

COMMISSION REGULATION (EU) No 1135/2011

of 9 November 2011

initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China by imports of certain open mesh fabrics of glass fibres consigned from Malaysia, whether declared as originating in Malaysia or not, and making such imports subject to registration

THE EUROPEAN COMMISSION,

in the People's Republic of China, currently falling within CN codes ex 7019 51 00 and ex 7019 59 00 ('the product concerned').

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

- (4) The product under investigation is the same as that defined in the previous recital, but consigned from Malaysia, whether declared as originating in Malaysia or not, currently falling within the same CN codes as the product concerned.

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 Articles 13(3), 14(3) and 14(5) thereof,

C. EXISTING MEASURES

After having consulted the Advisory Committee in accordance with Articles 13(3) and 14(5) of the basic Regulation,

- (5) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Council Implementing Regulation (EU) No 791/2011⁽²⁾.

D. GROUNDS

Whereas:

- (6) The request contains sufficient prima facie evidence that the anti-dumping measures on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China are being circumvented by means of the transshipment via Malaysia.

A. REQUEST

- (1) The European Commission ('the Commission') has 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 People's Republic of China and to make imports of certain open mesh fabrics of glass fibres consigned from Malaysia, whether declared as originating in Malaysia or not, subject to registration.

The evidence submitted is as follows:

- (2) The request was lodged on 27 September 2011 by Saint-Gobain Adfors CZ s.r.o., Tolnatek Fonalfeldolgozo es Muszakiszovet-gyarto Bt., Valmieras 'Stikla Skiedra' AS and Vitrolan Technical Textiles GmbH, four Union producers of certain open mesh fabrics of glass fibres.

- (7) The request shows that a significant change in the pattern of trade involving exports from the People's Republic of China and Malaysia to the Union has taken place following the imposition of measures on the product concerned, and that there is insufficient due cause or justification other than the imposition of the duty for such a change.

B. PRODUCT

- (3) The product concerned by the possible circumvention is 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

- (8) This change in the pattern of trade appears to stem from the transshipment of certain open mesh fabrics of glass fibres originating in the People's Republic of China via Malaysia.

- (9) Furthermore, the request contains sufficient prima facie evidence that the remedial effects of the existing anti-dumping measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of the product under

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 204, 9.8.2011, p. 1.

investigation appear to have replaced imports of the product concerned. In addition, there is sufficient evidence that imports of the product under investigation are made at prices well below the non-injurious price established in the investigation that led to the existing measures.

- (10) Finally, the request contains sufficient prima facie evidence that the prices of the product under investigation are dumped in relation to the normal value previously established for the product concerned.
- (11) Should circumvention practices via Malaysia covered by Article 13 of the basic Regulation, other than transhipment, be identified in the course of the investigation, the investigation may also cover these practices.

E. PROCEDURE

- (12) In light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13(3) of the basic Regulation and to make imports of the product under investigation, whether declared as originating in Malaysia or not, subject to registration, in accordance with Article 14(5) of the basic Regulation.

(a) Questionnaires

- (13) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the known exporters/producers and to the known associations of exporters/producers in Malaysia, to the known exporters/producers and to the known associations of exporters/producers in the People's Republic of China, to the known importers and to the known associations of importers in the Union and to the authorities of the People's Republic of China and Malaysia. Information, as appropriate, may also be sought from the Union industry.
- (14) In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 of this Regulation, and request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.
- (15) The authorities of the People's Republic of China and Malaysia will be notified of the initiation of the investigation.

(b) Collection of information and holding of hearings

- (16) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) Exemption of registration of imports or measures

- (17) In accordance with Article 13(4) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if the importation does not constitute circumvention.
- (18) Since the possible circumvention takes place outside the Union, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers in Malaysia of certain open mesh fabrics of glass fibres that can show that they are not related⁽¹⁾ to any producer subject to the measures⁽²⁾ and that are found not to be engaged in circumvention practices as defined in Article 13(1) and (2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

F. REGISTRATION

- (19) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied retroactively from the date of registration of such imports consigned from Malaysia.

G. TIME LIMITS

- (20) In the interest of sound administration, time limits should be stated within which:
- interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

⁽¹⁾ In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife; (ii) parent and child; (iii) brother and sister (whether by whole or half blood); (iv) grandparent and grandchild; (v) uncle or aunt and nephew or niece; (vi) parent-in-law and son-in-law or daughter-in-law; and (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context 'person' means any natural or legal person.

⁽²⁾ However, even if producers are related in the aforementioned sense to companies subject to the measures in place on imports originating in the People's Republic of China (the original anti-dumping measures), an exemption may still be granted if there is no evidence that the relationship with the companies subject to the original measures was established or used to circumvent the original measures.

- producers in Malaysia may request exemption from registration of imports or measures,
- interested parties may make a written request to be heard by the Commission.

- (21) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits mentioned in Article 3 of this Regulation.

H. NON-COOPERATION

- (22) In cases in which an interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.
- (23) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available. If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

I. SCHEDULE OF THE INVESTIGATION

- (24) The investigation will be concluded, according to Article 13(3) of the basic Regulation, within 9 months of the date of the publication of this Regulation in the *Official Journal of the European Union*.

J. PROCESSING OF PERSONAL DATA

- (25) It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾.

K. HEARING OFFICER

- (26) It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights

of defence, they may request the intervention of the Hearing Officer of Directorate-General for Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to the file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details, interested parties may consult the Hearing Officer's web pages on the website of Directorate-General for Trade (http://ec.europa.eu/trade/tackling-unfair-trade/hearing-officer/index_en.htm),

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3) of the basic Regulation, in order to determine if imports into the Union 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 Malaysia, whether declared as originating in Malaysia or not, currently falling within CN codes ex 7019 51 00 and ex 7019 59 00 (TARIC codes 7019 51 00 11 and 7019 59 00 11), are circumventing the measures imposed by Implementing Regulation (EU) No 791/2011.

Article 2

The Customs authorities are hereby directed, pursuant to Articles 13(3) and 14(5) of the basic Regulation, to take the appropriate steps to register the imports into the Union identified in Article 1 of this Regulation.

Registration shall expire 9 months following the date of entry into force of this Regulation.

The Commission, by regulation, may direct Customs authorities to cease registration in respect of imports into the Union of products manufactured by producers having applied for an exemption of registration and having been found to fulfil the conditions for an exemption to be granted.

Article 3

1. Questionnaires should be requested from the Commission within 15 days from publication of this Regulation in the *Official Journal of the European Union*.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

2. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 37 days from the date of the publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

3. Producers in Malaysia requesting exemption from registration of imports or measures should submit a request duly supported by evidence within the same 37-day time limit.

4. Interested parties may also apply to be heard by the Commission within the same 37-day time limit.

5. Interested parties are required to make all submissions and requests in electronic format (the non-confidential submissions via e-mail, the confidential ones on CD-R/DVD), and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. However, any Powers of Attorney, signed certifications, and any updates thereof, accompanying questionnaire replies shall be submitted on paper, i.e. by post or by hand, at the address below. Pursuant to Article 18(2) of the basic Regulation if an interested party cannot provide its submissions and requests in electronic format, it must immediately inform the Commission. For further information concerning correspondence with the

Commission, interested parties may consult the relevant web page on the website of Directorate-General for Trade: <http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence>. All written submissions, including the information requested in this Regulation, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ⁽¹⁾ and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

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Article 4

This Regulation shall enter into force on the day following 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, 9 November 2011.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ A 'Limited' document is a document which is considered confidential pursuant to Article 19 of Regulation (EC) No 1225/2009 (referred in the text as 'the basic Regulation') and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 ('the Anti-Dumping Agreement'). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).