COUNCIL IMPLEMENTING REGULATION (EU) No 1371/2013

of 16 December 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 India and Indonesia, whether declared as originating in India and Indonesia 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 1 of that Regulation. Those measures are the measures in force and the investigation that led to the measures is the original investigation.

(2) The measures in force were previously extended to Malaysia, by Council Implementing Regulation (EU) No 672/2012 [3], and to Taiwan and Thailand, by Council Implementing Regulation (EU) No 21/2013 [4].

1.2 Request

(3) On 25 February 2013, the European Commission ('the Commission') received a request under 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 India and Indonesia, whether declared as originating in India and Indonesia or not, subject to registration.

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

(5) 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, India and Indonesia 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 consignment of certain open mesh fabrics of glass fibres originating in the PRC via India and Indonesia and/or false declaration of origin of the Chinese products.

(6) 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 the increased imports from India and Indonesia were made at prices below the non-injurious price established in the original investigation.

(7) Finally, there was evidence that prices of certain open mesh fabrics of glass fibres consigned from India and Indonesia were dumped in relation to the normal value established for the like product during the original investigation.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 204, 9.8.2011, p. 1.
[3] OJ L 196, 24.7.2012, p. 1.
[4] OJ L 11, 16.1.2013, p. 1.

1.3 **Initiation**

(8) Having determined, after consulting the Advisory Committee, that sufficient *prima facie* evidence existed for the initiation of an investigation under Articles 13(3) and 14(5) of the basic Regulation, the Commission initiated an investigation by Commission Regulation (EU) No 322/2013 ([1]) ('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 India and Indonesia.

1.4 **Investigation**

(9) The Commission officially advised the authorities of the PRC, India and Indonesia, the producers/exporters 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 producers/exporters in the PRC, India and Indonesia known to the Commission or which made themselves known within the deadlines specified in recital 15 of the initiating Regulation. Questionnaires were also sent to importers in the Union. 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.

(10) Two exporting producers in India and one unrelated importer in the Union made themselves known and submitted replies to the questionnaires. Later the Union importer informed the Commission that it imported other products and it did not import any product under investigation in the past. No exporting producer in Indonesia submitted a reply. The following exporting producers in India submitted an exemption form reply:

— Montex Glass Fibre Industries Pvt.Ltd. ('Montex'), and

— Urja Products Pvt.Ltd.

(11) Subsequently, Urja Products Pvt.Ltd. informed the Commission that it does not produce the product under investigation and its products have different technical characteristics and different use (falling within other CN codes). Therefore, a verification visit was carried out only at the premises of Montex.

1.5 **Investigation period**

(12) The investigation period covered the period from 1 April 2009 to 31 March 2013 ('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 2012 to 31 March 2013 ('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**

(13) 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, India, Indonesia and the Union; if that 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 for the product concerned, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2 **Product concerned and the product under investigation**

(14) 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/m^2, excluding fibreglass discs, originating in the PRC, currently falling within CN codes ex 7019 51 00 and ex 7019 59 00.

(15) The product under investigation is the same as that defined in the previous recital, but consigned from India and Indonesia, whether declared as originating in India and Indonesia or not.

(16) The investigation showed that open mesh fabrics of glass fibres, as defined above, exported from the PRC to the Union and those consigned from India and Indonesia 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 **Level of cooperation**

2.3.1 *India*

(17) As stated in recital 10 above, only two Indian companies submitted an exemption form reply. As one of them, Urja Products Pvt.Ltd., was found not to be a producer of the product under investigation, there was only one cooperating company, Montex. The company represented only 1 % of the exports from India to the Union in the RP, compared to overall exports from India. This led to the application of Article 18 of the basic Regulation and findings with regard to India were based on facts available.

([1]) OJ L 101, 10.4.2013, p. 1.

2.3.2 *Indonesia*

(18) As stated in recital (10), no Indonesian companies submitted a questionnaire reply. There was no cooperation from Indonesian companies. This led to the application of Article 18 of the basic Regulation and findings with regard to Indonesia were based on facts available.

2.3.3 *The PRC*

(19) There was no cooperation from the Chinese exporting producers. This led to the application of Article 18 of the basic Regulation and findings with regard to the PRC were based on facts available.

2.4 **Change in the pattern of trade**

(20) To determine whether there was a change in the pattern of trade, imports of the product under investigation from India and Indonesia into the Union and exports of the product under investigation from the PRC to India and Indonesia were assessed. Those imports were established on the basis of facts available under Article 18(1) of the basic Regulation given the relatively low or no cooperation of Indian, Indonesian and Chinese companies (see Section 2.3 above).

(21) To that end, COMEXT statistics ([3]), trade statistics from India and Indonesia received from the respective national authorities and Global Trade Information Services ([4]) statistics were used for the analysis. Accounting years starting on 1 April and finishing 31 March were used in order to use 12-month periods.

(22) 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 that import volume covered the product concerned and the product under investigation. Accordingly, those data could be used to establish a change in the pattern of trade.

2.4.1 *Imports into the Union*

(23) COMEXT statistics show a significant change in the pattern of trade over the IP (see Table 1 below).

Table 1

Import volumes (millions of m^2) ([1])	April 2009/March 2010	April 2010/March 2011	April 2011/March 2012	April 2012/March 2013
PRC	288,40	385,85	110,30	85,93
India	0,35	0,28	0,89	13,13
Indonesia	0,004	0,16	3,22	33,31

Source: COMEXT statistics

([1]) The volume in Comext is reported in metric tonnes and converted to square meters according to UI conversion rates; i.e. for CN 70 195 100: 1 m^2 = 0,05kg, for CN 70 195 900: 1 m^2 = 0,14 kg.

Imports from the PRC

(24) According to COMEXT statistics imports of the product concerned from the PRC to the Union dropped dramatically subsequent to the imposition of the provisional measures in February 2011 ([1]) and of the definitive measures in August 2011 ([2]). Table 1 above shows that between 2010/2011 and 2011/2012 the imports to the Union from the PRC dropped from 385,85 million m^2 to 110,30 million m^2 (by approximately 70 %) and between 2010/2011 and 2012/2013 (by approximately 80 %) further to 85,9 million m^2.

Imports from India

(25) According to COMEXT statistics, in the financial year 2009/2010 the quantities imported from India to the Union accounted for 0,35 million m^2, in the financial year 2010/2011 it was 0,28 million m^2 and it increased sharply between 2011/2012 and 2012/2013, reaching 13,13 million m^2 in the financial year 2012/2013.

(26) As stated in recital 17 above, the company Montex exported a very small quantity to the Union of the product under investigation in the IP – compared to overall exports from India it represents 1 % of the exports from India to the Union in the period of 2012/2013. Moreover, it was found that Montex exports the product under investigation under an

([1]) OJ L 43, 17.2.2011, p. 9.
([2]) OJ L 204, 9.8.2011, p. 1.
([3]) Comext is a database on foreign trade statistics managed by Eurostat.
([4]) Global Trade Information Services are trade statistics from a commercial database provider.

incorrect CN code – 7019 52. Its exports had therefore to be added to the COMEXT statistics as shown in Table 1 above.

Imports from Indonesia

(27) According to COMEXT statistics, in the financial year 2009/2010 the quantities imported from Indonesia to the Union market accounted for 0,004 million m^2, in 2010/2011 they amounted to 0,16 million m^2 and they increased sharply between 2011/2012 and 2012/2013, from 3,22 million m^2 to 33,31 million m^2 respectively.

2.4.2 *Exports from the PRC to India and Indonesia*

(28) A dramatic increase of exports can also be observed from the PRC to India and Indonesia in the same period.

Table 2

Import volumes (millions of m^2)	April 2009/March 2010	April 2010/March 2011	April 2011/March 2012	April 2012/March 2013
India	4,80	16,35	18,38	29,28
Indonesia	5,78	4,01	8,94	11,54

Source: China customs Statistics

Exports from the PRC to India

(29) According to the Chinese customs statistics, imports from the PRC to India of the product under investigation increased from 4,8 million m^2 in the financial year 2009/2010 to 29,3 million m^2 in the financial year 2012/2013.

Exports from the PRC to Indonesia

(30) According to the Chinese customs statistics, imports from the PRC to Indonesia of the product under investigation increased from 5,78 million m^2 in the financial year 2009/2010 to 11,54 million m^2 in the financial year 2012/2013.

2.4.3 *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 India and Indonesia to the Union and exports from the PRC to India and Indonesia, 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 the abovementioned countries, on the one hand, and of the exports of those countries to the Union, on the other hand.

2.5 **Nature of the circumvention practice**

(32) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, *inter alia*, the consignment of the product subject to measures in force via third countries in accordance with Article 13(2) of the basic Regulation.

(33) During the investigation, evidence was found of transhipment practices via Indonesia and India and/or incorrect certificates of origin. For instance, some of the imports of the product concerned to the Union were transhipped through Dubai or Singapore with certificates of origin of Indonesia/India and a part of the imports to the Union was transhipped through an Indian company which did not cooperate in the investigation. The lack of cooperation by any of the producers of the product under investigation, except Montex, is also an indication that there is no genuine production in Indonesia and India that could justify the export levels from Indonesia and India to the Union. It is reasonable to expect that if there are genuine producers, they would try to distinguish themselves from circumvention practices by participating in this investigation in the first place. In addition, the investigation did not reveal evidence of genuine production in the two contries concerned, other than that of Montex. Furthermore, the surge in imports from those two countries indicates that the Chinese products are transhipped to the Union through India and Indonesia and/or with incorrect certificates of origin.

(34) The existence of transhipment of Chinese-origin products via India and Indonesia is therefore confirmed.

2.6 **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 transhipment 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 transhipment, in particular regarding transport and reloading, of certain open mesh fabrics of glass fibres originating in the PRC from the PRC via India and Indonesia.

2.7 **Undermining of the remedial effect of the anti-dumping duty**

(36) Next, it was assessed whether the imports of the product under investigation into the Union had undermined the remedial effects of the measures in force in terms of quantities and prices. COMEXT data was used as the best data available concerning quantities and prices of exports by the non-cooperating companies in India and Indonesia. The prices so determined were compared to the injury elimination level established for the Union industry in recital (74) of the original Regulation.

(37) The increase of imports from India to the Union from 0,35 million m^2 in 2009/2010 to 13,10 million m^2 in the RP was significant in terms of quantities, compared to (very low) volumes of imports from India before the imposition of the provisional measures in 2009/2010. Also, the increase of imports from Indonesia to the Union from 0,04 m^2 in 2009/2010 to 33,31 million m^2 in the RP was considered to be substantial in terms of quantities, compared to (very low) volumes of imports from Indonesia before the imposition of the provisionnal measures in 2009/2010.

(38) To assess whether the remedial effects of the measures in force are undermined in terms of prices, the prices of the imports from Indonesia and India were compared with the injury elimination level as established in the original Regulation. The injury elimination level as established in the original Regulation was adjusted for inflation. The weighted average export price of exports from India and Indonesia was adjusted for post importation costs and quality adjustments as established in the original investigation for imports from PRC. The comparison showed significantly lower export prices for exports from the countries concerned to the Union. It was therefore concluded that the remedial effects of the measures in force are also being undermined in terms of both quantities and prices.

2.8 **Evidence of dumping**

(39) Finally, in accordance with Article 13(1) of the basic Regulation it was examined whether there was evidence of dumping.

(40) 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 the normal value as established in the original investigation was used.

(41) The export prices from India and Indonesia were based on facts available under Article 18 of the basic Regulation. The export price was the average export price of certain open mesh fabrics of glass fibres from each of the two contries concerned during the RP as reported in COMEXT. The exports of the Indian company Montex were not reflected in the statistics due to the misclassification of their products (see recital 25 above), and were not used for the calculation of the dumping margin.

(42) 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 data available did not allow to establish the level of the adjustments to be made, the adjustments had to be established on the basis of the best facts available. Thus, the adjustment for these allowances was based on a percentage calculated as the proportion of the total transport, insurance and packing costs over the value of the Union sales transactions with CIF delivery terms provided by the cooperating Chinese exporting producers in the original investigation.

(43) In accordance with Articles 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.

(44) The comparison of the weighted average normal value and the weighted average export price as established showed dumping.

3. **MEASURES**

(45) In view of the above, it is 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 transhipment via India and Indonesia within the meaning of Article 13(1) of the basic Regulation.

(46) 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 same product but consigned from India and Indonesia, whether declared as originating in India and Indonesia or not.

(47) The measures to be extended should be the measures established in Article 1(2) of Regulation (EU) No 791/2011 for 'all other companies', which is a definitive anti-dumping duty of 62,9 % applicable to the net, free-at-Union-frontier price, before duty.

(48) 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 India and Indonesia.

4. REQUESTS FOR EXEMPTION

4.1 India

(49) As stated in recital (10) two exporting producers came forward following initiation and submitted questionnaire replies and requested exemption in accordance with Article 13(4) of the basic Regulation – Montex and Urja Products.

(50) As stated in recital (11), it was found that one of the two companies, Urja Products does not produce the product under investigation. The exemption under Article 13(4) of the basic Regulation is not applicable to that company.

(51) Montex was found not to be engaged in the circumvention practices subject to this investigation. The company demostrated that it is a genuine producer whose production capacity exceeds the volume of exports of the product under investigation to the Union. The company submitted a complete set of data and was verified on the spot. The verified data relating to the setting-up of the company, purchase of machinery, production process, capacity, stocks, purchases of raw material and cost of production support this conclusion. Furthermore, this producer could demonstrate that it is not related to any of the Chinese producers/exporters subject to the existing measures or to companies involved in the circumvention practices. Therefore, the exemption from the extended duties could be granted to this company.

4.2 Indonesia

(52) As stated in recital (10) no exporting producer in Indonesia submitted a request for exemption under Article 13(4) of the basic Regulation. The investigation did not reveal any genuine producer of the product under investigation in Indonesia.

4.3 Newcomers

(53) Producers in India and Indonesia which did not participate in this investigation and/or did not export the product under investigation to the Union in the RP may request an exemption from the extended anti-dumping duty under Articles 11(3), 11(4) and 13(4) of the basic Regulation. They will be asked 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 of the product concerned, production capacity and capacity utilisation, procurement and sales and the likelihood of a 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.

(54) 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.

5. DISCLOSURE

(55) All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. The oral and written comments submitted by the parties were considered. None of the arguments presented gave 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 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/m^2, 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/m^2, excluding fibreglass discs, consigned from India and Indonesia, whether declared as originating in India and Indonesia or not, currently falling in CN codes ex 7019 51 00 and ex 7019 59 00 (TARIC codes 7019 51 00 14, 7019 51 00 15, 7019 59 00 14 and 7019 59 00 15) with the exception of those produced by Montex Glass Fibre Industries Pvt.Ltd. (TARIC additional code B942).

2. The application of the exemption granted to Montex Glass Fibre Industries Pvt. Ltd. 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 the Annex to this Regulation. If no such invoice is presented, the anti-dumping duty as imposed by paragraph 1 of this Article shall apply.

3. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from India and Indonesia, whether declared as originating in India and Indonesia or not, registered in accordance with Article 2 of Regulation (EU) No 322/2013 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009.

4. 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 8/20
1049 Brussels
Belgium
Fax (32 2) 295 65 05

2. Imports from companies which do not circumvent the anti-dumping measures imposed by Regulation (EU) No 791/2011 may be exempted from the duty extended by Article 1 under the relevant provisions of the Basic Regulation.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EU) No 322/2013.

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, 16 December 2013.

For the Council
The President
V. JUKNA

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(2):

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 (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct';

3. Date and signature