

**Sayı:** 17812098-TİM.AKİB.GSK.SAN.2024/86-1230

Mersin, 08/03/2024

**Konu:** AB HUŞ AĞACINDAN KONTRPLAK ÖNLEMLERİNİN ETKİSİZ KILINMASI  
SORUŞTURMASI

**Sayın Üyemiz,**

**İlgi :** 28.08.2023 tarihli ve 2023/481-4078 sayılı duyuru yazımız.

İlgi’de kayıtlı daha önce yaptığımız duyurumuzda, Rusya menşeli “huş ağacından kontrplak” (4412.33.10 gümrük tarife pozisyonu altında yer alan-2022 öncesi 4412.33.00) ithalatında AB tarafından uygulanan anti-damping önleminin, bu ürünlerin Kazakistan’ın yanı sıra ülkemizden sevk edilmesi suretiyle muhtemel etkisiz kılınması ile ilgili olarak bir soruşturma açıldığı bilgisi iletilmişti.

Bu defa, T.C. Ticaret Bakanlığından alınan yazıya atıfla, Avrupa Komisyonu’ndan alınan bir örneği ekli 01.03.2024 tarihli Nota’da, söz konusu soruşturmaya ilişkin elde edilen kesin bulguların Nota ekinde iletilen raporda yer aldığı ve ayrıca bu bulguların ilgili taraflarla da paylaşıldığı belirtilmiştir. Bu çerçevede konuya ilişkin olabilecek görüşlerinizin en geç **12 Mart 2024** tarihine kadar [sanayi@akib.org.tr](mailto:sanayi@akib.org.tr) e-posta adresine bildirilmesi gerekmektedir.

Bilgilerini rica ederim.

**Dr. Osman ERŞAHAN**  
**Genel Sekreter Yrd.**

**Ekler:**

- 1- R799 Note Verbale
- 2- R799 General Disclosure Document



## **GENERAL DISCLOSURE DOCUMENT**

**R799 – Proceeding concerning possible circumvention of the anti-dumping measures imposed by Commission Implementing Regulation (EU) 2021/1930 on imports of birch plywood originating in Russia, by imports of birch plywood consigned from Türkiye and Kazakhstan.**

### **INVESTIGATION TEAM**

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## **1. PROCEDURE**

### **1.1. Existing measures**

- (1) In November 2021, by Implementing Regulation (EU) 2021/1930 <sup>(1)</sup>, the European Commission ('the Commission') imposed a definitive anti-dumping duty on imports of birch plywood originating in Russia ('the original Regulation'). The measures took the form of an *ad valorem* duty ranging between 14,4 % and 15,8 %, with a residual duty of 15,8 % for non-cooperating Russian companies. The investigation that led to these duties ('the original investigation') was initiated in October 2020 <sup>(2)</sup>.

### **1.2. Request**

- (2) The Commission received a request pursuant to Articles 13(3) and 14(5) of Regulation (EU) 2016/1036 ('the basic Regulation') to investigate the possible circumvention of the anti-dumping measures imposed on imports of birch plywood originating in Russia by imports of birch plywood consigned from Türkiye and Kazakhstan, whether or not declared as originating in Türkiye and Kazakhstan and to make such imports subject to registration ('Request').
- (3) The request was lodged on 10 July 2023 by the Woodstock Consortium ('the applicant').
- (4) The request contained sufficient evidence of a change in the pattern of trade involving exports from Russia, Türkiye and Kazakhstan and the Union that took place following the imposition of measures on birch plywood from Russia. This change appeared to stem from the consignment of birch plywood via Türkiye and Kazakhstan to the Union, a practice for which there was insufficient due cause or economic justification other than the imposition of the duty.
- (5) Furthermore, the request contained sufficient evidence that the practice described above was undermining the remedial effects of the existing anti-dumping measures both in terms of quantity and prices. Significant volumes of imports of birch plywood entered the Union market. In addition, there was sufficient evidence that the imports of birch plywood were made at injurious prices. Finally, there was sufficient evidence that the prices of birch plywood consigned from Türkiye and Kazakhstan were dumped in relation to the normal value established for birch plywood.

### **1.3. Product concerned and product under investigation**

- (6) The product concerned by the possible circumvention is plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with outer plies of wood specified under subheading 4412 33, with at least one outer ply of birch wood, whether or not coated, classified on the date of entry into force of the original Regulation under CN code ex 4412 33 00 (TARIC code 4412 33 00 10) and originating in Russia ('the product concerned'). This is the product to which the measures that are currently in force apply.

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<sup>1</sup> Commission Implementing Regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitely collecting the provisional duty imposed on imports of birch plywood originating in Russia, OJ L 394, 9.11.2021, p. 7.

<sup>2</sup> Notice of initiation of an anti-dumping proceeding concerning imports of birch plywood originating in Russia, OJ C 342, 14.10.2020, p. 2.

- (7) The product under investigation is the same as that defined in the previous recital, currently falling under CN code 4412 33 10 <sup>(3)</sup> but consigned from Türkiye and Kazakhstan, whether declared as originating in Türkiye and Kazakhstan (TARIC codes 4412 33 10 10 and 4412 33 10 20) ('the product under investigation').
- (8) The investigation showed that birch plywood exported from Russia and birch plywood consigned from Kazakhstan and Türkiye, whether originating in Kazakhstan and Türkiye, have the same basic physical and chemical characteristics and have the same uses, and are therefore considered as like products within the meaning of Article 1(4) of the basic Regulation.

#### **1.4. Initiation**

- (9) Having determined, after informing the Member States, that sufficient evidence existed for the initiation of an investigation pursuant to Article 13(3) of the basic Regulation, the Commission initiated, on 21 August 2021, the investigation by Commission Implementing Regulation (EU) 2023/1649<sup>(4)</sup> ('the initiating Regulation') and made imports of birch plywood consigned from Kazakhstan and Türkiye, whether declared as originating in Kazakhstan and Türkiye or not, subject to registration.

#### **1.5. Comments on initiation**

- (10) After initiation, the Kazakh authorities provided a list of companies producing birch plywood and requested that these companies were exempted from the scope of the measures, since they exported birch plywood produced in Kazakhstan. They submitted that certificates of origin in Kazakhstan complied with international standards and as well with all EU requirements and rules regarding the origin of the goods, and that this was controlled by the Ministry of Trade and Integration. Thus, they requested the Commission not to extend the anti-dumping duties to Kazakhstan, since the companies could not be involved in the circumvention of the measures.
- (11) The Commission recalled that the exemption requests (assessed in Section 4) were considered in the light of Article 13 of the basic Regulation and that the certificates of origin were not thus the only criteria for the assessment.

#### **1.6. Investigation period and reporting period**

- (12) The investigation period covered the period from 1 January 2019 to 30 June 2023 ('the investigation period' or 'IP'). Data were collected for the investigation period to investigate, inter alia, the alleged change in the pattern of trade following the imposition of measures on the product concerned, and the existence of a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty. More detailed data were collected for the period from 1 July 2022 to 30 June 2023 ('the reporting period' or 'RP') in order to examine if imports were undermining the remedial effect of the measures in force in terms of prices and/or quantities and the existence of dumping.

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<sup>3</sup> Until 31 December 2021, the applicable TARIC code was 4412 33 00 10. Since 1 January 2022, it was replaced by TARIC code 4412 33 10 10. Since 01 September 2022, it was replaced by CN code 4412 33 10.

<sup>4</sup> Commission Implementing Regulation (EU) 2023/1649 of 21 August 2023 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2021/1930 on imports of birch plywood originating in Russia, by imports of birch plywood consigned from Türkiye and Kazakhstan, whether or not declared as originating in Türkiye and Kazakhstan, and making imports of birch plywood consigned from Türkiye and Kazakhstan subject to registration, L 207, 22.8.2023, 22.8.2023, p. 77.

## 1.7. Investigation

- (13) The Commission officially informed the authorities of Russia, Kazakhstan and Türkiye, the known exporting producers in those countries, the Union industry and the President of the EU-Türkiye Association Council of the initiation of the investigation.
- (14) In addition, the Commission asked the Mission of the Republic of Kazakhstan to the European Union and the Permanent Delegation of Türkiye to the European Union to provide it with the names and addresses of exporting producers and/or representative associations that could be interested in participating in the investigation in addition to the Turkish and Kazakh exporting producers, which had been identified in the request by the applicant. The Kazakh authorities provided a list of producers of birch plywood, that the Commission contacted.
- (15) Exemption claims forms for the producers/exporters in Kazakhstan and Türkiye and questionnaires for importers in the Union were made available on DG TRADE's website.
- (16) The following five companies in Kazakhstan submitted exemption claim forms:
- Favorit LLP
  - QazFanCom LLP
  - Semipalatinsk Wood Processing LLP
  - Severnyi Fanernyi Kombinat LLP ('SFK')
  - VFP LLP
- (17) The following four companies in Türkiye submitted exemption claim forms:
- Intur Construction Tourism and Forest
  - Murat Şahin Orman Ürünleri
  - Petek Kontrplak San ve Tic A.Ş.
  - Sağlamlar Orman Tarım Ürünleri San. Ve. Tic. AS
- (18) In addition, the following unrelated importers submitted a questionnaire reply:
- Aschiero Wood Import SPA
  - FOREST TRAFIC
  - CASTELLANA LEGNAMI SNC
  - IMOLALEGNO spa
  - Orlimex CZ s.r.o.
- (19) 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 initiating Regulation. All parties were informed that the non-submission of all relevant information or the submission of incomplete, false or misleading information might lead to the application of Article 18 of the basic Regulation and to findings based on the facts available. At the request of the companies, hearings with Favorit and SFK were held on 8 February 2024 with the Commission services and subsequently on 14 February 2024 with the Hearing Officer.

## **2. RESULTS OF THE INVESTIGATION**

### **2.1. Level of cooperation**

- (20) As stated in recitals (16) to (17), five companies established in Kazakhstan and four companies established Türkiye provided exemption claim forms, and requested to be exempted from duties, if extended to Kazakhstan and Türkiye.
- (21) However, two companies in Kazakhstan (QazFanCom and VFP LPP), and three companies in Türkiye (Murat Şahin Orman Ürünleri, Petek Kontoplak San ve Tic A.Ş. and Sağamlar Orman Tarım Ürünleri San. Ve. Tic. AS) provided highly deficient exemption claim forms. Therefore, by letter of 13 October 2023 to VFP LLP and the three Turkish companies, and by letter of 17 November 2023 to QazFanCom, the Commission informed these companies that it intended to apply facts available in accordance with Article 18(1) of the basic Regulation, because these companies had not provided, within the time limits provided for, the necessary information for the Commission to determine whether they were or not involved in the circumvention practices ('Article 18 letter'). The companies were given the opportunity to comment. The company QazFanCom submitted comments. No other company provided comments.
- (22) In response to the Article 18 letter, QazFanCom submitted that, contrary to what was mentioned in the Article 18 letter, it cooperated with the investigation since the information it had submitted involved a big amount of work. It also considered that to provide and translate the information into English was time consuming and that the extension to deadlines to provide a reply was too short, given that the procedure lasted nine months. The company also considered that the basic Regulation did not provide the maximum deadline for extension of deadlines.
- (23) QazFanCom further submitted that, in its opinion, all the information that the Commission asked to be provided was sensitive and, therefore, could not be provided. At the same time, it alleged that the Commission leaked a confidential information and violated Article 19 of the basic Regulation since its trade partners knew about the fact that the exemption request submitted by QazFanCom would be rejected, already before QazFanCom received the Article 18 letter from the Commission.
- (24) The Commission recalled that the deadline of 37 days to provide the exemption claim form was set out in Article 3(2) of the initiating Regulation and it was in line with a general deadline of at least 30 days mentioned in Article 6(2) of the basic Regulation. Extensions may be granted, due account being taken of the time limits of the investigation, provided that the party shows due cause for such an extension in terms of its particular circumstances. In the present case, the Commission granted an extension of seven days which was the maximum it could give in view of the time limits of the investigation. The Commission thus rejected the claim that more time to provide the exemption claim form could be given in the present case.
- (25) The Commission further considered that detailed instructions on how to provide the non-confidential version of the exemption claim form were provided to QazFanCom together with the exemption claim form. The information that was sent described in detail how data can be presented to ensure that confidentiality is respected but also preserve the rights of defence of other interested parties. The Commission thus rejected the claim that no information could be provided because of its confidential nature.

- (26) Furthermore, with regard to the claim on the alleged breach of confidentiality, QazFanCom did not substantiate the claim; it did not point out to any information published in the open file that would contain information about the status of the exemption request of QazFanCom prior to the Article 18 letter, Therefore, the Commission rejected the claim.
- (27) Based on the above, the Commission thus concluded that two companies in Kazakhstan (QazFanCom and VFP LPP), and three companies in Türkiye (Murat Şahin Orman Ürünleri, Petek Kontrplak San ve Tic A.Ş. and Sağlamlar Orman Tarım Urunleri San. Ve. Tic. AS) failed to cooperate within the meaning of Article 18 of the basic Regulation and consequently did not demonstrate that they are not engaged in circumvention activities. Therefore, their exemption requests were rejected.
- (28) The Commission carried out the verification visits on the premises of the following companies:
- Favorit LLP (Kazakhstan)
  - Semipalatinsk Wood Processing LLP (Kazakhstan)
  - Severnyi Fanernyi Kombinat LLP (Kazakhstan)
  - Intur Construction Tourism and Forest (Türkiye)
- (29) The Commission also analysed the information in the questionnaire replies of the cooperating importers to crosscheck with the information collected during the verification.
- (30) After the on-the spot verifications, the Commission decided to base the findings with regard to the exemption requests of the Kazakh companies Favorit LLP, Semipalatinsk Wood Processing LLP, and Severnyi Fanernyi Kombinat LLP on best facts available, of which the companies were informed on respectively 22 January 2024, 26 January 2024, and 22 January 2024, based on Article 18 of the basic Regulation. A detailed analysis, as well as the assessment of the Turkish company Intur Construction Tourism and Forest is to be found in Section 4 below.
- (31) In view of the above<sup>5</sup>, the Commission considered that the cooperation in both countries was low, and that the findings for both countries had to be based on Statistics.

## **2.2. General considerations**

- (32) In accordance with Article 13(1) of the basic Regulation, the Commission must analyse whether the following conditions are met:
- whether there was a change in the pattern of trade between Russia, Kazakhstan, Türkiye and the Union,
  - if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the anti-dumping measures in force,
  - if there is evidence of injury or the remedial effects of the anti-dumping measures in force were being undermined in terms of the prices and/or quantities of the product under investigation, and

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<sup>5</sup> In the RP, Intur Construction Tourism and Forest (the only cooperating company) exported to the Union [2000-3000] m3 which represented between [5-10] % of the total imports from Türkiye.

- whether there is evidence of dumping in relation to the normal values previously established for the product concerned.
- (33) In addition to the circumvention practices consisting in transshipment of plywood via Kazakhstan and Türkiye, the Commission also investigated whether the anti-dumping measures were circumvented via practices involving assembly / completion operations. It considered that practices such as producing birch plywood from Russian inputs (birch logs and veneer) constituted assembly or completion operations within the meaning of Article 13(2). The Commission therefore specifically analysed the criteria set out in Article 13(2), in particular:
- whether the assembly/completion operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and whether the parts concerned are from the country subject to measures, and
  - whether the parts constitute 60 % or more of the total value of the parts of the assembled product and whether the value added to the parts brought in, during the assembly or completion operation, was greater than 25 % of the manufacturing costs.

### 2.3. Change in the pattern of trade

#### 2.3.1. Change in the pattern of trade between the Union, Russia, and Türkiye

- (34) Table 1 shows the development of imports of birch plywood into the Union in the IP:

Table 1

#### Imports of birch plywood from Russia, Kazakhstan and Türkiye into the Union (m3)

	2019	2020	2021	2022	RP
<b>Russia</b>	809 267	763 783	959 000	503 140	51 398
Index (base=2019)	100	94	119	62	6
Market share	44.2%	41.7%	52.4%	31.8%	4.2%
<b>Kazakhstan</b>	0	0	0	29 225	97 068
Index (base=2022)				100	332
Market share	0	0	0	1.8%	7.9%
<b>Türkiye</b>	4094	3001	1 536	15 619	33 832
Index (base=2019)	100	73	38	381	826
Market share	0.2%	0.2%	0.1%	1.0%	2.8%

Source: Comext, complainant's estimates for EU sales

- (35) Table 1 shows that in 2022, after imposition of the anti-dumping duties on imports of birch plywood from Russia in November 2021, the imports from Russia to the Union decreased by almost 40 %, compared to 2019, the period before the start of the original investigation. In the RP, the imports further decreased by 94 % compared to 2019.
- (36) In 2019, 2020 and in 2021, there were no imports to the Union of birch plywood from Kazakhstan. The imports to the Union only started in April 2022, after the imposition of the anti-dumping duties on Russia in November 2021. In the RP, the imports more than tripled compared to 2022 and achieved over 97 thousand m3.
- (37) In 2019, imports from Türkiye were only around 4 000 m3. Between 2019 and 2021, the volume of imports decreased by more than 60 %. In 2022, after the imposition of



anti-dumping duties on Russia in November 2021, the imports increased almost four times compared to 2019, and, in the RP, more than eight times.

2.3.2. *The change of the pattern of trade between Russia and Kazakhstan*

(38) Table 2 shows the development of imports of birch plywood, logs and veneer from Russia to Kazakhstan in the IP (m3):

Table 2

	2019	2020	2021	2022	RP
Birch plywood	0	0	0	171 277	1 258 454
Index				100	735
Logs	0	0	0	11 120	27 202
Index				100	245
Veneer	0	0	0	4 480	16 686
Index				100	372

*Source: Global Trade Atlas*

(39) Table 2 shows that imports from Russia to Kazakhstan of birch plywood, and of logs and veneer (main input materials to produce birch plywood) only started in 2022.

(40) In the RP, imports of birch plywood increased more than seven times. Between 2022 and the RP, also the imports of logs and veneer increased considerably, in case of veneer almost four times.

2.3.3. *The change of the pattern of trade between Russia and Türkiye*

(41) Table 3 shows the development of imports of birch plywood, logs and veneer from Russia to Türkiye in the IP (m3):

Table 3

	2019	2020	2021	2022	RP
Birch plywood	14 749	21 600	21 620	60 231	120 073
Index	100	146	147	408	814
Logs			1 752	2 012	
Index			100	115	
Veneer	10 462	23 260	40 096	71 672	109 977
Index	100	222	383	685	1051

*Source: Global Trade Atlas*

- (42) Table 3 shows that birch plywood started to be imported from Russia to Türkiye already in 2019, but in relatively low quantities. Between 2021 in 2022, the imports tripled. The most significant increase took place between 2022 and the RP, when the imports doubled and achieved more than 120 thousand m<sup>3</sup>. In terms of volume, compared to 2021 (the period before the imposition of the measures), the imports of plywood increased six times.
- (43) In parallel, compared to 2019, imports of logs and veneer also increased. While for logs there was no increase between 2021 and the RP, the imports of veneer increased more than 10 times between 2019 and the RP. In the RP, imports of veneer increased by 2,5 times compared to 2021.

#### 2.3.4. *Conclusion*

- (44) The above evolution of imports from Russia, Kazakhstan and Türkiye clearly shows a change in the pattern of trade after the measures on imports of birch plywood were imposed. While the imports from Russia almost disappeared, imports from both Kazakhstan and Türkiye considerably increased. At the same time, trade flows of birch plywood, logs and veneer between Russia and Kazakhstan and Russia and Türkiye substantially increased.
- (45) The Commission thus concluded that decrease of Russian imports, the parallel increase on imports from Kazakhstan and Türkiye, constitute a change of pattern of trade between the above-mentioned countries within the meaning of Article 13(1) of the basic Regulation.

#### 2.4. **Nature of the circumvention practices**

- (46) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process of work includes, inter alia, the consignment of the product subject to the existing measures via third countries, and the assembly of parts/completion operations in a third country in accordance with Article 13(2) of the basic Regulation.
- (47) As concluded in Section 2.1.4 above, because of the low cooperation, findings in respect of the existence and nature of the circumventing practices had to be based on facts available pursuant to Article 18 of the basic Regulation.
- (48) The evidence in the request and confirmed by the Commission during the investigation, showed that birch plywood produced in Russia was exported to Türkiye or Kazakhstan. An intermediary party in Türkiye or Kazakhstan re-exported birch plywood to the Union either as a stand-alone batch or by mixing it with locally produced plywood of birch or other wood species. In addition, some of the companies both in Kazakhstan and Türkiye circumvented the anti-dumping measures on birch plywood from Russia, by producing birch plywood out of inputs from Russia which, within the meaning of the conditions of Article 13(2) of the basic Regulation, was found to constitute an assembly / completion operation (see Section 2.7 below) <sup>6</sup>.
- (49) Furthermore, the volume of imports into the Union from both Türkiye and Kazakhstan in the RP exceeded the production in both countries, estimated in the RP to be about

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<sup>6</sup> Paragraphs 38 to 45 and paragraphs 71 to 77 of the request.

17 to 20 thousand m<sup>3</sup>, and around 69 thousand m<sup>3</sup> respectively<sup>7</sup>. These imports could thus not be entirely constituted of birch plywood of Kazakh or Turkish origin<sup>8</sup>.

- (50) Transshipment practices of Russian plywood in the RP through Türkiye and Kazakhstan were further evidenced by numerous emails and price offers by importers and traders<sup>9</sup>. The information submitted by the cooperating importers also proved that plywood from Russia was sold on the Union market, and that the sales were done via a chain of numerous traders<sup>10</sup>.
- (51) In Kazakhstan, circumvention practices were facilitated by the geographical proximity to Russia, and the fact that companies had links to Russian producers of birch plywood or of the input materials. In addition, Kazakh certificates of origin were, according to two exporting producers, traded and misused for the plywood of Russian origin.

## **2.5. Insufficient due cause or economic justification**

- (52) In addition to the increased transport costs linked to transshipment of birch plywood through Kazakhstan and Türkiye, imports of birch plywood from Russia into Türkiye in the RP were subject to the conventional customs duty of 7 % and, since 2018, to an additional 20 % duty rate. Therefore, transshipping plywood through the two countries involved additional costs, and no economic justification for the change of the pattern of trade and the practices was found to exist.
- (53) Both Favorit and SFK considered that the Commission did not establish that the circumvention stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and it argued that imports from Kazakhstan started arriving into the Union only following imposition of sanctions on Russian plywood which is the only cause or economic justification for the increased imports<sup>11</sup>.
- (54) The Commission considered that the sanctions were imposed less than 8 months after the imposition of the anti-dumping duties and that the start of the change in the pattern of trade could already be observed before the sanctions were imposed. Imports from Kazakhstan (and Türkiye) started before the sanctions were imposed. In addition, the investigation revealed that SFK set up a related importer in the Union in April 2022 just after the imposition of the anti-dumping duties, and before the sanctions entered into force (10 July 2022).
- (55) The Commission thus concluded that there was no other due cause or an economic justification of the consignment of birch plywood via Kazakhstan and Türkiye, other than the circumvention of the duties.

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<sup>7</sup> The production in Türkiye was estimated based on the estimated production capacity (paragraph 32 of the request). The production was thus likely to be lower. The production in Kazakhstan was based on the questionnaire replies of Kazakh producers and information in the request (paragraph 67).

<sup>8</sup> According to the information provided in the request, in Türkiye there is no production of a wide density of birch species used to produce birch plywood, and the birch ecosystem in Türkiye is not of high productivity.

<sup>9</sup> Annexes 16 to 24 to the request.

<sup>10</sup> Open questionnaire replies of importers.

<sup>11</sup> The prohibition of importation of Chapter 44 products (including birch plywood) from Russia entered into force on 10 July 2022 (<https://eur-lex.europa.eu/eli/reg/2022/576/oj>).

## **2.6. Start or substantial increase of practices defined in Article 13(2)**

- (56) Article 13(2) of the basic Regulation requires the assembly/completion operation to have started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation, while the parts concerned are from the country subject to anti-dumping measures.
- (57) In view of the low cooperation in both countries, the Commission based its findings about the start or substantial increase of the practices identified as assembly or completion operation, based on best facts available within the meaning of Article 18 of the basic Regulation.
- (58) The statistical data, as summarized in Section 2.3 above clearly showed that the assembly and completion operations and subsequent imports into the Union started after the imposition of the anti-dumping duties in November 2021. Therefore, the Commission concluded that the assembly operation started after the imposition of the anti-dumping duties.

## **2.7. Value of parts and value added**

- (59) Article 13(2)(b) of the basic Regulation states that, as far as assembly operations are concerned, another condition to establish circumvention is that the parts (from Kazakhstan and Türkiye, in this case) constitute 60 % or more of the total value of the parts of the assembled product and that the added value of the parts brought in, during the assembly or completion operation, is less than 25 % of the manufacturing cost.
- (60) Some Kazakh and Turkish producers bought in the RP the main input materials from Russia (birch logs, or birch veneer produced from logs, and resin). As logs, veneer and resin constitute 100% of the input material, value of the input material (parts brought in) exceeded the 60% threshold.
- (61) This was confirmed by the findings on the cooperating Turkish producer, producing birch plywood from Russian veneer (for details, see Section 4 below). The findings for this company further showed that the value added was below the 25 % threshold set by Article 13(2)(b) of the basic Regulation. It was therefore concluded that the second criterion set out in Article 13(2)(b) of the basic Regulation was also met.
- (62) SFK argued that the present investigation was only initiated on the basis of allegedly sufficient evidence regarding the transshipment of Russian origin plywood but there was no evidence in the file that would with regard to change in the pattern of trade stem from an assembly or completion operation. SFK considered that the Commission had no choice but to rely on SFK's data as facts available, which in its view demonstrated that the value added was significantly above 25% of the total costs of manufacturing.
- (63) The Commission considered that, as set out in the initiating Regulation (Section D), it could also investigate other circumvention practices, should they be identified during the investigation. In this case, and as mentioned in Section 2.2 above, the Commission also investigated assembly / completion operations and concluded that the measures on imports from Russia were, amongst others, circumvented by assembly or completion operations both in Kazakhstan and in Türkiye.

## **2.8. Undermining of the remedial effect of the anti-dumping duty**

- (64) In accordance with Article 13(1) of the basic Regulation, the Commission examined whether the imports of the product under investigation, both in terms of quantities and prices, undermined the remedial effects of the measures currently in force.

- (65) Regarding quantities, the market share of the imports from Kazakhstan represented around 7,9% of the Union consumption during the RP while there were no imports in the original investigation period<sup>12</sup>. For Türkiye, the market share increased from 0,2% in the original investigation period to 2,8% in the RP. The Commission considered that the volume of imports was significant.
- (66) Regarding prices, the Commission compared the average non-injurious price as established in the original investigation, adjusted for cost increase between the original investigation period and the RP, with the weighted average export CIF prices determined on the basis of the information provided in Eurostat statistics, duly adjusted to include conventional customs duties (7% for Kazakhstan and none for Türkiye) and post clearance costs, estimated at 5%<sup>13</sup>. This price comparison showed the existence of underselling of 66,4% for Kazakhstan and of 18,9% for Türkiye.
- (67) The Commission also compared the prices of imports as established above with the prices of the Union industry. This price comparison showed undercutting of 36,7% for Kazakhstan, and of 14,6% for Türkiye<sup>14</sup>.
- (68) The Commission concluded that in the RP the existing measures were undermined in terms of quantities and prices by the imports from Kazakhstan and Türkiye.

## **2.9. Evidence of dumping**

- (69) In accordance with Article 13(1) of the basic Regulation, the Commission also examined whether there was evidence of dumping in relation to the normal values previously established for the like product.
- (70) To this end, export prices were determined based on data in Eurostat and brought ex works and compared to the normal values established during the original investigation, duly adjusted for inflation.
- (71) The comparison of normal values previously established for the like product and export prices showed evidence of dumping for imports from both Kazakhstan and Türkiye.

## **3. MEASURES**

- (72) Based on the above findings, the Commission concluded that the anti-dumping measures imposed on imports of plywood originating in Russia are being circumvented by imports of the product under investigation consigned from Kazakhstan and Türkiye.
- (73) Therefore, in accordance with Article 13(1) of the basic Regulation, the anti-dumping measures in force should be extended to imports of the product under investigation.
- (74) Pursuant to Article 13(1), second paragraph of the basic Regulation, the measure to be extended should be the one established in Article 1(2) of Implementing Regulation (EU) 2021/1930 for ‘all other companies’, which is a definitive anti-dumping duty of 15,8 % applicable to the net, free-at-Union-frontier price, before customs duty.
- (75) Pursuant to Article 13(3) of the basic Regulation, which provide that any extended measure should apply to imports that entered the Union under registration imposed by

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<sup>12</sup> The consumption was established based on total EU sales estimates and imports in the IP.

<sup>13</sup> Annex 26 of the request.

<sup>14</sup> The Union prices are based on information from the request (annex 26).

the initiating Regulation, duties are to be collected on those registered imports of the product under investigation.

- (76) Both Favorit and SFK requested that any Regulation extending the duties should specifically mention that any facts of circumvention as established in the framework of this investigation should not be understood or suggest any finding of circumvention within the meaning of EU restrictive measures in view of Russia's invasion of Ukraine.
- (77) The Commission confirmed that the legal basis for the investigation was the basic Regulation, in particular Article 13 thereof, and that the findings detailed in this regulation related to circumvention of the anti-dumping duties imposed on imports of birch plywood from Russia in November 2021.

#### **4. REQUESTS FOR EXEMPTION**

- (78) As mentioned in Section 1.7 above, the Commission assessed exemption requests of the exporting producers in Kazakhstan and in Türkiye.

##### **4.1. Kazakhstan**

###### *4.1.1. Findings with regard to Favorit*

- (79) At the verification visit at the premises of Favorit and its related companies, the Commission services found that the accounting records of Favorit were not reliable since their veracity could not be confirmed by any independently audited document. As a result, the Commission could not reliably establish the scope of the business of Favorit against any official document, also in the absence of independently audited financial statements. The accounting records did not allow the Commission to reliably establish the total purchases of input materials, the total purchases of the finished product, the total production and total sales volumes. All of this information is necessary in order to assess an application for an exemption under Article 13(4) of the basic Regulation. The information which could not be verified concerned a major part of the purchases of the input material and of the product concerned, including quantities and values of purchases and resales of Russian birch plywood and veneer, as well as information related to costs and sales. Consequently, the Commission could not establish and confirm the completeness of the data concerning the volume and source of the birch plywood exported to the Union and therefore, to confirm whether all birch plywood purchased by Favorit in Russia was resold exclusively on the domestic market, as claimed by Favorit.
- (80) The Commission then analysed whether it was possible to use some of the information of Favorit, based on Article 18(3) of the basic Regulation. Article 18(3) of the basic Regulation provides that, where the information submitted by an interested party is not ideal in all respects, it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability. Pursuant to settled case-law, it is evident from the wording of that provision that the four conditions are to be applied cumulatively. Accordingly, if just one of them is not satisfied, that

provision cannot be applied and the information in question cannot be taken into account <sup>(15)</sup>.

- (81) In the case at hand, the Commission considered that the entirety of the information submitted by Favorit could not be considered as verifiable. In the absence of reliable accounting, the volume and source of the plywood sold by Favorit on the Union market could not be reliably established. Therefore, using only partially the information submitted by Favorit did not allow arriving at a reasonably accurate finding on whether Favorit was not reselling the birch plywood it purchased in Russia to the Union market.
- (82) The Commission considered as well other factors, such as the absence of separate warehouses, or at least clearly distinguished spaces and/or labelling of the finished product, for own-produced and purchased birch plywood, and the fact that birch plywood destined for the domestic market did not have labels at all, and the absence of verifiable records on stock movement in its warehouses. The company purchased most of the Russian birch plywood through domestic traders and therefore, its volume could not be reliably established since these purchases were not recorded in any official document. Resales were done through three traders, two in Kazakhstan, and one outside Kazakhstan. The trader outside Kazakhstan, which resold the birch plywood it purchased from Favorit to the Union did allegedly not have audited accounts and therefore, the information on the volumes and specificities of the resold products could not be verified against any official document. Because of the combination of all these factors, the Commission considered that all the information provided by Favorit had to be rejected.
- (83) On this basis, the Commission services informed Favorit of their intention to apply Article 18(1) of the basic Regulation, and make its findings based on ‘facts available’ used for the country as a whole, summarised in Section 2.
- (84) Favorit disagreed with these findings. It considered that there was no basis to apply either Article 18(1) or Article 18(3) of the basic Regulation, since it fully cooperated with the investigation and since it provided all the necessary data that the Commission requested, and it successfully demonstrated that it did not tranship Russian origin birch plywood to the Union.
- (85) Favorit argued that it was a genuine producer and that the company invested a lot of efforts in preparing the questionnaire reply, which was complicated by the fact that it did not have financial statements, and because its accounting system had limitations. Favorit further pointed to the fact it was not required under Kazakh legislation to have financial statements and that the Commission was aware of the difficulties Favorit had regarding its accounting, and that it nevertheless proceeded with the investigation and conducted the on-the spot verification. Favorit argued that, when analysing the data, the Commission should apply an objective standard of establishing a reliability of the accounting information, and it referred to Article 15 of the WTO Antidumping Agreement that provides that a special regard must be given to developing country WTO members, and therefore that the Commission cannot apply IFRS or other global standards. It referred to a case of an Algerian producer for which the Commission

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<sup>15</sup> See judgment of 19 March 2015, *City Cycle Industries v Council*, T 413/13, not published, EU:T:2015:164, paragraph 120 and the case-law cited.

applied this Article due to the fact it did not have accounting records for half of the investigation period<sup>16</sup>.

- (86) The Commission did not question the fact that Favorit also produced its own birch plywood, but the application of Article 18 was based on a combination of factors, as detailed above in recitals (79) to (83). The purpose of the on-the-spot verification was not only to look into the reliability of the accounting data, but also to verify other information that could only be verified on the spot, such as, among others, an existence of a genuine production, stock of the input material, records that may only exist on paper form, physical location of the stock of birch plywood, and separation between the own production and birch plywood purchased in Russia. The Commission further stressed that the fact that the verification visit took place did not mean that data were to be accepted. The Commission thus disagreed that the fact that data were not rejected from the start meant that the Commission had to accept these data.
- (87) The Commission further noted that it did not require companies to provide financial statements if these did not exist and when national legislation did not require to prepare these, nor did it require that the information which was to be provided complied with IFRS or other accounting standards, in situations where it was not required by national legislation of the country in question. Therefore, the reason for the application of Article 18 was not the non-compliance of the accounting of Favorit with accounting standards, but rather the fact that the accounting records kept by Favorit were unreliable and made it impossible to verify the veracity of information that Favorit submitted with its request for an exemption. As a result, Favorit could not demonstrate that it was not involved in circumvention practices.
- (88) Without prejudice to the principle that the legality of anti-dumping measures should be assessed by reference to the applicable law, and not by reference to the alleged past administrative practice, the Commission further noted that in the case of the Algerian producer, it decided *‘to use data from the company where it was considered to be sufficiently reliable, and in so far as it did not materially affect the outcome’* (17). The conclusion for data of Favorit was contrary to the situation of the Algerian producer – the Commission did not consider the data of Favorit for any part of the investigation period as sufficiently reliable, and their veracity had a direct impact on the outcome. Therefore, the Commission found the argument of Favorit unsubstantiated.
- (89) Favorit also considered that the Article 18 letter did not specify what exactly triggered the application of Article 18(1) and 18(3) of the basic Regulation. It argued that it provided all the requested information, and therefore, that Article 18(1) did not apply. Also, it considered that the Commission could not apply Article 18(3) of the basic Regulation only because Favorit’s data was not ideal in all respects. Finally, the Commission was wrong to the extent that Article 18(1) applied because conditions of Article 18(3) were not fulfilled. It considered that Article 18(1) and 18(3) address different situations and their application is not contingent one on another.
- (90) Furthermore, Favorit argued that the Commission’s intent to disregard Favorit’s data in its entirety is manifestly contrary to paragraph 3 of Annex II to the WTO Anti-

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<sup>16</sup> Commission Regulation (EC) No 617/2000 of 16 March 2000 imposing provisional anti-dumping duties on imports of solutions of urea and ammonium nitrate originating in Algeria, Belarus, Lithuania, Russia and Ukraine and accepting, on a provisional basis, an undertaking offered by an exporting producer in Algeria, OJ L 75, 24.3.2000, p. 3, rec. 10.

<sup>17</sup> Commission Regulation (EC) No 617/2000, recital (10).



Dumping Agreement. It referred to the report of Appellate Body in *US — Hot-Rolled Steel*<sup>18</sup>, which specified that according to paragraph 3 of Annex II, investigating authorities are directed to use information if three conditions are satisfied, namely that such information is verifiable, appropriately submitted so that it can be used in the investigation without undue difficulties, and is supplied in a timely fashion. It follows that if these conditions are met, investigating authorities are not entitled to reject information submitted, when making a determination. Favorit argued that these conditions were met in this case since the Commission verified several documents that pointed to the absence of circumvention. Because the Commission asked to reconcile information to the trial balance and Favorit and its related companies did that, it was obliged to take such information into account, before resorting to any facts available.

- (91) The Commission reiterated that the reasons to apply Article 18 of the basic Regulation were detailed in Article 18 letter. In addition, the information collected during the verification visit was mentioned in the mission report shared with the company after the verification visit. As the information provided was clearly not verifiable, as detailed in recitals (79) to (83) above, the Commission concluded that the conditions to use Article 18(3) were not fulfilled<sup>19</sup> and the Commission based its findings solely on Article 18(1) of the basic Regulation, not on both articles (Article 18(1) and 18(3)), as alleged by Favorit.
- (92) Favorit further argued that it sufficiently demonstrated that it was not engaged in circumvention, which the Commission could have verified. All the information matched to the company's ERP system<sup>20</sup>, which could not be, in Favorit's view, changed retroactively. It further considered that the Commission could also visually confirm that what was loaded for the Union market was the same as what was seen in the company's warehouse in Uralsk.
- (93) The Commission considered that information submitted by parties must be verifiable, reliable and therefore usable, and presented in a way that it can be checked against audited books and records of the company submitting it, or any other official documents. However, in case of Favorit it was found that the information was unverifiable, unreliable, and unusable and it could not be proven to be accurate. The Commission thus disagreed that Favorit demonstrated that it was not involved in the circumvention practices and namely in that it was not reselling Russian birch plywood to the Union.
- (94) The Commission further noted that the quantity of Russian birch plywood, purchased by Favorit, was significant and represented [10-40] % of its sales and was close to the quantity that Favorit exported to the Union. However, as explained above, the absence of reliable and verifiable accounts recording the resales did not allow the Commission to confirm neither the quantities nor the destination of Russian birch plywood. Favorit

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<sup>18</sup> Report of the Appellate Body, United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, paragraph 80.

<sup>19</sup> The Commission looked if *deficiencies were not such as to cause undue difficulty in arriving at a reasonably accurate finding whether the information was appropriately submitted in good time and was verifiable, and if the party acted to the best of its ability*. Accordingly, if just one of them is not satisfied, that provision cannot be applied and the information in question cannot be taken into account (see judgment of 19 March 2015, *City Cycle Industries v Council*, T 413/13, not published, EU:T:2015:164, paragraph 120 and the case-law cited).

<sup>20</sup> ERP stands for Enterprise Resource Planning and it is a software recording business activities of a company.

resold the plywood through traders in Kazakhstan and a trader outside Kazakhstan for which Favorit claimed that officially audited accounts were not required. As explained during the verification visit, these sales channels through traders made it possible for Favorit to export to the Union. Likewise, purchases of Russian inputs to produce plywood and sales of plywood when done via traders could not be verified against any official or independently audited document.

- (95) The records in the accounts of Favorit were therefore not complete and could not be verified. The Commission also noted that the argument that the ERP system could not be retroactively changed was not based on any concrete evidence but was rather a statement of the company that could not be verified. In any event, the Commission was not able to verify that what was in the ERP system concerned the totality of the transactions of Favorit.
- (96) Furthermore, the Commission noted that no records or other evidence allowed to confirm, at the visit of the warehouse in Zubovsk, at the company's premises and in the warehouse in Uralsk, that birch plywood destined for the Union and birch plywood destined for the domestic market was kept separately. At the time of the visit, very little stock was kept, and only some of it was labelled. Neither in Zubovsk, nor in the warehouse in Uralsk the company could show records for stock movements tracing the origin and destination of the birch plywood. To the contrary, in Zubovsk, it was argued that the (only) employee working at the warehouse had the knowledge of the birch plywood to be loaded, therefore no records or labelling on the birch plywood ready to be sold was needed. In Uralsk, even though the warehouse was shared with other companies, no records were allegedly kept either. The Commission thus disagreed with the argument of Favorit that the fact that packages labelled as being for the Union were similar to those the Commission could see at the warehouse in Uralsk constituted evidence that the plywood sold to the Union market was produced by Favorit. To the contrary, since allegedly no records were kept in either warehouse, and there was not a separate space for the production of Favorit and Russian plywood, the company could not show that what was exported to the Union was solely its own production.
- (97) Favorit further argued that it had only one set of accounts that is issued for all the purposes, including for the tax accounting. It argued that all the purchases were recorded in Favorit's accounting system and reported in the tax accounting. Furthermore, Favorit argued that the deficiencies in its accounting related to the reliability and verifiability of the data were irrelevant to assess its exemption request. Favorit argued that according to the Court of Justice in *Maxcom*<sup>21</sup>, exemption requests should be granted if they are supported by evidence and if such evidence demonstrates that exporters submitting a request have not engaged in circumvention practices. It argued that the Court of Justice did not limit the notion of evidence to be submitted in order to meet the relevant legal standard to a specific type. In particular, there was not a requirement in its view for the applicants to have financial statements, audited financial statements, "official accounts", and that any evidence in principle would suffice.
- (98) The Commission disagreed that only one set of accounts was kept. To the contrary, Favorit's accounts used for tax accounting were not complete. Since the accounts

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<sup>21</sup> Judgment of the Court (Fourth Chamber) of 26 January 2017, Joined Cases C-247/15 P, C-253/15 P and C-259/15 P, paragraph 58.

should normally include purchases and resales of Russian birch plywood, the Commission disagreed that their reliability was irrelevant to assess its exemption request. The Commission recalled that its conclusion to apply Article 18 was based on a number of factors, detailed in recitals (79) to (83) and not on one piece of a specific evidence. It thus rejected the claim that the deficiencies in its accounting were irrelevant.

- (99) Favorit also argued that the questionnaire and pre-verification letter required to make all reconciliations to the trial balance and to electronic records, which Favorit did. It considered that the Commission failed to "*specify in detail*" that Favorit was supposed in addition to tie the data to some "*official accounts*". It also argued that the Commission also failed to articulate the way that information was to be structured. In its view, the Commission thus failed to take account of genuine difficulties that Favorit had experienced (such as lack of financial statements) and that it had made known to the Commission. In its view, the Commission could not then fault Favorit for its alleged lack of cooperation.
- (100) The Commission disagreed. It specified in detail the information it required and the way that information should be structured in the questionnaire. It was also in line with its standard practice to verify the veracity of the information by crosschecking it with, among others, official accounts, tax declarations, or records kept in factory. However, Favorit could not provide the reconciliation with any official or independently audited documents. The Commission also reiterated that the reason to apply Article 18 was not that Favorit refused to provide any requested information, but rather due to the facts explained in detail in recitals (79) to (83). The Commission thus rejected the claim.
- (101) Favorit argued that during the verification visit, it made a reconciliation of the revenue in its tax accounting module to revenue in VAT declarations and that it also reconciled revenue to the management and tax accounting module. This reconciliation showed that both sets of data came from the same accounts and were thus reliable, accurate and verifiable. The Article 18 letter was thus manifestly wrong and unreasoned by alleging that there was any issue regarding the reconciliation and was also contrary to paragraph 1 of Annex II to the WTO Anti-Dumping Agreement.
- (102) The Commission noted that only part of the accounts reconciled to official documents which could not thus constitute evidence that the company reported all the rest of the information correctly. The Commission thus disagreed that because part of the operation matched the official accounts, data had to be accepted. As explained above, the fact that all data could not be reconciled put in question all the information Favorit submitted. It thus rejected the claim.
- (103) Favorit further argued that the Article 18 letter did not explain which facts available it intended to apply and whether such facts available were based on Favorit's data or anything else. Nothing on the record pointed to involvement of Favorit in transshipment or other circumvention practices. Even if Article 18(1) applied, the only facts reasonably replacing the missing information would be the data that Favorit has provided. An extrapolation of country-wide circumvention findings to Favorit was in its view unreasonable as such selection of facts would clearly aim at punishing a non-cooperating party, which was not the case of Favorit.
- (104) Favorit also considered that any attempt to draw adverse inferences from the alleged non-cooperation was illegal under Article 6.8 of the Anti-Dumping Agreement. It argued that in line with the ruling in Mexico-Anti-dumping Measures on Rice, and Panel Report, China-GOES, the Commission must find '*best information available*'

which has to be not simply correct or useful per se but ‘*the most fitting*’ or ‘*most appropriate*’, and that the non-cooperation does not justify the drawing of adverse consequences<sup>22</sup>.

- (105) The Commission reiterated that the data of Favorit could not be used as a basis for its findings. As explained above, the data supplied by the company was unverifiable and as such it could not be used even under Article 18(3) of the basic Regulation. As confirmed by the Court of Justice, it is for each individual producer-exporter to show that its particular situation justifies an exemption pursuant to Article 13(4) of the basic Regulation.<sup>23</sup> Accordingly, the Commission concluded that Favorit had not demonstrated that it was a genuine producer not engaged in circumvention activities. In those circumstances, in line with its past practice, the Commission had no choice but to base itself on country-wide circumvention findings. Also, Article 18(6) of the basic Regulation provides that when a party has failed to cooperate partially or entirely, the result “*may be less favourable ... than if it had cooperated*”. Accordingly, the fact that the application on Favorit of the country-wide findings were to be less favourable for Favorit did not aim at punishing Favorit but was the only option and the consequence of the fact that its data could not be used.
- (106) Favorit further argued that it provided the profit and loss statement of the traders in Kazakhstan through which it exported and therefore, the Commission could carry out a full verification and reconciliation. Also, it argued that these traders had no obligation to provide audited accounts. Favorit also submitted that the Commission was wrong when it considered that it did not provide a profit and loss statement of the trader in the UAE. It also repeated that the trader outside Kazakhstan was not required to have audited accounts.
- (107) The Commission noted that profit and loss statements of the traders only reflected part of the business of Favorit and therefore, did not constitute evidence that all data provided by Favorit were correct. Similarly, the accounts of the trader outside Kazakhstan only captured part of the sales of Favorit and could not be used to establish the veracity of accounts of Favorit. It thus rejected the claim.
- (108) Favorit further argued that based on consistent Commission’s practice, non-cooperation with the anti-circumvention did not automatically lead to either the finding of circumvention by default or to the total disregard of the data submitted. It referred to the investigation relating to *Glass Fiber Fabric from Morocco* in which a producer was found non cooperating based on seven issues, but the Commission accepted its data<sup>24</sup>, and an investigation on *Coumarin from India*<sup>25</sup>, where a company

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<sup>22</sup> Report of the Appellate Body, Mexico — Anti-Dumping Measures on Rice, WT/DS295/AB/R, paragraph 289, and Panel Report, China — GOES, WT/DS414/R, paragraph 7.302.

<sup>23</sup> See for instance of 26 January 2017, *Maxcom v Chin Haur Indonesia*, C-247/15 P, C-253/15 P and C-259/15 P, EU:C:2017:61, para. 59.

<sup>24</sup> Commission Implementing Regulation (EU) 2022/302 of 24 February 2022 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2020/492, as amended by Implementing Regulation (EU) 2020/776, on imports of certain woven and/or stitched glass fibre fabrics (‘GFF’) originating in the People’s Republic of China (‘the PRC’) to imports of GFF consigned from Morocco, whether declared as originating in Morocco or not, and terminating the investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2020/492 on imports of GFF originating in Egypt by imports of GFF consigned from Morocco, whether declared as originating in Morocco or not, OJ L 46, 25.2.2022, p. 49.

<sup>25</sup> Council Regulation (EC) No 2272/2004 of 22 December 2004 extending the definitive anti-dumping duty imposed by Regulation (EC) No 769/2002 on imports of coumarin originating in the People’s

misled the Commission with regard to its affiliation to its trading companies but where no Article 18 of the basic Regulation was applied. Therefore, it considered that the intention of the Commission to apply facts available and its intention to reject its data was a violation of the principle of non-discrimination that obliges to treat similar situations in the same manner. Favorit further argued that its situation was similar to that at issue in the *Maxcom* judgement, and therefore, no findings of circumvention by Favorit could be found by reference to the country wide circumvention. Favorit considered that it provided evidence that it did not circumvent and that therefore, the Commission could not apply the country-wide findings to its situation.

- (109) The Commission noted that findings are made on a case-by-case basis, and in this case, as extensively explained above, due consideration was given as to whether the entire data set could not be used or only a specific information, as to whether the missing information had a substantial impact on the outcome of the investigation, and as to whether without the information the Commission could arrive to a reasonable finding. Furthermore, the facts of the cases mentioned by Favorit were completely different in many respects. In particular, in the other cases the business model of the concerned companies was different and there was no issue with the absence of audited financial statements. Therefore, the Commission did not agree that because the data were not entirely rejected in the above cases, the same approach had to be taken at the case at hand. It thus found the claim unsubstantiated. Also, the Commission disagreed that there was verified evidence that Favorit did not circumvent – the absence of reliable and verifiable data did not allow the company to demonstrate the absence of circumvention practices.
- (110) Based on the above, the Commission concluded that findings on Favorit had to be based on facts available in the sense of Article 18 of the basic Regulation and that Favorit did not demonstrate that it was a producer not engaged in circumvention activities in the sense of Article 13(4) of the basic Regulation. The Commission therefore rejected its exemption request.

#### 4.1.2. Findings with regard to Semipalatinsk

- (111) In the questionnaire reply Semipalatinsk reported all pressed wood input material to be non-Russian. However, during the verification visit the Commission discovered that the pressed wood from one supplier was from Russia while for the purchases made from Semipalatinsk's biggest supplier the origin could not be established. This information was necessary to establish, based on Article 13 of the basic Regulation, what is the percentage that the Russian origin input material constituted in the production of birch plywood and thus necessary to assess the application for exemption.
- (112) In addition, labour costs for the calculation of the added value as required by Article 13 of the basic Regulation could not be established by the Commission services because Semipalatinsk did not include all employees in the table on cost of manufacturing as they were paid in cash i.e. not present in the official accounts.
- (113) Furthermore, Semipalatinsk did not provide complete questionnaire replies for its related companies RKD LLP and RKD Latvia in a timely manner. The submission of questionnaire replies of these related companies was requested both in the

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Republic of China to imports of coumarin consigned from India or Thailand, whether declared as originating in India or Thailand or not, OJ L 396, 31.12.2004, p. 18–27, recitals (11)-(12).

questionnaire and in the subsequent deficiency letters as well as with an e-mail on 27 November 2023, prior to the verification visit. During the verification visit, Semipalatinsk submitted only partial data for RKD LLP while for RKD Latvia some partial data were submitted after the verification visit. In both cases, the non-timely submission of data for its related companies prevented the Commission officials from doing a complete and appropriate verification on-spot.

- (114) In addition to the above, on the last day of the verification visit the Commission officials were unable to perform the final checks such as verifying contacts with suppliers, customers and related companies.
- (115) Even though requested, Semipalatinsk did not provide the Commission services with a comprehensive overview of the communications with its main supplier. A specific e-mail account that was used for communication with Semipalatinsk's suppliers and customers was not disclosed during the verification visit. Nevertheless, the Commission officials found communications that cast doubts on the reliability of the claims of Semipalatinsk about its commercial links and relations.
- (116) The investigation revealed that the RKD LLP and Semipalatinsk's warehouses were in the same premises. The labelling of products was manual, and its labels did not contain batch identification information nor QR/bar code that would enable the tracing back to the production. Furthermore, next to Semipalatinsk's warehouse there were warehouses and external storage space for Russian birch plywood purchased by RKD LLP for resale. Thus, the Commission officials could not get the needed assurance concerning RKD LLP's activities in the movement of traded Russian birch plywood. Also, in another warehouse the Commission was unable to verify the movements of the goods since there were no supporting documents nor IT systems in place on site.
- (117) During the verification visit, Semipalatinsk explained that Kazakhstan does not have enough birch wood that would make economically sound production of all-Kazakh birch plywood. Therefore, Semipalatinsk was buying Russian "pressed wood in the form of slabs" as input materials while inserting as top layer own-produced birch veneers from Kazakh logs. This input material was the main input material during the IP. However, the Commission was unable to trace any stock of this input material. Semipalatinsk claimed that during the verification visits there were no new orders and hence no stocks of the input materials in the warehouses. However, this contradicted Semipalatinsk's statements on the importance of the specific input material in their business model.
- (118) On the basis of the above, the Commission informed Semipalatinsk of its intention to apply Article 18(1) of the basic Regulation and base its findings on best facts available within the meaning of this Article.
- (119) In response to the Article 18 letter Semipalatinsk claimed that the procurement of input material pressed wood slabs was carried out via Kazakh suppliers and that there were no legal obligations for them to provide documentation on the origin. Furthermore, Semipalatinsk emphasized that the information on the origin of input material was not requested earlier by the Commission and that the further processing of this input material amounted to the value added to the costs of manufacturing of 47% to obtain the final product.
- (120) Semipalatinsk claimed that it disclosed during the verification visit the contacts that had taken place with one of its suppliers. Also, the company maintained that the tables of the questionnaire provided reliable information and included all employees

including those who are paid in cash. Furthermore, Semipalatinsk argued that they had provided sufficient information about the related companies RKD LLP and RKD Latvia. Finally, Semipalatinsk claimed that RKD LLP and Semipalatinsk have different warehouses since they have different employees and separate lease agreements and loading facilities.

- (121) The Commission rejected the above claims. The origin of the input materials was requested by the Commission both in the questionnaire and in the deficiency letters that were sent subsequently. Although Semipalatinsk made an effort to find proof of origin of the input material the Commission could not obtain timely and reliable information on origin for the major proportion of input material. Furthermore, the Commission officials re-calculated value added to the parts brought in, during the assembly or completion operation, and it was less than 1% of the manufacturing cost.
- (122) The Commission also rejected the claim that during the verification visit it was informed of the email account from which the communications with certain suppliers were done. Semipalatinsk informed the Commission officials on the existence of this email account only at the end of the verification visit. Thus, the needed checks could not be performed, on top of the non-availability of IT staff to solve the technical problems that were encountered at the end of the verification visit.
- (123) Furthermore, the Commission rejected the claims of Semipalatinsk that it submitted timely and complete questionnaires for RKD LLP and RKD Latvia. For the former, Semipalatinsk submitted some fragmented data during the verification visit, and for the latter it submitted some fragmented data after the verification visit. This was not timely and not complete, and far too late to verify this information. The fact that RKD Latvia also had other unrelated stakeholders was not relevant, because RKD Latvia was a related company and, hence, had to provide the requested information. On 27 November 2023, i.e. one week before the start of the verification visit in a so-called pre-verification letter, the Commission informed Semipalatinsk that it could not submit new information during the verification visit. In this letter, it was also explained that any change to its reported data, which would be provided after this date may give rise to the application of Articles 18. The Commission rejected the claim that Semipalatinsk provided reliable information on labour costs. Although the Commission acknowledges that the reported labour costs provided in the table “Annex 2 - Cost consumption information request” included all employees, because of a part of it being cash-based, it was not possible to verify labour costs in the financial accounts of Semipalatinsk.
- (124) Finally, the Commission rejected as immaterial the claims of Semipalatinsk that they have different warehouses and employees. The Commission reiterated that, although the warehouses of the two companies may have separate lease agreements, loading facilities and employees, it could not get the needed assurance concerning RKD LLP’s activities in the movement of traded Russian birch plywood.
- (125) Based on the above, the Commission concluded that Semipalatinsk did not demonstrate that it was a producer not engaged in circumvention activities in the sense of Article 13(4) of the basic Regulation, and that therefore, the findings with regard to Semipalatinsk had to be based on facts available in the sense of Article 18 of the basic Regulation which was to apply the country-wide circumvention findings. The Commission therefore rejected its exemption request.

#### 4.1.3. Findings with regard to Severnyi Fanernyi Kombinat LLP

- (126) At the verification visit at Severnyi Fanernyi Kombinat LLP and its related companies ('SFK'), the Commission found that SFK did not report its related company in Russia. The company was reported as an unrelated log supplier. SFK therefore did not provide a questionnaire reply for this company. During the verification visit, the Commission also found that a number of transactions selected as a sample for detailed verification, SFK misreported the origin of Russian logs (as being Kazakh)<sup>26</sup>. On this basis, the Commission considered that SFK significantly impeded the investigation by supplying false and misleading information. Furthermore, and since the information was to be used to establish the percentage of the input material purchased in Russia and calculate the value added, the Commission considered that it could not use the data of SFK to establish that it was not involved in circumvention practices. On this basis, the Commission services informed SFK that it intended to disregard its data and to apply Article 18 of the basic Regulation.
- (127) SFK disagreed. It argued that the Commission should have considered the major overall effort that SFK undertook in terms of cooperation, the fact it was a major employer in its region and the fact that it operated in a developing country. SFK further pointed out to its efforts to prepare a detailed questionnaire response, despite its limited staff and no audited financial statements, and it referred to all the information and reconciliations it had provided. Also, SFK argued that the Commission grossly exaggerated by alleging that the non-disclosure of the relation with its related company in Russia and the misdeclaration of origin for one of the sampled transactions meant that SFK supplied false or misleading information and significantly impeded the investigation. It considered that the Commission was legally and factually wrong, violated EU's WTO obligations, was discriminatory and disregarded the hard work of the staff members of SFK Group. SFK also considered that throughout the different reconciliation, and as verified by the Commission during the on-the-spot verification, it demonstrated that it was not involved in any circumvention practices.
- (128) SFK considered that the Commission's intent to disregard SFK's data in its entirety was manifestly contrary to Article 6.8. and paragraph 3 of Annex II to the WTO Anti-Dumping Agreement. It referred to the report of *Appellate Body in US — Hot-Rolled Steel*<sup>27</sup>, which specified that according to paragraph 3 of Annex II, investigating authorities are directed to use information if three conditions are satisfied, namely that such information is verifiable, appropriately submitted so that it can be used in the investigation without undue difficulties, and is supplied in a timely fashion. It argued that if these conditions were met, investigating authorities were not entitled to reject information submitted, when making a determination. In its opinion, such conditions were met in the present investigation since the Commission verified each and every timely submitted document that points to the absence of circumvention. SFK considered that the Commission conducted its analysis of the data submitted by SFK in wrong order, and it referred to *US-Anti-Dumping and Countervailing Duties (Korea)*<sup>28</sup>. The correct order would be considering first all the information in direct

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<sup>26</sup> The detailed information on the discrepancies were explained in the sensitive version of the Article 18 letter.

<sup>27</sup> Report of the Appellate Body, United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, paragraph 80.

<sup>28</sup> Panel Report, US – Anti-Dumping and Countervailing Duties (Korea), para. 7.138.



response to the Commission, and since the information provided satisfied the criteria under paragraph 3 of Annex II to the WTO Anti-Dumping Agreement, the Commission had thus all the necessary information to accept the exemption request of SFK.

- (129) The Commission disagreed. Contrary to the allegations by SFK, it considered that the non-reporting of a related company in Russia and the origin of purchased logs seriously impeded the investigation. In the RP, SFK purchased birch logs, veneer, resin, and as well birch plywood in Russia. In these circumstances, the Commission had to determine the exact percentage of the input material from Russia in order to establish if the Russian parts constitute 60 % or more of the total value of the parts of the assembled product and if the added value of the parts brought in was more than 25 % of the manufacturing cost. The information on the value and origin of the input material had thus a direct impact on the assessment of the exemption request. Because the questionnaire reply of the related Russian company could not be verified, and because the accounts of SFK with the related company showed financial transactions beyond the log purchases (that the company explained as ‘advance payments’), the Commission could not verify the quantities and values of the logs, and if other input material or the product concerned was purchased. Since the questionnaire reply of the related company was not submitted when requested at the start of the investigation but was only submitted at the very end of the verification visit, the Commission considered that the information on the financial and goods flow between SFK and its Russian related company could not be verified. Therefore, it could not be argued that it was appropriately submitted, in a timely fashion, and that the information was verifiable. Therefore, the conditions under paragraph 3 of Annex II to the WTO Anti-Dumping Agreement were not met.
- (130) SFK further considered that the Commission could not disregard all the information provided by SFK. It referred to Article 18(1) of the basic Regulation which stipulates that “*where it is found that any interested party has supplied false or misleading information, that information shall be disregarded, and use may be made of facts available*”. On that basis, it considered that the Commission can proceed in its investigation by applying facts available in this regard and thus by treating the Russian company as a related company, and to treat the logs that were wrongly declared as being from Russia. It argued that these facts available however had no bearing on the data that SFK otherwise submitted in the course of the investigation, which showed lack of any circumvention practices. SFK further considered that the Commission did not need the country where parts come from for the calculation of the added value. It considered that it did not matter whether the related supplier was related or not, since even if transfer prices for an input had to be adjusted, it would equally affect the total cost of manufacturing, such that the value added would remain the same. Therefore, Article 18 letter was based on a manifest error of assessment and contrary to Article 13(2) of the basic Regulation.
- (131) The Commission disagreed that in the case at hand the only consequence for the provision of false and misleading information should be to treat the Russian company as a related company, and to treat the logs from a sample transaction that were wrongly declared as coming from Russia. The false information on the logs and the fact that the Commission could not verify the Russian related supplier rendered the whole data set of SFK unreliable. SFK declared that it purchased between [6-10%] from the related Russian supplier. The Commission could not verify the quantities of the logs and that SFK only purchased logs from the company and not the product

concerned directly. The Commission noted that SFK had, at the end of 2023, an outstanding debt to the Russian company, which equalled half of the turnover it had with this company. Also, SFK bought in the RP product concerned from Russia, which was initially declared to the Commission as ‘unfinished goods’. Therefore, the fact that SFK did not provide the questionnaire reply to the Commission directly affected the outcome of the investigation.

- (132) Furthermore, the exact percentage of the input material within the manufacturing costs was relevant not only to establish the percentage of the input material from Russia (the 60 % test) but also applied on the value added (the 25% test). The allegations of SFK that value added would be the same even if 100 % of the input material came from Russia was thus not correct.
- (133) Furthermore, SFK submitted that even assuming SFK’s cooperation with the investigation could be considered as less than ideal, the Commission was obliged to comply with Article 18(3) of the basic Regulation stating that “[w]here the information submitted by an interested party is not ideal in all respects, it shall nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability”. SFK considered that the two points raised by the Commission related to the accuracy of the information on the corporate structure and the origin of logs were not such as to cause undue difficulty in arriving at reasonably accurate findings on the lack of circumvention by means of either transshipment or assembly/completion operations. SFK thus argued that the information was submitted in good time, was verified and reflected SFK’s ability to cooperate, and must therefore not be disregarded.
- (134) The Commission reiterated that the information that was misdeclared and the fact that the questionnaire of the Russian related company was not submitted before the verification visit were issues that significantly prevented the Commission from reaching a reasonably accurate finding. The misdeclaration seriously impacted the investigation and, as a consequence, the data of SFK could not be used. The Commission thus rejected the claim.
- (135) SFK argued that it was SFK who first disclosed to the Commission the existence of affiliation with the Russian related company, and that it was not the Commission who brought this fact forward. It argued that nothing on the records suggested that the Commission was aware of the Russian related company being an affiliate, and as described in the mission report, the Commission asked SFK whether it had affiliates in Russia. And SFK explained that it had an affiliate in Russia that purchased logs and supplied them to SFK.
- (136) According to SFK, the fact that the owner mentioned that the Russian company was a dormant company and that SFK did not purchase logs as of 2020 was a mistake which was allegedly understandable, since it was not him who prepared the tables, and the person who prepared the tables did not know about the relationship, and as well because purchases of the logs from the Russian company constituted in the RP only between [6-10%] of all the log purchases. SFK argued that it did not have enough staff and all the staff acted to the best of their ability, and that what is in essence a clerical mistake could not be classified as false and misleading information. Omission of the Russian company in corporate tables and its designation as unrelated in log purchase tables was unintended and was simply a misunderstanding or a clerical error.

- (137) The Commission disagreed that it was SFK who brought forward the information on the existence of the unreported Russian company. To the contrary, it was the Commission that confronted the company with the information that it found with regard to the related company in Russia, a trader in timber products selling, amongst others, birch logs, which SFK initially denied. Once it acknowledged the relationship, initially SFK stated that this company was ‘dormant’ and that therefore it had ceased purchasing logs from this company a long time ago. However, the investigation revealed that this related company in Russia was an important provider to SFK of logs in the RP, and therefore, this contradicted the explanations by the company that there were no purchases of logs after 2020. The company then admitted that the last transaction it had with this related company took place in April 2023. It was not thus SFK that brought the information forward. Also, it considered that the mis-declaration of the company as unrelated could not be a clerical error by a person filling in tables, since the question was asked to the owner of SFK who was at the same time 100 % owner of the Russian company, and who finally acknowledged its existence. Therefore, the Commission disagreed that it was just a clerical error or omission by the person filling in the tables.
- (138) SFK also considered that it was incorrect to allege that the Russian company questionnaire reply could not be verified, and that the Commission made a legal mistake by suggesting that information provided during on-site verification could not be accepted by default. SFK also submitted that the questionnaire reply was submitted in time, was and remained verifiable and could have been crosschecked through the purchase table of SFK. Therefore, it submitted that the questionnaire response was verifiable and could have been verified, since it was submitted the last night before the last day of verification. The questionnaire also remained verifiable without a need for the actual verification.
- (139) The Commission disagreed. The verification planning was based on the number of companies it had to verify, and as well based on the information the companies submitted in advance. The information that companies could not submit new information during the verification and that the company could only correct clerical errors one week before the start of the verification was communicated to SFK in a so-called pre-verification letter. At the same time, the letter informed companies that any change to reply to the questionnaires, which would be provided after the date may give rise to the application of Article 18. The existence of a Russian related company was only revealed at the start of the verification and could not be considered as a clerical error but an important fact that had an important bearing on the investigation. The fact that it was not reported prevented the Commission from verifying the completeness of the reply.
- (140) The Commission also disagreed that the questionnaire reply could be verified because it was submitted the last night before the end of the verification visit. The questionnaire was sent to the Commission electronically after the verification of SFK. The last day of the verification was the on-the-spot verification of the related domestic trader of SFK, and if the Commission were to verify remotely the Russian related company, it would have to skip entirely or partially the verification of the related trader. The Commission thus disagreed that it could verify the questionnaire reply.
- (141) SFK also argued that the financial transactions in the RP between SFK and the Russian related company were of a lesser magnitude than what the Commission alleged, and that they made perfect sense. It maintained that it was a dormant company

which was confirmed by information reported in various tables and because the last transaction took place in April 2023.

- (142) The Commission considered that the argument that the company was dormant was not supported by the facts. Although SFK claimed that it had no business with company anymore, and that the last purchase took place in April 2023, the receivable accounts of SFK showed a significant outstanding debt with that company which, in terms of value, was significant, compared to the purchase value of the logs the IP. Since SFK explained that these were advance payments for input material to be delivered, it contradicted the claim that it stopped the business with this company.
- (143) With regard to the logs, SFK argued that the Commission's allegations were based on a manifest error of assessment and that they were totally misplaced. It argued that the Commission reviewed six invoices, and not only three, and that out of the six invoices, five were correct. Second, the volume of the logs where the origin was not reported correctly was very minor (of [50-100] m<sup>3</sup>), could not affect the remaining 99,9 % of purchases. SFK also argued that it had explained that to provide the information in the questionnaire, it primarily relied on the country of registration of the supplier, so if the supplier was registered in Kazakhstan, SFK assumed that the logs were of the Kazakh origin which was in its view a reasonably accurate method. Therefore, SFK did not mislead the Commission or provided any false information. Establishing the origin based on transaction-to-transaction basis would not be possible given a significant volume of purchase.
- (144) The Commission disagreed. During the on-the-spot verification, it indeed collected altogether six invoices with evidence on the log origin. There were two additional transactions (invoices) from the same supplier that were misreported. Therefore, out of the eight invoices, only five were correct. The Commission also disagreed that the value of the misreported invoices was minor. The correctness of the data could not be expressed on the total value of transactions (that could be thousands in some cases) but on the value of the sample. In the case at hand, the incorrect transactions represented more than 18 % of the sampled logs. The Commission also considered that the fact that the rest of the sample was not reported based on verification of the log certificate but on the place where the supplier was registered put even more doubts on the reliability of the data.
- (145) Similarly to arguments by Favorit (see recital (108)), SFK submitted that based on consistent Commission's practice, non-cooperation with the anti-circumvention did not automatically lead to either the finding of circumvention by default or to the total disregard of the data submitted and it referred to investigations on *Glass Fiber Fabric from Morocco*, and on *Coumarin from India*. Therefore, it considered that the intention of the Commission to apply facts available and its intention to reject its data was a violation of the principle of non-discrimination that obliges to treat similar situations in the same manner. SFK further argued that in any event the Commission acknowledged that the related Russian supplier was not involved with the production or sales of the product concerned and its affiliation had no impact on the outcome of the investigation.
- (146) The Commission reiterated that findings were made on a case-by-case basis, and due consideration was made as to whether the entire data set could not be used or only a specific information, as to whether the missing information had a substantial impact on the outcome of the investigation, and as to whether without the information the Commission could arrive to a reasonable finding. Furthermore, the facts and figures of

the cases mentioned by SFK were completely different in many respects. In particular, in the other cases the business model of the concerned companies was different and there was no issue with misreporting of the origin of input material. Therefore, the Commission did not agree that because the data were not entirely rejected in the above cases, the same approach had to be taken at the case at hand. It thus found the claim unsubstantiated. Also, the Commission disagreed that there was verified evidence that SFK did not circumvent – the absence of reliable and verifiable data did not allow the company to demonstrate the absence of circumvention practices.

- (147) SFK further argued that regardless of any alleged non-cooperation by SFK, in light of the findings of the Court of Justice in *Maxcom* and consistent with Commission Implementing Regulation (EU) 2018/28<sup>29</sup>, no findings of circumvention by SFK can be found by reference to the country-wide circumvention, and that SFK's company's data precludes the finding of company-specific circumvention practices. In that context, whether there is country-wide circumvention by means of imports from Kazakhstan was irrelevant since such evidence was not capable of overriding specific, verified evidence provided by SFK that is not involved in any circumvention practices.
- (148) The Commission considered that the facts of this case are different. In the case mentioned in the previous recital there was no issue with hiding links or misreporting information with regard to the country subject to measures. The Commission was not able to come to the conclusion that there was verified evidence that SFK did not circumvent. It found thus the claim unsubstantiated.
- (149) Similarly to *Favorit*, SFK also considered that any attempt to draw adverse inferences from the alleged non-cooperation was illegal under Article 6.8 of the Anti-Dumping Agreement. It argued that in line with the ruling in *Mexico-Anti-dumping Measures on Rice*, and Panel Report, *China-GOES*, the Commission must find '*best information available*' which has to be not simply correct or useful per se but '*the most fitting*' or '*most appropriate*', and that the non-cooperation does not justify the drawing of adverse consequences.
- (150) The Commission reiterated its conclusion that the data of SFK could not be used as a basis for its findings. Accordingly, the Commission concluded that SFK had not demonstrated that it was a producer not engaged in circumvention activities. In those circumstances, in line with its past practice, the Commission had no choice but to base itself on country-wide circumvention findings. Also, Article 18(6) of the basic Regulation provides that when a party has failed to cooperate partially or entirely, the result "*may be less favourable ... than if it had cooperated*". Accordingly, the fact that the application on SFK of the country-wide findings were to be less favourable for SFK was the only option and the consequence of the fact that its data could not be used.
- (151) SFK further argued that the Commission in the context of the ongoing anti-circumvention investigation (or otherwise) has no jurisdiction to enforce sanctions and to establish that SFK or for that purpose any other party has circumvented the sanctions. The investigation was solely a possibility to extend a 15.8% duty on imports from Kazakhstan and not any sanctions violations.

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<sup>29</sup> Commission Implementing Regulation (EU) 2018/28 of 9 January 2018 re-imposing a definitive antidumping duty on imports of bicycles whether declared as originating in Sri Lanka or not from City Cycle Industries, OJ L 5/27, 10.1.2018, recitals (20)-(21).

- (152) SFK therefore suggested that the Commission should accept SFK' price undertaking offer, and terminate an anti-circumvention investigation with regard to SFK, in line with Article 8.5 of the basic Regulation and, in addition, any Commission decision accepting SFK's price undertaking should specify that the acceptance of the price undertaking should not be taken to mean that SFK is facilitating infringements of the prohibition against circumvention of the provisions of this Regulation, or of Council Regulations relating to sanctions on the Russian federation.
- (153) The Commission considered that in general, undertakings in circumvention investigations could not be considered. The Commission has discretion in accepting undertakings; in this case, the Commission could not accept an undertaking offer from a company that could not demonstrate not to be involved in circumvention practices and for which findings had to be based on facts available. In any event, undertakings were also refused in the original investigation for the non-compliance with criteria specified in Article 8(2) of the basic Regulation<sup>30</sup>.
- (154) Based on the above, the Commission concluded that SFK did not demonstrate that it was a producer not engaged in circumvention activities in the sense of Article 13(4) of the basic Regulation, and that therefore, the findings with regard to SFK had to be based on facts available in the sense of Article 18 of the basic Regulation which was to apply the country-wide circumvention findings. The Commission therefore rejected its exemption request.

## **4.2. Türkiye**

### **4.2.1. Findings on Intur Construction Tourism and Forest ('Intur')**

- (155) Intur claimed that there was due cause and an economic justification for its establishment in March 2020. After several decades in the wood industry with a focus on African wood, and after having detected inefficiencies of a family led business, the company for plywood production was established. Its primary objective was the procurement of input materials for plywood production, both domestically and internationally, followed by processing and transforming these materials into finished plywood products for distribution in both domestic and international markets. The investigation revealed that Intur started production at the end of 2019, which was before the initiation of the original anti-dumping investigation on imports of birch plywood from Russia.
- (156) The investigation revealed that Intur substantially increased its export sales to the Union and input materials purchases from Russia in 2021, after the anti-dumping investigation was initiated. Therefore, the Commission concluded that the operation substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures, as required by Article 13(2)(a) of the basic Regulation.
- (157) The main input material to produce birch plywood for Intur are birch veneers, which were all purchased from Russia. According to the submitted and verified information by Intur, over 75% of the total value of the input materials purchases were from Russia. The Commission therefore concluded that the 60% criterion set out in Article 13(2)(b) of the basic Regulation was met.

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<sup>30</sup> See recitals (247) to (254) of the original regulation.

- (158) The Commission concluded that the value added to the parts brought in, during the assembly or completion operation, was less than 25 % of the manufacturing cost, as required by Article 13(2)(b) of the basic Regulation for these operations to constitute circumvention.
- (159) With a communication on 30 January 2024, Intur requested the Commission to take into account two further revisions, concerning the exchange rates impacting the depreciation of machinery as well as the allocation of certain labour costs.
- (160) The Commission informed the company, that it was not possible to revise the cost elements after the verification visit as such claims could no longer be verified.
- (161) Based on the submitted and verified tables by Intur, there was no export in 2019 while in the RP it exported [2 000-3 000] m3. Regarding prices, the Commission compared the average non-injurious price as established in the original investigation, adjusted to reflect the cost increase, with the weighted average export CIF prices determined on the basis of the information provided by Intur, duly adjusted to include post clearance costs. This price comparison showed that the imports from Intur undersold the Union prices by more than 37 %.
- (162) The Commission also examined whether there was evidence of dumping in relation to the normal values previously established for the like product. To this end, export prices of Intur on an ex-works basis were compared to the normal values established during the original investigation, duly adjusted for inflation. The comparison of normal values and export prices showed evidence of dumping during the reporting period’.
- (163) Based on the above, the Commission concluded that Intur was found to be engaged in circumvention practices within the meaning of Article 13(2) of the basic Regulation. The Commission therefore rejected its exemption request.

#### **4.3. Conclusion**

- (164) The Commission thus concluded that none of the exemption requests could be accepted.



EUROPEAN COMMISSION  
Directorate-General for Trade

## NOTE VERBALE

The Directorate-General for Trade of the European Commission presents its compliments to the Permanent Delegation of Türkiye to the European Union and has the honour to refer to the Note Verbale sent on 9 January 2024 concerning possible circumvention of the anti-dumping measures imposed by Commission Implementing Regulation (EU) 2021/1930 on imports of birch plywood originating in Russia, by imports of birch plywood consigned from Türkiye and Kazakhstan.

The European Commission has the honour to provide the Permanent Delegation of Türkiye to the European Union with the disclosure of the definitive findings in the framework of the above proceeding. These findings were also disclosed to the interested parties. The deadline for comments is 13 March 2024

The Directorate-General for Trade of the European Commission takes this opportunity to renew to the Permanent Delegation of Türkiye to the European Union the assurance of its highest consideration.

Brussels, 01 March 2024  
TRADE G3/1 KG (2024) 1854217

Permanent Delegation of Türkiye to the European Union  
AVENUE DES ARTS, 36-38,  
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Encl. Disclosure document



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