 2,1 %) in 2020. Such decline cannot be considered immaterial, or as being even close to the trend of the (broader) European chemical industry. More importantly, the claims by the Greven group are based on profitability trends of relative changes in profitability, while completely ignoring the actual, absolute levels of profitability of the chemical industry. Furthermore, a decrease in percentage points from 10,4 % to 7,0 % does not have the same impact on the activity of a company whose profits decrease from 1,9 % to - 1,5 %. In the first scenario, the company simply

recorded less profits, while in the second scenario the company became loss making, jeopardizing its future. It is undisputable that these negative or low absolute levels of profitability of the fatty acid industry are below the normal profit averages of the European chemical industry. As explained at recitals (266) and (269), the negative or very low levels of profitability throughout the period considered were insufficient for the Union industry to continue their business activity under normal conditions, as they could not raise prices to the necessary level to absorb the increase in cost of raw materials and achieve a regular profit. Nor could the industry effect the necessary investments to innovate and keep up with demand from their customers for specific products (see recitals (253), (254) and (269)). The Greven group did not show how such negative or low profitability levels of the fatty acid industry in absolute terms could be justified under normal conditions of competition, nor did they substantiate which specific factors other than dumped imports from Indonesia affected the Union industry profitability, other than by generically referring to the profitability trends of the chemical industry. Based on all these elements, the Commission concluded that the assertion that the low profitability was attributable to other factors unrelated to the dumped imports of fatty acid from Indonesia is not only unsubstantiated, but also baseless in substance as the above arguments demonstrate, and therefore must be rejected.

- (296) Wilmar claimed that the growth of imports from Indonesia had no impact on the volume of sales of the Union industry. In particular, Wilmar claimed that Table 2 showed no significant increase in imports within the meaning of Article 3(3) of the basic Regulation. Wilmar claimed that imports from Indonesia were stable apart from 2019 when they increased by 25 384 tonnes, which was insignificant against the total consumption of 1 295 034 tonnes. The volumes of imports remained relatively stable since then, growing by 1 % in 2020 and decreasing by 1 % in the investigation period, which, according to Wilmar, amounted to standard market fluctuations. Furthermore, Wilmar claimed that the overall growth of import over the period considered was 13 % and took place only in 2019, i.e. there was no growth of import in subsequent years, despite the alleged dumping. By comparison, imports from Malaysia, showed a steady growth between 2018 and 2020. Wilmar argued that an increase in imports, which happened in 2019, did not affect the sales of the Union industry in absolute terms in the same year. Furthermore, Wilmar claimed that the major downturn of sales of the Union industry took place in 2020 and the investigation period, in a period when import from Indonesia did not increase. Wilmar added that the market share of imports from Indonesia increased by 1,9 % in 2019 and further by 1 % in 2020. The overall increase between 2018 and the investigation period was 3,2 %. Such an increase took place against the background of a decrease in the Union consumption in 2020 and further in the investigation period due to the effects of COVID, economic slowdown and downturn in specific industries (e.g. automotive).
- (297) The Commission noted that during the period considered the imports from Indonesia increased by 13 % and their market share increased by 19 %. Furthermore, between 2018 and 2019, on a rather stable market when the consumption increased by 1 %, the imports from Indonesia increased by 13 %, while the sales of the Union industry remained almost constant. This was translated into an increase in market share of the Indonesian imports from 17,1 % to 19,0 %, while the Union industry's market share decreased from 72,1 % to 70,8 %. While in absolute terms, the sales of the Union industry did not decrease between 2018 and 2019, the Union industry lost market share and was not able to maintain prices at profitable levels in 2019 and 2020. It follows that during this period, the increase in imports from Indonesia, contrary to what Wilmar claimed, had impacted the Union industry as the Union industry lost market share and became loss making.
- (298) Between 2019 and 2020, on a market with a decreased consumption (by 4 %), the volume of imports from Indonesia continued to increase, but to a lower degree, by 1,4 % and gaining an additional 1 percentage point market share. On the other hand, the Union industry lost even more market share, that is, 2,4 percentage points, but had to decrease their prices even more not to lose more market share and therefore incurred higher losses as compared to 2019, that is, -2,1 %. Therefore, between 2019 and 2020, the Indonesian exports continued to increase market share, while the Union industry lost more market share and incurred higher losses than in 2019.
- (299) The Commission further noted that from the beginning of the period considered, the Indonesian imports had a significant market share, that is, 17,1 %. Therefore, it is not surprising that in a period with a slight decrease in consumption, the imports of Indonesia did not increase as of 2019, as sharp as between 2018 and 2019. The Union industry chose to maintain its market share and incurred losses due to the price pressure exercised by Indonesian imports. Had the Union industry chosen to maintain higher prices and sacrifice more market share,

Indonesian fatty acid exporters would have increased their exports even more and established their position as suppliers of main customers in the Union. Therefore, the slower increase of imports from Indonesia between 2019 and 2020 as compared to 2018 and 2019 has to be seen in correlation with the Union industry's response to protect its market share.

- (300) Between 2020 and the investigation period, the Union market changed because of the Covid-19 pandemic. The consumption decreased by 2,5 %, the volume of imports from Indonesia decreased by 2,3 % and the sales of the Union industry also decreased by 2,6 %. During this period of time, due to the Covid-19 pandemic that disrupted supply chains and increased prices globally, as explained in recital (266), the Indonesian imports even managed to slightly increase their market share by 0,3 percentage points while the Union industry decreased its market share by 0,1 percentage points. In the absence of the supply chain issues, the Indonesian imports would likely have increased even more. It is recalled that as stated at recital (259), the injury in this case relates mainly to price effects, although volume injury was also found. The significant level of price undercutting and price depression found during the investigation as detailed at recitals (209) and (210), as well as the change in the level of Indonesian imports and market shares throughout the period considered, confirm this. Therefore, the claim that the growth of import from Indonesia had no impact on the volume of sales of the Union industry was rejected.
- (301) Wilmar also claimed that the Union industry was not impacted by price effects caused by the imports from Indonesia. Wilmar used as evidence the information on average prices in Tables 3 and 7, and the price increases achieved by the Union industry. It also claimed that the imports from Indonesia did not compete with those of the Union industry and therefore could not exert price pressure. Wilmar further claimed that the Commission relied solely on 'end to end' (i.e. price comparisons from 2018 to the end of the investigation period) to reach its conclusions on price.
- (302) As concerns import prices from Indonesia, the Commission established the volume and prices of imports from Indonesia on the methodology stated in recitals (195) and (199). While this methodology is highly accurate for volume of imports, as concerns prices, after the comments received from parties, the Commission considers it necessary to compare the prices in Table 3 with the export prices reported by Wilmar, especially for 2018. In 2018, Wilmar exported the vast majority of total imports from Indonesia on the Union market and therefore its export price is a reasonable benchmark for the import price in 2018. The average unit export price of Wilmar in 2018 was lower than the imports price in Table 3 and lower than the unit selling price of the Union industry in Table 7.
- (303) Furthermore, it should be recalled that the Commission's analysis of price trends and price suppression in this case pointed out that increases in raw material prices must also be taken into account. Therefore, the Commission analysis took into account Union industry unit costs, profitability and the prices of both the Union industry and prices of imports from Indonesia. The price increase that the Union industry managed to achieve during the IP was just sufficient to be able to compensate for the increase in cost of production due to the increase in price of raw materials borne by the industry. Furthermore, the industry managed to increase prices in the IP just due to the supply chain issues suffered by the Indonesian exporters linked to the Covid-19 issues, as explained at recital (266). As stated by the Union sampled producers, absent the temporary situation of the market derived from the effects of the COVID-19 pandemic, the industry would have been unable to raise the prices in the IP in line with the higher cost of production, and the injury suffered would have been even more significant. Furthermore, the fact that the Indonesian exporting producers managed to maintain their exports and increase their market share in the IP, despite these supply chain issues, further shows that the injurious effects of their dumped imports can and will likely continue to inflict injury to the Union industry.
- (304) In addition, a price undercutting analysis was performed for the investigation period on a type by type basis. This demonstrated that competition between the Union industry and imports from Indonesia was strong, and the majority of imported product types competed with identical types sold by the Union industry. Also taking into account that fatty acids are commodities sold mainly on the basis of price, it was considered that the price pressure on the Union market was very strong. The fact that price increases took place over the period

considered, as raw material costs increased, is not a sign of health, if, as is the case here, those increased prices are at levels to simply cover costs and without achieving the necessary profit levels. This is demonstrated by the fact that over the period considered Union industry growth and sales stagnated because of inadequate prices leading to insufficient profitability levels. Therefore these claims were rejected.

- (305) Wilmar also claimed that the development of cash flow was not injurious and suggested that cash flow problems derived from Union industry customers delaying payment of invoices or from large investment projects.
- (306) These allegations are unsubstantiated and speculative. No evidence was provided to support either of these allegations. On the contrary, the low and falling cash flow situation of the industry is consistent with the return on turnover and other indicators, which were essentially created by low sales prices and low profitability levels. Therefore, the Commission rejected these claims.
- (307) Wilmar also claimed that the development of employment and productivity did not correlate with the trend in import volumes from Indonesia.
- (308) First, it should be stated that not all injury indicators need to show a direct correlation with imports from Indonesia in order for an overall determination of material injury within the context of Article 3 of the basic Regulation. Also, both employment levels and productivity fell during the period considered, and the Commission gave adequate consideration to these factors in the Section 'Conclusion on Injury'. However, as stated at recital (259) the dumped imports caused negative price effects to the Union industry suffering material injury as they could not increase their prices to a level allowing for a reasonable level of profits. Therefore, the Commission rejected the claims concerning employment and productivity.
- (309) Wilmar also compared prices on the Union market to the export prices of the Union industry during the period considered, and suggested that they were very similar. Making the assumption that the Union industry's export prices were set at the level of global market prices, Wilmar reached the conclusion that Union industry prices were not suppressed by the imports from Indonesia, but were set at the global price level.
- (310) The Commission noted that the assumption that the Union industry's export prices were set at a global price level was not explained or substantiated. The Commission directly compared Union industry's sales prices and Wilmar's export sales prices on a PCN per PCN basis, and showed that Wilmar prices significantly undercut the Union industry's prices. Therefore, the Commission rejected this claim.
- (311) In their comments following final disclosure the Musim Mas group submitted comments and analysis of volume of imports from Indonesia and average prices, and made comparisons with Union industry average prices and profitability in order to demonstrate that imports from Indonesia were not a cause of the injury suffered by the Union industry.
- (312) However, being based on average prices, the comparisons and conclusions reached are less accurate than the findings made on the basis of specific undercutting calculations, which show clear price pressure. In addition the comment that profitability was highest in the investigation period ignores the fact that, even in this particular year, the profitability was too low to ensure the viability of the industry, as explained at recitals (266) and (269). Contrary to what this party claims, these circumstances show precisely the causal link between Indonesian dumped exports and the injury suffered by the EU industry. Indeed, the slight recovery of the Union industry because of this temporary shortage from Indonesia and the insecurities of the Indonesian exports arriving on the Union market permitted that the users were led to purchase fatty acid from Union producers rather than Indonesian exporters as explained in recital (266). These comments were therefore rejected.
- (313) Based on the above, the Commission concluded that the dumped imports from Indonesian caused material injury to the Union industry.

## 5.2. Effects of other factors

### 5.2.1. Imports from third countries

- (314) The volume of imports from other third countries developed over the period considered as follows, following the calculation methodology outlined at recital (195):

Table 11  
Imports from third countries

Country		2018	2019	2020	Investigation period
Malaysia	Volume (tonne)	88 322	90 583	95 453	88 183
	<i>Index</i>	100	103	108	100
	Market share (%)	7,5	7,5	8,3	7,8
	<i>Index</i>	100	101	111	105
	Average price	1 110	849	925	1 161
	<i>Index</i>	100	76	83	105
Other third countries	Volume (tonne)	39 435	32 899	38 092	40 064
	<i>Index</i>	100	83	97	102
	Market share (%)	3,3	2,7	3,3	3,6
	<i>Index</i>	100	82	99	107
	Average price	1 331	1 522	1 329	1 443
	<i>Index</i>	100	114	100	108
Total of all third countries except Indonesia	Volume (tonne)	127 757	123 482	133 545	128 247
	<i>Index</i>	100	97	105	100
	Market share (%)	10,8	10,3	11,6	11,4
	<i>Index</i>	100	95	107	106
	Average price	1 178	1 028	1 040	1 249
	<i>Index</i>	100	87	88	106

Source: Eurostat

- (315) Import volumes from Malaysia were relatively stable over the period considered. In terms of volume they were at a similar level in the IP as they were in 2018 at around 88 000 tonnes. The market share of these imports was between 7,5 and 8,3 % during the period considered, although overall there was an increase in market share of 5 %, due to the fall in consumption.
- (316) Imports from Malaysia entered the Union market mainly under CN codes 3823 11 00, 3823 12 00 and 3823 19 10. These were also the main codes used by Indonesian imports. The information available suggests

that the product mix of the imports from the two countries remained stable over the period considered. Average import prices from Malaysia were at levels consistently higher than those of both Indonesia (by more than 10 % each year) and the Union industry.

- (317) Import volumes from other third countries increased by 2 % over the period considered. Throughout the period these imports remained stable at around 40 000 tonnes and represented together less than 4 % in terms of market share.
- (318) Imports from other countries were also made mainly under CN codes 3823 11 00, 3823 12 00 and 3823 19 10, suggesting a similar product mix. Average import prices from these other third countries were at levels consistently higher than those of both Indonesia and the Union industry.
- (319) Wilmar claimed that the import prices from Argentina were causing injury to the Union producers.
- (320) However, bearing in mind that such imports were negligible, accounting for only around 4 000 tonnes and 0,4 % market share in the IP, this claim was rejected.
- (321) Therefore, the Commission concluded that the imports from third countries did not cause material injury to the Union industry or attenuate the causal link with respect to the imports from Indonesia.

#### 5.2.2. Export performance of the Union industry

- (322) The volume of exports of the Union producers developed over the period considered as presented in Table 12. This figure was obtained using the exports of the sampled Union producers and extrapolating the figure so that it represents the whole Union industry <sup>(42)</sup>.

Table 12

#### Export performance of the sampled Union producers

	2018	2019	2020	Investigation period
Export volume (tonne)	91 577	82 260	79 319	86 173
<i>Index</i>	100	90	87	94
Average price to unrelated parties (EUR/tonne)	929	804	857	1 105
<i>Index</i>	100	87	92	119

Source: Sampled Union producers

- (323) The export volume of the Union industry decreased by 6 % over the period considered. The sales prices of these exports increased by 19 % over the same period, considering that those prices were also affected by the development in costs shown in Table 7.
- (324) Bearing in mind that export volumes represented only around 10 % of Union sales volumes and that the trend of sales volumes and prices were similar to those observed for Union industry sales on the Union free market, it is evident that the export performance of the Union industry is not a key element in the overall assessment of the economic situation of the Union industry.
- (325) Therefore, the Commission concluded that the export performance of the Union industry did not cause material injury to the Union industry or was able to attenuate the causal link with respect to Indonesian imports.

#### 5.2.3. Consumption

- (326) Consumption fell by 5 % in the free Union market over the period considered as shown in Table 1. When captive use is also taken into account, the total Union market also fell by 5 %. The investigation showed that the decrease in consumption was mainly due to factors relating to the Covid-19 pandemic and its impact on user sectors in the Union, such as home care, as stated in recital (191).
- (327) Wilmar and P&G submitted that developments in the automotive sector during the Covid-19 pandemic were partly responsible for the fall in consumption. In addition, they claimed the introduction of legislation relating to maximum levels for 3-monochloropropanediol (3-MCPD) had also impacted sales to the food sector.

<sup>(42)</sup> The sampled Union producers represent around 60 % of Union production and sales.

- (328) The Commission found that the temporary decrease in consumption during the Covid-19 pandemic could not explain the material injury suffered by the Union industry. The developments in the automotive and food sectors did not play a big role in the overall development of consumption, whose decrease was limited to 5 %. The injury analysis showed that the material injury suffered by the Union industry was related to price issues, such as undercutting and price suppression, which prevented the Union from increasing price in line with costs to a level of adequate profits.
- (329) The investigation showed that the Union industry losses in terms of production and sales volume were greater than the fall in consumption over the period considered. In fact, despite the shrinking consumption, the main beneficiary from market developments were the dumped imports from Indonesia, which increased their market share by 19 % over the period considered, as shown above in Table 2.
- (330) Based on the above, the Commission concluded that the development in consumption was not a cause of the material injury to the Union industry.

#### 5.2.4. Raw material issues

- (331) The main raw materials of the product under investigation are tallow, a material derived from animal fat, and/or vegetable oils such as CPO. These make up around 70 % of total costs for the production of fatty acids.
- (332) The Union producers used tallow as a major feedstock, but also use large quantities of vegetable oil, including CPO, which were sourced from the Union or from South East Asia, including Indonesia. Tallow is locally available and suitable for the production of most user segments of fatty acids. The exporting producers in Indonesia mainly used CPO, CPKO and small volumes of other locally available vegetable oils, such as coconut oil in their production. The investigation showed that in general terms, the quality and specification of the fatty acid depend on the raw material input, although there was a large interchangeability between tallow and CPO-based products. In addition, products manufactured can be further refined or developed into products with different characteristics by hydrogenation and fractionation in order to satisfy certain customer requirements.
- (333) Wilmar and P&G claimed that the Union industry's dependence on tallow as a feedstock rather than CPO had a negative impact on their costs and profitability. It claimed that developments in the tallow market in the Union had increased competition for tallow and pushed up tallow prices. The Greven group argued that the increasing usage of rendered animal fats for biofuel production had an adverse impact on the availability of tallow for the oleochemical industry and the scarcity had caused drastic price increases.
- (334) The Commission noted that the cause of injury was the low prices of Indonesian imports. That these low prices are enabled by the possibility to source cheap raw materials<sup>(43)</sup> is immaterial for the purposes of the injury analysis, given that the investigation has established that the Indonesian exporters have engaged in dumping practices.
- (335) Furthermore, the Commission noted that the Union industry's raw material costs showed that the costs for both tallow and CPO had increased up to 40 % in the period considered. In addition, the average purchase prices of both tallow and CPO were very similar, as CPO had to be imported from South East Asia. Transport costs had increased for imported products, especially during the pandemic when logistics costs had been impacted by supply issues. The use of tallow by the Union industry (in addition to a mix of other types of raw materials) was thus a rational and efficient choice based on sound business logic and could not be considered to be a source of self-inflicted injury. The claims were, therefore, rejected.
- (336) Wilmar also claimed that the uses of the product under investigation were restricted if tallow was used as a raw material, because such products could not be used in the Halal and Kosher markets. In addition, fatty acids produced from tallow as feedstock could not be used as animal feed.
- (337) However, the investigation revealed that the home care sector was by far the largest buyer for such fatty acids, which represented over 50 % of Union consumption. In addition, Union producers were able to ensure compliance with requirements such as Kosher and Halal by dedicating part of their production facilities to exclusively produce fatty acids with vegetable oils as a feedstock. Therefore, the claim was rejected.
- (338) Wilmar also claimed that the unavailability of tallow meant that Union industry production and sales were restricted.

<sup>(43)</sup> The Commission also notes that the low price of raw materials is due to economic distortions in Indonesia's market. See recitals (392) to (400).

- (339) Wilmar did not provide any evidence to substantiate their point in the non-confidential version of its submission. In fact, the confidential evidence submitted showed an increase in the share of tallow consumption in the production of fatty acid over the period considered. Therefore, the claim was rejected.
- (340) Bearing in mind that tallow and vegetable oil feedstock prices were comparable, in particular in the investigation period, the large interchangeability for tallow and CPO-based products, and the limited nature of the restrictions on the use of tallow based fatty acids, the Commission found that the use of tallow as a feedstock was not a cause of the material injury to the Union industry.
- (341) In their comments following final disclosure, the Greven group, Wilmar, the Musim Mas group and the Schill + Seilacher group commented on issues relating to the developments in the cost of tallow as a feedstock, due to its increased use by other industries, and on the reduced availability of raw materials for the Union industry. The main point made by these parties was that the Commission did not give enough weight, in the final disclosure, to the impact of the deterioration in tallow's availability, which resulted in an increase in tallow costs in comparison to palm oil as a feedstock for fatty acid production. To support its views, the Greven group submitted statistics and analyses showing the evolution of the relationship between tallow and palm oil prices during the period from 2008 to 2022. Moreover, the Greven group argued that tallow prices would continue to increase in the future and that the Union industry failed to undertake the significant investments, required to allow a shift of their production to CPO as the main feedstock.
- (342) The Commission does not dispute that tallow availability in the Union has reduced over the years, that tallow prices have increased as a result, or that there has been a historical shift in the competitiveness of tallow prices as compared to vegetable oil feedstock prices. As in all industries, increases in raw material prices, especially for industries making low profits, need to be passed on to customers at some stage, in order that they remain viable. In the period considered, the Union industry experienced raw material cost increases of around 40 % for both palm oil and tallow. The Union industry was not able to increase fatty acid prices sufficiently to reflect these cost increases and to reach adequate profitability levels, while the raw material costs represent around 70 % of total costs. Also, the tallow costs were similar to CPO costs (including logistics costs) over the period considered, based on the verified cost data of the sampled Union producers. The reason why raw material prices had not been adequately passed on to customers is because of the price pressure on the like product caused by dumped import prices from Indonesia. In any event, as discussed above, CPO and tallow input prices (including transport costs) were very similar for Union producers of fatty acid.
- (343) As regards the ability of Union producers to shift their production from one type of feedstock to another, the Commission noted that all four sampled Union producers already make use of different types of feedstock, including tallow and palm oil, taking into account market conditions. In any case, expectations about future market developments, such as on the evolution of tallow prices, are not relevant to the assessment of injury and causation in the period considered.
- (344) Therefore, the Union sales prices increased because of the increase in the raw materials prices; yet, the Union industry could not set its prices at a reasonable level because of the low priced dumped imports. Therefore this claim cannot be accepted.

#### 5.2.5. *Alleged inefficiencies of the Union industry*

- (345) Wilmar and P&G submitted that Indonesian exporters were vertically integrated to the extent that they owned palm oil plantations and therefore enjoyed competitive advantages over the Union industry, which was inefficient.
- (346) The Commission considers that any alleged competitive advantage cannot justify the injurious dumping practiced by Indonesian exporters on the Union market. As explained in the Section 'Dumping' above, the Commission compared the price charged by the exporters concerned to EU-based customers with their normal value in Indonesia and found that significant dumping existed. This means that the dumping found is solely conditioned by the commercial behaviour of the Indonesian exporting producers who decided to export at prices below their domestic sales prices or costs. The investigation demonstrated that this behaviour caused material injury to the Union industry.
- (347) Wilmar also claimed that the Union industry was suffering from a lack of investment, which would explain the injury found.

- (348) As mentioned above, the Union industry mainly made investments in maintaining existing capacity and improving efficiency. The investigation concluded that the inadequate profitability levels and the reduced ability to raise capital caused by the dumped imports led to restricted investment levels. Thus, the alleged lack of investments were not the cause but rather the consequence of the material injury caused by dumped imports from Indonesia. The massive presence of dumped imports in the Union market had a negative impact on the Union industry's profitability and ability to raise capital and certain structural investments could not go ahead as planned, in particular during the investigation period.
- (349) Wilmar claimed that certain Union producers, including KLK, had imported fatty acids from Indonesia during the period considered. Wilmar claimed that any injury must be considered to have been at least partially self-inflicted.
- (350) The investigation showed that the purchases of the sampled Union producers, including KLK, from Indonesia were negligible, namely less than 3 % of their production volumes per year and throughout the period considered. Therefore, the claim was rejected.
- (351) Wilmar also claimed that the Union industry suffered from poor geographical location, namely from locations not giving access to deep-water port facilities for the procurement of raw materials and sales of finished goods.
- (352) The Commission rejected this claim as the investigation showed that at least all four of the sampled Union producers which, as stated in recital (36), represented 61 % of the Union production, had access to deep-water sea or river port facilities during the period considered. Therefore, while certain smaller Union producers might not have access to deep-water port facilities, this is not true for the Union industry as a whole and, therefore, would not explain the material injury.
- (353) Wilmar also claimed that the acquisition of the Dusseldorf site by the KLK Group created further inefficiency within the Union industry. This claim is based on the fact that the site uses tallow as a feedstock.
- (354) However, as pointed out in recitals (331) to (340), tallow price is similar to the price of other feedstocks and tallow is technically suitable for the production of the majority of user segments. Therefore, this claim was considered to be without merit.
- (355) P&G and Wilmar claimed that the Union industry was inefficient and employed a large number of staff and thus suffered from high employment costs.
- (356) Bearing in mind that the Union industry employment costs (salaries plus all other employment related costs) represented only 7,2 % of total costs in the period considered, this cost was not considered to be potentially able to cause material injury to the Union industry. Thus, the claim was rejected.
- (357) Wilmar claimed that the Union industry was inefficient in terms of meeting delivery times and ensuring the delivery of relevant quantities demanded by the Union market. This claim was not accompanied by any evidence.
- (358) Nevertheless, it is clear from Table 4 above that the Union industry has over 200 000 tonnes of spare capacity which it could immediately use, should sufficient orders be received. In the absence of any evidence that the Union industry was unable or unwilling to supply, the claim was rejected.
- (359) Based on the above facts and considerations, the Commission concluded that any alleged efficiency and raw material issues were not such as to cause material injury to the Union industry or to have attenuated the causal link with respect to Indonesian imports.
- (360) In their comments following final disclosure Wilmar claimed that the reason for the injury suffered by the Union industry was increases in logistics costs resulting from the Covid-19 pandemic and in labour costs. It was claimed that these issues made the Union industry uncompetitive as compared to Indonesian exporting producers.
- (361) Logistics costs are a relatively small part in the total cost (below 5 %). Also, labour costs per employee rose by only 8 % over the 4 years of the period considered in accordance with negotiations with labour union and national administrations. Labour costs represented only around 7,2 % of total costs. Therefore, the Commission rejects the claim that increased logistics and labour costs caused injury.
- (362) Wilmar also claimed that the reason for the unprofitable sales in 2019 and 2020 was because of increases in SG&A and finance costs.

- (363) However, this claim was made due to a misunderstanding by Wilmar of Table 7 relating to production costs. In that table, the terms 'production costs' mean the full costs of the Union producers, including SG&A and finance costs. In fact, SG&A and finance costs were relatively stable over the period considered. Therefore, the Commission rejected the claim that increased SGA and finance costs caused injury.
- (364) In their comments following final disclosure, the Greven group questioned that Union producers have enough capacity to replace the imports from Indonesia, even though in theory a 20 % market share might be covered by the 20 % spare capacity of the Union industry. To support this claim, the Greven group provided data showing that the current capacity utilisation of the Union fatty acid industry (80 %) is already at the long-term average of the broader European chemical industry. In view of this, the Greven group argued that a 100 % capacity utilisation was neither sustainable, nor achievable over an extended period of time. Furthermore, the Greven group referred to its own demand, which as of 2020 could not be fulfilled by Union producers, because of either insufficient capacity, or insufficient supply in raw material. In particular for the pharmaceutical, feed and food sectors, the Greven group claimed that there was insufficient production capacity from Union producers, as fatty acids for these sectors could be produced only from vegetable or palm-based material and have to be RSPO (Roundtable on Sustainable Palm Oil) Mass Balance, Kosher and Halal certified.
- (365) The Commission recalled that the Union production capacity for fatty acid was calculated on the basis of an achievable maximum production in the long-term, taking into account maintenance. Therefore, the fact that the long term average capacity utilisation of the broader chemical industry is at 80 % does not call into question the ability of the Union fatty acid industry to fully utilise its spare capacity as calculated by the Commission in the present case. Moreover, the Greven group has not provided evidence that the alleged inability of the Union industry to serve its demand has been due to systematic rather than circumstantial factors and would persist in the long run. As regards fatty acids for the pharmaceutical, feed and food sectors, the Commission took the view that by restoring profitability, a level playing field in the Union fatty acid market would enable and incentivise the Union industry to undertake any investments required to address capacity gaps related to specific products. In view of the above, these arguments were rejected.

#### 5.2.6. *Captive use*

- (366) Captive use increased by around 2 % in absolute terms over the period considered and comprised around 10 % of total market consumption in each year of the period considered as stated in Table 5. The Commission, therefore, considered that developments in captive use were stable or slightly positive for the Union industry.
- (367) The development in captive use could therefore not have caused material injury to the Union industry or to have attenuated the causal link with respect to Indonesian imports.

### 5.3. **Conclusion on causation**

- (368) There were 15 producers of fatty acids in the Union in the investigation period and they sold to a vast array of customers in many user sectors. The investigation showed that the presence of low price dumped imports from Indonesia had the effect of suppressing prices in the Union market during the period considered. This meant that the price level of the Union industry could not match the raw material price increases through the whole period considered. Consequently, the profitability of the Union industry sales was low, or even negative, throughout the period considered. Such profitability is below the profits that the industry should obtain under normal conditions of competition and is clearly inadequate to ensure the industry's long-term survival. Investment by the Union industry had to be made to maintain the existing facilities but the reduced ability to raise capital threatened investment levels.
- (369) Significant quantities of Indonesian low-priced dumped imports were present in the Union free market. Whilst that market shrunk by 5 % over the period considered, the volume of Indonesian imports increased by 13 % and market share by 18 %. As a result, they represented around two thirds of all imports to the Union market in the investigation period. The investigation showed that this market penetration also had negative consequences on the Union industry, in particular on production and sales volumes, which respectively decreased by 7 % and 10 % over the period considered. This is shown in Tables 4 and 5.
- (370) Other factors examined were imports from other sources, the export performance of the Union industry, developments in captive use, developments in consumption and alleged inefficiencies of the Union industry.

- (371) Therefore, the Commission has distinguished and separated the effects of all known factors affecting the situation of the Union industry from the injurious effects of the dumped imports. None of the factors, collectively or separately, were found to have a bearing on the situation of the Union industry sufficient to call into question the conclusion that the Indonesian imports were causing material injury.
- (372) On the basis of the above, the Commission concluded that the dumped imports from the country concerned caused material injury to the Union industry. The injury consists mainly of price suppression, inadequate profitability, return on investments, cash flow, ability to raise capital, a loss of market share, and falls in production, productivity, sales volume and employment.

## 6. LEVEL OF MEASURES

- (373) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by the dumped imports to the Union industry.
- (374) The complainant claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation. Thus, in order to conduct the assessment on the appropriate level of measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation. Then it examined whether the dumping margin of sampled exporting producers would be higher than their injury margin (see Section 6.2 below).

### 6.1. Underselling margin

- (375) The injury would be removed if the Union industry was able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic Regulation.
- (376) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, research and development ('R&D') and innovation and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.
- (377) Information relating to the establishment of the normal profit was included in the questionnaires sent to the sampled Union producers. This included the profitability of the like product for the 10 years preceding the investigation period. However, the Union producers were unable to supply complete data because of changes to accounting systems and organisational changes. In addition, the profitability of the like product in the period considered was lower than 6 % as shown in Table 10.
- (378) Certain sampled Union producers claimed that their level of investments, R & D and innovation during the period considered would have been higher under normal conditions of competition.
- (379) However, the producers were not able to quantify these claims. Therefore, it was concluded that the target profit should be set at 6 % in accordance with Article 7(2c) of the basic Regulation.
- (380) In accordance with article 7(2d) of the basic Regulation, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and from the ILO Conventions listed in Annex Ia to the basic Regulation, that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). The Commission established an additional cost of 0,1 % which was added to the non-injurious price. A note to the file on how the Commission established this additional cost is available in the file for inspection by interested parties.
- (381) These costs comprised the additional future costs to ensure compliance with the EU Emissions Trading System (EU ETS). The EU ETS is a cornerstone of the EU's policy to comply with Multilateral Environmental Agreements. Such additional costs were calculated on the basis of the average estimated additional EU Allowances (EUA) which will have to be purchased during the period of the application of the measures (2022 to 2026). The EUAs used in the calculation were net of free allowances receivable and were adjusted to ensure they related solely to the product under investigation. The costs of the EUAs were extrapolated to account for the expected price variation during the lifespan of the measures. The source for these projected prices is a Bloomberg extraction dated 23 June 2022. The average projected mean price for EUAs (including Bloomberg New Energy Finance) for this period is 91,8 EUR per tonne of CO<sub>2</sub> emitted.

- (382) On this basis, the Commission calculated a non-injurious price for the like product of the Union industry by applying the above-mentioned target profit margin stated in recital (378) to the cost of production of the sampled Union producers during the investigation period, and then added the adjustments under Article 7(2d) on a type-by-type basis.
- (383) The Commission then determined the underselling margin level on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers in Indonesia, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (384) In view of the revisions of the SG&A of WETBV as stated in recital (161) and (162), the Commission revised also the calculation of constructed CIF accordingly.
- (385) For other cooperating companies outside the sampled, the Commission used the weighted average margins of the two sampled exporting producers.

Company	Definitive dumping margin (%)	Underselling margin (%)
P.T. Musim Mas	46,4	30,5
P.T. Wilmar Nabati Indonesia	15,2	38,7
Other cooperating companies	26,6	35,9

- (386) In their comments following final disclosure Wilmar claimed that its injury margin should not have been adjusted for SG&A and profit in respect of sales via WET B.V. because this comparison was made at a different level of trade with Union prices.
- (387) However, the Commission noted that the non-injurious price for the like product of the Union industry included only the cost of production of the sampled Union producers and did not include any SG&A of any sales from related selling entities since all sales by the sampled Union producer were made directly to consumers (see recital (209)). The Commission thus considered that no level of trade imbalance exists. This claim was therefore rejected.

## 6.2. Examination of the margin adequate to remove the injury to the Union industry

- (388) The complainant has provided sufficient evidence in the complaint that there are raw material distortions within the meaning of Article 7(2a) of the basic Regulation in Indonesia with regard to the product concerned. According to the evidence in the complaint, CPO and CPKO, accounting for more than 70 % of the cost of production of the product concerned, were subject to an export tax, an export levy and a maximum domestic price setting in Indonesia.
- (389) On the basis of the above, the Commission concluded that it was necessary to assess whether there are distortions with regard to the product under investigation within the meaning of Article 7(2a) of the basic Regulation, which would render a duty lower than the margin of dumping insufficient to remove the injury caused by dumped imports of the product under investigation only with regard to the exporter Musim Mas, as the dumping margin for Wilmar was lower than the injury margin.
- (390) The Commission first identified the main raw materials used in the production of the product concerned by Musim Mas. As main raw materials were considered those raw materials which are likely to represent at least 17 % of the cost of production of the product concerned. The Commission established that Musim Mas used CPO and CPKO for the production of the product concerned. The CPO represented more than 30 % in the total manufacturing cost, while CPKO represented more than 40 %.
- (391) The Commission then examined whether any of the main raw materials used in the production of the product concerned was distorted by one of the measures listed in Article 7(2a) of the basic Regulation: dual pricing schemes, export taxes, export surtax, export quota, export prohibition, fiscal tax on exports, licensing

requirements, minimum export price, value added tax (VAT) refund reduction or withdrawal, restriction on customs clearance point for exporters, qualified exporters list, domestic market obligation, captive mining. For this purpose the Commission relied on the relevant Indonesian legislation.

- (392) The investigation revealed that both CPO and CPKO were subject to an export tax and levy. The export tax consists of a progressive tariff schedule on CPO and CPKO (Decree No 166/PMK.010/2020 <sup>(44)</sup>). In addition, there was also a progressive export levy on CPO and CPKO (Decree No 57/PMK.05/2020 <sup>(45)</sup> as amended by Decree No 76/PMN.05/2021 <sup>(46)</sup>).
- (393) The Commission established that Musim Mas benefitted from the export tax and levy.
- (394) The Commission compared the domestic price of CPO and CPKO to an international benchmark.
- (395) Regarding the domestic price for CPO and CPKO, the investigation revealed that the State owned company Kharisma Pemasaran Bersama Nusantara (KPNB) organises daily tenders <sup>(47)</sup> where the state-owned companies PTPN sell CPO and CPKO. There is one tender per day for CPO and one weekly tender for CPKO and only one standard quality for CPO and CPKO, and therefore only one daily price for CPO and only one weekly price for CPKO respectively. The price is set FOB Dumai or Belawan (two important seaports in Indonesia). The PTPN sets the price and the companies either accept it or they wait until the following day. The contracts between private companies use also the price set by PTPN. The tender price is a public price and all operators in the market know it. The investigation also revealed that the contracts between related parties are also based on the price set by PTPN. Therefore, all the buyers in Indonesia buy CPO and CPKO at the daily price set by PTPN. Furthermore, the investigation revealed that the small differences between the tender price and the actual purchase price of the sampled exporters was mainly due to transport expenses. Therefore, for the domestic price of CPO and CPKO, the Commission used the daily tender prices set by PTPN during the investigation period submitted by one of the sampled exporting producers.
- (396) Regarding the international benchmark for CPO and CPKO, the Commission used several benchmarks: (1) FOB Indonesian export prices from Global Trade Atlas <sup>(48)</sup> ('GTA'), (2) Malaysian domestic prices <sup>(49)</sup>, (3) FOB Malaysian export prices from GTA (4) CIF Rotterdam spot prices <sup>(50)</sup> <sup>(51)</sup>.
- (397) The comparison revealed that the domestic Indonesian price for CPO was 20 % lower than the FOB Indonesian export prices, 23 % lower than the Malaysian domestic prices, 29 % lower than the FOB Malaysian export prices, 24 % lower than the CIF Rotterdam spot prices (adjusted to FOB).
- (398) The comparison revealed that the domestic Indonesian price for CPKO was 18 % lower than the Indonesian export price, 19 % lower than the Malaysian domestic price, 6 % lower than the Malaysian export price, 22 % lower than the CIF Rotterdam spot prices (adjusted to FOB).
- (399) Finally, the Commission examined if CPO or CPKO account individually for at least 17 % of the cost of production of the product concerned. For the purpose of this calculation, an undistorted price of the raw material as established upon export from Indonesia and retrieved from GTA was used. The Commission established that for Musim Mas CPO represented more than 40 % and CPKO more than 50 % of the total cost of manufacturing.

<sup>(44)</sup> <https://www.ssas.co.id/wp-content/uploads/2020/10/166-PMK.010-2020.pdf> (only Indonesian, last accessed on 10 July 2022).

<sup>(45)</sup> <https://jdih.kemenkeu.go.id/FullText/2020/57~PMK.05~2020Per.pdf> (only Indonesian, last accessed on 10 July 2022).

<sup>(46)</sup> <https://jdih.kemenkeu.go.id/download/30a94928-f217-48ee-934e-c2be549f350f/76~PMK.05~2021Per.pdf> (only Indonesian, last accessed on 10 July 2022).

<sup>(47)</sup> <https://kpbn.co.id/home.html?lang=1>

<sup>(48)</sup> <https://www.gtis.com/gta/>

<sup>(49)</sup> Malaysian Palm Oil Board [https://bepi.mpob.gov.my/admin2/price\\_local\\_daily\\_view\\_cpo\\_msia.php?more=Y&jenis=1Y&tahun=2020](https://bepi.mpob.gov.my/admin2/price_local_daily_view_cpo_msia.php?more=Y&jenis=1Y&tahun=2020) and [https://bepi.mpob.gov.my/index.php/en/?option=com\\_content&view=article&id=1033&Itemid=136](https://bepi.mpob.gov.my/index.php/en/?option=com_content&view=article&id=1033&Itemid=136)

<sup>(50)</sup> CRUDE PALM OIL – CIF ROTTERDAM Spot Historische Prijzen - Investing.com <https://nl.investing.com/commodities/crude-palm-oil-cif-rotterdam-futures-historical-data>

<sup>(51)</sup> <https://gapki.id/en/news/19196/october-1-2020-commodity-price-position-at-the-closing-of-physical-exchange-market>

- (400) Therefore, the Commission concluded that the prices of CPO and CPKO were subject to distortions and significantly lower as compared to prices in the representative international markets, within the meaning of Article 7(2a) of the basic Regulation.

## 7. UNION INTEREST

### 7.1. Union interest under Article 7(2b) of the basic Regulation

- (401) In accordance with Article 7(2b) of the basic Regulation, the Commission examined whether it could clearly conclude that it was in the Union interest to determine the amount of definitive duties in accordance with Article 7(2a) of the basic Regulation with regard to Musim Mas only. Wilmar's anti-dumping duty would in any event be set at the dumping margin because the underselling was established at a higher level. The determination of the Union interest was based on an appreciation of all pertinent information to this investigation, including the spare capacities in the exporting country, competition for raw materials and the effect on supply chains for Union companies.

### 7.2. Spare capacities in the exporting country

- (402) The GOI submitted that during the investigation period, the total production capacity in Indonesia of the product under investigation was around 3 600 000 tonnes, while the actual production was around 2 600 000 tonnes. It stated that both estimates were based on a report by the Indonesian Oleochemical Manufacturers Association (APOLIN).
- (403) The Commission notes that the original estimates have been amended by GOI by a margin of up to +/- 30 % to protect confidentiality, and that the resulting estimate of 1 000 000 tonnes of spare capacity is significantly lower than its true value. Similarly, the resulting estimate of 72 % of capacity utilisation is significantly higher than its true value. The Commission further notes that even based on an estimate of 1 000 000 tonnes, the spare capacity in Indonesia is higher than, and therefore could substitute, the entire Union production, which amounted to around 872 000 tonnes during the investigation period. It is also four times higher than the volume of imports from Indonesia, which amounted to around 228 000 tonnes.
- (404) In view of the above, the Commission concluded that Indonesian producers have significant spare capacity and that, if used, this spare capacity had the potential to increase the global supply of the product under investigation, depress prices and consequently undermine the effectiveness of the measure if not set at the level of dumping.

### 7.3. Competition for raw materials

- (405) The main raw material used for the production of the product under investigation is either tallow, or a vegetable oil, such as CPO and CPKO.
- (406) As established in recitals (397) and (398), the prices of CPO and CPKO in Indonesia were significantly lower than the prices of CPO and CPKO in representative international markets. This creates an unfair advantage to the exporting producers in Indonesia as compared to the Union industry. The Commission therefore concluded that, while CPO and CPKO was available to the Union industry, given the distortions it was available at a higher price than for producers in Indonesia. The Union industry was therefore at a disadvantageous position vis-à-vis Indonesian exporting producers.

### 7.4. Effect on supply chains for Union companies

- (407) As shown in Table 4 above, the Union industry had a spare capacity of almost 250 000 tonnes during the investigation period. This spare capacity was higher than the volume of imports from Indonesia during the same period. It follows that the Union industry is able to replace imports from Indonesia with its own production, and even to cover almost the entire Union demand of the product under investigation.
- (408) Moreover, the investigation has shown that Union users could source the product under investigation from third countries such as Malaysia. The total volume of imports from third countries remained stable over the period considered, while their market share increased by 6 %. In the absence of dumped imports from Indonesia, imports from third countries would increase, as the sales prices in the Union market would be more attractive.
- (409) Wilmar claimed that the fact that Union producers such as AAK requested the exclusion of certain fatty acids from the product scope of the investigation indicates that certain Union producers (of downstream products) were in great need of access to all sources of imports.

- (410) The Commission notes that the ability of the Union industry to cover the Union demand concerns a broad range of fatty acids. In particular with respect to AAK's exclusion requests, as explained in recitals (108) to (118), the types and quantities of fatty acid required can be either produced by Union producers once a level playing field has been restored in the Union market, or sourced from countries other than Indonesia.
- (411) Therefore, users would have sufficient access to the product under investigation even in case the imports from Indonesia decrease. Consequently, disruptions of the value chains of Union users are not expected.
- (412) In their comments following final disclosure several interested parties commented on the effect of measures on supply chains in the Union.
- (413) These comments are discussed at Section 7.9.2 of this Regulation. On the basis of these comments and the ensuing analysis the Commission is satisfied that any supply issues will be temporary and manageable in the light of the other available sources of supply, such as Malaysia.

#### **7.5. Conclusion on Union interest under Article 7(2b) of the basic Regulation**

- (414) Having assessed all pertinent information to this investigation, the Commission concluded that it is in the Union interest to determine the amount of definitive duties in relation to Musim Mas in accordance with Article 7(2a) of the basic Regulation.
- (415) In view of the analysis set out above, the Commission concluded that, in accordance with Article 7(2a) of the basic Regulation, it is in the interest of the Union to set the level of the definitive duties on the basis of the level of dumping, subject to the further considerations in the context of Article 21 set out in Section 7.6 below.
- (416) In their comments following final disclosure, the Musim Mas group argued that the GOI's policies on CPO and CPKO were under investigation in the parallel anti-subsidy investigation mentioned in recital (3) and therefore by applying Article 7(2a) of the basic Regulation in the current anti-dumping investigation and applying anti-subsidy duties on the same policies would result in double remedies being applied for the same set of GOI's policies.
- (417) The Commission will address the issue of double remedy, if any, in the framework of the anti-subsidy investigation.

#### **7.6. Union interest under Article 21 of the basic Regulation**

- (418) Having assessed the Union interest pursuant to Article 7(2b) of the basic Regulation, the Commission then examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping, in accordance with Article 21 of the basic Regulation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, users and other relevant economic operators. No unrelated importers cooperated in the investigation.
- (419) The Commission sent questionnaires to known interested parties. It received questionnaire replies from four users belonging to two groups of companies, that is, the Greven group and the Schill + Seilacher group.

#### **7.7. Interest of the Union industry**

- (420) There are 15 companies producing fatty acid in the Union employing around 900 staff. The producers are widely spread throughout the Union. The sampled Union industry representing over 60 % of total production, cooperated with the investigation.
- (421) Further to the withdrawal of the complaint covered in Section 1.10, the Commission decided to continue the investigation and carried out its injury and causation analysis with regard to the Union industry as a whole regardless of the support and/or cooperation of single Union producers, as explained in more detail at recitals (64), (66), (68) and (69). The analysis in Sections 4 and 5 of this Regulation confirmed that the Union industry suffered material injury and that it was caused by dumped imports of the product concerned by Indonesian exporting producers. The Commission further noted that it enjoys a wide margin of discretion on the decision to continue or terminate a proceeding further to a withdrawal.

- (422) In the letter to withdraw the complaint, the complainant stated that the reason for its withdrawal was ‘*due to the influence from stakeholders*’<sup>(52)</sup>. This confirms that the complainant did not question the analysis and conclusion on the existence of material injury caused by dumped Indonesian imports, but that the only reason for the withdrawal was the influence from stakeholders. A reason linked to stakeholders exerting influence on the complainant would not support a finding that it would be in the Union interest to terminate the proceeding solely for this reason, when the Commission has already concluded that there is significant injurious dumping. In this regard, the Commission further noted that the withdrawal of the complaint took place at a very late stage in the proceeding, where there had been full disclosure of the findings to the parties demonstrating the existence of material injury suffered by the Union industry caused by the Indonesian dumped imports. The comments received by parties further to the disclosure did not alter this conclusion, thereby supporting the consideration that in any event it would not be in the Union interest to terminate proceedings without imposing measures, even if the complaint was withdrawn by the complainant.
- (423) Given the finding of material injury to the Union industry described in recitals (255) to (259), imposing measures would allow the Union industry to improve its profitability towards sustainable levels, increase investment, and thus maintain a competitive position in their core market. The Union industry would also be able to regain lost market share by increasing sales volumes in the Union market.
- (424) The absence of measures is likely to have further significant negative effects on the Union industry in terms of lower sales and production volumes, further price depression leading to further financial deterioration of its economic situation in terms of profitability and investment jeopardizing its future and employment.
- (425) In their comments following final disclosure the Musim Mas group claimed that the Union industry, using tallow as a feedstock, would not benefit from measures, and that it would be Malaysian exporting producers which would ultimately benefit.
- (426) However, bearing in mind the Commission comments in respect of tallow as a non-causation factor, the higher prices of Malaysian imports throughout the period considered, and the ability of the Union industry to increase profitability and investment and therefore to increase production and sales volume should measures be adopted, this comment was rejected.
- (427) The imposition of measures on Indonesian fatty acid is therefore clearly in the interest of the Union industry.

#### 7.8. Interest of unrelated importers/traders

- (428) No cooperation was received from unrelated importers/traders, as stated in recital (38).
- (429) Therefore, the Commission did not have information to precisely establish the impact that the imposition of measures would have on the activities of the unrelated importers/traders. The absence of cooperation suggests that importers do not consider that the imposition of anti-dumping measures would significantly affect their business. Whilst a reduction in imports and resale of goods affected by measures may be observed in a first step, any such negative effect on turnover could eventually be compensated by increased resale of products purchased from other sources such as Malaysia.
- (430) Therefore, the Commission concluded that the impact of measures would not be disproportionate for importers/traders.

#### 7.9. Interest of users

- (431) The product under investigation is purchased by several industries in the Union market to produce products such as food, feed, pharmaceuticals, cosmetics (daily hygiene products and luxury beauty items), home and personal care, and industrial detergent products.
- (432) Four users belonging to two groups of companies, representing around 4 to 7 % of total Union consumption, cooperated in the investigation and provided replies to the users’ questionnaire.
- (433) One group used fatty acid to produce metallic and alkaline soaps, as well as esters which are used as additives in the plastic, lubricant and textile industry. The other group produces chemicals for technical textiles, leather chemicals, cosmetics and fine chemicals.

<sup>(52)</sup> The letter is available in the open file under No t22.004777.

- (434) The investigation found that these users together purchase [6-9] % of total imports from Indonesia, [4-7] % of total Union industry sales and [2-4] % of total imports from other countries during the investigation period. The Commission, therefore, had limited information to assess the overall impact of the imposition of the anti-dumping measures on user's activities.
- (435) Based on the data provided by the cooperating users, during the IP, they purchased around [23-26] % of their needs in fatty acid from Indonesia, [68-72] % from Union producers and [2-5] % from other sources. Whilst one group of users was importing negligible quantities, the other imported more than one quarter of their fatty acid needs from Indonesia in that period.
- (436) Depending on the user, sales of products incorporating fatty acids ranged between 29 % to more than 95 % of total turnover. Overall, the proportion of fatty acid from all origins in the total manufacturing costs of the cooperating users ranged from 6 % to 52 %.
- (437) The total profitability margins of the four users ranged between single digit to double digits profit margins.
- (438) As regard the effect of the measures on the cooperating users, and in view of the limited substitutability of the product, the Commission considered that their profits may be somewhat affected by the imposition of measures. In view of their profit margins, the effect would not be disproportionate, as, at least part of the increase in price, could be passed on to the downstream supply chain.
- (439) Given the inadequate profitability of the Union industry and price depression on the market, it can reasonably be assumed that prices will increase after measures are imposed. Nevertheless, the impact measures may have on certain users should be balanced against the risk of a discontinuation of Union industry activity as the current situation is not sustainable. Not imposing measures will lead to less reliable and stable sources of supply and inevitably to price increases on the Union market.
- (440) P&G did not fully cooperate in the investigation but stated that it was against the imposition of measures. It considered that the imposition of measures would jeopardize its access to a reliable source of supply of fatty acid. P&G claimed that imposing anti-dumping measures would have two key consequences. First, measures were likely to lead to increased production costs in the consumer goods industry and these costs would eventually be passed on to the consumers. Second, imposing measures was likely to disrupt the supply chains from Indonesia at a time when demand for fatty acid was strong and Union producers running at full capacity. The Greven group also claimed that demand for fatty acid in the Union market could not be met without the imports of fatty acid from Indonesia.
- (441) The Commission noted that P&G did not submit a reply to the user questionnaire and did not provide detailed information on its purchases of fatty acid and their weight in terms of cost in the finished goods. Therefore, the Commission was not able to assess the impact of the imposition of measures on P&G's activity.
- (442) In addition, the Commission found that the production capacity of the Union industry was sufficient to meet almost the entire consumption in the EU market. Currently, the Union industry has around 20 % of spare capacity and, if conditions of fair competition are restored, Union producers could increase production to meet the demand in the Union. In addition, there is spare capacity for fatty acid production in Malaysia. Therefore, the Commission concluded that imposing anti-dumping measures could not lead to shortage of supply of fatty acid on the Union market.

#### 7.9.1. *General comments on the interest of users following final disclosure*

- (443) After final disclosure, comments on Union interests were received from the Greven group, the Schill + Seilacher group, P&G, Unilever, Henkel, Quaker Houghton, Evonik, NYCO, Kapachim, Omya, Stéarinerie Dubois, Wilmar, the Musim Mas group, Ecogreen and CUTFA. Many of these parties were users which had not fully cooperated in the investigation and had not previously submitted comments. The investigation therefore benefitted from a broader range of comments after the final disclosure, although the information was not submitted in the questionnaire reply format as required at the initiation of the investigation, and it was not possible to verify the veracity of all the comments made.
- (444) CUTFA pointed out that the measures would only have a limited impact on users because cost increases would be able to be passed on to their customers. Even if this was not the case, profits were of a magnitude to be absorbed, so that the impact of the measures would not be disproportionate.

(445) The broader range of comments from users appeared to indicate that users could be distinguished into two main categories.

(a) **large multinational groups**

(446) The first category, being large multinational groups such as P&G, Unilever, Henkel, Quaker Houghton and Evonik, which manufactured a large number of finished goods using the product under investigation as a key raw material mainly in their home care, laundry, beauty and personal care products. However, as described above, due to the lack of full cooperation from these parties, it was not possible to ascertain the quantity of fatty acid used in their production, or the importance of fatty acid in the production cost of, even, the most important products using fatty acid. In addition, the data of P&G, Unilever and Henkel available from public sources<sup>(53)</sup> showed that in recent years group turnover and profits had increased substantially especially in respect of home care products, which is the largest market for fatty acids.

(447) P&G explained that they had not submitted a questionnaire response because P&G, like other fatty acid users, are fragmented across many production sites.

(448) However, P&G did not even complete the questionnaire section covering the purchases of fatty acid through their central purchasing unit. The fragmented nature of the user industry does not prevent, at least some of them, from submitting a questionnaire response. Moreover, the publicly available consolidated annual accounts for P&G also show that its European operations had a very large turnover in 2021 (16,7 billion USD<sup>(54)</sup>). Its worldwide profitability was 23 %<sup>(55)</sup>. Henkel's turnover in 2021 for Western and Eastern Europe was 9,1 billion EUR and profitability in these regions was 18,9 %<sup>(56)</sup>. This information supported the Commission's view that the large buyers of fatty acids in the biggest user industries (home care, laundry, beauty and personal care) would not be disproportionately affected by the measures proposed.

(449) Henkel stated that the lack of cooperation from users did not mean that the measures, at the levels proposed in the final disclosure, would not have a serious impact on their activities.

(450) As further set out below, the Commission reviewed its original determinations and conclusions concerning the impact on users, in light of the additional comments received in response to the final disclosure, including comments from new interested parties.

(451) Henkel, Kapachim, Omya, and Wilmar also pointed out that the interest of users should be seen in the context of recent developments preceding the disclosure such as increasing raw material and energy prices, inflation and supply chain issues.

(452) The Commission noted that these issues are post-investigation period developments. It has not been substantiated what impact these developments could have on the user industry. For instance, whether extra costs have been passed on to customers and what impact has there been on the profitability of products containing fatty acids. In any case it is not clear whether such developments were of a lasting nature. These claims could not therefore be accepted.

(453) In its confidential submission Unilever focussed on a certain product which would be affected by measures, claiming that prices would increase considerably, and that it might have to import this product, with a consequential impact on its Union production and employment. It also claimed that consumer prices for this product would increase as a result. Furthermore, Unilever pointed out that the vast majority of sales of this product were exported outside the Union.

(454) The Commission was not able to verify these claims as Unilever, like most users, did not complete a user's questionnaire reply. The Commission was therefore unable to ascertain the importance of this product in Unilever's Union operations in terms of profitability and turnover. The Commission was also unable to ascertain the importance of fatty acid in Unilever's costs for this product, or other products. It was also unable to assess clearly

<sup>(53)</sup> See the 2021 annual report of P&G, the 2021 annual report of Henkel and the 2021 annual report of Unilever: [https://assets.ctfassets.net/oggad6svuzkv/4Jv0tM2D5D4uo9fpGkFINt/51f922cfc331f8cd887e86f5dca2a59f/2021\\_annual\\_report.pdf](https://assets.ctfassets.net/oggad6svuzkv/4Jv0tM2D5D4uo9fpGkFINt/51f922cfc331f8cd887e86f5dca2a59f/2021_annual_report.pdf)  
<https://www.henkel.com/resource/blob/1616958/8a9ca447fca79ec3ad39d8e5192a1fb6/data/2021-annual-report.pdf>  
<https://www.unilever.com/files/92ui5egz/production/e582e46a7f7170fd10be32cf65113b738f19f0c2.pdf>

<sup>(54)</sup> See page 39 of the 2021 annual report of P&G:  
[https://assets.ctfassets.net/oggad6svuzkv/4Jv0tM2D5D4uo9fpGkFINt/51f922cfc331f8cd887e86f5dca2a59f/2021\\_annual\\_report.pdf](https://assets.ctfassets.net/oggad6svuzkv/4Jv0tM2D5D4uo9fpGkFINt/51f922cfc331f8cd887e86f5dca2a59f/2021_annual_report.pdf)

<sup>(55)</sup> See page 19 of the 2021 annual report of P&G.

<sup>(56)</sup> See page 92 of the 2021 annual report of Henkel:  
<https://www.henkel.com/resource/blob/1616958/8a9ca447fca79ec3ad39d8e5192a1fb6/data/2021-annual-report.pdf>

what impact duties would have overall on Unilever's Union market profitability. Furthermore, the publicly available consolidated annual accounts for Unilever shows that its European operations had a turnover of 11,3 billion EUR <sup>(57)</sup> and a profitability of 1,8 billion EUR <sup>(58)</sup> or over 16 %. Therefore, the Commission had not been given any information to demonstrate that the impact of the measures on fatty acid from Indonesia would be disproportionate on Unilever's sales of this product, or more generally on its Union operations. The claim regarding increases in consumer prices and importation of this product was clearly not substantiated bearing in mind the overall profitability of its Union operations. Furthermore, the Commission noted that processing arrangements under customs control would be available to Unilever to mitigate the impact of measures.

(b) *smaller companies and groups*

- (455) The second category of users tended to be smaller companies and groups, such as those which fully cooperated with the investigation (Greven group and Schill + Seilacher group) and used fatty acids to manufacture downstream products such as esters, amines, lubricants, soaps etc.
- (456) In addition, following final disclosure, NYCO, Kapachim, Omya, Ecogreen affiliates and Stéarinerie Dubois came forward with submissions. In general, the companies in this category purchased smaller quantities of the product under investigation. However, these users did not submit questionnaire replies to permit a substantiation of the points they raised. In contrast, the information submitted by the fully cooperating companies, showed that these fully cooperating companies, were likely to be more affected by measures, because fatty acid represented a larger proportion of their total costs, and sales of the respective downstream products had limited profitability. Furthermore, the impact of measures on all users would be mitigated by the fact that users did not exclusively sell products which contained fatty acids. Also, most fatty acid purchased was sourced from either the Union industry or third country suppliers. This means that price increases for these purchases would be expected to be lower than those sourced from Indonesian exporting producers. Furthermore, the finished goods made using fatty acid were often exported outside the Union, meaning that processing arrangements under customs control could be available to reduce the impact of measures.
- (457) Ecogreen claimed that the weighted average duties applicable to Ecogreen would harm its two related companies in the Union. Ecogreen also maintained that all of its sales to the Union were intended for captive use and therefore these exports could not cause injury to the Union industry.
- (458) The Commission noted that as Ecogreen affiliate, DHW and E&S, did not fill in a user's questionnaire, Ecogreen's claims concerning injury could not be verified. According to Ecogreen's submission, one of its subsidiaries in the Union buys certain types of fatty acid from the Union industry. Therefore, it cannot be excluded that there is competition between Ecogreen's products and the Union industry's products at least on certain segments of the market as mentioned at recital (108). Therefore, the claim concerning Ecogreen affiliates and captive use cannot be accepted.
- (459) Therefore, from the information on file, the Commission concluded that the measures proposed would not impact users disproportionately.

7.9.2. *Comments on market disruption and supply issues*

- (460) The Greven group, Henkel, Unilever, Kapachim, Evonik, Ecogreen, Quaker Houghton, Omya, NYCO, Stéarinerie Dubois, the Musim Mas group and Wilmar made claims relating to disruption of the Union market and supply issues resulting from the imposition of measures. In particular, these interested parties considered that the proposed level of measures was too high and would disproportionately affect the Union downstream industries' interest. Also, these companies claimed that imports from Indonesia would cease, or be restricted, to such an extent that there would be a general shortage on the Union market, which would also cause price rises. Other users made more specific claims relating to certain types of fatty acid which they claimed these could not be adequately supplied from the Union industry. AAK, Unilever, and the Greven group supplied email correspondence with Union producers to support their claim concerning supply issues on the market which would be aggravated by the measures.

<sup>(57)</sup> See page 122 of the 2021 annual report of Unilever:  
<https://www.unilever.com/files/92ui5egz/production/e582e46a7f7170fd10be32cf65113b738f19f0c2.pdf>

<sup>(58)</sup> See page 122 of the 2021 annual report of Unilever.

- (461) Unilever, Henkel and Ecogreen claimed that imports to the Union of short chain fatty acids such as C8-C10 would be affected by the measures. NYCO claimed that C8-C10 acids were more and more difficult to find on the Union market because producers increased their captive use. As a result of this shortage, prices increased sharply since September 2021. Moreover, NYCO claimed that the shortage of short chain fatty acids such as C8-C10 would have an impact on industries which NYCO supplies with specialty lubricants, such as the aeronautic and defence industries.
- (462) Kapachim, Evonik, NYCO also submitted that they would be put at a disadvantage with manufacturers of the same products located outside the Union. Other companies claimed that they might have to relocate outside the Union.
- (463) Stéarinerie Dubois claimed that the limited substitutability of many product types imported from Indonesia would heavily affect their profitability as their production costs would increase. Stéarinerie Dubois also argued that Union producers listed in the complaint did not necessarily produce the same fatty acid in sufficient quantities of the type it required. They also pointed out that for two fatty acid types that their company was using in its production, no Union producer could match the company's specifications in colour, which was an important factor for their customers in the pharmaceutical industry. Stéarinerie Dubois stated that, as there was no Union market for fatty acids compliant with the REACH legislation and being Kosher and Halal, there was no injury caused to the Union industry by imports of these products.
- (464) CUTFA pointed out that the Union industry, together with imports from both Indonesia and third countries, would ensure adequate supply of the Union market in the event of measures. This view was supplemented by a bar chart showing the main sources of supply. CUTFA also pointed out that imports from Indonesia would not cease but would continue on a level playing field basis.
- (465) The Commission acknowledged that fatty acid supply to the various Union user industry sectors is essential because fatty acids cannot be adequately replaced with other products. Therefore, the Commission reviewed the issue of market disruption and supply issues in light of the comments received.
- (466) Firstly, as pointed out in recital (220) the spare capacity figures quoted at recital (407) were calculated based on a sustainable, rather than a theoretical, capacity of the Union industry taking into account normal downtime, such as maintenance, and taking into account production of other products. This means that around 250 000 of spare capacity existed in the Union in the IP. The verification of the Union industry questionnaire replies ensured a consistent and accurate approach to the capacity figures. Capacities were reduced, where appropriate, and verified figures were disclosed to the companies involved.
- (467) Secondly, it was clear that investments in the Union industry had been restricted over the period considered. Investments of the sampled companies continued, but were limited to maintaining existing plant and equipment, rather than increasing capacity and removing production bottlenecks. The imposition of measures would relieve the price pressure on the industry, and enable them to set prices at a level whereby profitability would be at reasonable levels. Production and sales could be increased to supply the market due to better market conditions. The industry would also be able to raise capital to increase capacity.
- (468) Supply issues during the period considered, as evidenced by email correspondence, are to be expected if an industry has suffered material injury affecting its sales prices leading to low profitability and an inability to raise capital for investment. However, the imposition of measures will create better market conditions for the Union industry and it will be able to increase production and improve the quantity and range of the fatty acid it supplies to the market.
- (469) Thirdly, it is not expected that the measures imposed by this Regulation will prohibit imports from Indonesia. It is recalled that the purpose of the anti-dumping measures is not to stop the imports but to restore the level playing field on the market. Therefore, the Commission rejected the claim that there would be a general shortage on the Union market, which would cause disproportionate price rises.
- (470) The Commission observed that the claim regarding a sharp price increase for C8-C10 concerned the global market, rather than only the Union market. Therefore, the effects of anti-dumping measures on the global competitiveness of Union users of C8-C10 would not be different from the effects on users of other types of fatty acid. Moreover, the Commission recalled that market developments after the end of the investigation period are normally not taken into account in its assessment. Regarding NYCO's point relating to the aeronautic and defence industries, these claims of disruption were not substantiated and therefore they were rejected.

- (471) Furthermore, the Commission noted that Indonesian and Union industry products were highly substitutable. Just because certain Union producers were unable to supply certain product types, at certain times under the market conditions applicable in the period considered, did not mean that supply problems will persist following the imposition of measures. Furthermore, the Commission considered that the impact of the measures on the costs and profitability of this user was not substantiated because, in the absence of a questionnaire response, the Commission could not assess how important fatty acid costs were for the company as a percentage of total costs or turnover. Therefore, the claims were rejected.
- (472) The likely impacts vis-à-vis competitors outside the Union and risk of relocation was not substantiated. In addition, factors which could mitigate the impact of duties on users are discussed in recital (455).
- (473) Wilmar suggested the cost on the Union market of fatty acid as a raw material would increase by around 32,9 % <sup>(59)</sup>.
- (474) However, such estimates exaggerate of the likely cost increases for users. This is because Indonesian imports represented around 20 % of consumption and much lower increases in costs are likely to occur for those users which are supplied by the Union industry or imports from other sources. Furthermore, imports from third countries such as Malaysia will inevitably increase over the life of measures due to better market conditions and less Indonesian price pressure.
- (475) Wilmar also pointed out that reduced vegetable oil imports, especially from Ukraine, would limit the Union industry's ability to source raw materials.
- (476) The Commission noted that these allegations were post-investigation period developments. It has not been substantiated what impact these developments could have on the Union market, or whether such developments were of a lasting nature as Article 6(1) of the basic Regulation states that information relating to a period subsequent to the investigation period shall, normally, not be taken into account. Therefore, the claims were rejected.
- (477) The Commission, therefore, could not accept the arguments that there will be a general lack of supply of fatty acid to users in the Union. In respect of supply problems involving specific products, any market disruption is likely to be temporary whilst producers and their customers adjust to the new market situation.

### 7.9.3. Conclusion on the Interest of Users

- (478) Bearing in mind the comments made by interested parties and based on the information on file, it is clear that for the largest consuming sectors of fatty acid (home care, beauty, laundry and personal care) there would not be a large impact following the imposition of measures, because such sectors would be able to absorb any cost increases that could not be passed on to customers.
- (479) For the remaining sectors there is some evidence that costs increases may occur and will have an impact on the profitability. However, only two groups decided to fully cooperate with the investigation in order to substantiate their claims.
- (480) For all users several issues will mitigate the impact of any cost increases, such as processing under customs control for imports of fatty acid, which will be used to manufacture exported products. Not all products manufactured by the users use fatty acid. In addition, around 80 % of fatty acid consumed on the Union market is not sourced from Indonesia, and will therefore not be subject to the direct impact of measures.
- (481) Anti-dumping measures are designed to increase Union import prices (duty paid) for the country concerned. Import prices from third countries and Union industry prices are likely to increase too. However, in order that the Union industry can survive, it needs to operate on a fairer basis with Indonesian exporting producers on the Union market. The Union market needs time to adjust to the new conditions and in that period there may be some negative impact on particular market players and user sectors. As mentioned above increased investment was expected by the Union producers to increase capacity. Some of this investment would enable Union industry companies to supply a wider range of fatty acids, or to increase production of specific products. Just because a Union producer was unable to supply the market with specific products under the current conditions of unfair competition does not mean that the Union producers do not have the capability to adapt to the new market conditions created by the measures.

<sup>(59)</sup> 32,9 % was the anti-dumping duty rate applicable to all other cooperating companies in the final disclosure document.

(482) The Commission maintains that such cost increases are required to enable the Union industry to compete fairly and at price levels which do not jeopardise their viability. It is clear that profitability as shown in Table 10 is not sustainable, and it is in the interest of all users, that production of a wide range of fatty acids in the Union continues. The expected cost increases for users are not considered disproportionate.

(483) Therefore, taking into account the views of all interested parties that came forward, the Commission concluded that users would not be disproportionately affected by the imposition of the measures.

#### 7.10. Interest of suppliers

(484) Suppliers of raw materials in the Union consist mainly of tallow and vegetable oil producers. Although these raw material suppliers did not cooperate in this investigation, it is clear that the imposition of measures would also benefit suppliers in the long-term because the Union industry consumes significant quantities of tallow and vegetable oils produced in the Union.

#### 7.11. Conclusion on Union interest

(485) On the basis of the above, the Commission concluded that there were no compelling reasons demonstrating that it was not in the Union interest to impose measures on imports of fatty acid originating in Indonesia.

### 8. DEFINITIVE ANTI-DUMPING MEASURES

(486) On the basis of the conclusions reached by the Commission on dumping, injury, causation, level of measures and Union interest, definitive measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

(487) As per the assessment above, definitive anti-dumping duties are set at the level of the dumping margin for Wilmar.

(488) Regarding Musim Mas, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove injury. Having found distortions on raw materials with regard to the product concerned in the sense of Article 7(2a) of the basic Regulation, namely in the form of export taxes and levies for CPO and CPKO, the Commission concluded that it would be in the Union interest, as provided for in Article 7(2b) of the basic Regulation, to set the amount of the duty at the level of the dumping margin, as a duty lower than the margin of dumping would not be sufficient to address the injury suffered by the Union industry.

(489) The definitive duty for the other cooperating non-sampled companies in Indonesia is based on the weighted average dumping margin as established above for the two sampled companies.

(490) Given the high level of cooperation (exports of the cooperating exporting producers constituted the totality of the total imports during the IP), the level of the countrywide duty level was based on the highest dumping margin of the two sampled cooperating exporters.

(491) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Definitive dumping margin (%)	Definitive injury margin (%)	Anti-dumping duty (%)
P.T. Musim Mas	46,4	46,4	46,4
P.T. Wilmar Nabati Indonesia	15,2	38,7	15,2
Other cooperating companies	26,6	41,5	26,6
All other companies	46,4	46,4	46,4

- (492) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (493) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.
- (494) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (495) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (496) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (497) Several interested parties argued that the measures were too high or not set at an appropriate level and that the Commission should reduce them
- (498) However, these measures have been set according to the methodology outlined in this Regulation and in accordance with the basic Regulation. The calculations involved in the setting of the dumping and injury margins have been disclosed to the appropriate interested parties. Therefore, these claims must be rejected because the arbitrary setting of duties is not foreseen by the basic Regulation.
- (499) In their comments following final disclosure, Ecogreen requested a duty-free quota as a constructive remedy to be explored by the Commission, stating various legal bases for this claim.
- (500) Firstly, elaborating on Article 8 of the basic Regulation, Ecogreen offered to enter into discussions for a price undertaking with a quota element. In this respect, it recalled that quotas were part of the undertakings accepted in the *Solar Panels* case<sup>(60)</sup> and claimed that, according to the WTO Panel in *EC – Bed Linen*<sup>(61)</sup>, the Commission had an obligation to consider constructive remedies in proceedings involving developing countries Members.
- (501) The Commission noted that, as mentioned in Article 8(1) of the basic Regulation, it is up to Ecogreen to submit a price undertaking offer which may be accepted by the Commission. Such an offer should be made within the statutory deadline mentioned in Article 8.2 of the basic Regulation. Ecogreen's offer should have reached the Commission no later than 5 days prior to the deadline for comments on final disclosure. The request suggesting a

<sup>(60)</sup> Commission Decision 2013/423/EU of 2 August 2013 accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China (OJ L 209, 3.8.2013, p. 26).

<sup>(61)</sup> Panel Report, *EC – Bed Linen*, WT/DS141/R, adopted 12 March 2001, as modified by Appellate Body Report WT/DS141/AB/R, DSR 2001:VI, p. 2077, para. 6.233.

price undertaking was only made on 12 September 2022, much later than the legal deadline mentioned above, and no concrete proposal was formulated. Therefore, no offer for a price undertaking that could be taken into account according to the basic Regulation was provided and no analogy with the *Solar Panels* and the *EC – Bed Linen* cases could thus rightfully be invoked. Hence, this claim was rejected.

- (502) Secondly, Ecogreen requested a duty-free quota by analogy to the imposition of quotas to preserve trade flows deemed to be unharmed in the context of safeguards measures, another trade defence instrument.
- (503) In this respect, the Commission limited itself to observe that this investigation was regulated by the basic Regulation, which did not foresee duty free quotas. Thus, this claim was rejected.
- (504) Thirdly, Ecogreen claimed a tariff quota as a constructive remedy under Council Regulation (EU) 2021/2283<sup>(62)</sup>, as last amended by Council Regulation (EU) 2022/972<sup>(63)</sup>, which it allegedly allowed the Commission to open and grant tariff quotas for agricultural and industrial goods.
- (505) The Commission noted that Regulation (EU) 2021/2283, as last amended by Regulation (EU) 2022/972, applied to agricultural and industrial products listed in the Annex to Regulation (EU) 2021/2283, where the product under investigation is not mentioned under any of its TARIC codes. Therefore, this claim was rejected.
- (506) Finally, Ecogreen pointed out that the Union Customs Code provided for the possibility of processing a certain quantity of imports under customs control (inward processing). Ecogreen requested the Commission to explore ways on how to implement such an arrangement.
- (507) The Commission highlighted that such provisions are not within its competences and within the scope of the present investigation, which is governed by the basic Regulation. Thus, this claim was rejected.

#### 9. FINAL PROVISIONS

- (508) In view of Article 109 of Regulation (EU, Euratom) 2018/1046<sup>(64)</sup>, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (509) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures. They were also granted a period to make representations subsequent to this disclosure.
- (510) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of fatty acids with a carbon chain length of C6, C8, C10, C12, C14, C16 or C18 with an iodine value below 105 g/100 g and with a ratio of free fatty acids to triglycerides (degree of split – DoS) of at least 97 %, including:

- single fatty acid (also referred to as ‘pure cut’), and
- blends containing a combination of two or more carbon chain lengths,

<sup>(62)</sup> Council Regulation (EU) 2021/2283 of 20 December 2021 opening and providing for the management of autonomous tariff quotas of the Union for certain agricultural and industrial products, and repealing Regulation (EU) No 1388/2013 (OJ L 458, 22.12.2021, p. 33).

<sup>(63)</sup> Council Regulation (EU) 2022/972 of 17 June 2022 amending Regulation (EU) 2021/2283 opening and providing for the management of autonomous tariff quotas of the Union for certain agricultural and industrial products (OJ L 167, 24.6.2022, p. 10).

<sup>(64)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

excluding fatty acid certified by a voluntary scheme <sup>(65)</sup> for the production of sustainable biofuels, bioliquids and biomass fuels recognized by the European Commission pursuant to Article 30(4) or a national certification scheme established pursuant to Article 30(6) of Directive (EU) 2018/2001, currently falling within CN codes ex 2915 70 40, ex 2915 70 50, ex 2915 90 30, ex 2915 90 70, ex 2916 15 00, ex 3823 11 00, ex 3823 12 00, ex 3823 19 10 and ex 3823 19 90 (TARIC codes: 2915 70 40 95, 2915 70 50 10, 2915 90 30 95, 2915 90 70 95, 2916 15 00 10, 3823 11 00 20, 3823 11 00 70, 3823 12 00 20, 3823 12 00 70, 3823 19 10 30, 3823 19 10 70, 3823 19 90 70 and 3823 19 90 95) and originating in Indonesia.

2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Definitive anti-dumping duty (%)	TARIC additional code
P.T. Musim Mas	46,4	C880
P.T. Wilmar Nabati Indonesia	15,2	C881
Other cooperating companies listed in Annex	26,6	See Annex
All other companies	46,4	C999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

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 131(2) of Commission Implementing Regulation (EU) 2015/2447 <sup>(66)</sup> the amount of anti-dumping duty, calculated on the basis of 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

Where a new exporting producer from Indonesia provides sufficient evidence to the Commission, the Annex may be amended by adding that new exporting producer to the list of cooperating companies not included in the sample and thus subject to the appropriate weighted average anti-dumping duty rate, namely 26,6 %. A new exporting producer shall provide evidence that:

- (a) it did not export the goods described in Article 1(1) originating in Indonesia during the period of investigation (1 October 2020 to 30 September 2021);
- (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and
- (c) it has either actually exported the goods described in Article 1(1) originating in Indonesia or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

<sup>(65)</sup> The list of voluntary schemes recognized by the Commission is available at: [https://energy.ec.europa.eu/topics/renewable-energy/bioenergy/voluntary-schemes\\_en](https://energy.ec.europa.eu/topics/renewable-energy/bioenergy/voluntary-schemes_en)

<sup>(66)</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

*Article 3*

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

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

Done at Brussels, 18 January 2023.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

Indonesian cooperating exporting producers not sampled:

Name	TARIC additional code
P.T. Nubika Jaya	C882
P.T. Permata Hijau Palm Oleo	
P.T. Unilever Oleochemical Indonesia	C883
P.T. Soci Mas	C884
P.T. Energi Sejahtera Mas	
P.T. Ecogreen Oleochemicals	C885
P.T. Apical Kao Chemicals	C886
P.T. Sari Dumai Sejati	
P.T. Kutai Refinery Nusantara	
P.T. Sari Dumai Oleo	
P.T. Padang Raya Cakrawala	
P.T. Asianagro Agung Jaya	
P.T. Domas Agrounti Prima	C887