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⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/1928

of 31 August 2021

amending Delegated Regulation (EU) 2020/760 as regards the management and quantities of certain tariff quotas for Argentina and correcting that Regulation as regards its transitional provisions

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 185, Article 186 and Article 223(2) thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 ⁽²⁾, and in particular Articles 64(6) and 66(3) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2020/760 ⁽³⁾ supplements Regulation (EU) No 1308/2013 as regards the rules for the administration of import and export tariff quotas for agricultural products subject to licences and Regulation (EU) No 1306/2013 as regards the lodging of securities in the administration of tariff quotas.
- (2) The Agreement in the form of an Exchange of Letters between the European Union and the Argentine Republic pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union ('the Agreement'), concluded by Council Decision (EU) 2021/1213 ⁽⁴⁾, amends the management system of some tariff quotas.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 347, 20.12.2013, p. 549.

⁽³⁾ Commission Delegated Regulation (EU) 2020/760 of 17 December 2019 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the rules for the administration of import and export tariff quotas subject to licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the lodging of securities in the administration of tariff quotas (OJ L 185, 12.6.2020, p. 1).

⁽⁴⁾ Council Decision (EU) 2021/1213 of 13 July 2021 on the conclusion, on behalf of the Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Argentine Republic pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff-rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union (OJ L 264, 26.7.2021, p. 1).

- (3) The Agreement introduces a change to the management of the tariff quota for garlic originating in Argentina from a system of traditional and new importers to the simultaneous examination method, to which the reference quantity requirement does not apply. As a consequence, Article 9(4) of Delegated Regulation (EU) 2020/760 should be deleted.
- (4) The Agreement also splits tariff quotas under order numbers 09.4213 and 09.4412, which concern poultry, and allocates part of their quantities to two newly created tariff quotas for goods originating in Argentina: order numbers 09.4289 and 09.4290. References to those new tariff quotas should be inserted in Article 9(6) and (7) of Delegated Regulation (EU) 2020/760.
- (5) In accordance with Article 27(2) of Delegated Regulation (EU) 2020/760, that Regulation applies to the tariff quota periods starting from 1 January 2021 onwards. The transitional provision in Article 26, first paragraph, of that Regulation provides that the reference quantity referred to in Article 9 of that Regulation may be established in accordance with the Regulations repealed by Article 25 of that Regulation in the two first tariff quota periods 'following the entry into force of this Regulation'. That wording should be aligned to Article 27(2) of Delegated Regulation (EU) 2020/760 by referring to the first two tariff quota periods 'to which this Regulation applies'.
- (6) A similar correction needs to be made in Article 26, second paragraph, of Delegated Regulation (EU) 2020/760. In addition, it should be clarified in that provision that the reference quantity may be established by using full tariff rate quota periods rather than 12-months periods.
- (7) In order to avoid any confusion, it is appropriate to correct the corresponding recital as well.
- (8) Delegated Regulation (EU) 2020/760 should therefore be amended and corrected accordingly.
- (9) Article 9(4) of Delegated Regulation (EU) 2020/760 should continue to apply to the ongoing tariff quota period for the tariff quota under order number 09.4104, pending the beginning of the first tariff quota period of the tariff quota under order number 09.4288 in accordance with Commission Implementing Regulation (EU) 2020/761 ⁽⁹⁾.
- (10) The amendment of Article 9(6) and (7) of Delegated Regulation (EU) 2020/760 should apply from the beginning of the first tariff quota period of the tariff quotas under order numbers 09.4289 and 09.4290 starting after the entry into force of this Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Amendments and corrections of Delegated Regulation (EU) 2020/760

Delegated Regulation (EU) 2020/760 is amended and corrected as follows:

- (1) recital (18) is replaced by the following:

'(18) In order to avoid disrupting trade flows, it is necessary to provide for the continued application of the repealed acts to import licences that were issued on the basis of those acts prior to the application of this Regulation. For the same purpose, it is appropriate to allow licence issuing authorities to establish the reference quantity in accordance with the repealed acts during the first two tariff quota periods starting from 1 January 2021 onwards to which this Regulation applies.';

- (2) Article 9 is amended as follows:

- (a) paragraph 4 is deleted;
- (b) paragraphs 6 and 7 are replaced by the following:

⁽⁹⁾ Commission Implementing Regulation (EU) 2020/761 of 17 December 2019 laying down rules for the application of Regulations (EU) No 1306/2013, (EU) No 1308/2013 and (EU) No 510/2014 of the European Parliament and of the Council as regards the management system of tariff quotas with licences (OJ L 185, 12.6.2020, p. 24).

‘6. By way of derogation from paragraph 2, the reference quantity shall be calculated by cumulating the quantities of products released for free circulation in the Union, which fall within each of the following groups of three or four quota order numbers set out in Annex I to Implementing Regulation (EU) 2020/761:

09.4211, 09.4212, 09.4213 and 09.4290;

09.4214, 09.4215 and 09.4216;

09.4410, 09.4411, 09.4412 and 09.4289.

7. By way of derogation from paragraph 3, for the tariff quotas under order numbers 09.4211, 09.4212, 09.4213 and 09.4290, the total quantity of products covered by licence applications submitted in the tariff quota period for those four tariff quotas shall not exceed the applicant's total reference quantity for those four tariff quotas. The applicant may choose how to sub-divide the total reference quantity among the tariff quotas for which applications are submitted. This rule shall also apply to tariff quotas under order numbers 09.4214, 09.4215 and 09.4216 and order numbers 09.4410, 09.4411, 09.4412 and 09.4289.’;

(3) Article 26 is replaced by the following:

‘Article 26

Transitional provisions

In the first two tariff quota periods to which this Regulation applies in accordance with Article 27(2), the licence issuing authority may establish the reference quantity referred to in Article 9 in accordance with the relevant repealed Regulations listed in Article 25.

Where in one or both of the two tariff quota periods before the first tariff quota period to which this Regulation applies in accordance with Article 27(2), a tariff quota that is subject to the reference quantity requirement referred to in Article 9 has not been fully used, operators may choose to establish their reference quantity either in accordance with Article 9(1), or using the two last preceding tariff quota periods where the tariff quota was fully used.’.

Article 2

Transitional provision

Article 9(4) of Delegated Regulation (EU) 2020/760 shall continue to apply to the ongoing tariff quota period for the tariff quota under order number 09.4104.

Article 3

Entry into force and application

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

However, point (2)(b) of Article 1 shall apply from the beginning of the first tariff quota period of the tariff quotas under order numbers 09.4289 and 09.4290 starting after the entry into force of this Regulation.

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

Done at Brussels, 31 August 2021.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION REGULATION (EU) 2021/1929
of 8 November 2021
amending Regulation (EU) No 142/2011 as regards conditions for exports of certain organic
fertilisers and soil improvers containing Category 2 materials

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 ⁽¹⁾, and in particular Article 32(3)(a) and the second subparagraph of Article 43(3) thereof,

Whereas:

- (1) Commission Regulation (EU) No 142/2011 ⁽²⁾ lays down public and animal health rules for placing on the market and export of derived products, including organic fertilisers and soil improvers.
- (2) Chapter V of Annex XIV to Regulation (EU) No 142/2011 provides for rules on exports of amongst others processed manure. Processed manure may be used as a component to exclude the subsequent use of organic fertilisers and soil improvers containing meat-and-bone meal (MBM) of Category 2 materials for feeding purposes. The rules on export of processed manure should be amended to allow the export of processed manure contained as mixing component in MBM of Category 2 materials.
- (3) The export of certain organic fertilisers and soil improvers containing MBM of Category 2 materials should be authorised without the channelling referred to in Article 48(4) of Regulation (EU) No 1069/2009, where the use of such organic fertilisers and soil improvers for feeding purposes is excluded due to their composition or packaging. Organic fertilisers and soil improvers should be mixed with processed manure or other prescribed components to exclude the subsequent use for feeding purposes. The rules for the export of organic fertilisers and soil improvers containing MBM of Category 2 materials are to be set out in Chapter V of Annex XIV to Regulation (EU) No 142/2011.
- (4) Annex VIII of Regulation (EU) No 142/2011 provides for labelling requirements for organic fertilisers and soil improvers placed on the Union market. In case of the export to third countries, labelling should be in one of the official languages of the third country of destination.
- (5) Annex XIV to Regulation (EU) No 142/2011 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Chapter V of Annex XIV to Regulation (EU) No 142/2011 is amended in accordance with the Annex to this Regulation.

⁽¹⁾ OJ L 300, 14.11.2009, p. 1.

⁽²⁾ Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive (OJ L 54, 26.2.2011, p. 1).

Article 2

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

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

Done at Brussels, 8 November 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

In Regulation (EU) No 142/2011, Annex XIV, Chapter V, the table shall be amended as follows:

(a) row 1 is replaced by the following:

'1	Processed manure; Organic fertilizers, compost or digestion residues from biogas transformation containing no other animal by-products or derived products than processed manure; Processed animal protein containing processed manure as a mixing component or meat-and-bone meal of Category 2 materials containing processed manure as a mixing component	The following derived products must comply at least with the conditions set out in points (a), (b), (d) and (e) of Section 2 of Chapter I of Annex XI: — Processed manure; — Organic fertilizers, compost or digestion residues from biogas transformation containing no other animal by-products or derived products than processed manure; — Processed manure as a mixing component in processed animal protein or meat-and-bone meal of Category 2 materials.'
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(b) the following row 4 is added as follows:

'4	Organic fertilisers and soil improvers containing meat-and-bone meal of Category 2 materials	Organic fertilisers and soil improvers containing meat-and-bone meal of Category 2 materials referred to in points 1, 2, 3 and 5 of Section 1 of Chapter II of Annex XI that meet the requirements therein, which are packaged in ready-to-sell packages of not more than 50 kg in weight for use by the final consumer with a content of (a) not more than 90 % in volume of meat-and-bone meal of Category 2 material; (b) at least 10 % in volume of processed manure, processed urine, lime, mineral fertilisers, or any other mixing component referred to in point 3(b) of Section 1 of Chapter II to Annex XI.'
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COMMISSION IMPLEMENTING REGULATION (EU) 2021/1930**of 8 November 2021****imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of birch plywood originating in Russia**

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 14 October 2020, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of birch plywood originating in Russia ('the country concerned') on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the Official Journal of the European Union ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 31 August 2020 by the Woodstock Consortium ('the complainant'). The complaint was made by the Union industry of birch plywood in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Amendment to the Notice of initiation

- (3) The Notice of Initiation inadvertently omitted a section concerning the procedure for the assessment of Union interest. While this omission did not affect interested parties' right to make submissions regarding the Union interest, it was considered appropriate to address this omission as a matter of procedural transparency. It was therefore amended on 11 December 2020 ⁽²⁾.

1.3. Registration

- (4) Since the conditions laid down in Article 14(5a) of the basic Regulation were not met, imports of the product concerned were not made subject to registration. No party made any comments on this point.

1.4. Provisional measures

- (5) In accordance with Article 19a of the basic Regulation, on 12 May 2021 the Commission provided parties with a summary of the proposed provisional duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. One party submitted valid comments which were taken into account.
- (6) On 11 June 2021, the Commission imposed a provisional anti-dumping duty on imports of birch plywood originating in Russia by Commission Implementing Regulation (EU) 2021/940 ⁽³⁾ ('the provisional Regulation').

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ C 428, 11.12.2020, p. 27.

⁽³⁾ Commission Implementing Regulation (EU) 2021/940 of 10 June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia (OJ L 205, 11.6.2021, p. 47).

- (7) The investigation of dumping and injury covered the period from 1 July 2019 to 30 June 2020 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2017 to the end of the investigation period ('the period considered').

1.5. Subsequent procedure

- (8) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('the provisional disclosure'), the complainants, other Union producers, the sampled exporting producers, two non-sampled exporting producers, and numerous other interested parties made written submissions making their views known on the provisional findings.
- (9) The parties who so requested were granted an opportunity to be heard. Hearings took place with the three sampled exporting producers, two non-sampled exporting producers, a non-sampled Union producer, the complainants and seventeen importers and users.
- (10) After provisional disclosure, Sveza Group made a request for additional disclosure arguing that the provisional disclosure was not sufficiently detailed and lacked explanations on a number of points regarding the calculation of the dumping margin and import statistics. Contrary to the allegations in the request and as explained in its reply dated 21 June 2021, the Commission considered that the provisional disclosure, including the company specific pre-disclosure, provided a complete set of information allowing the company to comment on the provisional disclosure as well as to exercise its rights of defence.
- (11) The Commission continued to seek and verify all the information it deemed necessary for its final findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions where appropriate.
- (12) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of birch plywood originating in Russia ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.
- (13) The comments submitted by the interested parties were considered and taken into account where appropriate in this regulation.
- (14) After final disclosure, Sveza Group reiterated its claims that its rights of defence had not been observed at provisional stage as the calculation of the provisional anti-dumping duty lacked sufficient reasoning. The Commission considered that the company was able to fully exercise its rights of defence on the basis of the information it had received in the provisional disclosure, coupled with the pre-disclosure. In any case, the company had ample opportunities to comment on the pre-disclosure, provisional and definitive disclosures and in all of these occasions it submitted comments which were duly addressed in this regulation. Consequently, the claim was rejected.

1.5.1. Request for suspension of duties

- (15) Following final disclosure several interested parties requested the suspension of the anti-dumping measures pursuant Article 14(4) of the basic Regulation alleging market changes after the end of the investigation period.
- (16) In this respect, the Commission noted that it had already prior to the final disclosure, on 18 August 2021, on its own initiative requested post-IP information from the Union industry and other interested parties. The Commission noted that the decision whether a suspension of measures under Article 14(4) is warranted or not will be taken in due course.

1.5.2. Request not to collect provisional duties

- (17) Following the final disclosure, Emiliana Imballagi, No-Nail Boxes and Industria Compensati Moglia, users and importers of birch plywood, requested the Commission to apply Article 10(2) of the basic Regulation and not to collect provisional duties for imports of square shaped plywood due to the lack of capacity of the Union's industry to supply square shaped plywood. The request of Industria Compensati Moglia included all types of birch plywood due to the general lack of capacity of the Union industry to satisfy Union's consumption.
- (18) With regard to the alleged lack of supply, the Commission noted, as established in recital (224), that the Union market can be sufficiently supplied from various sources including union industry and Russian imports. Therefore, in view of the established material injury caused by Russian dumped imports, the conclusions set out in section 4.5, the Commission determined that provisional duties were to be collected in full and, therefore, the request was rejected.

1.6. Sampling

- (19) In the absence of comments concerning sampling, recitals (12) to (23) of the provisional Regulation were confirmed.

1.7. Individual examination

- (20) Regarding the individual examination requests as mentioned in recital (24) of the provisional Regulation, one exporting producer reiterated that the Commission can carry out the individual examination or as a last option establish an individual injury margin.⁽⁴⁾ The resources required for such an assessment would be limited: the verification would be limited to export prices and the analysis is not the same as the analysis of the dumping margin. This party also claimed that the Commission has the obligation to carry out the individual examination.
- (21) In this respect, the Commission noted that Article 17(3) of the basic Regulation does not provide for individual injury margin calculations as it states that "*an individual margin of dumping shall (...) be calculated for any exporter or producer*" [emphasis added].
- (22) As explained in recital (24) of the provisional Regulation, the Commission received three complete replies within the deadline of companies that requested individual examination. However, the Commission concluded that the examination of these requests, also at definitive stage, of the investigation would have been unduly burdensome, in view of the several exporting producers already included in the sample, and would prevent the proper completion of the investigation in good time. Therefore, the Commission decided not to grant individual examination to any of the companies in question.

1.8. Investigation period and period considered

- (23) In the absence of comments concerning the investigation period ('IP') and the period considered, recital (28) of the provisional Regulation was confirmed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Claims regarding the product scope

- (24) As explained in recital (38) and (39) of the provisional Regulation, a Russian producer, Segezha, claimed that the product scope should be extended to include not only birch plywood but also pine, poplar, okoumé and beech plywood. It was argued that there is direct competition and interchangeability between the said woods, plywood and birch plywood. Following provisional disclosure, the same party reiterated its request and claimed that the Commission failed to analyse available information, submitted by national plywood associations of other types of wood, concerning the degree of substitution.

⁽⁴⁾ Please refer to archive number t21.004885.

- (25) The Commission recalled, as already mentioned in recital (201) of the provisional Regulation, that the national associations (of France, Italy and Spain) representing plywood producers of poplar, pine and other types of wood, in their submissions emphasize that plywood made of different woods are different products, which cannot be considered or grouped as a single product.
- (26) Similarly, the Commission reiterated its position and rejected the claim given that pine, poplar, okoumé and beech plywood do not share the same basic physical, technical and chemical characteristics with birch plywood. The fact that in some applications, alternative products and materials could be used, with an undetermined degree of substitution capacity, does not change the nature of the physical, technical and chemical differences between the product concerned and the said products.

2.2. Claims regarding product exclusion

- (27) At provisional stage, one user, Emiliana Imballaggi S.p.A., and two Russian exporting producers, Sveza Group and Vlas Truda, requested the exclusion of square-shaped birch plywood with the length and width of five feet (1 525 × 1 525 mm). The Commission, rejected the exclusion requests as explained in recital (37) of the provisional Regulation.
- (28) Following provisional disclosure, further comments were received concerning the decision of rejecting the exclusion request. Specifically it was argued that i) a difference in shape is already a difference in physical and technical characteristics, ii) square-shaped plywood and rectangular-shape plywood are not interchangeable since square-shaped cannot be used for applications where rectangular shaped is needed and square-shaped cannot be processed into rectangular-shaped and iii) Union producers do not manufacture square-shaped plywood. These arguments were repeated by several parties after the final disclosure. Emiliana Imballaggi and No-Nail Boxes, users of birch plywood, also claimed the Union interest as basis for the exclusion, without which the viability of user's businesses (eg. foldable wooden boxes and crates producers) would not be guaranteed.
- (29) The Commission confirmed its decision that square-shaped plywood cannot be excluded from the product scope since it, notwithstanding a difference in dimensions and shape, shares the same basic physical, technical and chemical characteristics with the rectangular shaped plywood. As regards the use, while for certain specific applications there is no immediate interchangeability, there are many other applications in which square and rectangular plywood is further cut and thus the original shape is modified, where there is a degree of substitutability in which square-shape exercises competitive pressure on rectangular-shaped birch plywood. Finally, the investigation confirmed that the Union industry does manufacture and sell square-shaped plywood, albeit in relatively small volumes and generally not as a commodity but rather as a niche product on specific orders. Given these findings, the Commission concluded that the claim that the exclusion would be in interest of the Union was without merit. Therefore, the Commission rejected this claim.

2.3. Conclusion

- (30) In the absence of any other comments with respect to the product scope, the Commission confirmed the conclusions set out in recitals (32) to (33) of the provisional Regulation.

3. DUMPING

- (31) Following provisional disclosure, the Commission received written comments from the three sampled exporting producers and from the complainant on the provisional dumping findings.

3.1. Normal value

- (32) The details of the calculation of the normal value were set out in recitals (44) to (57) of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions.

3.2. Export price

- (33) The details of the calculation of the export price were set out in recitals (58) and (60) of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions.

3.3. Comparison

- (34) The details concerning the comparison of the normal value and the export price were set out in recitals (61) to (71) of the provisional Regulation.
- (35) The exporting producer UPG reiterated its claim for an adjustment increasing the export price in order to reflect the amounts reimbursed under the Scheme described in recital (63) of the provisional Regulation.
- (36) The Commission concluded that, since the party did not provide any new evidence substantiating their claim that would change the Commission's assessment, the provisional findings set out in recital (64) of the provisional Regulation were confirmed and the claim was rejected.
- (37) Following final disclosure, the exporting producer reiterated the claim that the transport costs reimbursed under the Scheme should have been considered when adjusting the export price under Article 2(10)(e) of the basic Regulation.
- (38) The Commission considered that it complied with the provisions of Article 2(10)(e) of the basic Regulation as it deducted, among others, directly related transport costs incurred when delivering the product concerned to the first independent customer. Whether those costs were subsequently reimbursed or not does not fall within the scope of Article 2(10)(e) of the basic Regulation. Therefore, the claim was rejected.
- (39) The exporting producer further argued that Article 2(10)(k) of the basic Regulation does not preclude the Commission from taking into consideration an export subsidy. The exporting producer reiterated that pricing decisions on the export markets and the profitability of those sales were impacted by the subsidy. Therefore, the Commission allegedly committed a manifest error of assessment and acted in breach of Article 2(10)(k) of the basic Regulation.
- (40) The Commission noted that the party did not provide any new evidence substantiating its claim. In any case, the Commission re-examined carefully the file and it did not find any evidence showing that the exporting producer's customers consistently paid different prices on the domestic market because of the alleged difference in reimbursement of transport costs by the Government of the Russian Federation between domestic and export sales, in accordance with Article 2(10)(k) of the basic Regulation.
- (41) Furthermore, the Commission did not address the issue of the subsidy as such but considered whether the scheme impacted the comparability between export and domestic prices in a way that the domestic price should be adjusted. Therefore, the Commission rejected the claim that the reimbursement of transport costs of the export prices should be considered for comparison purposes.
- (42) Moreover, the same exporting producer assumed that the Commission accepted its claim by not removing the reimbursement of transportation costs from table G of the anti-dumping questionnaire (i.e. the profit and loss table).
- (43) The Commission considered that, irrespective of the removal of the reimbursement of transportation costs in the relevant tables that were submitted by UPG, the rejection of the claim was clearly explained both in the specific company disclosure and in recital (64) of the provisional Regulation. Therefore, the claim was rejected.
- (44) Following final disclosure, the exporting producer claimed that the Commission incorrectly adjusted table G of the anti-dumping questionnaire. The party reiterated that the reimbursement of transport costs on exports should be allocated to the export sales as it is conditional upon incurring transport costs when exporting.

- (45) As described in recital (43) above, the purpose of table G is to establish the profitability for each market segment. However, for this issue there is no direct link between table G and the assessment made under Article 2(10)(e) and (k) of the basic Regulation. As described in recitals (38)-(41) above, the Commission did not consider that the adjustment was warranted. Therefore, the fact that the subsidy is reported or not in Table G for export sales has no bearing. Therefore, the claim was rejected.
- (46) UPG also claimed that the Commission made a manifest error by allocating the commission paid to its related trader to the actual services provided (i.e. the related trader claimed that its tasks concerned all type of sales and not only domestic sales). The Commission should have allocated the commission only to the domestic sales in accordance with the commission agreement.
- (47) The Commission took into consideration the factual situation between the two related parties. The commission paid concerned all type of sales. Since the party did not provide any new evidence substantiating its claim, the provisional findings set out in recital (65) of the provisional Regulation were confirmed.
- (48) Finally, UPG claimed in case the Commission would maintain its decision to allocate the amount of commissions paid to both domestic and export sales, also the sales to third countries and not only the sales to the EU should be used for the allocation of the commissions. The Commission accepted that claim and allocated the commissions paid to all sales, including the sales to third countries.
- (49) Following final disclosure, UPG reiterated the claim that the re-allocation of commissions paid to a related party distorted the facts. Moreover, UPG claimed that the Commission did not substantiate its allegation with evidence.
- (50) With regard to the evidence, the Commission referred to two submissions made by UPG where it was stated that a significant proportion of the EU sales (between 75 and 95 %) were made through a related party, which however received no commission for such sales, though it had the same selling functions on the domestic and EU markets. ⁽⁷⁾ Moreover, following final disclosure, UPG reiterated that the commissions received based on domestic sales were sufficient to cover all functions carried out by the related party on the domestic and export markets. The Commission thus considered that the functions of the related party covered not only the domestic sales but also export sales. Therefore, the commissions paid were rightly re-allocated to all type of sales. On that basis, the claim was rejected.
- (51) UPG claimed that the Commission committed a manifest error by confusing the scope of the services rendered by the related party and the scope of application of the commissions paid to the related party.
- (52) The Commission considered that the commission contract in force between UPG and its related party did not reflect the factual situation as shown in the evidence contained in the file. Therefore, the claim was rejected.
- (53) UPG claimed that the Commission, by re-allocating commissions to export sales, double counted them in view of the actual commission fees paid to unrelated parties in the EU. UPG also claimed that the re-allocation of the commissions was discriminatory in particular when considering the commission adjustment made to the export price of another exporting producer (Sveza Group) under Article 2(10)(i) of the basic Regulation.
- (54) The Commission considered carefully the claim and did not find any discrimination between the two exporting producers as the factual situation between the two parties differed significantly:
- (55) The Sveza exporting producers had commission agreements with the related trader Sveza-Les which, on its turn, paid fees to unrelated EU agents. As described in recitals (114)-(115) below, the fees paid to the unrelated EU agents were considered as expenses incurred in the framework of the commission agreements in question.

⁽⁷⁾ These submissions concern Zhesharsky's questionnaire reply and the reply to the deficiency letter dated on 18 January 2021. Reference can also be made to the remote cross-checking report.

- (56) As far as UPG is concerned, UPG itself and not the related trader was invoicing fees to the unrelated EU agents.
- (57) Consequently, the related trader could not claim that the fees paid by UPG to the unrelated EU agents were part of its expenses and, as a result, double counted. In any case, the party did not substantiate its claim and as a matter of fact, the commission fees paid to unrelated parties in the EU were not reinvoiced by UPG to its related party. Therefore, the claim was rejected.
- (58) UPG also made a claim regarding the scope of services rendered by the related party on domestic and export markets. In particular, the related party allegedly provided limited services to UPG export sales and thus the re-allocation of commission to the sales to the EU was incorrect.
- (59) The Commission observed that the claim was not substantiated and could not be verified. Therefore, the claim was rejected.
- (60) The exporting producer SPM claimed that the Commission wrongly established the credit costs in its export sales by using the interest rate published by the Russian Central Bank and not the official rate of the invoice currency under the Article 2(10)(g) of the basic Regulation ⁽⁶⁾.
- (61) The Commission considered that the credit costs could be expressed in the currency of the invoice only if the party could demonstrate that there is a need for such currency in its daily business. In all other cases, the credit costs should be expressed in the currency of the country where the company is established.
- (62) The party did not provide any evidence that it held loans in EUR nor that it incurred credit costs in EUR, and thus the Commission rejected the claim.
- (63) Following final disclosure, SPM reiterated its claim that credit costs should be established based on the official rate of the invoice currency as SPM incurred risks in the invoice currency and not in RUB. Moreover, SPM claimed that this approach was a constant practice of the Commission.
- (64) The Commission noted that SPM did not substantiate its claim with evidence regarding the financial risk described and failed to provide evidence that its methodology is a constant practice of the Commission. Moreover, the Commission considered that there is no direct link between the risk described and the establishment of the credit costs. Credit costs relate to the invoice payment terms and are a necessity for the company to finance the costs resulting from the difference in time between the invoice date and the actual payment. SPM did not finance its daily operations with loans in euro. Therefore, there was no evidence that the credit costs should be established based on EUR rate. The claim was therefore rejected.
- (65) The same party claimed that the Commission has to apply the currency conversion requested as the exchange EUR/RUB fluctuated significantly in the investigation period (i.e. + 33 % when considering the daily extremum during the investigation period).
- (66) During the investigation period, the analysis conducted by the Commission shows that the fluctuation of the monthly exchange rate EUR/RUB between July 2019 to February 2020, was rather stable, in a range -3 %/+3 % around the average exchange rate for that period (i.e. EUR/RUB 70,7). ⁽⁷⁾
- (67) The Commission considered that the exchange rate fluctuation is not significant and sustained over the investigation period. The Commission considered that the conditions set out in Article 2(10)(j) of the basic Regulation are not met as the exchange rate did not move significantly or in a sustained way. Therefore, the claim was rejected.

⁽⁶⁾ Please refer to archive number t21.004918.

⁽⁷⁾ Exchange rate EUR/RUB: 7/2019 = 70,907; 8/2019 = 73,216; 9/2019 = 71,411; 10/2019 = 71,086; 11/2019 = 70,577; 12/2019 = 69,987; 1/2020 = 68,769; 2/2020 = 69,911; 3/2020 = 82,426; 4/2020 = 81,745; 5/2020 = 79,233; 6/2020 = 78,038.

- (68) Following final disclosure, SPM reiterated its claim regarding the exchange rate fluctuation and that the exchange rate fluctuated by 18 % in March 2020. SPM claimed that an examination over a period longer than the investigation period showed a sustained movement in the exchange rate during the investigation period.
- (69) The Commission analysed the evolution of the exchange rate during the investigation period. Information obtained outside of the investigation period is not relevant for the purpose of the investigation. While in March 2020, the exchange rate EUR/RUB increased by + 16,5 % in relation to the weighted average of the previous months ⁽⁸⁾, it decreased during the next months. Therefore, the Commission considered that the conditions set out in Article 2(10)(j) of the basic Regulation were not met as the exchange rate did not move significantly or in a sustained way. The claim was rejected.
- (70) The same exporting producer claimed, both after provisional and final disclosure, that the Commission did not provide clear instructions regarding the situation of the United Kingdom in the investigation. The party did not remove from it costs data in relation with the products sold to the UK. However, as explained in Section 1.10 of the provisional Regulation, on 19 January 2021 the Commission put a note to the file making interested parties aware of the consequences of the UK withdrawal. In addition, the party could have made a specific request backed with evidence in its comments to the provisional disclosure. However, the party did not provide any evidence explaining how the costs data could have been impacted by the sales to the UK. In this respect, the Commission analysed the dataset and found that only one product code number representing 0,04 % of their total export quantity into the EU may have been impacted by the insertion of UK data within the EUCOP file ⁽⁹⁾. Therefore, the Commission rejected this claim since the removal of such costs data in relation with the products sold to the UK would not appear to have any impact in this case.
- (71) SPM clarified that most of the packing costs initially reported included also warehouse costs incurred by the related traders for selling domestically. It further requested to keep the adjustment for those costs which were initially declared as packing costs and for which the Commission did an adjustment as packing costs. The Commission considered that warehouse costs (such as payment of rent for a warehouse) are born as costs of production and contained in the SG&A of the company. Therefore, as such they do not directly affect the prices charged by related traders to the first independent customer. As result, the Commission rejected this claim.
- (72) Following final disclosure, SPM claimed that the warehouse costs reported were those of the related distribution companies for domestic sales and not those of the producer. The related distribution companies did not produce birch plywood and therefore did not have any costs of production. Therefore, the normal value should be established at ex-works level excluding the costs of the distribution companies in the same way as the construction of the export price pursuant to Article 2(9) of the basic Regulation.
- (73) The Commission considered that no evidence was provided by the company that the related distribution companies' costs for selling on the domestic market should not be taken into account for the purposes of fair comparison and that the related distribution companies should not be treated as a single economic entity. In addition, Article 2(1) of the basic Regulation stipulates that the normal value should be based on the prices to the first independent customers. This would not be the case if costs incurred by the related distribution companies were deducted. Consequently, the claim was rejected.
- (74) The exporting producer Sveza Group claimed that the Commission made a manifest error when dealing with dividends and managements fees issues. The methodology used was explained in the specific provisional disclosure sent to the party.

⁽⁸⁾ Weighted average exchange rate for the period July 2019 –February 2020 = 70,73.

⁽⁹⁾ Regarding the methodology used for the establishment of the normal value for a certain product number type, the Commission uses the EUCOP dataset only in the absence of sales on the domestic market and thus DMCOP data for this product number type. EUCOP and DMCOP datasets provide the costs of manufacturing for each product number type sold respectively for the EU and for the domestic markets.

- (75) During the investigation period, one company of the group of exporting producers distributed a dividend to its shareholder, Sveza-Les. Sveza-Les reported the dividend received in the item *Financial Income* of the anti-dumping questionnaire's table G. This dividend was also allocated to all type of revenues, including the revenue originating from the sales of the product concerned. The methodology used had for consequence a decrease of the SG&A percentage calculated for all type of revenues. The Commission considered that there is no link between the sales reported and the dividend and thus decided to reject the dividend allocation.
- (76) For the investigation period, the total revenue was divided between revenue generated by sales of: product concerned and not concerned, related customers and unrelated customers and by type of market (i.e. domestic, sales to the Union and sales to other third countries). For each of the items listed above, the Sveza Group was required to establish its profitability (or loss). The profitability was obtained by removing all the expenses linked to those revenues (i.e. costs of goods sold, selling, general and administrative costs, gain/loss from foreign exchange rate and gain or loss from financial income).
- (77) In its comments to the provisional disclosure, Sveza Group claimed that there is no basic accounting principle allowing the Commission to disregard some data originating from audited financial statements. Moreover, the dividend was paid during the first half of 2020 and corresponded to profit earned as of 31 December 2019, and thus the party was entitled to report it during the investigation period.
- (78) The Commission did not disregard the audited financial statements but considered that the dividend earned from an investment cannot be allocated to other type of revenues when establishing the profitability of those sales. In the same way, the profit distributed was not allocated to other type of revenues. As mentioned above in recital (76), the purpose of the anti-dumping questionnaire's Table G is to establish the profitability of various type of revenue/income during the investigation period. Therefore, the Commission rejected the claim.
- (79) The party claimed that the methodology used for the establishment of the profitability of sales is not reliable as the Commission accepted certain types of incomes (i.e. for foreign exchange gain and financial income) but also some profits and losses reported from previous years (i.e. outside of the investigation period).
- (80) As correctly mentioned by the party, foreign exchange gains and financial incomes can be reported when they are linked to the normal business activity of the party. In that case, the exchange gains could result from the exports of birch plywood and the financial incomes from the cash generated by the sales of birch plywood. Dividend is another matter though, as the profit distributed was generated by another company. The Commission considered that there was no relationship between the dividend and other revenues of Sveza-Les, including the sales of the product concerned. Therefore, the Commission rejected the claim.
- (81) Following final disclosure, the Sveza Group reiterated that there was 100 % relationship between the dividend and other revenues of Sveza-Les. Moreover, the party stated that the exporting producer owned by Sveza-Les earned profit from the sales of plywood either on the domestic market or on the export market.
- (82) The Commission considered the arguments and agreed with the party. The profit and thus the dividend originated from the entire business of the exporting producer. However, there was no link between the cash transferred to Sveza-Les and the activities of Sveza-Les (and the associated costs) which were directly linked to the product concerned during the investigation period. The claim was therefore rejected.
- (83) Regarding the profits and losses of previous years and reported in table G, the Commission decided to remove these amounts from the dataset used to establish the profitability of sales during the investigation period as it was not linked to the normal business activity of the party during the investigation period. The items listed represented less than 0,5 % of the total SG&A reported.

- (84) The management fees, mentioned above in recital (74), concern a management fee paid by each of the exporting producers to Sveza-Les. Sveza-Les reported, in the anti-dumping questionnaire's table G, the management fee as a revenue and allocated expenses to the management contracts for which it received the fee in question. However, Sveza-Les did not trace back the costs generated by these management contracts. Based on the absence of evidence, the Commission decided at provisional stage, to disregard the costs reported as linked to the revenues from the management contracts and to re-allocate these costs to other types of revenues.
- (85) Sveza Group claimed that the Commission's decision to eliminate the revenue earned (i.e. management fees), to disregard the expenses reported and to reallocate them to other revenues was manifestly erroneous and illegal.
- (86) The Commission noted that the company did not provide any further evidence supporting its claim.
- (87) Moreover, it is recalled that the management fee revenues were not disregarded from table G. The Commission re-allocated to other type of revenues the expenses allocated by the party to the management fee revenues as the party did not provide any evidence supporting the allocation. Therefore, the claim was rejected.
- (88) Furthermore, the party claimed that the Commission used an incoherent and inaccurate methodology for the re-allocation of the expenses. While the party did not substantiate its claim, the Commission used the same methodology as the party for the allocation of expenses. Therefore, the claim was rejected.
- (89) Finally, the party claimed that the management fees should be removed from the expenses reported by the exporting producers in their own table G in case the Commission decides to maintain its decision to remove from the related party's table G of the expenses reported.
- (90) The Commission examined the claim and did not find any grounds for removing the management fees expenses reported by the exporting producers as these costs were supported by the accounting documents. Therefore, the claim was rejected.
- (91) Following final disclosure, the Sveza Group claimed, by referring to the SG&A accounts of Sveza-Les, that it was possible to trace back the expenses generated by the management fee contracts.
- (92) The Commission analysed the arguments and did not find in the submission any information allowing to conclude with certainty that the management fee contracts generated any expenses which could be directly related to the contracts. In addition, the Commission also requested during the RCC supporting documents for the expenses allocated to these contracts but the company failed to provide them. Therefore, the claim was rejected.
- (93) After provisional and final disclosure, Sveza Group claimed that the Commission's assessment on single economic entity ('SEE') was affected by manifest errors of assessment. The party reiterated that Sveza-Les performed the same selling functions on the domestic and export markets, with the only difference relating to the remuneration of its activities. On that issue, the party claimed that extensive evidence was provided with its questionnaire reply.
- (94) First, after provisional and final disclosure, the group referred to the part of the questionnaire replies of the mills where it was explained that Sveza-Les performs the same selling functions on the domestic and export markets, with the only difference relating to the remuneration of Sveza-Les' activities. One of the elements emphasised therein is the fact that as per the management agreements concluded between Sveza-Les and each mill, the powers of the sole executive body of the Sveza producers are transferred to Sveza-Les, acting as a management company. According to the management contracts, Sveza-Les performs a wide range of management activities on behalf of the mills, including tax accounting and reporting. Consequently, according to the company, from an operational perspective, Sveza-Les and the mills are not operated independently. The mills operate under the direction of and in accordance with the policy operated by Sveza-Les.

- (95) The Commission observed that Sveza-Les provides its management services against remuneration and it invoices regularly the mills listing the services rendered to them. However, despite the wide range of services provided for in the management contracts, the legal entities have decided to regulate their sales in separate and very different types of contracts with respect to exports and domestic sales of the product under investigation, which affected how those sales were made. As explained in recital (67) of the provisional Regulation and further in the following recitals, the commission contracts signed between Sveza-Les and the mills affect solely the export sales and, as a result, called for an adjustment under Article 2(10)(i) of the basic Regulation.
- (96) Second, after provisional and final disclosure, the company group challenged the Commission's assessment in recital (68) of the provisional Regulation arguing that the Union Courts confirmed that the existence of a contract is a "relevant" element, but not a decisive element in order to assess whether or not there is a SEE. A SEE may therefore exist, notwithstanding the existence of a contract ⁽¹⁰⁾. The Commission must thus conduct a comprehensive assessment of all factors reflecting the economic reality of the relationships between the SVEZA mills and SVEZA-Les and cannot conclude to the absence of a SEE on the mere basis of the existence of a contract.
- (97) The Commission considered that the judgement cited by the Sveza Group confirms the Commission's position in this case. As concluded by the Court of Justice, the existence of a contract concluded between the producer and its related distributor, providing for the payment of commissions to the latter, is an important factor in the relationship between those two companies and to disregard it would be to obfuscate the economic reality of that relationship. The Commission indeed examined the relationships between the SVEZA mills and SVEZA-Les based on the contracts concluded between them with the title 'commission agreement' and came to the conclusion that these contracts, which are being executed, contain various provisions that are difficult to reconcile with the notion that those companies form a single economic entity for the reasons explained in recital (98) below ⁽¹¹⁾.
- (98) Third, the group claimed that while the Commission in recital (68) of the provisional Regulation referred to "numerous clauses, such as an arbitration clause, showing a lack of solidarity between the companies", it mentioned only one: the "arbitration clause". At the same time, in the judgment *PT Musim Mas*, the General Court did refer to several types of clauses as evidence of a lack of solidarity. The clause on arbitration is allegedly not sufficient for the Commission to conclude that no SEE exists. As explained in recital (68) of the provisional Regulation, the commission contracts between Sveza-Les and the mills contain numerous provisions showing lack of solidarity between the companies and was thus evidence of the existence of two economic entities with divergent interests ⁽¹²⁾. Other than the arbitration clause, the liability of the parties to the contract is limited only in case of force majeure whereas in all other situations the parties are responsible for non-performance or improper performance of obligations arising from the contracts in accordance with the generally applicable legislation of the Russian Federation. The contracts further contain provisions governing communications between Sveza-Les and the mills and their obligations in the event of a change of name or address. These non-exhaustive examples along with the arbitration clause mentioned in the provisional regulation constitute evidence that the relationship between the Sveza-Les and the producers as far as export sales are concerned is organised on the basis of normal commercial conditions. Consequently, the claim was rejected.
- (99) After final disclosure, the Sveza Group reiterated that the provisions in the commission contracts referred to in the previous recital were not sufficient to show lack of solidarity. Pursuant to the management contracts, the SVEZA mills could not take any decision without the consent of Sveza-Les and they are fully dependent on Sveza-Les in practice and in law. The Commission noted that, as explained in recital (95) above, despite the wide range of services provided for in the management contracts the sales of the products produced by the mills were not covered

⁽¹⁰⁾ Judgment of 26 October 2016, *PT Musim Mas v Council*, C-468/15 P, EU:C:2016:803, paras. 43 and 55-59.

⁽¹¹⁾ See also Judgment of 14 July 2021, *Interpipe Niko Tube LLC, v Commission* T-716/19. ECLI:EU:T:2021:457, paras. 162-163.

⁽¹²⁾ Judgment of 14 July 2021, *Interpipe Niko Tube LLC v Commission*, T-716/19. ECLI:EU:T:2021:457, para. 163.

by the management contracts. Indeed, the legal entities decided to regulate their sales in separate and very different types of contracts with respect to exports and domestic sales of the product under investigation, which affected how those sales were made and their price comparability. Consequently, this claim was rejected.

- (100) Fourth, after provisional and final disclosure, the Sveza Group challenged the Commission's findings that "some sales functions were retained by the exporting producers in view of their SG&A expenses" arguing that those functions are not related to sales but to other activities remotely relevant to sales functions. Even assuming the Commission's allegation was correct (*quod non*), a SEE may exist where the producer assumes part of the sales functions complementary to those of the distribution company for its products ⁽¹³⁾.
- (101) The Commission observed that the claim that the SG&A expenses in question do not relate to sales functions by the exporting producers but to other activities was not backed by any evidence on the file. No evidence was provided either after final disclosure. In fact, to the contrary, the producer had reported that at least some of those costs were linked to sales functions such as personnel costs. The Commission considered that this constituted a relevant element showing that the producers have not delegated all of their sales activities to Sveza-Les.
- (102) Fifth, the exporting producer argued that the statement "the related trader issued the invoices in the name of the exporting producers to the first independent customers in the Union" is factually incorrect. Invoices to unrelated customers are issued by Sveza-Les, but not "in the name of the exporting producers". The invoices simply mention the identity of the Sveza mill that manufactured the goods.
- (103) The Commission noted that the property of the goods passes directly from the exporting producer to the buyer. These sales are booked as a revenue in the sales ledger of the exporting producer. Sveza-Les never owned the goods and thus did not book it in their accounts as a sales revenue. Only the commission paid by the exporting producers are booked as a revenue in Sveza-Les accounts. By contrast, on the domestic sales the exporting producers do not sell directly to the first independent customers but to Sveza-Les. In that case, the ownership is transferred to Sveza-Les. In addition, the payments from unrelated customers received by Sveza-Les in relation to the export transactions do not belong to it but are directly owned by exporting producers in question and transferred in their entirety to the latter. In other words, Sveza-Les acts as an agent for export sales effected by the mills and is compensated by a commission, while for the domestic market Sveza-Les is the relevant seller to the first independent customer within the meaning of Article 2(1) of the basic Regulation. Consequently, this claim was rejected.
- (104) After final disclosure, the exporting producer argued that the Commission's assessment described in the previous recital focused on the formal arrangements established between Sveza-Les and the mills, but did not address the economic reality of their relationship, in light of the functions actually performed by SVEZA-Les, which were those of an integrated sales department. In fact, the Commission's formalistic approach to the economic reality of the relationship between Sveza-Les and the exporting producers was allegedly legally and factually incorrect.
- (105) The Commission considered that there was no evidence on the file that the contractual arrangements did not reflect the economic reality in the relationships within the group. On the contrary, all documents showed that the contractual arrangements were followed in practice by the different legal entities when performing the export and domestic sales respectively. Consequently, this claim was rejected.

⁽¹³⁾ Judgment of 13 October 1993, *Matsushita v Council*, C-104/90, EU:C:1993:837, para. 14. See also, Judgment of 10 March 2009, *Interpipe Niko Tube and Interpipe NTRP v Council*, T-249/06, EU:T:2009:62, para. 185.

- (106) Sixth, the Sveza Group argued that while written commission agreements are concluded for export sales, purchase and sale agreements are concluded for domestic sales. This is factually correct. However, the fact remains that, as acknowledged by the Sveza Group, domestic and export sales are organised differently and subject to contracts of a different nature as recalled below in recital (108). Thus, it is undisputed that export sales are governed by commission agreements and that such commissions are actually paid to remunerate the services provided for export transactions. This is not the case for domestic transactions.
- (107) Seventh, the Sveza Group claimed that the Commission is requested to demonstrate that a price comparability issue exists as a result of commission paid on export sales. Article 2(10)(i) of the basic Regulation requires an adjustment for differences in commissions paid. The Sveza Group argued that the relationship between the Sveza mills and Sveza-Les achieves the same economic results, regardless of whether Sveza-Les receives a mark-up on domestic sales or a commission on export sales. Both the mark-up on domestic sales and the commissions on export sales must therefore be considered as a “commission” for the purpose of Article 2(10)(i) of the basic Regulation. That being the case, there is no difference in commissions paid which would affect price comparability and an adjustment under Article 2(10)(i) of the basic Regulation is not justified.
- (108) The Commission disagreed. The purpose of the adjustment under Article 2(10)(i) is to offset any difference in commission paid between domestic sales and export sales. While it is uncontested, based on the contracts governing export sales, that commissions are being paid by the mills to Sveza-Les for export transactions, including sales to the Union, it was not demonstrated that, for domestic sales, Sveza-Les can be considered as an agent acting on a commission basis. Rather, the facts, as established by the Commission, are that all domestic sales effected by the group are indirect sales in the sense that the mills first sell the product concerned at transfer prices to Sveza-Les, which then resells at arm’s length to the first independent customers on the domestic market. There is no indication that, when doing so, Sveza-Les could be considered as an agent acting on a commission basis. Indeed, the Commission recalled the following features: all domestic sales are made by Sveza-Les and the sales contracts between Sveza-Les and the mills do not contain any clause that would suggest that Sveza-Les acts as an agent. In particular, certain of the sales contracts stipulate ‘In order to agree on the price of the goods for a certain period, the parties shall be entitled to sign the relevant annex hereto’. Such annexes were not provided as part of the verification, and other contracts containing payment and volume details were outdated. Consequently, the evidence on the file did not show how the purchase price or the remuneration of Sveza-Les was determined. ⁽¹⁴⁾ The contracts are also silent on other rights and obligations of the parties. For example, among others, there is no reporting obligation, there is no obligation to notify the other party in case of name change but also there is nothing about the liability of parties for the non-execution of the contract ⁽¹⁵⁾. The Commission noted that, in similar circumstances as those prevailing for the domestic sales made by Sveza-Les, the General Court ruled that the adjustment that the Commission carried out in relation to export sales in the *Interpipe* case was unjustified. ⁽¹⁶⁾ On that basis, the Commission confirmed that no adjustment pursuant to Article 2(10)(i) for domestic sales was warranted. By contrast, the contracts concluded between the mills and Sveza-Les for export sales clearly stipulate that Sveza-Les acts as an agent and is entitled to the receipt of a commission for such services, which was paid by the mills as a matter of fact. On this basis, the Commission concluded that an adjustment pursuant to Article 2(10)(i) was warranted for the export sales.
- (109) Furthermore, the Commission examined the claim that the alleged mark-up for domestic sales and the actual commissions paid for export transactions would have the same economic consequences for the exporting producers. As further detailed in the company-specific disclosure, there were differences in profitability between sales on the domestic market and export sales. Therefore, the Commission considered that the payment of commissions to Sveza-Les for export sales does not achieve the same economic results for the group of exporting producers as the transfer prices charged to Sveza-Les for domestic sales effected by Sveza-Les to the first independent customers. The claim was therefore rejected.

⁽¹⁴⁾ See, by analogy, Case T-26/12 PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) v Council, Judgment of the General Court of 25 June 2015, para. 60.

⁽¹⁵⁾ Case T-26/12 PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) v Council, Judgment of the General Court of 25 June 2015, para. 62.

⁽¹⁶⁾ Joined Cases C-191/09 P and C-200/09 P, Council and Commission v Interpipe Niko Tube and Interpipe NTRP, Judgment of the Court of Justice of 16 February 2012, paras 50-69.

- (110) Eight, regarding recital (71) of the provisional Regulation, the Sveza Group claimed that the situation is similar to Articles 2(8) and 2(9) of the basic Regulation which provide that the price to the first independent customer may be adjusted for all costs incurred between the importation and resale. In addition, Article 2(1) of the basic Regulation is in no way an impediment to the application of an adjustment under Article 2(10)(i) of the basic Regulation. Any other interpretation would deprive Article 2(10)(i), including its second paragraph, of any *effet utile*.
- (111) The Commission observed that the wording of Article 2(1) of the basic Regulation, on the one hand, and Articles 2(8) and 2(9) of the basic Regulation, on the other hand, is different. Whereas Article 2(1) mandates that the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country, Article 2(9) provides for construction of export price based on the price at which the imported products are first resold.
- (112) It should also be noted that as explained in recital (108) above, the Sveza Group did not provide supporting evidence regarding the amount of the claimed adjustment to the normal value based on Article 2(10)(i) of the basic Regulation. The alleged difference between the purchase and re-sale price and how this was calculated was not set out in writing in any of the agreements provided to the Commission. According to the Sveza Group, it also appeared to vary among the mills and was changing during the investigation period. Furthermore, as explained in recital (71) of the provisional Regulation, if an adjustment for mark-up pursuant to Article 2(10)(i) is to be quantified as a deduction of the alleged mark-up charged by Sveza-Les when reselling the product, this would de facto bring the price to the level of the relevant sale between the mills and Sveza-Les. In other words, if the alleged mark-up is deducted, the basis for the establishment of the normal value would be the sale between the mills and Sveza-Les. However, Article 2(1) of the basic Regulation stipulates that the normal value should be based on the prices to the first independent customer, which Sveza-Les is not.
- (113) After definitive disclosure, the Sveza Group reiterated that if no SEE existed on the export markets, no SEE could be found to exist on the domestic market because Sveza-Les performs the same functions on the exports and domestic markets. The Commission disagreed. As explained in details in recitals (93)-(112) above, the Commission found that the economic relationship between Sveza-Les and the producers as far as export sales are concerned is that of the supplier selling through the intermediation of an agent and on the basis of normal commercial conditions: the producer retains the ownership and the liability of the goods sold, whereas Sveza-Les receives a sales commission as set out in the relevant contracts. In contrast, for domestic sales Sveza-Les assumes the ownership and liability of the goods sold and any alleged mark-up for those sales was not clearly defined in the contracts. Moreover, Sveza-Les issues the invoice as regards domestic sales to the mills usually on the same day an invoice is issued as regards the final customer, which further confirms the non-commercial relationship. The Commission also recalled that the concept of single economic entity in the context of adjustments under Article 2(10) of the basic Regulation was developed in the Court's case law ⁽¹⁷⁾ on 'notional commissions' including the mark-up received by a trader as referred to in the second subparagraph of Article 2(10)(i), and not for situations where actual commissions are clearly defined and de facto paid as in the case at hand. Consequently, the Commission rejected this claim.
- (114) The Sveza Group claimed that the Commission double-counted some bonuses and commissions paid to unrelated customers in the Union by Sveza-Les as these amounts were not re-invoiced to the exporting producers. Therefore, Sveza-Les considered that these expenses are costs generated by the implementation of the commission agreements.
- (115) The Commission considered the claim in parallel with its decision on single economy entity and decided not to deduct the bonuses and the commissions paid to unrelated customers in the Union from the export price. Therefore, the claim was granted.

⁽¹⁷⁾ Quoted in footnotes 15 and 16 above.

- (116) Following final disclosure, the Sveza Group claimed that as the Commission found a single economic entity on the domestic market, the Commission should have used a consolidated income statement of Sveza-Les and Sveza exporting producers when calculating SG&A costs. This is because the consolidated income statement eliminated intra-group payments and combines actual costs and actual revenues as for a single economy entity.
- (117) With the initial questionnaire reply, the Commission requested the exporting producers within the group to provide both their audited accounts and the consolidated audited accounts (if any). None of the exporting producers provided such consolidated information, including Sveza-Les, which was nevertheless the main shareholder of one of the exporting producers. Within the Sveza Group, there were no audited consolidated accounts and thus such a document could not be reported for the purposes of this investigation. While Sveza-Les provided a consolidated income statement during the remote cross-checking, the Commission was not in a position to check its accurateness and reliability as the document in question was not properly audited by an independent audit firm. Therefore, the Commission rejected the claim.
- (118) The Sveza Group claimed that that the adjustment for the commission fees paid on the export sales was discriminatory in particular when considering the commission adjustment made to the export price of another exporting producer (UPG).
- (119) The Commission did not find any discrimination between the two cases as the factual circumstances of the two parties and in particular the contractual relationships between the related entities in their respective company groups differed. Whereas UPG admitted that the commission fee paid on domestic sales covered expenses and services related to export sales, within the Sveza Group domestic and export sales were arranged through distinct legal set-ups. Consequently, the claim was rejected.

3.4. Dumping margins

- (120) As detailed in recitals (31) to (115) above, the Commission took into account interested parties' comments submitted after provisional disclosure and recalculated the dumping margins accordingly.
- (121) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Zheshartsky LPK LLC	15,80 %
Sveza Group	14,40 %
Syktyvkar Plywood Mill	15,72 %
Other cooperating companies	14,85 %
All other companies	15,80 %

- (122) The calculations of the individual dumping margins, including corrections and adjustments made following comments by the interested parties submitted after provisional and final disclosures, were disclosed to the sampled exporting producers.

4. INJURY

4.1. Definition of the Union industry and Union production

- (123) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (80) to (82) of the provisional Regulation.

4.2. Union consumption

- (124) The Commission established the Union consumption on the basis of (a) data submitted by the complainant concerning the Union industry's sales of the like product to unrelated customers in the Union, as cross-checked with the sales volumes reported by the sampled Union producers; (b) imports of the product under investigation from all third countries as reported in Eurostat ⁽¹⁸⁾.
- (125) Having taken into account the methodology for the identification of imports as set out below in section 4.3.1, the Union consumption developed as follows:

Table 1

Union consumption cubic meters (m³)

	2017	2018	2019	Investigation period
Total Union consumption	1 755 656	1 855 185	1 829 570	1 762 318
Index	100	106	104	100

Source: Complainant, sampled Union producers and Eurostat.

- (126) The consumption in the Union remained stable during the period considered. A detailed analysis shows an increase of 6 % from 2017 to 2018, attenuating in 2019 to an increase of 4 % with respect to 2017 and a final decrease which left the consumption at similar levels to the level in 2017.

4.3. Imports from the country concerned

4.3.1. Methodology for the identification of imports of the product concerned

- (127) As set out in recital (86) of the provisional Regulation, prior to the initiation of the proceeding and the subsequent creation of a specific TARIC code ⁽¹⁹⁾, imports of the product concerned were recorded at CN level ⁽²⁰⁾ including also products other than the product concerned. In order to estimate the volume of imports of the product concerned during the period considered, the Commission applied the same ratio (TARIC/CN) observed after initiation between the import volumes of the full CN code and the imports for the product concerned based on TARIC data. For imports from the country concerned, the ratio ⁽²¹⁾ was established at 78 %.
- (128) After provisional disclosure, some interested parties claimed that the determination of the import statistics showed distorted results. Specifically it was argued that when comparing imports in cubic meters with imports in tonnes, the results were not compatible with the widely accepted average density of the product under investigation.
- (129) The Commission analysed these claims and found distorted data in the reported statistics at the level of the supplementary unit (cubic meter in this case). The Commission therefore decided to convert the reported weight (tonnes), being a reliable and stable set of data, into cubic meters for the determination of the imports.

⁽¹⁸⁾ Source of data Eurostat, adjusted by applying the methodology explained in section 4.3.1.

⁽¹⁹⁾ TARIC code: 4412 33 00 10

⁽²⁰⁾ CN code: 4412 33 00

⁽²¹⁾ The ratio slightly changed to 79 % since the publication of the provisional Regulation since more recent import statistics data was available covering a wider time period. The Commission used full month's TARIC data from the initiation of the investigation to the publication of pre-disclosure (November 2020 to April 2021).

- (130) To convert tonnes into cubic meters, the Commission used a conversion key established at 0,69. The conversion key was determined by the widely accepted density values of the product concerned. The conversion key was suggested by both exporting producers and Union producers, and also fell into the range proposed in the methodology contained in the complaint. Furthermore, the analysis of the average tonne and cubic meters sold in the Union by the sampled exporting producers confirmed the accurateness of the conversion key at 0,69. Following revision, the ratio for imports from the country concerned was revised upwards slightly, to 79 %.
- (131) Following final disclosure, one Russian exporting producer (Sveza) claimed that the use of a ratio (TARIC /CN) based on imports after the initiation of the proceedings did not necessarily reflect the prevailing situation over the entire period considered, since the evolution of the CN code may have been influenced by other types of plywood not subject to the investigation. It was also claimed that, following the initiation of the investigation, imports from Russia could have experienced a substantial increase and as a consequence imports of the product concerned prior to the initiation could have been overestimated. Sveza Group also claimed that the use of Russian statistics for the determination of the imports would be more reliable than Eurostat.
- (132) The Commission considered that the methodology it had used allowed for a reasonable and reliable estimation, given that the product concerned was part of a bigger basket of plywood products at statistical level. In the Commission's view, the use of Russian export statistics would not provide more reliability than Eurostat data as they also include products other than the product concerned. Also, Sveza Group did not provide any evidence substantiating that imports of other types of plywood as a group increased more than birch plywood. Therefore, the claim was rejected.

4.3.2. Volume and market share of the imports from the country concerned

- (133) By using the above mentioned methodology, the Commission established the volume of imports on the basis of Eurostat data. The market share of the imports was established by comparing the volume of imports with the Union consumption.
- (134) Imports from the country concerned developed as follows:

Table 2

Import volume (m³) and market share

	2017	2018	2019	Investigation period
Volume of imports from Russia (m ³)	710 163	773 521	809 267	812 521
<i>Index</i>	100	109	114	114
Market share	40 %	42 %	44 %	46 %
<i>Index</i>	100	103	109	114

Source: Eurostat.

- (135) Imports from the country concerned increased from around 710 163 cubic meters to around 812 521 cubic meters over the period considered, an increase of 14 %. The market share of those imports increased from 40 % to 46 % over the period considered.

4.3.3. Prices of the imports from the country concerned and price undercutting

- (136) The Commission established the prices of imports based on EUR/tonne Eurostat statistic at CN level. Even though, as explained in section 4.3.1 above, the imports of the product concerned were recorded together with a bigger basket of products, this methodology provided a reliable estimation of prices and its evolution over time, as the large majority of imports under this CN code were product concerned, and therefore enabled a comparison of price developments between different exporting countries.

- (137) Following final disclosure, Sveza Group contested the use of statistical data at CN level to establish import prices given that the product concerned falls under a CN code that also includes other types of plywood, which made the data unreliable. It further claimed that Eurostat data was disconnected from market realities and prices actually observed on the market, which further accentuated the unreliability of the Commission's methodology.
- (138) The Commission disagreed. As explained above it considered that its methodology to assess the volume and prices of Russian imports of birch plywood allowed for a reasonable and reliable estimation. As regards the reliability of Eurostat prices, recitals (140) and (141) below confirm that prices obtained from Eurostat statistics followed the same trend as the weighted average export prices of the sampled Russian exporting producers. This showed that Eurostat statistics did not deviate from verified data related specifically to the product concerned and thus confirmed the reliability of the data to establish import prices.
- (139) The average price of imports from the country concerned developed as follows:

Table 3

Import prices (EUR/ tonne)

	2017	2018	2019	Investigation period
Russia	646	681	608	584
Index	100	105	94	90

Source: Eurostat.

- (140) The average prices of the imports from Russia decreased from 646 EUR/tonne in 2017 to 584 EUR/tonne during the investigation period, a decrease by 10 %. The average price of the imports went up in 2018 by 5 % and then decreased in the subsequent periods by 14 %.
- (141) The same trend could be observed when using the weighted average export prices as reported by the sampled exporting producers, showing a price of 434 EUR/m³ in the IP for the product concerned. Following provisional disclosure, UPM claimed that the undercutting and underselling calculations were not in line with the Court's jurisprudence as they were based on an export price that had been adjusted under Article 2(9), while a similar adjustment had not been made to the sale price of the Union industry. The Commission considered that since only a limited percentage, 4 % to 7 %, of the Russian exports were sold via a related company, the impact of this issue on the undercutting calculation is marginal and would not change the fact that Russian imports significantly undercut Union industry prices. Moreover, as far as underselling (injury margin) calculations are concerned, the Union non-injurious price was based on the cost of production plus a target profit, and hence excluded any possible costs of related traders in the Union similar to the situation of the Russian exports.
- (142) Following provisional disclosure, several parties challenged the grouping performed by the Commission to compare different product types. Specifically, it was claimed that unifying the surface for each plywood sheet, by multiplying width and length, disregarded the direction of the fibre of the wood, and thus failed to consider a major driver of manufacturing costs and prices. This therefore affected the validity of the undercutting and underselling calculations.
- (143) With regard to the exercise of grouping, the Commission recalled, as noted in recital (95) of the provisional Regulation, that birch plywood is sold in a large variety of dimensions, qualities and according to specific customer specifications. Therefore, as already explained in recital (95) of the provisional Regulation, with the aim to conduct a proper comparison of the products sold by the Union industry with the equivalent product types sold by the Russian exporting producers, the Commission carried out an approximation by grouping some closely resembling product types, though maintained the large majority of product types. Given the wide variety of PCNs that only

varied slightly in terms of dimensions, thickness and/or coating, a grouping of closely similar PCNs was possible without unduly affecting the accurateness of the comparison. This methodology allowed the Commission to compare a critical mass of imports with sales by the Union industry. Specifically, the Commission took the following actions to allow a proper comparison of the products concerned: 1) three types of phenolic film coating were grouped (F-W-HT as described in the questionnaire); 2) two types of non-coated but similar surface qualities were grouped (CP and WG); and 3) the Commission calculated the surface for each plywood sheet, by multiplying width and length. This calculation was done in square millimetres to allow the comparison of similar dimensions positioned differently and/or reported differently. One interested party claimed that the price difference between the various product types grouped together was [4 % to 7 %]. Even if the alleged price difference would be accepted, the Commission did not consider this difference to be significant. Indeed, it showed that the grouping carried out by the Commission did not prevent an accurate price comparison. As a result, the Commission considered that the grouping performed at provisional stage allowed for a reasonable and reliable price comparison and product comparability of equivalent product types.

- (144) After provisional disclosure, some parties provided comments relating to the calculation of the undercutting margin as indicated in recital (100) of the provisional Regulation. Further to those comments and slight changes made to the weighted average undercutting margin, the margin for the cooperating sampled exporting producers was revised and now ranges from 9,6 % to 18,4 % for the imports from the country concerned on the Union market. The weighted average undercutting found on the basis of the data provided by the sampled exporting producers was 12,6 %.
- (145) Following final disclosure, Sveza Group claimed that the undercutting and underselling calculations were flawed for the following reasons: (i) given the significant lack of competitive overlap between product types originating in Russia and product types produced and sold by the Union industry, the calculations were not representative; (ii) the grouping of different product types was flawed as it failed to take into account variations in dimensions, which has an impact on prices due to, among other factors, different fiber directions; and (iii) the Commission failed to take into account SG&A and profits of related importers when carrying out its calculations.
- (146) With regard to the competitive overlap, the Commission, contrary to the claim, found a significant level of matching between Union and Russian sales. It was similarly established that birch plywood sold by the Union and Russian producers shared the same basic physical and technical characteristics, and that both the Union industry and the exporting producers compete in the same sectors and for the same final users. As to the second claim, the Commission maintained its position as explained in recital (143) that the grouping of some product types and the conversion into surface area were both appropriate and necessary to allow for a reasonable price comparison of equivalent product types given the numerous slight variations between different PCNs. The Commission also noted that Sveza Group did not put forward any other alternative method to allow for a proper price comparison. With regard to the third claim, the Commission maintained its position as set out in recital (141) and recalled the following.
- (147) As regards the calculation of undercutting, the Commission considered the point at which Russian imports entered into competition with the products of the Union producers in the Union market, and therefore looked at the purchasing price of the first unrelated party because that party had the choice to source either from the Union industry or from Russian suppliers. In case of export prices to related importers, the methodology as set in Article 2(9) of the basic Regulation was used. The application by analogy of Article 2(9) of the basic Regulation allows the establishment of a price that is fully comparable to the price that is used when examining sales made to unrelated customers and also comparable to the sales price of the Union industry and therefore a deduction of SG&A and profit from the resale price to unrelated customers made by the related importer was warranted.

- (148) Such a deduction was also needed to allow for an accurate calculation of underselling. The target price of the Union industry was based on its cost of production plus the target profit, without taking into consideration whether products were then sold in the Union to related or unrelated customers and, accordingly did not include any SG&A and profit of related selling entities in the Union either.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (149) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (101) to (105) of the provisional Regulation.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

- (150) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (106) to (109) of the provisional Regulation.

4.4.2.2. Sales volume and market share

- (151) The Union industry's sales volume and market share developed over the period considered as follows, having taken into account the methodology for the identification of imports as set out above in section 4.3.1:

Table 4

Sales volume and market share

	2017	2018	2019	IP
Total sales volume on the Union market (m ³)	821 341	818 621	757 103	680 243
<i>Index</i>	100	100	92	83
Market share	47 %	44 %	41 %	39 %
<i>Index</i>	100	94	88	83

Source: Complainant, sampled Union producers and Eurostat.

- (152) Throughout the period considered the total Union industry's sales volume decreased significantly by 17 %. Union sales volume remained at the same level from 2017 to 2018, but showed in 2019 a decrease of 8 % and a further decrease of 10 % from 2019 to the IP.
- (153) The Union industry's market share was similarly reduced by 17 %, showing an invariably declining trend that reduced the presence of Union industry in the market from 47 % of market share in 2017 to 39 % in the IP.

4.4.2.3. Growth

- (154) In a context of a sound market with stable Union consumption, the above figures showed that the Union industry experienced substantial decreases in respect of production, sales volume and market share.

4.4.2.4. Employment and productivity

- (155) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (114) to (116) of the provisional Regulation.

4.4.2.5. Magnitude of the dumping margin and recovery from past dumping

- (156) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (117) to (118) of the provisional Regulation.

4.4.3. *Microeconomic indicators*

- (157) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (119) to (131) of the provisional Regulation.

4.5. **Conclusion on injury**

- (158) In a context of a stable Union consumption, imports from Russia increased during the period considered (+ 14 %), at prices which significantly undercut those of the Union industry. This allowed Russian exporting producers to reach a market share of 46 % in the IP (up from 40 % in 2017).
- (159) In these circumstances, the economic situation of the Union industry worsened as shown by all major macro-indicators presenting a negative trend: production (- 14 %), EU sales (- 17 %) and a significant reduction of its market share (from 47 % to 39 %) in the period considered.
- (160) In reaction to the pressure of low Russian prices, the Union industry tried to reduce cost and adjustments in employment (- 12 %) were undertaken, as shown in table 6 of the provisional Regulation. However, as a result of the pressure exerted by dumped Russian imports in terms of increased volumes and low prices, EU sales dropped and stocks increased rapidly (+ 22 %) in the period considered, reaching their maximum level (+ 41 %) in 2018, as shown in table 9 of the provisional Regulation.
- (161) The cost of production of the Union industry went up significantly during the period considered (+ 10 %), as shown in table 7 of the provisional Regulation, mainly because of a strong increase in the raw material prices.
- (162) The Union industry's cost increased more than sales prices in view of the pressure made by the dumped imports. Consequently, profitability collapsed in the period considered, from a healthy situation (+ 9,7 %) in 2017 to an unsustainable loss making scenario (- 2,8 %) in the IP, as shown in table 10 of the provisional Regulation.
- (163) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. **Effects of the dumped imports**

- (164) Following provisional disclosure, some parties claimed that Russian imports could not have been the cause of injury since they operate in different segment of the market.
- (165) As described in section 5.2.7 below, the investigation established that the Union industry and the exporting producers compete in the same sectors and supply the same final users.
- (166) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (138) to (141) of the provisional Regulation.

5.2. **Effects of other factors**

5.2.1. *Imports from third countries*

- (167) To determine the volume of imports from third countries, the Commission, as explained in section 4.3.1 above, applied the same ratio (TARIC/CN) observed after initiation between the import volumes in tonnes of the full CN code and the imports for the product concerned based on TARIC data. To convert tonnes into cubic meters, the Commission used a conversion key of 0,69.

(168) The only third countries which imported significant volumes to the Union were Belarus and Ukraine. For Belarus, the ratio (TARIC/CN) observed after initiation has been established at 39 % and for Ukraine at 61 %.

(169) The Commission established the prices of imports based on EUR / tonne at CN level, as explained in section 4.3.2 above.

(170) The volume of imports from other third countries developed over the period considered as follows:

Table 5

Imports from third countries

Country		2017	2018	2019	Investigation period
Ukraine	Volume (m ³)	67 831	83 465	86 795	88 303
	Index	100	123	128	130
	Market share	4 %	4 %	5 %	5 %
	Average price (EUR / tonne)	651	725	641	616
	Index	100	111	98	95
Belarus	Volume (m ³)	124 561	141 310	138 307	145 731
	Index	100	113	111	117
	Market share	7 %	8 %	8 %	8 %
	Average price (EUR / tonne)	403	481	387	363
	Index	100	119	96	90
Other third countries ⁽²²⁾	Volume (m ³)	31 760	38 267	38 097	35 520
	Index	100	120	120	112
	Market share	2 %	2 %	2 %	2 %
	Average price (EUR / tonne)	566	576	565	561
	Index	100	102	100	99
Total of all third countries except Russia	Volume (m ³)	224 153	263 043	263 199	269 555

⁽²²⁾ The ratio (TARIC/CN) after initiation between the import volumes of the full CN code and the imports for the product concerned based on TARIC data, for 'Other third countries' has been established at 8 %.

	<i>Index</i>	100	117	117	120
	Market share	13 %	14 %	14 %	15 %
	Average price (EUR / tonne)	537	574	535	520
	<i>Index</i>	100	107	100	97

Source: Eurostat.

- (171) Compared to Russia, Belarus and the Ukraine had a limited presence on the Union market. In the period considered their market shares remained relatively stable, with minimal increase of 1 percentage point over the period considered, at a level of 8 % and 5 % respectively during the IP. All the other third countries slightly increased their presence, but their market share remained low at 2 %. The combined market share of imports from all third countries except Russia increased by 1 % from 2017 to 2018, and 1 % from 2019 to the IP, reaching a level of 15 %.
- (172) In terms of prices during the period considered, Ukraine sold at prices slightly higher than Russia, and Belarus at lower prices. The lower prices from Belarus were explained, both by importers and complainants, by its limited technology that only allows producing a very specific and cheaper quality product type. In contrast to Belarus, imports from Russia concerned a wider variety of products and also concerned higher quality birch plywood, thus showing higher average prices.
- (173) On that basis, the Commission concluded that the impact of imports from other countries did not attenuate the causal link between dumped Russian imports and the material injury suffered by Union producers.
- (174) After final disclosure, Sveza Group argued that the Commission ignored the fact that imports from Belarus and Ukraine both increased in volume and at lower prices (after adjustment for customs duty) than Russian exports to the Union, thus contributing to the injury. By failing to consider those elements the Commission committed a manifest error in its analysis of imports from third countries. Also, the Government of the Russian Federation ('GOR') claimed that the Commission had not properly assessed the impact of imports from third countries on the Union industry.
- (175) The Commission rejected this claim. First, concerning Ukrainian imports, it recalled that the import prices were based on Eurostat data at CIF level and thus before any application of customs duty. Thus, the Commission confirmed that prices from Ukraine were higher than Russian import prices. In any case, should the Commission compare Russian and Ukrainian imports after the custom duty (only applying to Russian imports), prices from both countries would be in the same range. Given their limited volume and market share, imports from Ukraine did not attenuate the causal link between dumped Russian imports and the material injury suffered by Union producers.
- (176) Second, whilst the volumes from both Ukraine and Belarus increased, they increased from a relatively small starting point and their impact on the Union market was marginal as their respective market shares only increased by 1 percentage point, whereas Russian imports increased its market share with 6 percentage points. The Commission therefore confirmed its provisional finding that imports from other countries did not attenuate the causal link.
- (177) Finally, the Commission recalled that imports from third countries other than Ukraine and Belarus only accounted for around 2 % of the Union market and remained at that level during the period considered. Similarly, the price level also remained stable during the period considered. Those imports were thus not considered susceptible to cause injury to the Union industry. This claim was therefore rejected.

5.2.2. *Export performance of the Union industry*

- (178) Following provisional disclosure, one exporting producer, the Sveza Group, claimed that the positive export performance of the Union industry contributed to the injury, since allegedly, the increase in export sales would have been to the detriment of the domestic sales. After final disclosure also the GOR claimed that the export performance of the Union industry (increased exports at low prices) had been a cause of injury.
- (179) During the IP the Union industry had sufficient production capacity to cover the increase in export sales. The same applied to the sampled Union producers. Furthermore the increase in the volume of exports represented only a small part of the decrease of 17 %, as shown in table 4 above, suffered in the volume of domestic sales. As a result, the increase of exports of the Union industry does not contribute to the injury suffered by Union industry.
- (180) Following provisional disclosure, the exporter producer UPM noted that the analysis of the export performance in the provisional Regulation relied on the data for the sampled Union producers, which showed an increase, contrary to the export performance for the Union industry as a whole as estimated by the complainants, which showed a decrease.
- (181) The exports for the entire Union industry provided by the complainant showed a decrease of 4 % during the period considered. While export volumes decreased by 12 % from 2017 to 2019, export volumes increased by 8 % from 2019 to the IP, which resulted in an increase of exports as a percentage of its total sales. Accordingly, the export performance of the entire Union industry could not have contributed to the injury suffered by the Union industry.
- (182) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (150) to (152) of the provisional Regulation.

5.2.3. *Competitive disadvantage in access to the main raw material*

- (183) Following provisional disclosure, some parties claimed that the Union industry suffers from a limited availability of the main raw material, i.e. birch wood logs, which would be the origin of lower production volumes, costs increases and therefore be the cause of injury.
- (184) As explained in recital (154) of the provisional Regulation, access to the main raw material, birch wood logs, did not explain the injury, since Union producers had sufficient access to supplies of birch logs. Table 9 of the provisional Regulation showed that stocks of sampled union producers increased by 22 % over the period considered, and specifically by 6 % from 2019 to the IP. The evolution of stocks indicated that the problem did not reside in the production, but rather in its commercialization. As a result, the decrease in production during the period considered was not explained by the availability of wood.
- (185) The investigation also established that the cost of raw material did not attenuate the causal link. The problem resided rather in the limited ability of the Union industry to raise prices to the same extent as costs increases due to the pressure exerted by dumped imports from Russia, both in terms of volumes and prices. Specifically this could be observed, as explained in recital (155) of the provisional Regulation, by the fact that between 2019 and the IP the cost of production of the Union industry decreased, whereas this did not result in an improvement of its profitability. Therefore, the Commission dismissed these claims.

5.2.4. *Self-inflicted injury*

- (186) After final disclosure the GOR claimed that capacity expansions to accommodate increased production, which were not materialized, was a cause of Injury.
- (187) The Commission, contrary to the claim, found, that annual investments, as shown in table 10 and explained in recital (130) of the provisional Regulation, decreased over the period considered by 1 %. Similarly, as explained in recital (108) of the provisional Regulation, Union production capacity was reduced by overall 3 % in the period considered.

- (188) The Commission therefore concluded that the claim that expansion capacity investments were a source of injury was thus unfounded, as was also set out in recitals (156) to (157) of the provisional Regulation.

5.2.5. *Strikes in Finland*

- (189) Following provisional disclosure, several interested parties claimed that the strikes in Finland affected negatively to the Union industry resulting in lower production volumes and consequently in lower sales volumes. The strikes allegedly would have also result in an increase of cost resulting in lower profitability.
- (190) The increase in stocks, as shown in table 9 of the provisional Regulation, evidenced that the problems did not reside in the production. Concerning the increase in cost, contrary to the allegations, table 7 of the provisional Regulation showed a decrease of costs during the period when the strikes took place. Therefore the Commission concluded that the strikes of the mills in Finland did not contribute to the injury suffered by the Union industry.

5.2.6. *COVID-19 effects*

- (191) Following provisional disclosure, some parties claimed that the lockdowns imposed as a result of the COVID-19 might have resulted in production stoppages which might have affected production volumes, employment and costs. After final disclosure also the GOR claimed that the COVID-19 pandemic was the main reason for the injurious situation of the Union industry.
- (192) As explained in recital (128) the evolution of the stocks and the cost contradicted the allegations. The COVID-19 crisis did not negatively affect production volumes and employment in the IP. The Commission, thus, dismissed these claims and concluded that effects of the COVID-19 did not attenuate the causal link.

5.2.7. *Product comparability*

- (193) Following provisional disclosure, some parties claimed a lack of competitive overlap between the birch plywood produced by the Russian industry and the plywood produced by the Union industry, since they allegedly produce different qualities destined to different segments, and that therefore, Russian imports were not the cause of injury.
- (194) The Commission, nonetheless, compared thousands of different types of plywood products and established a significant level of matching (over 68 %) between Union sales and Russian imported products. Furthermore, the investigation established that not only the imported and like Union products shared the same basic physical and technical characteristics, but also, that both the Union industry and the exporting producers compete in the same sectors and for the same final users. The Commission, thus, concluded that the alleged lack of product comparability and competition did not attenuate the causal link.
- (195) Following final disclosure, Sveza Group insisted that there was a significant lack of product comparability and hence competitive overlap that must be considered for the causation analysis. It further claimed that the Commission argument that product comparability was not an issue for causation purposes was flawed and inconsistent with WTO rules. Also the GOR claimed that the Commission had not sufficiently analysed product comparability and the competitive overlap between product types with different characteristics.
- (196) The Commission disagreed with the claim that it had not considered product comparability for causation purposes, and considered it to be a misinterpretation of its findings. As described in recital (194) the Commission found, contrary to the claim by the exporting producer, that, given the significant level of product matching and competition in the same sectors and for the same users, there was both product comparability and competition. Accordingly, the allegation concerning a lack of product comparability and competition was unfounded and could not attenuate the causal link.

- (197) Another exporting producer (SPM) also referred to the alleged lack of product comparability and competition and requested that product types that were not produced by the Union industry should be excluded from the product scope.
- (198) The Commission rejected this claim for the reasons set out in recital (196) above. Furthermore, the Commission recalled that it, as described in recital (143), the Commission had grouped closely resembling product types to ensure that a fair price comparison, based on representative volumes, could be made between Russian imports and the product sold by the Union industry.
- (199) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (162) to (163) of the provisional Regulation.
- (200) Following final disclosure, Sveza Group claimed that the Commission failed to take due account of information concerning the post-IP data, which in its view demonstrated that Russian imports could not cause injury to the Union industry. In particular, it referred to certain statements by the complainant that they had not been able to pass on global price increases due to agreed contracts and that in the post-IP period there was neither any undercutting or underselling. Instead, long-term contracts and variations in raw material prices were the source of any alleged injury.
- (201) Also, SPM claimed that the Commission has failed to properly take into account post-IP developments in the assessment of injury and causation, which according to SPM is a requirement when post-IP developments are manifest, undisputed and lasting.
- (202) The Commission considered for its injury and causation analysis the situation as established during the IP. The Commission recalled that, as provided in Article 6(1) of the basic Regulation, information relating to a period subsequent to the investigation period shall, normally, not be taken into account. It further considered that the situation post-IP is of a temporary character and the result of an unexpected and rapid post-COVID recovery. Therefore, it was not considered that those temporary circumstances were of such a character that they would make the proposed imposition of definitive anti-dumping duties inappropriate, even in light of post-IP developments. Nevertheless, as explained in recital (16), the Commission will analyse the post-IP situation in the context of a possible suspension of the duties due to a temporary change of market conditions. That analysis will however be carried out in due course and concluded in a separate decision.

5.3. Conclusion on causation

- (203) On the basis of the above and in the absence of any other comments, the Commission concluded that none of the factors, analysed either individually or collectively, attenuated the causal link between the dumped imports and the injury suffered by the Union industry to the effect that such link would no longer be genuine and substantial, confirming the conclusion in recitals (164) to (166) of the provisional Regulation.

6. LEVEL OF MEASURES

6.1. Injury margin

- (204) The claims made by UPM and Sveza Group concerning adjustments under Article 2(9) of the basis Regulation in the undercutting calculations also apply to the calculation of the injury elimination level. Those claims were rejected by the Commission as set out in section 4.3.3 above.
- (205) Following final disclosure Sveza Group also claimed that the Commission had wrongly computed the injury margin as it had not deducted the injurious effects of other factors. According to Sveza Group, the Commission must ensure that the amount of the anti-dumping duty imposed (if any) does not exceed that which is necessary to counter the injurious effects of the dumped imports, including by ensuring that the amount of the anti-dumping duty does not take into account injurious effects caused by factors other than those imports. Therefore, Commission must adjust the injury margin to exclude the injury caused by factors other than Russian imports.

- (206) First, the Commission recalled that the anti-dumping duty was based on the established dumping margin. Therefore, the imposed duty does not exceed what is necessary to counteract the injurious effects of the dumped imports, notwithstanding the fact that the established injury margin is significantly higher than the dumping margin. In this respect the Commission also recalled that, as described in Section 5.2 above, the Commission examined several other factors possibly contributing to the injury and found that none of those factors, either individually or taking together were able to attenuate the causal link between the dumped imports and the injury suffered. Finally, the injury margin determination must be done according to the provisions of Article 7(2c) and (2d) of the basic Regulation. Therefore, the Commission established the target price and level of profitability by taking into account the factors listed.
- (207) As provided by Article 9(4), third subparagraph, of the basic Regulation, and given that the Commission did not register imports during the period of pre-disclosure, it analysed the development of import volumes to establish if there had been a further substantial rise in imports subject to the investigation during the period of pre-disclosure and therefore reflect the additional injury resulting from such increase in the determination of the injury margin.
- (208) Based on data from the Surveillance 2 database, import volumes from Russia during the four weeks period of pre-disclosure were 98,6 % higher than the average import volumes in the investigation period on a four-week basis. On that basis, the Commission concluded that there had been a substantial rise in imports subject to the investigation during the period of pre-disclosure.
- (209) To reflect the additional injury caused by the increase of imports, the Commission decided to adjust the injury elimination level based on the rise in import volume, which is considered the relevant weighting factor based on the wording of Article 9(4) of the basic Regulation. It therefore calculated a multiplying factor established by dividing the sum of the volume of imports during the four weeks of the pre-disclosure period of 85 449 tonnes and the 52 weeks of the IP, by the import volume in the IP extrapolated to 56 weeks. The resulting figure, 1,02, reflects the additional injury caused by the further increase of imports. The injury margin was thus multiplied by this factor. Therefore, the final injury elimination level is as follows:

Country	Company	Injury margin
Russia	Zheshartsky LPK LLC	58,3 %
	Sveza Group	32,2 %
	Syktyvkar Plywood Mill	43,8 %
	Other cooperating companies	39,9 %
	All other companies	58,3 %

- (210) Following final disclosure, Sveza Group claimed that the Commission was not entitled to make an adjustment to the injury margin under Article 9(4). First, it claimed that the Commission used two different sources of data, namely the Surveillance 2 database and Eurostat, to establish the existence of a substantial rise of imports. This was based on the use of one source to establish imports during the pre-disclosure period and another source coupled with an allegedly unreliable method to establish the import volume during the IP. Therefore, the finding of a substantial rise of imports was not based on an objective examination of positive evidence. In addition, Sveza Group argued that the imports during the pre-disclosure period were neither undercutting, nor underselling, the Union prices and no additional injury could therefore have been caused by those imports.
- (211) As explained in recital (207) it is the import volumes, not the prices, which were decisive for considering whether any additional injury was caused by the rise of imports. Indeed, article 9(4), third subparagraph of the basic Regulation requires the Commission to reflect the additional injury resulting from a further substantial rise in imports subject to the investigation, when no registration has taken place during the period of pre-disclosure. As

the increase in imports from Russia during the period was objectively very significant, according to this provision the Commission adjusted the injury margins accordingly as the text of the Article reads 'shall reflect'. As regards the use of different sources of data, the Commission recalled that the analysis was based on a common source, which is the information collected by custom administrations, regardless on which database this information is contained. The Commission also recalled that while both databases, Eurostat and Surveillance 2, are fed with the same information, only Surveillance 2 provides information at the level of daily data necessary for this analysis. As regards the reliability of Eurostat data and the methodology to establish the volume of imports during the IP, the Commission confirmed its position as set out in section 4.3. Therefore, the Commission dismissed the claim.

- (212) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (168) to (177) of the provisional Regulation as modified by the table above.

7. UNION INTEREST

7.1. Interest of the Union industry

- (213) Following provisional disclosure, the non-sampled exporting producer Segezha claimed that the imposition of the measures would be to the detriment of Union producers due to the risk of retaliation from the Government of Russia coupled with likely export restrictions of raw materials. The Commission did not have any evidence at its disposal that pointed to any intention of retaliation from the Government of Russia triggered by this proceeding, thus considered the claim unfounded.
- (214) Following final disclosure, Sveza Group claimed that antidumping measures were unlikely to bring any concrete benefit to the Union industry, since, due to the lack of Union production capacity to supply Union demand, there would be continuation of imports from Russia as observed after the imposition of the measures. The Commission recalled that the objective of the measures is not to block the imports from Russia but to establish a level playing field that allows the continuation of the sourcing of birch plywood from Russia but at fair prices.
- (215) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (179) to (182) of the provisional Regulation.

7.2. Interest of unrelated importers

- (216) Following provisional disclosure, several importers claimed that the imposition of anti-dumping duties would increase material costs for them and for their customers. These additional costs would be difficult to cover and therefore threaten their profitability and competitiveness. After final disclosure, the Birch Plywood Alliance also claimed that measures would have a negative impact on importers and users.
- (217) Concerning the economic consequences on importers, as described in recital (185) of the provisional Regulation, the investigation established that the sampled importers had a profitable business, with a weighted average profit of 4,7 %, with different shares of birch plywood in their portfolio of products.
- (218) Comments on importers' interest following provisional disclosure relating to the lack of capacity of the Union industry were the same as comments from users and are addressed in section 7.3 below.
- (219) In the absence of any other comments regarding the interest of unrelated importers, the conclusions set out in recitals (189) to (190) of the provisional Regulation were confirmed.

7.3. Interest of users

- (220) Following provisional disclosure, some parties claimed that anti-dumping duties would threaten users' profitability and competitiveness. It was also claimed that the assessment of the interest of users in the provisional Regulation was based on a study commissioned by the complainant and that the Commission disregarded data submitted by importers and users in their questionnaires.
- (221) Concerning the use of data submitted for interested parties, the Commission recalled that the assessment of the Union interest, including the interest of users, was made based on available information, including importers and users questionnaires as well as information provided by interested parties. Concerning the impact on users, as stated in recital (194) of the provisional Regulation, the imposition of measures is likely to have a different impact across users, depending on the share of birch plywood costs in the total costs for that sector and the ability to pass on costs to downstream consumers. On the basis of the explanations detailed in recitals (194) and (195) of the provisional Regulation the Commission established that any negative impact of measures on users does not outweigh the positive effect of measures on Union producers.
- (222) Following provisional disclosure, some parties claimed that Union producers refused to supply certain customers or certain products.
- (223) Following final disclosure the Birch Plywood Alliance and Sveza Group claimed that the lack of sufficient supply from Union producers is not circumstantial or temporary but structural, and that Union producers refuse to supply certain customers or products.
- (224) The Commission recalled that there is no obligation on the Union industry to fully meet Union demand. In fact, as shown in table 1 and table 4 of the provisional Regulation, the Union industry does not have the capacity to supply the entire Union consumption. Consequently, inevitably there are some customers, which would not be directly supplied by the Union industry. However, as set out in recital (186) of the provisional Regulation, the measures are not meant to bring Russian imports to a halt, but rather to allow the continued sourcing of birch plywood from Russia at fair prices, as has also been after the case following the imposition of provisional duties.
- (225) In addition, as stated in recital (187) of the provisional Regulation, the Union industry has developed an extensive network of retailers, allowing the Union industry to reach small customers which do not have the capacity to buy entire containers. Furthermore, as mentioned above, any consumer can continue sourcing from Russian producers as well as from other third countries, like Ukraine and Belarus.
- (226) Following provisional disclosure, Blomberger Holzindustrie GmbH, a user of birch plywood, claimed that its business would be negatively affected since they operate with long term contracts which cannot be modified on a short notice. However, at the date of the initiation all known interested parties were notified of the start of the proceeding. The Notice of initiation, published in the official journal, provided a detailed schedule of the investigation. An open version of the complaint, containing information on the alleged levels of dumping, was also available from the start of the proceeding. Similarly, all interested parties received a pre-disclosure documents with the expected level of duties, four weeks before its application. As a consequence, the Commission concluded that sufficient information was made available in due time to interested parties on the impact that could arise from the investigation.
- (227) Following provisional disclosure, numerous users and other interested parties claimed that the measures would have a material impact on the users' financial situation. It was claimed that the situation was particularly aggravated by the post-IP evolution of the market, namely a significant increase in prices, as well as transport prices, forcing users to pay a much higher price for the product concerned compared to the IP. The interested parties argued that users are not able to continue passing on the price increase deriving from the duties in the post-IP market situation to the final customers, and that therefore the analysis on the impact on users and importers at provisional stage was invalidated by the post-IP developments. In this context some parties requested the Commission to assess available post-IP data in order to better assess the Union interest.

- (228) The Commission recalled that the investigation of dumping and injury covered the period from 1 July 2019 to 30 June 2020. The examination of trends relevant for the assessment of injury covered the period from 1 January 2017 to the end of the investigation period. Therefore, the findings of this investigation are based on the information concerning the period mentioned before. In this respect, the Commission considered that the allegedly abnormally high post-IP prices of the product concerned and increase of transport were expected to be of a temporary nature responding to a post-COVID global economic recovery and rise in demand. This was confirmed by an outlook of the World Bank ⁽²³⁾. Accordingly, the information available to the Commission on post-IP developments did not change the conclusions as set out above and in the provisional Regulation.
- (229) Whereas it appeared to be generally accepted that prices will stabilise at a certain point in time, it was difficult for the Commission to determine at which levels and how long the situation of high demand and high prices would last. In any event, the Commission, exceptionally, requested post-IP data about in particular production volume, sales volume, sales prices and profitability of the Union producers, and collected the views of interested parties, in order to further assess the impact of recent market development on the Union interest in due course.

7.4. Interest of suppliers

- (230) In the absence of comments with respect to this section, the Commission confirmed its conclusions set out in recitals (197) to (200) of the provisional Regulation.

7.5. Other interested parties: other plywood producers, environmental interest

- (231) Following provisional disclosure, the claim was made that the Commission attributed importance to unsubstantiated arguments by plywood associations of other types of wood. It similarly argued that the argument according to which “higher prices” of birch would have “attracted demand that traditionally was for other type of woods” is illogic. The Commission noted that the argument in recital (201) of the provisional Regulation indicated that certain changes in the demand of other types of plywood were triggered by the decrease of prices of birch plywood relative to the prices of plywood from other types of wood. Moreover, in the provisional Regulation the Commission considered the arguments submitted by the plywood associations of other types of wood, but did not attribute special importance to these, since, in any event, those arguments would not have changed the conclusion that measures would have a positive effect on Union producers.
- (232) Following provisional disclosure, the exporting producer Segezha claimed that the imposition of measures would be contrary to the European Green Deal since measures would result in an increase of carbon leakage. This claim was, however, already covered by recital (202) of the provisional Regulation. In the absence of any further additional information that substantiated this argument, the Commission confirmed its conclusion of the provisional Regulation.
- (233) Following the final disclosure, Sveza Group claimed that the balance of interests required under the Union interest assessment did not tip in favour of Union producers. According to Sveza, Union producers are not expected to significantly benefit from the imposition of measures, either volume-wise or price-wise. They also remain unable to supply most users, in a context exacerbated by shortages and rising prices. By contrast, users would be required to bear an extra cost burden in the same context, as they have no choice but to continue sourcing from Russia, at prices, which were allegedly not undercutting or underselling the Union producers.

⁽²³⁾ World Bank estimation for major commodity products forecast price stabilization during 2021. The World Bank, “Commodity Prices to Stabilize after Early 2021 Gains, Supported by Global Economic Recovery”, <https://www.worldbank.org/en/news/press-release/2021/04/20/commodity-prices-to-stabilize-after-early-2021>

- (234) The Commission recalled that for the Union interest test under Article 21 of the basic Regulation the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration, whilst measures, as determined on the basis of the dumping and injury found, may not be applied where the Commission, on the basis of all the information submitted, can clearly conclude that it is not in the Union's interest to apply such measures.
- (235) It follows that to not apply measures, the balancing of various interest must clearly speak against the imposition of measures. It is, contrary to what Sveza Group suggested, not sufficient that the balancing test does not "tip in favour" of the imposition of measures. In any event, as explained in the preceding recitals, the Commission analysed in detail the various interests and the impact the imposition of measures would have and found that, on balance, the imposition of measures would clearly not be against the Union interest. The claim was therefore rejected.

7.6. Conclusion on Union interest

- (236) In view of the above and as described in recital (202), the post IP situation is considered to be of a temporary nature. In any event the analysis of the post-IP data showed that the situation of the Union industry, as concluded in section 4.5, has not been significantly reversed. It also showed that imports from Russia to the Union market continued after the imposition of provisional measures, in response to Union demand. Therefore, the Commission considered that the imposition of definitive measures would clearly not be against the Union interest under Article 21. Therefore, the Commission confirmed the conclusions set out in recital (204) of the provisional Regulation.

8. DEFINITIVE ANTI-DUMPING MEASURES

- (237) Following provisional disclosure, some parties claimed that, should measures be imposed, they should be set in the form of a minimum import price since it would balance interest of different parties, would prevent a shortage of the product concerned, and would safeguard the competition in the market. Similarly it was claimed that the minimum import price should take into account the price difference between square and rectangular-shaped plywood.
- (238) The Commission considered that as the product concerned was produced and sold in a wide variety of product types, the imposition of measures in the form of a minimum import price was neither practicable nor would it accurately reflect the level of dumping.

8.1. Definitive measures

- (239) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.
- (240) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Company	Definitive anti-dumping duty
Zheshartsky LPK LLC	15,80 %
Sveza Group	14,40 %
Syktyvkar Plywood Mill	15,72 %
Other cooperating companies	14,85 %
All other companies	15,80 %

- (241) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (242) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽²⁴⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (243) To minimize the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (244) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law. To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for "all other companies" should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

8.2. Definitive collection of the provisional duties

- (245) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected up to the level established by the present Regulation.
- (246) The definitive duty rates being lower than the provisional duty rates, the amounts secured in excess of the definitive anti-dumping duty rates should be released.

9. UNDERTAKING OFFERS

- (247) Following final disclosure, within the deadline specified in Article 8(2) of the basic Regulation, two Russian exporting producers submitted offers for a price undertaking: SPM and UPG.
- (248) According to Article 8 of the basic Regulation, the price undertaking offers must be adequate to eliminate the injurious effect of dumping and their acceptance must not be considered impractical. The Commission assessed the offers in view of these criteria and considered that its acceptance would be impractical for the following reasons.

⁽²⁴⁾ European Commission, Directorate-General for Trade, Directorate G, Wetstraat 170 Rue de la Loi, 1040 Brussels, Belgium.

- (249) Both companies produce and sell hundreds product types with significant differences in prices. One of the companies proposed only one minimum import price ('MIP'), which raise serious cross compensation risks within different types of products. The other exporting producer offered a MIP which for the majority of product types would be below the non-injurious price and below the levels which would properly reflect the dumping margin. Therefore, the level of minimum import price proposed was not sufficient to remove the injurious effect of dumping.
- (250) One producer proposed to index the minimum import price based on the evolution of birch log prices while the second one did not propose any indexation. However, while indexation would be necessary given the price volatility established on the market, the Commission found that the index proposed did not reflect the evolution of the selling prices. Therefore, the proposed index was considered inaccurate.
- (251) Birch plywood types and models cannot be easily distinguished from one another by a physical inspection. In particular, it would be very difficult to assess the coating type only by physical inspection. Without a detailed lab analysis the customs authorities would not be able to determine whether the imported product corresponds to what is being declared.
- (252) The Commission sent letters to the applicants, setting out the reasons to reject the undertaking offers.
- (253) UPG submitted comments thereto, but did not provide any arguments which affected the reasons to reject the offers. These comments were made available to interested parties on the case file.
- (254) The Commission considered the undertaking offers unenforceable and thus impractical within the meaning of Article 8 of the basic Regulation, for the reasons set out in recitals (247) to (251), and therefore rejected the offers.

10. FINAL PROVISIONS

- (255) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽²⁵⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (256) Article 3 of this Regulation contains an amendment with regard to the names of the seven exporting producers of the Sveza Group, and of the name of a cooperating non-sampled exporting producer, following a name change that was communicated to the Commission on 28 July 2021 and which did not affect in any manner the findings made in this investigation. The collection of provisional duties will apply to the company names as amended by Article 3 of this Regulation.
- (257) *The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion,*

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with outer plies of wood specified under subheading 4412 33, with at least one outer ply of birch wood, whether or not coated, originating in Russia, currently falling under CN code ex 4412 33 00 (TARIC code 4412 33 00 10).

⁽²⁵⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

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

Company	Definitive anti-dumping duty	TARIC additional code
Zheshartsky LPK LLC	15,80 %	C661
Sveza Group composed of seven exporting producers: "SVEZA Tyumen" Limited Liability Company; Joint Stock Company "SVEZA Ust-Izhora"; Joint Stock Company "SVEZA Verhnaya Sinyachiha"; Joint Stock Company "SVEZA Kostroma"; Joint Stock Company "SVEZA Manturovo"; Joint Stock Company "SVEZA Novator"; Limited Liability Company "SVEZA Uralskiy"	14,40 %	C659
Syktyvkar Plywood Mill Ltd.	15,72 %	C660
Other cooperating companies listed in the Annex	14,85 %	
All other companies	15,80 %	C999

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

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2021/940 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

Article 1(2) may be amended to add new exporting producers from Russia and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:

- (a) it did not export the goods described in Article 1(1) during the period of investigation (1 July 2019 to 30 June 2020);
- (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and
- (c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 4

1. Article 1.2 of Commission Implementing Regulation (EU) 2021/940 is amended as follows:

‘Sveza Group composed of seven exporting producers: JSC «SVEZA Manturovo»; JSC «SVEZA Novator»; Tyumen Plywood Plant Limited; JSC «SVEZA Ust-Izhora»; JSC «SVEZA Uralskiy»; JSC «SVEZA Kostroma»; JSC «SVEZA Verhnaya Sinyachiha»’

is replaced by

‘Sveza Group composed of seven exporting producers: “SVEZA Tyumen” Limited Liability Company; Joint Stock Company “SVEZA Ust-Izhora”; Joint Stock Company “SVEZA Verhnaya Sinyachiha”; Joint Stock Company “SVEZA Kostroma”; Joint Stock Company “SVEZA Manturovo”; Joint Stock Company “SVEZA Novator”; Limited Liability Company “SVEZA Uralskiy”’.

2. The Annex of Commission Implementing Regulation (EU) 2021/940 is amended as follows:

‘Murashi Plywood Factory’

is replaced by

‘LLC Murashinskiy plywood plant’.

3. This Article shall be applicable for the purposes of Article 2 as from 11 June 2021.

Article 5

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

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

Done at Brussels, 8 November 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Cooperating exporting producers not sampled

Name	TARIC additional code
Arkhangelsk Plywood Plant JSC	C662
CJSC Murom	C663
LLC InvestForest	C664
Joint Stock Company Bryansk Plywood Mill	C665
Joint-Stock Company Krasnyi Yakor	C666
Limited Liability Company Fanerniy Zavod	C667
Limited Liability Company UPM-Kymmene Chudovo	C668
LLC Murashinskiy plywood plant	C669
Parfino Plywood Factori	C670
ZAO Plyterra	C671
Plywood Plant Vlast Truda JSC	C672
Limited Liability Company Vyatsky Plywood Mill	C673

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