

**COMMISSION REGULATION (EU) No 1036/2010****of 15 November 2010****imposing a provisional anti-dumping duty on imports of zeolite A powder originating in Bosnia and Herzegovina**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> (the 'basic Regulation'), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

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

- (1) On 17 February 2010, the European Commission (the 'Commission') announced, by a notice published in the *Official Journal of the European Union* <sup>(2)</sup> ('Notice of Initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Union of zeolite A powder originating in Bosnia and Herzegovina ('BiH').
- (2) The proceeding was initiated as a result of a complaint lodged on 4 January 2010 by Industrias Quimicas del Ebro SA, MAL Magyar Aluminium, PQ Silicas BV, Silkem d.o.o. and Zeolite Mira Srl Unipersonale (the 'complainants'), representing a major proportion, in this case more than 25 % of the total Union production of zeolite A powder. The complaint contained *prima facie* evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.

**1.2. Parties concerned by the proceeding**

- (3) The Commission officially advised the complainants, other known Union producers, the exporting producer group in BiH, importers, users, and other parties known to be concerned, and representatives of BiH of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) The complainants, Union producers, the exporting producer group in BiH, importers and users made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (5) In view of the apparent high number of Union producers and importers, sampling was envisaged in the Notice of initiation, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and if so, to select a sample, all known Union producers and importers were asked to make themselves known to the Commission and to provide, as specified in the Notice of initiation, basic information on their activities related to the product concerned (as defined in section 2.1. below) during the period from 1 January 2009 to 31 December 2009.
- (6) As explained in recital (16) below, eight Union producers provided the requested information and agreed to be included in a sample. On the basis of the information received from the cooperating Union producers, the Commission selected a sample of four Union producers having the largest volume of production/sales in the Union.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ C 40, 17.2.2010, p. 5.

- (7) As explained in recital (20) below, only three unrelated importers provided the requested information and agreed to be included in a sample. However one of these importers did not import/purchase the product concerned. Therefore, in view of the limited number of importers, sampling was deemed to be no longer necessary.
- (8) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the Notice of initiation, namely to the exporting producer group in BiH, the four sampled Union producers and three unrelated importers/users.
- (9) Replies were received from the exporting producer group in BiH, including its related companies, from the four sampled Union producers and three Union unrelated importer/users.
- (10) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:

*Producers in the Union*

- Industrias Químicas del Ebro SA, Zaragoza, Spain
- MAL Magyar Aluminium, Ajke, Hungary
- PQ Silicas BV, Eijsden, Netherlands
- Zeolite Mira Srl Unipersonale, Mira, Italy

*Importers/users in the Union*

- Reckitt Benckiser Group, Slough, UK and Mira, Italy
- Henkel AG, Dusseldorf, Germany
- Chemiewerk Bad Kostritz GmbH, Bad Kostritz, Germany

*Exporting producers in BiH*

- Fabrika Glinice Birac AD, Zvornik
- Alumina d.o.o., Zvornik (related to the above mentioned exporting producer)

*Related importer in the Union*

- Kauno Tiekimas AB, Kaunas, Lithuania

**1.3. Investigation period**

- (11) The investigation of dumping and injury covered the period from 1 January 2009 to 31 December 2009 (the 'investigation period' or the 'IP'). The examination of trends relevant for the assessment of injury covered the period from January 2005 to the end of the IP ('period considered').

**2. PRODUCT CONCERNED AND LIKE PRODUCT**

**2.1. Product concerned**

- (12) The product concerned is zeolite A powder, also referred to as zeolite NaA powder or zeolite 4A powder (the 'product concerned'), currently falling within CN code ex 2842 10 00.

- (13) The product concerned is destined at end-use applications as a builder, used in the production of dry detergents and water softeners.

## 2.2. Like product

- (14) The product concerned, the product sold domestically in BiH as well as the one manufactured and sold in the Union by the Union producers were found to have the same basic physical and technical characteristics as well as the same basic uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.
- (15) The Bosnian exporting producer group submitted that the product concerned exported by both Fabrika Glinice Birac AD and its related company Alumina d.o.o. ('the Birac group'), has different production costs, production processes and quality than the like product produced by some Union producers. It was also argued that the production process of the Birac group is based on alumina liquor from the alumina production process instead of aluminium trihydrate, while production in the Union is typically based on hydrate crystals which, by heating and adding caustic soda, are brought back to liquid state for the production of the zeolite slurry. With respect to the above arguments it is noted that the information submitted by the Birac group does not put in dispute the established facts that irrespectively of any alleged differences in production processes, costs or quality, the product concerned has the same basic physical and technical characteristics and serves the same purposes as the like product.

## 3. SAMPLING

### 3.1. Sampling of Union producers

- (16) Eight Union producers representing around 50 % of the Union producers' sales volume on the market replied to the request for sampling data in the Notice of Initiation. Initially the five largest Union producers were selected to be part of the sample. However, one company decided to terminate its co-operation. Therefore the remaining four Union producers form the sample in this investigation.
- (17) These four producers represented around 37 % of the Union producers' total sales volume on the Union market in the IP and more than 75 % of the sales volume of the eight producers that provided data for the sampling exercise. The four producers selected in the sample were considered to be representative of the overall producers in the Union.
- (18) The Bosnian exporting producer group argued that three Union producers (MAL Magyar Aluminium, Silkem d.o.o. and Industrias Quimicas del Ebro SA) should be considered as non-cooperating with the investigation. It was argued that these companies submitted non-confidential replies to deficiency letters some days latter than the dateline set. With respect to the above it is noted that the information provided by the aforesaid parties was submitted in a timely fashion and it did not impede in any way the progress of the investigation or the rights of defence of parties.
- (19) It was also argued that one Union producer (MAL Magyar Aluminium) failed to mention in its reply on sampling that it was related to another Union producer (Silkem d.o.o.). The latter company was not sampled and was not included in MAL Magyar Aluminium's questionnaire reply. It was therefore argued that both these two Union producers should be considered as non-cooperating with the present investigation. To this it is noted that the relationship between these two parties was known to the Commission services at complaint stage and the relationship was stated in the reply on sampling from one of the two parties. Furthermore the relationship was disclosed in MAL Magyar Aluminium's questionnaire response. Finally it should be made clear that Silkem d.o.o. and MAL Magyar Aluminium have fully co-operated with the investigation. In respect of Silkem d.o.o. they submitted data at sampling stage but were not sampled and hence were not requested to complete a questionnaire response. In respect of MAL Magyar Aluminium there was no need for them to submit a consolidated response including Silkem d.o.o. as Silkem d.o.o. is a separate legal entity.

### 3.2. Sampling of unrelated importers

- (20) Only three unrelated importers replied to the request for information for the sampling exercise in the Notice of Initiation. It was subsequently discovered that one of these companies did not import or purchase the product concerned. Subsequently it was decided that sampling was not necessary for unrelated importers.

## 4. DUMPING

### 4.1. Normal value

- (21) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of the like product to independent customers by each of the two exporting producers of the Birac group were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Union. It was found that the domestic sales were not representative.
- (22) The Commission subsequently examined whether the domestic sales of each exporting producer could be considered as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers.
- (23) Domestic sales transactions were considered profitable where the unit price was equal to or above the cost of production. Cost of production on the domestic market during the IP was therefore determined.
- (24) The above analysis showed that all domestic sales of both exporting producers were profitable, given that the unit net sales price was above the calculated unit cost of production.
- (25) Since the sales on the domestic market were not sold in representative quantities, normal value had to be constructed, in accordance with Article 2(3) of the basic Regulation.
- (26) To construct normal value pursuant to Article 2(3) of the basic Regulation, the selling, general and administrative (SG&A) expenses incurred and the weighted average profit realised by each of the cooperating exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period, was added to their own average cost of production during the investigation period. Where necessary, the costs of production and SG&A expenses were adjusted, before being used in the ordinary course of trade test and in constructing normal values.

### 4.2. Export price

- (27) Since all exports to the Union were made via a related importer, the export price was constructed on the basis of the resale price to independent customers in accordance with Article 2(9) of the basic Regulation. Adjustments were made in the resale price to the first independent buyer in the Union for all costs including duties and taxes, incurred between importation and resale, as well as a reasonable margin for SG&A and profits. As regards the SG&A, the related importer's own SG&A costs were used. In the absence of cooperation by unrelated importers in the investigation, a reasonable profit margin of 5 % was used, based on information obtained from users who also imported the product concerned in the IP.
- (28) The Birac group claimed that the functions of its related importer were similar to those of an export department rather than an importer, and therefore the export price should not be constructed in accordance with Article 2(9) of the basic Regulation, but rather established in accordance

with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable. In this respect, it is noted that, in accordance with Article 2(9) of the basic Regulation, the export price is established on the basis of the resale price to independent customers whenever the product concerned is resold to independent customers by companies related to the exporter in the exporting country. The investigation showed that the related company is located in the Union. It handles, *inter alia*, the customer orders and the invoicing of the product concerned produced by the Birac group. It was further found that the Birac group sells the product concerned to the related company in the Union for resale to EU independent customers. Consequently, the claim has to be rejected. It should be noted that the fact that certain activities are performed by the related company prior to importation does not mean that the export price may not be reconstructed on the basis of the resale price to the first independent customer with the necessary allowances being made pursuant to Article 2(9).

#### 4.3. Comparison

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

#### 4.4. Dumping margin

- (30) According to Article 2(11) of the basic Regulation, the dumping margin for both exporting producers was established based on the comparison of the weighted average normal value with the weighted average export price.
- (31) The individual dumping margins of both exporting producers were weighted based on quantities exported to the Union, resulting in a dumping margin, expressed as a percentage of the CIF Union border price, duty unpaid, of 28,1 % for the Birac group.
- (32) Based on information available from the complaint and the cooperating exporting producer group in BiH, there are no other known producers of the product concerned in BiH. Therefore, the country-wide dumping margin to be established for BiH should be equal to the dumping margin established for the sole cooperating exporting producer group in BiH.

### 5. INJURY

#### 5.1. Introductory remarks

- (33) It is recalled that in this case there is only one Bosnian exporting producer (the Birac group). Therefore, no precise figures can be given relating to import volumes, import prices, market shares and Union production as well as sales volumes in order to protect business proprietary information. In these circumstances, indicators are given in indexed form or ranges.
- (34) In line with section 3.1 above, the four sampled Union producers constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will be hereafter referred to as the 'Union industry'.

#### 5.2. Union Consumption

- (35) During the provisional stage of the investigation the calculation of Union consumption was based on figures contained in the complaint and supplemented by verified figures established from producers and importer/users involved in the investigation. This data was sent to all interested parties for comment. No comments were provided to dispute the Union consumption data.

(36) The Union consumption was thus established on the basis of the volume of sales in the Union of the like product produced by the Union industry, the volume of sales in the Union of the like product produced by the other known Union producers and the volume of imports of the product concerned from third countries.

(37) On this basis the Union consumption developed as follows:

	2005	2006	2007	2008	2009 (IP)
Tonnes	324 395	347 183	371 567	315 642	300 491

Source: Complaint and Questionnaire replies

(38) The consumption of the product concerned and the like product in the Union fell 7 % over the period considered. This reflects a gradual reduction of the amount of the product concerned incorporated into key products such as laundry detergents by users. It also reflects that more user industry products are becoming zeolite free.

### 5.3. Imports from the country concerned

#### 5.3.1. Volume, price and market share of dumped imports from the country concerned

(39) The volume of imports of the product concerned increased by 359 % through the period considered.

	2005	2006	2007	2008	2009 (IP)
Volume of imports	100	73	68	252	459

Index: 2005 = 100

Source: Verified questionnaire reply

(40) The average import price was stable from 2005 to 2008 and increased by around 10 % in the IP. This was mainly due to an improved situation on the EU market which permitted price increases for all producers of the product concerned.

	2005	2006	2007	2008	2009 (IP)
Average import price (CIF)	100	100	102	99	109

Index: 2005 = 100

Source: Verified questionnaire reply

(41) The market share of the imports from the country concerned nearly quadrupled in the period considered and represented a market share of between 10-15 % in the IP.

	2005	2006	2007	2008	2009 (IP)
B&H market share	0-5 %	0-5 %	0-5 %	5-10 %	10-15 %
Index: 2005 = 100	100	68	59	259	495

Source: Verified questionnaire reply

### 5.3.2. Effect of dumped imports on prices

- (42) For the purpose of analysing price undercutting, the import prices of the Bosnian exporting producer were compared to the Union industry prices during the IP, on an average to average basis. The Union industry prices were adjusted to a net ex-works level, and compared to CIF import prices. No customs duties were taken into account as the Bosnian exporting producer was subject to a 0 % preferential rate in the IP.
- (43) The weighted average undercutting margin found, expressed as a percentage of the Union industry's prices is between 20 and 25 %.

## 5.4. Situation of the Union industry

### 5.4.1. Preliminary remarks

- (44) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry.
- (45) The indicators referring to macroeconomic elements, such as production, capacity, sales volume, market share etc, are based on data established by the Commission services and sent to interested parties for comment as mentioned above at recital (35). The data for these indicators represent all Union producers. Whenever data relating to the Union producers as a whole are used, the tables below refer to macro data as a source. Other indicators are based on verified data from the sampled producers. These indicators are referred to as micro data. With respect to the macro data the Bosnian exporting producer argued that due to the controversy concerning the appropriate CN code used for classification of the product it is unlikely that these data is reliable. In this respect it is noted that the injury indicators are not in anyway affected by the alleged controversy on CN codes. It is recalled that the definition of the product concerned was provided in the published notice of initiation. This definition is clear leaving out any possibility of misinterpretation. Interested parties were requested to provide information on the basis of the product definition irrespectively of CN codes as the notice of initiation states that the CN code is given for information only. Furthermore it is recalled that the Bosnian exporting producer has not disputed the information concerning Union consumption. Most of the information on imports was directly derived from the Bosnian exporting producer data while the remainder referred to a small volume of imports from other countries. Account taken of the above and of the fact that no concrete evidence was presented to corroborate the claim on unreliable data this argument had to be rejected.

### 5.4.2. Injury indicators

*Production, capacity and capacity utilisation*

	2005	2006	2007	2008	2009 (IP)
Production	100	108	114	90	86
Capacity	100	99	104	100	100
Capacity utilisation	72 %	79 %	78 %	65 %	62 %

*Index: 2005 = 100*

*Source: Macro data*

- (46) During the period considered, the Union industry's production volume decreased by 14 %. In 2008-2009 an Union producer (Sasol Italy SpA) ceased production altogether. In addition Henkel AG stopped production of its zeolite slurry (this is not the product concerned but is a liquid version which is used as a substitute). To some extent these developments helped the situation of the remaining producers.

- (47) Despite the developments mentioned above capacity was relatively stable across the period considered based on the method of calculation normally employed by the industry. However, the verification of the sampled producers showed that calculation of capacity for this industry can fluctuate depending on the relative fortunes of the market for the product concerned and the market for other products which can be produced using the same facilities.
- (48) The capacity utilisation figures above show a decrease of 14 %. Furthermore at no point did this rate reach 80 % which demonstrates a certain overcapacity. This issue is further discussed under causation.

*Stocks*

	2005	2006	2007	2008	2009 (IP)
End of year stock	Less than 2 %				

*Index: 2005 = 100*  
*Source: Macro data*

- (49) The Union industry's stock level was low and stable throughout the period considered. The production of the like product was planned to match orders and stocks were always kept to the minimum possible level. This was not therefore an important factor in this investigation.

*Sales volume and market share*

	2005	2006	2007	2008	2009 (IP)
EU sales volume	100	108	116	93	82
Market share	95-100 %	95-100 %	95-100 %	90-95 %	85-90 %
Index of market share	100	101	101	96	89

*Index: 2005 = 100*  
*Source: Macro data*

- (50) The sales volume of the union industry decreased during the period considered by 18 %.
- (51) The market share of the union industry decreased during the period considered by 11 %.

*Sales prices*

	2005	2006	2007	2008	2009 (IP)
Average sales price in Euro/tonne	292	306	315	332	354

*Source: Micro data*

- (52) The average sales price of the Union industry to unrelated parties in the EU increased by 21 % over the period considered. This reflected by and large higher raw material and energy prices and, in isolation, is therefore not considered to be a meaningful indicator.

*Profitability*

	2005	2006	2007	2008	2009 (IP)
Pre-tax profit margin	3,2 %	0,8 %	1,4 %	- 1,8 %	4,3 %

Source: *Micro data*

- (53) The profitability of the Union industry was low throughout the period considered. This situation resulted from its inability to raise its prices for the reasons discussed under the 'Causation' section below and in particular the existence of increasing volumes of dumped imports. It also resulted from the low capacity utilisation explained at recital (47).
- (54) From 2005 to 2008 the Union industry's profitability fell substantially and in 2008 became loss-making. It recovered during the IP to the highest level during the period examined but still fell short to the profit of 5,9 % that the industry could have achieved in the absence of dumped imports (see below recital (67)).
- (55) The exporting producer claimed that the profitability of the Union producers was healthy in 2009. This assumption was not backed up by any positive evidence but rather the claim refers to unspecified 'publicly available information'. The sampled producers claimed that the profitability rate achieved in 2009 was a one-off and was not sustainable in the light of the vigorous Bosnian exporting producers' entry to the market in large quantities and low dumped prices. The sampled producers claimed that profitability in 2010 was likely to fall back to 2008 levels.
- (56) The above claims were examined by the Commission services. The examination comprised in particular the development of raw material and sales costs, prices as reflected in the relevant contracts. It was found that the Union industry benefited in 2009 from certain temporary factors which increased its profitability despite the existence of significant volumes of dumped imports:
- (i) The sampled producers benefited to a certain degree from increased production and sales volume following the cessation of production of two other Union producers as mentioned at recital (46).
  - (ii) Although there was a general increase in raw material prices from 2008 some sampled producers benefited from annual raw material contracts which limited the impact of such increases.
  - (iii) One sampled producer benefited from significantly lower finance costs in 2009 due to a restructuring within its group.
- (57) On this basis, the development of the profit margin still pointed to the existence of injury as the profit would have been considerably higher without the dumped imports.

*Investments, return on investment, cash flow and the ability to raise capital*

	2005	2006	2007	2008	2009 (IP)
Investments (Euro)	577 448	337 865	324 636	1 012 717	366 235
Return on net assets	17 %	6 %	11 %	- 10 %	26 %
Cash flow (Euro)	1 013 223	744 905	905 792	- 930 920	1 638 112

Source: *Micro data*

- (58) It was claimed by the Bosnian exporting producer that investments were low over the period considered while the Union industry explained that returns on investment were too low to justify substantial investment in the product concerned.
- (59) The return on investment, expressed in terms of net profits of the Union industry and the net book value of its investments follows the trend of profitability shown above. It should be noted that the net assets involved had already been largely depreciated.
- (60) The cash flow situation of the Union industry also follows the trend of profitability shown above. The cash flow situation was serious in 2008 as losses in sale volume were compounded by the producers having to continue to meet their contractual obligations to purchase raw materials.
- (61) Ability to raise capital was not raised as an issue by the Union industry.

*Employment, productivity and wages*

	2005	2006	2007	2008	2009 (IP)
Employment (FTE)	241	241	253	244	221
Average labour cost per worker (Euro)	36 574	39 644	40 207	39 130	40 225
Productivity per worker	1 423	1 529	1 535	1 296	1 223

*Source: Micro data except Employment – macro data*

- (62) The number of employees of all Union producers involved with the like product decreased during the period considered in line with reductions in production and sales volume. The average labour cost per worker increased reflecting inflation rises.
- (63) Productivity, expressed in terms of output per worker, decreased by 14 % over the period considered as the sales volume decreased more than employment. This negative development is likely to lead to further job losses in the future.

5.4.3. Magnitude of dumping

- (64) Given the volume and the prices of dumped imports from the country concerned the impact on the EU market of the actual margin of dumping cannot be considered to be negligible.

**5.5. Conclusion on injury**

- (65) During the period considered the Union producers suffered substantial volume injury which is clearly evident from the above analysis of its production, capacity utilisation, sales volume, market share, employment and productivity trends.
- (66) In terms of prices and profitability an injurious picture is also present. However this analysis is complicated by raw material and energy price increases which have impacted on prices of the product concerned. Profitability, cash flow, and return on investment all deteriorated over the period 2005-2008. 2008 was a particularly serious year for the industry mainly because the companies were locked into raw material contracts but lost more than 20 % of its sales volume.

- (67) In 2009 the market situation eased and price increases enabled an improved profitability situation but as explained above at recital (56) it was clear that this was a temporary respite and that the 2009 market situation is unlikely to be repeated. However, it should be noted that even in 2009 the profitability rate did not reach the 5,9 % deemed as a normal profit for this industry.
- (68) Injury was assessed for the whole Union industry (macro-economic indicators) although for some indicators only the sampled producers were assessed (micro-economic indicators). No significant differences were identified between the micro and macro indicators.
- (69) In the light of the foregoing, it is provisionally established that a major proportion of the Union industry has suffered injury within the meaning of Article 3(5) of the basic Regulation.

## 6. CAUSATION

### 6.1. Introduction

- (70) In accordance with Articles 3(6) and (7) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned had caused injury to the Union industry to a degree sufficient to be considered as material. Known factors other than the dumped imports, which could at the same time have injured the Union industry, were also examined in order to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

### 6.2. Effects of the dumped imports

- (71) Over the period considered imports from the country concerned increased by nearly 400 % and gained a substantial market, i.e. they increased from below 5 % to between 10 and 15 %. In parallel there was a direct and comparable deterioration of the economic situation of the Union industry being the only other significant player on the EU market as imports from other sources are negligible.
- (72) The market share increases of the dumped imports occurred against the backdrop of a fall in EU consumption of 7 % over the period considered.
- (73) The dumped imports of increasing volume undercut the prices of the Union industry by between 20-25 % in the IP. It can be reasonably concluded that such increasing imports in a contracting market were responsible for price suppression in 2008 and 2009. This effect of the dumped imports on prices was magnified by the fact that most sales were made on the basis of annual contracts. Thus, the dumped Bosnian imports could be used to suppress price increases for large volumes of sales despite increases in raw material prices. In 2009 there was an easing of this effect but not enough to enable the industry as a whole to reach the normal profit level of 5,9 %.
- (74) In view of the clearly established coincidence in time between, on the one hand, the surge of dumped imports at prices undercutting the Union industry's prices and, on the other hand, the Union industry's loss of sales and production volume, decrease in market shares and price suppression, it is provisionally concluded that the dumped imports played a major role in the injurious situation of the Union industry.

### 6.3. Effects of other factors

#### 6.3.1. Export performance of the Union producers

	2005	2006	2007	2008	2009 (IP)
Export sales of Union production	100	108	90	57	121

*Index: 2005 = 100*

*Source: Macro data*

- (75) The export volume of all the Union producers increased during the period considered but represented on average only about 10 % of production. The exports of the sampled producers increased and partially compensated for lost EU sales volumes.
- (76) Therefore, the export performance of the Union producers helped sustain its business and did not contribute to the material injury suffered.

#### 6.3.2. Imports from third countries

- (77) Imports from third countries were negligible during the period considered and could not have contributed to the injury suffered by the Union industry. The Bosnian exporting producer argued that market share of Union producers has been lost to imports from China and Korea but this claim is not supported by the actual facts as imports from these countries were marginal.

#### 6.3.3. Impact of a fall in consumption

	2005	2006	2007	2008	2009 (IP)
EU Consumption in tonnes	324 395	347 183	371 567	315 642	300 491

*Source: Macro data*

- (78) Over the period considered consumption fell by around 24 000 tonnes (7 %) reflecting the fact that the laundry detergent industry was gradually using more alternative products in their formulas to replace the product concerned. It was claimed by the exporting producer that this led to 'saturated stocks, cancellations of orders and lower profits'.
- (79) It should be said that two producers in the EU market have ceased production towards the end of the period considered and therefore an adjustment of capacity has taken place to compensate for the decrease in consumption. Furthermore, as explained at recital (49) stock levels have remained low and stable meaning that production has adjusted to the lower consumption levels.
- (80) Therefore whilst it cannot be excluded that the fall in consumption has contributed to the injury suffered by the Union producers, it appears that this impact is not important.

#### 6.3.4. Impact of investments

- (81) It was claimed by the exporting producer that compliance with REACH legislation caused the injury. However, as explained at recital (58) given the level of investments in the product concerned throughout the period considered this could not have contributed to the injury suffered to any significant degree. Furthermore, the costs associated with REACH have been moderate.

#### 6.3.5. Impact of increases in raw material and energy costs

- (82) It was claimed by certain parties that increased raw material and energy costs contributed to the injury. The increases in these costs were indeed significant and took place mainly in 2008. This no doubt had some impact on profitability in that year because they occurred at a time of falling sales volume. However, to a certain degree increases in energy costs were reflected in increases in sales prices as shown at recital (52) although the price depression effect of the dumped imports has prevented adequate increase levels.

- (83) Therefore it is considered that the increase in raw material and energy costs has not contributed to the injury suffered.

#### 6.3.6. Impact of capacity issues

- (84) The issues of overcapacity and low capacity utilisation were discussed at recital (46). The effect of the capacity issues on profitability has to be looked at in view of both the structural characteristics of this industry and the existence of dumped imports. The effect on profitability is because of the substantial fixed costs which would be recovered if utilisation rates were higher.
- (85) However, the overcapacity and low capacity utilisation issues can partially explain some of the negative injury indicators suffered by the Union producers but do not explain the large declines in production, sales volume and market share in 2009. They clearly therefore do not break the causal link between the big increase in imports at dumped prices and the injury suffered by the Union producers.

#### 6.3.7. Impact of global credit crisis/general economic crisis

- (86) It was claimed by certain interested parties that the global credit crisis and the general economic crisis contributed to the injury. In fact consumption of the product concerned did fall in 2008/2009 when these crises occurred.
- (87) However, these issues cannot explain why the market share of the Union producers fell substantially in 2009 while the market share held by Bosnian imports increased and undercut the EU prices by over 20 %. Therefore whilst the decline in consumption in 2008/2009 would in itself have affected the Union industry, the significant rise of imports from BiH had a much more significant impact on sales volumes of the Union industry and, in view of the undercutting, on prices. Thus, the crisis did not break the causal link between the big increase in imports at dumped prices and the injury suffered by the Union producers.

#### 6.3.8. Impact of consolidated user industry

- (88) Although more than 10 companies manufactured the product concerned in the IP the main user industry (laundry detergent and water softener producers) consisted essentially of 4 big groups (Reckitt Benckiser, Henkel, Proctor & Gamble and Unilever). In fact the two main co-operating users represented nearly 40 % of purchases of the product concerned in the EU. Using centralised purchasing these 4 groups are indeed able to keep prices of the product concerned low.
- (89) However, this issue is not a new phenomenon but has existed for many years. Therefore, it again cannot explain the large declines in production, sales volume and market share in 2009. It clearly therefore does not break the causal link between the big increase in imports at dumped prices and the injury suffered by the Union producers.

### 6.4. Conclusion of causation

- (90) Based in the above, it is provisionally concluded that the material injury to the Union industry was caused by the dumped imports concerned.
- (91) A number of factors other than the dumped imports were examined but none of these could explain the serious losses in market share, production and sales volume which occurred in 2008 and 2009 which coincides with the increases in volumes of dumped imports.
- (92) Given the above analysis which has properly distinguished and separated the effects of all the known factors on the situation of the Union industry from the injurious effects of the dumped imports, it is provisionally concluded that the imports from BiH have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

## 7. UNION INTEREST

### 7.1. General remarks

- (93) The Commission examined whether, despite the provisional conclusion on the existence of injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Union interest to adopt measures in this particular case. For this purpose, and in accordance with Article 21(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

### 7.2. Interest of the Union industry

- (94) The injury analysis has clearly demonstrated that the Union industry has suffered from the dumped imports. The increased presence of dumped imports in recent years caused a suppression of sales in the Union market and a loss of market share for the Union industry. This prevented the Union industry from achieving profitability levels similar to those achieved for other products.
- (95) The investigation has shown that any increase in the market share of the dumped imports from the country concerned is gained at the direct expense of the Union industry. Despite the restructuring that occurred with respect to the Union producers (two companies stopped production) the situation has not ameliorated. In this respect it is noted that zeolite A powder is an important product in terms of the turnover of the sampled companies being up to 30 % of their sales turnover. Without the imposition of measures the Union industry situation would clearly deteriorate further. The imposition of measures will restore the import price to non-injurious levels, allowing the Union industry to compete under fair trade circumstances.
- (96) It is therefore provisionally concluded that imposing measures would clearly be in the interest of the Union industry.

### 7.3. Interest of importers

- (97) The likely impact of measures on importers has been considered in accordance with Article 21 (2) of the basic Regulation. In this respect it is noted that the unrelated importers that made themselves known were also users. Thus the analysis referring to them is presented under the relevant section on interest of users.

### 7.4. Interest of users and consumers

- (98) No representations were received from consumers' organisations following the publication of the notice of initiation of this proceeding. Therefore, the analysis has been limited to the effect of measures on users.
- (99) Questionnaires were sent to 8 known users. However, meaningful comments were received from only two of them. Therefore, the Union interest analysis is based on the responses of two rather large users, which together represent almost 40 % of Union consumption.
- (100) The two co-operating Union users represent major players in the Union laundry detergent and water softener industry. They both objected to the imposition of measures.
- (101) The investigation established that with respect to the co-operating Union users' consumption less than 1/3 of it is imported from the Bosnian exporting producer. The remaining part is covered by procurements from the Union producers which remain the prime supply source of the co-operating users. Account taken of the low capacity utilisation rate of the Union producers, as explained above at recitals (47) and (48), it is clear that any imposition of measures is not expected to lead to any shortages in supply or consequent increase of prices.

- (102) Further to the above it appears that the Union user industry has already started exploring the possibility of imports from China. The fact that such option exists and is considered reliable demonstrates that any imposition of measures will not in any way lead to a shortage of the product concerned.
- (103) The percentage in turnover of the final products incorporating the product concerned was also looked at. To this respect it is noted that in both cases the relevant products represent less than 10 % of their turnovers.
- (104) The percentages of the product concerned being incorporated into the final products was also investigated. The investigation established that in general these percentages are extremely small (on average less than 5 % on the total cost), and therefore the product concerned does not represent a very significant cost element in the finished products.
- (105) The Commission examined also if the imposition of measures would have any significant negative financial impact on the situation of these two users. The Commission established two scenarios, i.e. worst case scenario and a more realistic scenario.
- (106) The worst case scenario assumes that both the import and Union prices increased by the level of the duty. This would increase on average the costs of the users by less than 2 %.
- (107) The above situation has to be compared with the profitability rates of the co-operating Union users. The users' profitability on products incorporating the product concerned is around 11 % and for all their products was over 20 %. Account taken of such profitability rates even a full pass of measures to both import and Union prices would not have a disproportionate effect on these parties' financial situation.
- (108) In fact a much more realistic scenario is that the imposition of measures would lead to a situation where only import prices from BiH increase while the Union industry benefits from increased economies of scale. Indeed, as explained above, the supply situation of the product concerned within the EU is fully sufficient, since most Union producers operate at far from full capacity.
- (109) It should also be noted that the investigation established that there are products that could be substituted for the product concerned. Indeed, it is clear that both the co-operating and non co-operating users also produce laundry detergents without the product concerned. In this more realistic scenario, the costs of the cooperating users will only increase by a fraction of one percent. In other words, in light of the profitability figures the imposition of measures will only have negligible consequences for users.
- (110) Account taken of the above it is clear that the imposition of measures would not lead to any significant impact to users and thus it is highly unlikely that there would even be any increase in price to the consumers.

#### **7.5. Conclusion on Union interest**

- (111) Overall, it is expected that the Union industry would clearly be in a position to benefit from measures. Indeed, they could in the first place benefit from increased economies of scale because of a higher capacity utilization due to an increase in production and sales.
- (112) Account taken of the above it is provisionally concluded that the imposition of measures on dumped imports of the product concerned from Bosnia and Herzegovina will not affect the Union users significantly and that overall it is in the Union interest.

### **8. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES**

- (113) In view of the conclusions reached above with regard to dumping, resulting injury and Union interest, provisional measures on imports of the product concerned from Bosnia and Herzegovina should be imposed in order to prevent further injury being caused to the Union industry by dumped imports.

### 8.1. Injury elimination level

- (114) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury to the Union industry caused by the dumped imports, without exceeding the dumping margins found.
- (115) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Union industry to cover its costs and obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports. The pre-tax profit margin used for this calculation was 5,9 % of turnover. This was the profit level achieved by the Union industry in the IP for all its products including the product concerned. Bearing in mind that the profitability for the product concerned was affected by dumped imports it is clear that this level of profit is prudent and not excessive. It was also considered whether the profit rates achieved by the Union industry in 2005-2007 should be used but the profit rates were low in terms of profitability achieved by the companies for similar products and were not considered to be representative for a viable industry. This is because the Bosnian imports undercut those of the Union industry by between 10-20 % during these 3 years and such differences would have played a significant role in annual contract negotiations. Thus these profit margins could not be considered representative of a normal situation in the EU market. On the basis mentioned above, a non-injurious price was calculated for the Union industry of the like product. The non-injurious price has been obtained by adding the above mentioned profit margin to the cost of production.
- (116) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price of products sold by the Union industry on the EU market. The difference resulting from this comparison was then expressed as a percentage of the average import CIF value. The underselling margin thereby calculated was 31,5 %.

### 8.2. Provisional measures

- (117) In the light of the foregoing, and in accordance with Article 7(2) of the basic Regulation, it is considered that provisional anti-dumping measures should be imposed on imports originating in the Bosnia and Herzegovina at the level of the dumping margin found.
- (118) On the basis of the above, the rate of the provisional anti-dumping duty for Bosnia and Herzegovina is 28,1 %.

## 9. DISCLOSURE

- (119) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

### Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of zeolite A powder, also referred to as Zeolite NaA or Zeolite 4A powder, currently falling within CN code ex 2842 10 00 (TARIC code 2842 10 00 30) and originating in Bosnia and Herzegovina.
2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 shall be 28,1 %.
3. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

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

*Article 2*

1. Without prejudice to Article 20 of Council Regulation (EC) No 1225/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Council Regulation (EC) No 1225/2009, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

*Article 3*

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 15 November 2010.

*For the Commission*  
*The President*  
José Manuel BARROSO