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

The titles of all other acts are printed in bold type and preceded by an asterisk.

II

(Non-legislative acts)

REGULATIONS

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

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], and in particular Article 9(4) and 14(1) thereof,

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) On 28 November 2013, the European Commission (the Commission) imposed a provisional anti-dumping duty on imports of solar glass from the People's Republic of China by Regulation (EU) No 1205/2013 (the provisional Regulation) [2].

(2) The proceeding was initiated on 28 February 2013 following a complaint lodged on behalf of producers representing more than 25 % of the total Union production of solar glass [3].

(3) The investigation of dumping and injury covered the period from 1 January 2012 to 31 December 2012 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2009 to the end of the investigation period (the period considered).

2. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed (the provisional disclosure), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(6) Subsequently, the Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of solar glass originating in the People's Republic of China (the PRC) and definitively collect the amounts secured by way of provisional duty (the definitive disclosure). All parties were granted a period within which they could make comments on the final disclosure.

[1] OJ L 343, 22.12.2009, p. 51.
[2] Commission Regulation (EU) No 1205/2013 of 26 November 2013 imposing a provisional anti-dumping duty on imports of solar glass from the People's Republic of China (OJ L 316, 27.11.2013, p. 8).
[3] Notice of initiation of an anti-dumping proceeding concerning imports of solar glass originating in the People's Republic of China (OJ C 58, 28.2.2013, p. 6).

(7) The comments submitted by the interested parties were considered and taken into account where appropriate.

3. **Sampling**

(8) One exporting producer claimed that the total number of Union producers was not clearly presented in recitals 7, 11 and 75 of the provisional Regulation. In this respect, the Commission hereby confirms that there were eight Union producers which came forward and were active during the IP. The identity of all but one Union producer had been withheld. In its reply to the general disclosure document, the complainant named three Union producers that had gone out of business (Guardian, AGC and Centrosolar Glass), and a fourth company that significantly reduced production (Saint Gobain).

(9) In the absence of other comments concerning the method of sampling of exporting producers in the PRC and of Union producers, the provisional findings in recitals 7 to 24 of the provisional Regulation are confirmed.

4. **Questionnaire replies and verification visits**

(10) After the adoption of the provisional Regulation, a verification visit was carried out at the premises of a second cooperating user, namely Viessmann Faulquemont SAS, France.

5. **Procedural rights**

(11) One exporting producer claimed that the provisional disclosure provided to it was inadequate, in particular with regard to dumping, undercutting and injury margin calculations. In the absence of an adequate disclosure it was deprived of its fundamental rights of defence, guaranteed by Regulation (EC) No 1225/2009 (the basic Regulation), the WTO Anti-dumping Agreement as well as the European Charter of Fundamental Rights.

(12) Regarding the calculation of the dumping margin the exporting producer claimed that no details were provided in the provisional disclosure in relation to the amount of adjustment applied on the cost of coating and the cost of the float production process (see recital 64 of the provisional Regulation) or the percentage of selling, general and administrative costs and profit.

(13) This claim was accepted and the Commission disclosed additional information. Where exact data could not be provided due to confidentiality reasons, ranges were disclosed.

(14) Following the definitive disclosure the exporting producer claimed that the disclosed data was still not sufficient and argued, in particular that it was unclear whether the adjustment applied on the cost of coating took into account the cost of single-side coating, double-side coating or both.

(15) As explained in recital 68 below no evidence was provided by interested parties demonstrating that there is a consistent difference in costs of production between single-side and double-side coated solar glass. The Commission therefore did not make a distinction between single-side and double-side coated solar glass when calculating the level of the adjustment.

(16) Regarding injury the same exporting producer complained that in its specific disclosure document the sales prices and target prices of the Union producers in relation to two out of total five product types had been marked as limited or provided in ranged format for reasons of confidentiality.

(17) The company also argued that in this case there is a high level of confidentiality whereby the name of only one sampled Union producer is known. Consequently, the company was of the opinion that even if for certain product types the information relates to the data of one or two Union producer(s) only, by no means it would be possible to identify of those companies, and as a result, to give significant competitive advantage to the exporting producer vis-à-vis any of its Union competitors individually or collectively.

(18) Under Article 20 of the basic Regulation the Commission is indeed bound to disclose after provisional measures the details underlying the essential facts and consideration on the basis of which the measures have been imposed. However, the Commission is also obliged under Article 19 of the basic Regulation to treat as confidential any information which is such by nature or which is provided on a confidential basis.

(19) In this particular case the actual sales prices and target prices of the Union producers for two product types have been either removed or replaced with ranges because the information of one of the product types comes exclusively from only one or two Union producer(s). In addition, it is a widely known fact in this business that this particular product type is not produced by any other Union producers. Consequently, the Commission

considers this information confidential by nature since its disclosure would be of significant competitive advantage to competitors and/or would have a significantly adverse effect upon the company(ies) supplying the information. In addition, the same type of information has been removed for a second product type in order to avoid that the figures for the first product type could be deducted from the total figures available.

(20) Following definitive disclosure, the company reiterated its claim that the level of disclosure of injury margin calculations was insufficient and inadequate. Specifically, it complained that it was not clear how the second product type whose figures have been removed had been selected. The Commission clarifies that this was done on a purely random basis.

(21) As a solution to the alleged insufficient disclosure, the company proposed that its lawyers could meet the Commission's staff and discuss in detail the dumping and injury margin calculations without taking a copy of any confidential document, or alternatively have access to a data room at the Commission's premises where notes could be made.

(22) The Commission could not accommodate this request. In order for the company's lawyers to be able to verify the calculations, exact figures from one or two companies would have to be provided. This could not be done as the Commission is obliged to keep this data confidential in accordance with Article 19 of the basic Regulation.

(23) Moreover, the Commission explicitly mentioned in the definitive disclosure that as far as any issues related to the company's rights of defence are concerned — such as access to file — it may address itself to the Hearing officer under the Terms of Reference of the Hearing officer ([1]). The company however did not request an intervention of the Hearing officer within the deadline for submitting comments on the definitive disclosure.

(24) In view of the above, the Commission rejects the claims made regarding possible violation of the procedural rights of the exporting producer in question.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(25) As set out in recital 26 of the provisional Regulation, the product concerned is 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 150 K (measured according to EN 12150) and having a mechanical strength of 90 N/mm^2 or more (measured according to EN 1288-3) ('the product concerned', commonly referred to as 'solar glass'). The product concerned currently falls within CN code ex 7007 19 80.

2. **Claims regarding the product scope**

(26) One exporting producer claimed after provisional disclosure that, contrary to what was stated in recital 32 of the provisional Regulation, horticultural glass which complies with the technical characteristics of solar glass, as defined in recital 26 of the provisional Regulation, should be excluded from the product scope. First, according to the exporter, the physical characteristics of the horticultural glass are quite different from those of the solar glass: (i) horticultural glass has different sizes according to the requirement of the customers, while solar glass is in certain fixed sizes; (ii) the horticultural glass may be double-side coated, but the solar glass for photovoltaic modules (PV modules) is not double-side coated. Second, horticultural glass has allegedly different use: it cannot be used either for manufacturing PV modules or thermal collectors.

(27) The Commission rejects the claim for the following reasons. Firstly, the fact that solar glass used for greenhouse manufacturing has different sizes than solar glass used for PV modules or thermal collectors is irrelevant since size requirements may vary both for PV modules and for greenhouses. Also, any product exclusion on such basis may give rise to possible circumvention of the anti-dumping measures. Secondly, horticultural glass sold on the market is not only double-side coated solar glass, but can also be non-coated and single-side coated. Moreover, as explained in recital 68 below double-side coated glass is also used for both PV modules and thermal collectors. Therefore, this physical characteristic cannot distinguish solar glass used for horticultural glass from any other use. Finally, it cannot be excluded that solar glass destined for greenhouse manufacturing will be used for manufacturing PV modules and/or thermal collectors.

([1]) Decision 2012/199/EU of the President of the European Commission of 29 February 2012 on the function and terms of reference of the hearing officer in certain trade proceedings (OJ L 107, 19.4.2012, p. 5).

(28) After disclosure, one importer argued that since solar glass that can also be used as furniture glass was not excluded from the scope, this results in administrative burden and delays for companies. This is allegedly caused by the fact that companies are required to send test reports to Customs Authorities in the Union every time the Customs Authorities question if the goods being imported are subject to the measures.

(29) The Commission considers that those types of glass should not be excluded from the scope of the investigation, because solar glass can potentially have horticultural and furniture use. In order to ensure adequate protection of the Union industry against the injurious effect of the dumped imports, loopholes that may allow for circumvention should be avoided. The positive effect of adequate protection outweighs the negative effect of the additional administrative burden arguably suffered by the importer concerned.

(30) Another exporting producer claimed that float glass should be excluded from the product scope since the one it produces is used in the building market and greenhouse market. Moreover, it alleged that float glass is not used for PV modules manufacturing. However, on the basis of the arguments put forward by the Commission in recital 33 of the provisional Regulation, the Commission reiterates that float glass clearly complies with the technical characteristics of solar glass, as set out in recital 26 of the provisional Regulation. Also, float glass is produced by both the Union industry and the exporting producers. This is confirmed by publicly available information on the internet ([1]). Consequently, this claim is rejected.

3. **Conclusion**

(31) In the absence of other comments regarding the product concerned and the like product, the conclusions reached in recitals 26 to 33 of the provisional Regulation are confirmed.

C. **DUMPING**

1. **Market Economy Treatment (MET)**

(32) Following provisional disclosure and subsequently after definitive disclosure, one exporting producer claimed that the Commission erred in rejecting its request for MET. The same claim in relation to the MET determination had already been made at the provisional stage and was rejected by the Commission in recitals 43 and 47 of the provisional Regulation.

(33) The exporting producer claimed that the benefits received from preferential tax regimes and grants do not represent a significant proportion of their turnover. In this respect, it is recalled that this argument, along with other arguments, was already addressed in the Commission's letter to the exporter dated 13 September 2013 in which the Commission notified the party with regard to its MET determination. In particular, it was stressed that due to the nature of this advantage, the absolute benefit received during the IP is irrelevant for assessing whether the distortion is 'significant'. This claim is therefore rejected.

(34) Having regard to the above, the finding that all MET claims should be denied, as established in recitals 34 to 47 of the provisional Regulation, is confirmed.

2. **Normal Value**

2.1. *Selection of an analogue country*

(35) In the provisional Regulation, Turkey was selected as an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation. One exporting producer claimed that Turkey is not a suitable analogue country for the purpose of establishing the normal value due to the fact that there is only one producer of solar glass in Turkey and that there are virtually no import of solar glass on the Turkish market. The exporting producer also claimed that the profit margin on the Turkish domestic solar glass market was particularly high, therefore artificially inflating the level of the normal value. In addition, the same exporting producer recalled that there was no coating technology applied on the solar glass produced in Turkey and that none of the Turkish solar glass was produced using the float production process. As a consequence, key elements needed for the establishment of the normal value could not be obtained from the Turkish domestic market of the like product. The exporting producer therefore argued that Union prices should have been used instead as a basis for the determination of the normal value.

(36) First, the Commission recalls that there are no significant trade barriers in Turkey concerning the like product. Therefore, it cannot be concluded that the Turkish solar glass market is foreclosed to international trade. On the contrary, the market is open and the price on that domestic market of the like product is being determined freely by the interaction of supply and demand.

([1]) http://www.fsolar.de/cms/fileadmin/user_upload/Bilder/PVSEC_2013/Presse_Information_EU_PVSEC_2013_Paris_ENG.pdf

(37) Second, concerning the allegation of particularly high profits on the Turkish domestic market, the Commission underlines that it did not observe an excessive profit margin on the like product market in Turkey during the IP compared to profit margins realised by Union producers during the period considered.

(38) Third, the lack of certain product types in a third country does not make it unsuitable as an analogue country. On the contrary, Article 2(3) of the basic Regulation stipulates that in the absence of domestic sales of certain product types the Commission shall construct a normal value based on the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits. The cost contribution for coating and the float production process were based on verified data from the Union industry.

(39) In view of the above, the claim that Turkey is not a suitable analogue country is rejected.

(40) Also, the Commission cannot accept the argument that the normal value should have been established on the basis of prices actually paid in the Union. According to Article 2(7)(a) of the basic Regulation, the Commission can only revert to Union prices for determining normal value if it is not possible to determine that value on the basis of data from an appropriate analogue country. Since an appropriate analogue country with sufficient cooperation from a producer was found to exist the Commission was obliged to determine the normal value based on the data from this analogue country and not revert to Union prices ([1]).

(41) The Commission confirms the selection of Turkey as an analogue country within the meaning of Article 2(7) of the basic Regulation.

2.2. *Normal value*

(42) One exporting producer claimed that the Commission erred in the determination of the normal value by basing it on only the profitable sales in the analogue country and adding a hypothetical profit margin to those sales which were not profitable.

(43) The Commission confirms that for the determination of the normal value, as explained in recitals 61 and 62 of the provisional Regulation and as required by Article 2(4) of the basic Regulation, it had verified that at least 80 % of the sales of all product types of the like product on the Turkish domestic market were profitable. Accordingly, all the sales on the Turkish domestic market, whether profitable or not, were taken into account for the determination of the normal value. This claim is therefore unfounded and accordingly rejected.

(44) In the absence of further comments regarding the determination of the normal value, recitals 58 to 64 of the provisional Regulation are confirmed.

2.3. *Export price*

(45) In the absence of any comments regarding export prices, recital 65 of the provisional Regulation is confirmed.

2.4. *Comparison*

(46) After provisional disclosure and subsequently after definitive disclosure one exporting producer claimed that the Commission erroneously adjusted its export price under Article 2(10)(i) of the basic Regulation. It argued that the producer and the related trader constitute a single economic entity and that such an adjustment is therefore precluded. In any event, the level of the adjustment is too high since the Commission based it on the actual mark-up which was not established at arms-length but was rather the result of a transfer pricing agreement. Instead the Commission should have made the adjustment, if any, on the basis of an estimated mark-up between a producer and unrelated importer at arms-length.

(47) The investigation revealed that the exporting producer had itself a fully functional export department that negotiated sales conditions and terms with Union customers, placed the production orders, organised and carried out the shipping to the Union customers, including all shipping documents, of the final product, handled the export customs clearance and prepared sales documents. Indeed, there was no duplication of export related tasks between the exporting producer and the related trader. However, the exporting producer issued sales invoices in to the trader, which, in turn, issued a sales invoice to the Union customer at the contractual price. The related trader collected the payment, deducted a mark-up and paid the remaining amount to the exporting producer.

([1]) Case 338/10 *Grunwald Logistik Service (GmbH) (GLS)* v *Hauptzollamt Hamburg-Stadt*.

(48) The Commission therefore finds that the related trader cannot be considered as an internal sales department, even if the two companies would be considered as constituting a single economic entity, and that an adjustment under Article 2(10(i) to be fully justified. Moreover, since the adjustment made reflects the mark-up actually charged between the related companies there is no reason to replace it with another theoretical amount. This claim is therefore rejected.

(49) One exporting producer claimed that its production capacities were much higher than those of the Union industry, and that it therefore had an advantage in terms of lower costs in its production process of the product concerned. The Commission should therefore consider this alleged advantage related to its lower cost of production and make a necessary adjustment.

(50) The Commission cannot accept this claim. First, the exporting producer does not suggest a relevant legal provision under which such an adjustment could be made. Second, it is not demonstrated that lower costs due to higher production capacities would affect the prices or price comparability within the meaning of Article 2(10) of the basic Regulation. Indeed, even if a cost difference could be demonstrated it is not clear how this is reflected in the final price and whether it is not offset by a difference in other costs.

(51) In addition, the alleged benefit claimed by the exporting producer concerns the allegedly lower costs of production compared to the costs incurred by the Union Industry. In this respect it is recalled that the exporting producer was not granted MET and that its costs were therefore not verified. Under Article 2(7)(a) of the basic Regulation, the Commission determined the normal value on the basis of the actual prices and/or costs of the analogue country producer because prices and costs in non-market economy countries are not the result of market forces and are therefore, as such, not a reliable proxy for market prices or costs.

(52) One exporting producer in the PRC claimed that the Commission should adjust the ex-factory export price of one of its competitors by deducting from it a service fee and a licence fee it allegedly paid to a third party.

(53) The Commission rejects this claim. First, the exporting producer does not suggest a relevant provision of the basic Regulation under which such an adjustment could be made. Second, even if this claim could be construed as falling under Article 2(10)(e) of the basic Regulation, which provides for adjustments for transport, insurance, handling, loading and ancillary costs, that provision does not relate to service fees or costs related to a licence agreement. Such costs constitute business costs which are normally incurred by a producer of goods using a technology licence acquired from a third party irrespective of whether they are exported or sold domestically. Such costs should therefore be reflected in the final price of both the export as well as the domestic sales. These costs can therefore not affect the comparability between the export price and the normal value. An adjustment under Article 2(10) is therefore not warranted and the claim is therefore rejected.

(54) As stipulated in recitals 67 and 68 of the provisional Regulation, 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.

(55) On this basis, company specific 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. However, after the imposition of provisional measures the Commission noted a clerical omission in relation to the VAT adjustment. This has been accordingly corrected for the dumping calculations reflected in the relevant table under recital 169 below.

(56) Two exporting producers claimed that the price comparison between the export price and the normal value has not been correctly made as far as one product type is concerned. This claim is addressed in recitals 67-68 below.

2.5. *Dumping margins*

(57) In the absence of comments, the methodology used for calculating the dumping margins, as set out in recitals 69 to 73 of the provisional Regulation, is herewith confirmed.

(58) One exporting producer claimed that, in the anti-dumping questionnaire, it had erroneously filled in incorrect Cost, Insurance and Freight values (CIF values) of a number of its export sales of the product concerned to the EU. The reported CIF values were too low thereby inflating the company's dumping margin as well as its injury margin.

(59) The Commission examined this request thoroughly. Having counterchecked and verified on spot the CIF prices of the respective transactions with the EU importer the Commission was able to verify the validity of this claim. This claim was therefore accepted.

(60) Taking into account the adjustments made to the normal value and to the export price, and in the absence of any further comments, the definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Dumping margin
Xinyi PV Products (Anhui) Holdings Ltd	83,1 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	78,4 %
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	90,1 %
Henan Yuhua New Material Co., Ltd	41,6 %
Other cooperating companies	84,7 %
All other companies	90,1 %

D. **INJURY**

1. **Definition of the Union industry and Union production**

(61) No comments were received in respect to the definition of the Union industry and Union production. Therefore, the Commission confirms recitals 75 to 79 of the provisional Regulation.

2. **Union consumption**

(62) After provisional disclosure, the sales volume figures submitted by the complainant concerning the sampled Union producers have been updated with data from the sampled Union producers. Accordingly, Table 1 was corrected (see below). The correction does not change or invalidate the trend or the conclusions drawn from the data in the provisional Regulation. Therefore, in the absence of any comments with respect to Union consumption, the trend in Union consumption established in recitals 80-82 of the provisional Regulation is confirmed.

Table 1

Union consumption (1 000 m^2)

	2009	2010	2011	IP
Total Union consumption	16 596	28 239	33 993	27 412
Index	*100*	*170*	*205*	*165*

Source: Glass for Europe, the complainant and sampled Union producers' questionnaire replies.

3. **Volume, price and market share of dumped imports from the country concerned**

(63) Due to the correction made in Union industry sales (see recital 62 above), the market share of the imports from the country concerned had to be corrected as well (see Table 2). The correction does not change the trend or the conclusions drawn from the data in the provisional Regulation.

(64) Consequently, the Commission confirms recitals 83-87 of the provisional Regulation.

Table 2

Import volume (1 000 m^2) and market share

	2009	2010	2011	IP
Market share	7,2 %	7,3 %	18,1 %	30,5 %
Index	*100*	*100*	*250*	*421*

Source: Glass for Europe, the complainant and sampled Union producers' questionnaire replies.

4. **Price undercutting**

(65) Recitals 88 to 89 of the provisional Regulation set out how the price undercutting during the IP has been determined. The weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market and adjusted to an ex-works level were compared to the corresponding weighted average prices per product type of the imports from the sampled cooperating exporting producers. The imports in question were to the first independent customer on the Union market, established on a CIF basis, with upward adjustments, that is to say custom clearance, duty, handling and loading costs. Those adjustments increase the price, depending on the product control number, by 7 % to 15 %.

(66) The price comparison was made on a product type number-by-product type number basis for transactions at the same level of trade, duly adjusted as set out in the recital above, and after deduction of rebates and discounts. The result of the comparison, when expressed as a percentage of the sampled Union producers' turnover during the IP, showed a weighted average undercutting margin between 10,6 % and 26,7 % of the prices of the sampled Union producers by the dumped imports.

(67) Two exporting producers claimed that the price comparison has not been correctly made as far as one product type is concerned. In particular, it was argued that double-side coated solar glass should have been compared separately from single-side coated solar glass. Allegedly, the cost and price of the double-side coated solar glass is much higher than the cost and price of single-side coated solar glass. It was further claimed that double-side coated solar glass has solar transmittance coefficient 'normally' much higher than single-side coated solar glass. Finally, one exporter stated that PV modules never use double-side coated solar glass as its price is much higher than the price of single-side coated solar glass but the solar transmittance coefficient of double-side coated solar glass is the same as that of single-side coated solar glass when used in the production of PV modules. By contrast, for solar thermal applications the higher transmittance achieved by double-side coated solar glass is allegedly important since thanks to it the solar thermal applications can be much more efficient.

(68) The Commission rejects the claims put forward by the exporting producers for the following reasons. First, beyond general allegations no evidence was provided by the exporting producer that there is a consistent difference in costs of production between single-side and double-side coated solar glass. The Union industry argued the contrary and claimed that depending on the coating technology used, production costs differ, and double-side coated glass is not necessarily more expensive than single-side coated and vice versa. Second, indeed double-side coated glass can achieve higher solar transmittance than single-side coated glass (the former can reach maximum 98 % solar transmittance, while the latter — up to 95 %) and indeed this technical characteristic only matters for solar thermal applications, while it is irrelevant for PV modules. However, contrary to what the exporting producer claims, double-side coated solar glass is also sold to producers of PV modules and even constitutes its main market. In fact, during the IP the Union industry sales of double-side coated glass to thermal collectors was negligible (less than 1 % of all double-side coated glass sales; all other sales were destined to PV modules).

(69) Concerning the post-importation cost, two comments were received after provisional disclosure. In the first comment, the complainant argued that cost adjustments for the custom clearance, duty, handling and loading costs should be at much lower rate, that is to say EUR 0,26/m^2 for custom clearance, handling and loading costs plus 3 % duty, instead of EUR 0,40/m^2 plus 3 % duty which had been used.

(70) The second comment came from an exporting producer who claimed that no breakdown details had been disclosed, apart from an overall 0,40 EUR/m^2 covering costs of handling, customs clearance fees and temporary storage of the imported products at the point of importation. It also alleged that the criteria applied in order to determine whether an adjustment was considered reasonable or not had not been explained.

(71) The adjustments in question applied by the Commission are based on verified data received from importers of solar glass produced in the PRC and reflect the actual weighted average costs incurred for importing the product concerned during the IP. By contrast, the complainant provided a statement of regular standard charges applied by an independent freight forwarder for imports from China in standard sea-containers. This statement does not constitute valid evidence of the actual charges applied by freight forwarders to imports of the product concerned during the IP. Consequently, the claim put forward by the complainant is rejected.

(72) Regarding the claim of the exporting producer, no further breakdown of the amount of 0,40 EUR/m^2 could be provided as this amount is a weighted average calculated on the basis of numerous actual invoices issued during the IP of imports of Chinese solar glass at different EU ports. Thus, the actual post-importation costs incurred vary depending on the EU port of entry, the product type, the usage of temporary storage at the point of importation, etc.

(73) Furthermore, the post-importation costs adjustment made by the Commission in the provisional Regulation is considered reasonable as it is based on verified actual invoices of imports of Chinese solar glass incurred by independent importers.

(74) In the absence of any other comments on the methodology used for calculating undercutting, the price comparison method explained in recitals 89 and 90 of the provisional Regulation is confirmed.

5. **Macroeconomic indicators**

(75) As set out in recital 92 of the provisional Regulation, for the purpose of the injury analysis the Commission distinguished between macroeconomic and microeconomic injury indicators. The macroeconomic indicators for the period considered were analysed on the basis of the data provided by the Union industry relating to all Union producers that came forward during the investigation.

(76) One exporting producer claimed that the Commission has failed to conduct the injury analysis in line with Article 3(2) and Article 3(5) of the basic Regulation as it conducted the injury analysis on the basis of two separate and allegedly inconsistent sets of data, that is to say the macro- and microeconomic injury indicators. It further contends that the alleged inconsistency of the analysis based on the two sets of data casts serious doubts on the appropriateness, fairness and objectivity of the overall injury picture.

(77) Following definitive disclosure, the same company reiterated its claim. It also quoted a number of prior investigations where allegedly the Union institutions defined in an inconsistent way different sets of data as belonging either to macro or micro data.

(78) The Commission cannot accept this claim. This is a methodology applicable in sampling cases in order to analyse the situation of the Union industry and to take into consideration not only the trends displayed by the sample but also by the Union industry as a whole. All the factors prescribed by Article 3(5) of the basic Regulation were considered in the analysis. The conclusion on injury is also drawn on the basis of them all. Accordingly, the injury analysis was conducted in line with Article 3(2) and Article 3(5) of the basic Regulation.

(79) In the absence of any further comments, the Commission confirms recitals 90-94 of the provisional Regulation.

(80) Concerning the macroeconomic indicators analysed by the Commission in recitals 95 to 103 of the provisional Regulation, due to the correction made in Union industry sales (see recital 62 above), the market share of the Union producers slightly changed (see Table 5). However, the correction does not change the trend or the conclusions drawn from the data in the provisional Regulation. Consequently, the Commission confirms recitals 95 to 105 of the provisional Regulation.

Table 5

Sales volume and market share

	2009	2010	2011	IP
Sales volume (1 000 m^2)	14 696	25 303	26 556	18 039
Index	*100*	*172*	*181*	*123*
Market share	88,6 %	89,6 %	78,1 %	65,8 %
Index	*100*	*101*	*88*	*74*

Source: Glass for Europe, the complainant and sampled Union producers' questionnaire replies.

6. **Microeconomic indicators**

(81) After provisional disclosure, the Unit cost of production of the sampled Union producers has been updated. Accordingly, Table 7 was slightly modified (see below). The correction does not change or invalidate the trend or the conclusions drawn from the data in the provisional Regulation. Therefore, in the absence of any comments the Commission confirms recitals 106 to 123 of the provisional Regulation.

Table 7

Average sales prices in the Union

	2009	2010	2011	IP
Unit cost of production (EUR/m^2)	13,13	8,38	8,44	9,34

Source: sampled Union producers' questionnaire replies.

7. **Conclusion on injury**

(82) In the absence of any other comments, the Commission confirms the conclusion contained in recitals 124 to 129 of the provisional Regulation that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

E. **CAUSATION**

1. **Effect of the dumped imports**

(83) In recitals 131, 132 and 133 of the provisional Regulation the Commission concluded that there is a causal link between the material injury suffered by the Union industry and the dumped imports from the PRC. This conclusion was contested by several interested parties, which claimed that there is no reasonable and coherent coincidence in time between the injury and the increased imports from the country concerned. This is due to the fact that between 2009 and 2011 Chinese imports increased significantly. Furthermore, the average price of Chinese imports in 2011 was 4,96 EUR/m^2, an amount near to that of 2012 (4,38 EUR/m^2).

(84) The same parties contended that the conclusion that the injury suffered by the Union industry should be attributed to the Chinese imports in 2012 is at odds with its findings that the Chinese imports had allegedly no negative impact whatsoever the year before, especially as far as the Union industry's profit margin is concerned, even though the average import price was very similar.

(85) From the start of the period considered to the end of the IP imports rose by 596 %, with an increase by 321 % in their market share. Import prices dropped by 27,2 % over the period considered.

(86) It is correct that the Union industry's profit margin in 2011 was only slightly lower than in 2010, despite the high increase of imports from the PRC already in 2011. However during 2011 the Union consumption of solar glass increased significantly, that is to say by 20,4 % between 2010 and 2011, while imports from the PRC increased by 150 % over the same period. In the IP, whereas consumption dropped by slightly more than 19 %, the volume of Chinese imports further increased by more than 35 % compared to 2011. This clearly shows the coincidence in time between the material injury suffered by the Union industry in the IP and the strong increase of the dumped Chinese imports. Also, logically it takes some time before some of the negative effects of the increased dumped imports are felt by the Union producers (for example loss of clients, incur of losses, reduction of return on investments and cash flow, etc.). Therefore, the claim is rejected.

(87) After definitive disclosure, the same parties contended that the coincidence in time between the material injury suffered and the dumped Chinese imports cannot be assessed on the basis of the whole period considered from 2009 to the end of the IP, without taking into account the intervening trends observed during this period.

(88) The Commission also analysed the intervening trends during the period considered. The fact that indeed in 2011 the Union industry was still profitable even though Chinese imports already strongly increased in that year, does not affect the conclusion that in the IP there was a coincidence in time between the injury suffered by the Union industry and the dumped Chinese imports.

(89) In the IP, whereas consumption dropped by slightly more than 19 %, the Chinese exporting producers:

— increased their market share by 12,4 percentage points compared to 2011 while the Union industry's share dropped by 12,3 percentage points,

— increased the volumes of Chinese imports by more than 35 % against a drop of 32 % in the sales of the Union industry, and

— reduced further their already very low export prices by more than 10 % and undercut the Union industry prices by up to 26,7 % thereby contributing to the losses suffered by the Union industry in the IP.

(90) Based on the above analysis, the Commission concludes that the presence of dumped imports and the considerable increase of their market share at prices constantly undercutting those of the Union industry have caused the material injury suffered by the Union industry.

(91) In the absence of any other comments as regards the effect of the dumped imports, the Commission confirms recitals 131, 132 and 133 of the provisional Regulation.

2. **Effect of other factors**

2.1. *Imports from third countries*

(92) Due to the correction made in Union industry sales data (see recital 62 above), the market share of the imports from third countries slightly changed (see corrected Table 11 below). However, the correction does not change the trend or the conclusions drawn from the data in the provisional Regulation.

(93) In the absence of any other comments, the Commission confirms recitals 134 to 137 of the provisional Regulation.

Table 11

Imports from third countries (1 000 m^2)

Third Countries	2009	2010	2011	IP
Market share	4,2 %	3,1 %	3,8 %	3,7 %
Index	*100*	*74*	*90*	*88*

Source: Glass for Europe, the complainant and Union producers' questionnaire replies.

2.2. *Export performance of the Union industry*

(94) One party contested the Commission's findings in recital 139 of the provisional Regulation that the drop of export sales of the sampled Union producers during the IP was most probably due to very low prices of Chinese exports to the Union industry's major destinations of exports (namely US, Canada). The party considered that this conclusion is unwarranted since Chinese exports were present also in 2011 and thus there is no reason why the impact should have occurred only in 2012. It is also of the view that the actual reason for their low export sales was the fact that the Union industry was not competitive and, when world market prices decreased, the Union industry could not remain competitive. Consequently, the party claimed that the drop in export sales of the Union industry during the IP further contributed to the injury suffered.

(95) Export sales of the sampled Union producers constituted 20 % of their total sales in volume in 2009 (in the start-up phase), during 2010 11 % and during the peak year of 2011 only 14 %. 2012 showed a further decrease to 5 %.

(96) The Commission rejects these claims for the following reasons. The Union market, being one of the largest in the world, has always been and is still the main market for the Union industry and not third country markets. Also, the fact that solar glass is relatively heavy and fragile translates into additional costs when transported over a distance (due to breakage and corrosion). On the basis of the information at the Commission's disposal from the questionnaire replies of the sampled exporting producers, the prices of the Chinese exports to the Union industry's main export destinations were indeed very low and decreased even further during the IP in comparison with 2011. This shows that the reduced export performance of the Union industry is mainly due to the increasingly low priced Chinese exports, also in third country markets as confirmed during the investigation.

(97) After definitive disclosure, the same party claimed that the investigation concerned the Union market and did not assess any alleged unfair pricing in third country markets.

(98) In addition, the findings by the EU institutions, even assuming they were correct, allegedly attributed injury caused by other factors to the dumped imports into the Union. Thus the alleged low-priced or subsidised Chinese exports to third countries were not the dumped imports into the EU and, as such, qualified as another factor, the injurious effects of which could not be attributed to the dumped imports.

(99) The Commission rejects this claim. It did not investigate whether prices of imports of the PRC to third countries are dumped and/or subsidised. It merely established, on the basis of export prices to third countries which were submitted by the sampled exporting producers, that those prices have been constantly decreasing in the recent years.

(100) In the same vein, the Commission analysed the price decrease of the imports from the PRC to third countries as a separate factor and did not attribute it to the dumped imports into the Union. Indeed, this fact was only used as a possible explanation for the reduced Union industry's exports to its main third countries destinations in the context of the fact that those markets were not and have never been the main markets for the Union industry. Even in its peak years 2010 and 2011, more than 85 % of the Union industry sales were sold on the Union market.

(101) Therefore, the conclusion in recital 140 of the provisional Regulation that the deteriorated export performance of the sampled Union producers cannot break the causal link between the dumped imports and the injury suffered by the Union industry is confirmed.

2.3. *Development of consumption, capacity and capacity utilisation*

(102) One party claimed that the injury suffered by the Union industry was due to the drop in Union consumption. This is allegedly the only factor which appeared to drop for the first time in 2012 and to which the injury can be reasonably linked, while the Chinese imports started already in 2011 at prices comparable to those in 2012. After definitive disclosure, the same party reiterated its claim.

(103) Indeed, in 2012 consumption dropped in comparison with the previous years. However, the Commission's analysis runs from the start of the period considered in 2009 to the end of the IP and in this period Union consumption increased in overall by 65 %. During the period considered the market share of the Union industry constantly and considerably decreased, that is to say by 25,7 % in overall, while the market share of the Chinese imports increased by 321 %. The increase of Chinese imports was 596 % during the period considered.

(104) In addition, in the IP the Union consumption was still at a comparable level as in 2010, while, as indicated in table 10 of the provisional Regulation, 2010 was the year when the Union industry achieved a reasonable profit. Therefore, the drop in the Union consumption during the IP cannot, in itself, have led to the losses suffered by the Union industry in the IP. In addition, the Union industry's market share dropped by 26,6 % between 2010 and 2012, while the market share of the Chinese imports increased by 318 % during the same period. Finally, if the drop in consumption during the IP should have inflicted the injury suffered by the Union industry, then the drop should have also affected the Chinese imports. However, this was clearly not the case. On the contrary, during the IP the Chinese imports significantly increased both in volume and in market share.

(105) Consequently, the Commission rejects this claim and confirms the conclusions reached in recitals 141 and 142 of the provisional Regulation.

(106) Regarding the production capacity of the Union industry contained in Table 4 of the provisional Regulation, the Commission is of the view that its increase clearly followed the trend in the increase of Union consumption up until 2011.

(107) The Commission also established that the main reason for the increase by 12,5 % of the production capacity between 2011 and end of the IP was the entry into the solar glass market of one company, whereas the production capacity of all other companies on the market slightly decreased during the same period.

(108) Consequently, the Commission is of the view that, in overall, the trend in the Union industry's capacity development followed the development of Union consumption. The Commission thus considers that the high production capacity of the Union industry, which was already high at the start of the period considered and which remained high during the IP, cannot break the causal link between the dumped imports and the injury suffered by the Union industry.

(109) After definitive disclosure, several parties argued that the Commission failed to take into account the alleged overcapacity as an important cause of injury. During the period considered the increase in capacity was allegedly not justified by the increase in consumption as the Union industry experienced a constant huge gap between production capacity and consumption which is, in their opinion, not economically viable. One party further claimed that the fact that there was a new entrant on the market between 2011 and the end of the IP contributed to the injury suffered as it increased domestic competition.

(110) It was also claimed that the decreasing Union consumption, the increasing production capacity, combined with a drop in export sales, resulted in a low capacity utilisation rate. This low utilisation rate caused high fixed costs, which, in its opinion, severely impacted the Union solar glass industry.

(111) The Commission observes that the level of capacity of the whole Union industry has constantly been higher than the total Union consumption during the whole period considered. Nevertheless, this has not prevented the sampled Union industry companies to achieve profits during the two years prior to the IP, while they incurred significant losses of 14,5 % only in the IP.

(112) In addition, the capacity of the sampled Union producers increased only by 4 % between 2010 and 2011 and by 2,6 % between 2011 and the IP, resulting in a modest overall increase by 6,7 % between 2010 and the IP.

(113) Consequently, the difference between the consumption and the capacity existed during the whole period considered and, even though slightly higher in the IP, cannot explain the huge losses incurred by the sampled companies during the IP. As a result, the Commission rejects the claim that the Union industry's level of capacity is not economically viable.

(114) Regarding the argument that the new entrant in 2012 contributed to the injury suffered by the Union industry, the Commission observes that this new entrant, even though it had installed a high capacity, had very limited production and sales volumes, in the range of 2 % of total EU sales, during the IP. As a result, its entry had hardly an impact on the performance of the Union industry as a whole, except that it significantly inflated the latter's capacity and capacity utilisation data. Indeed, without this company's data, the capacity of all other Union producers actually decreased between 2011 and 2012.

(115) In addition, the investigation did not confirm that the solar glass industry is severely impacted by fixed costs. In fact, the average fixed costs of the sampled Union producers were in the range of 25 %-35 % of the total costs of production during the IP. In the preceding years 2010 and 2011, the percentage of fixed costs was slightly lower, but still within the same range. This clearly shows that the high capacity in the IP had obviously an impact on the cost of production, but its impact was not significant and cannot explain the high losses incurred in the IP, in particular, compared to the profits achieved in previous years. In addition, the capacity utilisation rate of the sampled Union producers went down compared to previous years but was still at the level of 65 % in the IP.

(116) Finally, in its analysis the Commission has also taken into account that the installed capacity can be adapted for the production of other types of glass, which fall outside the scope of this investigation. Accordingly, also because of this element the Commission disagrees with the interested party that the high installed capacity is economically not viable.

(117) In view of the above, the Commission rejects the claims put forward by the party and reiterates that the developments in consumption, capacity and capacity utilisation during the period considered, analysed both separately and cumulatively, are not such as to break the causal link found between the material injury suffered by the Union industry and the dumped imports.

2.4. *Trends in solar modules*

(118) Two parties claimed that, in addition to the development in consumption of the product concerned, the injury suffered by the Union industry was also caused by the drop in consumption of solar modules and the losses suffered by this industry in the end of 2011/beginning of 2012. The impact of the financial distress of the solar panels producers on the solar glass market allegedly started to appear in the end of 2011 and in 2012, due to the necessary time lag between the two events.

(119) The same arguments were repeated by one party following definitive disclosure.

(120) In recital 143 of the provisional Regulation the Commission indeed found that the trends observed in solar modules have an important impact on the consumption of solar glass as 80-85 % of the solar glass sales are made to solar modules producers (Crystalline silicon photovoltaic modules and thin-film photovoltaic modules). However, as stated in recitals 143 and 144 of the provisional Regulation, consumption of solar modules increased constantly over the period considered, that is 2009-2012, and even though it decreased in 2012, the level of consumption remained 221 % higher than in 2009 and 44 % higher than in 2010 ([1]). In addition, it was established that the feed-in tariffs (FITs) cutbacks at the end of 2011/beginning of 2012 had not broken the causal link between the dumped imports of solar modules and the material injury found ([2]) as the demand for solar modules remained relatively high over the period 2009-2012.

(121) In view of the above, the Commission concludes that the decrease in 2012 of the level of consumption of solar modules cannot be regarded on its own as a factor such as to break the causal link established between the dumped imports of solar glass from the PRC and the material injury suffered by the Union industry.

(122) Similarly, since the demand for solar modules remained relatively high over the period 2009-2012 and the demand of solar glass increased by 65 % over the same period, the impact on solar glass consumption of the deterioration of the financial situation of solar modules producers in the end of the 2011/beginning of 2012 cannot be regarded on its own as a factor to be such as to break the causal link established between the dumped imports of solar glass from the PRC and the material injury suffered by the Union industry.

(123) In the absence of any other comments, the conclusion reached in recital 144 of the provisional Regulation is confirmed.

2.5. *Conclusion on causation*

(124) In view of the above, the Commission confirms its findings in recitals 130-133 of the provisional Regulation that imports of the product concerned from the country concerned were dumped during the IP and they undercut the sales of the Union industry. Furthermore, there is a clear coincidence in time between the increasing volumes of dumped imports and the deterioration of the situation of the Union industry. The dumped imports were in direct competition with the Union industry's production and as a result the Union industry lost profitability and market share during the period considered. Other possible causes of injury were analysed above and none of them, analysed both individually and cumulatively, were found to be such as to break the causal link established between the dumped imports from the PRC and the material injury suffered by the Union industry.

(125) No new evidence was provided to change that conclusion and in the absence of any other comments regarding the conclusion on causation, the Commission confirms recitals 145 and 146 of the provisional Regulation.

F. **UNION INTEREST**

1. **Interest of the Union industry**

(126) In the absence of any comments regarding the interest of the Union industry, the Commission confirms recitals 148 to 151 of the provisional Regulation.

2. **Interest of unrelated importers and traders**

(127) In the absence of any comments regarding the interest of unrelated importers and traders, the Commission confirms recitals 152, 153 and 154 of the provisional Regulation.

([1]) Tables 1-a and 1-b on p. 16 of Commission Regulation (EU) No 513/2013 of 4 June 2013 imposing a provisional anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (namely cells and wafers) originating in or consigned from the People's Republic of China and amending Regulation (EU) No 182/2013 making these imports originating in or consigned from the People's Republic of China subject to registration (OJ L 152, 5.6.2013, p. 5) (Solar Panels Provisional Regulation). According to section B of the Solar Panels Provisional Regulation, the product covered by that investigation is crystalline silicon photovoltaic modules or panels and cells and wafers of the type used in crystalline silicon photovoltaic modules or panels. Therefore, thin-film photovoltaic modules are not subject to that investigation and their consumption is not covered.

([2]) The findings of the Solar Panels Provisional Regulation contained in recitals 107-109 were confirmed in recitals 245 to 265 of the Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ L 325, 5.12.2013, p. 1).

3. **Interest of raw materials suppliers**

(128) In the absence of any comments regarding the interest of raw materials suppliers the Commission confirms recital 155 of the provisional Regulation.

4. **Interest of users**

(129) One user came forward and indicated that the anti-dumping measures will not affect it as it has not used solar glass produced in the PRC and does not intend to do so.

(130) One exporting producer claimed that the imposition of anti-dumping duty on Chinese solar glass may benefit the Union solar glass industry a little, but harm the Union PV and solar thermal industry a lot as they will have to pay more for the product concerned. Furthermore, this would arguably go against the environmental protection target of the Union as it would increase prices for PV modules and solar thermal applications and it would favour the solar glass industry which it perceived as energy intensive.

(131) As set out in recital 157 of the provisional Regulation, the imposition of the anti-dumping duties will have only very limited impact (less than 1 %) on the total costs of the solar modules. No evidence was received that would question the accuracy of this analysis. This claim is therefore rejected.

(132) In the absence of any other comments received concerning Union interest, the Commission confirms recitals 155 to 159 of the provisional Regulation.

5. **Competition aspects**

(133) In the absence of any comments regarding the competition aspects identified in recitals 160 to 163 of the provisional Regulation, the Commission confirms the recitals in question.

6. **Conclusion on Union interest**

(134) No comments were received that would change the analysis of the Union interest as set out in the provisional Regulation. Therefore, the Commission confirms recital 164 of the provisional Regulation.

G. **DEFINITIVE ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(135) Several interested parties contested the use of 8,3 % as the target profit for the Union industry set out in recital 167 of the provisional Regulation, stating that it was unrealistically high. They argued that the 8,3 % profit margin in 2010 was the highest during the period considered, because 2010 was the best year for the world PV industry. They also claimed that it is impossible for the Union solar glass industry to obtain the same profit margin in 2012 in the absence of dumping when the global PV module industry including the Union PV module industry allegedly entered into big recession in 2012.

(136) The Commission rejects this claim. The Commission used as target profit the average profit achieved by the sampled Union producers in 2010 when the imports of the product concerned were still small and therefore could not have distorted the normal conditions of competition yet. Therefore, the profit margin used to establish the injury elimination level corresponds to a period when the Union industry could reasonably expect a profit under normal conditions of competition, not affected by the dumped imports yet [1].

(137) Finally, as far as the solar glass industry is concerned, its peak year was not 2010, as claimed by the parties, but 2011 when it experienced the highest Union consumption and highest sales volume of the Union industry.

(138) Following definitive disclosure, one party reiterated its claim contesting the profit margin used as a target profit. It argued that the Commission should take into account all other factors which affected profitability in the IP. It claimed that the reasonable target profit could not be higher than 5 %.

(139) The Commission rejects this claim for the following reasons. The target profit used is not based on estimation but on an actual profit achieved by the Union industry prior to the distortion of competition caused by the Chinese dumped imports. The Commission considers this a reasonable profit, and has taken into account that the market situation was not significantly different compared to the IP, left aside the impact of the Chinese dumped imports.

[1] Cf; T-462/04 *HEG and Graphite India* v *Council*, judgment of 17 December 2008 (§§ 161-162).

The statement of the party in this respect that the consumption in 2010 was much higher than in 2012 is factually incorrect. As indicated in Section E.2.3 above, the consumption in 2010 was at a similar level to the one in 2012. Also, in 2010 the Union industry was building up capacity in view of the expected strong increase of demand, which affected negatively its profit in that year. Finally, the proposed target profit of 5 % is arbitrary as it is not based on any data or actual calculations and is therefore rejected.

(140) The complainant claimed on the other hand that the profit margin is too low and the Commission should increase it to 15 % as the complainants' profits for 2010 were higher than 10 %. The lower profit margins which other sampled EU producers seem to have achieved in 2010 are allegedly not representative of the profits that can reasonably be expected in the absence of unfairly traded imports. Most likely, there are reasons linked to management policies or issues of those companies, possibly including short-term pricing policies aimed at gaining market share, which would explain why they only obtained a lower margin in that year and why they were among the first to experience injury from the dumped imports.

(141) The Commission does not accept this claim. As explained above in this section, in the Commission's view the average profit in 2010 for the whole Union industry correctly reflects the average profit under normal conditions of competition. This conclusion is not contradicted by the fact that some members of the Union industry have taken management decisions which have led to profit margins lower or higher than other members of the same industry. Indeed, the existence of such differences is an intrinsic characteristic of the behaviour of companies in a market economy.

(142) In the absence of any other comments, the Commission confirms the methodology described in recitals 166 to 169 of the provisional Regulation.

2. **Definitive measures**

(143) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on the imports of the product concerned at the level of the injury margins, in accordance with the lesser duty rule. In this case the duty rate should accordingly be set at the level of the injury margins found.

(144) Following provisional disclosure, the complainant claimed that the provisional *ad valorem* duties were not effective. Therefore it requested the Commission to impose definitive measures in the form of a minimum import price (MIP). The complainant argued that such MIP would render the measures more effective, especially if two different MIPs would be imposed, one for coated and one for uncoated solar glass. The reasons put forward by the complainant were the following:

(145) Firstly, the complainant claimed that after the IP the exporting producers have been selling coated glass to the EU market for the same price at which they had sold uncoated solar glass during the IP. It also alleged that coated glass has higher production costs than uncoated glass and is therefore normally sold at prices that are 20 % to 25 % higher than those of uncoated glass.

(146) Secondly, the complainant claimed that after the IP demand in the Union shifted from uncoated to coated solar glass. The users have been purchasing in increasing proportion coated solar glass rather than uncoated solar glass. Consequently, coated solar glass has accounted for almost the totality of imports from the PRC into the EU in the second half of 2013 while during the IP the reverse was the case.

(147) Anti-dumping measures may indeed take different forms. While the Commission has a large discretion when choosing the form of the measures, the purpose remains to remove the effects of the injurious dumping.

(148) The investigation confirmed that there is a significant difference in both costs and prices between uncoated and coated solar glass due to the difference in the technical characteristics of the two products. Indeed, coated solar glass, which depending on the technology used can be single or double-side coated, increases transmittance in comparison with uncoated solar glass and could have additional self-cleaning, anti-soiling or hardness properties. A high quality uncoated solar glass can achieve a solar transmittance of up to 92 %. Coating can reduce reflection by approximately 3 % (per side) and consequently increase transmittance of single-side coated solar glass to a maximum of 95 % and double-side coated solar glass to a maximum of 98 %.

(149) During the IP 81 % of the imported, from the PRC, solar glass sold in the EU was uncoated whereas only 19 % was coated. Both price and cost differences found between uncoated and coated solar glass during the IP were around 30 %.

(150) However, the Commission considers that the evidence provided by the complainant was not sufficiently substantiated. Furthermore, the Commission does not have at its disposal sufficient evidence or data from any other sources that would allow it to conclude that since the imposition of provisional anti-dumping measures demand has shifted from uncoated to coated solar glass and that prices of, in particular, coated glass have decreased significantly as alleged by the complainant.

(151) Consequently, the Commission cannot accept this claim and considers appropriate to impose *ad valorem* duties instead of MIPs. Nevertheless, in order to address the concerns raised above, two different Integrated Community Tariff codes (TARIC codes) — one for coated and one for uncoated solar glass — will be created. They would enable the Commission to closely monitor the developments of the market and to decide in due time whether any further measures are needed.

(152) The Commission also recalls that in the past, it has used MIPs in specific circumstances, in particular in the following situations:

— A particular high export price for one product type, which meant that there was no dumping with regards to that product type ([1]),

— Considerations linked to market power and market share of Union producers, which made it necessary to ensure, for reasons of Union interest, that prices of imports do not exceed a certain level ([2]).

(153) Furthermore, minimum import prices have been used mainly for homogenous products, and not for products like the present one, which comes in a variety of product types.

(154) Also for those reasons, the Commission takes the view that minimum import prices are not suitable for the present file.

(155) Following definitive disclosure, the complainant reiterated its request for the imposition of a MIP and commented on recitals 152 to 156 above by indicating the following.

(156) First, those recitals allegedly do not address considerations on the effectiveness of the form of the measures to remove the injurious effects of dumping and subsidisation which is also a valid reason to employ MIPs.

(157) Second, the Commission allegedly did not explain why these considerations are relevant in the present case and how they outweigh the EU industry's interest.

(158) Third, it argued that the product concerned is sufficiently homogenous to allow the practical administration of a MIP as the two main product types have clear distinctive features which allow a proper price differentiation and easy administration and monitoring, especially as nearly all imports are currently coated solar glass.

(159) Regarding the first claim, it appears that demand may indeed have shifted from uncoated to coated solar glass. However, as no additional evidence was provided, the Commission cannot conclude that prices of, in particular, coated solar glass have decreased significantly. Consequently, it has no reasons to change its previous conclusion that *ad valorem* duties are more appropriate to remove the injurious effects of dumping and subsidisation.

(160) With regard to the second comment, the purpose of the recitals in question was to illustrate that the Commission does not consider that this case is appropriate for the imposition of a MIP, unless the claims made by the complainant were further substantiated. As this was not done, the Commission does not deem necessary to further analyse the benefit of a possible MIP for the EU industry's interest.

([1]) Council Regulation (EC) No 119/97 of 20 January 1997 imposing definitive anti-dumping duties on imports of certain ring binder mechanisms originating in Malaysia and the People's Republic of China and collecting definitively the provisional duties imposed (OJ L 22, 24.1.1997, p. 1), recital 70.

([2]) Council Implementing Regulation (EU) No 457/2011 of 10 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of melamine originating in the People's Republic of China (OJ L 124, 13.5.2011, p. 2), recital 76.

(161) As far as the third comment is concerned, the complainant has not put into question the different product types defined by the Commission in the investigation, and has not demonstrated that there would be no price difference. The offer for an undertaking made by the exporting producers, which foresees different MIPs, indicates as well that these differences are real. Therefore, that claim is rejected. In any event, even if the Commission were to accept that the product concerned may be rather homogenous, it considers this issue irrelevant as it rejects the request for a MIP also for the other two reasons set out above. It also recalls that the Commission can take into consideration information that relates to the period subsequent to the investigation period only in exceptional cases (see Article 6(1) of the basic Regulation). The complainants have not demonstrated that the situation is such an exceptional situation, and that other available remedies, such as monitoring through the creation of an additional TARIC code, would not be sufficient.

(162) In conclusion, the Commission hereby rejects these claims.

(163) After definitive disclosure several solar modules producers also requested a MIP. Their main concerns were:

— after the IP the production capacity of solar glass declined massively and many Union manufacturers dropped irrevocably out of the market. The only three Union producers left on the market are no longer able to cover more than 50 % of the European demand. Thus solar modules manufacturers need to cover their needs with supplies from the PRC. One user claimed that it would be forced to rely for its supply on only one or two Union producers which would be able to meet the required technical product specifications,

— duties, as they are now proposed, would increase product costs for solar modules significantly (by around 3 cents per watt which is allegedly five percent of the MIP established in the solar panels case),

— the MIP should be designed in a way not to lead to higher costs for solar modules in the EU.

(164) On the first argument, the Commission does not have any reasons to believe that those Union producers which have reduced or have temporarily ceased their production would not restart their business at full capacity once the imports are again made at fair prices. As described in recitals 106 to 112 above, the Union industry disposes of sufficient capacity to satisfy the whole Union consumption. Consequently, this claim is rejected. The Commission also rejects the claim of one user that it would be forced to rely on only one or two Union producers for supplies. In fact, Chinese exporting producers would still be able to supply the Union market. The anti-dumping measures, irrespective of their form, should ensure that imports are made at fair prices, and are not meant to cease imports from the PRC altogether.

(165) On the second argument, the users did not provide any evidence proving their claim. By contrast, the Commission established in recital 157 of the provisional Regulation that the impact of the measures would be less than 1 % on the total costs of the solar modules produced by companies which cooperated in the investigation. This claim is thus rejected.

(166) It is therefore not necessary to take a view on the third point raised by the solar modules producers.

(167) An anti-subsidy investigation was carried out in parallel with the anti-dumping investigation. In view of the use of the lesser duty rule and the fact that the definitive subsidy margins are lower than the injury elimination level, the Commission should impose the definitive countervailing duty at the level of the established definitive subsidy margins and then impose the definitive anti-dumping duty up to the relevant injury elimination level. On the basis of the above, the rate at which such duties will be imposed are set as follows:

Company	Subsidy margin	Dumping margin	Injury elimination level	countervailing duty	Anti-dumping duty
Xinyi PV Products (Anhui) Holdings Ltd	3,2 %	83,1 %	39,3 %	3,2 %	36,1 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	17,1 %	78,4 %	26,2 %	17,1 %	9,1 %

Company	Subsidy margin	Dumping margin	Injury elimination level	countervailing duty	Anti-dumping duty
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	12,8 %	90,1 %	42,1 %	12,8 %	29,3 %
Henan Yuhua New Material Co., Ltd	16,7 %	41,6 %	17,1 %	16,7 %	0,4 %
Other cooperating companies	12,4 %	84,7 %	36,5 %	12,4 %	24,1 %
All other companies	17,1 %	90,1 %	42,1 %	17,1 %	25,0 %

(168) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of product concerned originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported product concerned produced by any other company whose name is not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should not benefit from these rates and should be subject to the duty rate applicable to 'all other companies'. Due to the fact that there was high level of cooperation from the exporting producers (above 80 %, see recital 15 of the provisional Regulation), this duty rate is based on the highest individual injury margin established for the sampled exporting producers. The duty applicable to 'other cooperating companies' is based on the weighted average of the sampled exporters and applies to all cooperating non-sampled companies (except for Henan Yuhua, which is subject to individually established duty following its request for individual examination (see recital 48 of the provisional Regulation)).

(169) Any claim requesting the application of these individual company anti-dumping duty rates (for example following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission [1] with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation can be amended accordingly by updating the list of companies benefiting from individual duty rates.

3. **Undertakings**

(170) Following definitive disclosure, the three sampled exporting producers and Henan Yuhua offered price undertakings pursuant to Article 8(1) of the basic Regulation. They envisage different MIPs corresponding to different groups of product types.

(171) The Commission notes that the proposed MIPs by all companies are much lower than the non-injurious prices which it established during the investigation. Consequently, the Commission does not consider them to be set at the injury elimination level, in accordance with Article 8(1) of the basic Regulation.

(172) Even if they were set at the injury elimination level, the sampled companies propose a quarterly adjustment only of the price of coated solar glass on the basis of the change in prices in the solar modules market. The Commission cannot accept this method of indexation for the following reasons.

(173) First, the prices of all product types should be regularly adjusted, otherwise there may soon be an artificially created gap between the price levels of coated and non-coated solar glass. Second, the Commission does not consider appropriate to adjust the prices of solar glass on the basis of the final users' prices (that is prices of solar modules). This could lead to an unjustified squeeze of the profit margins of the solar glass industry, if the prices of solar modules for example decrease because of the drop in prices of other solar modules components.

[1] European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

(174) In general, the Commission considers appropriate to index the MIPs with the prices of raw materials. However, in this particular case no raw material was found to constitute a significantly high proportion of the overall costs of manufacturing.

(175) The Commission also established that the prices of solar glass were significantly unstable during the IP in the PRC and Turkey.

(176) In addition, there is a high risk of cross compensation since some of the companies in question sell the product concerned as well as other products to the same customers. Finally, the proposed MIPs by the sampled companies do not seem to cover all product types manufactured by the respective exporting producers. These factors render the effective implementation of undertakings impracticable and difficult to monitor.

(177) Consequently, for the reasons stated above, the Commission rejects the undertaking offers.

4. **Definitive collection of the provisional duties**

(178) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected. Amounts secured in excess of the combined definitive rates of the anti-dumping and the countervailing duties should be released.

5. **Enforceability of the measures**

(179) If market conditions change significantly after the imposition of definitive measures, the Commission may, on its own initiative, review the form of the measures in order to assess whether the measures are achieving the intended results in removing the injury and whether a change in the form of the measures is warranted.

(180) In order to best guard against any possible absorption of the measures, the Commission intends to immediately initiate a review under Article 12(1) of the basic Regulation and may subject imports to registration in accordance with Article 14(5) of the basic Regulation, should any evidence of such behaviour be provided. Under Article 12(3) of the basic Regulation, the amount of duty imposed may be increased up to twice the initially imposed amount of duty.

(181) The Commission will rely, inter alia, on import surveillance information provided by national customs authorities, as well as information provided by Member States pursuant to Article 14(6) of the basic Regulation.

(182) The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of 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 150 K (measured according to EN 12150) and having a mechanical strength of 90 N/mm^2 or more (measured according to EN 1288-3), currently falling within CN code ex 7007 19 80 and originating in the People's Republic of China. Coated solar glass (single or double-side coated) shall fall under TARIC code 7007 19 80 19 and uncoated solar glass shall fall under TARIC code 7007 19 80 11.

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

Company	Anti-dumping duty	TARIC additional code
Xinyi PV Products (Anhui) Holdings Ltd	36,1 %	B943
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	9,1 %	B944
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	29,3 %	B945
Henan Yuhua New Material Co., Ltd	0,4 %	B946

Company	Anti-dumping duty	TARIC additional code
Other cooperating companies listed in Annex I	24,1 %	
All other companies	25,0 %	B999

3. The application of the individual anti-dumping duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the duty applicable to 'All other companies' shall apply.

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

Article 2

The amounts secured by way of the provisional anti-dumping duties pursuant to Commission Regulation (EU) No 1205/2013 [1] shall be definitively collected. The amounts secured in excess of the combined rates of the anti-dumping duties contained in Article 1(2) above and of the countervailing duties adopted by Commission Implementing Regulation (EU) No 471/2014 [2] shall be released.

Article 3

Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

— it did not export to the Union the product described in Article 1(1) during the investigation period (1 January 2012 to 31 December 2012),

— it is not related to any of the exporters or producers in the People's Republic of China which are subject to the measures imposed by this Regulation,

— it has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,

article 1(2) may be amended by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 24,1 %.

Article 4

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

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

Done at Brussels, 13 May 2014.

For the Commission
The President
José Manuel BARROSO

[1] Commission Regulation (EU) No 1205/2013 of 26 November 2013 imposing a provisional anti-dumping duty on imports of solar glass from the People's Republic of China (OJ L 316, 27.11.2013, p. 8).

[2] 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 (see page 23 of this Official Journal).

ANNEX I

Cooperating exporting producers not sampled and not granted individual examination

Name	TARIC additional code
Henan Ancai Hi-Tech Co., Ltd	B947
Henan Succeed Photovoltaic Materials Corporation	B948
Avic Sanxin Sol-Glass Co. Ltd; Avic (Hainan) Special Glass Material Co., Ltd	B949
Wuxi Haida Safety Glass Co., Ltd	B950
Dongguan CSG Solar Glass Co., Ltd	B951
Pilkington Solar Taicang, Limited	B952
Zibo Jinxing Glass Co., Ltd	B953
Novatech Glass Co., Ltd	B954

ANNEX II

The valid commercial invoice referred to in Article 1(3) must be issued showing the following:

1. The name and function of the official of the entity issuing the commercial invoice.
2. The following declaration:

   'I, the undersigned, certify that the (area in m^2) of solar glass sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.'

3. Date and signature of the official of the entity issuing the commercial invoice.

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

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community [1], and in particular Article 15 thereof,

Whereas:

A. **PROCEDURE**

1. **Initiation**

(1) On 27 April 2013, the European Commission ('the Commission') announced the initiation of an anti-subsidy proceeding with regard to imports into the European Union of solar glass originating in the People's Republic of China ('PRC' or 'China') by a notice published in the *Official Journal of the European Union* (the Notice of Initiation) [2].

(2) The proceeding was initiated by the Commission following a complaint lodged on 14 March 2013 by EU ProSun Glass (the complainant) on behalf of producers representing more than 25 % of the total Union production of solar glass. The complaint contained *prima facie* evidence of subsidisation of solar glass and of material injury caused by it, which the Commission considered sufficient to justify the initiation of an investigation.

(3) In accordance with Article 10(7) of Regulation (EC) No 597/2009 (the basic Regulation), the Commission notified the Government of the People's Republic of China ('GOC') prior to the initiation of the proceeding that it had received a properly documented complaint alleging that subsidised imports of solar glass originating in the PRC were causing material injury to the Union industry. The Commission invited the GOC for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution.

(4) The GOC accepted the offer of consultations which were subsequently held. During the consultations, no mutually agreed solution could be arrived at. However, the Commission took due note of comments made by the GOC regarding the schemes listed in the complaint. Following the consultations, submissions were received from the GOC.

2. **Parallel anti-dumping proceeding**

(5) On 28 February 2013 the Commission announced the initiation of an anti-dumping proceeding concerning imports into the Union of solar glass originating in the PRC by a notice published in the *Official Journal of the European Union* [3].

(6) On 27 November 2013 the Commission imposed a provisional anti-dumping duty on imports of solar glass originating in the PRC by Commission Regulation (EU) No 1205/2013 [4].

(7) The injury analyses performed in the present anti-subsidy and the parallel anti-dumping investigation are based on the same definition of the Union industry, the same representative Union producers and the same investigation period and led to identical conclusions unless otherwise specified. This was considered appropriate in order to streamline the injury analysis and to reach consistent findings in both proceedings. For this reason, comments on injury aspects put forward in any one of these proceedings were taken into account in both proceedings.

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[1] OJ L 188, 18.7.2009, p. 93.
[2] OJ C 122, 27.4.2013, p. 24.
[3] OJ C 58, 28.2.2013, p. 6 and a corrigendum was published in OJ C 94, 3.4.2013, p. 11.
[4] Commission Regulation (EU) No 1205/2013 of 26 November 2013 imposing a provisional anti-dumping duty on imports of solar glass from the People's Republic of China (OJ L 316, 27.11.2013, p. 8).

3. **Parties concerned by the proceeding**

(8) The Commission officially informed the complainants, the other known Union producers, the known exporting producers in the PRC, the known importers, suppliers, distributors, users and associations known to be concerned, and the authorities of the PRC of the initiation of the investigation. The Notice of Initiation invited all parties concerned by the investigation to contact the Commission and make themselves known.

(9) Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation.

(10) The complainants, exporting producers in the PRC, importers and the PRC authorities made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

3.1. *Sampling*

(11) The Commission announced in the Notice of Initiation that it might limit to a reasonable number the exporting producers in the PRC, the unrelated importers and Union producers that would be investigated by selecting a sample in accordance with Article 27 of the basic Regulation.

3.2. *Sampling of Union producers*

(12) The Commission selected a sample of five companies out of the eight producers which came forward on the basis of the largest representative sales volume of the like product during the investigation period (IP).

(13) Following the verification visits, the Commission decided to remove one of the five sampled companies, as that company was found not to be representative of the Union industry, because it was the only one of the eight producers which came forward that was in a start-up phase. Therefore, the Commission saw the risk that in the case of its inclusion, the injury indicators, in particular profitability, may not have given a fair representation of the state of the Union industry.

(14) Consequently, the final sample consisted of four Union producers. Their production accounted for 79 % of the sales of the Union industry on the Union market during the IP. The sample was thus considered to be representative of the Union industry.

(15) Three Union producers requested, on the basis of Article 29 of the basic Regulation, that their identities remained confidential. They claimed that disclosure of their identity could lead to a risk of significant adverse effects to their business activities. The Commission examined the reasons put forward and accepted their request. Given the limited number of producers in the Union, no other names were disclosed in the general disclosure document, as this would allow identification of the companies requesting anonymity.

(16) The identity of the company Interfloat Corporation/GMB Glasmanufaktur Brandenburg GmbH (GMB/IF) was, however, already known publicly as it declared that it is one of the companies that support the complaint. The company was therefore named in the general disclosure document.

(17) Also, in the non-confidential version of their comments on disclosure the complainant named three Union producers that had gone out of business (Guardian, AGC and Centrosolar Glass), and a fourth company that had significantly reduced production (Saint Gobain).

3.3. *Sampling of exporting producers in the PRC*

(18) The Notice of Initiation requested all exporting producers in the PRC to make themselves known to the Commission and to provide the information specified in the Notice of Initiation within a given time period.

(19) Nine exporting producers or groups of exporting producers provided the requested information and agreed to be included in the sample. The cooperating companies covered almost 100 % of the reported exports of solar glass to the Union during 2012.

(20) In accordance with Article 27 of the basic Regulation, the Commission selected a sample of four exporting producers or groups of exporting producers based on the largest representative volume of exports of the product concerned that could reasonably be investigated within the time available. The selected sample accounted for 76 % of the total volume of exports to the Union of the product concerned in the investigation period.

(21) In accordance with Article 27(2) of the basic Regulation the Commission informed all interested parties of the sample selected and they were invited to comment. No comments were received.

3.4. *Individual examination*

(22) No exporting producer in the PRC requested individual examination under Article 27(3) of the basic Regulation.

3.5. *Sampling of unrelated importers and users*

(23) Four unrelated importers replied to the sampling form attached to the Notice of Initiation, while two importers and twelve users replied to the questionnaire. In view of the low number of cooperating importers sampling was not necessary.

4. **Questionnaire replies and verification visits**

(24) Questionnaires were sent to the GOC and to the sampled exporting producers, to the sampled Union producers, to all importers that had come forward, and to all users that had come forward. The GOC were also sent an Appendix to the questionnaire sent to them and were requested to forward it to state-owned commercial banks ('SOCBs') in the PRC that had lent funds to the sampled companies during the investigation period. The GOC stated that they had forwarded the Appendix to the banks concerned but had not received any replies.

(25) Replies to the questionnaire were received from the four sampled Chinese exporting producers, from all sampled Union producers, two unrelated Union importers and 12 users.

(26) The Commission sought and verified all the information provided by interested parties and deemed necessary for a definitive determination of subsidisation, resulting injury and Union interest. Verification visits were carried out as follows:

(a) Exporting producers in the PRC:

— Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd; Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd ('Flat Solar Group')

— Henan Yuhua Photovoltaic New Material Co., Ltd

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

(b) Government of the PRC:

— Ministry of Commerce, Beijing

— China Banking Regulatory Commission, Beijing

(c) Union producers

— GMB/IF, Germany

— [Confidential]

— [Confidential]

— [Confidential]

— [Confidential]

(d) Unrelated importers

— Vetrad NV, the Netherlands

(e) Users

— Sunerg Solar SRL, Italy

— Viessmann Faulquemont SAS, France

(27) All interested parties were sent a disclosure document which contained the essential facts and considerations on the basis of which the Commission proposed to impose countervailing duties 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.

(28) The comments submitted by interested parties were considered and taken into account where appropriate.

(29) The Government of China ('GOC') alleged that this disclosure document did not meet the standards set out in Articles 22.3 and 22.5 of the ASCM as it did not set out in sufficient detail the findings and conclusions of the investigating authority. However, the GOC provided no specific example of this alleged failure. Having reviewed the document carefully the Commission considers that the document contains sufficient information for the GOC to exercise its rights of defence.

(30) Certain information could not be provided in the disclosure as it was business-confidential information, and this was disclosed only to the sampled exporting producers concerned. The sampled exporting producers were sent a confidential specific disclosure giving calculations and information on each scheme and benefit countervailed, and were given 25 days to comment.

5. **Investigation period**

(31) The investigation of subsidisation and injury covered the period from 1 January 2012 to 31 December 2012 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2009 to the end of the investigation period ('period considered').

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(32) The product under investigation is 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 150 K (measured according to EN 12150) and having a mechanical strength of 90 N/mm^2 or more (measured according to EN 1288-3) ('the product concerned', commonly referred to as 'solar glass'). The product concerned currently falls within CN code ex 7007 19 80.

2. **Like product**

(33) The investigation has shown that the product concerned, the product produced and sold on the domestic market of the PRC, and the product produced and sold in the Union by the Union industry have similar basic physical, chemical, technical characteristics and uses. They are therefore considered to be alike within the meaning of Article 2(c) of the basic Regulation.

3. **Product scope**

(34) An unrelated importer requested exclusion of horticultural glass for the construction of greenhouses from the scope of the investigation, arguing that such construction requires many different sizes of glass sheets whereas solar glass is produced in only certain fixed sizes. The importer also provided a certificate showing that part of its imports were of glass with iron content higher than 300 ppm. As a result, those imports are outside the product scope. With regard to the remaining part of its imports, the Commission considers that, despite the difference in size, those glass sheets may also be used as solar glass. For instance, in order to circumvent the duty, importers could order larger glass sheets than they need and then cut that glass only in the Union. Therefore, horticultural glass with iron content lower than 300 ppm is part of the product concerned.

(35) Another unrelated importer argued that the furniture glass it imports (which is used for glass shelves, panel fillings, table tops, sliding door panels, top panels products, etc.) has the same or very similar technical characteristics as solar glass but requested its exclusion from the scope of the investigation as it has a different end use.

(36) However, on the basis of the evidence provided, it seems that most of the glass imported by that unrelated importer does not share all the technical characteristics of solar glass as described above. In particular, six types of the imported glass have iron content much higher than 300 ppm, while one type of the imported glass has iron content lower than 300 ppm but their solar transmittance is significantly lower than the minimum 88 % required to be defined as solar glass.

(37) The importer argued that even though those types of glass do not fulfil one of the technical characteristics of solar glass as described above, they comply with the primary classification for solar glass, i.e. 'tempered soda-lime-flat-glass'. However, the Commission considers that only those types of glass which fulfil all the technical characteristics of solar glass fall within the scope of the investigation. Consequently, all types of glass mentioned above and imported by this particular importer fall outside the scope of the investigation.

(38) For reasons of legal certainty, it should be made clear that any type of horticultural and furniture glass which fulfils the technical characteristics set out in recital 32 remains within the scope of the product concerned as they can be used as solar glass.

(39) After disclosure, the same importer argued that since solar glass that can also be used as furniture glass was not excluded from the scope, this results in administrative burden and delays for companies. This is allegedly caused by the fact that companies are required to send test reports to Customs Authorities in the Union every time the Customs Authorities question if the goods being imported are subject to the measures.

(40) The Commission considers that those types of glass should not be excluded from the scope of the investigation, because solar glass can potentially have horticultural and furniture use. In order to ensure adequate protection of the Union industry against the injurious effect of the subsidies that are countervailed, loopholes that may allow for circumvention should be avoided. The positive effect of adequate protection outweighs the negative effect of the additional administrative burden arguably suffered by the importer concerned.

(41) The same importer also argued that float glass should be excluded from the product scope since it has a different production process than rolled glass which is perceived by the importer as the only type of solar glass. The importer stated that float glass home furnishing products cannot be used as solar glass and therefore should be excluded from the scope of the investigation. However, float glass cannot be excluded from the scope of the investigation as it complies with all the technical characteristics set out above. Confidential documents provided by interested parties during the investigation have shown that float glass can be used as solar glass and it is produced by both the Union industry and the Chinese exporters. This is confirmed by publicly available information on the internet ([1]). Float glass therefore remains within the scope of the investigation.

C. **SUBSIDY**

1. **Introduction**

(42) The complainant alleged that the PRC is subsidising its solar glass industry. The complaint contains *prima facie* evidence for several subsidy practices included in both legislation and a number of policy and planning documents which are the basis for state support of the sector.

(43) The Commission reviewed and analysed the documents mentioned in the complaint as well as additional documents submitted by the GOC and by sampled exporting producers in the course of the investigation and found that many of these documents show that the solar glass industry in the PRC receives preferential treatment in many areas.

(44) The GOC has included the solar glass industry amongst 'key' industries in the 12th Five Year Plan ([2]). The GOC has also issued a specific policy paper, 'The 12th Five Year Plan for the Solar Photovoltaic Industry' which establishes glass as a key focus ancillary material for the photovoltaic (PV) industry for which domestic production is required. The Plan requires that government will support industry development and technological innovation and attract funds to the industry.

(45) Following disclosure the GOC challenged the Commission's citation of the 12th Five Year Plan in the context of solar glass. This was rejected as the Plan specifically mentions solar glass, in chapter 9, column 6, regarding 'Key fields of development of manufacturing'. The 12th Five Year Plan clearly sets out the GOCs priorities for the period it covers, and one of those priorities is the manufacture of solar glass.

(46) Following disclosure the GOC challenged the Commission's reading of the '12th Five Year Plan for the Solar PV Industry', stating that it did not support the Commission's conclusions. However this challenge was rejected, as it clearly contradicts information received from other GOC departments. During the visit to the GOC, the Ministry of Industry and Information Technology ('MIIT') explained themselves that solar glass is covered by this plan which focusses strongly on improving quality, as good quality solar glass was vital for the encouragement of the solar PV industry.

([1]) http://www.fsolar.de/cms/fileadmin/user_upload/Bilder/PVSEC_2013/Presse_Information_EU_PVSEC_2013_Paris_ENG.pdf

([2]) Chapter 9, of the 12th 5-Year Plan: 'Focus on the development of photovoltaic glass, ultra-thin substrate glass … and other new materials'.

(47) The importance of innovation and new materials in general is noted in the '12th Five Year Industrial Technology Innovation Programme' ([1]) intended to implement the Five Year Plan and also the 'Long term Science and Technology Development Plan' ([2]). Its strong focus on technological innovation includes the development of new materials. In that context, there is also a specific reference to solar glass.

(48) Following disclosure the GOC challenged the Commission's conclusions, saying that solar glass was not mentioned in either of these documents. The Commission notes that both these documents are designed to offer special assistance to high technology enterprises, as was discussed in recitals 401 and 402 of Council Implementing Regulation (EU) No 1239/2013 ([3]) ('the solar panels Regulation'), where the same arguments were made by the GOC. Both documents implement the 12th Five Year Plan and the plan for the Solar PV Industry, and assist high and new technology enterprises, which includes many solar glass manufacturers.

(49) The 'Decision No 40 of the State Council on Promulgating and Implementing the "Temporary Provisions on Promoting the Industrial Structure Adjustment"' (which, together with the attached 'Temporary Provisions on Promoting the Industrial Structure Adjustment' are referred to as 'Decision No 40') states that the GOC will actively support the development of new energy industries and expedite the development of solar energy ([4]); instructs all financial institutions to provide credit support only to encouraged projects (the category in which the solar glass projects belong); and promises the implementation of 'other preferential policies on the encouraged projects' ([5]).

(50) Following disclosure the GOC disputed the Commission's reading of both Article 5 and Article 17 of the 'Temporary Provisions on Promoting the Industrial Structure Adjustment'. The GOC stated that Article 5 does not mention solar glass. However as it mentions the encouragement of solar energy, which requires solar glass, the Commission considers that this includes solar glass within the ambit of the Temporary Provisions.

(51) The GOC then challenged the Commission's understanding of Article 17, which, while stating that only encouraged industries should receive credit support, orders that this should be done 'according to the credit principles' rather than on a preferential basis.

(52) No evidence was found in the inspection of the sampled companies, or during the visit to the GOC, that this provision was complied with. The banks concerned did not cooperate with the investigation to allow this provision to be tested or verified. In fact, the investigation has shown that certain enterprises benefit from the preferential lending policies. The Commission therefore rejects the assertion of the GOC that lending to the solar glass industry was done 'according to the credit principles'. The key point remains that all financial institutions shall provide credit to encouraged industries, which includes the manufacture of solar glass, and that that support is de facto provided on preferential terms.

(53) In 2011 the National Development and Reform Commission (NDRC), gave a recommendation to the State Council to revise the programme in Decision No 40. The State Council issued 'Decision No 9 of the State Council on Promulgating and Implementing the Guidance Catalogue for the Industrial Structure Adjustment' ('Decision No 9'). This document 'actively encourages' the GOC and public agencies to 'guide the development of relevant industries, optimise the upgrading of the industrial structure.' Point 12(2) of Decision No 9 mentions specifically the encouragement of 'ultra-clear float glass for solar energy industry' production.

(54) The National Outline for the Medium and Long-term Science and Technology Development (2006 – 2020), adopted by the GOC, promises to 'give the first place to policy finance', 'encourage financial institutions to

([1]) Issued by the Ministry of Industry and Information Technology covering the period 2011-2015.
([2]) Issued by the State Council covering the period 2006-2020.
([3]) Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ L 325, 5.12.2013, p. 66).
([4]) Chapter II, Article 5 of the Temporary Provisions on Promoting the Industrial Structure Adjustment.
([5]) Chapter III, Article 17 of the Temporary Provisions on Promoting the Industrial Structure Adjustment.

grant preferential credit support to major national scientific and technological industrialisation projects', to 'Encourage financial institutions to improve and strengthen financial services to high-tech enterprises' and to 'implement the preferential tax policies to promote the development of high-tech enterprises'.

(55) Solar glass production falls under the description of a high technology enterprise, as is shown by the number of manufacturers with New and High Technology status and is a new industry, both in China and in the Union. In this context the Commission would also point out that one of the sampled companies received a specific grant from the National Development and Reform Commission (NDRC) to reward them for their innovation in the field of solar glass, clearly showing the GOC's interest in this high technology sector.

(56) The complainant has claimed that the alleged subsidies consist of the schemes listed in Section C.2 below. Following the inspection of the sampled companies in the PRC, and a visit to the GOC, the Commission analysed these schemes, where sampled companies received a benefit during the investigation period.

2. **Other identified subsidy schemes**

(57) During the inspection of the sampled companies, analysis of their internal records brought to light subsidies from provincial, city, county or district government authorities. These subsidies had not been listed specifically in the complaint. On the basis of the information at the Commission's disposal, it is unclear whether these are ad hoc subsidies or local subsidy programmes. However, the local nature of these schemes means that the complainants could not reasonably be expected to be aware of the details of those subsidies and therefore there is no direct mention of these subsidies in the complaint.

(58) The Commission offered additional consultations with the GOC regarding these other subsidies that are company or location specific; that were found in the records of the sampled companies during the verification visits; and not listed in the complaint. These consultations were offered by the Commission to ensure due process during the investigation. The GOC declined this offer claiming that such an offer would not be in line with the Agreement on Subsidies and Countervailing Measures (ASCM).

(59) The Commission considers that these other subsidies are closely connected to the types of measures and practices alleged in the complaint and the Notice of Initiation These measures involve the same kind of financial contribution and benefit with respect to the product concerned and thus fall under the definition of 'subsidy practice or practices to be investigated' which Article 22.2 (iii) of the ASCM requires to be specified in the Notice of Initiation. The schemes mentioned in the Notice of Initiation are not exhaustive, which is shown by the wording 'the subsidies consist, *inter alia*, of …' in section 3. The Commission therefore concluded that these additional subsidies fall under the scope of this proceeding.

(60) Following disclosure the GOC disputed the Commission's reading of the ASCM and stated that their opinion was that the Commission had no legal basis on which to countervail a specific subsidy to one sampled exporting producer, even if that subsidy was directly linked to the subsidy practice identified by the complainants. The Commission does not agree with the GOC's interpretation of the ASCM on that point. Where the complainants have identified a subsidy practice, and along with examples of national schemes, local benefits are found within the same subsidy practice, the Commission considers that it has the right to countervail any benefits found. In particular, this applies where the mechanics, the nature and the effects of the benefits found are the same as other schemes already identified in the complaint and the Notice of Initiation.

3. **Non-cooperation and use of facts available**

(61) The Commission notified the GOC on 18 December 2013 that it would consider the use of facts available due to the lack of a response from the SOCBs to whom the GOC sent the Appendix provided to them.

(62) The GOC responded on 26 December 2013 and disagreed with the proposed use of Article 28 against the 'allegedly state-owned banks' but did not dispute the fact that the banks had not submitted a reply to the questionnaire. The GOC also did not dispute the fact that these banks were state-owned. Therefore, the Commission had no option but to use the best facts available as far as information which was supposed to be provided by the SOCBs is concerned.

(63) After disclosure the GOC challenged the use of Article 28 to replace the information that was requested in the Appendix sent to the SOCBs. The Commission does not dispute that information was provided by the GOC in this investigation and the Commission analysed it and took it into account where necessary. However when neither the GOC, nor the SOCBs, nor the companies could provide information, for example on credit worthiness, the Commission had to use 'facts available' under Article 28 of the basic Regulation.

(64) As regards the other subsidies not specifically mentioned in the Notice of Initiation by reference to a particular programme, and found during the verification visits of the sampled exporting producers, the Commission has used all the evidence available to reach its conclusions. Those subsidies found were falling under the types of measures and practices described in the Notice of Initiation, and the Commission offered the GOC further consultations on these subsidies without the offer being taken up. The Commission considers that those subsidies are closely connected to the types of measures and practices alleged in the complaint and the Notice.

(65) After disclosure the GOC challenged the Commission's conclusions as regards the subsidies found during the inspection of the sampled companies and for other points regarding subsidy schemes. The Commission would like to clarify that it did not apply Article 28 in these cases. Where cooperation was good but information simply could not be provided – for example the exact legal basis for a one-off subsidy payment – then the evidence provided by the company concerned was used to reach a conclusion as to whether this was a countervailable subsidy or not.

(66) The GOC also alleges that the Commission did not provide enough information in the disclosure when it used best facts available under Article 28 of the basic Regulation. This allegation in fact refers to the use of the conclusions of previous investigations where the same subsidy was investigated. Where this is the case the Commission has referred to the exact recitals of the Regulation concerned and summarised the arguments found.

(67) The GOC notes that the disclosure document does not describe particular one-off subsidies found at the sampled companies in any great detail. This has been done specifically to protect the business confidential information provided by the sampled companies to the Commission, and no further non-confidential summary is possible. Full confidential disclosure was made to each individual sampled exporting producer. Where the legal basis was provided by the sampled exporting producer then this was noted in the disclosure back to the company. In any case, when the GOC was offered consultations on these subsidies, it was also given an opportunity to provide further relevant information, which it did not do.

4. **Schemes investigated**

(68) The Commission sent questionnaires to the GOC and the sampled exporting producers, requesting information on the following schemes that allegedly involved the granting of subsidies to the solar glass industry:

— preferential lending to the solar glass industry:

  — credit lines and low-interest policy loans granted by SOCBs and public development banks ([1])

  — export credit subsidy programmes

  — export guarantees

  — State-funded insurance for green technologies ('Green express')

([1]) Public development banks are banks that do not pursue a commercial objective, but that are public bodies entrusted by the State with the objective of financing projects that are pursued on the basis of public policy considerations.

— financial advantages from the granting of access to offshore holding companies

— loan repayments by Government

— grant programmes:

— 'Famous Brands' and 'China World Top Brands' subsidies

— Funds for Outward Expansion of Industries in Guangdong Province

— Government provision of goods and services for less than adequate remuneration:

— provision of antimony

— provision of power

— provision of land use rights

— direct tax exemption and reduction programmes:

— income tax exemptions or reductions under the Two Free/Three Half Programme

— income tax reductions for foreign invested enterprises ('FIEs') based on geographic location

— local income tax exemptions and reductions for 'productive FIEs'

— income tax reductions for FIEs purchasing Chinese-made equipment

— tax offset for R & D at FIEs

— preferential corporate income tax for FIEs recognised as High and New Technology Industries

— tax reductions for High and New Technology Enterprises involved in designated projects

— preferential income tax policy for enterprises in the North-East Region

— Guangdong Province tax programmes

— dividend exemption between qualified resident enterprises

— indirect tax and import tariff programmes:

— VAT exemptions for use of imported equipment

— VAT rebates on FIEs' purchases of Chinese-made equipment

— VAT and tariff exemptions for purchases of fixed assets under the Foreign Trade Development Programme

— Other subsidies and other subsidy programmes (including provincial, city, county or district government authority programmes).

5. **Preferential policy loans, other financing, guarantees and insurance**

5.1. *Preferential loans*

(a) Introduction

(69) The Commission sent to the GOC an Appendix to be forwarded to the SOCBs, public development banks and privately owned financial institutions that lent money to the companies sampled during the investigation period. The GOC informed the Commission that they did so but they did not receive a reply. As set out above, the Commission has therefore advised the GOC that due to this lack of cooperation, it will apply Article 28 and use facts available to reach its conclusions on this point.

(b) Legal basis

(70) The following legal provisions provide for preferential lending in China: *The Law of the PRC on Commercial Banks* (the banking law), *The General Rules on Loans* promulgated by the People's Bank of China (PBOC) on 28 June 1996 and Decision No 40 of the of the State Council as referenced above.

(c) Findings of the investigation

(71) Previous anti-subsidy investigations against the PRC have concluded that the banking system in China is dominated by state-owned banks, or banks where the State has a controlling interest in terms of shareholding. Both are referred to as 'SOCB's'. The Commission also found that SOCBs are exercising governmental authority. The Commission found no evidence that the situation had changed. As noted in recital 161 of the solar panels Regulation, which is the latest investigation covering this subject, the five largest SOCBs (Agricultural Bank of China, Bank of China, China Construction Bank, Bank of Communications and ICBC) represent more than 50 % of the banking sector in terms of balance sheet sum.

(72) Based on the use of facts available, including facts established in the solar panels Regulation, the conclusion remains that SOCBs are public bodies within the meaning of Article 2(b) of the basic Regulation, as was set out in detail in recitals 158 to 168 of the solar panels Regulation.

(73) Following disclosure the GOC disputed this conclusion stating that the Commission had not set out the reasons why they considered that SOCBs were public bodies. The Commission rejects this allegation as the reasons why SOCBs are public bodies is set out in recitals 158 to 168 of the solar panels Regulation and the GOC provided no information that would contradict those best facts available. In summary:

(a) SOCBs hold the highest market share and are the predominant players on the market in the PRC;

(b) On the basis of facts available SOCBs are controlled by the government by means of ownership and administrative control of their commercial behaviour including limits on interest rates they can offer;

(c) The banking law and other laws and Regulations require banks to lend according to the needs of the national economy, provide credit support to encouraged projects, and give priority to new and high technology enterprises.

(74) The conclusions in these recitals are recent, as they were only published at the end of 2013, and were published in the full knowledge of the change in July 2013 to the policy on floors of interest rates in China.

(75) As in previous investigations, the Commission attempted to verify the role played by the GOC and in particular the central bank, the People's Bank of China (PBOC) in the financial markets and the banking sector in relation to the lending to the solar glass industry. Whereas cooperation from the GOC and the PBOC was in general satisfactory, the PBOC did not provide the full text of the 'Circular on the issues about adjusting interest rates on deposits and loans' (YinFa (2004) 251) which sets interest rate floors and ceilings for loans and deposits. For commercial bank lending (both SOCBs and privately owned commercial banks) and public development bank lending, the Circular only sets a floor. For preferential loans and loans for which the GOC has adopted specific regulations, the circular provides that the interest rates are not allowed to float upwards. The precise upper limit is set in the specific regulations applicable to those loans.

(76) During the Commission's verification visit, the PBOC stated that the document could not be provided as it was not available publicly on their website. A search of the internet however found a copy of the Circular, and a translation in English, in a package of documents given to the Australian authorities by the GOC some years ago ([1]). In the absence of an official copy directly from the GOC, the Commission has taken this version as a true and complete copy of the Circular concerned.

(77) The Circular shows that the PBOC influenced the setting of interest rates for loans granted during the IP by SOCBs in the PRC. The GOC explained that in July 2013 the PBOC abolished both the floor and the ceiling for lending interest rates. This was noted but as this was after the end of the investigation period it does not affect the conclusion set out here. In any case the floor on interest rates that was current during the investigation period is not the sole argument as to why the Commission considers SOCBs as public bodies. The conclusions in recitals 158 to 168 of the solar panels Regulation still apply regardless.

([1]) http://www.adcommission.gov.au/cases/documents/141-AttachmentstoPreliminaryReportonExistenceofCVSubsisides-GovofthePeoplesRepublicofChina-N.pdf

(78) Following disclosure the GOC made several comments on the Circular 'YinFa (2004) 251' without giving an explanation as to why the full text of this Circular was not provided to the Commission, and without confirming whether the text given to the Australian authorities, and found by the Commission, was accurate. As was previously found in the solar panels investigation, the Circular clearly sets out the instructions of the PBOC to banks as regards lending. As stated in previous investigations, the content of this Circular is important in understanding the role the GOC and PBOC play in the direction of banks and lending.

(79) The Commission's conclusion remains as was previously found in the solar panels Regulation, namely first that Article 34 of the banking law requires banks in the PRC to carry out their loan business according to the needs of the national economy. The needs of the national economy are laid down in the 12th Five Year Plan.

(80) Following disclosure the GOC disputed the Commission's interpretation of Article 34 of the banking law, stating that 'this sentence is ambiguous and provides no explicit guidance to the banks to act in a certain manner. No document describes the needs of the national economy, whether it be the 12th Five Year Plan or any other Regulation/Decision'.

(81) This differs from the GOC's interpretation of Article 34 in the solar panels investigation, where it described it as 'neutral'. The Commission disagrees with the assessment of the GOC. The Commission considers, and the GOC has not demonstrated otherwise, that the policies regarding the national economy are set out in the 12th 5 Year Plan and the specific plan for the PV industry, and that financial institutions are encouraged to lend to encouraged industries such as solar glass.

(82) The GOC has drawn the Commission's attention to other articles of the Banking Law, namely Articles 4, 5 and 7, which should ensure that loans are made without interference and after a credit assessment. The Commission acknowledges that these Articles exist but notes that the GOC, the banks and the sampled companies concerned were unable to demonstrate that loans were made without interference – given the preferential lending to the solar glass industry – and with a credit assessment – as despite requests no loan agreements or risk assessments, including credit ratings, were provided as exhibits or found linked to any loan provided to any sampled exporting producer.

(83) Second, banks are required to provide credit support to encouraged industries under Decision No 40 and Decision No 9, which have the force of law. The GOC confirmed during the inspection of the Ministry of Commerce that solar glass is an encouraged industry. This is in line with the Industrial Restructuring Guidance Catalogue of 2011, which was provided by the GOC in its questionnaire reply and which classifies solar glass in the encouraged category.

(84) Decision No 40 provides guidance to all financial institutions in the form of binding instructions on the promotion and support of encouraged industries, and the solar glass industry constitutes an encouraged industry.

(85) Following disclosure the GOC disputed the Commission's assessment of the impact of Decision No 40 and the Regulations attached, and Decision No 9. The Commission restates that its assessment of both Decision No 40 and the Regulations attached is that they set out the needs of the national economy. They set out a strategy for government and for the financial sector and in particular direct lending by financial institutions to encouraged industries such as solar glass.

(86) The GOC were asked to clarify the legal status of a Decision of the State Council such as Decision No 40. Their only reply was that it is a Regulation issued by the State Council and does not form part of Chinese law. However they provided no evidence to substantiate that argument. The view taken by the GOC is in contradiction with publicly available information, which describes the State Council as the highest administrative authority with administrative rule-making power. According to those sources, Decisions of the State Council are legally binding rules. [1] On the basis of the facts available, the Commission therefore takes the view that Decision No 40 and implementing Decisions attached to that Decision, such as Decision No 9, are administrative Regulations, and as such part of Chinese law.

[1] http://www.china.org.cn/english/kuaixun/76340.htm

(87) The Commission therefore confirms the analysis in recital 191 of the solar panels Regulation, which concludes that Decision No 40 and Decision No 9 are legally binding for other public bodies and economic operators.

(88) The Commission also analysed whether privately-owned banks in China are entrusted and/or directed by the GOC to provide preferential loans to solar glass producers, within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

(89) Article 34 of the banking law applies also to privately owned banks in China. The GOC and interested parties have not provided any evidence that the conclusion on the legal situation reached in recital 174 of the solar panels Regulation, namely that the GOC instructs them in the same manner as state-owned banks, ceases to apply. Article 34 of the banking law states that banks are instructed to 'carry out their loan business upon the needs of national economy and the social development and with the spirit of state industrial policies' ([1]). In these circumstances, as set out in recital 188 of the solar panels Regulation, the lending strategy of both SOCBs and privately owned banks is decided by the GOC.

(90) Following disclosure the GOC disputed the conclusion that they entrust or direct private banks in the PRC and disputed in particular the weight that the Commission has given to Article 34 of the banking law, stating that 'what constitutes the "needs of national economy" is open to interpretation and obviously differs depending on the person/body scrutinising the provision'.

(91) It is notable that the GOC, in disagreeing with the Commission's interpretation, did not present their own interpretation of their own law.

(92) However the Commission need only refer to the findings in previous investigations, and to the facts available in this case, to reassert the conclusion that the needs of the national economy are set out in the Plans and Regulations issued by the PRC and Article 34 requires banks to lend in line with these descriptions of the national economy, which includes encouraging the production of solar glass.

(93) The finding remains therefore that the GOC entrusts and directs private banks to lend to encouraged industries in line with Article 34 of the Banking Law.

(94) The Commission therefore concludes that in the case of loans provided by SOCBs in the PRC, there is a financial contribution to solar glass producers in the form of a direct transfer of funds by the government as set out in Article 3(1)(a)(i) of the basic Regulation.

(95) The same evidence also shows that SOCBs (as well as privately owned banks) are entrusted or directed by the government and this consequently means that a financial contribution exists as set out in Article 3(1)(a)(iv) of the basic Regulation.

(96) With regard to specificity, the Commission notes that the GOC directs preferential lending to a limited number of industries and the solar glass industry, as part of the PV sector, is one of them, as is set out in detail in recital 172 of the solar panels Regulation. The GOC has included the solar glass industry amongst 'key' industries in the 12th Five Year Plan. Decision No 40 states that the GOC will actively support the development of new energy industries and expedite the development of solar energy. All financial institutions are instructed to provide credit support only to encouraged projects, the category in which the solar glass projects belong. That decision also promises the implementation of 'other preferential policies on the encouraged projects'.

(97) Following disclosure the GOC disputed the finding of specificity and in particular the Commission's reading of the 12th Five Year Plan, stating that it 'has no legal value as it is not a binding document'. The Commission disagrees with this statement, and notes that the GOC made the same claims in previous investigations, which were also not accepted. The 12th Five Year Plan states that it was 'deliberated and approved by the National People's Congress, and it has the effect of law.'

([1]) Article 34 of the Commercial Banking Law.

(98) The Commission therefore concludes that the subsidies in form of preferential lending are not generally available and are therefore specific in the meaning of Article 4(2)(a) of the basic Regulation.

(99) A benefit exists to the extent that government loans, or loans from private bodies entrusted or directed by the government, are granted on terms more favourable than the recipient could actually obtain on the market.

(100) As in previous investigations the Commission attempted to verify the credit risk assessments carried out by the banks that lent money to the sampled companies during the IP. No evidence was provided by the companies as to their credit rating, and the banks did not cooperate with the investigation. The Commission was therefore unable to see any evidence that loans to solar glass companies were based on a risk assessment, and the interest rate set as a result of such exercise.

(101) In the absence of any information provided by the GOC, the exporting producers or the banks, the Commission relied on facts available to establish whether preferential lending in the PRC did in fact confer a benefit on the sampled exporting producers who had loans from banks in the PRC.

(102) The Commission, as in the solar panels investigation, started with the officially published central bank interest rates from the PBOC for loans in Chinese Renminbi Yuan (CNY). The average interest rate over the investigation period was 6,26 %.

(103) The Commission then adjusted the interest rate of the PBOC to take account of the credit risk of the companies concerned. However they did not provide any independent credit ratings or similar information that would allow the Commission to calculate a credit rating. In any event, the Commission has established in previous investigations that credit ratings of Chinese firms are distorted by government support and that there is no evidence of any meaningful risk assessment of loan recipients. The Commission has therefore taken the same methodology as the solar panels investigation and considered all of the companies concerned as having a non-investment grade 'BB' rating as defined by the Bloomberg credit rating company.

(104) The premium on bonds issued by companies with BB ratings against bonds issued by companies with AAA ratings (which the PRC has on its bonds), as recorded by Bloomberg, was then added to the average lending rate of the PBOC during the IP. The result was a benchmark interest rate for the IP, for loans to the sampled companies in CNY, of 10,37 %.

(105) By comparing this benchmark interest rate to the actual interest rate charged during the IP to the companies concerned the Commission concluded that loans are granted to the solar glass industry at below-market terms and conditions.

(106) Following disclosure the GOC disputed the Commission's choice of benchmark and the conclusions that the Commission has drawn from the comparison between the benchmark and the actual interest paid.

(107) The comparison between the benchmark and the actual interest paid clearly shows that the sampled exporting producers that borrowed from Chinese banks, in CNY, paid less than the normal commercial interest rates for companies in their financial position.

(108) Second, the Commission was indeed aware that the PBOC lifted the floor on lending in July 2013 and mentioned it in the disclosure document. However this does not change the conclusion that the GOC interferes in the lending behaviour of banks in China, in particular through the application of Decision No 40 and the attached Regulations, and the provisions of Article 34 of the Banking Law.

(109) Third the Commission only calculated a benchmark for loans made in CNY, as the sampled exporting producers did not have loans in EUR or USD from Chinese banks.

(110) Finally the GOC requested more information as to why the Commission considered that the sampled exporting producers would be credit rated BB. The reason that BB credit rating was chosen was because the Commission received no evidence that any credit rating was calculated for any sampled exporting producer because of the lack of cooperation from the banks concerned. The BB credit rating is also not adverse inference, and in fact works in favour of the sampled companies concerned, as it is the best non-investment grade on the financial markets.

(111) Under the terms of Article 28 the Commission was obliged to use best facts available, which were taken from the conclusions of the solar panels Regulation, which used a BB credit rating for the companies sampled there. This was considered reasonable in this case and no evidence was received after disclosure that the sampled companies were given a different credit rating by the banks concerned.

(d) Conclusion

(112) On the basis of the findings of the investigation, the Commission concludes that the solar glass industry in China benefited from preferential loans in the IP, both from state-owned banks and from private banks. The financing of the solar glass industry constitutes a subsidy within the meaning of the basic Regulation as there is

(a) a financial contribution by government as set out in Article 3(1)(a)(i);

(b) entrustment and direction by government as set out in Article 3(1)(a)(iv); and

(c) a benefit is thereby conferred as required by Article 3(2).

(113) In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, this subsidy should be considered countervailable.

(114) Following disclosure the GOC challenged the use of findings from previous investigations to reach conclusions on subsidisation in this case, and in particular alleged that the Commission was over-reliant on the findings of the solar panels Regulation.

(115) This allegation was rejected. As previously noted, given the lack of cooperation from the banks in the PRC the Commission was forced to use the provisions of Article 28 and best facts available. The solar panels investigation is the most recent, and contains the most up-to-date findings on subsidisation in China. Solar panels are not the same product as solar glass, but they are both in the same new energy sector and are covered by the same government planning documents. In the absence of other information, therefore, the use of findings in the solar panels investigation as 'best facts available' is appropriate. The GOC also alleged that significant changes had taken place between the solar panels investigation and this one, in particular the lifting of the floor on interest rates by the PBOC in July 2013. This allegation was rejected as the conclusions from the solar panels investigation refer to that investigation period, just as this investigation refers to its own investigation period. In both cases the lifting of the floor took place after the end of both investigation periods and therefore does not affect the use of Article 28 and the findings of the solar panels investigation as best facts available.

(116) All but one of the sampled companies received loans from both SOCBs and private banks. One company was financed solely via its offshore parent company and no lending was made by banks established in the PRC.

(117) Following disclosure one sampled company disputed the conclusion of the Commission, and stated that the Commission did not ask the company to provide their independent credit rating. However the Commission asked the company to provide all information regarding the loans that it received, but the company did not provide an independent credit rating. If the company had such information then given the allegations in the complaint and the information requested in the questionnaire it should have provided it. And in particular given the information in the disclosure document, if it had an independent credit rating it should have provided it immediately. This argument is therefore rejected.

(e) Calculation of the subsidy amount

(118) Article 6(b) of the basic Regulation provides that the benefit on preferential loans should be calculated as the difference between the amount of interest paid and the amount that would be paid for a comparable commercial loan which the firm could obtain on the market. As stated, with the absence of any meaningful risk assessment, the Commission established a market benchmark for comparable commercial loans.

(119) The benefit was calculated for the IP as the difference between the interest actually paid during the IP, and the interest that would have been paid using the benchmark.

(120) The subsidy margins calculated for the sampled exporting producers based on this methodology are as follows:

Preferential loans	
Company Name	Subsidy margin
Xinyi PV Products (Anhui) Holdings Ltd	0 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	6,2 %
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	2,5 %
Henan Yuhua New Material Co., Ltd	4,8 %

5.2. *Other preferential lending schemes*

(121) No benefits had been received by the sampled exporting producers under export credit subsidy programmes, credit lines, export guarantees, the 'Green Express' programme or as benefits through access to offshore holding companies during the IP.

6. **Grant programmes**

(122) No benefits had been received by the sampled companies from 'Famous Brands' or 'China World Top Brands' programmes during the IP.

6.1. *Specific grant programmes and grants*

(a) Introduction

(123) The sampled companies received significant one-off grants from various government authorities at many levels of government resulting in the receipt of a benefit during the IP. These were found during the verification of the companies concerned and were not disclosed in the questionnaire replies of the companies concerned nor were they disclosed in the questionnaire reply of the GOC, as requested. The complaint alleged that producers of solar glass received these one-off grants from provincial and local government bodies and that these conferred a benefit as the monies were received without adequate consideration ([1]). The Notice of Initiation also sets out that 'grant programmes' are a subsidy practice used to support the solar glass industry.

(b) Legal basis

(124) These grants were given to the companies by national, provincial, city, county or district government authorities, and all appeared to be specific to the companies concerned, or specific in terms of location or type of industry. The level of legal detail for the exact law under which these benefits were granted, if there was any legal basis for them at all, was usually not disclosed although the Commission was often but not always given a copy of a document issued by a government authority which accompanied the grant of funds.

(c) Findings of the investigation

(125) One sampled company received grants during the IP from the Economic Development Zone within which it is located. These grants were calculated by the Economic Development Zone at 20 % of any taxes paid by the company to local tax authorities, and covered corporate income tax, land use tax, and dividend income tax, amongst others.

(126) Another sampled company received a large grant in the IP from the local government to cover the fees required for the connection of the company to the electricity supply, which they would otherwise have paid themselves. This was granted to the company 'to support large companies established in the region'.

(127) Another sampled company received a direct grant of 25 million CNY from the National Development and Reform Commission (NDRC) fund for Industrial Adjustment for the production of high tech solar glass. This direct grant from the State was received in 2006 and the company apportioned 10 % of the grant over the next 10 years. 2,5 million CNY was therefore taken as the benefit during the IP.

([1]) Page 37 of the open version of the complaint deals with other government grants alleged as subsidies.

(128) The same company also had booked in its accounts for 2012 other grants from the local tax bureaux and other local government bodies. The company stated that most of these grants were not in fact direct transfers of money from these bodies to the company, but reimbursements of sums previously paid by the company to the government. As no satisfactory evidence could be provided, the Commission cannot accept this explanation.

(129) Another sampled company received a direct grant of 15 million CNY before the IP from the local government and the company apportioned 10 % of the grant over the next 10 years. The grant was paid to the company for the development of the photovoltaic industry (which includes the solar glass sector), the accelerated construction of the advanced manufacturing base in the local industrial zone, and smooth implementation of major projects.

(130) The same company received also several other grants prior to the IP and allocated a proportion of the grant to the IP. However no details regarding the nature of these grants were provided by the company and in the absence of such information, facts available were used to arrive at a conclusion. The Commission has concluded in the absence of other facts available, that these grants are specific to this company; and that the amount of grant allocated to the IP should be considered as a benefit.

(d) Conclusion

(131) The GOC was invited to give further information and to enter into consultations regarding these grants, but declined to do so. On the basis of the evidence collected with regard to the receipt of these grants by the sampled companies and in the absence of any other information, the Commission has considered these grants to be a subsidy within the meaning of Article 3(1)(a)(i) and (2) of the basic Regulation as a transfer of funds from the GOC in the form of grants to the producers of the product concerned took place and a benefit was thereby conferred.

(132) These grants are also specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation given that they appear to be limited to certain companies or specific projects in specific regions, granted to meet the one-off requirements of the sampled companies. These grants do not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation, given that the eligibility conditions and the actual selection criteria for enterprises to be eligible are not transparent, not objective and do not apply automatically. Further, there is no evidence that the grants belong to an overarching subsidy programme.

(133) Following disclosure the GOC challenged the Commission's authority to investigate these grants and the Commission's analysis of the partial information available to it. However the Commission has carefully analysed the business-confidential information made available by the companies concerned and where there is evidence both of a benefit and that the grant was specific, the grant has been countervailed.

(134) In all cases the companies provided information as to the amount of the grant, and from whom the grant was made, even if in certain cases the company had no document to prove the legal basis on which the grantor had provided the grant. The companies concerned also mostly booked this income under the heading 'subsidy income' in their accounts and had had these accounts independently audited. This has been taken as positive evidence of a subsidy that conferred a countervailable benefit.

(135) One sampled company also disputed the Commission's authority to investigate and countervail these company-specific grants for the same reasons. For the same reasons the Commission rejects their argument and restates its position that it has the authority to investigate these grants and countervail them when appropriate.

(e) Calculation of the subsidy amount

(136) The table below shows the calculation of benefit for these grants set out above, with the benefit taken as the amount received in the investigation period, or booked for the investigation period, where the amount was depreciated by the company concerned.

Other Grant programmes	
Company Name	Subsidy margin
Xinyi PV Products (Anhui) Holdings Ltd	1,1 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	2,9 %

Other Grant programmes	
Company Name	Subsidy margin
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	1,1 %
Henan Yuhua New Material Co., Ltd	3,0 %

7. **Direct tax exemption and reduction programmes**

7.1. *The 'two free, three half' programme for foreign invested enterprises*

(a) Introduction

(137) The 'two free, three half' programme entitles foreign invested enterprises ('FIEs') to pay no corporate income tax for the first two years, and to pay only 12,5 % rather than 25 % for the next three years.

(b) Legal basis

(138) The legal basis of this programme is Article 8 of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (the 'FIE Tax Law') and Article 72 of the Rules for the Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises According to the GOC this programme was terminated under Article 57 of the Enterprise Income Tax Law (EIT Law) of 2008 with a transition period until the end of 2012. The law therefore makes clear that there would be a benefit under this scheme in the tax year 2012.

(c) Findings of the investigation

(139) This 'two free, three half' scheme conferred benefits on companies during the financial year 2012, after which, according to the GOC, the scheme has been withdrawn.

(140) One of the sampled companies was a foreign owned enterprise which used this tax scheme during the IP. They received a corporate tax rate of 12,5 % rather than the full rate of 25 %, which was stated on their corporate tax return for 2012 and in their annual accounts.

(141) The Commission disclosed these findings to interested parties, and received comments from the GOC stating that under the Notice of Transition [1] all benefits under this scheme would cease in 2012. The GOC stated that therefore should countervailing duties be imposed, no duties could be imposed as regards the benefit received under this scheme by one sampled company during the IP. This argument is accepted, as for this sampled company, in the particular circumstances of this case, the Commission has no evidence of any continuing benefit.

(d) Conclusion

(142) Although the 'two free, three half' scheme has been countervailed in previous Regulations, for this one sampled company the Commission will not impose a duty to countervail the benefit found during the IP, as the Commission has no evidence that for this one sampled company the scheme or any variant of it would be in force on the date that the duties are imposed.

7.2. *High and New Technology Enterprises*

(a) Introduction

(143) This programme allows companies that can show that they meet a certain set of criteria to be recognised as a 'High and New Technology Enterprise' to receive a reduction to 15 % on their corporate income tax, as compared to the standard rate of 25 %.

[1] Notice by the PRC State Council on the Implementation of the Grandfathering Preferential Policies under the PRC Enterprise Tax Law [Decree No [2007]39].

(b) Legal basis

(144) The legal basis of this programme are Article 28(2) of the Enterprise Income Tax Law of 2008 (the EIT law), along with the 'Administrative Measures for the Determination of High and New Technology Enterprises' (Guo Ke Fa Huo [2008] No 172); and Article 93 of the Regulations on the Implementation of Enterprise Income Tax Law, along with the Notice of the State Administration of Taxation on the issues concerning the Payment of Enterprise Income Tax by High and New Technology Enterprises (Guo Shui Han [2008] No 985).

(c) Findings of the investigation

(145) This scheme applies to High and New Technology Enterprises recognised as such by the GOC. To be eligible for this scheme enterprises shall have core independent intellectual property rights and must meet the following requirements which are set out in the legal basis and summarised as follows:

(a) their production is included in the scope of the products in the 'High-Tech Fields with Key State Support';

(b) their total expenses for R & D shall account for 3-6 % of total sales income;

(c) their income from high and new technology products shall account for over 60 % of the total sales income;

(d) the personnel engaged in R & D shall account for 10 % of the total staff;

(e) the other requirements set by the '2008 Administrative Measures for High and New Tech Enterprises' are met.

(146) Some but not all of the companies sampled were found to be using this scheme, and thereby only paying 15 % corporate income tax rather than 25 %. These companies had applied to be New and High Technology Enterprises and received official notification that they had met the criteria of the scheme and would therefore be entitled to complete their corporate tax returns accordingly.

(d) Conclusion

(147) As in the previous solar panels investigation recitals 322 to 326, the Commission considers that this scheme is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(148) This subsidy is specific as defined in Article 4(2)(a) of the basic Regulation since it is limited to the enterprises receiving the certification of High and New Tech Enterprises and complying with all the requirements of the 2008 administrative measures. The sampled companies concerned received such certification. Eligibility is not automatic and no objective criteria were established by the legislation or the granting authority.

(149) After disclosure the GOC challenged the Commission's conclusions, maintaining that the eligibility criteria were objective and apply equally to all companies in the PRC. The Commission does not agree with the GOC's reading of the laws and implementing measures, which show that the programme is limited to certain sectors and enterprises supported by the GOC on the basis of criteria that do not appear objective or neutral, such as that their production is included in the scope of the products in the 'High-Tech Fields with Key State Support'.

(150) Eligibility is also not automatic but depends on the grant of a High and New Technology Enterprise certificate, which is released after a discretionary procedure by the competent authority.

(151) The Commission therefore considers this subsidy as countervailable.

(e) Calculation of the subsidy amount

(152) The Commission has calculated the amount of countervailable subsidy as the difference between the amount of tax normally paid during the IP and the amount of tax actually paid during the IP by the companies concerned.

High and New Technology Enterprises	
Company Name	Subsidy margin
Xinyi PV Products (Anhui) Holdings Ltd	0 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	0 %
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	0,4 %
Henan Yuhua New Material Co., Ltd	1,8 %

7.3. *Exemption from tax of dividend income between qualified resident enterprises*

(a) Introduction

(153) The complaint alleged that exporting producers of solar glass were receiving subsidies from another direct tax exemption scheme, namely an exemption from tax of dividend income between qualified resident enterprises ([1]).This falls under the general subsidy practice of exemptions and/or reductions of direct income tax as set out in the Notice of Initiation.

(b) Legal Basis

(154) The legal bases of such tax exemption of dividend income are Articles 25-26 of the EIT Law and Article 83 of the Regulations on the Implementation of Enterprise Income Tax Law.

(c) Findings of the investigation

(155) The Commission found that one sampled company received an exemption from tax of dividend income between qualified resident enterprises. This company applied directly to the local taxation bureau for the deduction of the dividends obtained by equity investments from the taxable income.

(d) Conclusion

(156) The Commission considers that this is a subsidy under Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the company concerned. The benefit for the recipient is equal to the tax saving.

(157) In the disclosure document the Commission had stated that this subsidy scheme is specific under Article 4(2)(a) of the basic Regulation as the legislation limits access to this scheme to enterprises that are resident in the People's Republic of China and that have made investments in other resident enterprises.

(158) Following disclosure the GOC disputed these conclusions, stating that the exemption of tax from dividend income between qualified resident enterprises cannot be deemed to be specific as Article 26(3) of the EIT Law provides that such exemption from tax of dividend income is also available to non-resident enterprises. In addition, the GOC states that the eligibility criteria are objective and apply to all resident enterprises irrespective of industry, product or geographical location.

(159) Whereas it is true that the EIT law submitted by the GOC in this proceeding states in Article 26(3) that such exemption of tax from dividend income is also available to non-resident enterprises, the Commission remains however of the view that this subsidy scheme is specific. Indeed, Article 25 of the EIT law confirms that this tax exemption is reserved to industries and projects encouraged by the State. Thus, only encouraged industries and projects can have access to this scheme. As explained above in section 5.1(c), the solar glass industry is an encouraged industry.

(e) Calculation of subsidy amount

(160) The Commission has calculated the amount of the subsidy as the difference between the amount of tax normally collected during the IP and the amount of tax actually paid by the company concerned.

([1]) Pages 52 and 53 of the open version of the complaint deal with this programme.

Dividend income tax schemes	
Company Name	Subsidy margin
Xinyi PV Products (Anhui) Holdings Ltd	0 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	0 %
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	5,8 %
Henan Yuhua New Material Co., Ltd	0 %

7.4. *Other direct tax exemption schemes and reduction programmes*

(a) Introduction

(161) Apart from the schemes assessed in sections 7.1 – 7.3, the Commission did not find any evidence of benefits conferred on the sampled companies by other direct tax exemption schemes and reduction programmes listed above in section C(4). However, during its inspections the Commission found two other corporate tax schemes included in the accounts of one sampled company, namely R & D expenses offsets and refunds of housing property tax and land use tax. These also fall under 'direct tax exemption and reduction schemes' as outlined in the Notice of Initiation, as measures whereby the amount of corporate income tax paid has been lowered by the tax authority, or where the tax authority has refunded corporate income tax already paid. The R & D expenses tax offset is also linked to the 'tax offset for R & D at FIEs' scheme listed above under section C(4).

(b) Legal Basis

(162) The legal basis for the R & D expenses tax offset is Article 30 of the Chinese EIT law.

(163) For the refunds for housing property tax and land use tax, the exact law under which these benefits were granted was not disclosed although the Commission was given a copy of a Circular issued by the provincial government authority which accompanied the exemption.

(c) Findings of the investigation

(164) The Commission found that one sampled company received R & D expenses offsets and refunds for housing property tax and land use tax. The document issued by the provincial government authority limits the refunds to newly established high and new technology enterprises.

(d) Conclusion

(165) Regarding the R & D expenses offsets, the Commission considers that this subsidy scheme is specific given that Article 30 has to be read together with Article 25 of the EIT law which states that this tax exemption is reserved to industries and projects encouraged by the State. Thus, only encouraged industries and projects can have access to this scheme. As explained above in section 5.1(c), the solar glass industry is an encouraged industry.

(166) The refunds for housing property tax and land use tax were specific in terms of location and type of industry. The GOC was invited to provide more information on these tax schemes in the request for further consultations but declined to do so. Therefore, the Commission has proceeded on the basis of evidence collected with regard to the application of these schemes to the sampled company and in the absence of any other information available.

(167) After disclosure the GOC challenged the Commission's findings stating that the Commission had not disclosed any positive evidence as to the specificity of these schemes in the disclosure document. A disclosure containing detailed information on the specificity of these schemes was made only to that company and no comments were received from that company. The Commission has also put more information on the specificity of these schemes in the recitals above.

(168) The Commission considers that these schemes are subsidies under Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the company concerned. The benefit for the recipient is equal to the tax saving.

(e) Calculation of subsidy amount

(169) The Commission has calculated the amount of the subsidy as the difference between the amount of tax normally collected during the IP and the amount of tax actually paid by the company concerned.

Corporate tax schemes	
Company Name	Subsidy margin
Xinyi PV Products (Anhui) Holdings Ltd	0 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	0 %
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	0,7 %
Henan Yuhua New Material Co., Ltd	0 %

8. **Indirect tax and import tariff programmes**

(170) The Commission did not find any benefit conferred on any sampled company for the indirect tax and import tariff programmes listed above in Section C(4).

9. **Government provision of goods and services for less than adequate remuneration**

9.1. *Provision of antimony; provision of electricity*

(171) No benefit was found linked to the purchase of antimony or electricity by the sampled companies during the IP.

9.2. *Provision of land use rights*

(a) Introduction

(172) As also set out in recitals 354 to 370 of the solar panels Regulation, companies cannot purchase land outright in the PRC, but only purchase a land use right (LUR) from local authorities.

(b) Legal basis

(173) The Land Administration Law of the PRC states that all land belongs to the people, and cannot be bought or sold, but sets out the conditions by which land use rights can be sold to businesses by bidding, quotation or auction.

(c) Findings of the investigation

(174) In principle a system of auction would allow the market to judge the price of a particular land use right, and therefore the price would be set independently. However, during the Commission's visit the GOC stated that in any case they set floor prices for each grade of land (land is graded from 1 to 15 based on the quality of the land parcel) below which the price for the land use right cannot fall.

(175) The GOC also controls the supply of land, by restricting by quota the area of land for which land use rights can be sold for industrial or residential purposes, by province and by year.

(176) In any case, for each and every land use right purchase by the sampled exporting producers, the Commission found no evidence of an auction process that independently set the price of the land use right. The company awarded the land either bid the starting price, or 5 CNY per square metre more than the starting price, and, as it was the only bidder, it was awarded the land use right.

(177) Following disclosure the GOC challenged the Commission's findings and stated that there was a true auction procedure in the sale of land use rights to industry in the PRC.

(178) The GOC first alleged that there was a true system of auction because all the government was doing was fixing the starting price, like any auctioneer. This argument is rejected, as an auction normally involves the starting price being fixed by an independent auctioneer after an independent valuation, which is not the case here, as the owner of the land use right is also the auctioneer.

(179) The GOC then states that the floor prices are there to ensure that the final price does not fall below 'the basic market value' for the land use right. No evidence was provided to support this statement, which is in itself circular, as the amount of money paid for the land use right (which the government has fixed) is supposed to be the market price (on which the floor is then based).

(180) The GOC then stated that the fact that there were no other bidders at the auction 'cannot be the basis for the assumption that the LUR was actually not auctioned'. In fact the conclusion from this evidence is exactly the opposite. The GOC, despite requests, has not provided evidence of one single land use right being priced by competitive auction, and therefore the effect of the process is that the government sets the price and the company pays this price. While multiple bidders may not be an absolute requirement in every instance in order to establish the existence of a market-based system, the complete lack of multiple bidders, which was found to be the case with regard to all sampled companies, is a strong indication of the absence of true market prices.

(181) In the case where one sampled company paid 5 CNY per square metre more than the price set by the government, the company stated to the Commission that they were told to do so by the competent authority simply to make it look as if an auction had taken place. The Commission therefore cannot take this fact as positive evidence that a market for land use right sales exists in the PRC.

(182) In effect therefore the sampled companies paid the price set by the GOC. As also set out in the solar panel Regulation (at recitals 361 to 370), the land use right is provided at less than adequate remuneration when compared to a market benchmark, which is set out in section (e) below.

(d) Conclusion

(183) The Commission concludes that the provision of land use rights by the GOC should be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation in the form of provision of goods conferring a benefit upon the companies. As the investigation did not reveal the existence of a functioning market for the sale of land use rights in the PRC the use of an external benchmark (see section (e) below) demonstrates that the amount paid for land use rights by the sampled exporters is below the market rate.

(184) The subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation because Decision No 40 of the State Council requires that public authorities ensure that land is provided to encouraged industries, of which solar glass is one. Article 18 of Decision No 40 makes clear that industries that are 'restricted' will not have access to land use rights.

(185) The situation concerning land in the PRC is also discussed in the IMF Working Paper which confirms that the provision of LUR to Chinese industries does not respect market conditions ([1]).

(186) The GOC disputed the finding of specificity stating that the restrictions in Decision No 40 cannot be used to prove a specific granting of a benefit. This argument is rejected as the effect of Decision No 40 is to grant land use rights to encouraged industries. Solar glass production is an encouraged industry and therefore the provision of land use rights for solar glass manufacturers is included in the provisions of Decision No 40.

(187) One sampled company also disputed the Commission's findings, stating that there was a functioning market in China for land use rights. However their assessment of the land use right process in China does not result in their conclusion. They were still unable to show that LURs are independently valued; that they are sold by an independent auction; that the price of the LUR is set by the market as the result of a competitive bidding process and that any price is undistorted by government support.

([1]) IMF Working Paper (WP/12/100), An End to China's Imbalances, April 2012, p. 12.

(188) The sampled company then stated that despite the fact that the Commission should have found that there was a functioning market, and therefore no subsidy, the Commission should compare the price of the company's LUR to a benchmark, namely the prices of LUR in the province in which the company was located. Given that the Commission has established that there is no appropriate market benchmark in that province, this argument was rejected.

(e) Calculation of the subsidy margin

(189) The benefit is the difference between the price paid for the land use right, and an appropriate external benchmark. As in the solar panels Regulation, this external benchmark is the market price for land in the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei).

(190) Following disclosure the GOC disputed the use of Chinese Taipei as a benchmark and requested more information as to why Chinese Taipei was suitable. As was explained in recital 467 of the solar panels Regulation, the Commission considers Chinese Taipei as a suitable external benchmark for the following reasons:

(a) the comparable level of economic development, GDP and economic structure in Chinese Taipei and a majority of the provinces and cities in the PRC where the sampled exporting producers are based;

(b) the physical proximity of the PRC and Chinese Taipei;

(c) the high degree of industrial infrastructure in both Chinese Taipei and many provinces of the PRC;

(d) the strong economic ties and cross border trade between Chinese Taipei and the PRC;

(e) the high density of population in many of the provinces of the PRC and in Chinese Taipei;

(f) the similarity between the type of land and transactions used for constructing the relevant benchmark in Chinese Taipei with those in the PRC; and

(g) the common demographic, linguistic and cultural characteristics between Chinese Taipei and the PRC.

(191) Taking all these factors into account, the Commission concluded that land use right prices in the PRC, if market conditions prevailed, for the sampled exporting producers, would be very similar to land prices in Chinese Taipei.

(192) One sampled company suggested that if an external benchmark was to be taken, then the GDP of the province in which they were located should be taken into account and the benchmark should be 'current land prices in Egypt, Armenia, Guatemala, Congo, Mongolia or Indonesia' as these countries were at a 'similar degree of development'. This argument was rejected for the following reasons:

(a) The level of economic development is not the only factor listed above as to why Chinese Taipei was a suitable benchmark;

(b) the company referred to the province where it was located, rather than the city, which has a much higher GDP per capita than the province surrounding it; and

(c) they advanced no arguments, other than GDP, as to why any of the other external benchmarks would be more appropriate than Chinese Taipei.

(193) Another sampled company suggested following disclosure that the use of Chinese Taipei was not suited to the economic conditions in the particular province in which they were located, but did not suggest an alternative. Given the lack of alternative benchmark suggestions, the use of Chinese Taipei is confirmed.

(194) Average land prices in Chinese Taipei for 2012 were taken from the Industrial Bureau of the Ministry of Economic Affairs and adjusted backwards for inflation and GDP growth to fix a benchmark price for land in each calendar year. As land use rights are valid for 50 years and depreciated on this basis, the benefit in the IP will be 1/50 of the difference between the benchmark price and the actual price paid.

(195) The subsidy rate established for provision of land at less than adequate remuneration ('LTAR') is as follows:

Provision of land at LTAR	
Company Name	Subsidy margin
Xinyi PV Products (Anhui) Holdings Ltd	2,1 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	8,0 %
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	2,3 %
Henan Yuhua New Material Co., Ltd	7,1 %

10. **Conclusion on subsidisation**

(196) The Commission has calculated the amounts of countervailable subsidies in accordance with the provisions of the basic Regulation for the investigated companies scheme by scheme, and added these figures together to calculate a total subsidy amount for the whole company for the IP.

(197) To calculate the overall subsidy margins below, the Commission first calculated the percentage subsidisation, being the subsidy amount over total company turnover. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the IP.

(198) The subsidy amount per square metre of product concerned exported to the Union during the IP was then calculated, and the margins below calculated as a percentage of the CIF value of the same exports per square metre.

(199) Following disclosure the GOC commented that the Commission did not take into account the dumping margins calculated in the parallel anti-dumping proceeding when publishing the subsidy margins at the time of disclosure, and that the Commission only dealt with the issue of 'double-counting' when calculating the duty to be imposed.

(200) The GOC requested that when subsidisation was found to cause dumping, that the margin calculations should reflect this, as well as the duty calculations.

(201) Given that the measures in this case are limited by the injury margin, such manipulation would not change the actual duties imposed. The Commission therefore did not consider it necessary to address the substance of these claims.

Company Name	Subsidy margin
Xinyi PV Products (Anhui) Holdings Ltd	3,2 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	17,1 %
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	12,8 %
Henan Yuhua New Material Co., Ltd	16,7 %

D. **INJURY**

1. **Definition of the Union industry and Union production**

(202) Eight producers that manufactured the like product in the Union during the IP came forward following initiation. The Commission is not aware of any other Union producers of the like product. The Commission therefore considers that those eight producers constitute the Union industry within the meaning of Article 9(1) of the basic Regulation and will be referred to as 'the Union industry'.

(203) All available information concerning the Union industry, including information provided by the complainant, macroeconomic data provided by the Union industry's association (Glass for Europe) and the questionnaire

responses of the sampled Union producers were used in order to establish the total Union production for the IP. For the sampled Union producers, the data was cross-checked with the questionnaire replies. On this basis, the total Union production was estimated to be around 21 734 000 square metres during the IP.

(204) After disclosure, the GOC noted differences between the data quoted in the disclosure document and the one contained in the complaint concerning the Union industry. It further argued that this indicates the lack of objective and credible evidence and makes the conclusions reached by the Commission questionable.

(205) The differences established by the GOC between the complaint data and the disclosure document are caused by the fact that all data relating to the sampled Union producers was verified on-spot and, when necessary, was updated. As the sample represents 79 % of the total sales of the Union industry on the Union market, the Commission cannot accept the argument that the evidence used was not an objective and credible basis on which the Commission reached its conclusions.

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

(206) None of the sampled Union producers' production was destined for captive use. Consequently there was no need to make a distinctive analysis of captive sales.

3. **Union consumption**

(207) Union consumption was established on the basis of the volume of the total Union sales on the Union market of all Union producers, that is excluding their exports, plus imports from the PRC and imports from other third countries. The establishment of Union consumption was based on data provided by the complainant and Glass for Europe and, when possible, cross-checked with the sampled Union producers' questionnaire replies.

(208) Union consumption developed as follows:

Table 1

Union consumption (1 000 m^2)

	2009	2010	2011	IP
Total Union consumption	16 596	28 239	33 993	27 412
Index	*100*	*170*	*205*	*165*

Source: Glass for Europe, the complainant and Union producers' questionnaire replies.

(209) In the period considered, total Union consumption increased by 65 % between 2009 and 2011, but decreased in the IP compared to 2011. Consumption in 2012 remained significantly above the level of 2009 though. This is mainly due to the increase in consumption of the end products, in particular solar modules (see Section E.2.3 below).

4. **Imports from the country concerned**

4.1. *Volume and market share of the subsidised imports from the country concerned*

(210) Since solar glass is imported in the Union under CN code 7007 19 80 – Other — Laminated safety glass, which covers other products not subject to the present investigation, Eurostat could not be used to determine import volumes and values. Import volumes and values were based on data provided by the complainant and Glass for Europe. Subsidised imports into the Union from the country concerned developed as follows:

Table 2

Import volume (1 000 m^2) and market share

	2009	2010	2011	IP
Volume of imports from the PRC (1 000 m^2)	1 200	2 050	6 150	8 350
Index	*100*	*171*	*513*	*696*

	2009	2010	2011	IP
Market share	7,2 %	7,3 %	18,1 %	30,5 %
Index	*100*	*100*	*250*	*421*

Source: Glass for Europe and complaint.

(211) Over the period considered, subsidised import volumes of the product concerned to the Union increased considerably by 596 %. This led to a significant increase of the market share of the imports from the PRC of the product concerned on the Union market (increase from 7,2 % to 30,5 %).

(212) The Union consumption has also increased until 2012. In 2012, when the Union market shrank, Chinese exporting producers could nevertheless still increase their total volume of imports.

(213) After disclosure, the GOC argued that the Commission has used highly inflated data, while Chinese export statistics arguably showed much lower exports in the IP compared to the import volume stated in the disclosure document and requested an explanation how these volumes have been calculated.

(214) The Commission first observes that the export statistics submitted by the GOC — including all types of tempered glass — are more than 2,5 times lower than what the statistics from Eurostat show for the entire CN code ex 7007 19 80 for 2012. Consequently, it cannot consider them as reasonably reliable.

(215) The Commission based its calculations on the information provided by the complainant and Glass for Europe. This data is available in the non-confidential file. The Commission cross-checked this information with the verified data provided by the sampled exporting producers and by the other cooperating exporting producers. As mentioned in Section A3.3 above, the cooperating exporting producers covered almost 100 % of the reported exports of solar glass to the Union during 2012. Consequently, the Commission has no reasons to believe that the information on which it based its findings is incorrect. In addition, the GOC did not provide any evidence to substantiate its claim.

4.2. *Prices of the subsidised imports from the country concerned and price undercutting*

(216) The average price of subsidised imports into the Union from the country concerned developed as follows:

Table 3

Import prices (EUR/m^2)

	2009	2010	2011	IP
PRC	6,02	6,10	4,96	4,38
Index	*100*	*101*	*82*	*73*

Source: Complainant and questionnaire replies of the Chinese exporting producers.

(217) The average import price for the product concerned dropped over the period considered. The average import price decreased by 27,2 % from 6,02 EUR/m^2 in 2009 to 4,38 EUR/m^2 in the IP.

(218) In order to determine price undercutting during the IP, the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices per product type of the imports from the sampled Chinese producers to the first independent customer on the Union market, established on a CIF basis, with upward adjustments, namely 0,40 EUR/m^2 for custom clearance, handling and loading costs and 3 % import duty. Those adjustments increase the price, depending on the product control number, by 7 % to 15 %, that is to say, a weighted average of 11 %.

(219) The price comparison was made on a product type-by-product type basis for transactions at the same level of trade, duly adjusted as set out in the recital above, and after deduction of rebates and discounts. The result of the

comparison, when expressed as a percentage of the sampled Union producers' turnover during the IP, showed a weighted average undercutting margin per company between 10,6 % and 26,7 % of the prices of the sampled Union producers by the subsidised imports of the product concerned.

5. **Economic situation of the Union industry**

(220) In accordance with Article 8(5) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic factors and indices having a bearing on the state of the Union industry during the period considered.

(221) As explained in Section A.3.2 above, sampling was used for the examination of the possible injury suffered by the Union industry.

(222) For the purpose of the injury analysis, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission analysed the macroeconomic indicators for the period considered on the basis of the data provided by Glass for Europe and the complainant relating to all Union producers. The Commission analysed the microeconomic indicators on the basis of the sampled Union producers' questionnaire responses.

(223) For the purpose of this investigation, the following macroeconomic indicators were assessed: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the subsidy margin and recovery from past subsidy.

(224) The following microeconomic indicators were assessed: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital.

(225) One exporting producer claimed that the Commission has failed to conduct the injury analysis in line with Article 8(1) and Article 8(4) of the basic Regulation as it conducted the injury analysis on the basis of two separate and allegedly inconsistent sets of data, that is to say the macro- and microeconomic injury indicators. It further contends that the alleged inconsistency of the analysis based on the two sets of data casts serious doubts on the appropriateness, fairness and objectivity of the overall injury picture.

(226) The same party quoted a number of prior investigaitons where allegedly the Union institutions defined in an inconsistent way different sets of data as belonging either to macro or micro data.

(227) The Commission cannot accept this claim. This is a methodology applicable in sampling cases in order to analyse the situation of the Union industry and to take into consideration not only the trends displayed by the sample but also those by the Union industry as a whole. All the factors prescribed by Article 8(4) of the basic Regulation were considered in the analysis. The conclusion on injury is also drawn on the basis of them all. Accordingly, the injury analysis was conducted in line with Article 8(1) and Article 8(4) of the basic Regulation.

6. **Macroeconomic indicators**

6.1. *Production, production capacity and capacity utilisation*

(228) The total Union production, production capacity and capacity utilisation developed as follows over the period considered:

Table 4

Production, production capacity and capacity utilisation

	2009	2010	2011	IP
Production capacity (1 000 m^2)	39 000	44 611	48 511	54 615
Index 2009	*100*	*114*	*124*	*140*
production volume (1 000 m^2)	17 540	29 245	31 245	21 734
Index	*100*	*167*	*178*	*124*
Capacity utilisation	45 %	66 %	64 %	40 %
Index	*100*	*146*	*143*	*88*

Source: Complainant and Union producers' questionnaire replies.

(229) Production of the Union industry increased over the period considered in line with consumption. Already at the beginning of the period considered, the Union industry had excess production capacity. Due to the fast growth of Union consumption, that excess capacity shrank until 2011, as Union production capacity – although growing – grew less rapidly than Union consumption. Production capacity kept growing in 2012, whereas Union consumption declined. Production grew from 2009 until 2011 and then dropped by 30 % in the IP. Due to the existing capacities, the Union industry could rapidly ramp up production to meet the strong growth in Union demand until 2011. At the same time, as a reaction to the growth observed from 2009 until 2011, the Union industry added further capacity, which partially only came into production in the IP. That resulted in a sharp decline in capacity utilisation in the IP, compared to previous years.

(230) Even if during the period considered the Union industry expanded its capacity in response to an increased consumption, the Union industry's production levels increased at a lower rate than the consumption and the capacity utilisation after a substantial increase in the first three years of the period considered, decreased during the investigation period, which coincided with an increased market share of the subsidised imports from the country concerned and the unfair competition encountered by the Union industry's main user customers in the solar panels sector due to Chinese dumping and subsidisation established in that sector as well.

6.2. *Sales volume and market share*

(231) The Union industry's sales volume and market share developed as follows over the period considered:

Table 5

Sales volume and market share

	2009	2010	2011	IP
Sales volume (1 000 m^2)	14 696	25 303	26 556	18 039
Index	*100*	*172*	*181*	*123*
Market share	88,6 %	89,6 %	78,1 %	65,8 %
Index	*100*	*101*	*88*	*74*

Source: Glass for Europe, the complainant and Union producers' questionnaire replies.

(232) During the period considered the Union industry's sales volume increased by 22,7 %. However, in the context of an increase in Union consumption by 65 %, this was translated into a decrease of the Union industry's market share from 88,6 % in 2009 to 65,8 % during the IP, that is to say, a decrease by 25,7 % over the period considered. The Union industry's sales grew much less than the subsidised imports from the country concerned. Consequently, the Union producers could not fully benefit from the growing consumption and thus their market share decreased during the period considered.

6.3. *Growth*

(233) The growth of the Union industry is reflected in its volume indicators such as production, sales and in its market share, when compared with developments in consumption. Despite an increase in consumption during the period considered the market share of the Union producers did not grow in line with consumption. The market share of the Union industry declined over the period considered. During the same period, the market share of the imports from the PRC increased by 321 %. The fact that the Union industry could not grow in line with market growth had an overall negative impact on its economic situation.

6.4. *Employment and productivity*

(234) Employment and productivity developed as follows over the period considered:

Table 6

Employment and productivity

	2009	2010	2011	IP
Employment — Full time equivalent (FTE)	565	792	932	857
Index	*100*	*140*	*165*	*152*

	2009	2010	2011	IP
Productivity (1 000 m^2/FTE)	31	37	34	25
Index	*100*	*119*	*108*	*82*

Source: Complainant and Union producers' questionnaire replies.

(235) Overall, employment increased by 52 % between 2009 and the IP. However, the increase took place in the period until 2011 when it reached its peak of 932 Full time equivalent (FTE) and subsequently decreased to 857 FTE during the IP. Productivity increased only slightly in 2010 and in 2011 compared to 2009. This is partially due to the fact that the production of the like product is highly automated and requires a small number of personnel. However, during the IP it decreased by 24,4 % in comparison with 2011. This was a result of the decrease by around 30 % in production, which negatively impacted the capacity utilization, during the same period.

(236) Therefore, employment decreased during the IP, responding to the trend in the Union production of the like product during the IP.

6.5. *Magnitude of the subsidy margin and recovery from past subsidy*

(237) All subsidy margins are significantly above the de minimis level. Given the volume and prices of imports from the country concerned, the impact of the magnitude of the actual margins of subsidy on the Union industry can be considered substantial.

(238) Since this is the first anti-subsidy investigation regarding the product concerned, recovery from past subsidy is not an issue in the assessment.

7. **Microeconomic indicators**

(239) As indicated above, the microeconomic indicators are analysed on the basis of the questionnaire responses provided by the sampled Union producers. For the majority of the sampled Union producers 2009 was the year when they made their initial investments and started the production of the like product. Although the majority of sampled Union producers were in the glass business before, all companies had to invest in solar glass dedicated facilities, which are completely independent from normal glass production, because the purity and the iron content of the glass is very different, as well as overall quality. In addition, the glass needs to be tempered which is not the case for ordinary glass. Finally, coating is also added. Thus, all the indicators analysed below are significantly influenced by this start-up phase in 2009. In order to show the trends without the distortive impact of the start-up phase of the sampled companies, indexes are also shown from 2010.

7.1. *Prices and factors affecting prices*

(240) The average sales prices of the sampled Union producers to unrelated customers in the Union developed as follows over the period considered:

Table 7

Average sales prices in the Union

	2009	2010	2011	IP
Average unit selling price on the Union market (EUR/m^2)	10,64	9,07	8,91	8,20
Index 2009	*100*	*85*	*84*	*77*
Index 2010	*117*	*100*	*98*	*90*
Unit cost of production (EUR/m^2)	13,13	8,38	8,44	9,34
Index 2009	*100*	*64*	*64*	*71*
Index 2010	*157*	*100*	*101*	*112*

Source: Union producers' questionnaire replies.

(241) Unit sales prices fell continuously throughout the period considered, but the decrease in prices was particularly pronounced during the IP when they dropped by 7,9 % in comparison with 2011, by 9,5 % in comparison with 2010 and by 23 % in comparison with 2009. The decline in sales prices of Union producers was slower than the trend observed for the sales prices of the imported products from the country concerned. For example, the drop in Chinese prices was 11 % between 2011 and 2012, while Union prices dropped by 8 % during the same period.

(242) Despite the big difference between the Union industry's average unit selling price and the Chinese import prices, as explained in Section D.4.2 above, the actual undercutting based on a comparison per product type was much lower, i.e. between 10,6 % and 26,7 % during the investigation period. This is due to the fact that not all product types that were produced by the Union industry were exported by the sampled Chinese exporting producers.

(243) Following disclosure, the GOC argued that the Commission has not taken into account the difference in the product types exported by the Chinese exporting producers and those sold by the Union producers while assessing the average Chinese prices. The mentioning of the fact that there was a big difference between the average selling price of the Union industry and the average selling price of the Chinese exporting producers allegedly led to a distorted presentation of the facts because of the gap between the Union sales prices and Chinese import prices.

(244) As indicated above, the Commission made a detailed comparison per product type for the purpose of undercutting which is undeniably part of the injury analysis. In addition, it clearly indicated the cause of the differences: the fact that not all product types produced by the Union industry were produced by the Chinese exporting producers. Consequently, it cannot be argued that the Commission made a misleading and distorted presentation of the facts.

(245) The unit cost of production increased by more than 10 % between 2011 and the IP, while it remained relatively stable between 2010 and 2011. The cost of production generally followed the trend of the sales price between 2009 and 2011. The increase in the unit cost of production in 2012 was due to decrease in production volume.

(246) The GOC also claimed that the decrease in the average unit selling price during the period considered was caused, among others, by the achieved production efficiencies. In addition, the increase of the unit cost of production in 2012 was arguably not caused by the decrease in production volume but by the increase in production capacity.

(247) Indeed, the efficiency gains during the 2009-2011 period reduced the unit cost of production and thus contributed to the decrease in the unit selling price. However, the Commission established that during the IP the average selling price level fell way below the average unit cost of production, thus covering only 88 % of the latter. At the same time, the increase of production capacity of the sampled companies could not have caused the rise in their unit cost of production. Indeed, their production capacity increased only by 2,6 % between 2011 and 2012, while their average unit cost of production increased by 10,6 % during the same period. Consequently, these claims are rejected.

7.2. *Labour costs*

(248) The average labour costs of the sampled Union producers developed as follows over the period considered:

Table 8

Average labour costs per employee

	2009	2010	2011	IP
Average costs per employee (EUR)	45 232	44 503	48 288	50 615
Index 2009	*100*	*98*	*107*	*112*
Index 2010	*102*	*100*	*109*	*114*

Source: Union producers' questionnaire replies.

(249) Between 2009 and the IP, the average labour costs per employee continuously increased, overall by 12 %. However a major increase by 4,8 % took place between 2011 and the IP. The overall increase of labour costs can be partly explained by costs incurred by some Union producers linked to the idling of plants between 2011 and the IP, in other words, the need to pay employees despite the fact that they were actually not working.

7.3. *Inventories*

(250) Stock levels of the sampled Union producers developed as follows over the period considered:

Table 9

Inventories

	2009	2010	2011	IP
Closing stocks (1 000 m^2)	1 540	1 875	1 657	1 778
Index 2009	*100*	*122*	*108*	*115*
Index 2010	*82*	*100*	*88*	*95*

Source: Union producers' questionnaire replies.

(251) Stocks increased by 7,3 % between 2011 and the IP and by 15 % between 2009 and the IP, while they dropped by 11,6 % between 2010 and 2011.

(252) After disclosure, the GOC claimed that the trends in stocks are irrelevant since their increase in absolute and relative terms was very low.

(253) Given the price developments, it is not rational for a producer to keep high stocks, because their value reduces rapidly. Union producers would therefore be expected to hold limited stocks for the like product. Therefore, the increase in stocks for the like product between 2011 and the IP, although quite limited, is a relevant indicator in establishing if the Union industry suffered material injury. The high volume of stocks in absolute terms in 2010 has to be seen against the background that sales were much higher in that year than in the IP.

7.4. *Profitability, cash flow, investments, return on investments and ability to raise capital*

(254) Profitability, cash flow, investments and return on investments of the sampled Union producers developed as follows over the period considered:

Table 10

Profitability, cash flow, investments and return on investments

	2009	2010	2011	IP
Profitability	– 20,3 %	8,3 %	8,2 %	– 14,5 %
Index 2009	*100*	*241*	*240*	*129*
Index 2010	*– 244*	*100*	*99*	*– 174*
Cash flow (1 000 EUR)	– 21 550	29 574	33 425	6 200
Index 2009	*100*	*337*	*355*	*229*
Index 2010	*– 73*	*100*	*113*	*21*
Investments (1 000 EUR)	46 087	18 230	7 633	10 712
Index 2009	*100*	*40*	*17*	*23*
Index 2010	*253*	*100*	*42*	*59*

	2009	2010	2011	IP
Return on investments	– 6,9 %	9,6 %	13,3 %	– 11,5 %
Index 2009	*100*	*339*	*393*	*66*
Index 2010	*– 72*	*100*	*139*	*– 120*

Source: Questionnaire replies of the Union producers.

(255) Profitability of the sampled Union producers was established by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of such sales.

(256) In 2009 most of the sampled Union producers incurred losses, which, as explained in section D.7, were mainly due to the fact they started their production of the like product at that time. In 2010 the average profit was already 8,31 %. Subsequently the profitability slightly decreased in 2011 when the subsidised imports started increasing. Finally, the industry suffered significant losses during the IP, notably a drop by 276,6 % in comparison with 2011.

(257) The trend in net cash flow, which is the ability of the sampled Union producers to self-finance their activities, had a pronounced drop of 81 % between 2011 and the IP. It was increasing progressively as from 2010 and overall it increased over the period considered.

(258) The return on investments was expressed as the profit in percentage of the net book value of investments.

(259) Table 10 shows that after the start-up phase in 2009 when industry made major investments in the like product, investments constantly decreased between 2009 and 2011 and then increased in the IP. However, investments remained at low level in the IP in comparison with 2009 levels. The investments made in the IP were mainly linked to R & D as well as improving and maintaining production technology and process in order to improve efficiency. In particular, the industry invested in new product types that are not imported from the PRC during the same period and that are research and innovation intensive.

(260) By contrast, the return on investments decreased by 34 % between 2009 and 2012. However, it constantly increased before the IP, in other words, it increased by 293 % between 2009 and 2011, but it dropped by 186 % during the IP in comparison with 2011. The drop in 2012 is a logical consequence of the fact that the Union industry suffered a loss during the IP.

(261) As far as the ability to raise capital is concerned, it has been found that there was a constant deterioration of the ability of the Union industry to generate cash for the like product and, consequently, a weakening of the financial situation of the Union industry.

8. **Conclusion on injury**

(262) The analysis of the situation of the Union industry shows a clear downward trend of most of the injury indicators. Against a generally increasing consumption, overall production increased in the period considered. Although the volume of sales increased, the market share of the Union industry shrank in the period considered due to stronger increase of consumption during that period. Average sales price fell sharply during the period considered, negatively impacting all the financial performance indicators such as profitability, cash flow, return on investments and ability to raise capital.

(263) Over the period considered, the overall Union industry's sales volume increased. However, the increase in sales volumes of the Union industry was accompanied by a significant decrease in average sales price, as well as in the Union industry's market share.

(264) In view of the above, the investigation confirmed in particular the fact that the Union industry's sales prices are below their production costs during the IP, thus having a negative effect on the Union industry's profitability, reaching significant negative levels during the IP.

(265) However, capacity developed positively between 2009 and the IP. In addition, although investments did decrease between 2009 and the IP, they increased between 2011 and the IP. This is due to the fact that, as explained in Section D.7.4 above, the sampled companies continued investing in the like product by, amongst other things, concentrating on product types in market niches where there are no exports of these particular product types yet from the country concerned and which are research and innovation intensive. At the same time, it is evident that the Union industry also needs to be able to produce and sell the high volumes of the more basic product types (which are currently in competition with the subsidised imports from the PRC) in order to dilute fixed costs and achieve economies of scale.

(266) After disclosure, the GOC claimed that there is inconsistency in the Commission's assessment as it stated that investments were mainly in R & D while it also argued that capacity was increased in the IP in anticipation of the increased demand. These statements are not inconsistent but complementary: the investments in new product types during the same period inevitably also lead to the increase in capacity. In addition, even though such investments indeed increase the costs of the Union industry, they are also an important indicator that the industry is doing its best to remain competitive.

(267) Consequently, it can be concluded that the Union industry not only suffered material injury during the IP, but also actively sought ways to reduce its exposure to the subsidised imports of the product concerned by developing innovative products which are not yet imported from the country concerned.

(268) In the light of the foregoing, it is concluded that the Union industry suffered material injury within the meaning of Article 8(5) of the basic Regulation.

E. **CAUSATION**

(269) In accordance with Article 8(6) and (7) of the basic Regulation, it was examined whether the subsidised imports from the country concerned have caused injury to the Union industry to a degree that may be considered as material. Known factors other than the subsidised imports, which could at the same time have injured the Union industry, were also examined in order to ensure that the possible injury caused by these other factors was not attributed to the subsidised imports.

1. **Effect of the subsidised imports**

(270) The investigation showed that subsidised imports increased over the period considered, increasing their volumes by 596 % and their market share by 366 %. Therefore, it is confirmed that both the volume and market share of imports for the product concerned increased considerably during the period considered. There was a clear coincidence in time between the increase in subsidised imports and the loss of market share of the Union industry. In other words: imports grew considerably faster than the Union market and Union producers lost market share to Chinese subsidised imports. The investigation also established that as mentioned in Section D.4.2 above, the subsidised imports undercut the prices of the Union industry during the IP.

(271) The investigation showed that the prices of the subsidised imports decreased by 27,2 % during the period considered and led to even higher differences between the prices of the Union producers and those of the exporting producers. Against this significant price pressure, the Union industry underwent considerable effort to decrease its production costs. Despite these efforts the exceptionally low level of Chinese import prices forced the Union industry to further decrease its sales price to unprofitable levels. After the start-up phase in 2009, the Union producers achieved stable profit levels in 2010 and 2011. During the IP, however, Union producers recorded significant losses.

(272) After disclosure, several interested parties contested the Commission's conclusion that there is a causal link between the material injury suffered by the Union industry and the subsidised imports from the PRC. They claimed that there is no coincidence in time between the injury and the increased imports from the country concerned. This is due to the fact that between 2009 and 2011 Chinese imports increased significantly. Furthermore, the average price of Chinese imports in 2011 was 4,96 EUR/m^2, an amount near to that of 2012 (4,38 EUR/m^2).

(273) The same parties contended that the conclusion that the injury suffered by the Union industry should be attributed to the Chinese imports in 2012 is at odds with its findings that the Chinese imports had allegedly no negative impact the year before, even though the average import price was very similar.

(274) The parties also claimed that the coincidence in time between the material injury suffered and the subsidised Chinese imports cannot be assessed on the basis of the whole period considered from 2009 to the end of the IP, without taking into account the intervening trends observed during this period.

(275) From the start of the period considered to the end of the IP, imports rose by 596 %, with an increase by 321 % in their market share. Import prices dropped by 27,2 % over the period considered.

(276) It is correct that the Union industry's profit margin in 2011 was only slightly lower than in 2010, despite the high increase of imports from the PRC already in 2011. However during 2011 the Union consumption of solar glass increased significantly, that is to say by 20,4 % between 2010 and 2011, while imports from the PRC increased by 150 % over the same period. In the IP, whereas consumption indeed dropped by slightly more than 19 %, the volume of Chinese imports further increased by more than 35 %. This clearly shows the coincidence in time between the material injury suffered by the Union industry in the IP and the strong increase of the subsidised Chinese imports. Also, logically it takes some time before some of the negative effects of the increased subsidised imports are felt by the Union producers (for example loss of clients, incur of losses, reduction of return on investments and cash flow, etc.). Therefore, the claim is rejected.

(277) The Commission also analysed the intervening trends during the period considered. The fact that indeed in 2011 the Union industry was still profitable, even though Chinese imports already increased in that year, does not affect the conclusion that in the IP there was a coincidence in time between the injury suffered by the Union industry and the continuing increase in subsidised Chinese imports.

(278) In the IP, whereas consumption dropped by slightly more than 19 %, the Chinese exporting producers:

(a) increased their market share by 12,4 percentage points compared to 2011 while the Union industry's market share dropped by 12,3 percentage points;

(b) increased the volumes of Chinese imports by more than 35 % against a drop of 32 % in the sales of the Union industry; and

(c) reduced further their already very low export prices by more than 10 % and undercut the Union industry prices by up to 26,7 % thereby contributing to the losses suffered by the Union industry in the IP.

(279) Based on the above analysis, the Commission concludes that the presence of subsidised imports and the considerable increase of their market share at prices constantly undercutting those of the Union industry caused the material injury suffered by the Union industry.

2. **Effects of other factors**

2.1. *Imports from third countries*

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

Table 11

Imports from third countries (1 000 m^2)

Third Countries	2009	2010	2011	IP
Volume (m^2)	700	886	1 287	1 023
Index	*100*	*127*	*184*	*146*
Market share	4,2 %	3,1 %	3,8 %	3,7 %
Index	*100*	*74*	*90*	*88*
Average price EUR/m^2	10,50	10,09	9,60	8,40
Index	*100*	*96*	*91*	*80*

Source: Glass for Europe and the complaint.

(281) The volume of imports from other third countries during the period considered increased by 46 %, in line with increase in Union consumption. Their market share slightly decreased during the IP in comparison with 2011 (3,7 %) but overall it remained stable over the period considered. Turkey is the second largest exporter after the PRC, followed by India.

(282) The information available as regards imports from all third countries shows that the average import price was higher than the average Chinese import price. This is also valid for unit price per particular types of the product concerned. On the other hand, the third countries' average import price was similar or higher than the Union industry's average price.

(283) In view of the low overall import volumes and market shares from third countries as well as their price levels, the Commission concludes that third country imports could not break the causal link between the subsidised imports and the injury suffered by the Union industry.

2.2. *Export performance of the Union industry*

(284) The volume of exports of the sampled Union producers developed as follows over the period considered:

Table 12

Export performance of the sampled Union producers

	2009	2010	2011	IP
Export sales value (1 000 EUR)	19 313	19 814	27 419	7 001
Index	*100*	*103*	*142*	*36*
Export sales volume (1 000 m^2)	1 460	1 713	2 708	760
Index	*100*	*117*	*185*	*52*
Average price (EUR/m^2)	13,22	11,56	10,12	9,21
Index	*100*	*87*	*77*	*70*

Source: questionnaire replies of the Union producers.

(285) Export sales of the sampled Union producers increased between 2009 and 2011, but dropped suddenly in the IP by 74 % in value and by 71,9 % in volume. Based on the replies of the sampled Chinese exporters, this appears to be due to very low prices of Chinese exports to the Union industry's major destinations of exports (namely, US, Canada).

(286) Export sales of the sampled Union producers constituted 20 % of their total sales in volume in 2009 (in the start-up phase), during 2010 11 % and during the peak year of 2011 only 14 %. 2012 showed a further decrease to 5 %.

(287) The Union market, being one of the largest in the world, is the main market for the Union industry and not third country markets. Also, the fact that solar glass is relatively heavy and fragile translates into additional costs when transported over a distance (due to breakage and corrosion). The investigation also confirmed that the reduced export performance is mainly due to the competition with low priced Chinese exports also in third country markets. Consequently, the Commission cannot conclude that the deteriorated export performance of the sampled Union producers breaks the causal link between the subsidised imports and the injury suffered by the Union industry.

(288) After disclosure, several parties contested the Commission's findings that the drop of export sales of the sampled Union producers during the IP was most probably due to very low prices of Chinese exports to the Union industry's major destinations of exports (namely US, Canada). They considered that this conclusion is unwarranted since Chinese exports were present also in 2011 and thus there is no reason why the impact should have occurred only in 2012. They were also of the view that the actual reason for their low export sales was the fact that the Union industry was not competitive and, when world market prices decreased, the Union industry could not remain competitive. Consequently, the parties claimed that the drop in export sales of the Union industry during the IP further contributed to the injury suffered.

(289) The Commission rejects these claims for the following reasons. The Union market is still the main market for the Union industry and not third country markets. Also, the additional costs incurred when transported over a distance (due to breakage and corrosion) can be compensated, only if the price level in third countries is sufficiently high.

This seems not to be the case. Indeed, on the basis of the information at the Commission's disposal from the questionnaire replies of the sampled exporting producers, the prices of the Chinese exports to the Union industry's main export destinations were indeed very low and decreased even further during the IP in comparison with 2011. This shows that the reduced export performance of the Union industry is mainly due to the increasingly low priced Chinese exports, also in third country markets as confirmed during the investigation.

(290) The same parties also claimed that the investigation concerned the Union market and did not assess any alleged unfair pricing in third country markets.

(291) In addition, the findings by the EU institutions, even assuming they were correct, allegedly attributed injury caused by other factors to the subsidised imports into the Union. Thus the alleged low-priced or subsidised Chinese exports to third countries were not the subsidised imports into the EU and, as such, qualified as another factor, the injurious effects of which could not be attributed to the subsidised imports.

(292) The Commission rejects this claim. It did not investigate whether prices of imports of the PRC to third countries are dumped and/or subsidised. It merely established, on the basis of export prices to third countries which were submitted by the sampled exporting producers, that those prices have been constantly decreasing in the recent years.

(293) In the same vein, the Commission analysed the price decrease of the imports from the PRC to third countries as a separate factor and did not attribute it to the subsidised imports into the Union. Indeed, this fact was only used as a possible explanation for the reduced Union industry's exports to its main third countries destinations in the context of the fact that those markets were not and have never been the main markets for the Union industry. Even in its peak years 2010 and 2011, more than 85 % of the Union industry sales were sold on the Union market.

(294) Therefore, the Commission concludes that the deteriorated export performance of the sampled Union producers cannot break the causal link between the subsidised imports and the injury suffered by the Union industry.

2.3. *Development of consumption and capacity*

(295) As mentioned in Section D.3 above, Union consumption increased between 2009 and the IP by 65 %. It had its peak in 2011 when it increased by 105 % in comparison with 2009. However, the Union industry could not fully benefit from this increase in consumption. Its overall sales increased significantly until 2011, but grew slower than the market. They then decreased also in overall terms during the IP. Its market share constantly fell during the period considered reaching a drop of 25,7 % during the IP in comparison with 2009 (– 15,8 % in comparison with 2011). On the contrary, both the Chinese market share and sales volume increased significantly, even when consumption fell between 2011 and IP, resulting in an increase of 68,4 % between 2011 and the IP and an overall increase of 321 % during the whole period. The increase of Chinese imports was 596 % during the period considered.

(296) As the Union consumption increased in the period considered, its development is such that reinforces the causal link between the increasing subsidised imports and the injury suffered by the Union industry and it is not itself a cause of injury to the Union industry. In addition, even in the IP, when consumption decreased, Chinese subsidised imports were able to further increase their market share to the detriment of the Union industry.

(297) After disclosure, several parties claimed that the injury suffered by the Union industry was due to the drop in Union consumption. This is allegedly the only factor which appeared to drop for the first time in 2012 and to which the injury can be reasonably linked, while the Chinese imports started already in 2011 at prices comparable to those in 2012.

(298) Indeed, in 2012 consumption dropped in comparison with the previous years. However, the Commission's analysis runs from the start of the period in 2009 considered to the end of the IP and in this period Union consumption increased in overall by 65 %. During the period considered the market share of the Union industry constantly and considerably decreased, that is to say by 25,7 % in overall, while the market share of the Chinese imports increased by 321 %. The increase of Chinese imports was 596 % during the period considered.

(299) In addition, in the IP the Union consumption was still at a comparable level as in 2010, while, as indicated in table 10 above, 2010 was the year when the Union industry achieved a reasonable profit. Therefore, the drop in the Union consumption during the IP cannot, in itself, have led to the losses suffered by the Union industry in the IP. In addition, the Union industry's market share dropped by 26,6 % between 2010 and 2012, while the market share of the Chinese imports increased by 318 % during the same period. Finally, if the drop in consumption during the IP should have inflicted the injury suffered by the Union industry, then the drop should have also affected the Chinese imports. However, this was clearly not the case. On the contrary, during the IP the Chinese imports significantly increased both in volume and in market share.

(300) In view of the above considerations, the Commission rejects this claim. Therefore, the Commission concludes that the decrease in consumption in the IP could not break the causal link between the subsidised imports and the injury suffered by the Union industry.

(301) Regarding the production capacity of the Union industry as set out in Table 4 above, its increase clearly followed the trend in the increase of Union consumption until the end of 2011. The investigation revealed that the main reason for the increase of the production capacity between 2011 and the IP with 12,5 % was the entry into the solar glass market of one company. Production capacity of all other companies on the market slightly decreased during the same period. Consequently, the overall trend in the Union industry's capacity development followed the trend in Union consumption. The Commission thus considers that the high production capacity of the Union industry, which was already high at the start of the period considered and which remained high during the IP, could not break the causal link between the subsidised imports and the injury suffered by the Union industry.

(302) After disclosure, several parties argued that the Commission failed to take into account the alleged overcapacity as an important cause of injury. During the period considered the increase in capacity was allegedly not justified by the increase in consumption as the Union industry experienced a constant huge gap between production capacity and consumption which is, in their opinion, not economically viable. They further claimed that the fact that there was a new entrant on the market between 2011 and the end of the IP contributed to the injury suffered as it increased domestic competition.

(303) The parties also claimed that the decreasing Union consumption, the increasing production capacity, combined with a drop in export sales, resulted in a low capacity utilisation rate. This low utilisation rate caused high fixed costs, which, in their opinion, severely impacted the Union solar glass industry.

(304) The Commission observes that the level of capacity of the whole Union industry has constantly been higher than the total Union consumption during the whole period considered. Nevertheless, this has not prevented the sampled Union industry companies to achieve profits during the two years prior to the IP, while they incurred significant losses of – 14,5 % only in the IP.

(305) In addition, the capacity of the sampled Union producers increased only by 4 % between 2010 and 2011 and by 2,6 % between 2011 and the IP, resulting in a modest overall increase by 6,7 % between 2010 and the IP.

(306) Consequently, the difference between the consumption and the capacity existed during the whole period considered and, even though slightly higher in the IP, cannot explain the huge losses incurred by the sampled companies in the IP. As a result, the Commission rejects the claim that the Union industry's level of capacity is not economically viable.

(307) Regarding the argument that the new entrant in 2012 contributed to the injury suffered by the Union industry, the Commission observes that this new entrant, even though it had installed a high capacity, had very limited production and sales volumes, in the range of 2 % of total EU sales, during the IP. As a result, its entry had hardly an impact on the performance of the Union industry as a whole, except that it significantly inflated the latter's capacity and capacity utilisation data. Indeed, without this company's data, the capacity of all other Union producers actually decreased between 2011 and 2012.

(308) The investigation did not confirm either that the solar glass industry is severely impacted by fixed costs. In fact, the average fixed costs of the sampled Union producers were in the range of 25 %-35 % of the total costs of production during the IP. In the preceding years 2010 and 2011, the percentage of fixed costs was slightly lower, but still within the same range. This clearly shows that the high capacity in the IP had obviously an

impact on the cost of production, but its impact was not significant and cannot explain the high losses incurred in the IP, in particular, compared to the profits achieved in previous years. In addition, the capacity utilisation rate of the sampled Union producers went down compared to previous years but was still at the level of 65 % in the IP.

(309) Finally, in its analysis the Commission has also taken into account that the installed capacity can be adapted for the production of other types of glass, which fall outside the scope of this investigation. Accordingly, also because of this element the Commission disagrees with the interested party that the high installed capacity is economically not viable,

(310) In view of the above, the Commission rejects the claims put forward by the parties and reiterates that the developments in consumption, capacity and capacity utilisation during the period considered, analysed both separately and cumulatively, are not such as to break the causal link found between the material injury suffered by the Union industry and the subsidised imports.

2.4. *Trends in solar modules*

(311) According to the information at the Commission's disposal [1], around 80-85 % of solar glass sales are made to solar modules producers (Crystalline silicon photovoltaic modules and thin-film photovoltaic modules), and around 15-20 % of the sales are made to producers of solar thermal flat plate collectors producing hot water. Consequently, the trends observed in solar modules have an important impact on the consumption of solar glass.

(312) After disclosure, two parties claimed that, in addition to the development in consumption of the product concerned, the injury suffered by the Union industry was also caused by the drop in consumption of solar modules and the losses suffered by this industry in the end of 2011/beginning of 2012. The impact of the financial distress of the solar panels producers on the solar glass market allegedly started to appear in the end of 2011 and in 2012, due to the necessary time lag between the two events.

(313) Consumption of solar modules increased constantly throughout the same period, i.e. 2009-2012, and even though there was a decrease in 2012, the level of consumption remained 221 % higher than in 2009 and 44 % higher than in 2010 [2]. In addition, it was established that while demand for modules in the Union was initially generated by financial support schemes, mainly feed-in-tariffs (FITs), it could not be concluded that the FITs cutbacks (at the end of 2011, beginning of 2012) had broken the causal link between subsidised imports and injury [3]. This was due to the fact that demand for solar modules remained relatively high over the same period 2009-2012.

(314) Consequently, the level of consumption of solar modules, and as a result the demand of solar glass, remained high during the period considered. Its slight decrease in 2012 cannot be regarded on its own as a factor such as to break the causal link established between the subsidised imports from the PRC and the material injury by the Union industry.

(315) Similarly, since the demand for solar modules remained relatively high over the period 2009-2012 and the demand of solar glass increased by 65 % over the same period, the impact on solar glass consumption of the deterioration of the financial situation of solar modules producers in the end of the 2011/beginning of 2012 cannot be regarded on its own as a factor to be such as to break the causal link established between the subsidised imports of solar glass from the PRC and the material injury suffered by the Union industry.

(316) In view of the above, the Commission confirms that the development of consumption of solar modules cannot be regarded on its own as a factor such as to break the causal link established between the subsidised imports from the PRC and the material injury suffered by the Union industry.

[1] Complainant's data cross-checked with Union producers' questionnaire replies.

[2] Tables 1-a and 1-b in recital 108 of Commission Regulation (EU) No 513/2013 of 4 June 2013 imposing a provisional anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China and amending Regulation (EU) No 182/2013 making these imports originating in or consigned from the People's Republic of China subject to registration (OJ L 152, 5.6.2013, p. 5) ('Solar Panels Provisional Regulation'). According to recital 20 and onwards of the Solar Panels Provisional Regulation, the product covered by that investigation is crystalline silicon photovoltaic modules or panels and cells and wafers of the type used in crystalline silicon photovoltaic modules or panels. Therefore, thin-film photovoltaic modules are not subject to that investigation and their consumption is not covered.

[3] See recital 107 and onwards of the Solar Panels Provisional Regulation. The findings of the Solar Panels Provisional Regulation contained in recitals 107 to 109 were confirmed in recitals 245 to 265 of the Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ L 325, 5.12.2013, p. 1).

3. **Conclusion**

(317) The investigation has established a causal link between the material injury suffered by the Union industry and the subsidised imports from the PRC. The Commission analysed other possible causes of injury, such as imports from other third countries, export performance of the Union industry, changes in the patterns of consumption and of production capacity or the market situation of some of the users of the product concerned. None of them, analysed both individually and cumulatively, were found to be such as to break the causal link established between the subsidised imports from the PRC and the material injury suffered by the Union industry.

(318) Based on the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the subsidised imports, it is concluded that the subsidised imports from the country concerned have caused material injury to the Union industry within the meaning of Article 8(6) of the basic Regulation.

(319) Post IP several Union solar glass producers have publicly announced cessation of production operations which has inevitably shifted significant operating capacity to idle capacity. This further reinforces the causal link established above and demonstrates the devastating effect that subsidised imports have on the Union industry.

F. **UNION INTEREST**

(320) In accordance with Article 31 of the basic Regulation, the Commission examined whether, despite the conclusion on injurious subsidy, it was clearly not in the Union interest to adopt measures in this case. The analysis of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, raw materials suppliers and users of the product concerned.

1. **Interest of the Union industry**

(321) The Union industry directly employed about 860 people in the IP in the production and sale of the like product. The investigation established that the Union industry has suffered material injury caused by the subsidised imports from the country concerned during the investigation period. Some Union producers were already forced to close down their production facilities while some others have faced insolvency ([1]). In the absence of measures, a further deterioration in the Union industry's economic situation appears very likely.

(322) It is expected that the imposition of anti-subsidy duties will eliminate the trade-distorting effects of injurious subsidisation and restore effective competition on the Union market, allowing the Union industry to align the prices of the like product to reflect the costs of production thus improving its profitability. It can also be expected that the imposition of measures would enable the Union industry to regain at least part of the market share lost during the period considered, with a positive impact on its overall financial situation.

(323) Moreover, the Union industry should be able to have better access to capital and to further invest in R & D and innovation in the solar glass market.

(324) Finally, it is likely that the Union producers who were forced to cease production as a result of the pressure of the Chinese subsidised imports might restart their business activity. Overall, under this scenario, not only the existing jobs would be secured, but there would also be a reasonable prospect for further production expansion and increase in employment.

(325) Should measures not be imposed, further losses in market share are expected with a further deterioration of the Union industry's profitability. This would be unsustainable in the short to medium-term. As a consequence, in addition to the large number of Union producers that were already forced out of the market, other producers could be facing insolvency which would in the short to medium term lead to a likely disappearance of the Union industry with the consequent significant impact of the existing jobs.

(326) It is therefore concluded that the imposition of the anti-subsidy duties would be in the interest of the Union industry.

([1]) See for example: http://www.lesoir.be/421477/article/actualite/fil-info/fil-info-economie/2014-02-07/agc-confirme-l-arret-du-verre-solaire-roux from 7 February 2014.; http://www.pv-magazine.com/news/details/beitrag/centrosolar-glas-must-declare-insolvency_100013055/#axzz2tDr5dhxV from 16 October 2013.

2. **Interest of unrelated importers and traders**

(327) For the two cooperating importers the major business activity consisted of trading the product concerned. Both of them had diversified sources of the product concerned, that is to say, they were not only sourcing from the PRC, but also from the Union and third countries.

(328) An argument was put forward that the imposition of measures on the product concerned would negatively affect the importers' business activity. Firstly, the imposition of duties should not result in the elimination of all imports from the PRC. Secondly, although it can be expected that the imposition of measures may have a negative effect on the financial situation of the importers importing only or mainly from the PRC, in view of the possibility to source from third countries, the importers can be expected to be flexible and shift their sources of supply if deemed necessary.

(329) It is therefore concluded that the imposition of measures at the proposed level may have a certain negative impact on the situation of unrelated importers of the product concerned, but that its impact is mitigated by the fact that importers and traders can use other sources of supply, both from third countries and the Union industry, the latter having the capacity to increase its production, and in any case it would not outweigh the positive impact on other parties.

3. **Interest of raw materials suppliers**

(330) No raw materials supplier cooperated with the investigation. In the absence of data from such suppliers, there was no evidence that the imposition of measures would be against the interest of those parties.

4. **Interest of users**

(331) All users that responded are producers of solar modules and/or thermal collectors. Three users are in favour of imposing anti-subsidy duties, arguing that the Union industry produces better quality solar glass which cannot always be supplied by Chinese companies. By contrast, three other users were against the imposition of anti-subsidy measures. Those users expect that the imposition of anti-subsidy duties would have a negative impact on their business. They expect not to be able to pass on the increase in prices to final consumers given the dire situation of the solar modules industry.

(332) According to the information submitted by users, solar glass constitutes only around 6-8 % of the total costs of the solar modules. Thus, solar glass constitutes only a limited part of the costs and of the final value of the photovoltaic modules. In addition, it can be estimated that if anti-subsidy duties are imposed on solar glass imported from the PRC, the impact on the total costs of the solar modules should be less than 1 %. This is mainly due to the fact that cooperating users buy significant quantities of the solar glass from Union producers.

(333) Accordingly, while a possible imposition of anti-subsidy duties will most probably slightly increase input prices for solar modules compared to the counterfactual scenario without duties, it is not expected to have a significant negative impact on the costs and on the final prices of the Union solar modules industry.

(334) In addition, some of the users already have other sources of supply such as Turkey and India which would not be negatively influenced by the imposition of anti-subsidy duties. Other users can switch to other sources of supply as well, either from third countries or from the Union industry.

(335) In view of the above, the Commission rejected the arguments brought forward by some of the users against the imposition of measures.

5. **Competition aspects**

(336) One importer argued that since some Union producers participated in a world cartel of flat glass (solar glass is part of it) and were fined by the European Commission in 2007, they are using the anti-subsidy tool as a way of recuperating the losses they made on fines for the cartel and on losing market share in the Union. In addition, if the access to the Union market were to be restricted by means of anti-subsidy duties, there will be stronger incentives for the Union producers to enter into a cartel or other anti-competitive behaviour in respect of products with low volume leverage capabilities in the Union like home furnishing products.

(337) These arguments should be rejected. First, the Commission observes that the cartel has ceased to function in 2007. Therefore, the effects of the cartel in the past had no impact on the industry during the period considered. Second, none of the sampled Union producers was part of the cartel and none of the current Union producers with highest sales volume. Third, the possible imposition of anti-subsidy duties is not expected to have any impact on the competitive behaviour of the Union industry since, on the one hand, it will not change the structure of the Union market and, on the other hand, companies have a general duty to comply with the applicable Union and national competition rules, irrespective of whether duties are imposed or not.

(338) It was also argued by an importer that the imposition of duties would have a negative impact on the Union market of antireflective coating of solar glass. This market, identified by the importer as a related market, is allegedly dominated by the Union producers and the imposition of measures would reinforce their position to the detriment of competing providers of anti-reflective coating. Furthermore, it was stated that importers faced difficulties in obtaining orders from the Union producers or in having such orders delivered within a reasonable period of time and at reasonable prices.

(339) The market of anti-reflective coating is part of the investigation and not a related market. The investigation showed that indeed Union producers during the IP still remained competitive on this niche market despite the relatively higher prices they charge since the market considers their coated products as having a quality advantage. However, no evidence was provided that the Union industry would not be able to meet the demand of a possible increase of antireflective coated solar glass. Consequently, that argument should be rejected.

(340) Regarding the claims that Union producers have refused providing orders or on-time delivery at reasonable prices, it is entirely up to each producer to choose its commercial strategy to the extent that such producer or producers do not enjoy single or joint dominance on the relevant market. There is sufficient competition on the Union market in order to change and/or diversify suppliers. Therefore, that argument should be rejected as well.

6. **Conclusion on Union interest**

(341) In view of the above, it was concluded that, based on an appreciation of all the various interests taken as a whole, the Union interest calls for the imposition of definitive measures on imports of solar glass originating in the PRC.

G. **COUNTERVAILING MEASURES**

(342) In view of the conclusions reached with regard to subsidisation, injury, causation and Union interest, definitive countervailing measures should be imposed in order to prevent further injury being caused to the Union industry by the subsidised imports.

1. **Injury elimination level**

(343) For the purpose of determining the level of these measures, account was taken of the subsidy margins found and the amount of duty necessary to eliminate the injury sustained by the Union producers, without exceeding the subsidy margins found.

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

(345) A profit margin of 8,3 % of turnover is regarded as an appropriate minimum that the Union industry could have expected to obtain in the absence of injurious subsidised imports. This profit margin is based on the average profit achieved by the sampled Union producers in 2010 when the imports of the product concerned were still small and therefore could not yet have distorted the normal conditions of competition.

(346) On this basis, a non-injurious price was calculated for the Union industry for the like product. The non-injurious price was obtained by adding the abovementioned profit margin of 8,3 % to the cost of production during the IP of the sampled Union producers.

(347) The necessary price increase was then determined on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers in the PRC, as established for the price undercutting calculations, duly adjusted for importation costs and customs duties with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the weighted average CIF import value.

(348) Following disclosure, one party contested the profit margin used as a target profit. It argued that the Commission should take into account all other factors which affected profitability in the IP. It claimed that the reasonable target profit could not be higher than 5 %.

(349) The Commission rejects this claim for the following reasons. The target profit used is not based on estimation but on an actual profit achieved by the Union industry prior to the distortion of competition caused by the Chinese subsidised imports. The Commission considers this a reasonable profit, and has also taken into account that the market situation was not significantly different compared to the IP, left aside the impact of the Chinese subsidised

imports. The statement of the party in this respect that the consumption in 2010 was much higher than in 2012 is factually incorrect. As indicated in Section E.2.3 above, the consumption in 2010 was at a similar level to the one in 2012. Also, in 2010 the Union industry was building up capacity in view of the expected strong increase of demand, which affected negatively its profit in that year. Finally, the proposed target profit of 5 % is arbitrary as it is not based on any data or actual calculations and is therefore rejected.

2. **Measures**

(350) In the light of the foregoing, and in accordance with Article 15 of the basic Regulation, a definitive countervailing duty should be imposed on imports of solar glass originating in the PRC at the level of the lower of the subsidy or injury margins found, in accordance with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the subsidy margins found.

(351) 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.

(352) For the cooperating non-sampled Chinese companies listed in the Annex, the definitive duty rate is set at the weighted average of the rates of the sampled companies.

(353) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Company Name	Subsidy margin	Injury margin	Countervailing duty
Xinyi PV Products (Anhui) Holdings Ltd	3,2 %	39,3 %	3,2 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	17,1 %	26,2 %	17,1 %
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	12,8 %	42,1 %	12,8 %
Henan Yuhua New Material Co., Ltd	16,7 %	17,1 %	16,7 %
Other cooperating companies listed in Annex I	12,4 %	33,2 %	12,4 %
All other companies	17,1 %	42,1 %	17,1 %

(354) The above countervailing measures are established in the form of ad valorem duties, that is to say, in proportion to the value of the import.

(355) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to those companies selected into the sample, with the average of the duty rates imposed on them being applied to the cooperating companies not selected into the sample.

(356) Those duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in Article 1, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(357) Any claim requesting the application of an individual company countervailing duty rate (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

(358) In order to ensure proper enforcement of the countervailing duty, the residual duty level should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the IP, except if they have cooperated in the investigation.

(359) Following disclosure, the complainant argued that the *ad valorem* anti-dumping and countervailing duties were not effective and requested the Commission to impose measures in the form of a minimum import price ('MIP'). In addition, several users also proposed a MIP. The reasons put forward by the parties and the reasons why the Commission rejected these requests are set out in recitals 144 to 168 of the Commission Implementing Regulation (EU) No 470/2014 [1] (the definitive anti-dumping Regulation).

(360) After disclosure, the three sampled exporting producers as well as Henan Yuhua offered price undertakings in the form of MIPs. The Commission rejected the proposed undertakings for the reasons contained in recitals 172 to 179 of the definitive anti-dumping Regulation.

(361) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 25(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is imposed on imports of 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 150 K (measured according to EN 12150) and having a mechanical strength of 90 N/mm^2 or more (measured according to EN 1288-3), currently falling within CN code ex 7007 19 80 and originating in the People's Republic of China. Coated solar glass (single or double-side coated) shall fall under TARIC code 7007 19 80 19 and uncoated solar glass shall fall under TARIC code 7007 19 80 11.

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

Company	Countervailing duty	TARIC additional code
Xinyi PV Products (Anhui) Holdings Ltd	3,2 %	B943
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	17,1 %	B944
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	12,8 %	B945
Henan Yuhua New Material Co., Ltd	16,7 %	B946
Other cooperating companies listed in Annex I	12,4 %	
All other companies	17,1 %	B999

3. The application of the individual countervailing duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the duty applicable to 'All other companies' shall apply.

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

Article 2

Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

— it did not export to the Union the product described in Article 1(1) during the investigation period (1 January 2012 to 31 December 2012),

— it is not related to any of the exporters or producers in the People's Republic of China which are subject to the measures imposed by this Regulation,

[1] 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 (See page 1 of this Official Journal).

— it has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,

Article 1(2) may be amended by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 12,4 %.

Article 3

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

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

Done at Brussels, 13 May 2014.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Name	TARIC additional code
Avic Sanxin Sol-Glass Co. Ltd and Avic (Hainan) Special Glass Material Co., Ltd	B949
Wuxi Haida Safety Glass Co., Ltd	B950
Dongguan CSG Solar Glass Co., Ltd	B951
Pilkington Solar Taicang Limited	B952
Novatech Glass Co., Ltd	B954

ANNEX II

The valid commercial invoice referred to in Article 1(3) must be issued showing the following:

1. The name and function of the official of the entity issuing the commercial invoice.
2. The following declaration:

   'I, the undersigned, certify that the (area in m^2) of solar glass sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.'

3. Date and signature of the official of the entity issuing the commercial invoice.

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