

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1394**of 13 August 2015****amending Regulation (EU) No 470/2014, as amended by Regulation (EU) 2015/588, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China following an absorption reinvestigation pursuant to Article 12 of Council Regulation (EC) No 1225/2009**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 12(3) thereof,

Whereas:

A. PROCEDURE**1. Original measures**

- (1) The measures currently in force ('the original measures') are definitive anti-dumping duty rates imposed by Commission Implementing Regulation (EU) No 470/2014 ⁽²⁾ ranging from 0,4 % to 36,1 %. Article 1(2) of this Regulation was amended by Commission Implementing Regulation (EU) 2015/588 ⁽³⁾. By Commission Implementing Regulation (EU) No 471/2014 ⁽⁴⁾, the Commission also imposed countervailing duty rates ranging from 3,2 % to 17,1 %.

2. Request for an absorption reinvestigation

- (2) On 12 November 2014, a request for an absorption reinvestigation of the original anti-dumping measures was lodged pursuant to Article 12 of the basic Regulation. The request was submitted by the association EU ProSun Glass ('the applicant') on behalf of producers representing more than 25 % of the total Union production of solar glass.
- (3) The applicant submitted sufficient information showing that after the original investigation period and prior to and following the imposition of the original measures export prices have decreased. This allegedly resulted in an increased dumping margin which has impeded the intended remedial effects of the original measures. The applicant also provided evidence showing that imports of solar glass have continued to enter the Union in significant volumes.
- (4) On 19 December 2014, the Commission announced by a notice published in the *Official Journal of the European Union*, the initiation of an absorption reinvestigation, pursuant to Article 12 of the basic Regulation, of the anti-dumping measures applicable to imports of solar glass originating in the People's Republic of China (PRC) ⁽⁵⁾.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Commission Implementing Regulation (EU) No 470/2014 of 13 May 2014 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China (OJ L 142, 14.5.2014, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) 2015/588 of 14 April 2015 amending Implementing Regulation (EU) No 470/2014 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China (OJ L 98, 15.4.2015, p. 6).

⁽⁴⁾ Commission Implementing Regulation (EU) No 471/2014 of 13 May 2014 imposing definitive countervailing duties on imports of solar glass originating in the People's Republic of China (OJ L 142, 14.5.2014, p. 23).

⁽⁵⁾ OJ C 457, 19.12.2014, p. 9.

3. Parties concerned by the reinvestigation

- (5) In the Notice of reopening, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, the known exporting producers in the PRC, importers, traders, users, suppliers and the authorities of the PRC about the initiation of the investigation and invited them to participate.
- (6) Interested parties had an opportunity to comment on the reopening of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. After disclosure one party requested such a hearing with the Commission and was able to submit its point of view on 23 June 2015.

4. Sampling of exporting producers in the PRC

- (7) In its Notice of reopening, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.
- (8) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of reopening. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (9) Five Chinese exporting producers or groups of exporting producers, representing around 70 % of total Chinese exports to the Union during the current investigation provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of two groups of companies on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. The two selected groups of companies represent more than 60 % of total Chinese exports to the Union and 94 % of the exports of the companies that cooperated in this investigation.
- (10) In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were made. Therefore, the Commission decided to retain the proposed sample of two groups of companies and all interested parties were accordingly informed of the finally selected sample.
- (11) The sample of exporting producers of solar glass was therefore the following:

— Flat Solar Glass Group Co., Ltd ('Flat Glass Group')

— Xinyi PV Products (Anhui) Holdings ('Xinyi Group')

5. Replies to the questionnaire

- (12) The Commission sent questionnaires to both selected Chinese groups of exporting producers and to the unrelated importers, as well as to users that made themselves known within the time limits set out in the notice of reopening.
- (13) Questionnaire replies were received from two Chinese exporting producers and three unrelated Union importers/users.

6. Verification visits

- (14) The Commission sought and verified all the information deemed necessary for the purpose of this reinvestigation. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

- Flat Glass Group, Jiaxing, Zhejiang, PRC
- Xinyi Group, Wuhu, Anhui, PRC

7. Disclosure

- (15) All interested parties were sent a disclosure document which contained the essential facts and considerations on the basis of which the Commission proposed to amend the definitive anti-dumping duty on solar glass originating in the People's Republic of China. All parties were informed of the deadline within which they could comment on the disclosure.
- (16) The comments submitted by interested parties were considered and taken into account where appropriate.

8. Investigation period

- (17) The absorption investigation period of this reinvestigation ('AIP') ran from 1 December 2013 to 30 November 2014. Export prices during the AIP were compared to those during the original investigation period of the investigation which led to the imposition of the original measures, which covered the period from 1 January 2012 to 31 December 2012 ('OIP').

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (18) The product subject to this investigation is the same as in the original investigation and is defined as solar glass consisting of tempered soda-lime-flat-glass, with an iron content of less than 300 ppm, a solar transmittance of more than 88 % (measured according to AM1.5 300-2 500 nm), a resistance to heat up to 250 °C (measured according to EN 12150), a resistance to thermal shocks of Δ 150K (measured according to EN 12150) and having a mechanical strength of 90 N/mm² or more (measured according to EN 1288-3) originating in the PRC ('the product concerned'), currently falling within CN code ex 7007 19 80.
- (19) The investigation showed that the product concerned, the product produced and sold on the domestic market of the PRC, the product produced and sold on the domestic market of Turkey which served as an analogue country in the original investigation and the product produced and sold in the Union by the Union industry have the same basic physical, chemical and technical characteristics as well as the same basic uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. FINDINGS

- (20) An absorption reinvestigation pursuant to Article 12 of the basic Regulation aims at establishing whether or not export prices have decreased or whether there has been insufficient movement in resale prices or subsequent selling prices in the Union of solar glass originating in the PRC since the imposition of the original measures. Where it is concluded that absorption took place, a new dumping margin should be calculated.

1. Decrease of export prices

- (21) Exports of the product concerned were, in the AIP, made directly to unrelated customers in the EU.

- (22) The Commission compared for both groups in the sample the prices of the product types sold in the AIP with the same product types sold in the OIP and calculated a weighted average level of absorption for both groups.
- (23) During the original investigation the sampled companies mostly exported uncoated solar glass together with some small quantities of coated glass. The average premium in sales prices between uncoated and coated was found to be around 20 % during the original investigation. However, since then the solar panels industry worldwide has been moving from using uncoated to coated glass as the latter is a more efficient product. Nowadays, coated glass has become the standard and uncoated solar glass is mainly used for installations in an environment with adverse and harsh weather conditions. This evolution is also reflected in the export behaviour of the sampled exporting producers, whose exports changed diametrically from uncoated to coated solar glass.
- (24) The comparison of the export prices of the IP with the AIP shows that for Flat Group export prices fell on average by 17,6 % and for Xinyi Group by 30,4 % for the product concerned exported in the AIP. Hence absorption can be established for both groups of companies.
- (25) In accordance with Article 12(2) of the basic Regulation, importers, users and exporters were provided with an opportunity to submit evidence to justify a decrease in export prices and lack of movement in resale prices in the Union following the imposition of measures for reasons other than absorption of the anti-dumping duty.
- (26) One exporting producer claimed -and reiterated the same claim after disclosure- that the decrease of export prices was not due to absorption but to efficient production methods, economy of scale and a more competitive environment for the product concerned. As a result the cost of production as well as export prices had gone down.
- (27) The Commission rejected this claim. This claim refers to costs of production and can only be taken into account in the context of a re-examination of normal value. However, pursuant to Article 12(5) of the basic Regulation, alleged changes in normal value shall only be taken into account where complete information on revised normal values is made available to the Commission. This was not the case as none of the sampled groups of companies had requested the re-examination of normal values, as provided for in Article 12(5) of the basic Regulation and as mentioned in point 5.1.1.(a) of the Notice of reopening. Hence, the cost of production during the AIP was not verified and the scope of the investigation remains limited to the examination of the export prices. Any claim regarding alleged changes in the costs of production and/or normal value can only be addressed in an interim review, pursuant to Article 11(3) of the basic Regulation.
- (28) After disclosure one exporting producer claimed that its export prices had not decreased or at least not to the same extent as the export prices of the sampled companies. It further argued that the apparent decrease in the export prices of the two sampled Chinese exporters and the recalculation of their dumping and injury margin could not form a basis for reassessing its individual new anti-dumping duty. Therefore, it requested an individual examination pursuant to Article 12(2) and Article 17(3) of the basic Regulation.
- (29) The Commission rejected this claim. This exporting producer did not cooperate in this investigation and did not provide the necessary information within the time-limits provided for in the notice of initiation. Pursuant to Article 12(4) of the basic Regulation the reinvestigation shall be carried out expeditiously and normally be concluded within six months of the date of initiation of the reinvestigation. In any event, such reinvestigations shall in all cases be concluded within nine months of initiation of the reinvestigation. An individual examination, which was requested only at a late stage of the proceeding after disclosure, would therefore prevent completion of the investigation in due time.
- (30) One importer/user claimed that the EU solar glass industry had insufficient supply of especially high-quality solar glass to meet the demands of the EU solar module industry and thus opposed imposition of additional measures. It further claimed that additional anti-dumping measures would lead to a shift of production of solar modules outside of the EU.
- (31) The Commission rejected both claims. First, these claims would fall under the Union interest test which is not analysed in an absorption reinvestigation. Second, according to its questionnaire reply the user was able to source

100 % of its supplies of solar glass in the AIP from EU and third country solar glass manufacturers. Hence, this claim has not been sufficiently substantiated. The same is true of the claim that the imposition of additional measures would force the EU solar module manufacturers to outsource their production outside of the EU. This scenario seems unlikely. As established in the original investigation, the part of solar glass in the cost of production of a solar module is limited, i.e. 6-8 %. The increase of the measures will therefore only have a limited impact on the total costs of the solar modules, in the order of magnitude of 2-3 %.

2. Dumping

- (32) After having established absorption for both groups of companies, dumping margins were recalculated.

2.1. Export prices

- (33) All sales by the sampled exporting producers were made to unrelated customers in the Union. The export prices were therefore based on the prices actually paid or payable for the product concerned, in accordance with Article 2(8) of the basic Regulation.

2.2. Comparison

- (34) The Commission compared the normal value as established in the original investigation and export price on an ex-works basis. The dumping margins were established by comparing the individual ex-works prices of the sampled exporters to the domestic sales prices of the analogue country producer or to the constructed normal value as appropriate.
- (35) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (36) On this basis, adjustments were made for transport, ocean freight and insurance costs, handling, loading and ancillary costs, export duties and commissions in all cases where demonstrated to affect price comparability.

2.3. Dumping margin

- (37) Pursuant to Articles 2(11) and 2(12) of the basic Regulation, the dumping margins for the sampled exporting producers were established on the basis of a comparison of the weighted average constructed normal value of each product type of the like product established in Turkey during the OIP, with each company's weighted average export price of the corresponding type of the product concerned during the AIP, expressed as a percentage of the CIF Union frontier price, duty unpaid.
- (38) As a result, for Xinyi Group the dumping margin increased from 83,1 % in the OIP to 122,2 % in the AIP and for Flat Group from 90,1 % to 122,4 %.

3. Injury elimination level

- (39) In accordance with the lesser duty rule under Article 9(4) of the basic Regulation and because the original measures were based on the injury elimination level the injury margins were recalculated.
- (40) The injury elimination level was determined on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers during the AIP, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the OIP. Any difference resulting from this comparison was then expressed as a percentage of the weighted average import CIF value.

- (41) Following disclosure one exporting producer questioned the accuracy of the method used by the Commission. To illustrate this, it claimed that even if the export prices had stayed the same in the AIP compared to the prices during the OIP, the injury elimination level would have increased.
- (42) The Commission rejected this claim. The exporting producer confirmed that its export prices had gone down during the AIP. Hence, absorption could be established with the consequence that dumping and injury margins needed to be recalculated.
- (43) On that basis, the injury margin for Xinyi Group increased from 39,3 % to 107,00 % and for Flat Group from 42,1 % to 112,5 %.

D. CONCLUSION

- (44) Based on the above facts and considerations, the Commission concluded that the sampled exporting producers absorbed the anti-dumping duty in force. Hence, anti-dumping measures imposed on imports of solar glass originating in the PRC should be amended in accordance with Article 12(3) of the basic Regulation.

New level of the measure

- (45) In accordance with the lesser duty rule in Article 9(4) of the basic Regulation, the Commission first compared the injury margins and the dumping margins. The amount of the duties should be set at the level of the injury margins. However, in accordance with the last sentence of Article 12(3) of the basic Regulation the amount of the new anti-dumping duty to be imposed shall not exceed twice the amount of the duty imposed initially.
- (46) As the anti-subsidy investigation remains unaffected by the present investigation, the countervailing duty needs to be deducted in order to determine the new anti-dumping duty.
- (47) Consequently, for Flat Group the new anti-dumping duty is 71,4 % (i.e. the double of the currently applicable injury margin of 42,1 % minus 12,8 % countervailing duty) and for Xinyi Group 75,4 % (i.e. the double of the currently applicable injury margin of 39,3 % minus 3,2 % countervailing duty).
- (48) Given the high rate of cooperation of Chinese exporting producers, the 'all other companies' duty was set at the level of the highest duty to be imposed on the companies sampled or cooperating in the investigation. The 'all other companies' duty will be applied to those companies which had not cooperated in the investigation, with the exception of the companies which cooperated in the original investigation and are subject to their individual duty. Their new anti-dumping duty is set at the double of their currently applicable injury margin from which the applicable countervailing duty has been deducted.
- (49) For the cooperating and non-sampled companies listed in the table below the dumping and injury margins were calculated as a weighted average of the sampled companies. For the purpose of establishing the new anti-dumping duty, the double of the currently applicable injury margin was set as a limit from which the applicable countervailing duty has been deducted.
- (50) One non-cooperating exporting producer, which cooperated in the original investigation, claimed that there was an insufficient legal basis for increasing its existing anti-dumping duty or alternatively an insufficient legal basis for imposing as high an increase of the anti-dumping duties as proposed by the Commission.
- (51) The Commission rejected this claim. The legal basis for amending the measures in force is Article 12(3) of the basic Regulation, according to which the amount of the anti-dumping duty imposed shall not exceed twice the

amount of the duty imposed initially. This producer did not cooperate in this investigation and should therefore normally be subject to the residual duty. However, pursuant to Article 12(3) of the basic Regulation, as set out above in recital (48), its new anti-dumping duty is set at the double of its currently applicable injury margin, from which the applicable countervailing duty has been deducted.

- (52) The revised rate of anti-dumping duty applicable, before duty, to the net free-at-Union-frontier price will be as follows:

Company	New dumping margin	New injury margin	Cap under Art 12(3) BR (see recital (45))	Countervailing Duty (unchanged)	Revised definitive anti-dumping duty
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	122,4 %	112,5 %	84,2 %	12,8 %	71,4 %
Xinyi PV Products (Anhui) Holdings Ltd	122,2 %	107,0 %	78,6 %	3,2 %	75,4 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	122,4 %	112,5 %	52,4 %	17,1 %	35,3 %
Henan Yuhua New Material Co., Ltd	122,4 %	112,5 %	34,2 %	16,7 %	17,5 %
Wuxi Haida Safety Glass Co., Ltd	122,4 %	112,0 %	73 %	12,4 %	60,6 %
Avic Sanxin Sol-Glass Co. Ltd and Avic (Hainan) Special Glass Material Co., Ltd	122,4 %	112,5 %	73 %	12,4 %	60,6 %
Dongguan CSG Solar Glass Co., Ltd	122,4 %	112,0 %	73 %	12,4 %	60,6 %
Novatech Glass Co., Ltd	122,4 %	112,5 %	73 %	12,4 %	60,6 %
Pilkington Solar Taicang, Limited	122,4 %	112,0 %	73 %	12,4 %	60,6 %
Henan Ancai Hi-Tech Co., Ltd	122,4 %	112,5 %	73 %	17,1 %	55,9 %
Henan Succeed Photovoltaic Materials Corporation	122,4 %	112,5 %	73 %	17,1 %	55,9 %
Zibo Jinxing Glass Co., Ltd	122,4 %	112,5 %	73 %	17,1 %	55,9 %
All other companies	122,4 %	112,5 %	84,2 %	17,1 %	67,1 %

- (53) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009.

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Implementing Regulation (EU) No 470/2014, as amended by Implementing Regulation (EU) 2015/588, shall be replaced by the following:

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

Company	Definitive anti-dumping duty	TARIC Additional code
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	71,4 %	B945
Xinyi PV Products (Anhui) Holdings Ltd	75,4 %	B943
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	35,3 %	B944
Henan Yuhua New Material Co., Ltd	17,5 %	B946
Henan Ancai Hi-Tech Co., Ltd	55,9 %	B947
Henan Succeed Photovoltaic Materials Corporation	55,9 %	B948
Avic Sanxin Sol-Glass Co. Ltd and Avic (Hainan) Special Glass Material Co., Ltd	60,6 %	B949
Wuxi Haida Safety Glass Co., Ltd	60,6 %	B950
Dongguan CSG Solar Glass Co., Ltd	60,6 %	B951
Pilkington Solar Taicang, Limited	60,6 %	B952
Zibo Jinxing Glass Co., Ltd	55,9 %	B953
Novatech Glass Co., Ltd	60,6 %	B954
All other companies	67,1 %	B999'

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 13 August 2015.

For the Commission
The President
 Jean-Claude JUNCKER