

Commission Regulation (EU) No 821/2011 of 16 August 2011
imposing a provisional anti-dumping duty on imports of vinyl
acetate originating in the United States of America (repealed)

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acetate originating in the United States of America (repealed)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (the 'Union'),

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

After consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Initiation**

- (1) On 4 December 2010, the Commission announced, by a notice published in the *Official Journal of the European Union*⁽²⁾, the initiation of an anti-dumping proceeding with regard to imports into the Union of vinyl acetate originating in the United States of America (hereinafter USA or the country concerned).
- (2) The proceeding was initiated as a result of a complaint lodged on 22 October 2010 by Ineos Oxide Ltd ('the complainant') representing a major proportion, in this case more than 25 % of the total Union industry production of vinyl acetate. The complaint contained prima facie evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. **Parties concerned by the proceeding**

- (3) The Commission officially advised the complainant, other known producers in the Union, exporting producers in the country concerned, importers, traders, users, suppliers and associations known to be concerned, and the representatives of the United States of America of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

- (4) All interested parties, who so requested and showed that there were particular reasons why they should be heard were granted a hearing.
- (5) The Commission sent questionnaires to the four known exporting producers in the country concerned. Three such exporting producers provided a questionnaire response. The fourth exporting producer declined to cooperate with the investigation and was subsequently informed that it would be treated as a non-cooperating company in accordance with Article 18 of the basic Regulation.
- (6) The Commission also sent questionnaires to the complainant and the other Union producer mentioned in the complaint.
- (7) In view of the apparent large number of unrelated importers which are potentially concerned by this investigation, sampling was envisaged in the notice of initiation in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all unrelated importers were asked to make themselves known to the Commission and to provide information specified in the notice of initiation. However, given that only two importers came forward within the deadline set by the notice of initiation, it was decided that sampling was not necessary. Two importers in the Union duly replied to the questionnaire and a verification visit took place at the premises of one of them.
- (8) On the other hand, a number of interested parties made themselves known as users. A questionnaire specifically designed for users was sent to such parties. Twelve companies replied to the questionnaire and verification visits were carried out at the premises of two of them.
- (9) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest and carried out verifications at the premises of the following companies:
 - (a) *Union producers*

Ineos Oxide Ltd, United Kingdom

Wacker Chemie AG, Germany
 - (b) *Exporting producers in the country concerned*

Celanese Ltd.

The Dow Chemical Company

LyondellBasell Industries, Acetyls, LLC
 - (c) *Unrelated companies in the country concerned*

Terminal, United States [name of party and exact location confidential]

- (d) *Related and unrelated companies in the Union*
Celanese Chemicals Europe GmbH, Germany
Lyondell Chemie Nederland B.V., Netherlands
Terminal, Union [name of party and exact location confidential]
- (e) *Related companies neither in the Union, nor the United States of America*
Dow Europe GmbH, Switzerland
- (f) *Importers*
Gantrade Ltd, United Kingdom
- (g) *Users*
Vinavil, Mapei, Italy
Synthomer, United Kingdom

3. **Investigation period**

- (10) The investigation of dumping and injury covered the period from 1 October 2009 to 30 September 2010 (the investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 2007 to the end of the IP (the period considered).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

- (11) The product concerned is defined as vinyl acetate originating in the United States of America currently falling within CN code 2915 32 00.
- (12) Vinyl acetate (hereinafter VAM or the product concerned) is a commodity chemical derived from acetic acid.
- (13) Vinyl acetate has a wide variety of applications. The majority of vinyl acetate produced is used as an input into two downstream products: polyvinyl acetate and polyvinyl alcohol. These downstream products are an important polymer in the various industries. Vinyl acetate polymers are commonly used in the production of paints, adhesives, coatings and textile finishes.
- (14) The investigation revealed that there is only one type of the product concerned.

2. **Like product**

- (15) The investigation showed that vinyl acetate produced and sold in the Union by the Union industry and the vinyl acetate produced in the country concerned and exported to the Union had the same basic physical, chemical and technical characteristics and uses. Therefore, these products are provisionally

considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Normal value

(16) For the determination of normal value, it was first established that domestic sales of the like product to independent customers of the respective exporting producers in the country concerned were representative, i.e. whether the total volume of such sales represented at least 5 % of its total export sales volume of the product concerned to the Union, in accordance with Article 2(2) of the basic Regulation.

(17) The Commission subsequently examined whether the domestic sales of each exporting producer could be considered as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers during the IP.

(18) Domestic sales transactions were considered profitable where the unit price was equal to or above the cost of production. Cost of production on the domestic market during the IP was therefore determined.

(19) In the case where more than 80 % by volume of sales on the domestic market were above cost and the weighted average sales price was equal to or higher than the weighted average production cost, normal value was calculated as the weighted average of all domestic sales prices, irrespective of whether they were profitable or not. However, where the volume of profitable sales represented 80 % or less of the total sales volume, or where the weighted average sales price was below the weighted average production cost, normal value was on the weighted average price of only the profitable domestic sales.

2. Export price

(20) The investigation revealed that vinyl acetate was exported from the country concerned to the Union either (i) through related trading companies located in the Union; or (ii) for one exporting producer, through a related trading company outside the Union.

(21) In both cases, the export prices were established on the basis of the resale prices to the first independent customers in the Union, pursuant to Article 2(9) of the basic Regulation, duly adjusted for all costs incurred between importation and resale, and profits.

3. Comparison

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

(23) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments for differences in handling and storage costs, transport and insurance costs, credit costs, rebates, commissions, import duties have been made where applicable and justified.

4. **Dumping margin**

(24) Pursuant to Article 2(11) of the basic Regulation, the dumping margin for the cooperating exporting producers in the United States of America was established on the basis of a comparison of the weighted average normal value with a weighted average export price.

(25) In order to determine the dumping margin for non-cooperating exporting producers, the level of non-cooperation was first established. To this end, the volume of exports to the Union reported by the cooperating exporting producers was compared with the equivalent Eurostat import statistics.

(26) As the level of cooperation in the United States of America was high (above 90 %) it was provisionally considered appropriate to set the residual dumping margin for any non-cooperating exporting producers in this country at the level of the highest duty imposed on a cooperating exporter. This matter may be subsequently reconsidered at the definitive stage.

(27) On the basis of the above methodology, the provisional dumping margins, expressed as a percentage of the CIF import price at the Union border, duty unpaid, are the following:

Company	Provisional Dumping Margin
Celanese Ltd.	12,1 %
LyondellBasell Acetyls, LLC	13,0 %
The Dow Chemical Company	13,8 %
All other companies	13,8 %

D. **INJURY**

1. **Union production and Union industry**

(28) The complaint was lodged by Ineos Oxide Ltd hereinafter "the Complainant", a producer of vinyl acetate in the Union, representing a major proportion of the total Union production. A second Union producer, Wacker GmbH, supported the initiation of the proceeding. Thus, the complaint was supported by Union producers who represent more than 25 % of total production of vinyl acetate produced by the Union industry. Therefore, the proceeding has been initiated according to the provisions of article 5(4) of the basic Regulation.

- (29) A third producer located in the Union (Celanese Europe GmbH) was found to be related to an exporting producer located in the country concerned. According to the information obtained in the course of the investigation, it was provisionally established that this producer was fully controlled by the US-based Celanese Corporation which has decisive role in key European business operations such as business planning, production control, purchase and sales activity.
- (30) Given the abovementioned, it was considered that the relationship of Celanese Europe GmbH within the group was such as to cause a behaviour that would be different from that of other non related producers within the meaning of article 4 (2) of the basic Regulation. It was also considered that through this relationship, the company could be shielded from the negative consequences of the injurious dumping. Furthermore, to include such a company in the injury findings would distort aggregate data on the constitution of the Union industry.
- (31) On this ground, it was provisionally established that Celanese Europe GmbH should be excluded from the definition of the Union industry.
- (32) Therefore, the two producers Ineos Oxide Ltd and Wacker GmbH constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation, representing 100 % of the Union production. They will hereinafter be referred to as the 'Union industry'.

2. **Determination of the relevant Union market**

- (33) For the purpose of establishing whether the Union industry, as defined in recitals (28) *et seq.*, had suffered material injury, it was examined to what extent the Union industry's captive production of the product concerned had to be considered in the analysis.
- (34) Indeed, the product concerned is sold by the Union industry to both (a) the free market and (b) the captive market (within the same group of the company). In the captive market, the product concerned is used as a raw material for the manufacture of various products used in paints, adhesives, coatings, etc.
- (35) In this context, sales of the product concerned for use as a raw material to manufacture other products for companies in the same group shall be considered as 'captive use', in so far as at least any of the following two conditions occur: (i) sales are not made at market prices or (ii) the customer does not have a free choice of supplier within the same group of companies. In the course of the investigation, it was provisionally found that sales to related entities which purchase the product concerned as a raw material for the manufacture of a different product had to be considered as captive sales; it was found that pursuant to the commercial policy of the companies, these related entities did not have a free choice of supplier.

- (36) This distinction is relevant for the injury analysis. Vinyl acetate destined for captive use was found not to be directly in competition with imports from the country concerned. By contrast, production destined for the free market sales was found to be in direct competition with those imports, because these sales were made under normal market conditions; this implies free choice of supplier. This warranted the differentiation between the captive and the free market in the analysis for certain injury indicators.
- (37) In this respect, it was found that the following economic indicators related to the Union industry could reasonably be examined by referring to the total activity, i.e. including the captive use of the Union industry, production, capacity, capacity utilisation, investments, stocks, employment, productivity, wages and magnitude of the dumping margin. This is because those indicators are affected regardless of the fact whether the product is transferred downstream within a company or a group of companies for further processing or whether it is sold on the free market.
- (38) As for profitability, cash flow, return on investment and ability to raise capital, the analysis was performed at the level of the free market only because the fact that prices in the captive markets are not representative of the normal market conditions has a bearing on the reliability of those indicators.
- (39) The other economic indicators relating to the Union industry, namely consumption, sales, market shares and prices in the Union market were analysed and evaluated mainly referring to the situation prevailing on the free market, in particular where measurable market conditions exist and where transactions are made under normal market conditions implying free choice of supplier.
- (40) For those indicators, the captive market was however also taken into account and compared to data for the free market in order to determine whether the situation of the captive market was likely to change the findings based on the analysis of the free market alone.

3. **Union Consumption**

- (41) The Union consumption was established by adding the total import volume of vinyl acetate based on Eurostat, cross-checked against the verified data provided by the exporting producers for imports from the country concerned, to the total sales volume on the Union market of the Union industry and the other producer located in the Union.
- (42) In view of the small number of suppliers and the need to protect confidential business data pursuant to Article 19 of the basic Regulation, the development of consumption is indexed.

Status: This is the original version (as it was originally adopted).

Table 1

Consumption in the Union

Index 2007 = 100	2007	2008	2009	IP
Total consumption	100	90	87	99
Captive market	100	96	100	104
Free market	100	88	82	97

- (43) In the period considered the consumption on the total Union market and on the free market slightly decreased by 1 % and 3 % respectively. Conversely, an increase of 4 % was recorded on the captive market during the same period.

4. Imports from the country concerned

4.1. Volume and market share

- (44) The evolution of imports from the country concerned, in volume and market share, has been the following:

Table 2

Imports from the United States of America

Import volumes (MT)	2007	2008	2009	IP
United States of America	103 192	146 800	133 763	152 445
<i>(Index 2007 = 100)</i>	<i>100</i>	<i>142</i>	<i>130</i>	<i>148</i>
Market share in total market <i>(Index 2007 = 100)</i>	<i>100</i>	<i>159</i>	<i>150</i>	<i>149</i>
Market share in free market <i>(Index 2007 = 100)</i>	<i>100</i>	<i>162</i>	<i>157</i>	<i>152</i>

Source: Eurostat and information obtained from interested parties through the questionnaire responses.

- (45) Over the period considered, imports to the total Union market (captive and free market) from the country concerned increased by 48 %. This led to a market share increase during the same period by 49 %. Market share in the free market increased by 52 %.

4.2. *Prices of imports and price undercutting*

- (46) Average prices of the imports from the country concerned, developed as follows:

Table 3

Price of imports from the United States of America

Import prices (EUR/MT)	2007	2008	2009	IP
United States of America	774	814	541	573
<i>(Index 2007 = 100)</i>	<i>100</i>	<i>105</i>	<i>70</i>	<i>74</i>

Source: Eurostat

- (47) While seeing a slight increase in the IP, the overall average imports prices from the country concerned decreased by 26 % between 2007 and the IP.
- (48) A comparison of sales prices on the Union market was made between the average prices of the Union industry charged on the free market and average import prices from the country concerned. The relevant sales prices of the Union industry were adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Union and after deduction of discounts and rebates.
- (49) These prices were compared with prices charged by the cooperating US exporting producers net of discounts and adjusted where necessary to CIF Union frontier price duly adjusted for customs clearance costs and post-importation costs.
- (50) The comparison showed that during the IP, imports of the product concerned from all the cooperating exporters were sold in the Union at prices which undercut the Union industry's prices. The average level of undercutting, when expressed as a percentage of the Union industry's prices, was 17,9 %, based on the verified data submitted by the cooperating exporting producers. This level of undercutting was combined with a negative price development and a substantial price depression.

*Status: This is the original version (as it was originally adopted).***5. Imports from other third countries**

(51) The following table shows the developments of imports from other third countries.

*Table 4***Volume of imports from other third countries**

Import volumes (MT)	2007	2008	2009	IP
United States of America	103 192	146 800	133 763	152 445
<i>(Index 2007 = 100)</i>	<i>100</i>	<i>142</i>	<i>130</i>	<i>148</i>
Saudi Arabia	0	0	0	73 156
Other	88 138	52 414	15 937	8 198
<i>Index 2007 = 100</i>	<i>100</i>	<i>59</i>	<i>18</i>	<i>9</i>
Market share in total market <i>(Index 2007 = 100)</i>	<i>100</i>	<i>66</i>	<i>21</i>	<i>9</i>
Market share in free market <i>(Index 2007 = 100)</i>	<i>100</i>	<i>68</i>	<i>22</i>	<i>10</i>

Source: Eurostat

(52) At the beginning of the period considered, imports from the country concerned competed with other countries including Taiwan, Ukraine and Russia. At the end of the period considered, imports from these traditional sources had decreased to almost nil.

(53) A new exporting country, Saudi Arabia, which entered the Union market during the IP, exported around 73 000 tonnes in the IP. The impact of this development on the Union industry is discussed in recitals (91) *et seq.*

6. Situation of the Union industry**6.1. General**

- (54) Pursuant to Article 3(5) of the basic Regulation, the examination of the impact of dumped imports on the Union industry included an evaluation of all economic factors and indices relating to the state of the Union industry from 2007 to the end of the IP.
- (55) Macroeconomic indicators (production, production capacity, capacity utilisation, sales volumes, market share, employment, productivity, wages and magnitude of dumping margins) as well as micro-economic indicators (stocks, sales prices, profitability, cash flow, and return on investment, ability to raise capital and investments, production costs) were assessed at the level of the entire Union industry. The assessment was based on the information derived from the verified questionnaires submitted by the Union industry.
- (56) It is to be noted that the complainant procured its production facilities only during 2007; as a consequence, the data for certain injury indicators (profitability, wages, investments, return on investment, cash flow) could not be obtained for 2007. Therefore, for those indicators, the analysis covers the period 2008 to IP. For the remaining indicators, figures for 2007 were available. Thus, for such indicators, the analysis covers the entire period under consideration (from 2007 to the IP).
- (57) The complainant is focused on delivering the product concerned entirely to the free market whereas the other Union producer is focused mainly on the captive market with a small fraction destined for the free market. Taking into account the fact that the data for the injury analysis is mainly derived from two sources only, one of which is mainly focused on the captive market, and considering that it has been found that a distinction between the total market and the free market has to be made for a number of injury indicators, data relating to the Union industry had to be indexed in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.

6.2. *Macro-economic indicators*

6.2.1. Production, production capacity and capacity utilisation

- (58) The table below indicates the evolution of production, production capacity and capacity utilisation of the total Union industry:

Table 5

Total Union production, production capacity and capacity utilisation

(Index 2007 = 100)	2007	2008	2009	IP
Total Production	100	105	102	92

*Status: This is the original version (as it was originally adopted).**Table 5***Total Union production, production capacity and capacity utilisation**

Total Production capacity	100	121	126	143
Total Capacity utilisation	100	87	81	64

- (59) As shown in the table above, during the period considered, the overall Union production has decreased by 8 %.
- (60) During the same period, the production capacity increased by 43 %. However, this increase in capacity was not linked to the establishment of new production lines but to the improved efficiency in the utilisation of the existing capacity.
- (61) The combination of these two factors, i.e. decrease in production volume and increase in production capacity during the same period led to a significant decrease in capacity utilisation by 36 % over the period considered.

6.2.2. Sales volumes and market share

- (62) The figures below present the sales volume, market share and average unit sales prices of the Union industry split between the total, captive and free market.

*Table 6***Sales volumes and market share**

(Index 2007 = 100)	2007	2008	2009	IP
Total sales	100	99	96	88
Market share (%)	100	110	111	88
Captive market sales	100	111	109	113
Market share (%)	100	115	108	109
Free market sales	100	89	86	67
Market share (%)	100	102	104	69

- (63) The overall sales volume decreased by 12 % in the period considered. This drop was even steeper in the free market where it fell by 33 % between 2007 and the IP. The captive market followed the opposite trend and sales volume increased by 13 % in the same period.
- (64) The drop in sales volume was reflected in market share that saw an 11 % decrease for the whole market and 31 % decrease in the free market between 2007 and the IP. Again, the captive market followed the opposite trend and saw an increase of 9 % during the same period.

6.2.3. Employment, productivity and wages

TABLE 7

Employment, productivity and wages

(Index 2007 = 100)	2007	2008	2009	IP
Total Number of employees	100	96	98	100
Total Productivity (unit/employee)	100	109	104	92
Total Yearly wages	0	100	95	88

- (65) Total employment remained stable between 2007 and the IP. It should be noted that production of vinyl acetate is not labour-intensive and employment figures are therefore not closely linked to the production figures. Employment is therefore not of significant importance as an indicator in this sector.
- (66) During the period considered the total productivity per employee decreased by 8 % between 2007 and the IP. This followed the decrease in production and the increase in production capacity as explained in the recital (58) *et seq.*

6.2.4. Magnitude of the actual margin of dumping

- (67) The dumping margins are specified above in the dumping section. All margins established were above the *de minimis* level. Furthermore, given the volumes and the prices of the dumped imports, the impact of the actual margin of dumping cannot be considered as negligible.

6.3. *Micro-economic indicators*

6.3.1. General remarks

- (68) The analysis of micro-economic indicators (stocks, sales prices, profitability, cash flow, and return on investment, ability to raise capital and investments, production costs) was carried out at the level of the entire Union industry as established in recitals (28) *et seq.*
- (69) From the above indicators, the assessment of profitability, wages, investments, return on investment, cash flow had to be focused on the free market, meaning that it would reflect mainly the data provided by the Complainant. Given the aforementioned, the development of the indicators profit and cash-flow, could not be given in index format due to confidentiality reasons.
- (70) In addition, as explained in recital (56), the complainant could not provide data for 2007 concerning certain injury indicators; therefore, the analysis of those indicators was performed for the period of 2008 to the IP.

6.3.2. Stocks

- (71) The figures below represent the evolution of the stocks of the Union industry during each of the period concerned:

Table 8

Stocks

Index 2007 = 100	2007	2008	2009	IP
Total Stocks	100	86	49	69

- (72) Stocks decreased by 31 % over the period considered. However, this indicator is not to be considered as relevant in this sector, as vinyl acetate producers produce to order and tend to hold limited stocks. In fact, stocks correspond only to a few weeks of supply.

6.3.3. Sales prices

- (73) The following table represents the Union industry's price evolution split between the total, captive and free market.

Table 9

Sales prices

Index 2007 = 100	2007	2008	2009	IP
Average unit selling price total market	100	107	74	84

Table 9

Sales prices				
Average unit selling price on captive market	100	115	82	92
Average unit selling price on free market	100	102	69	77

(74) Sales prices for the total Union market decreased by 16 % in the period considered. Sales prices fell in both markets, even if the decrease was sharper in the free market (– 23 %) than in the captive market (– 8 %).

6.3.4. Profitability, cash flow, return on investment, ability to raise capital and investments

(75) Profitability for the like product on the free market was established by expressing the pre-tax net profit of the sales of the like product by the Union industry, as the percentage of the turnover of such sales.

(76) The profitability on the free market decreased over the period considered. During the IP, losses were reported for each month. This was the effect of a strong decrease both in sales volumes and in sales prices.

(77) The table below demonstrates that the Union industry has increased its investments in the product concerned, even when faced with decreasing profitability. The investments were mainly made in improving and maintaining production technology and process in order to improve efficiency.

Table 10

Investments				
Index 2008 = 100	2007	2008	2009	IP
Total Investments	n.a.	100	129	127

(78) Investments increased by 27 % over the period under consideration.

(79) Despite the increase in investment, the return on investments (ROI) of the product concerned did not meet the expected return and decreased between 2008 and the IP.

(80) A decrease was observed also in cash flow between 2008 and the IP shows a constant deterioration of the ability of the Union industry to generate cash and consequently, a weakening of the financial situation of the Union industry.

(81) Therefore, by increasing its investments, the industry still showed ability to raise capital; nevertheless, this ability is hampered by falling sales and increasing difficulties in generating cash flow.

7. **Conclusion on injury**

(82) The analysis of the situation of the Union industry shows a downwards trend for all the main injury indicators. Against a relatively stable consumption, overall production fell by 8 % in the period considered. During the same period, the Union industry lost 11 % of the overall market share and 33 % of the free market. Capacity utilisation decreased by 36 %. In the same period, imports from the country concerned increased by 48 %.

(83) Over the period under consideration, the overall Union industry's sales volume decreased by 12 %. A stronger downward trend in sales volumes could be observed when looking at trends related to the free market which saw a 33 % decrease over the period under consideration.

(84) The decrease in sales volumes of Union industry was accompanied by a 16 % overall price depression. As was the case for sales volume, the situation was even worse in the free market where a price depression of 23 % was recorded. The loss of sales volume along with the decrease in prices had an effect on profit levels and led to losses for each month of the IP.

(85) The only indicators which recorded a positive trend were investments which increased by 27 % and so did the ability to raise capital. However, the investments did not meet the expected return and decreased between 2008 and the IP.

(86) In view of the above, the investigation confirmed that should the situation continue, losses seen in the course of the investigation would be likely to lead to the discontinuation of any sizeable Union Industry production of vinyl acetate destined for the free market.

(87) Due to the circumstances presented above, the Union industry has suffered material injury during the IP.

E. **CAUSATION**

1. **Introduction**

(88) In accordance with Article 3(6) and (7) of the basic Regulation it was examined whether the material injury suffered by the Union industry has been caused by the dumped imports from the country concerned. Furthermore, known factors other than dumped imports, which might have injured the

Union industry, were examined to ensure that any injury caused by those factors was not attributed to dumped imports.

2. **Impact of the imports from the USA**

2.1. *General*

(89) There is a clear coincidence in time between the increase of dumped imports between 2007 and the IP, along with a parallel loss of market share by the Union industry over the same period. The investigation has also established the existence of negative price effects of dumped imports which continuously undercut prices of Union industries and consequently pushed down their profitability.

(90) Some parties claimed that the increase in imports was simply replacing the imports previously made by other importing countries and/or due to the increasing demand on the EU market. However, neither the import figures (see table 2), nor the consumption figures (see table 1) can confirm this claim. In this context it is recalled as seen in recital (43), that consumption was rather stable and even decreased slightly in the period considered while the imports from the USA increased by 48 %.

3. **Effects of other factors**

3.1. *Impact of imports from other third countries*

3.1.1. Impact of imports from Saudi Arabia

(91) Some interested parties have claimed that imports of VAM from Saudi Arabia are the cause of the injury of the Union industry.

(92) Saudi Arabia is indeed, as stated in recital (53) above, the second largest exporter of VAM to the Union after the USA. Imports from Saudi Arabia entered the market only during the IP.

(93) Eurostat figures presented in table 11 below show the prices of imports from Saudi Arabia and other third countries.

Table 11

Sales price of exports from other third countries

EURO/MT	2007	2008	2009	IP
Saudi Arabia	n.a.	n.a.	n.a.	636
<i>(Index IP = 100)</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>100</i>
Other	878	919	473	633
<i>(Index 2007 = 100)</i>	<i>100</i>	<i>105</i>	<i>54</i>	<i>72</i>

- (94) The table shows that the average price of imports from Saudi Arabia at 636 EUR was comparable with those of imports from other third countries which were on average 633 EUR, while they were 11 % higher than the average US price of 573 EUR.
- (95) The fact that the Saudis are operating in the same price segment as other importers with a significant price differential in comparison to US exports shows that the Saudi exporting producers behave differently from the US in terms of the price setting and in terms of the possible impact on the Union producers.
- (96) On these grounds, it can be provisionally concluded that imports from Saudi Arabia do not break the causal link between dumped imports from the USA and the injury suffered by the Union industry.

3.2. *Impact of the economic crisis*

- (97) Some interested parties claimed that the decrease in production and sales volume of the Union industry should be attributed to the decreasing consumption. These parties also claimed that the downward trend in average sales prices was caused by the world wide economic crisis.
- (98) Other interested parties claimed that during the economic crisis, all petro-chemical producers, including VAM producers, suffered serious losses and that therefore the losses suffered by the Union industry should not be attributed to the dumped imports from the country concerned.
- (99) However, the present investigation, as mentioned in recitals (41) to (43) showed that the decrease of Union consumption on the free market was negligible during the period considered. Therefore, the impact of the economic crisis in terms of a decrease in consumption could not have been responsible for the steep decrease in sales volume as shown in recitals (62) to (64).
- (100) The analysis of the profitability figures of the free market of Union industry has revealed that the VAM business suffered particular losses when compared to other similar chemical products manufactured. Moreover, the profitability of these other products recovered after the crisis, whereas the VAM business has continued to deteriorate. This leads to the provisional conclusion that while the VAM business was most likely to be affected by the economic crisis, it should be distinguished from other petro-chemical sectors, because of persistent losses suffered by the Complainant that continued post-crisis which was directly linked to low priced imports from the USA. The claim is therefore provisionally rejected.
- (101) In the light of the above, it is provisionally concluded that the economic crisis has not contributed to the injury suffered by the Union industry to the extent

that it would break the causal link between the injury suffered by the Union industry and the dumped imports from the USA.

3.3. *Self-inflicted injury*

- (102) Several interested parties claimed that the Complainant had contributed to its precarious situation by building additional production capacity during the recession. It was alleged that any decrease in sales and profit therefore was caused by the combination of the recession and poor business decision on behalf of the Complainant
- (103) Several interested parties have furthermore claimed that the technology used in the Complainant's plant is the main cause of injury. Over the period considered, the Complainant has suffered several outages and *force majeure* situations and it was claimed that the decrease in the Complainant's sales should be attributed to the numerous stoppages and not to the dumped imports from the USA. Similar arguments were raised in relation to the Complainant's profitability.
- (104) As for the claim that the Complainant should not have expanded the production capacity during the world economic downturn, it is recalled that the Complainant did not procure any new capacity but simply expanded its production capacity through the optimisation of existing processes. This must be considered a reasonable business decision in a market where total consumption is stable but sales are falling because of the competition of low priced imports. This claim is therefore provisionally rejected.
- (105) As concerns the claim that it was outages caused by technical problems with the complainant that led to the injury suffered by the complainant, the investigation showed that the production process for VAM requires a cyclic maintenance and closure of the plant at regular, planned intervals. Therefore, three out of five stoppages must be considered as part of the regular running of a VAM plant.
- (106) Furthermore, it was found that all three planned outages were based on conscious decisions by the Complainant to stop production at times when price pressure caused by dumped imports was so strong that the Complainant was not in the position to deliver at sustainable price levels. During these stoppages, the Complainant had sufficient stock levels to deliver the low volumes demanded which were either agreed by contract or earned through spot sales. Moreover, the decreasing stock levels, as stated in recital (72), confirm that constant deliveries were made over the period considered.
- (107) On these grounds, it was found that the overall impact of the outages of the Complainant was not such as to break the causal link. Therefore, the arguments raised by the interested parties with regards to the self-inflicted injury were rejected.

3.4. *Access to raw material: The natural competitive advantage by producers in the country concerned*

(108) Several interested parties claimed that the Complainant's dependency on external supplies of raw material, rather than the dumped imports should be considered as one of the main sources of its problems. It was also alleged that US exporters have a natural competitive advantage as they have access to cheaper raw materials, i.e. ethylene and acetic acid.

(109) In terms of the alleged problems of the raw material sources available to the Complainant, the argument raised above could not be upheld as it was found that the Complainant also benefits from preferential channels, materials sourced from its supplier's on-site plant as well as from a sister company. Accordingly, prices of the main raw materials were thus comparable with those available to the market of the country concerned.

(110) It follows that while the general prices of the main raw material used for production of VAM indeed may have been lower in the USA than on the Union market this did not have an impact on the costs of the Complainant.

(111) The fact that the raw material price difference could only have had partial impact on the problems experienced by the Complainant was furthermore supported by the fact that significantly better profitability figures were recorded for other products produced by the Complainant that contained the same raw materials.

(112) On these grounds, it is provisionally concluded that the impact of raw material prices was not such as to break the causal link between the dumped imports from the USA and the material injury suffered by the Union industry.

4. **Conclusion on causation**

(113) It was thus concluded that there is a causal link between the injury suffered by the Union industry and the dumped imports from the USA. Other possible causes of injury, i.e. impact of import from other third countries, impact of economic crisis, natural competitive advantage of exporting producers on raw material and self-inflicted injury, have been analysed and none of them had an impact on the situation of the Union industry such as to break the causal link established between the dumped imports from the USA and the material injury suffered by the Union industry.

(114) Based on the above analysis of the effects of all known factors on the situation of the Union industry, it was therefore provisionally concluded that there is a causal link between the dumped imports from the USA and the material injury suffered by the Union industry during the IP.

F. **UNION INTEREST**

1. **Interest of the Union industry**

- (115) The investigation showed that the Union industry is suffering material injury because of the effects of dumped imports which undercut its prices as elaborated in recital (48) *et seq.*
- (116) The Union industry is investing to improve its efficiency and is gradually streamlining its production process. It can be expected that measures would prevent further unfair competition from dumped, low-priced imports and consequently allow for the recovery of the Union industry's situation.
- (117) On the other hand, should measures not be imposed, the current financial situation and profitability of the Union industry, as analysed in the present investigation in recitals (54) *et seq.*, are not strong enough to withstand further the pressure exerted by the dumped imports. The consequence would be likely to lead to the discontinuation or significant reduction of the Union industry's production for the free market.
- (118) In the light of the above analysis, it is expected that the Union industry would benefit from the imposition of provisional measures.

2. **Interest of importers**

- (119) The Commission sent questionnaires to the two known unrelated importers which came forward within the deadline set in the Notice of Initiation.
- (120) The investigation showed that a relevant part of its overall turnover relates to the product concerned.
- (121) The impact of the duties on the importer's profitability was analysed. The analysis showed that the profit and mark-up made on its imports are such that the imposition of measures indeed could lead to a decrease in its profitability. Consequently, from a cost perspective, should measures be imposed, they would in all likelihood have an impact on the importer's business. Nevertheless, the importer confirmed that it would be able to pass at least part of the cost increase on its customers in view of the current situation of the market, where demand is expected to remain constant. Moreover, the investigation revealed that it is possible for the importer to switch to sourcing the product from producers which are not subject to the duty, such as Taiwanese exporters or Union producers.
- (122) In view of the above, it is concluded that the effect on importers of the imposition of measures would be limited.

3. **Interest of users**

- (123) Users have shown a strong interest in this case. Twelve users cooperated in the investigation; out of these, two were verified on the basis of their volume of imports from the country concerned. These companies are located throughout the Union and are present in the sector of industrial applications such as coatings, paints and adhesives.

- (124) The imports of cooperating users account for around one-third of the total imports from the US based on Eurostat figures. The investigation showed that 30 % of the cooperating users' VAM purchases are of US origin and 57 % are of EU origin.
- (125) The investigation showed that VAM represented, on average, around one-third of the cost of production of the two verified users.
- (126) Some users claimed that the imposition of measures would increase their cost of production and that it would be difficult to transfer this cost increase onto their customers due to the fierce price competition in the market. Allegedly, this difficulty may result either in a reduction of the users' market share to the advantage of their competitors located outside the Union, or in a switch from their current production process to others not involving the product concerned. Allegedly, the final consequence of the measures would be an important reduction of the users' profit margins.
- (127) Two of these users alleged that the reduced profit margins would lead to fewer investments in their production and that, consequently, employment would be affected.
- (128) As to the claim concerning the profit margin reduction, taking into account the users' healthy profitability levels, it is expected that should users not be able to transfer the cost increase onto their customers, the imposition of duties would only slightly decrease their profit margins. Therefore, it is likely that investments in production would not be disrupted and that there would be no significant adverse effect on the employment. In the light of the above, the claim is rejected.
- (129) As regards the claim that measures on imports of the product concerned would harm the competitiveness of Union users as they would increase their production costs and favour imports of downstream products from other third countries, it is recalled that the duties do not intend to stop imports and that the level of measures is not such as to prevent users from sourcing from the USA. The purpose of anti-dumping duties is to re-establish a fair level playing field in the Union market for the product concerned. Based on the above and on the consideration that only one third of the users' VAM consumption is of US origin, the claim is rejected.
- (130) In addition to the above, it must also be underlined that many users reported that due to the scarce number of sources of VAM, sufficient supply of Union origin VAM is a priority. In this respect, it is recalled that the investigation has shown that there is the likelihood that the Union industry will as good as discontinue supply of free market VAM if measures are not imposed. In relation to the diversity of supply, the imposition of measures would thus also be in the interest of the Union users.

(131) In view of the above, it is provisionally concluded that any negative effects of the imposition of measures on users would be limited.

4. **Conclusion on Union interest**

(132) In view of the above, it is provisionally concluded that, based on the information available on Union interest, it cannot be clearly concluded that the imposition of provisional measures on imports of vinyl acetate originating in the USA would not be in the Union interest.

G. **PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES**

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

1. **Injury elimination level**

(134) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Union industry.

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

(136) Therefore, the injury elimination level was calculated on the basis of a comparison of the average price of the dumped imports and the target price of the Union industry. The target price was established by adding a target profit margin to the costs of production of the Union industry. The target profit margin was provisionally set at the level of 9,9 %. This profit margin was established by reference to the profitability based on the average return (measured as EBITDA/sales) that petrochemical companies operating in a sector similar to VAM generated during the period 2007-2009.

(137) The resulting underselling margins are in excess of 30 %.

2. **Provisional measures**

(138) In the light of the foregoing, and in accordance with Article 7(2) of the basic Regulation, it is considered that the provisional anti-dumping measures should be imposed on imports originating in the country concerned at the level of the lower of the dumping and the injury margins in line with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the dumping margins found.

- (139) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to ‘all other companies’) are thus exclusively applicable to imports of products originating in the United States of America and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to ‘all other companies’.
- (140) Any claim regarding the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission⁽³⁾ forthwith with all relevant information, in particular any modification in the company’s activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.
- (141) On the basis of the above, the proposed anti-dumping duty rates, expressed on the CIF Union border, are provisionally as follows:

Company	Dumping margin	Injury margin	Provisional Duty Rates
Celanese Ltd.	12,1 %	38,4 %	12,1 %
LyondellBasell Acetyls, LLC	13 %	65,8 %	13 %
The Dow Chemical Company	13,8 %	66,2 %	13,8 %
All other companies	13,8 %	66,2 %	13,8 %

H. DISCLOSURE

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

HAS ADOPTED THIS REGULATION:

Article 1

1 A provisional anti-dumping duty is hereby imposed on imports of vinyl acetate, currently falling within CN codes 2915 32 00 and originating in the United States of America.

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

Company	Anti-Dumping Duty	TARIC additional code
Celanese Ltd.	12,1 %	B233
LyondellBasell Acetyls, LLC	13 %	B234
The Dow Chemical Company	13,8 %	B235
All other companies	13,8 %	B999

3 The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty

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

Article 2

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

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

Article 3

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

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

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

Done at Brussels, 16 August 2011.

For the Commission

The President

José Manuel BARROSO

Status: This is the original version (as it was originally adopted).

Status: This is the original version (as it was originally adopted).

- (1) OJ L 343, 22.12.2009, p. 51.
- (2) OJ C 327, 4.12.2010, p. 23.
- (3) European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.