EUROPEAN UNION – ANTI-DUMPING MEASURES ON IMPORTS OF CERTAIN FATTY ALCOHOLS FROM INDONESIA (WT/DS442)

QUESTIONS FROM THE PANEL FOLLOWING THE SECOND MEETING OF THE PANEL WITH THE PARTIES

15 APRIL 2016

TABLE OF CASES CITED

Short Title	Full Case Title and Citation
Korea – Certain Paper	Panel Report, Korea – Anti Dumping Duties on Imports of Certain Paper from Indonesia, WT/DS312/R, adopted 28 November 2005
US – Hot Rolled Steel	Appellate Body Report, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, adopted 23 August 2001, DSR 2001:X, p. 4697
US – Zeroing	Appellate Body Report, United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing"), WT/DS294/AB/R, adopted 9 May 2006, and Corr.1, DSR 2006:II, p. 417

TABLE OF EXHIBITS

Exhibit No.	Title
Exhibit EU – 16	Extracts of PTMM financial statements in 2008 and 2009
Exhibit EU - 17	Template Table G – PL of the exporting producer and each related company

1 QUESTIONS RELATED TO PRICE COMPARABILITY

31. To Indonesia: Is the Panel correct in understanding that, in Indonesia's view, the existence of a single economic entity is determinative to the question of whether a mark-up granted by a producer to a related trader can be considered to be a difference affecting price comparability within the meaning of the third sentence of Article 2.4? Please explain the textual basis for Indonesia's position.

32. To Indonesia: In what circumstances, in an anti-dumping investigation, does Indonesia consider that an investigating authority is required to consider whether a single economic entity exists? What criteria does Indonesia consider are necessary and/or relevant to such consideration?

33. To Indonesia: At paragraphs 2.6-2.12 in its second written submission, Indonesia refers to "actual expenses" and "genuine expenses", such as those incurred by paying unrelated companies for transportation and customs brokerage services, and distinguishes them from the same services being provided by a related company. When provided by a related company, Indonesia asserts

that these are "not actual expenses" but rather are "monetary flows… [that] reflect simply an allocation, or shifting, of funds (profits) from 'one pocket to another' of the larger entity". Does Indonesia agree that costs will be incurred if these services are supplied by a related company? Why are these costs not "actual expenses" or "genuine expenses"?

34. To the parties: Please comment on whether and how adjustments for selling costs would or would not be made in the following two hypothetical scenarios:

- Exporter/producer A has two sales divisions in its single location, one for domestic sales and one for export sales. The export sales division is larger and incurs higher costs than the domestic sales division.

- Exporter/producer B has two sales divisions in its single location, one for domestic sales and one for export sales. The export sales division is smaller and incurs lower costs than the domestic sales division.

Reply by the European Union

1. Article 2.4 of the *Anti-Dumping Agreement* provides that due allowance shall be made for differences affecting price comparability. An investigating authority confronted with either scenario will examine whether there is a difference between the export transaction and the domestic sales transaction and whether this difference is such as to affect price comparability. It is undisputed that a difference in direct selling expenses such as the payment of a commission to a trader for services rendered in relation to export sales that is not made with respect to domestic sales transactions is such a difference which affects price comparability. In order to comply with the obligation of Article 2.4 of the *Anti-Dumping Agreement* an adjustment is thus to be made by eliminating this difference. In both scenarios, depending on the facts, all other things being equal, it would be up to an interested party to claim an adjustment and demonstrate a difference affecting price comparability. The European Union understands the Panel's question to be about a difference in expenses between domestic and export sales where all of the cost differences are reflected in the accounts other than by way of a commission. The European Union considers that depending on the totality of the facts, there is nothing preventing this difference to constitute an indication that an adjustment could be due to reflect a factor affecting price comparability. If the export sales unit needs 10 computers, 5 people and 200m2 office space, while the domestic sales unit needs 1 computer and 1 person sitting in a 10m2 office, there is a general cost difference that is linked to export and/or domestic sales. It could also be for example that the record shows that the export sales division is much larger because it has to provide also after-sales service which is not the case for the domestic sales unit, or vice versa. This could in principle be the basis for an adjustment, as per Article 2.10 (h) of the EU basic Regulation. In addition, Article 2.10 (k) of the EU basic Regulation indicates that the list of differences possibly affecting price comparability is not exhaustive and that "an adjustment may also be made for differences in factors not provided for under subparagraphs (a) to (j) if it is demonstrated that they affect price comparability as required under this paragraph, in particular that customers consistently pay different prices on the domestic market because of the differences in such factors". It is with the list of factors that is reflected in Article 2.10 in mind that the European Union would examine the facts of the particular situation outlined in the Panel's question. The mere fact that the export sales unit is larger than the domestic sales unit is not enough information to enable an authority to

conclude than an adjustment is due. The factual circumstances of each case will need to be considered to examine whether this difference reflects a difference affecting price comparability. This is a separate question that needs to be addressed both in relation to its existence and quantification.

2. The European Union notes that the Panel's question raises a theoretical situation which is different of course from the facts of the fatty alcohols investigation. In the case at hand, for PTMM the investigating authority found a difference between the way exports were sold, namely with a mark-up of 5% for ICOF-S, as opposed to domestic sales, where no such mark-up was found. Such difference was deemed to affect price comparability and the mark-up in the form of a commission[1] was therefore deducted from the export price.

35. Can Indonesia point to facts on the record showing that PTMM/ICOF-S presented evidence to the EU authorities that the mark-up was not a direct selling expense, but rather a mere tool to allocate profits between two related entities?

i. How is this evidence (if any) consistent with PTMM's argument that the mark-up was remuneration for ICOF-S' services in relation to domestic and export sales?

ii. What was the purpose, for PTMM, of providing the email from ICOF-S to the EU authorities during the verification visit reflected in Exhibit IDN-47? Please explain how that email evidences that the mark-up is in fact a commission/selling expense or, alternatively, a tool to allocate profits, or something else.

iii. Do the annual reports provided as Exhibit IDN-55 and 56 provide any relevant information indicating the nature of the mark-up?

36. To both parties: Does the third sentence of Article 2.4 call for a two-part analysis by an investigating authority that firstly considers whether an alleged factor is "a characteristic of the compared transaction", and, if so, that secondly considers whether the factor is linked to either the export side or the domestic side or to both sides but with different amounts such that it affects price comparability?

i. To the EU: in its assessment of the facts, did the EU authorities carry out such an analysis? Can the EU point to relevant elements on the record showing this?

ii. To Indonesia: Does Indonesia consider that the mark-up is not a characteristic of the transaction? Does Indonesia consider that although the mark-up is a characteristic of the transaction, it is not tied to export sales only?

Reply by the European Union

3. The European Union understands the Panel's question to refer to the Appellate Body Report in *US – Zeroing (EC)* in which the Appellate Body rejected the argument that zeroing for non-dumped transactions constituted an undue adjustment. The Appellate Body considered that zeroing violated the applicable requirements of Article 2.4.2 on the methodology to follow when comparing export price and normal value. However, the Appellate Body did not consider that zeroing was a form of "adjustment" to which the requirements of the third sentence of Article 2.4 apply. According to the Appellate Body, the third sentence of Article 2.4 on adjustments does not

[1] For the sake of simplicity in the present responses the European Union will refer to either commission or mark-up without intending to draw any distinction between the two.

cover all adjustments, but only adjustments made for those differences that fall within the scope of that principle.[2] The Appellate Body found as follows:

> The illustrative list in the third sentence of Article 2.4 provides indications as to the nature of the differences covered by the principle set out in that sentence, which refers to differences that include "differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics". The elements of this list are all features, or characteristics, of the transactions that are compared. Although the list is illustrative and not exhaustive, it suggests that the adjustments, or allowances, covered by the third sentence are those that are made to take into account the differences relating to characteristics of the compared transactions (export transactions and domestic transactions). Article 2.4 specifies that the differences for which due allowance shall be made are those "which affect price comparability". In our view, this refers to differences in characteristics of the compared transactions that have an impact, or are likely to have an impact, on the price of the transaction. Likewise, the *a contrario* application of this principle prohibits only those adjustments made in relation to differences in characteristics of the compared transactions that do *not* affect price comparability. These are differences that do not have an impact, or are unlikely to have an impact, on the price of the transaction. Therefore, adjustments or allowances made in relation to *differences in price* between export transactions and domestic transactions—such as zeroing—cannot be adjustments or allowances covered by the third sentence of Article 2.4, including its *a contrario* application. Indeed, whether or not a factor affects the price comparability between export and domestic transactions should be determined before this comparison is made, and not after.[3]

4. The European Union considers that the Appellate Body was addressing a specific argument of relevance to the dispute before it and was not setting forth a new test that would require an investigating authority to always examine as a preliminary matter whether the requested adjustment concerned a "characteristic of the transaction". Rather, the Appellate Body was highlighting the fact that the listed examples of differences affecting price comparability in Article 2.4 all referred to the features or characteristics of the transactions and not to the differences in prices only.

5. The European Union considers that the two part analysis that Article 2.4 stands for is to examine (1) whether there exists a difference between export sales and domestic sales and (2) whether this difference affects price comparability. The parties agree that "commissions" are a selling expense that are similar to the examples expressly listed in Article 2.4 in the sense that they would warrant an adjustment if the commissions were paid only for export or domestic sales, or if there was a difference in the amount of the commissions paid. Similarly, differences in physical characteristics of the product when sold for export compared to the characteristics of the product that is used for domestic sales, or additional quality controls undertaken when the product is sold domestically that are not undertaken when exported, may justify making an adjustment if these differences affect price comparability. The ability to fairly compare export price and normal value is what matters, not the price differences between normal value and export price. That is essentially also what the Appellate Body found in *US – Zeroing (EC)*.

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2 Appellate Body Report, *US – Zeroing (EC*), para. 156.

3 Appellate Body Report, *US – Zeroing (EC),* para. 157.

6. The EU basic Regulation lists the factors that could justify making an adjustment on either the normal value side, the export price side, or both, and includes also the relevant factors expressly listed in Article 2.4 of the *Anti-Dumping Agreement*. It added "commissions" as an additional factor potentially affecting price comparability. Indonesia does not take issue with this listing of commissions as a factor potentially justifying an adjustment. The investigating authority turned to the list of factors in the EU basic Regulation potentially requiring an adjustment, including "commissions".[4] It examined whether the conditions for making an adjustment under EU law were satisfied and concluded that this was the case given that the mark-up paid by PTMM to ICOF-S was covered by the definition of a "commission" provided in Article 2(10)(i) of the basic Regulation and because no commission was paid for domestic sales. The European Union considers that it was a reasonable and reasoned conclusion of the investigating authority that this direct selling expense that related to export sales only was a difference in terms of the features of both types of (export and domestic sales) transactions that affected price comparability thus warranting an adjustment. The European Union refers to its reply to question 43 for additional record references to the investigating authority's analysis under Article 2(10)(i) of the basic Regulation.

37. We draw both parties' attention to the Appellate Body's remark in *US – Hot Rolled Steel*, made in the context of Article 2.1 of the Anti-Dumping Agreement, that "a transaction might be used as a vehicle for transferring resources within the single economic enterprise. Thus the sales price may be lower than the "ordinary course" price, if the purpose is to shift resources to the buyer, who then receives goods worth more than the actual sales price."[5]

i. Is this statement relevant to the analysis of the mark-up in the present case?

ii. If yes, what criteria might be relevant to determining if the mark-up is a "vehicle for transferring resources"? For example, might the value of the mark-up be relevant for determining the purpose of the mark-up?

iii. If the Panel concludes that an unbiased and objective investigating authority could have found that the mark-up deducted by the EU authorities reflected a payment for a service and therefore a cost to PTMM, would that mean Indonesia's Article 2.4 claim necessarily fails?

Reply by the European Union

7. The European Union considers that in the above referenced statements made in its report in *US – Hot Rolled Steel,* the Appellate Body was simply stating the obvious, i.e. that the sales prices charged for transactions between related parties may be affected by this relationship and may thus not represent an arm's length price that would "ordinarily prevail". The European Union recalls that in *US – Hot Rolled Steel*, the Appellate Body was interpreting the terms "ordinary course of trade" in Article 2.1 of the *Anti-Dumping Agreement*. The Appellate Body was required to examine whether it was permissible of the United States to consider as not being part of the sales made "in the ordinary course of trade" those sales between related parties that were considered to be abnormally "low" in price while including domestic sales between related parties

[4] See, for example, Provisional Regulation (Exhibit IDN-3), recital 38.

[5] Appellate Body Report, *US – Hot Rolled Steel*, para. 141.

that were abnormally "high" priced. The Appellate Body clarified that the absence of a provision on normal value addressing sales between related parties (contrary to the express language found in Article 2.3 on export price) did not prevent the United States from examining whether sales between related parties were made in the ordinary course of trade such that they should be part of the universe of domestic sales transactions. Similarly, the Appellate Body clarified that:

> even where the parties to a sales transaction are entirely independent, a transaction might not be "in the ordinary course of trade". In this appeal, we do not need to define all the circumstances in which transactions might not be "in the ordinary course of trade". It suffices to recognize that, as between affiliates, a sales transaction might not be "in the ordinary course of trade", either because the sales price is higher than the "ordinary course" price, or because it is lower than that price.[6]

8. The European Union considers that it is important to put the above referenced statements in the context of the facts of that dispute.

9. In response to the Panel's specific questions, the European Union's replies are as follows:

10. In response to question (i), the European Union considers that the above referenced statements by the Appellate Body are of limited relevance to the facts of this case which do not concern the determination of normal value under Article 2.1 or an assessment of whether sales were made "in the ordinary course of trade". Domestic sales by PTMM were not made to related parties and in so far as export sales were made to a related importer in the EU, the rule of Article 2.3 of constructing export price was followed. The only general relevance the Appellate Body's analysis in *US – Hot Rolled Steel* may have is that it confirms that, even outside the specific context of Article 2.3 where it is expressly recognised that prices may be affected by the relationship between parties, an investigating authority is generally permitted to review the reliability of the price information in the context of transactions between related parties. This confirms that the European Commission was justified in not uncritically accepting the amount of the mark-up stipulated in the Sale and Purchase Agreement between PTMM and ICOF-S of 5%, and that the European Union acted in line with the *Anti-Dumping Agreement* and WTO jurisprudential guidance when it verified and constructed the amount of the mark-up based on the reasonable profit margin for activities carried out by trading companies in the chemical sector, as explained in recital 36 of the Definitive Regulation..[7] It thus constructed the amount of the commission because it did not consider that the percentage of the mark-up as identified in the contract was necessarily reliable given the relationship between ICOF-S and PTMM. The constructed mark-up amount was actually very close to the mark-up ICOF-S was entitled to according the Sale and Purchase Agreement.

11. In response to question (ii), the European Union disagrees with the suggestion that the Appellate Body's statement made in an entirely different context to address a specific practice

[6] Appellate Body Report, *US – Hot Rolled Steel*, para. 143.

[7] Definitive Regulation, Exhibit IDN-4, recital 36; See also European Union's response to Panel Questions 5, 12.

relating to the determination of normal value, not at issue in this dispute, would be otherwise relevant and would require an authority to examine the purpose of the commission that was paid. That is not what the Appellate Body did either. The question the Appellate Body was addressing related to the amount of the price and the reliability of this amount for purposes of determining the "normal" value of the product. In that same spirit of ensuring that the amount of the mark-up stipulated in the contract is a reliable basis for determining the amount of the adjustment, the investigating authority conducted its own verification and constructed the amount as explained above.

12. In response to question (iii), the European Union considers that if the Panel concludes that an unbiased and objective investigating authority could have found that the mark-up deducted by the EU authorities reflected a payment for a service and therefore a cost to PTMM, that would mean Indonesia's Article 2.4 claim necessarily fails. But that is not the only situation in which Indonesia's claim fails. In fact, Indonesia's entire case rests on the assertion that as soon as a commission is paid between related parties, an adjustment is never warranted. Indonesia's legal case rests entirely on its erroneous "follow the money" principle that has no basis in the text of the *Anti-Dumping Agreement*. If the Panel finds that Indonesia's assertions relating to the impact of a relationship between parties on the possibility of making adjustments is incorrect, its legal claim fails. It is not for the Panel to make the case for either party and it would be incorrect to review the investigating authority's determination on the basis of arguments not developed by Indonesia. In addition, if the Panel finds that a reasonable investigating authority could have reached the reasoned conclusion that, as confirmed by the Sale and Purchase Agreement, the record reflects the fact that a mark-up was paid and that this mark-up was related to export sales only, Indonesia's claim will also be rejected.

38. To Indonesia: We refer to paragraph 66 of the European Union's second written submission, in which it states: "in the present case the difference in view is not about the amount of the adjustment, but rather about the fact that any adjustment was made". Does Indonesia agree with this statement?

2 QUESTIONS RELATED TO LEVEL OF TRADE

39. To the EU: Is the Panel's understanding correct that the EU authorities found that PTMM incurred selling costs for domestic sales, as well as for export sales (putting aside the intervention of ICOF-S)?

If yes, what was the factual basis for this conclusion?

The spreadsheet reflecting PTMM's P&L (Table 2.3 of Exhibit 12) indicates that the amount of SG&A and profit for domestic sales of the product concerned made by PTMM to independent customers AND for export sales of the product concerned made by PTMM to related customers is the same. Were these figures verified and accepted by the EU authorities or were they corrected during the verification visit?

Is the Panel's understanding correct that column X/Y of Table 2.3 (Export to other countries – product concerned – related customer) corresponds to sales of the product concerned by PTMM to ICOF-S? Is the Panel's understanding correct that the corresponding sales price includes SG&A and profit?

Reply of the European Union

13. As explained in Annex 2 of the Company Specific Disclosure Document,[8] normal value was generally determined by relying on the sales prices of domestic transactions. However, as part of the profitability test, the cost of production was determined by adding up the "cost of manufacturing (from worksheet 2.2) plus SG&A (from worksheet 2.3)". This worksheet is Table 2.3 of EU-12 to which the Panel refers. These figures show that PTMM reported having selling costs including SG&A for both domestic and export sales as the SG&A was allocated equally to both.

14. In response to the specific questions of the Panel, the European Union replies as follows:

(i) The factual basis for the determination of the cost of production including SG&A is the information provided by PTMM as reflected in the EU-12 table referred to by the Panel. PTMM was the source of this information and the accuracy of the information was never questioned.

(ii) The figures contained in Table 2.3 to which the Panel refers were provided by PTMM and were never contested nor corrected.

(iii) The Panel is correct that these columns concern sales of the product concerned to ICOF–S. The table reflects profits and losses based on prices between PTMM and ICOF-S, thus including SG&A and profits.

40. Does Indonesia agree with the analysis contained in Footnote 10 of the European Union's response to Panel Question 5, which seems to show that the ex-factory export price does contain an amount for SG&A and profit, even after the adjustment for ICOF-S' commission is made?

41. To both parties: in the original investigation, at what point was the correct level of trade for the comparison determined?

i. Before allowances for differences affecting price comparability were made? Namely at the CIF/FOB level in the present case?

ii. Or after allowances had been made, i.e. when the normal value and the export price had been netted back to an ex-factory level?

Reply by the European Union

15. The European Union queries the premise on which the Panel's question is based. There is no "correct" level of trade as suggested by the Panel. What Article 2.4 requires is that a fair comparison be made between export price and normal value, at "the same level of trade, normally at the *ex factory* level". There is therefore no *requirement* to work back to the *ex factory* level nor is there a single "correct" level. Furthermore, the European Union notes that the "level of trade" question concerns differences affecting price comparability that result from the fact the sales are made to distributors or wholesalers rather than directly to retailers or end consumers given that the latter might involve additional costs on the side of the producer. That "level of trade" question is not the issue in this dispute which rather concerns a direct selling expense in the form of a commission that is related to export sales only and for which an adjustment was therefore due.

[8] Provisional Disclosure document dated 11 May 2011, Annex 2, Exhibit IDN-33.

16. In the context of the fatty alcohols investigation, Annex 2 of the Company Specific Disclosure explains how the normal value and export price were first determined before adjustments were made to normal value and export price in order to ensure a fair comparison.[9] No "level of trade" adjustments were made. The comparison between export price and normal value is made on an ex-works basis.

3 QUESTIONS RELATED TO THE DIFFERENT TREATMENT OF PTMM AND ECOGREEN

42. To Indonesia: Indonesia argues that adjusting the commission received by ICOF-S but not the commission received by EOS evidences that the determination of the investigating authority was not reasoned and adequate.

i. If the Panel agrees with Indonesia that the investigating authority's determination was not reasoned and adequate, must the Panel automatically find that the comparison was not fair in the sense of Article 2.4 of the Anti-Dumping Agreement?

ii. If not, how does this argument relate to Indonesia's claim that the mark-up granted to ICOF-S did not affect price comparability?

43. Does the EU agree that, after the Interpipe judgement, the EU authorities changed their criteria for assessing whether the functions of the trader receiving a mark-up are similar to those of an agent working on a commission basis?

i. In the original investigation, was the test contained in Article 2.10 i) of the EU Basic Regulation used by the investigating authority in determining that the adjustment was justified? Can the EU point to relevant elements of the original determination or to any other element on the record?

ii. Is Indonesia arguing that the investigating authority violated Article 2.4 the Anti-Dumping Agreement by changing its criteria after the end of the investigation? If so, please explain how a change in the applicable criteria leads to a violation of Article 2.4?

iii. To both parties: is the Panel's understanding correct that the revised criteria were applied to both PTMM and Ecogreen in the context of the revised determination?

Reply by the European Union

17. The European Union disagrees with the suggestion that the investigating authority "changed its criteria" for making adjustments after the Interpipe judgement. The investigating authority continues to apply the same relevant provision of the EU basic Regulation, Article 2(10)(i), to the facts of each case. The relevant criteria under EU law, before and after Interpipe, are whether a commission, within the meaning of Article 2(10)(i) of the EU basic Regulation, was received by the traders in question. The only change that occurred was to examine the factual situation of the interested parties in the light of the factual situation that led the CJEU to find that no adjustment was warranted in the Interpipe case. The criteria for making an adjustment did not change but rather the examination of the factual circumstances which would allow an investigating authority to make an adjustment. As a result of the similarity in factual circumstances between the Interpipe case and the facts in the fatty alcohol investigation in so far as Ecogreen was concerned, the European Union concluded that it could make no adjustment as regard to Ecogreen.

[9] Provisional Disclosure document dated 11 May 2011, Annex 2, Exhibit IDN-33.

18. In response to the Panel's specific questions, the European Union replies as follows:

19. In response to question (i), the European Union's answer is yes: the test contained in Article 2(10)(i) of the EU basic Regulation was used by the investigating authority in determining that the adjustment was justified, both in the original investigation and in the review investigation (and having regard to the chapeau, which refers to a difference affecting price comparability). For example, recital 31 of the Definitive Regulation confirms that the investigating authority relied on Article 2(10)(i) when making adjustments for both Ecogreen and PTMM as it found that both traders "have functions which are similar to those of an agent working on a commission basis". Similarly, recital 5 of the Amending Regulation clearly reflects the investigating authority's reliance on Article 2(10)(i) of the EU basic Regulation and the application of this provision in the light of the factual circumstances of the Interpipe case that are similar to the situation of Ecogreen. The nature of the functions of the trader and the exporting producer is one of the factual elements that led the investigating authority to reject making an adjustment for Ecogreen. Similarly, after having addressed all of the comments made by PTMM, recital 32 of the Amending Regulation reflects the fact that the investigating authority considers that "the adjustment made to the export prices pursuant to Article 2(10)(i) of the basic Regulation is warranted" for PTMM.

20. In response to question (ii), the European Union notes that Indonesia's arguments on the different treatment of Ecogreen have varied during the course of this proceeding but none are relevant from a WTO perspective. Indonesia has argued that the difference in treatment is in itself a violation of Article 2.4 of the *Anti-Dumping Agreement* without explaining why this was so. It then argued that this difference in treatment was a violation of GATT Article X but never developed this argument it orally raised at the first hearing. Most recently, it has argued that this difference in treatment is an example of the arbitrary and unreasonable nature of the decision to make an adjustment for PTMM. Indonesia fails to explain why a determination would become unreasonable simply because a different producer in different factual circumstances is treated differently. The European Union did not change its criteria but revisited the facts of the case with a view to assessing whether or not an adjustment for Ecogreen and PTMM was justified. Because the factual circumstances concerning Ecogreen were similar to those giving rise to a judgment of the CJEU that no adjustment was warranted under those factual circumstances, the European Union concluded that it could not make an adjustment with respect to Ecogreen.

21. In response to question (iii), the European Union recalls that it does not agree with the premise of the Panel's question that the criteria were "revised" or changed between the Definitive Regulation and the Amending Regulation. It concerned merely a review of the factual findings made in light of the similarity in factual circumstances between Interpipe and Ecogreen. But yes, in examining whether an adjustment for "commissions" were warranted, the investigating authority undertook for both producers the same analysis relating to: the volume of direct sales to third countries by the producers, the nature and functions of the trader and the exporting producer in general and the significance of the trader's activities and functions concerning products sourced from non-related companies in particular, and the existence of a contract between the trader and

producer which provided that the trader was to receive the same commission for all export sales of the products concerned. These same elements are present in the finding that no adjustment was warranted for Ecogreen in recital 5 of the Amending Regulation and are the basis for the finding that PTMM was in a different factual situation as explained in recital 12 of the Amending Regulation as well as recitals 24 to 31 of the Amending Regulation.

44. To the EU: Please comment on paragraphs 16-18 of the Opening Statement of Indonesia at the second meeting with the Panel regarding the apparent contradictions in the EU authorities' treatment of PTMM and ICOFS as related companies.

Reply by the European Union.

22. The European Union considers that paragraphs 16 – 18 of Indonesia's Opening Statement at the second hearing are a good illustration of the confused approach to the law and the facts in this dispute.

23. Indonesia makes two arguments in this section of its oral statement, both equally flawed.

24. First, Indonesia considers the EU's position to be "contradictory" because the European Commission allegedly found that PTMM and ICOF-S were too related to accept the transaction price between them but at the same time not sufficiently related to treat ICOF-S as the intra-group sales department for PTMM. But the investigating authority never made such findings. It simply acknowledged that the two companies were "related" companies and explained that the only relevant question under Article 2(10)(i) was whether there was evidence of a "commission" being paid to the related trader, as defined in this provision. In the Definitive Regulation as well as in the Amending Regulation, it was found that an adjustment was warranted based on the mark-up provided to ICOF-S for export sales that was determined by contract, and because of the function of ICOF-S as shown by the significance of the products of third parties handled by ICOF-s as well as the level of direct export sale directly invoiced by PTMM (to third countries). The investigating authority never made a finding that ICOF-S was or was not the intra-group sales department of PTMM. However, it rejected the notion that simply because the two companies may be related, assumingly even being part of a single economic entity, does not mean that no adjustment can be made. The contradiction that Indonesia seeks to establish (without any reference to the record of course) does not exist. Moreover, the facts on the record show that both PTMM and ICOF-S incurred significant selling expenses respectively in the period of investigation, which factually disprove the argument by Indonesia that ICOF-S was the intra-group sales department of PTMM.[10] In its reply to question 5 of the Panel, with reference to the P&L of PTMM that was part of the record (Exhibit EU-11), the European Union showed that [[…]] Exhibit EU-11 also shows that ICOF-S had its own SG&A. It should also be noted that the suggestion by Indonesia at the second hearing that PTMM had been somehow induced by the EU to post a specific amount of marketing costs in Table G is groundless. Indeed, the template that the EU provides to interested parties does not contain a line for marketing-related expenses but only a column for possible "other"

[10] See Table 2.3, column G43, Exhibit EU-11. See also Exhibits EU-16 containing extracts of PTMM financial statements in 2008 and 2009, in which significant amounts are booked as selling expenses

expenses, which PTMM itself specified as being marketing expenses. This information was therefore added on purpose by PTMM itself.[11]

25. The fact that the investigating authority considered that the amount of the mark-up of the Sale and Purchase Agreement could not be accepted at face value but could have been affected by the relationship between the trader and the producer is in line with the authority's obligation to ensure that its determination is based on reliable and probative data that is not affected by the relationship. Moreover, it does not mean that the agreement was a sham and that the only logical conclusion should be that no mark-up was paid. It is merely an issue that concerns the amount of the commission, and not the question of knowing whether or not the adjustment was justified.

26. Second, Indonesia argues that the investigating authority rejected the transaction price from PTMM to ICOF-S as the starting point for calculating the export price, which, so it argues, suggests that the investigating authority treated PTMM and ICOF-S as a single economic entity. Indonesia states that "[i]t is inconsistent then for the EU to make the adjustment for ICOF-S, treating PTMM and ICOFS as if they were not a unit".[12] Indonesia errs both on the facts and on the legal conclusions it seeks to draw. Starting with the latter, contrary to Indonesia's argument that because the two were allegedly treated as a unit "then" no adjustment could be made since this would imply that they were "not a unit". This analysis reveals once again the flawed crux of Indonesia's legal argument. As demonstrated before, this direct link between the relationship of two companies and the possibility of making adjustments is simply misguided and not supported by the text of the *Anti-Dumping Agreement*. Indonesia seeks to point to a contradiction that does not exist. There is only a contradiction if one accepts Indonesia's flawed legal logic. In addition, turning to the facts of this case, it is clear from Annex 2 of the Company Specific Disclosure that the investigating authority determined the export price on the basis of the prices paid or payable by the EU customers of PTMM in accordance with Article 2(8) of the basic Regulation[13]. This is in line with Article 2.1 of the *Anti-Dumping Agreement* which defines the export price as the price at which the product is introduced into the commerce of another country. It is undisputed that all PTMM products concerned were introduced in the EU via ICOF-S. So, the investigating authority did not reject any transaction price between PTMM and ICOF-S as suggested by Indonesia. Rather, as explained in for example, paragraph 63 of the European Union's second written submission, the Sale and Purchase Agreement between PTMM and ICOF-S provides that ICOF-S could keep a certain percentage of the sales prices it was able to negotiate with buyers in the EU by way of commission for its export sales related services.[14] So, the relevant "transaction" price between PTMM and ICOF-S was the price at which ICOF-S sold the products to the EU, minus the commission/mark-up that ICOF-S could keep. It is thus not correct that the European Union "constructed" the export price for sales made via ICOF-S to independent buyers in the European

[11] Exhibit EU-17 template Table G – PL of the exporting producer and each related company.

[12] Indonesia's oral statement at the second meeting, para. 18.

[13] As explained in that same Annex 2, for sales made to ICOF-E, the export price was constructed under Article 2 (9) of the basic Regulation.

[14] Exhibits IDN-24 and IDN-25, Article 3.

Union. This has nothing to do with the alleged "single economic entity" relationship between PTMM and ICOF-S. Again, the contradiction Indonesia hopes to find and the conclusions it seeks to impute are baseless.

QUESTIONS RELATED TO INDONESIA'S CLAIM UNDER ARTICLE 3.5 OF THE ANTI-DUMPING AGREEMENT

45. How does the European Union respond to the argument and record evidence cited in paragraph 3.23 of Indonesia's second written submission that natural and synthetic raw materials are not substitutable due to different production processes?

Reply by the European Union

27. Synthetic and natural raw materials are not substitutable within the same production process. However, FOH producers will make sure that they can input both types of raw materials for FOH production and they will do so depending on the relative market prices. As it is stated in the complaint (Exhibit IDN-37, which Indonesia subsequently filed again as Exhibit IDN-58), EU producers "operate using all four production processes" involving either natural oils and fats or synthetic oil, coal, natural gas and natural gas liquids.[15]

28. However, the relevant question in this case is whether any evidence was adduced that developments in the prices of raw materials constituted an "other factor causing injury". The reasonable conclusion based on the record of the investigation shows that this was not the case and that any possible developments in prices to which the interested parties referred related to the effects of the economic crisis, a factor that was examined by the investigating authority.

29. Indonesia seeks to confuse the Panel by developing arguments about the alleged relevance of the fact that natural and synthetic raw materials are not substitutable. But the point the European Union was making was that both types of raw materials are traded on the world market and their prices are determined at the time of ordering. That has always been the case and does not constitute a cause of injury. Indonesian producers fail to substantiate their assertions about access to raw materials as another factor causing injury and Indonesia is now seeking to deviate attention to a completely irrelevant debate about the substitutability of natural and synthetic raw materials. The European Union never claimed that producers could switch without any problem between the two types but rather acknowledged the fact that the EU producers sourced both types of raw materials and developed the same fatty alcohols from both raw materials such that any price differences between these raw materials could not be causing injury.

30. It is noted that the argument was never before made that the alleged price differences between synthetic and natural raw materials was the "other factor" causing injury. Indonesia is once again seeking to make an argument that is not rooted in the facts of this case, that is based on a misrepresentation of the EU's argument and that is ultimately completely irrelevant to the issue at hand.

[15] Exhibit IDN-37/IDN-58, p. 8.

46. In paragraph 130 of its second written submission, the European Union states that the EU authorities "did not acknowledge… that prices fluctuated significantly during the period of investigation". Can the European Union please clarify how this statement relates to its argument in paragraph 155 of its first written submission that access to raw materials is "an aspect of conditions of competition that may be reflected in price differences between imported products from Indonesia and domestic products". In particular, is it the European Union's position that price fluctuations were not considered in the investigation at all, or that they were considered implicitly in respect of price differences between the respective products?

Reply by the European Union

31. In its first written submission, the European Union explained that it is simply a matter of fact that it has always been a comparative advantage of Indonesia that its producers have direct access to palm oil as the main raw material while that is obviously not the case for the European producers. This advantage is likely to be reflected in the price of Indonesian fatty alcohols. In fact, in the presentation of PTMM of 5 July 2011 to the hearing officer (Exhibit EU-13), PTMM makes this exact point. In Section II of the presentation on Injury and cumulation it is stated that [[…]]. It also refers to the fact that [[…]]

32. In the second written submission, the European Union was merely trying to highlight the important differences between the facts on the record in *EC – Salmon* on which Indonesia relied and the facts of this fatty alcohol investigation. In *EC – Salmon*, the record reflected that the investigating authority had acknowledged that production costs had significantly increased and that this increase had been raised as an "other factor" causing injury, which should therefore have been analysed by the investigating authority. Not so in this case. Relevantly, there is no evidence or argument on the record that prices of raw materials fluctuated significantly during the period of investigation. The record does not reflect the fact that such an alleged fluctuation was raised and supported with evidence and argument as an "other factor" causing injury. As explained in our answer to question 20 of the Panel, at the 5 July 2011 hearing with PTMM that followed the Provisional Disclosure (Exhibit EU-13), [[…]] In the comments of Ecogreen (Exhibit IDN- 36), no mention is made of the raw materials issue either. Ecogreen also focuses almost exclusively on the economic crisis as an "other factor" causing injury.[16]

33. The only evidence concerned fluctuations during the economic crisis that allegedly advantaged Indonesian producers with direct access to the raw materials, but without any evidence or argument that this was an independent "other" factor causing injury during the POI. The alleged price fluctuations were never supported by any evidence or argument even though this was clearly information that Indonesian producers could have obtained and could have provided to the investigating authority if they considered that this was another factor causing injury. It is worth recalling the facts on the record, which were also summarized in the European Union's second written submission[17]. The PTMM comments to which Indonesia keeps referring as being the "argument and evidence" that would have required the investigating authority to examine this alleged "other factor" were comments made in respect of the complaint. In the complaint, the

[16] Exhibit IDN-36, paras. 37-44.

[17] European Union's second written submission, paras. 143–148.

complainants had addressed potential other factors causing injury such as increases in "raw material prices". In the complaint, it was stated that increases in raw material prices bear an impact on the complainants' overall cost of production but that under normal conditions the complainants could pass on a substantial part of even the entire raw material costs to the downstream industries, if it were not for the fierce competition of high volume dumped imports. It was also stated in the complaint that the prices of natural and synthetic raw materials did not develop in parallel during the last years and therefore cannot explain the synchronic occurrence of injury to all EU producers which use different manufacturing processes. Finally, it was pointed out that all raw materials are traded at world market prices and that any price increases equally effect therefore all fatty alcohol producers. This is effectively also what PTMM stated in its above referenced 5 July 2011 presentation. The complainants thus concluded that raw material prices did not form another injury factor.[18] In its comments about the complaint, all that PTMM did was to submit limited information on price fluctuations and price decreases during the economic crisis and on the alleged price parallelism of natural and synthetic raw materials of fatty alcohols, without however explaining how that information had to be read or how it supported its case. As noted above, the lack of parallelism of natural and synthetic raw materials which is confirmed by Annex 21 of the complaint (Exhibit EU-15), was just one element in the discussion on the lack of relevance of raw material price increases in the complaint. PTMM lifted this one element out of its context and stated, without any additional evidence or argument about the relevance of this assertion, that prices did move in parallel. As explained in the European Union's reply to question 22 of the Panel and in the second written submission of the European Union, the facts do not support PTMM's assertion as prices clearly did not move in parallel and PTMM never even tried to analyse the data and to explain how they demonstrated the point it was making.[19]

34. In conclusion, since PTMM never provided any evidence pointing to the fact that raw materials' price developments were a separate cause of injury it was reasonable of the investigating authority to conclude that no analysis was to be performed of the alleged existence and effect of such raw material price fluctuations.

35. Price fluctuations need to be addressed by all players in the market and several possibilities exist, such as the conclusion of forward contracts and substitution of CPKO by synthetic raw materials. Indonesian producers are not shielded from these price fluctuations by referring to the shorter time it takes to source raw materials. When prices are not fixed by forward contracts, the fact of having a shorter supply time becomes a disadvantage in case CPKO prices increase, as the effect will be felt almost immediately. Price fluctuations are therefore not considered as a separate injury factor. They are dynamic conditions of competition and the positive or negative influence they may have on profitability will depend on the ability of both Indonesian and Union producers to cope with them.

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[18] Exhibit IDN-37/IDN-58, p. 30.

[19] European Union Replies to questions from the Panel following the first hearing, reply to question 22, p. 24-25; European Union Second Written Submission, paras. 143 – 148.

47. Indonesia refers[20] to pages 8-9 of Exhibit IDN-35 to assert that PTMM "made extensive arguments, supported by record evidence" on the relevance of captive demand to domestic industry. Can Indonesia explain further how this alleged argumentation and evidence suffices to require an investigating authority to investigate the matter?

[20] Indonesia's first written submission, para. 5.64.

QUESTIONS RELATED TO INDONESIA'S CLAIM UNDER ARTICLE 6.7 OF THE ANTI-DUMPING AGREEMENT

48. In *Korea – Certain Paper*, the panel stated:

> In our view, the purpose of the disclosure requirement under Article 6.7 is to make sure those exporters, and to a certain extent other interested parties, are informed of the verification results and can therefore structure their cases for the rest of the investigation in light of those results. It is therefore important that such disclosure contain adequate information regarding all aspects of the verification, including a description of the information which was not verified as well as of information which was verified successfully. This is because, in our view, information which was verified successfully, just as information which was not verified, could well be relevant to the presentation of the interested parties' cases.[21]

Would the European Union please explain, with reference to each aspect of what comprises the EU authorities in this case making "the results of [verification] available, or providing "disclosure thereof pursuant to [Article 6.9]", how that satisfies the considerations set forth by the Korea-Certain Paper panel in the quotation above. In the event the European Union is of the view that those considerations are not appropriate criteria for resolving Indonesia's claim in this case, please explain what criteria, in the European Union's view, the Panel should apply.

Reply by the European Union

36. As explained by the European Union in its second written submission, the above referenced statement by the panel in *Korea – Certain Paper* is an obiter dictum that was not essential to the panel's finding and that was not appealed. Furthermore, this statement must be read in its context. First, in that investigation, the Indonesian exporters had expressly requested to see the results of the verification but their request had been denied. Second, the real reason why the panel found a violation was because the authority "did not inform the two Sinar Mas Group companies of the verification results in a manner that would allow them to properly prepare their case for the rest of the investigation".[22] There is no basis for a similar conclusion in this case, as explained in previous submissions.

37. As already explained in the European Union's first written submission,[23] the on-the-spot verification of PTMM took place from 22 to 25 November 2010 in PTMM's Medan offices and from 18 to 19 November 2010 in the Singapore offices of Besdale and ICOF-S. Prior to these visits, the European Commission provided by letter of 5 November 2010 an overview of the procedures for the planned visit and an extensive list of information and documentation to be prepared by the companies in advance of the visit.[24] So, the European Union sent a list of information to be verified before the visit allowing for an efficient verification of the information provided in the questionnaire reply and noted that additional information relating to the questionnaire reply may be requested during verification. The interested parties were aware of this. The interested parties prepared additional exhibits for the investigating authority to consider, including corrections of the

[21] Panel Report, *Korea – Certain Paper*, para. 7.192.

[22] Panel Report, *Korea – Certain Paper*, para. 7.193.

[23] European Union's first written submission, paras. 168- 199.

[24] Letter from the European Commission to CMS Hasche Sigle dated 5 November 2010 (Exhibit EU-1).

information previously submitted. The investigating authority and the interested parties agreed on the list of additional exhibits taken at the time of concluding the verification.[25] The interested parties never complained about a lack of information on the results of the verification, despite frequent references to the verification visits in the provisional and final determinations. In addition, as confirmed by the lack of claims by Indonesia under Articles 6.2, 6.4 or 6.9 of the *Anti-Dumping Agreement*, Indonesia does not consider that its due process rights were violated or that the disclosure of essential facts was deficient. Again this is at odds with the claims and arguments made in *Korea – Certain Paper*.

38. The legal obligation of Article 6.7 of the *Anti-Dumping Agreement* is to "make available" the results of the verification or "disclose" the results of the verification pursuant to the essential facts disclosure of Article 6.9 of the *Anti-Dumping Agreement*. As explained for example in paragraphs 157 – 198 of the European Union's second written submission, this is exactly what the European Union did. By informing the Indonesian interested parties beforehand about the information that was going to be verified; by providing a list of additional information that was provided during verification; and by disclosing the relevant facts in both the May 2011 provisional company specific disclosure and the August 2011 final disclosure which both set out the findings of fact that were based on the information provided before and during the on-site verification and which both directly referred back to the on-site verification and its results, the investigating authority clearly met its obligation under Article 6.7.

39. Putting these facts in the context of the above referenced statement in *Korea – Certain Paper*, the European Union considers that in so doing, the interested parties were "informed of the verification results" and could "structure their cases for the rest of the investigation in light of those results". There is no basis in the record of the investigation to suggest the contrary and Indonesia has not presented any claims under Articles 6.2, 6.4 or 6.9 to suggest otherwise. The interested parties were present during verification, were informed beforehand of the information that the investigating authority wanted to verify in relation to the questionnaire reply, were given an opportunity to provide additional or corrected information, and agreed on the list of exhibits provided at the time of verification as well as on the corrections that were made to the information previously provided. All such factual information was subsequently disclosed in the provisional and final disclosures. The information that "could not be verified" was also identified in the disclosure documents.[26]

40. This does not mean that all of the information that was verified or could have been verified must be accepted at face value. The "verification" of the accuracy of the information - i.e. the fact that the information provided is supported by underlying data – should not be confused with the investigating authority's task as the trier of fact to weigh and balance often conflicting information

[25] See, e.g. European Union's first written submission, para. 186; European Union's second written submission, para. 169.

[26] See for example, General Disclosure document, Exhibit IDN-39, paras. 20, 29, 36, 41, 48, 59, 65, 66, 99 and 117.

in an objective and unbiased manner. To the extent that the above referenced finding of the panel in *Korea – Certain Paper* suggests otherwise, the European Union disagrees. It is certainly correct that information that was not verified "could well be relevant to the presentation of the interested parties' cases" as that panel stated. However, the fact that certain information was not individually verified on-site does not mean that it was disregarded or not relied on by the investigating authority. The disclosure pursuant to paragraph 9 of Article 6 of the *Anti-Dumping Agreement* is what reveals the essential facts on which the determination will be made, whether separately verified or not. Should certain information have been ignored, interested parties could highlight this fact in their comments.

41. The requirement to "make available" the "results" of the investigation does not require a report describing everything that happened and did not happen at the on-site verification, just like there is no report of the internal, documentary verification exercise that is undertaken by the investigating authorities outside the context of on-the-spot verifications to examine the data that was provided by interested parties, until the provisional or final disclosure document.

42. In sum, the investigating authority made available and otherwise disclosed "adequate information regarding all aspects of the verification", in so far as relevant. The statement of the panel in *Korea – Certain Paper* must be read in the specific context of the facts of that case where there was controversy over what had been verified and where interested parties requested to know the results of the verification and that request was denied. It would not be correct to lift such statements out of the specifics of that dispute and to turn them into a new, general standard for complying with Article 6.7 of the *Anti-Dumping Agreement*, especially when the text of Article 6.7 does not support such a generalised reporting requirement. As a factual matter, Indonesia has failed to point to any information regarding this on-site verification that would have affected the interested parties' defence of their interest or that revealed a lack of information on the side of the interested parties of what occurred during verification. Quite the contrary is true. The complaint of Indonesia is not about the lack of information relating to the verification but about the evaluation and assessment of the information that was provided. That is not a verification matter but rather an inherent aspect of an investigating authority's obligation to evaluate the evidence in an objective and unbiased manner.

49. At paragraph 54 of its oral statement, the European Union asserts that "during the verification visits, they [presumably the interested parties being verified] agreed on the corrections to be made to the data previously submitted to the investigating authority". Is this agreement, in the European Union's view, a "result" of the verification? If so, please identify where this result was made available, or was disclosed pursuant to Article 6.9 of the Anti-Dumping Agreement, to firms to which they pertain. If not, please explain why. Finally, please specify where, on the record, the Panel can find support for the conclusion that the parties being verified agreed to the corrections referenced.

Reply by the European Union

43. The European Union considers that the result of the verification is the corrected information that was agreed upon with the interested parties in the context of the on-site verification. The corrected information is one of the "outcome" of the verification. The fact that the interested

parties "agreed" with these corrections (and actually provided the corrections during verification) is simply an element of the process that led to the corrected information. Both this process and the final result are reflected in the disclosure documents that were provided to the interested parties.

44. As explained in the first and second written submissions, the record reflects that during verification the interested parties agreed to certain corrections that were made to the information previously submitted.[27] For example, the May 2011 provisional company specific disclosure document explained clearly that the European Commission services performed on-the-spot verifications during which the information submitted in the questionnaire reply was verified and additional information was obtained and that [[…]] Following this May 2011 disclosure by the European Commission to PTMM, the Indonesian producer provided its comments in response[28] and also defended its interests at a 5 July 2011 oral hearing before the European Commission. No objections were made with respect to this "agreed" correction.

45. Furthermore, as explained in the European Union's first written submission[29], in the annex of the provisional disclosure document, "Calculation of dumping margin – PT Musim Mas", the opening general section emphasized that this calculation was based on verified information:

[[¨]]

46. As mentioned in this excerpt, the provisional finding on the dumping margin for PTMM focused on the updated and corrected information that resulted from the verification visit. Thus, to the extent that the underlying information used to calculate the dumping margin in the provisional regulation differed from the original information provided by PTMM, such updated information reflects the results of the verification process. These differences and amendments were outlined by the European Commission in this annex.

47. For example, the European Commission noted that the "profitability test" of the "normal value determination" was based on certain information that resulted from the on-the-spot investigation:

[[…]]

48. Further, the European Commission reviewed PTMM's requests for some adjustments to normal value based on [[…]], which, as indicated in the opening paragraph of this annex quoted above, was based on information from PTMM that was verified through the on-spot investigation.[30] Likewise, adjustments to the export price were analysed [[…]] and verified with:

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27 See, e.g. European Union's first written submission, para. 172; European Union's second written submission, para. 166.

28 PTMM comments on the Provisional Disclosure document, Exhibit IDN-34.

29 European Union's first written submission, paras. 185-196.

30 Provisional Disclosure document dated 11 May 2011, Annex 2, Exhibit IDN-33, section 2.5.1.

- [[…]]

49. All of the worksheets that the European Commission referenced and disclosed to PTMM as a part of this annex were based on verified information and were included in the disclosure to PTMM via the Excel file entitled "AD 563 PTMM prov discl.xls".[31]

50. As noted before, after this May 2011 disclosure by the European Commission to PTMM, the Indonesian producer provided written comments[32] and participated in an oral hearing. The written and oral comments from PTMM reveals that the provisional disclosure letter from the European Commission was sufficient to allow PTMM to respond to these factual findings and to provide a defence of its interests. In sum, it is clear that the European Commission made available the results of its on-site verification visits in direct disclosures to PTMM. It provided ample information to allow PTMM to contest the essential facts on which the European Commission was basing its determination, and indeed PTMM provided its comments in writing and orally. Importantly, at no point in time did PTMM express a concern over the lack of detail in the information relating to the verification visits that was made available to it and did not object to the "agreed" corrections that were made. This is an implicit confirmation that the parties agreed to the corrections in question, and thus it constitutes evidence to that effect. The European Commission did not receive any formal request to obtain minutes of the verification visits or for additional information relating to the verification visit.

51. The final disclosure by the European Commission which was sent to PTMM on 2 August 2011 included three annexes:

(i) General Disclosure Document ("GDD");

(ii) Definitive dumping calculation (full calculation on CD-R); and

(iii) Company specific reply to arguments not addressed in detail in the GDD.[33]

52. The GDD highlighted the procedural steps the European Commission had taken to disclose all essential facts and considerations, including its efforts to verify the information,[34] and it noted certain information from Indonesian exporters that could not be verified.[35] Finally, the Definitive Regulation imposing definitive measures reiterated the GDD's procedural steps regarding the verification of information and reliance on essential facts as a basis for the measures.[36] It

31 Provisional Disclosure document dated 11 May 2011, Annex 2, Exhibit IDN-33, p. 5.

32 PTMM comments on the Provisional Disclosure document, Exhibit IDN-34.

33 Letter regarding disclosure of definitive findings dated 2 August 2011, Exhibit EU-10.

34 General Disclosure document, Exhibit IDN-39, paras. 4-7.

35 General Disclosure document, Exhibit IDN-39, paras. 20, 29, 36, 41, 48, 59, 65, 66, 99 and 117.

36 Definitive Regulation, Exhibit IDN-4, recitals 4-7.

provided further information regarding the verification of information from interested parties regarding essential facts raised in the GDD.[37]

53. In sum, the record reflects the active dialogue that took place between the interested parties and the investigating authority and confirms the repeated disclosure of the results of the on-site verification in time for the interested parties to make comments or request additional information on the results of the verification to be made available. PTMM offered corrected information which was included on the list of "agreed" corrections. This agreement to correct certain information is properly reflected in the record of the investigation as well and was never contested.

[37] Definitive Regulation, Exhibit IDN-4, recitals 20, 29, 38, 43, 45, 48, 50, 61, 67, 68, and 119.