COMMISSION REGULATION (EU) No 490/2013

of 27 May 2013

imposing a provisional anti-dumping duty on imports of biodiesel originating in Argentina and Indonesia

THE EUROPEAN COMMISSION,

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

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

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 29 August 2012, the European Commission ('the Commission') announced, by a notice published in the *Official Journal of the European Union* [2] ('notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Union of biodiesel originating in Argentina and Indonesia ('the countries concerned').

(2) The investigation was initiated following a complaint lodged on 17 July 2012 by the European Biodiesel Board ('the complainant') on behalf of producers representing more than 60% of the total Union production of biodiesel. 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 the investigation.

(3) On 30 January 2013, the Commission made imports of the same product originating in the countries concerned subject to registration under Commission Regulation (EU) No 79/2013 of 28 January 2013 [3].

(4) On 10 November 2012, the Commission announced, by notice published in the *Official Journal of the European Union* [4], the initiation of an anti-subsidy proceeding with regard to imports into the Union of biodiesel originating in Argentina and Indonesia and commenced a separate investigation.

2. Investigation period

(5) The investigation of dumping and injury covered the period from 1 July 2011 to 30 June 2012 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2009 to the end of the IP ('the period considered').

3. Parties concerned by the investigation

(6) The Commission officially advised the complainant, other known Union producers, the known exporting producers in Argentina and Indonesia, known importers, suppliers, distributors, users and associations known to be concerned, and the authorities of Argentina and Indonesia of the initiation of the investigation. The notice of initiation invited all parties concerned by the investigation to contact the Commission and make themselves known.

(7) 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.

(8) The complainant, exporting producers in Argentina and Indonesia, importers and the authorities of Argentina and Indonesia 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.

3.1. *Sampling*

(9) In view of the large number of exporting producers in Argentina and Indonesia, unrelated importers in the Union and Union producers involved in the investigation and in order to complete the investigation within the statutory time limits, the Commission announced in the notice of initiation that it might limit to a reasonable number the exporting producers in Argentina and Indonesia, the unrelated importers and Union producers that would be investigated by selecting a sample in accordance with Article 17 of the basic Regulation (this process is also referred to as 'sampling').

3.2. *Sampling of exporting producers in Argentina*

(10) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in Argentina were requested to make themselves known to the Commission and provide information specified in the notice of initiation.

(11) Ten exporting producers or groups of exporting producers provided the requested information and agreed to be included in the sample. However, two companies reported no exports to the Union (or no production at all) during the IP.

(12) The remaining eight (groups of) exporting producers accounted for the entire volume exported to the Union during the IP.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ C 260, 29.8.2012, p. 8.
[3] OJ L 27, 29.1.2013, p. 10.
[4] OJ C 342, 10.11.2012, p. 12.

(13) In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three exporting producers or groups of exporting producers based on the largest representative volume of exports of the product concerned to the Union, which could reasonably be investigated within the time available. The selected sample accounted for 86% of the total volume of exports to the Union of the product concerned in the IP as reported by the eight exporting producers referred to above in recital (12).

(14) In accordance with Article 17(2) of the basic Regulation, all known exporting producers, as well as the Argentine producers' association and the Argentine authorities, were consulted on the selection of the sample and raised no objections.

3.3. *Individual examination*

(15) No Argentine company that was not included in the sample requested individual examination pursuant to Article 17(3) of the basic Regulation.

3.4. *Sampling of exporting producers in Indonesia*

(16) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in Indonesia were requested to make themselves known to the Commission and provide information specified in the notice of initiation.

(17) Eight exporting producers or groups of exporting producers provided the requested information and agreed to be included in the sample. However, three companies reported no exports to the Union during the IP.

(18) The remaining five (groups of) exporting producers accounted for the entire volume exported to the Union during the IP.

(19) In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of four exporting producers or groups of exporting producers based on the largest representative volume of exports of the product concerned to the Union, which could reasonably be investigated within the time available. The selected sample accounted for 99% of the total volume of exports to the Union of the product concerned in the IP as reported by the five exporting producers referred to above in recital (18).

(20) In accordance with Article 17(2) of the basic Regulation, all known exporting producers, as well as the Indonesian authorities, were consulted and raised no objections.

3.5. *Individual examination*

(21) No Indonesian company that was not included in the sample requested individual examination pursuant to Article 17(3) of the basic Regulation.

3.6. *Sampling of unrelated importers*

(22) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all unrelated importers were requested to make themselves known to the Commission and to provide information specified in the notice of initiation. However no importers cooperated in this investigation.

3.7. *Sampling of Union producers*

(23) The Commission announced in the notice of initiation that it had provisionally selected a sample of Union producers. This sample consisted of eight Union producers that were known to the Commission prior to the initiation of the investigation to produce biodiesel. The Commission selected the sample on the basis of production volume, sales volume and geographical location. The sampled Union producers accounted for 27% of Union production.

(24) Interested parties were also invited in the notice of initiation to make their views known on the provisional sample. Following publication of the proposed sample two of the companies that were to be sampled withdrew their cooperation and they were replaced by two other companies. The Union industry also commented that due to the large number of SME producers of biodiesel at least one should be included in the sample. This request was accepted.

(25) The sample is considered to be representative of the Union industry.

3.8. *Questionnaire replies*

(26) Questionnaires were sent to the three sampled exporting producers or groups of producers in Argentina, to the four sampled exporting producers or groups of producers in Indonesia, and to the eight sampled Union producers.

(27) Questionnaire replies were received from the seven sampled exporting producers or producer groups in Argentina and Indonesia, eight sampled Union producers and three users.

3.9. *Verification visits*

(28) 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:

(a) **Producers located in the Union**

— Bio-Oils Huelva S.L., Huelva, Spain

— Biocom Energia S.L., Valencia, Spain

— Diester Industrie S.A.S., Paris, France

— Elin Biofuels S.A., Kifissia, Greece

— Novaol S.R.L., Milan, Italy

— Perstorp BioProducts A.B., Stenungsund, Sweden

— Preol A.S., Lovosice, Czech Republic

— VERBIO Vereinigte BioEnergie A.G., Leipzig, Germany

(b) **Exporting producers in Argentina**

— Louis Dreyfus Commodities S.A., Buenos Aires ('LDC');

— group of related companies "Renova":

— Molinos Río de la Plata S.A., Buenos Aires ('Molinos');

— Oleaginosa Moreno Hermanos S.A.F.I.C.I., Bahia Blanca ('Oleaginosa');

— Renova S.A., Bahia Blanca ('Renova');

— Vicentin S.A.I.C., Avellaneda ('Vicentin');

— group of related companies "T6":

— Aceitera General Deheza S.A., General Deheza, Rosario ('AGD');

— Bunge Argentina S.A., Buenos Aires ('Bunge');

— T6 Industrial S.A., Puerto General San Martín, Santa Fe ('T6').

(c) **Traders outside the EU related to exporting producers in Argentina**

— Molinos Overseas, Montevideo, Uruguay ('Molinos Overseas');

— Louis Dreyfus Commodities Suisse, Geneva, Switzerland ('LDC Suisse');

(d) **Exporting producers in Indonesia**

— PT. Ciliandra Perkasa, Jakarta, Indonesia ('CPL')

— PT. Musim Mas, Medan, Indonesia ('PTMM')

— PT. Pelita Agung Agrindustri, Medan, Indonesia ('PAA')

— group of releated companies ('Wilmar'), PT. Wilmar Bioenergi Indonesia, PT. Wilmar Nabati Indonesia;

— PT. Wilmar Bioenergi Indonesia, Medan, Indonesia ('WBI')

— PT. Wilmar Nabati Indonesia, Medan, Indonesia ('WINA')

(e) **Traders outside the EU related to exporting producers in Indonesia**

— First Resources Limited, Suntex Tower Three, Singapore ('FRL')

— IM Biofuel Pte Ltd, Gateway West, Singapore ('IMBS')

— Inter-continental Oils and Fats Pte Ltd, Gateway West, Singapore ('ICOF')

— Virgen Oils & Fats Pte Ltd, Marina Bay Financial Centre, Singapore ('VOF')

— Wilmar Trading Pte Ltd, Neil road, Singapore

(f) **Importers in the Union related to Argentinian and Indonesian exporters**

— Campa Iberia S.A.U., Tarragona, Spain ('CAMPA')

— IM Biofuel Italy S.R.L., Milan, Italy ('IMBI')

— Louis Dreyfus Commodities España S.A., Madrid, Spain ('LDC Spain');

— Losur Overseas S.A., Madrid, Spain ('Losur');

— Wilmar Europe Trading B.V., Barendrecht, The Netherlands ('WET BV') [1]

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

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

(30) The investigation showed that biodiesel produced in Argentina is exclusively "soybean methyl ester" (SME) derived from soybean oil, and that biodiesel produced in Indonesia is exclusively "palm methyl ester" (PME) derived from palm oil, whereas biodiesel produced in the Union is mainly "rapeseed methyl ester" (RME) but also from other feedstocks, including waste oils as well as virgin oils.

(31) SME, PME and RME all belong to the category of fatty acid methyl esters (FAME). The term "ester" refers to the transesterification of vegetable oils, namely, the mingling of the oil with alcohol, which generates biodiesel and, as a by-product, glycerine. The term "methyl" refers to methanol, the most commonly used alcohol in the process.

[1] At the premises of WET BV, the accounts of other companies from the Wilmar group located in Europe were also verified: Wilmar Italia SrL, Milan Italy; Oxem Oleo, Mezzana Bigli, Italy

(32) SME and PME biodiesel could be used in their pure forms but they are generally blended, either among themselves or with RME, before being used in the European Union. The reason for blending SME with PME is that SME in its pure form does not meet the European standard EN 14214 as regards iodine and cetane numbers. The reason for blending PME (and SME) with RME is that PME and SME have a higher Cold Filter Plugging Point (CFPP) than RME and are not therefore suitable for use in their pure form during winter months in cold regions of the European Union.

(33) The blends of biodiesels and mineral diesel are ultimately used in the transport sector as a fuel in diesel-power engines of road vehicles such as cars, trucks, buses and also in trains. Biodiesels in their pure forms or blended with mineral diesels can also be used as a heating fuel in domestic, commercial or industrial boilers and as a fuel for generators to produce electricity.

2. **Like product**

(34) The investigation has shown that the product concerned, the product produced and sold on the domestic market of Argentina and Indonesia, and the product produced and sold in the Union by the Union industry have similar basic physical, chemical, technical characteristics and uses. They are therefore provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. **Product exclusion request**

(35) One Indonesian producer requested that fractionated methyl esters be excluded from the product scope of the proceeding. Fractional distillation of fatty acid methyl esters separates them into components with different chemical characteristics for different end uses. They stated that fractionated methyl esters, which the company produced and exported to the EU, were not biodiesel and not used for fuel, but other industrial applications. They also stated that the raw material used for these fractionated methyl esters was coconut oil or palm kernel oil, rather than the crude palm oil usually used to make biodiesel in Indonesia.

(36) Fractionated methyl esters fall within the product description of the product concerned, as they remain fatty acid methyl esters and are manufactured from raw materials that are used to manufacture biodiesel. Although it does not in itself meet the European norm (EN 14214) it can be mixed with other biodiesels to create a blend that meets the norm. This is exactly the same as palm methyl ester biodiesel, which itself does not meet the European norm without blending. This argument is therefore rejected.

(37) However one European importer of palm kernel oil based fatty acid methyl ester from Indonesia requested End User Relief for their imports which were not destined for fuel use, but for processing into unsaturated fatty alcohol.

(38) End User Relief is a scheme administered by national Customs administrations whereby duties paid on importation are subject to a relief based on the final certified use of the raw materials imported. The scheme is set out in the Implementing Provisions of the Community Customs Code ([1]).

(39) This request will be addressed at the definitive stage of the investigation after the Commission has received comments from interested parties on whether this specific request should be granted for imports of palm kernel oil fatty acid methyl ester for non-fuel use. These comments should address whether this Relief could be used to circumvent any definitive duties if they are imposed and the effect on imports of biodiesel for non-fuel use from countries already subject to measures.

C. **DUMPING**

1. **Argentina**

1.1. *Normal value*

(40) The Commission first examined for each sampled exporting producer whether the total domestic sales volume of the like product to independent customers in Argentina was representative, i.e. whether the total volume of such sales represented at least 5% of its total export sales volume of the product concerned to the Union during the IP in accordance with Article 2(2) of the basic Regulation. The Commission found that for each sampled company or group of companies the total volume of such sales represented at least 5% of the total export sales volume to the Union during the IP.

(41) The Commission subsequently identified for each sampled company or group of companies those product types sold domestically that were identical or comparable with the types sold for export to the Union.

(42) For each product type sold by each sampled company or group of companies on their domestic market and found to be identical or comparable with the product type sold for export to the Union, it was examined whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold on the domestic market to independent customers during the IP represented at least 5% of the total volume of the comparable product type sold for export to the Union.

([1]) Commission Regulation (EEC) No 2454/93 as amended, in particular by Commission Regulation (EC) No. 1602/2000, Articles 291 to 300

(43) Subsequently, the Commission assessed for each sampled company or group of companies whether the domestic sales of the like product were made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each product type the proportion of profitable sales to independent customers on the domestic market during the IP.

(44) The investigation has shown that the Argentinian market is heavily regulated by the State. Blending fossil diesel and biodiesel is mandatory in Argentina (at 7% of biodiesel during the IP). The total amount of biodiesel needed to meet this blending requirement is apportioned, via the attribution of quotas, among a selected number of Argentine biodiesel producers. Oil companies are obliged to purchase biodiesel from those Argentine biodiesel producing companies to meet the mandatory blending. The price is fixed by the State and published by the Argentine Ministry of Energy. During the IP, this State-fixed reference price was calculated according to a complex formula which took into account the cost of production (raw materials, transport and other costs) and ensured the achievement of a certain amount of profit. The parameters used in the determination of the reference price were established on the basis of estimated costs of the most inefficient producer located in the most remote area of the country and resulted in significant profitability for the Argentinian producers.

(45) Under these conditions, domestic sales were not considered as being made in the ordinary course of trade and the normal value of the like product had to be provisionally constructed pursuant to Article 2(3) and (6) of the basic Regulation by adding to the company's own production costs during the investigation period, the selling, general and administrative expenses incurred ('SG&A') and a reasonable profit margin. The complainants have claimed that the Differential Export Tax system in Argentina depresses the price of soya beans and soya bean oil and therefore distorts the costs of biodiesel producers. The Commission does not have enough information at this stage to make a decision as to the most appropriate way to address this claim. The question as to whether the costs reasonably reflect the costs associated with the production of the product concerned will therefore be further examined at the definitive stage as well as in the ongoing anti-subsidy investigation.

(46) Considering the prevailing market condition, as described in recital (44) above, the Commission considered that the amount for profit could not be based on actual data of the sampled companies. Therefore, the amount for profit used when constructing the normal value was determined pursuant to Article 2(6)(c) of the basic Regulation on the basis of the reasonable amount of profit that a young and innovative capital intensive industry of this type under normal conditions of competition in a free and open market could achieve, that is 15% based on turnover.

1.2. *Export price*

(47) The sampled exporting producers exported to the Union either directly to independent customers or through related companies.

(48) Where the product concerned was directly exported to independent customers in the Union, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable for the product concerned.

(49) Where export sales to the Union were made through related trading companies located inside the Union, the export price was established in accordance with Article 2(9) of the basic Regulation on the basis of the price at which the imported product was first resold to independent customers in the Union. In such cases adjustments were made for all costs incurred between importation and resale, and for profits accruing. For the purpose of this calculation, a level of profit of 5% based on turnover was considered reasonable.

1.3. *Comparison*

(50) The normal value and export price of the sampled exporting producers were compared on an ex-works basis.

(51) 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.

(52) On this basis, adjustments were made for transport, ocean freight and insurance costs, handling, loading and ancillary costs, export duties and commissions in all cases where demonstrated to affect price comparability.

(53) Where export sales to the Union were made through related trading companies located outside the Union, the Commission examined whether or not such related traders should be treated as the export sales department of the exporting producer or as an agent working on a commission basis.

(54) One trading company was closely related and fully controlled by the exporting producer, did not have any negotiating power or influence on the prices or delivery terms, and was trading exclusively products manufactured by the exporting producer in Argentina. Therefore, it was considered as an export sales department of the exporting producer and no adjustment for commission was made.One trading company located outside the EU was found to have looser links with the exporting producer in Argentina, was not under its control and trading a number of other products manufactured by other producers. In this case, it was considered that the trading company was carrying out functions similar to those of a trader acting on a commission basis. As a consequence, export sales

prices were adjusted in accordance with Article 2(10)(i) of the basic Regulation to take account of the notional mark-up received by the trader.

(55) The actual difference between the sales prices charged by the exporting producer in Argentina to the related trader and the sales prices charged by the related traders to the first independent customer in the EU was not used to calculate the adjustment. The adjustment was calculated on the basis of the SG&A of the related trader and a reasonable amount of profit. The actual profit of the company was not considered to be reliable due to the nature of the relationship.

1.4. *Dumping margin*

(56) For the sampled exporting producers, the weighted average normal value of each type of the like product was compared with the weighted average export price, as provided for in Article 2(11) and (12) of the basic Regulation.

(57) The weighted average dumping margin for the cooperating exporting producers not included in the sample was calculated in accordance with the provisions of Article 9(6) of the basic Regulation. This margin was established on the basis of the margins established for the three sampled exporting producers.

(58) With regards to all other exporting producer in Argentina, the dumping margin was established on the basis of the facts available in accordance with Article 18 of the basic Regulation. To this end the level of cooperation was first established by comparing the volume of exports to the Union reported by the cooperating exporting producers with the equivalent Eurostat import statistics. Since the level of cooperation was very high at 100% of the total exports to the Union during the IP, the residual dumping margin applicable to all other exporting producers in Argentina was set at a level corresponding to the one found for the cooperating exporting producer in the sample with the highest dumping margin.

(59) The provisional dumping margins thus established, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Dumping margin

Company	Provisional dumping margin
Louis Dreyfus Commodities S.A.	7,2%
Group "Renova" (Molinos Río de la Plata S.A., Oleaginosa Moreno Hermanos S.A.F.I.C.I. y A. and Vicentin S.A.I.C.)	6,8%
Group "T6" (Aceitera General Deheza S.A., Bunge Argentina S.A.)	10,6%
Other cooperating companies	7,9%
All other companies	10,6%

2. **Indonesia**

2.1. *Normal value*

(60) The Commission first examined for each sampled exporting producer whether the total domestic sales volume of the like product to independent customers in Indonesia was representative, i.e. whether the total volume of such sales represented at least 5% of its total export sales volume of the product concerned to the Union during the IP in accordance with Article 2(2) of the basic Regulation. The Commission found that, except for two exporting producers, the domestic sales were not representative.

(61) For the exporting producers with global representativity, the Commission subsequently identified the product types sold domestically that were identical or comparable with the types sold for export to the Union.

(62) For these identical or comparable product types, it was examined whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold by the exporting producers on the domestic market to independent customers during the IP represented at least 5% of its total sales volume of the comparable product type exported to the Union. For the exporting producers with global representativity, no representative sales or no sales at all were found on the domestic market of the product type that was exported.

(63) Therefore, for all exporting producers, normal value of the like product was provisionally constructed pursuant to Article 2(3) and (6) of the basic Regulation by adding to the company's own production costs during the investigation period, the selling, general and administrative expenses ('SG&A') incurred and a reasonable profit margin. The complainants have claimed that the Differential Export Tax system in Indonesia depresses the price of palm oil and therefore distorts the costs of biodiesel producers. The Commission does not have enough information at this stage to make a decision as to the most appropriate way to address this claim. The question as to whether the costs reasonably reflect the costs

associated with the production of the product concerned will therefore be further examined at the definitive stage as well as in the ongoing anti-subsidy investigation.

(64) The investigation has shown that the Indonesian domestic market of biodiesel is heavily regulated by the State. The fully State-owned oil and gas company Pertamina is by far the biggest company active on the domestic market (more than 90% of the domestic biodiesel purchases from the sampled producers). Pertamina is mandated by the State to blend the biofuels with fossil fuels for sale at its gas stations. Every month, the Indonesian Ministry of Trade administratively sets the so called "HPE price (or Export Check Price)" which is a benchmark price used to calculate the monthly level of export duties. Pertamina purchases biodiesel at the level of the HPE price set by the Indonesian government.

(65) Under these conditions the amount of profit could not be based on actual data from the sampled companies given that the domestic sales are not considered as being made in the ordinary course of trade. Therefore, the amount for profit used when constructing the normal value was determined pursuant to Article 2(6)(c) of the basic Regulation on the basis of the reasonable amount of profit that a young and innovative capital intensive industry of this type under normal conditions of competition in a free and open market could achieve, that is 15% based on turnover.

2.2. *Export price*

(66) The sampled exporting producers exported to the Union either directly to independent customers or through related companies.

(67) Where the product concerned was directly exported to independent customers in the Union, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable for the product concerned.

(68) Where export sales to the Union were made through related trading companies located inside the Union, export price was established in accordance with Article 2(9) of the basic Regulation on the basis of the price at which the imported product was first resold to independent customers in the Union. In such cases adjustments were made for all costs incurred between importation and resale, and a level of profit of 5% based on turnover was considered reasonable.

(69) Premiums charged to clients in one Member State who were - subsequent to a biodiesel purchase – seeking to benefit from the 'double counting' biodiesel regulatory framework in place [1], were not considered part of the export price. Such premiums are not linked to the product concerned as such, but rather to the provision of documents by the related importer in order to obtain a government certificate which enables the related importer's client to fulfil the necessary conditions to blend only half the biodiesel quantity (given that this biodiesel can be counted 'double').

2.3. *Comparison*

(70) The normal value and export price of the sampled exporting producers were compared on an ex-works basis.

(71) 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.

(72) On this basis, adjustments were made for transport, ocean freight and insurance costs, handling, loading and ancillary costs, credit costs, export duties, survey fees, bank charges and commissions in all cases where demonstrated to affect price comparability.

(73) Where export sales to the Union were made through related trading companies located outside the Union, the Commission examined whether or not such related traders should be treated as the export sales department of the exporting producer or as an agent working on a commission basis.

(74) One company or group of companies was found to have established a contract with a related trading company to trade, among other things, biodiesel in exchange for a commission. In this case, it was considered that the related trader should be treated as an agent working on a commission basis and therefore export sales prices were adjusted in accordance with Article 2(10)(i) of the basic Regulation to take account of the mark-up received by the trader.

(75) For one exporting producer, the product concerned (PME) was blended with RME before being sold to the first independent customer. Therefore, in accordance with Article 2(10)(a), an adjustment was made for differences in the physical characteristics of the product concerned.

[1] This Member State recognises biodiesel made from Palm Fatty Acid Distillate ("PFAD") as "double counting" which means the contribution made by biofuels produced from PFAD shall be considered to be twice that made by other biofuels. You would therefore only have to blend the mineral diesel with half of such double counting biodiesel. Double counting biodiesel is more expensive than the normal/single counting biodiesel, hence a premium is charged to the client. However, it is a national practice that for the double counting biodiesel, the client will only pay this premium upon approval by the government (via a certificate) that the double counting biodiesel fulfils all the criteria to be qualified as double counting biodiesel. Once the government has issued this certificate, the related importer can send a separate invoice to the client for the outstanding premium that has to be paid.

2.4. *Dumping margin*

(76) For the sampled exporting producers, the weighted average normal value of each type of the like product was compared with the weighted average export price, as provided for in Article 2(11) and 2(12) of the basic Regulation.

(77) The weighted average dumping margin for the cooperating exporting producers not included in the sample was calculated in accordance with the provisions of Article 9(6) of the basic Regulation. This margin was established on the basis of the margins established for the sampled exporting producers, disregarding the margin of the exporting producer with a zero dumping margin.

(78) With regards to all other exporting producer in Indonesia, the dumping margin was established on the basis of the facts available in accordance with Article 18 of the basic Regulation. To this end the level of cooperation was first established by comparing the volume of exports to the Union reported by the cooperating exporting producers with the equivalent Eurostat import statistics. Since the level of cooperation was very high at 99% of the total exports to the Union during the IP, the residual dumping margin applicable to all other exporting producers in Indonesia was set at a level corresponding to the one found for the cooperating exporting producer in the sample with the highest dumping margin.

(79) The provisional dumping margins thus established, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Dumping margin

Company	Provisional dumping margin
PT. Ciliandra Perkasa	0,0%
PT. Musim Mas	2,8%
PT. Pelita Agung Agrindustri	5,3%
PT. Wilmar Bioenergi Indonesia	9,6%
PT. Wilmar Nabati Indonesia	9,6%
Other cooperating companies	6,5%
All other companies	9,6%

D. **INJURY**

1. **Definition of the Union industry and Union production**

(80) The like product is manufactured by 254 producers in the Union. They constitute the Union industry within the meaning of Article 4(1) of the basic Regulation and will hereafter be referred to as 'the Union industry'.

(81) Allegations were received that a significant number of large Union producers were related to exporters in Argentina and/or were importing biodiesel from Argentina and therefore should be excluded from the definition of the Union industry.

(82) After investigation, three companies were excluded from the definition of the Union industry due to their reliance on imports from the countries concerned, where imports had reached 63%, 85% and 71% respectively of their own production during the IP. Two further companies were excluded as they had not produced biodiesel during the investigation period. No data from these companies has been used in the sections below. It was provisonally concluded that there were no grounds to exclude any other Union producers from the definition of the Union industry.

(83) All available information concerning the Union industry, including information provided in the complaint and data collected from Union producers before and after the initiation of the investigation, was used in order to establish the total Union production for the IP. Based on this information it was found that the total Union production was around 9 052 871 tonnes during the IP. As indicated above, eight Union producers were selected in the sample representing 27% of the total Union production of the like product.

2. **Union consumption**

Table 1

Union consumption	2009	2010	2011	IP
Tonnes	11 165 831	11 538 511	11 159 706	11 728 400
Index 2009 = 100	*100*	*103*	*100*	*105*

Source: Eurostat, data from the Union industry

(84) Union consumption was established on the basis of the volume of the total Union production on the Union market of all Union producers, minus their exports, plus imports from Argentina and Indonesia and imports from other third countries.

(85) The volume of imports from Argentina and Indonesia was taken from Eurostat data for the different CN codes under which the product has been classified.

(86) Based on the above, Union consumption of biodiesel increased by 5% between 2009 and the end of the IP.

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

(87) As set out in Article 3(4) of the basic Regulation, an assessment of the effect of the imports from two countries can only be cumulatively assessed if two conditions are met.

(88) The first is that the dumping margin in relation to imports from both countries is more than de minimis, and that the volume of imports is not negligible. The margin of dumping established in relation to the imports from Argentina and Indonesia was above the de minimis threshold as defined in Article 9(3) of the basic Regulation and the volume of imports from each of the countries concerned was not negligible in the sense of Article 5(7) of the basic Regulation, with market shares of 10,8% and 8,5% respectively in the IP.

(89) The second is that the imported products are in competition with each other, and in competition with the like Union product. Imports of biodiesel from Argentina and Indonesia are blended with mineral diesel by the same trading companies and sold to customers across the Union in direct competition with biodiesel produced by the Union industry.

(90) In view of the above, it is provisionally considered that all the criteria set out in Article 3(4) of the basic Regulation are met and that imports from Argentina and Indonesia should be examined cumulatively for the purpose of the injury analysis.

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

Table 2

	2009	2010	2011	IP
Imports from Argentina				
Tonnes	853 589	1 179 285	1 422 142	1 263 230
Index 2009 = 100	*100*	*138*	*167*	*148*
Market share	7,6%	10,2%	12,7%	10,8%
Index 2009 = 100	*100*	*135*	*167*	*141*
Imports from Indonesia				
Tonnes	157 915	495 169	1 087 518	995 663
Index 2009 = 100	*100*	*314*	*689*	*631*
Market share	1,4%	4,3%	9,7%	8,5%
Index 2009 = 100	*100*	*303*	*689*	*600*
Total market share	9,1%	14,5%	22,5%	19,3%
Index 2009 = 100	*100*	*160*	*248*	*213*

Source: Eurostat

(91) Import volumes from Argentina and Indonesia increased significantly from 2009 to the IP, imports from Indonesia increasing at a faster rate than imports from Argentina. Market share increased from 9,1% to 19,3% during the same period.

5. **Prices of imports from the countries concerned and price undercutting**

5.1. *Price evolution*

Table 3

Import price EUR/tonne	2009	2010	2011	IP
Argentina	629	730	964	967
Index 2009 = 100	*100*	*116*	*153*	*154*
Indonesia	597	725	864	863
Index 2009 = 100	*100*	*121*	*145*	*145*
Total	624	728	920	921
Index 2009 = 100	*100*	*117*	*147*	*148*

Source: Eurostat

(92) Although import prices rose during the period considered, in particular between 2010 and 2011, prices of biodiesel from both Argentina and Indonesia remained below the prices of the Union industry throughout the period considered.

5.2. *Price undercutting*

(93) In order to determine price undercutting during the IP, the weighted average sales prices of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports from the sampled Argentinian and Indonesian producers to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for customs duties and post-importation costs.

(94) A comparison between the SME from Argentina and the PME from Indonesia with the product manufactured and sold on the Union market was made based on the Cold Filter Plugging Point (CFPP), which is the temperature at which the biodiesel turns back into fat and cannot be used as fuel.

(95) All sales from Argentina to the EU were at a CFPP of 0 degrees centigrade. These sales were therefore compared to the sales of Union producers of biodiesel at a CFPP of 0.

(96) All sales from Indonesia to the EU were at a CFPP of 13 degrees centigrade. Given the very small volume of sales of Union producers at this CFPP - since PME from Indonesia is almost always blended with other biodiesel from other sources before being sold to the first independent customer – a direct comparison was not considered reasonable. The export price of the PME from Indonesia at CFPP 13 was therefore adjusted upwards to a price at CFPP 0 by taking the difference in price on the Union market between the sales of PME at CFPP 13 manufactured by the Union industry and the average price of biodiesel at CFPP 0.

(97) Based on the above methodology, the difference between prices from Argentina and Indonesia and Union prices, expressed as a percentage of the Union industry's weighted average ex-works price, i.e. the price undercutting margin, ranged from 2,5% to 9,1%.

6. **Economic situation of the Union industry**

(98) In accordance with Article 3(5) of the basic Regulation, the examination of the effects of the dumped imports on the Union industry included an evaluation of all economic indicators established for the Union industry over the period analysed.

(99) As mentioned above, data verified from a sample of Union producers was used to examine the possible injury suffered by the Union industry.

(100) To analyse injury, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission analysed the macroeconomic indicators for the period considered on the basis of data provided by the Union industry relating to all Union producers. The Commission analysed the microeconomic indicators on the basis of the verified data collected from the sampled Union producers.

(101) The following macroeconomic indicators were assessed on the basis of information relating to all producers of biodiesel in the Union: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin and recovery from past dumping.

(102) The following microeconomic indicators were assessed on the basis of information relating to the sampled producers of biodiesel in the Union: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital.

7. **Macroeconomic indicators**

7.1. *Production capacity, production and capacity utilisation*

Table 4

	2009	2010	2011	IP
Production capacity (tonnes)	20 359 000	21 304 000	21 517 000	22 227 500
Index 2009 = 100	*100*	*105*	*106*	*109*
Production volume (tonnes)	8 745 693	9 367 183	8 536 884	9 052 871
Index 2009 = 100	*100*	*107*	*98*	*104*
Capacity utilisation	43 %	44 %	40 %	41 %
Index 2009 = 100	*100*	*102*	*92*	*95*

Source: Data supplied by the Union industry

(103) Production of the Union industry increased over the period considered in line with consumption. Capacity remained relatively stable in particular between 2010 and the IP; therefore capacity utilisation remained low throughout the period. The Union industry was unable to use the capacity previously installed, or exploit to any extent the increase in capacity during the period, made in anticipation of an effect from the imposition of measures against the USA, or the expected quota systems and increased mandates from some Member States.

7.2. *Sales volume and market share*

Table 5

	2009	2010	2011	IP
Sales volumes (tonnes)	9 454 786	9 607 731	8 488 073	9 294 137
Index 2009 = 100	*100*	*102*	*90*	*98*
Market share	84,7 %	83,3 %	76,1 %	79,2 %
Index 2009 = 100	*100*	*98*	*90*	*94*

Source: Data supplied by the Union industry

(104) Sales volumes to unrelated companies in the Union remained rather stable during the period. Given that consumption rose slightly during the period, a stable sales volume leads to a decreased market share (down 5.5 percentage points), which was taken by imports from the countries concerned.

7.3. *Growth*

(105) The growth of the Union industry is reflected in its volume indicators such as production, sales but in particular, in its market share. Despite an increase in consumption during the period analysed the market share of the Union producers did not grow in line with consumption. The market share of the Union industry declined over the period as the volume of imports rose. During the same period, imports from Indonesia and Argentina managed to gain over 10 percentage points of market share. The fact that the Union industry could not fully benefit from market growth had an overall negative impact on its economic situation.

7.4. *Employment and productivity*

Table 6

	2009	2010	2011	IP
Employment - Full time equivalent (FTE)	1 858	2 055	2 061	2 079
Index 2009 = 100	*100*	*111*	*111*	*112*
Productivity (tonnes/FTE)	4 707	4 558	4 142	4 354
Index 2009 = 100	*100*	*97*	*88*	*93*

Source: Data supplied by the Union industry.

(106) As the biodiesel industry is a capital intensive industry not requiring a large labour force in the production process, and given the amount of subcontracting of the actual production of biodiesel, the numbers of people employed in manufacture is not large. Given production volumes increased slightly during the period, employment also increased.

(107) As employment increased but at a higher rate than production, productivity decreased by 7 percentage points between 2009 and the end of the IP.

7.5. *Magnitude of the actual margin of dumping and recovery from past dumping*

(108) The Union industry had been suffering injury due to dumped imports from the United States of America until 2009, where the period of investigation for this proceeding starts. The duties in force against imports from the United States of America were designed to provide a level playing field where the Union industry could compete fairly with these imports and recover from the injury suffered.

(109) This has clearly not happened. The Union industry is now less profitable than in 2009 and has lost market share, even from 2009, to imports from Argentina and Indonesia that are undercutting Union prices. Capacity utilisation is down even as consumption in the Union has risen. Recovery from past dumping has clearly not taken place.

(110) The dumping margins for exporting producers in Argentina and Indonesia are specified above in the dumping section. One exporting producer in Indonesia, accounting for a low level of imports from Indonesia, was found not to be dumping. However the remaining exporting producers in Indonesia and all exporting producers in Argentina were found to be dumping biodiesel onto the Union market. Furthermore, given the volumes and the prices of the dumped imports from the two countries concerned, the impact of the actual margin of dumping cannot be considered to be negligible.

8. **Microeconomic indicators**

8.1. *Average unit prices, unit costs and wage costs*

Table 7

	2009	2010	2011	IP
Unit price EUR per tonne	797	845	1 096	1 097
Index 2009 = 100	*100*	*106*	*137*	*138*
Unit cost EUR per tonne	760	839	1 089	1 116
Index 2009 = 100	*100*	*110*	*143*	*147*
Wage costs EUR/FTE	57 391	63 490	62 141	61 004
Index 2009 = 100	*100*	*111*	*108*	*106*

Source: Questionnaire replies of the sampled Union producers.

(111) Although over the period considered the Union industry was able to increase its sales price, due to a poor rapeseed harvest in 2011 the cost of production rose to an extent that it could not be covered by an increase in sales price. It was uneconomical for the Union industry to import alternative raw materials from Argentina and Indonesia due to the tax regimes in place in those countries and therefore was forced to resort to importing the finished biodiesel in order to keep down its costs and therefore reducing overall losses.

(112) At the same time the wage costs of the sampled companies rose during the period under consideration, again causing the companies to find ways of reducing their overall cost burden.

8.2. *Stocks*

Table 8

	2009	2010	2011	IP
Stocks (tonnes)	74 473	87 283	90 249	103 058
Index 2009 = 100	*100*	*117*	*121*	*138*

Source: Questionnaire replies of the sampled Union producers.

(113) Over the period analysed stocks of biodiesel increased by around 40 %. This growth in inventories took place throughout the period analysed. However, because biodiesel cannot be stored for more than 6 months (on average the storage period is only around 3 months), data related to stocks have only limited value for assessing the economic situation of the Union industry.

8.3. *Profitability, investments, return on investments, cash flow and ability to raise capital*

Table 9

	2009	2010	2011	IP
Profitability	3,5 %	– 0,3 %	– 0,2 %	– 2,5 %
Investments in EUR 000	188 491	156 927	149 113	141 578
Index 2009 = 100	*100*	*83*	*79*	*75*
Return on investments	19 %	– 2 %	– 2 %	– 24 %
Cash flow in EUR 000	244 001	– 48 649	21 241	23 984
Index 2009 = 100	*100*	*– 20*	*9*	*10*

Source: Questionnaire replies of the sampled Union producers

(114) Profitability of the sampled Union producers was established by expressing the net pre-tax profit of the sales of the like product on the Union market as a percentage to the turnover of these sales. Over the period analysed the profitability of the sampled Union producers decreased considerably from 3,5 % to – 2,5 %.

(115) The level of investments in the production of biodiesel made by the sampled Union producers fell during the period, showing that whereas the sampled producers were still able to invest in the production of biodiesel, the amount of resources available for such investment had declined with the Union producers' market share.

(116) The sampled Union producers' return on investment, which expresses their pre-tax result as a percentage of the average opening and closing net book value of the assets employed in the production of biodiesel followed the negative trend in profitability. The deterioration of the return on investments is a clear indication of the deterioration of the economic situation of the Union industry during the period under investigation.

(117) Cash flow, which is the ability of the industry to self-finance their activities, has shown a significant decrease over the period analysed, showing the difficulty of the sampled companies to compete with the dumped imports from Argentina and Indonesia.

9. **Conclusion on injury**

(118) An analysis of the verified data clearly shows that the Union industry has suffered material injury as defined by Article 3(5) of the basic Regulation. At a time of increasing consumption they have lost market share and profitability, while imports have gained market share and undercut Union producer prices.

(119) Other indicators also show a declining or stable trend, even after the imposition of measures against the United States of America and the extension of duties to circumvented imports from Canada.

(120) The Union producers were able to pass on most of the increase in cost of production from 2010 to 2011 (+33 percentage points) but only by lowering profitability to the break-even point. However they could not pass on the further increase in cost from 2011 to the IP, due to an increase in the feedstock price, which represents close to 80 % of the full cost of production of biodiesel. These cost increases could not be fully passed on to customers on the Union market, causing the losses in the IP.

E. **CAUSATION**

1. **Introduction**

(121) In accordance with Article 3(6) and Article 3(7) of the basic Regulation, it was examined whether the dumped imports originating in the countries concerned have caused injury to the Union industry to a degree that enabled it to be classified as material.

(122) Known factors other than the dumped imports, which could at the same time have injured the Union industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

2. **Effect of the dumped imports**

(123) During the investigation period a low level (between 2% and 6%) of the imports from Indonesia to the EU were found not to be dumped. The remaining volume from Indonesia, and all imports from Argentina, were found to be dumped. Removing the small quantity of non-dumped imports from the total imports declared from Indonesia does not affect the trend of the imports detailed above.

(124) The investigation showed that low-priced dumped imports from the countries concerned significantly increased in terms of volume (more than doubled) during the period considered. This resulted in a significant increase in their market share by 10 percentage points, from 9.1% in 2009 to 18.8 % by the end of the IP.

(125) At the same time, despite the increase in consumption, the Union industry lost 5.5 percentage points of market share during the period considered.

(126) The average prices of the dumped imports increased by 48% between 2009 and the IP but were significantly lower than those of the Union industry during the same period. The dumped imports undercut Union industry prices with an average undercutting margin of 4% for Indonesia and 8% for Argentina during the IP.

(127) The pressure exercised by the increase of low-priced dumped imports on the Union market did not allow the Union industry to set its sales prices in line with market conditions and the cost increases. The sampled companies were only able to pass on to their customers a price increase limited to 38% while its full costs increased by 47% over the same period.

(128) Based on the above, it is provisionally concluded that the low-priced dumped imports from the countries concerned, which undercut the prices of the Union industry during the IP and which also significantly increased in volume, have had a determining role in the material injury suffered by the Union industry.

3. **Effect of other factors**

3.1. *Imports from other countries*

Table 10

Other third countries	2009	2010	2011	IP
Total imports (tonnes)	699 541	256 327	161 973	175 370
Index 2009 = 100	*100*	*37*	*23*	*25*
Market share	6,3 %	2,2 %	1,5 %	1,5 %
Index 2009 = 100	*100*	*35*	*23*	*24*

Source: Eurostat

(129) Imports from third countries, mainly the USA, Norway and South Korea, decreased substantially from 2009 to the end of the IP. This decline was due to the imposition of measures on imports from the United States in 2009 and following an anti-circumvention investigation against imports consigned from Canada in 2010. Given the decline in the market share of imports from other third countries at the time of the deterioration in the financial position of the Union industry, imports from other third countries cannot have made more than a negligible contribution to the injury suffered by the Union industry. Thus, it cannot be concluded that they break the causal link between the injury and the effect of dumped imports.

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

(130) Non-dumped imports from the countries concerned were found, but only in the second half of 2011. Given the short period of time in which these imports were made, and the limited quantities, they cannot have caused more than a negligible amount of injury to the Union industryand are not capable of breaking the causal link between the injury and the effect of dumped imports.

3.3. *Other Union producers*

(131) Given the small volume of production of the Union producers excluded from the definition of the Union industry, and the small volume in overall terms of their imports, these producers were not considered as a cause of injury to the Union industry.

3.4. *Imports made by the Union industry*

(132) CARBIO, the association of Argentinian biodiesel producers, alleged that the injury suffered by the Union industry was caused by imports from Argentina and Indonesia made by Union producers. They defined these imports as self-inflicted injury and claimed that they should be discounted as a cause of injury based on the behaviour of the Argentine producers.

(133) It is clear from data provided by the Union industry that they have imported quantities of biodiesel from Argentina and Indonesia during the period considered, up to 60% of all imports in the IP from these countries. However they have stated that these imports have been made in self-defence. Being able to benefit from the dumped prices of these imports, in the short term, has assisted Union producers in being able to stay in business for the medium term.

(134) The imports of biodiesel at dumped prices by the Union industry increased substantially in 2011 and the IP, which was when the effect of the differential export tax on biodiesel and its raw materials could be most felt, as it was at that time that imports of the raw materials (soybean oil and palm oil) became uneconomic as compared to imports of the finished product. The differential export tax system in both countries puts a higher tax on the export of raw materials than the tax on the finished product. Whether this differential export tax can be considered as a subsidy in the sense of Article 2 of the basic anti-subsidy Regulation will be examined in the ongoing anti-subsidy investigation.

(135) For example during some months of the IP the import price of soybean oil from Argentina was higher than the import price of SME, making purchase of soybean oil economically disadvantageous. In this position purchase of SME was the only economically justifiable option.

(136) In any case had the Union industry not imported these volumes of biodiesel, trading companies in the Union would have imported them, undercut the Union industry and sold them on the Union market, as they already import from these countries for sale to the diesel refiners in competition with the Union industry. The causal link is not broken by these imports and this argument is therefore provisionally rejected.

3.5. *Capacity of the Union industry*

(137) CARBIO further alleges that the injury caused to the Union industry is due to overcapacity caused by over-expansion. With capacity utilisation at 50% in 2008 they allege that the industry has continued to expand without a commensurate increase in demand.

(138) It is the case that during the period considered capacity utilisation across the Union remained low, at a low point of 40% during the IP. Therefore some companies have not been using the capacity they have installed.

(139) However capacity utilisation was already low at the start of the period considered and has remained low throughout the whole period, and was also stable in the sampled companies.

(140) The sampled companies were profitable at the start of the period considered and loss making at the end, with stable capacity utilisation. It is reasonable to deduce that the whole industry has also become less profitable while its capacity utilisation has remained stable. This cannot therefore be considered a major cause of injury, as there appears to be no causal link. This argument is therefore provisionally rejected.

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

(141) CARBIO also alleges that the Union industry is suffering injury because of a lack of efficiency, in particular because they are not vertically integrated and are not located close to raw materials.

(142) These arguments are provisionally rejected. Some of the sampled companies are located at the ports with seamless access to raw materials brought in by ship, and other sampled companies have located their biodiesel plants directly on the same site as their vegetable oil producing plants. Many biodiesel producers in the south of Europe are located at port sites deliberately to access raw materials imported from Argentina and Indonesia or on the same sites as their customers (being the fossil oil refineries). Given that the effect of the differential export tax has been to make the raw materials more expensive than the finished product, this has clearly injured the Union industry by making it economically impossible to manufacture PME and SME in the EU.

3.7. *Other regulatory factors*

(143) CARBIO also made reference to some regulatory factors which they allege have caused injury to the Union industry, some of which are proposals and have to date not been put into force. However they place emphasis on the system of 'double counting', which is described below.

(144) The Renewable Energy Directive ('RED') requires Member States to mandate a certain proportion of biodiesel to be mixed with mineral diesel before being sold to users. Some Member States have availed themselves of the provision in the RED which allows that proportion to be halved if the biodiesel used has been made from waste oils or used animal fats. For example if the Member State concerned requires that 7% biodiesel be mixed with 93% mineral diesel, then that 7% reduces to 3,5% if it is waste oil biodiesel.

(145) CARBIO alleges that the double counting rules have caused a drop in the sale of so-called 'first generation' biodiesel of 1 million MT during the IP, and that this is a cause of injury to the Union industry. This allegation is rejected, as the sample of Union producers contains some companies who are manufacturing double counted biodiesel and their financial situation is not significantly different to that of sampled companies making biodiesel from virgin vegetable oils. These companies have shown during verification of their data that the price of their biodiesel has been affected by the low price of dumped imports from Argentina and Indonesia, as they are in indirect competition with the PME and SME from the countries concerned.

(146) The argument has also been made that the Union industry is suffering injury by not investing more in second-generation biofuels such as using waste oils. This argument has been provisionally rejected, as there is not enough waste oil available in the Union to significantly increase the amount of processing from that already in existence.

3.8. *Restrictions in Member States*

(147) CARBIO also alleged that the injury caused to the Union industry could not be caused by imports from the countries concerned due to quota systems and tax regimes in various Member States that restrict access to these markets. They also allege that some markets in the EU are closed to SME and PME due to climatic conditions.

(148) They are correct to state that the Cold Filter Plugging Point ('CFPP') of PME (at +13 Centigrade) means that PME cannot be used across the Union without being mixed with other biodiesels to bring down the CFPP. The CFPP of SME, at 0 degrees Centigrade, does however allow it to be used more widely, in particular during the summer months.

(149) The argument that it is the regulatory system in some Member States that is causing injury to the Union industry was examined closely throughout the investigation.

(150) In some Member States, quota systems are in place that give a particular production quota to companies in that Member State or in other Member States across the Union. However most countries have given advantages by using the tax system and these advantages are being lowered or withdrawn.

(151) France for example has a 'detaxation advantage' of EUR90 per tonne for quota produced biodiesel. However given the low prices of dumped imports, it is often cheaper to import biodiesel than it is to buy from the Union industry even including the tax advantage. This is shown by the fact that Argentinian imports are clearly present on the French market.

(152) In some Member States imports from Argentina and Indonesia are not present, either due to climatic conditions or due to quota systems. However in most of the Union imports from Argentina and Indonesia are present on the market, either due to the lack of a quota system or due to the price being below any tax advantage that a Member State might give.

(153) Given that PME and SME, when blended with Union produced RME or other biodiesel, can be sold across the Union, and that imports are present in large quantities and dumped prices even in Member States with tax advantage systems in place, this argument is provisionally rejected as the existing quota systems and tax regimes are not capable of breaking the causal link between the injury and the effect of dumped imports.

4. **Conclusion on causation**

(154) The above analysis has demonstrated that there was a substantial increase in the volume and market share of the low-priced dumped imports originating in the countries concerned. At the same time, it was found that these imports were undercutting the price of the Union industry during the IP.

(155) The data shows that as the volume of low-priced imports from the countries concerned increase, the economic situation of the Union industry deteriorates significantly.

(156) The analysis above has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. Based on this analysis the provisional conclusion is that the dumped imports from the countries concerned have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

(157) The known factors other than the dumped imports have been assessed in line with Article 3(7) of the basic Regulation, and no evidence was found that they broke the causal link between the dumped imports and the injury suffered by the Union industry.

F. **UNION INTEREST**

(158) In accordance with Article 21 of the basic Regulation, the Commission examined whether, despite the conclusion on injurious dumping, compelling reasons existed for concluding that it was not in the Union interest to adopt measures in this particular case. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, raw material suppliers and users.

1. **Interest of the Union industry**

(159) As mentioned above, the Union industry suffered material injury caused by dumped imports originating in the countries concerned. Not imposing measures would most likely lead to a continuation of the negative trend of the financial situation of the Union industry. The situation of the Union industry was particularly marked by a decrease in profitability from + 3 % in 2009 to – 2,5 % by the end of the IP. Any further decline in performance would ultimately lead to cuts in production and more closures of production sites, which would therefore threaten employment and investments in the Union.

(160) The imposition of measures would restore fair competition on the market. The Union industry's downwards trend in profitability is the result of its difficulty in competing with the dumped, low-priced, imports originating in the countries concerned, a fact also due to the export tax regime in both countries that lowers the price of imports of SME and PME on the Union market, whilst increasing the price of the raw materials. The imposition of anti-dumping measures would therefore put the Union industry in the position to improve its profitability towards levels considered necessary for this capital intensive industry.

(161) Measures should give the Union industry the opportunity to begin to recover from the injurious dumping found during the investigation.

2. **Interest of unrelated importers/traders in the Union**

(162) Unrelated importers/traders in the Union were invited to make themselves known to the Commission. However no importer cooperated with the investigation.

(163) In the absence of data from unrelated importers or traders, there was no evidence that imposition of measures would be clearly against the interests of these parties.

3. **Interest of users and consumers**

(164) All known user companies involved in mineral diesel production and distribution, and also involved in the mandatory blending of mineral diesel with biodiesel were sent questionnaires upon initiation.

(165) Three users of biodiesel responded to the user questionnaire but stated that biodiesel was a very small part of their overall business activity. They stated that as they would be legally obliged to purchase biodiesel and as before, if a duty increased the price of biodiesel this would be passed on automatically to their customers.

(166) Given the limited amount of information available, the imposition of measures should have an extremely limited effect on the final consumer, given the small percentage of biodiesel that is mixed into the mineral diesel that they purchase at the pump. No evidence was found that the imposition of measures would be clearly against the interests of either users, or consumers.

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

(167) One association of suppliers of raw materials, FEDIOL (the federation representing the European Vegetable Oil and Proteinmeal Industry in Europe), responded to the questionnaire sent to suppliers of raw materials. They stated that imports from the countries concerned have reduced the demand for rapeseed oil across the Union, with demand falling by over 1 million tonnes between 2009 and 2011.

(168) They consider that imposition of measures will have a positive effect on the supplier industry in the EU as capacity utilisation will increase. Any increase in demand for rapeseed oil would then feed through to the compound feed sector – as this is the residue from rapeseed oil production and the farming sector in the EU as the producer of rapeseed.

(169) The evidence received therefore shows that imposition of measures would be in the interests of the raw material suppliers in the Union.

5. **Conclusion on Union interest**

(170) The imposition of measures on imports of biodiesel originating in Argentina and Indonesia would clearly be in the interests of the Union industry. It would allow the Union industry to grow and to start to recover from the injury caused by the dumped imports. However if no measures were to be imposed, the economic situation of the Union industry would continue to deteriorate and more operators would go out of business. Although no clear conclusions could be made with regard to users and importers, the imposition of measures should be in the interest of raw material suppliers.

(171) No compelling reasons exist to show that it would be clearly against the Union interest to impose provisional anti-dumping measures on imports of biodiesel originating in Argentina and Indonesia.

G. **PROVISIONAL ANTI-DUMPING MEASURES**

(172) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, provisional anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.

1. **Injury elimination level**

(173) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Union producers, without exceeding them.

(174) When calculating the amount of duty necessary to remove the effects of injurious dumping, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

(175) For this purpose a profit margin of 15% on turnover could be regarded as an appropriate level which the Union industry could have expected to obtain in the absence of injurious dumping based on the findings of the previous investigation concerning imports from the United States of America, where it was deemed reasonable for guaranteeing the productive investment for this industry in the long-term.

(176) On this basis, a non-injurious price was calculated for the Union industry of the like product. The non-injurious price has been obtained by adjusting the sales prices of the sampled Union producers by the actual profit/loss made during the IP and by adding the above mentioned profit margin.

(177) The necessary price increase was then determined on the basis of a comparison of the weighted average import price of the sampled exporting producers in the countries concerned, as established for the price undercutting calculations, with the non-injurious price of the like product sold by the sampled Union producers on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the total CIF import value.

2. **Provisional measures**

(178) In accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties should be imposed in respect of imports of biodiesel originating in Argentina and Indonesia in accordance with the lesser duty rule, i.e. the lower of the two margins calculated, either dumping or injury.

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

Country	Company	Provisional dumping margin	Provisional injury margin	Provisional anti-dumping duty rate
Argentina	Aceitera General Deheza S.A., General Deheza, Rosario	10,6%	27,8%	10,6%
	Bunge Argentina S.A., Buenos Aires	10,6%	27,8%	10,6%

Country	Company	Provisional dumping margin	Provisional injury margin	Provisional anti-dumping duty rate
	Louis Dreyfus Commodities S.A., Buenos Aires	7,2%	30,9%	7,2%
	Molinos Río de la Plata S.A., Buenos Aires	6,8%	31,8%	6,8%
	Oleaginosa Moreno Hermanos S.A.F.I.C.I. y A., Bahia Blanca	6,8%	31,8%	6,8%
	Vicentin S.A.I.C., Avellaneda	6,8%	31,8%	6,8%
	Other cooperating companies	7,9%	31%	7,9%
	All other companies	10,6%	31,8%	10,6%
Indonesia	PT. Ciliandra Perkasa, Jakarta	0,0%		0,0%
	PT. Musim Mas, Medan	2,8%	23,3%	2,8%
	PT. Pelita Agung Agrindustri, Medan	5,3%	27,1%	5,3%
	PT Wilmar Bioenergi Indonesia, Medan	9,6%	26,4%	9,6%
	PT Wilmar Nabati Indonesia, Medan	9,6%	26,4%	9,6%
	Other cooperating companies	6,5%	25,3%	6,5%
	All other companies	9,6%	27,1%	9,6%

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

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

(182) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

(183) The Commission made imports of the product concerned originating in the countries concerned subject to registration by Commission Regulation (EU) No 79/2013 of 28 January 2013. This was in view of the possible retroactive application of anti-dumping measures, under Article 10(4) of the basic Regulation. No decision on the possible retroactive application of anti-dumping measures can be taken at this stage in the proceeding.

H. **FINAL PROVISION**

(184) In the interests of sound administration, 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 within one month from the publication of this Regulation. The findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may be reconsidered for the purpose of any definitive measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of fatty-acid mono- alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as

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

included in a blend, currently falling within CN codes ex 1516 20 98 (TARIC codes 1516 20 98 21, 1516 20 98 29 and 1516 20 98 30), ex 1518 00 91 (TARIC codes 1518 00 91 21, 1518 00 91 29 and 1518 00 91 30), ex 1518 00 95 (TARIC code 1518 00 95 10), ex 1518 00 99 (TARIC codes 1518 00 99 21, 1518 00 99 29 and 1518 00 99 30), ex 2710 19 43 (TARIC codes 2710 19 43 21, 2710 19 43 29 and 2710 19 43 30), ex 2710 19 46 (TARIC codes 2710 19 46 21, 2710 19 46 29 and 2710 19 46 30), ex 2710 19 47 (TARIC codes 2710 19 47 21, 2710 19 47 29 and 2710 19 47 30), 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 90 97 (TARIC codes 3824 90 97 01, 3824 90 97 03 and 3824 90 97 04), 3826 00 10 and ex 3826 00 90 (TARIC codes 3826 00 90 11, 3826 00 90 19 and 3826 00 90 30), and originating in Argentina and Indonesia.

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

Country	Company	Provisional duty rate Euro per tonne net	TARIC additional code
Argentina	Aceitera General Deheza S.A., General Deheza, Rosario; Bunge Argentina S.A., Buenos Aires	104,92	B782
	Louis Dreyfus Commodities S.A., Buenos Aires	69,16	B783
	Molinos Río de la Plata S.A., Buenos Aires; Oleaginosa Moreno Hermanos S.A.F.I.C.I. y A., Bahia Blanca; Vicentin S.A.I.C., Avellaneda	65,24	B784
	Other cooperating companies: Cargill S.A.C.I., Buenos Aires; Unitec Bio S.A., Buenos Aires; Viluco S.A., Tucuman	75,97	B785
	All other companies	104,92	B999
Indonesia	PT Ciliandra Perkasa, Jakarta	0	B786
	PT Musim Mas, Medan	24,99	B787
	PT Pelita Agung Agrindustri, Medan	45,65	B788
	PT Wilmar Bioenergi Indonesia, Medan; PT Wilmar Nabati Indonesia, Medan	83,84	B789
	Other cooperating companies: PT Cermerlang Energi Perkasa, Jakarta	57,14	B790
	All other companies	83,84	B999

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

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

5. The release for free circulation in the European 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.

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

6. 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

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Commission Regulation (EU) No 79/2013.

2. Data collected regarding products which were entered for consumption not more than 90 days prior to the date of entry into force of this regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

Article 4

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, 27 May 2013.

For the Commission
The President
José Manuel BARROSO