

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 21/2013

of 10 January 2013

extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports of certain open mesh fabrics of glass fibres consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 13 thereof,

Having regard to the proposal from the European Commission,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) By Implementing Regulation (EU) No 791/2011 ⁽²⁾ ('the original Regulation') the Council imposed a definitive anti-dumping duty of 62,9 % on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China ('the PRC') for all other companies than the ones mentioned in Article 1(2) and Annex I to that Regulation. These measures will hereinafter be referred to as 'the measures in force' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

1.2. Request

(2) On 10 April 2012, the European Commission ('the Commission') received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of certain open mesh fabrics of glass fibres originating in the PRC and to make imports of certain open mesh fabrics of glass

fibres consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not, subject to registration.

(3) The request was lodged by Saint-Gobain Adfors CZ s.r.o., Tolnatek Fonalfeldolgozo es Muszakiszovet-gyarto Bt., Valmieras 'Stikla Skiedra' AS and Vitruvan Technical Textiles GmbH, four Union producers of certain open mesh fabrics of glass fibres.

(4) The request contained sufficient prima facie evidence that following the imposition of the measures in force, a significant change in the pattern of trade involving exports from the PRC, Taiwan and Thailand to the Union occurred, for which there was insufficient due cause or economic justification other than the imposition of the measures in force. This change in the pattern of trade stemmed allegedly from the transshipment of certain open mesh fabrics of glass fibres originating in the PRC via Taiwan and Thailand.

(5) Furthermore, the evidence pointed to the fact that the remedial effects of the measures in force were being undermined both in terms of quantity and price. The evidence showed that these increased imports from Taiwan and Thailand were made at prices below the non-injurious price established in the original investigation.

(6) Finally, there was evidence that prices of certain open mesh fabrics of glass fibres consigned from Taiwan and Thailand were dumped in relation to the normal value established during the original investigation.

1.3. Initiation

(7) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission, initiated an investigation by Commission

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 204, 9.8.2011, p. 1.

Regulation (EU) No 437/2012⁽³⁾ ('the initiating Regulation'). Pursuant to Articles 13(3) and 14(5) of the basic Regulation the Commission, by the initiating Regulation, also directed the customs authorities to register imports of certain open mesh fabrics of glass fibres consigned from Taiwan and Thailand.

1.4. Investigation

- (8) The Commission officially advised the authorities of the PRC, Taiwan and Thailand, the exporting producers in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation. Questionnaires were sent to the known producers/exporters in the PRC, Taiwan and Thailand known to the Commission from the request or through the Taipei Representative Office and the Mission of the Kingdom of Thailand to the European Union. Questionnaires were also sent to importers in the Union named in the request. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.
- (9) The anti-circumvention questionnaire was sent to eight companies in Taiwan and to seven companies in Thailand. Some Taiwanese and Thai companies came forward and claimed that they do not want to be considered as interested parties as they do not produce the product under investigation and/or do not have any exports to the Union. The remaining known companies from the two countries concerned did not come forward at all. None of the companies submitted a reply to the questionnaire. The anti-circumvention questionnaire was also sent to 44 companies in the PRC. However, those exporting producers in the PRC neither came forward nor submitted a reply to the questionnaire. Questionnaires were also sent to importers in the Union but none of them came forward nor did they submit replies to the questionnaire.

1.5. Investigation period

- (10) The investigation period covered the period from 1 January 2009 to 31 March 2012 ('the IP'). Data were collected for the IP to investigate, inter alia, the alleged change in the pattern of trade. More detailed data were collected for the reporting period from 1 April 2011 to 31 March 2012 ('the RP') in order to examine the possible undermining of the remedial effect of the measures in force and existence of dumping.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

- (11) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was

made by analysing successively whether there was a change in the pattern of trade between the PRC, Taiwan, Thailand and the Union; if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the product under investigation; and whether there was evidence of dumping in relation to the normal values previously established in the original investigation, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2. Product concerned and the product under investigation

- (12) The product concerned is as defined in the original investigation: Open mesh fabrics of glass fibres, of a cell size of more than 1,8 mm both in length and in width and weighing more than 35 g/m², excluding fibreglass discs, originating in the People's Republic of China, currently falling within CN codes ex 7019 51 00 and ex 7019 59 00.
- (13) The product under investigation is the same as that defined in the previous recital, but consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not.
- (14) The investigation showed that open mesh fabrics of glass fibres, as defined above, exported from the PRC to the Union and those consigned from Taiwan and Thailand to the Union have the same basic physical and technical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Degree of cooperation and determination of the trade volumes

Taiwan

- (15) As stated in recital 9, none of the companies submitted a reply to the questionnaire, i.e. there was no cooperation from the Taiwanese exporting producers, and consequently no on the spot verification visits were carried out. The findings in respect of imports of certain open mesh fabrics of glass fibres from Taiwan into the Union and exports of the product concerned from the PRC to Taiwan had to be made on the basis of facts available in accordance with Article 18(1) of the basic Regulation. In this case Comext data was used to determine overall import volumes from Taiwan to the Union and Chinese national statistics were used for the determination of the overall exports from the PRC to Taiwan.

⁽³⁾ OJ L 134, 24.5.2012, p. 12.

Thailand

- (16) The Thai exporting producers did not cooperate either as they also did not submit replies to the questionnaire, thus no on the spot verification visits were carried out. The findings in respect of imports of certain open mesh fabrics of glass fibres from Thailand into the Union and exports of the product concerned from the PRC to Thailand had to be made on the basis of facts available in accordance with Article 18(1) of the basic Regulation. In this case Comext data was used to determine overall import volumes from Thailand to the Union and Chinese national statistics were used for the determination of the overall exports from the PRC to Thailand.

The People's Republic of China

- (17) There was no cooperation from the Chinese exporting producers. Therefore, findings in respect of imports of the product concerned into the Union and exports of certain open mesh fabrics of glass fibres from the PRC to Taiwan and Thailand had to be made on the basis of facts available in accordance with Article 18(1) of the basic Regulation. In this case Comext data was again used to determine overall import volumes from the PRC to the Union. Chinese national statistics were used for the determination of the overall exports from the PRC to Taiwan and Thailand.
- (18) The import volume recorded in Comext statistics covers a larger product group than the product concerned and the product under investigation. However, based on estimates provided by the Union industry, it could be established that a significant part of this import volume covered the product concerned and the product under investigation. Accordingly, the data could be used to establish a change in the pattern of trade.

2.4. Change in the pattern of trade*Imports of certain open mesh fabrics of glass fibres into the Union*

- (19) Imports of the product concerned from the PRC to the Union dropped dramatically subsequent to the imposition of the provisional measures in February 2011 ⁽⁴⁾ and of the definitive measures in August 2011 by the original Regulation.

Taiwan

- (20) Total exports of the product under investigation from Taiwan to the Union increased significantly in 2011 and particularly following the imposition of the definitive measures in August 2011. Based on Comext data, exports from Taiwan to the Union surged suddenly in the second semester of 2011 whereas they were at insignificant levels in previous years. Those imports exploded further in the quarter January-March 2012, following the

initiation in November 2011 of the anti-circumvention investigation on open mesh fabrics originating in the PRC and consigned via Malaysia ⁽⁵⁾. That trend is confirmed by the corresponding Chinese statistics with regard to exports of open mesh fabrics of glass fibres to Taiwan from the PRC.

Thailand

- (21) As far as Thailand is concerned, the total exports to the Union of the product under investigation also increased sharply in 2011. Based on Comext data, exports from Thailand to the Union exploded in the quarter June-August 2011 whereas they were insignificant in previous years. Those imports also present a further surge in the quarter January-March 2012, following the initiation in November 2011 of the anti-circumvention investigation on open mesh fabrics originating in the PRC and consigned via Malaysia ⁽⁶⁾. That trend is confirmed by the corresponding Chinese statistics with regard to exports of open mesh fabrics of glass fibres to Thailand from the PRC.
- (22) Table 1 shows import quantities of certain open mesh fabrics of glass fibres from the PRC, Taiwan and Thailand into the Union from 1 January 2009 to 31 March 2012.

Table 1

Import volumes (millions of m ²)	2009	2010	2011	1.4.2011-31.3.2012
PRC	294,90	383,72	193,07	121,30
Taiwan	1,33	1,03	10,67	17,07
Thailand	0,66	0,04	10,40	24,11

Source: Comext statistics.

The Comext data is provided in kilograms while the measurement of the product concerned is in square meters. The Union Industry provided conversion rates for the two codes covered by the proceeding which were used to calculate the figures in the Tables.

- (23) The data clearly show that imports from Taiwan and Thailand into the Union were negligible in 2009 and 2010. However, in 2011, following the imposition of the measures, imports surged suddenly and partly replaced the exports from the PRC on the Union market in terms of volume. Moreover, since the imposition of the measures in force, the decrease of the exports from the PRC to the Union has been significant (70 %).

⁽⁴⁾ OJ L 43, 17.2.2011, p. 9.

⁽⁵⁾ OJ L 292, 10.11.2011, p. 4.

⁽⁶⁾ See footnote 5.

Exports from the PRC to Taiwan and Thailand

- (24) A dramatic increase of exports of open mesh fabrics of glass fibres can be observed from the PRC to Taiwan within the same period. From a relatively small number in 2009 (748 000 m²), exports surged to 14,39 million m² in the RP.
- (25) Table 2 shows exports of open mesh fabrics of glass fibres from the PRC to Taiwan from 1 January 2009 to 31 March 2012.

Table 2

Taiwan	2009	2010	2011	1.4.2011-31.3.2012
Quantity (million m ²)	0,75	2,45	7,58	14,39
Yearly change (%)		227	209	90
Index (2009 = 100)	100	327	1 011	1 919

Source: Chinese statistics.

- (26) The same trend can be observed for the exports of open mesh fabrics of glass fibres from the PRC to Thailand. The export volume in 2009 was only 1,83 million m² while in the RP exploded to 41,70 million m².
- (27) Table 3 shows exports of open mesh fabrics of glass fibres from the PRC to Thailand from 1 January 2009 to 31 March 2012.

Table 3

Thailand	2009	2010	2011	1.4.2011-31.3.2012
Quantity (million m ²)	1,83	9,80	25,51	41,70
Yearly change (%)		436	160	63
Index (2009 = 100)	100	535	1 394	2 279

Source: Chinese statistics.

- (28) To establish the trend of the trade flow of certain open mesh fabrics of glass fibres from the PRC to Taiwan and Thailand, Chinese statistics were considered, although they were only available at a higher product group level than the product concerned. In view of Comext data and the estimates provided by the Union industry on the volumes classified under the two CN codes ex 7019 51 00 and ex 7019 59 00, it could however be

established that the product concerned covers a significant part of the Chinese statistics. Therefore, those data could be taken into account.

- (29) Tables 1 to 3 clearly demonstrate that the sharp drop of Chinese exports of open mesh fabrics of glass fibres to the Union was followed by a significant increase of Chinese exports of open mesh fabrics of glass fibres to Taiwan and Thailand and a subsequent drastic increase of Taiwanese and Thai exports of open mesh fabrics of glass fibres to the Union in the RP.

Production volumes in Taiwan and Thailand

- (30) As there was no cooperation from the companies in Taiwan and Thailand, no information could be obtained on the possible levels of the genuine production of the product under investigation in these two countries.

2.5. Conclusion on the change in the pattern of trade

- (31) The overall decrease of the exports from the PRC to the Union and the parallel increase of both exports from Taiwan and Thailand to the Union and of exports from the PRC to Taiwan and Thailand respectively, following the imposition of provisional measures in February 2011 and of definitive measures in August 2011, constitutes a change in the pattern of trade between those countries, on the one hand, and of the exports of those countries to the Union, on the other hand.

2.6. Nature of the circumvention practice

- (32) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stem from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, inter alia, the consignment of the product subject to measures via third countries.

Transshipment

- (33) The Commission has evidence regarding business contacts of Chinese operators with importers in the Union which confirm the existence of transshipment practices via Thailand. In addition the lack of cooperation by any of the producers of the product under investigation in Taiwan and Thailand points to transshipment practices taking place in those countries with regard to open mesh fabrics of glass fibres. Moreover, the recent surge in imports from those two countries indicates that it is due to Taiwanese and Thai traders transshipping Chinese products to the Union.
- (34) The existence of transshipment of Chinese-origin products via Taiwan and Thailand is therefore confirmed.

2.7. Insufficient due cause or economic justification other than the imposition of the anti-dumping duty

- (35) The investigation did not bring to light any due cause or economic justification for the transshipment other than the avoidance of the measures in force on the product concerned. No elements were found, other than the duty, which could be considered as a compensation for the costs of transshipment, in particular regarding transport and reloading, of certain open mesh fabrics of glass fibres originating in the PRC via Taiwan and Thailand.

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

- (36) To assess whether the imported product under investigation had, in terms of quantities and prices, undermined the remedial effects of the measures in force on imports of the product concerned, Comext data was used as the best data available concerning quantities and prices of exports by the non-cooperating companies in Taiwan and Thailand. The prices so determined were compared to the injury elimination level established for Union producers in recital 74 of the original Regulation.
- (37) The increase of imports from Taiwan to the Union from 1,03 million m² in 2010 to 17,07 million m² in the RP was considered to be significant in terms of quantity.
- (38) Also, the increase of imports from Thailand to the Union from 40 000 m² in 2010 to 24,11 million m² in the RP was considered to be substantial in terms of quantity.
- (39) The comparison of the injury elimination level as established in the original Regulation and the weighted average export price (determined in this investigation for Taiwan and Thailand respectively and adjusted for post-importation costs and quality adjustments established in the original investigation) showed significant underselling for both countries concerned. It was therefore concluded that the remedial effects of the measures in force are being undermined in terms of both quantities and prices.

2.9. Evidence of dumping

- (40) Finally, in accordance with Article 13(1) of the basic Regulation it was examined whether there was evidence of dumping in relation to the normal value previously established in the original investigation.
- (41) In the original Regulation the normal value was established on the basis of prices in Canada, which in that investigation was found to be an appropriate market economy analogue country for the PRC. In line with Article 13(1) of the basic Regulation it was considered appropriate to use the normal value as previously established in the original investigation.

- (42) The export prices from Taiwan and Thailand, respectively, were based on facts available, i.e. on the average export price of certain open mesh fabrics of glass fibres during the RP as reported in Comext. The use of facts available was due to the lack of cooperation by any producer of the product under investigation in the two countries concerned.
- (43) For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for differences in transport, insurance and packing costs. Given that there was no cooperation from the producers in Taiwan, Thailand and the PRC, the adjustments had to be established on the basis of the best facts available. Thus, the adjustment for those allowances was based on a percentage calculated as the proportion of the total transport, insurance and packing costs over the value of the sales transactions to the Union with CIF delivery terms provided by the cooperating Chinese exporting producers in the original investigation.
- (44) In accordance with Article 2(11) and 2(12) of the basic Regulation, dumping was calculated by comparing the weighted average normal value as established in the original Regulation and the corresponding weighted average export prices of the two countries concerned during this investigation's RP, expressed as a percentage of the CIF price at the Union frontier duty unpaid.
- (45) The comparison of the weighted average normal value and the weighted average export price as established showed dumping.

3. MEASURES

- (46) Given the above, it was concluded that the definitive anti-dumping duty imposed on imports of certain open mesh fabrics of glass fibres originating in the PRC was circumvented by transshipment via Taiwan and Thailand pursuant to Article 13(1) of the basic Regulation.
- (47) In accordance with the first sentence of Article 13(1) of the basic Regulation, the measures in force on imports of the product concerned, should be extended to imports of the product under investigation, i.e. the same product but consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not.
- (48) In light of the non-cooperation in this investigation, the measures to be extended should be the measures established in Article 1(2) of the original Regulation for 'all other companies', which is presently a definitive anti-dumping duty of 62,9 % applicable to the net, free-at-Union-frontier price, before duty.

- (49) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provides that any extended measure should apply to imports which entered the Union under registration imposed by the initiating Regulation, duties should be collected on those registered imports of certain open mesh fabrics of glass fibres consigned from Taiwan and Thailand.

4. REQUESTS FOR EXEMPTION

- (50) As stated in recital 9 none of the producers in the two countries concerned came forward following initiation. Accordingly, no requests for exemption from the possible extension of the measures in accordance with Article 13(4) of the basic Regulation were made.
- (51) Without prejudice to Article 11(3) of the basic Regulation, the producers in Taiwan and Thailand which did not come forward in this proceeding and did not export the product under investigation to the Union in the RP and which consider lodging a request for an exemption from the extended anti-dumping duty pursuant to Articles 11(4) and 13(4) of the basic Regulation will be required to complete a questionnaire in order to enable the Commission to determine whether an exemption may be warranted. Such exemption may be granted after the assessment of the market situation, production capacity and capacity utilisation, procurement and sales and the likelihood of continuation of practices for which there is insufficient due cause or economic justification and the evidence of dumping. The Commission would normally also carry out an on-the-spot verification visit. The request should be addressed to the Commission, with all relevant information, in particular any modification in the company's activities linked to the production and sales.
- (52) Where an exemption is warranted, the Commission will, after consultation of the Advisory Committee, propose the amendment of the extended measures in force accordingly. Subsequently, any exemption granted will be monitored to ensure compliance with the conditions set out therein.

5. DISCLOSURE

- (53) All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. Following disclosure, comments were received from the Department of Foreign Trade in the Ministry of Commerce of Thailand. They requested to take into consideration the Thai import and export statistics of open mesh fabrics of glass fibres as well. The statistics provided by the Thai authorities were taken into consideration and proved to be a useful source of information. However, they were finally not used for the definitive findings as, Comext data and Chinese national statistics showed more coherent trends. Thus the arguments presented did not give rise to a modification of the definitive findings,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty applicable to 'all other companies' imposed by Article 1(2) of Implementing Regulation (EU) No 791/2011 on imports of open mesh fabrics of glass fibres, of a cell size of more than 1,8 mm both in length and in width and weighing more than 35 g/m², excluding fibreglass discs, originating in the People's Republic of China, is hereby extended to imports of open mesh fabrics of glass fibres, of a cell size of more than 1,8 mm both in length and in width and weighing more than 35 g/m², excluding fibreglass discs, consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not, currently falling CN codes ex 7019 51 00 and ex 7019 59 00 (TARIC codes 7019 51 00 12, 7019 51 00 13, 7019 59 00 12 and 7019 59 00 13).

2. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not, registered in accordance with Article 2 of Regulation (EU) No 437/2012 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009.

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

Article 2

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate H
Office: N-105 08/20
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax +32 22956505

2. In accordance with Article 13(4) of Regulation (EC) No 1225/2009, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Implementing Regulation (EU) No 791/2011, from the duty extended by Article 1.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EU) No 437/2012.

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, 10 January 2013.

For the Council

The President

E. GILMORE
