

**COMMISSION IMPLEMENTING REGULATION (EU) 2022/301****of 24 February 2022**

**extending the definitive countervailing duty imposed by Implementing Regulation (EU) 2020/776 on imports of certain woven and/or stitched glass fibre fabrics ('GFF') originating in the People's Republic of China ('the PRC') to imports of GFF consigned from Morocco, whether declared as originating in Morocco or not, and terminating the investigation concerning possible circumvention of the countervailing measures imposed by Implementing Regulation (EU) 2020/776 on imports of GFF originating in Egypt by imports of GFF consigned from Morocco, whether declared as originating in Morocco or not**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union <sup>(1)</sup> ('the basic Regulation') and in particular Article 23 thereof,

Whereas:

**1. PROCEDURE****1.1. Existing measures**

- (1) In June 2020, by Commission Implementing Regulation (EU) 2020/776 <sup>(2)</sup>, the Commission imposed a definitive countervailing duty on imports of certain woven and/or stitched glass fibre fabrics ('GFF') originating in the PRC and in Egypt, respectively ('the original anti-subsidy investigation'). The anti-subsidy measures took the form of an *ad valorem* duty ranging between 17 % and 30,7 % for imports originating in the PRC and an *ad valorem* duty of 10,9 % for imports originating in Egypt.

**1.2. Request**

- (2) The Commission received a request pursuant to Articles 23(4) and 24(5) of the basic Regulation to investigate the possible circumvention of the countervailing measures imposed on imports of GFF originating in the People's Republic of China and Egypt and to make such imports subject to registration.
- (3) The request was lodged on 19 May 2021 by TECH-FAB Europe e.V, an association of EU producers of GFF ('the applicant').
- (4) The request contained sufficient evidence of a change in the pattern of trade involving exports from China, Egypt and Morocco to the Union that had taken place following the imposition of measures on GFF. The change in the pattern of trade appeared to stem from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty.
- (5) Furthermore, the request contained sufficient evidence showing that the practice, process or work were undermining the remedial effects of the existing countervailing measures in terms of quantity and prices. Significant volumes of imports of the product under investigation appeared to have entered the EU market. In addition, there was sufficient evidence that imports of GFF were made at injurious prices.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 55.

<sup>(2)</sup> Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 189, 15.6.2020, p. 1).

- (6) Finally, the request contained sufficient evidence that the product under investigation and/or parts thereof still benefit from the subsidy. Indeed, the product under investigation and the parts thereof were produced by and exported to Morocco by companies in China and Egypt that were found to receive countervailable subsidies for the production and sale of the product under investigation under the existing measures.

### 1.3. Product concerned and product under investigation

- (7) The product concerned is fabrics of woven, and/or stitched continuous filament glass fibre rovings and/or yarns with or without other elements, excluding products which are impregnated or pre-impregnated (pre-preg), and excluding open mesh fabrics with cells with a size of more than 1,8 mm in both length and width and weighing more than 35 g/m<sup>2</sup>, classified on the date of entry into force of Implementing Regulation (EU) 2020/776 under CN codes ex 7019 39 00, ex 7019 40 00, ex 7019 59 00 and ex 7019 90 00 (TARIC codes 7019 39 00 80, 7019 40 00 80, 7019 59 00 80 and 7019 90 00 80) and originating in the People's Republic of China and Egypt ('the product concerned'). This is the product to which the measures that are currently in force apply.
- (8) The product under investigation is the same as that defined in the previous recital, currently falling under CN codes ex 7019 61 00, ex 7019 62 00, ex 7019 63 00, ex 7019 64 00, ex 7019 65 00, ex 7019 66 00, ex 7019 69 10, ex 7019 69 90, ex 7019 72 00, ex 7019 73 00, ex 7019 80 10, ex 7019 80 90, and ex 7019 90 00, but consigned from Morocco, whether declared as originating in Morocco or not (TARIC codes 7019 61 00 81, 7019 62 00 81, 7019 63 00 81, 7019 64 00 81, 7019 65 00 81, 7019 66 00 81, 7019 69 10 81, 7019 69 90 81, 7019 72 00 81, 7019 73 00 81, 7019 80 10 81, 7019 80 90 81, and 7019 90 00 81) ('the product under investigation')<sup>(3)</sup>.
- (9) The investigation showed that GFF exported from China and Egypt to the Union and those consigned from Morocco, whether originating in Morocco or not, have the same basic physical and chemical characteristics, and are therefore considered as like products within the meaning of Article 2(c) of the basic Regulation.

### 1.4. Initiation

- (10) Having determined, after having informed the Member States, that sufficient evidence existed for the initiation of an investigation pursuant to Article 23 of the basic Regulation, the Commission initiated the investigation concerning a possible circumvention of the countervailing measures by Commission Implementing Regulation (EU) 2021/863 of 28 May 2021<sup>(4)</sup> ('the initiating Regulation'). Pursuant to Articles 23(4) and 24(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of GFF consigned from Morocco, whether declared as originating in Morocco or not.

### 1.5. Comments on initiation

- (11) LM Wind Power, a wind blade manufacturer established in the Union, argued that the initiation of the investigation concerning the circumvention of countervailing measures was not justified due to a lack of sufficient evidence regarding the factors set out in paragraphs 1, 2 and 3 of Article 23 of the basic Regulation.
- (12) It argued that, in accordance with the second subparagraph of Article 23(3), there must be sufficient evidence of a practice, process or work which are defined as:
- the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics;

<sup>(3)</sup> The CN and TARIC codes referred to above will apply as from 1 January 2022 and are based on Commission Implementing Regulation (EU) 2021/1832 of 12 October 2021 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 385, 29.10.2021, p. 1).

<sup>(4)</sup> Commission Implementing Regulation (EU) 2021/863 of 28 May 2021 initiating an investigation concerning possible circumvention of the countervailing measures imposed by Implementing Regulation (EU) 2020/776 on imports of certain woven and/or stitched glass fibre fabrics originating in People's Republic of China and Egypt by imports of certain woven and/or stitched glass fibre fabrics consigned from Morocco, whether declared as originating in Morocco or not, and making such imports subject to registration (OJ L 190, 31.5.2021, p. 76).

- the consignment of the product subject to measures via third countries;
  - the reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to the Union through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers.
- (13) LM Wind Power noted in particular that the request as referred to in recital (2) contained in particular allegations regarding assembly operations and transshipments, on which basis the Commission initiated the investigation. Its main argument was that the allegations of assembly operations taking place in Morocco were irrelevant to initiate an anti-subsidy circumvention investigation. According to this user, the second subparagraph of Article 23(3) of the basic Regulation, unlike the fourth subparagraph of Article 13(1) of the basic anti-dumping Regulation <sup>(5)</sup>, does not list assembly operations as a practice, process or work that constitutes circumvention. Therefore, LM Wind Power requested that the Commission should terminate this investigation immediately.
- (14) The Egyptian authorities claimed that it had been unfairly involved in the present investigation as no circumvention practice has taken place involving Egypt. In this respect, the Egyptian authorities claimed that all necessary procedures were taken in Egypt to prevent circumvention since the original anti-dumping investigation. They also argued, similar to the claims of LM Wind Power, that there was a lack of evidence to prove circumvention in a form of either:
- assembly operations in Morocco involving the exports of glass fibre rovings from Egypt or;
  - transshipment between Morocco and the EU involving GFF from Egypt.
- (15) The Moroccan authorities requested the Commission to conclude that PGTEX Morocco SARL was not circumventing the measures imposed by the Union and to terminate the ongoing investigation. They stated that the establishment of PGTEX Morocco SARL in Morocco was the result of an authentic and long-term partnership, involving the PGTEX Group <sup>(6)</sup> and Morocco. They also stated that the production process of PGTEX Morocco SARL involved significant investments and extensive operations and contributed to the Moroccan economy. As a result, even if a change in the pattern of trade could be established, this would appear not to be caused by a practice of circumvention. Finally, the Moroccan authorities claimed that their official statistics refuted the allegation of the applicant that PGTEX Morocco SARL circumvented the measures in force by means of transshipment.
- (16) With regard to the claims related to the initiation referred to above, the Commission recalled that the investigation was initiated on the basis of the evidence provided in the request. Whilst the investigation could not confirm the existence of transshipment without assembly operations, it did find evidence of assembly or completion operations. In this regard, the Commission recalled that the second subparagraph of Article 23(3) of the basic Regulation explicitly uses the wording ‘inter alia’, thus covering circumvention practices, such as assembly operations, which are not explicitly listed in the Article. The request provided sufficient evidence <sup>(7)</sup> of the existence of assembly operations and that these assembly operations were done using glass fibre rovings from the PRC and Egypt <sup>(8)</sup>.
- (17) The request also provided sufficient evidence regarding the lack of economic justification other than the duties, such as PGTEX China’s 2019 Annual Report. According to this report, the main purpose of the establishment of PGTEX Morocco SARL was “to actively respond to the EU’s anti-dumping investigation against China, further optimize and adjust its internationalization strategy, consolidate and increase the market share of products in Europe and the United States, meet customer demand, and protect customer supply” and in particular that PGTEX “decided to build a wholly-owned subsidiary in Morocco to break through the EU’s anti-dumping investigations, approach customers, meet market demand, and adapt to sustainable development”. <sup>(9)</sup> The separate anti-dumping investigation explicitly referred to was conducted in parallel with the anti-subsidy investigation, which led to the imposition of the countervailing duties. Thus, this statement shows an intention to circumvent the duties resulting from the Commission’s investigation.
- (18) Therefore, the Commission rejected the claims put forward by LM Wind Power, and the Moroccan and Egyptian authorities that the request did not contain sufficient evidence to warrant the initiation of the investigation.

<sup>(5)</sup> Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

<sup>(6)</sup> See further recitals (36) and (37) for a description of the PGTEX Group.

<sup>(7)</sup> See the request, open version, points 40 to 42, page 10.

<sup>(8)</sup> See the request, open version, point 29, page 8 and point 41, page 9.

<sup>(9)</sup> See the request, open version, points 26 and 27, pages 7 and 8.

### 1.6. Investigation period and reporting period

- (19) The investigation period covered the period from 1 January 2019 to 31 December 2020 ('the investigation period' or 'IP'). Before 2019, there were no significant export volumes of GFF from Morocco to the Union. Data were collected for the IP to investigate, inter alia, the alleged change in the pattern of trade following the imposition of measures on the product concerned, and the existence of a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty. More detailed data were collected for the period from 1 January 2020 to 31 December 2020 ('the reporting period' or 'RP') in order to examine if imports were undermining the remedial effect of the measures in force in terms of prices and/or quantities and the existence of subsidisation.

### 1.7. Investigation

- (20) The Commission officially informed the authorities of China, Egypt and Morocco, the exporting producers in those countries, the Union industry and the President of the EU-Morocco Association Council of the initiation of the investigation.
- (21) In addition, the Commission asked the Mission of Morocco to the European Union to provide it with the names and addresses of exporting producers and/or representative associations that could be interested in participating in the investigation other than PGTEX Morocco SARL, the only producer of the product under investigation according to the request. The Moroccan authorities submitted a reply, listing three other companies. Two of those companies did not come forward, the third one did but declared that it did not export GFF to the Union.
- (22) Exemption claim forms for the producers/exporters in Morocco, questionnaires for the producers/exporters in China and Egypt, and for importers in the Union were made available on DG TRADE's website.
- (23) Only PGTEX Morocco SARL submitted an exemption claim form and also requested a hearing that took place on 21 June 2021. Moreover, as mentioned in recital (45), PGTEX Group requested and was invited to a hearing with the Commission on 10 January 2022, and a hearing with the Hearing Officer in Trade Proceedings on 12 January 2022.
- (24) 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 the non-submission of all relevant information or the submission of incomplete, false or misleading information might lead to the application of Article 28 of the basic Regulation and to findings being based on the facts available.
- (25) On 20 December 2021 (the day of the disclosure), the Commission received a submission (dated 16 December 2021) from the Moroccan authorities, which was too late to be taken into consideration at disclosure stage. Following disclosure, the Moroccan authorities sent a second submission, summarizing its submission of 16 December 2021. In essence, the Moroccan authorities reiterated their request to terminate the investigation and put forward the following arguments.
- (26) First, the Moroccan authorities claimed that GFF is manufactured by PGTEX Morocco SARL through activities that cannot be qualified as a completion or assembly operation. Second, they claimed that these products are "originating" in Morocco within the meaning of Article 29<sup>(10)</sup> of the EU-Morocco Association Agreement<sup>(11)</sup> and further detailed under the list rules contained in Annex II of Protocol 4 of the EU-Morocco Association Agreement. In addition, pursuant to Article 9 of the EU-Morocco Association Agreement, "*products originating in Morocco shall be imported into the Community free of customs duties and charges having equivalent effect*" and that the EU – Morocco Association Agreement provides only for some exceptions. This preferential origin was also confirmed by the Moroccan Customs Administration, which issued preferential origin certificates (EUR.1) for PGTEX's GFF exports to the EU pursuant to Article 17 of Protocol 4 of the EU-Morocco Association Agreement.

<sup>(10)</sup> Pursuant to Article 29 of the EU-Morocco Association Agreement, "*the concept of 'originating products' for the purposes of implementing this title and the methods of administrative cooperation relating thereto are laid down in Protocol 4*". In this respect, GFF fell under heading 7019 of the Harmonised System nomenclature and therefore conferred preferential origin under the list rules contained in Annex II of Protocol 4 of the EU-Morocco Association Agreement.

<sup>(11)</sup> Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ L 70, 18.3.2000, p. 2).

- (27) The Commission rejected the claim that the processing in Morocco of imported glass fibre rovings into GFF could not be qualified as an assembly or completion operation. As referred to in recital (16), the legal standards contained in Article 13(2) of basic anti-dumping Regulation can by analogy be used in assessing the anti-subsidy case in the context of Article 23(3) of the basic Regulation. In this context, Article 13(2) of the basic anti-dumping Regulation does not only cover the assembly operations of (several) parts into a finished product, but also the completion/conversion operations of intermediary products into the product concerned. This follows, in particular from point (b) of Article 13(2) of the basic anti-dumping Regulation, which stipulates that ‘...the value added to the parts brought in, during the assembly or completion operation, is greater than ...’ In addition, the fact that the Moroccan custom authorities issued EUR.1 certificates to PGTEX Morocco SARL, confirming their preferential origin under the Association Agreement, is irrelevant, as the applicable legal basis for this anti-circumvention investigation is the basic Regulation, in particular Article 23 thereof. <sup>(12)</sup>
- (28) Furthermore, following disclosure, the Moroccan authorities, supported by PGTEX Morocco SARL, claimed that the anti-circumvention investigation was not permitted pursuant to Article 24 of the EU-Morocco Association Agreement, as this Article only allows for the imposition of anti-dumping measures on Moroccan products if the conditions of Article VI of the General Agreement on Tariffs and Trade are met.
- (29) The Commission rejected this claim as Article 24 of the EU-Morocco Association Agreement does not preclude any anti-circumvention investigation, also given the fact that this Article also refers to the related internal legislation. When Morocco and the EU ratified the Association Agreement in 2000, the applicable basic Regulation already contained anti-circumvention provisions.
- (30) Finally, the Moroccan authorities, as well as PGTEX Morocco SARL, claimed that the Commission’s anti-circumvention investigation was not permitted under the WTO – rules, in particular pursuant to Article VI of the GATT and the Agreement on Implementation of Article VI.
- (31) The Commission rejected the claim and referred to paragraph 18 of the preamble of the basic Regulation <sup>(13)</sup> which sets out the approach of the Commission in this respect. On this basis, like many other WTO members, the Union legislation contains provisions to tackle circumvention practices.

## 2. RESULTS OF THE INVESTIGATION

### 2.1. General considerations

- (32) In accordance with Article 23(3) 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 third countries (China, Egypt and Morocco) and the Union,
  - 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,
  - 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 like product, and
  - the imported like product and/or parts thereof still benefitted from the subsidy.

<sup>(12)</sup> ECJ judgment of 12 September 2019, Case C-709/17 P, *European Commission v Kolachi Raj Industrial (Private) Ltd*, ECLI:EU:C:2019:717.

<sup>(13)</sup> Recital 18 of the basic Regulation codifies this approach as follows: “Even though the Subsidies Agreement does not contain provisions concerning circumvention of countervailing measures, the possibility of such circumvention exists, in terms similar, albeit not identical, to the circumvention of anti-dumping measures. It is appropriate, therefore, to provide for an anti-circumvention provision in this Regulation.”

- (33) The second subparagraph of Article 23(3) of the basic Regulation does not list assembly operations specifically as a practice, process or work that constitutes circumvention. Nevertheless, the second subparagraph of Article 23(3) of the basic Regulation explicitly uses the wording ‘inter alia’, which means that it provides a non-exhaustive list of possible circumvention practices. As a result, it also covers other circumvention practices, which are not explicitly listed in the Article in question, such as assembly operations. Therefore, since the evidence provided by the applicant in the request pointed to assembly operations in Morocco, the Commission also analysed whether, by analogy, the criteria set out in Article 13(2) of the basic anti-dumping Regulation were met, in particular:
- whether the assembly operation started or substantially increased since, or just prior to, the initiation of the anti-subsidy investigation and whether the parts concerned are from the country subject to measures, and
  - whether the parts constitute 60 % or more of the total value of the parts of the assembled product and whether the added value of the parts brought in, during the assembly or completion operation, was greater than 25 % of the manufacturing costs.
- (34) Following disclosure, the PGTEX Group claimed that there was no basis to apply “by analogy” the standard in Article 13(2) of the basic anti-dumping Regulation to assess whether circumvention took place within the meaning of Article 23(3) of the basic Regulation. It argued in particular that had the legislator intended for the practice, process or work referred to in the first subparagraph of Article 23(3) of the basic Regulation to cover assembly operations, it would have expressly mentioned so, as it did in Article 13(1) of the basic anti-dumping Regulation. Furthermore, with regard to the objective of the rules to which Article 23(3) of the basic Regulation is part, it seeks to “...offset any subsidy granted, directly or indirectly, for the manufacture, production, export or transport of any product whose release for free circulation in the Union causes injury <sup>(14)</sup>”. Article 2(a) of the basic Regulation is clear in that a product is to be considered as subsidised only if a subsidy has been granted “by the government of the country of origin of the imported product, or by the government of an intermediate country from which the product is exported to the Union”. In this respect, the PGTEX Group considered that Morocco is both the country of origin and export.
- (35) The Commission rejected this claim. As already referred to in recital (16), the Commission acknowledged that the second subparagraph of Article 23(3) of the basic Regulation does not list assembly operations specifically as a practice, process or work that constitutes circumvention, but explicitly uses the wording “inter alia”. Absent any explicit limitation, Article 23(3) of the basic Regulation should cover other circumvention practices, which are not explicitly listed in the Article in question, such as assembly operations. Indeed, otherwise, countervailing duties could be circumvented easily.

## 2.2. Level of cooperation

- (36) Only PGTEX Morocco SARL submitted a request for exemption in accordance with Article 23(6) of the basic Regulation. PGTEX Morocco SARL belongs to the Chinese Group PGTEX and is located in a Free Trade Zone in Tanger, Morocco.
- (37) In addition, its two related Chinese companies Chongqing Polycomp International Corporation (“CPIC”) and PGTEX China Co., Ltd (‘PGTEX China’) also submitted questionnaire replies. PGTEX Morocco SARL is a wholly owned subsidiary of PGTEX China, which is subject to a countervailing duty of 17 % imposed by Implementing Regulation (EU) 2020/776.
- CPIC is a producer of glass fibre rovings, which are the main input materials to produce the product under investigation. It sold these input materials to its related company PGTEX China during the reporting period, of which it owned 60 % of its shares;
  - PGTEX China purchased the glass fibre rovings from CPIC during the reporting period. Subsequently, it either used them to produce GFF itself, or resold them, including to PGTEX Morocco SARL. PGTEX China did not produce the main input material (glass fibre rovings) during the reporting period.

<sup>(14)</sup> Article 1 of the basic Regulation (OJ L 176, 30.6.2016, p. 55).

- (38) The questionnaire replies, including the response to a deficiency letter, of PGTEX Morocco SARL and its two Chinese related companies ('PGTEX Group') were found to be deficient for the following reasons:
- PGTEX Morocco SARL did not provide the necessary information required in the exemption claim form. In particular, it did not provide the necessary underlying documents for two sales transactions. As a result, the Commission was unable to verify the claim that PGTEX Morocco SARL only started its production in April 2020. Moreover, despite the fact that the Commission requested a detailed explanation for missing sales invoice numbers, only a general explanation for these missing sales invoice numbers was received. The Commission also noted a difference in the total turnover for the reporting period as reported in the sales listing compared to the one reported in its statutory accounts of 2020. The Commission could therefore not confirm the reported export sales volumes to the Union. In this respect, the Commission also noted that the reported export sales were higher than total imports to the Union from Morocco according to Eurostat import statistics and that PGTEX Morocco SARL was the only known producer in Morocco that exported the product under investigation to the Union. Contradictory information was also provided concerning the actual start of the production at PGTEX Morocco SARL. The information about the actual start of the production in 2020 was needed to identify the proportion of the incurred major costs (such as depreciation cost and rental cost) which could be attributed to the production of the product concerned. Furthermore, no satisfactory explanation was provided in the deficiency reply about the reasons behind the significant increase in the production volume in July 2020, which was about three times higher than the production volume of the previous month, June 2020, despite a more or less same level of electricity consumption in both months.
  - PGTEX China did not provide information from the Golden Tax System as requested concerning its purchases from CPIC and its sales to PGTEX Morocco SARL.
- (39) Therefore, in accordance with Article 28(4) of the basic Regulation the Commission informed the PGTEX Group, on 5 October 2021, of the fact that the non-exhaustive list of elements described in the previous recital might lead to the application of Article 28 of the basic Regulation and to the use of facts available. It also invited the PGTEX Group to comment on the possible application of Article 28 of the basic Regulation.
- (40) On 12 October 2021, the PGTEX Group claimed that the application of facts available was not legally justified in the present case for the following reasons:
- The Group did not fail to provide the "necessary" information, as spelled out in Article 28 of the basic Regulation.
  - The information submitted by the PGTEX Group cannot be disregarded.
  - In any event, any application of "facts available" must be limited.
- (41) The Commission analysed the information and documents that the PGTEX Group submitted with its letter of 12 October 2021. It concluded that neither satisfactory replies nor convincing supporting documentation were provided on most elements that were raised in its letter of 5 October 2021.
- (42) Accordingly, the Commission considered that the information provided by the PGTEX Group was partially incomplete and contradictory and thus could not be fully relied on by the Commission. Nevertheless, the data submitted by the PGTEX Group were not wholly disregarded, and the Commission used both the sales and cost data submitted by the PGTEX Group as a starting point of its analysis.
- (43) In accordance with Article 28(1) first sentence and Article 28(5) of the basic Regulation, the information provided by the PGTEX Group was complemented by data extracted from databases such as the Global Trade Atlas ('GTA')<sup>(15)</sup>, and Eurostat, as further detailed in section 2.3. below. Import data were extracted from Eurostat, and GTA was used for the determination of export volumes of glass fibre rovings from the PRC and Egypt into Morocco.

<sup>(15)</sup> <https://www.gtis.com/gta/>

- (44) Finally, in view of the outbreak of COVID-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 26 of the basic Regulation at the premises of the cooperating legal entities. The Commission considered the information submitted by the PGTEX Group, such as replies to questionnaires and replies to deficiency letters, in line with the Notice of 16 March 2020 on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations. <sup>(16)</sup> No remote-cross check of the information was deemed necessary in light of the issues set out in the previous recitals.
- (45) Following disclosure, the PGTEX Group reiterated its allegation that the application of facts available was manifestly ill-founded and not justified in view of the information provided by the PGTEX Group. In addition, the PGTEX Group requested and was granted a hearing with the Commission on 10 January 2022, and a subsequent hearing with the Hearing Officer in Trade Proceedings on 12 January 2022 regarding the use of facts available under Article 28 of the basic Regulation.
- (46) During the hearing on 12 January 2022, the Commission provided additional explanations concerning its finding that the response to the Article 28-letter had not dispelled the concerns of the Commission. As explained in recital (42), the Commission maintained its position that the information provided by the PGTEX Group could not be fully relied on by the Commission. Moreover, the Hearing Officer in Trade Proceedings stated in the hearing on 12 January 2022 that the Commission had respected the rights of defence of the PGTEX Group.

### 2.3. Change in the pattern of trade

#### 2.3.1. Imports of GFF

- (47) Table 1 below shows the development of imports of GFF from China, Egypt and Morocco between 2019 and 2020. As the TARIC codes were only created on 21 February 2019, the Commission extrapolated the data for period of 1 January 2019 to 20 February 2019 to use exactly the same period (12 months) for both years 2019 and 2020.

Table 1

#### Imports of GFF for the years 2019 and 2020 (tonnes)

	2019	RP
<b>PRC</b>	13 720	19 315
<i>index (base = 2019)</i>	100	141
<b>Egypt</b>	146	4 302
<i>index (base = 2019)</i>	100	2 946
<b>Morocco</b>	277	2 809
<i>index (base = 2019)</i>	100	1 014

Source: Eurostat, TARIC codes 7019 39 00 80, 7019 40 00 80, 7019 59 00 80 and 7019 90 00 80.

- (48) Table 1 shows that the imports of GFF from Morocco increased from 277 tonnes in 2019 to 2 809 tonnes in 2020. The significant increase in 2020 compared to 2019 coincided in time with the start of the production by PGTEX Morocco SARL. Although the company was officially established on 2 October 2019, it claimed in its exemption claim form to have started production and export sales only from April 2020 onwards. In this respect, the import data showed that the average monthly imports for the period April – December 2020 were about fifteen times higher than the average monthly imports from January 2019 to March 2020.

<sup>(16)</sup> OJ C 86, 16.3.2020, p. 6.



- (49) The Commission also noted that the reported export sales of PGTEX Morocco SARL were higher than total imports to the Union from Morocco. Given that PGTEX Morocco SARL was the only Moroccan company that cooperated with the Commission in this investigation and the insignificant export volumes of GFF from Morocco to the Union prior to its establishment, the Commission considered it reasonable to conclude that that PGTEX Morocco SARL was the sole producer in Morocco that exported GFF to the Union during the reporting period (RP).
- (50) As shown in table 1 the imports of GFF from China increased from 13 720 tonnes in 2019 to 19 315 tonnes in 2020, whereas the imports of GFF from Egypt increased from 146 tonnes in 2019 to 4 302 tonnes in 2020. As mentioned in recital (48), the average monthly import volumes of PGTEX Morocco SARL increased considerably from April 2020 onwards, compared to the previous periods.

### 2.3.2. Export volumes of glass fibre rovings from China and Egypt to Morocco

- (51) Table 2 below shows the development of imports of glass fibre rovings from China and Egypt by Morocco based on the Moroccan import statistics from the GTA database between 2019 and 2020.

Table 2

#### Imports of glass fibre rovings from Egypt and China by Morocco for the years 2019 and 2020 (in tonnes)

	2019	RP
<b>PRC</b>		
7019 12 Glass fibre rovings	2 378	7 839
<b>Egypt</b>		
7019 12 Glass fibre rovings	1 118	3 120

Source: GTA.

- (52) The main input material for the production of GFF are glass fibre rovings. This input material is then further processed to produce GFF. The evidence available to the Commission showed that the GFF exported to the Union from Morocco was produced from mainly glass fibre rovings.
- (53) Table 2 shows that the imports of glass fibre rovings from China to Morocco substantially increased from 2 378 tonnes in 2019 to 7 839 tonnes in 2020. The imports of glass fibre rovings from Egypt into Morocco also increased from 1 297 tonnes in 2019 to 3 687 tonnes in 2020. The imports from both China and Egypt represent around 90 % of the total Moroccan imports of glass fibre rovings for both years 2019 and 2020.
- (54) PGTEX Morocco SARL claimed that the glass fibre rovings that it used to produce GFF were all purchased from China (none from Egypt), in particular from its parent company PGTEX China. It also claimed that it imported these rovings under HS code 7019 12. Imports under this code showed the most significant increase in imports from China by Morocco.
- (55) The significant increase in import volumes of glass fibre rovings from China, as well as from Egypt, to Morocco indicated an increasing demand for such input materials in Morocco, which could, at least in part, be explained by the increase in the production and exports of GFF in and from Morocco during the reporting period. This was also corroborated by the information provided by PGTEX Morocco SARL.
- (56) Given that PGTEX Morocco SARL, the apparent sole exporter of GFF to the Union (see recital (49)), purchased all its glass fibre rovings from China, the Commission did not find any evidence that the glass fibre rovings from Egypt were used either by PGTEX Morocco SARL or by any other producer of GFF in Morocco for export to the Union. In this respect, the imports of glass fibre rovings from China started to increase from the last quarter of 2019 onwards,

which was the quarter in which PGTEX Morocco SARL was established. The monthly average import volumes of glass fibre rovings from China during the last quarter of 2019 was considerably higher than the monthly average import volumes during the previous periods. Moreover, the monthly average import volumes of glass fibre rovings during 2020 (the year in which PGTEX Morocco SARL started its production) was also much higher than the monthly average import volumes during the last quarter of 2019. Despite the increase of imports of glass fibre rovings from Egypt into Morocco during 2020, the Commission found no evidence that those imports were used for further processing in Morocco into GFF to be subsequently exported to the Union. Hence, the evidence available to the Commission did not support the allegation that the change in pattern of trade involving Egypt stemmed from a practice the purpose of which was to avoid anti-dumping measures on GFF from Egypt.

- (57) Following disclosure, the PGTEX Group as well as LM Wind Power claimed that there was no change in the pattern of trade. The PGTEX Group argued that the emergence of imports of GFF from Morocco was not made to the detriment of imports of GFF from China. On the contrary, the increase in imports of GFF from Morocco was less substantial than the parallel increase in imports of GFF from China.
- (58) As explained in recitals (47) – (56) above, the Commission observed an increase of exports of GFF from Morocco to the Union as well as a significant increase of imports of glass fibre rovings from China to Morocco in 2020 as compared to 2019. This in itself constitutes a change in the pattern of trade.
- (59) Further, whilst the overall exports of GFF from China to the Union indeed increased, the overview tables provided by PGTEX China in the framework of this anti-circumvention investigation showed that the export volumes of PGTEX China – the mother company of PGTEX Morocco SARL and its sole supplier of glass fibre rovings – to the Union were more than 2 times lower in 2020 compared to 2018, and even more than 3 times lower in 2020 than in 2019.
- (60) The Commission could therefore establish a change of the pattern of trade and rejected the claims.

#### 2.3.3. *Conclusion on the change in the pattern of trade*

- (61) The increase of exports of GFF from Morocco to the Union constitutes a change in the pattern of trade between Morocco and the Union within the meaning of Article 23(3) of the basic Regulation, together with the significant increase in 2020 compared to 2019 of Chinese exports of glass fibre rovings into Morocco as shown in table 2. On the other hand, no evidence was found concerning the alleged circumvention of countervailing measures on GFF involving Egypt.

#### 2.4. **Nature of circumvention practices for which there was insufficient due cause or economic justification other than the imposition of the countervailing duty**

- (62) Article 23(3) 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.
- (63) The Commission recalled that the practice, process or work includes the consignment of the product subject to the existing measures via third countries, and the assembly of parts/completion operations in a third country, as explained in recital (16).
- (64) According to the submission of the Moroccan authorities referred to in recital (15), the first contact with the PGTEX Group for the set-up of a plant in Morocco dated back to 20 March 2019, one month after the initiation of the original anti-dumping investigation<sup>(17)</sup> and two months before the initiation of the original anti-subsidy investigation<sup>(18)</sup>. PGTEX Morocco SARL was set up on 2 October 2019, about 5 months after the initiation of the anti-subsidy investigation. This coincidence in time suggests that the potential imposition of the duties were the cause of the establishment of PGTEX Morocco SARL.

<sup>(17)</sup> OJ C 68, 21.2.2019, p. 29.

<sup>(18)</sup> OJ C 167, 16.5.2019, p. 11.

- (65) Based on the submitted sales listing by PGTEX Morocco SARL, during 2020, all export sales of PGTEX Morocco SARL went to the Union market, whereas only a small fraction of its 2020 production was sold domestically. Moreover, its export sales during 2020 were all sold to customers in the Union, which were supplied in the past by PGTEX China. This again suggested that the potential imposition of the duties were the reason for the set-up of PGTEX Morocco SARL. This was explicitly confirmed by the 2019 annual report of PGTEX China (see recital (17)).
- (66) Following disclosure, the PGTEX Group claimed that there was due cause and an economic justification for the establishment of PGTEX Morocco SARL. It claimed that the set-up of the Moroccan plant was the result of a lengthy process, which included feasibility studies, applications to obtain the necessary permits from the Chinese and Moroccan governments, and obtaining those permits.
- (67) The Commission noted that the documentation, which the PGTEX Group submitted on 15 October 2021, showed that the Group was assessing a long time before the initiation of the investigation in which country to establish a company. Various potential countries were considered, including Morocco. However, the fact remained that PGTEX Morocco SARL was finally set up on 2 October 2019, about 7 months after the initiation of the original anti-dumping investigation. This coincidence in time suggested that the anti-dumping investigation was a cause for the establishment of PGTEX Morocco SARL. This was further corroborated by a statement of the Moroccan authorities stating that their contacts with PGTEX for the establishment of a plant dated back to 20 March 2019, and as such just after the initiation of the original investigation<sup>(19)</sup>. This demonstrated that formal contacts with the Moroccan authorities to establish a company in Morocco dated back to March 2019, which was just after the initiation of the initial anti-dumping investigation.
- (68) Following disclosure, LM Wind Power argued that PGTEX had set up its Moroccan plant in order to serve the Moroccan and Middle Eastern markets and therefore had an economic justification for its establishment other than avoiding duties.
- (69) The Commission rejected this claim. The Commission referred to evidence demonstrating that there was a lack of economic justification other than the duties (see in this context PGTEX China's 2019 Annual Report, as referred to in recital (17)). In addition, the argument of LM Wind Power that PGTEX Morocco SARL was set up to serve Moroccan and Middle Eastern markets was not supported by the evidence. In this respect, as explained in recital (65), all export sales by PGTEX Morocco SARL were made to the Union and only a small fraction of its production was sold domestically in Morocco.
- (70) In view of the above, the investigation did not reveal sufficient due cause or an economic justification of the establishment of a GFF production site in Morocco other than to avoid the payment of the duties currently in force.

## 2.5. Start or substantial increase of operations

- (71) Article 13(2) of the basic anti-dumping Regulation<sup>(20)</sup> requires the assembly operation to have started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation, while the parts concerned are from the country subject to anti-dumping measures. As referred to in recital (33), the legal standards contained in Article 13(2) of basic anti-dumping Regulation can by analogy be used in assessing the anti-subsidy case in the context of Article 23(3) of the basic Regulation.
- (72) The original anti-subsidy investigation was initiated in May 2019 and definitive countervailing duties were imposed in June 2020 (see recital (1)). PGTEX Morocco SARL was officially established on 2 October 2019 and started production from April 2020 according to its exemption claim form. This coincides with the change in the pattern of trade described in section 2.3.

<sup>(19)</sup> Commentaires du Ministère de l'Industrie, du Commerce et de l'Economie Verte et Numérique du Royaume du Maroc relatifs à l'ouverture des enquêtes anti-contournement concernant les importations de certains tissus en fibres de verre, 14.07.2021, page 2: «...le Ministère souligne que le contact entre PGTEX et les autorités marocaines pour l'implantation d'une usine de PGTEX au Maroc remonte au 20 mars 2019, soit juste après l'initiation de l'enquête antidumping initiale de l'UE...».

<sup>(20)</sup> OJ L 176, 30.6.2016, p. 21.

- (73) PGTEX Morocco SARL submitted a sales listing, showing that all its export sales of own produced GFF went to the Union during the reporting period. Moreover, 100 % of its main input material (mainly glass fibre rovings) were purchased from its related parent company in China. It did not purchase any glass fibre rovings from Egypt.
- (74) Therefore, the Commission concluded that the assembly operation started since the initiation of the original anti-subsidy investigation as required by Article 13(2)(a) of the basic anti-dumping Regulation, while the parts concerned are mainly from China, one of the two countries subject to the original anti-subsidy measures.

## 2.6. Value of parts and added value

- (75) As far as assembly operations are concerned, Article 13(2)(b) of the basic anti-dumping Regulation states that another condition to establish circumvention is that the parts (of Chinese origin, in this case) constitute 60 % or more of the total value of the parts of the assembled product and that the added value of the parts brought in, during the assembly or completion operation, is less than 25 % of the manufacturing cost. The legal standards contained in Article 13(2) of basic anti-dumping Regulation can by analogy be used in assessing the anti-subsidy case in the context of Article 23(3) of the basic Regulation.
- (76) The main raw material to produce GFF is glass fibre rovings. PGTEX Morocco SARL purchased 100 % of the glass fibre rovings it used from its related parent company in China. Through the sewing-knitting process carried out, which is a completion operation in Morocco, these glass fibre rovings were transformed into GFF. According to the submitted information by PGTEX Morocco SARL, the glass fibre rovings constitute almost 100 % of the total value of the parts of the assembled/completed product in the sense of Article 13(2)(b) of the basic anti-dumping Regulation.
- (77) The Commission therefore concluded that the process taking place in Morocco is a completion operation (assembly operation) and that the 60 % criterion set out in Article 13(2)(b) of the basic anti-dumping Regulation – applied by analogy in view of the wording of Article 23(3) of the basic Regulation, as explained in recital (33) – was met.
- (78) Following disclosure, the PGTEX Group and LM Wind Power reiterated their claim that the manufacturing of GFF from the imported main raw material glass fibre rovings does not constitute an “assembly of parts by an assembly operation” within the meaning of Article 13(2) of the basic anti-dumping Regulation. In this context, they claimed, first, that glass fibre rovings are not “parts” of GFF but are rather “goods which are subject to a process in the production of another good” and, second, that glass fibre rovings are not “assembled” into GFF, but are processed into GFF by looming and stitching together various types of glass fibre rovings as well as other materials, using complex machinery.
- (79) The Commission rejected these claims. The practice described in recital (76) above can be characterised as a completion operation that falls within the concept of assembly operations under Article 13 of the basic Regulation, as explained in recital (33) above.
- (80) PGTEX Morocco SARL claimed that its value added cost would be above the threshold of 25 %. The two main cost items in the calculation of the added value were the depreciation cost and the rental cost, which were part of the financial data of the reporting period submitted by PGTEX Morocco SARL in its exemption claim form.
- (81) Concerning the depreciation cost, PGTEX Morocco SARL claimed that there were less than ten GFF-machines <sup>(21)</sup> installed at its premises, and that each of these GFF-machines had been running for 300 out of the 360 days during 2020. It calculated the depreciation amount for the reporting period on the basis of the following three elements:
- The acquisition value;
  - 9,5 % as a depreciation percentage to take into account the estimated useful life <sup>(22)</sup>;
  - the above-mentioned 300 running days on a total of 360 days.

<sup>(21)</sup> A “GFF-machine” can be described as the machine, which is used during the assembly process, whereby mainly glass fibre rovings (the main input material) are converted into GFF.

<sup>(22)</sup> Useful life of a GFF-machine estimated to be 10 years, and adjusted for a residual value of 5 % at the end of its useful life.

(82) The Commission disagreed with this way of calculating the depreciation cost in the framework of the value-added calculation within the meaning of Article 13 of the basic anti-dumping Regulation. In particular, using 300 days as an element to calculate the depreciation amount may be acceptable according to the international accounting standards, but led to an overstatement of the calculated depreciation amount in the framework of the value-added calculation by PGTEX Morocco SARL for various reasons. First, as submitted by PGTEX Morocco SARL in its exemption claim form, the capacity utilisation (actual production in kg divided by the actual production capacity in kg) of the GFF-machines was low <sup>(23)</sup> in the year 2020. Given the low production capacity utilisation the reported depreciation cost was therefore found to have been overstated. Second, four of the GFF-machines were only shipped in November 2019 from Shanghai to Tanger and could not have been running during 300 days in 2020, taking into consideration the shipment time between Shanghai and Tanger, as well as the period required for unloading, installing and testing each of these 4 GFF machines. Third, PGTEX Morocco SARL claimed in its exemption claim form that the production only started in April 2020. If this were to be true, the total running time for each of the installed GFF-machines could only be at a maximum 270 days (from April 2020 to December 2020), without even taking into account any non-operational time caused by stoppages, as a result of required maintenance, days off, and holidays. As a result, the Commission concluded that the depreciation cost to be taken into account for the calculation of the value added cost should be significantly lower than the depreciation cost as calculated by PGTEX Morocco SARL.

(83) Following disclosure, the PGTEX Group argued that the Commission committed manifest errors of assessment and acted in breach of Article 13(2) of the basic anti-dumping Regulation when performing calculations relating to the value-added. In this context, according to the PGTEX Group, the full depreciation should be considered, as such costs were actually incurred in 2020 for the production of GFF.

(84) The Commission rejected this claim for the following reasons:

- Even though depreciation is in principle <sup>(24)</sup> a fixed cost, because it recurs in the same amount per period throughout the useful life of an asset, the Commission could not accept the recorded depreciation cost fully in the framework of the value-added calculation. The reason for this is the low production capacity utilisation, as shown by the data submitted by the PGTEX Group;
- Moreover, the Commission could not use the full depreciation cost due to the incomplete and contradictory information it received. In this respect, PGTEX Morocco SARL mentioned for instance on the one hand that all the machines were acquired early 2020. On the other hand, PGTEX Morocco SARL stated that it only started producing in April 2020 in its completed questionnaire reply. PGTEX Morocco SARL also stated that all the machines were operational during 300 days.

PGTEX Morocco SARL used these 300 days (i.e. 299 days rounded up to 300 days) for the calculation of its depreciation calculation and created the impression that all GFF machines that it installed were operational and fully running during the whole year of 2020. However, it appeared that this was not the case, as several machines had not arrived yet at the plant in Morocco on 1 January 2020 (see recital (82) above).

Due to the above-mentioned contradictory statements, the Commission considered it appropriate to use the capacity utilisation rate for the full year 2020, as submitted by PGTEX Morocco SARL and which was undisputed. For the Commission, this capacity utilisation rate was considered to be an objective and clear measurement to determine an appropriate depreciation cost in the framework of its value added calculation.

(85) Following disclosure, the PGTEX Group suggested that, to the extent that the Commission persisted to adjust the depreciation cost based on the capacity utilization (as communicated by the PGTEX Group in its Annex 7.2. of its letter of 12 October 2021) to use any of the alternative three methodologies that it proposed in its comments following disclosure:

- To adjust the capacity to reflect those months during which the relevant GFF machines were not operational;

<sup>(23)</sup> Table C.4.1. "Production and Production capacity" of the exemption claim form

<sup>(24)</sup> There is though one exception. If a business employs a usage-based depreciation methodology, then depreciation will be incurred in a pattern that is more consistent with a variable cost. The PGTEX Group remained silent on this methodology.

- To use only the cost data of December 2020, i.e. the month during the IP in which most GFF machines were operational, except for machine number 7;
  - To use the cost data of July to December 2020, since after June 2020, the certification of major customers was almost completed, so production could increase.
- (86) The Commission rejected the use of either of the three alternatives that the PGTEX Group proposed in view of a number of inconsistencies the Commission found, in Annex 7.2 of the letter of 12 October 2021, with regard to the proposed alternatives:
- The month of March 2020 was not mentioned by PGTEX Morocco SARL as a month of production in Annex 7.2 of the letter of 12 October 2021. PGTEX Morocco SARL stated for the first time <sup>(25)</sup> on 12 October 2021 that there had been production in March 2020, but that this production in March 2020 was only booked in its production data for the month of April 2020. This means that the Commission could not exclude other errors and/or delays in booking the monthly production. Therefore, the method as proposed by the PGTEX Group to monthly allocate which GFF machines were operational and which were not, could not be used as a basis;
  - Using the cost data of December 2020 only could not be accepted either as the capacity utilisation rate for the month of December 2020 was not representative for the capacity utilisation rate for the full year 2020;
  - Using the cost data for the period July – December 2020 could not be accepted either for the same reason as mentioned under the second proposed alternative. The capacity utilisation rate for the period July – December 2020 was not representative for the capacity utilisation rate for the full year 2020.
- Therefore, the Commission concluded that the capacity utilisation rate over the full year of 2020 was the most appropriate indicator to reduce the fully booked depreciation rate in a reasonable way in the framework of the value-added calculation.
- (87) Following disclosure, the applicant claimed that the depreciation cost of the GFF machines should be fully excluded from the added-value calculations, as these machines were not acquired from an independent supplier, but from the parent company.
- (88) The Commission rejected this claim. Depreciation expenses are generally accepted under local and international accounting principles. In particular, the “matching” accounting principle sets out that expenses should be recorded in the same period in which revenue is earned from them. This means that, by using these GFF machines, completed GFF can be sold and revenue earned. Depreciations are then portions of fixed assets (the GFF machines) that have been considered consumed in the current period, and therefore expensed, irrespectively from whom the machines were purchased. The intent of this expense is to gradually reduce the carrying amount of fixed assets as their value is consumed over time.
- (89) Following disclosure, the applicant also claimed that, to the extent that the Commission would not simply remove the full depreciation of the GFF machines PGTEX transferred from its related company in China from the value added calculations, the determination of the depreciation amount must reflect the true useful life of such machines and related equipment. The applicant referred to the fact that it is not unusual for such machines to run for over 20 years.
- (90) The Commission rejected this claim as the applicant itself referred to a useful life of the GFF machines of about 10 years in its request. No evidence was provided concerning its statements that it is not uncommon that GFF machines run for over 20 years.
- (91) Concerning the rental cost, PGTEX Morocco did not provide its rental contracts in its reply in the exemption claim form, despite the important rental costs it incurred in 2020 <sup>(26)</sup>. In its exemption claim form, it informed the Commission that it had installed all its GFF-machines at one location (plant – phase 1). It initially stated that it only rented this one plant as it stated that it “only has one production site”, despite the question in the exemption claim form to provide the addresses of all its production sites. Subsequently, PGTEX Morocco SARL, however, provided

<sup>(25)</sup> In response to Question C.4.1 of PGTEX Morocco SARL's completed questionnaire, PGTEX Morocco SARL stated that the production started from April 2020. This statement was re-confirmed as a reply to question 1 on page 1 of its deficiency reply.

<sup>(26)</sup> The Commission requested in the exemption claim form that any cooperating producer should provide all main contracts, both from related and unrelated parties,

two rental contracts as a reply to the deficiency letter of the Commission, indicating that PGTEX Morocco SARL rented two separate premises from two different property owners during the reporting period. Since PGTEX Morocco SARL had claimed previously in its exemption claim form that the GFF-machines, which were operational during 2020, were only installed in one of these two rented plants, the rental amounts incurred in 2020 for the second plant (plant – phase 2) should have been excluded from the rental cost and value added cost. In addition, because of the low capacity utilisation, the Commission, in its value added cost calculation, could also not accept the total rental cost for the plant – phase 1 as it was not fully used due to the fact that the GFF-machines were not producing in the first quarter of 2020 and not running at full capacity during the other quarters of 2020. The total rental cost as reported was not accepted by the Commission because of the above reasons.

- (92) Following disclosure, the PGTEX Group argued that the Commission committed manifest errors of assessment and acted in breach of Article 13(2) of the basic anti-dumping Regulation as the Commission did not take into account the full rental cost.
- (93) The Commission rejected this claim, on the basis of the following statements that had been made by the PGTEX Group in the course of the investigation. First, in its reply to the deficiency letter <sup>(27)</sup>, the PGTEX Group only referred to the plant – phase 1 for its production, its storage of raw materials and finished products, and the administrative area. Second, in its reply to the deficiency letter <sup>(28)</sup>, the PGTEX Group stated that its GFF machines, which were running in 2020, were all located in plant – phase 1. Consequently, the Commission deducted that none of these machines, which were operational in 2020, were located in plant – phase 2. This was also corroborated by other statements of the PGTEX Group in its deficiency reply. <sup>(29)</sup>
- (94) By adjusting the reported depreciation cost and rental cost, taking into consideration the issues explained above, the average value added thus established during the reporting period was found to be below the 25 % threshold set by Article 13(2)(b) of the basic anti-dumping Regulation. Some other cost items were found to be overstated as well, but were not adjusted as such adjustments should only have led to an even lower percentage of value added. The Commission therefore concluded that the value added to the parts brought in, during the assembly or completion operation, was less than 25 % of the manufacturing cost, as required by Article 13(2)(b) of the basic anti-dumping Regulation for these operations to constitute circumvention.
- (95) It was therefore concluded that the second criterion set out in Article 13(2)(b) of the basic anti-dumping Regulation – applied by analogy in view of the wording of Article 23(3) of the basic Regulation was also met.

## 2.7. Undermining of the remedial effect of the duty

- (96) In accordance with Article 23(3) of the basic Regulation, the Commission examined whether the imports of the product under investigation, both in terms of quantities and prices, undermined the remedial effects of the measures currently in force.
- (97) Regarding quantities, the increase of imports of GFF from Morocco was significant, as explained in recital (48) above. The 2020 imports from Morocco were already ten times higher, from only 277 tonnes in 2019 to 2 809 tonnes in 2020. At the same time, the Union consumption for the year 2020 was estimated by the applicant to be in a range between 135 000 and 140 000 tonnes. The market share of the imports from Morocco represented as such more than 2 %.
- (98) Regarding prices, the Commission compared the average non-injurious price as established in the original anti-subsidy investigation with the weighted average export CIF prices determined on the basis of the information provided by PGTEX Morocco SARL, duly adjusted to include post clearance costs. This price comparison showed that the imports from PGTEX Morocco SARL undersold the Union prices by more than 10 %.
- (99) The Commission concluded that the existing measures were undermined in terms of quantities and prices by the imports from Morocco subject to this investigation.

<sup>(27)</sup> Deficiency reply concerning PGTEX Morocco SARL: Reply to question 7, page 20.

<sup>(28)</sup> Deficiency reply concerning PGTEX Morocco SARL: Reply to question 6 c, page 20.

<sup>(29)</sup> Deficiency reply concerning PGTEX Morocco SARL: Reply to question 9 m, ii, page 23.

- (100) Following disclosure, the PGTEX Group claimed that the Commission's calculation of the non-injurious price only reflected the situation prevailing in 2018. However, it provided no evidence that the non-injurious price used by the Commission was not accurate and/or had gone down since 2018. Therefore, the claim was rejected.

## 2.8. Evidence of subsidisation

- (101) In accordance with Article 23(3) of the basic Regulation, the Commission also examined whether the imported like product and/or parts thereof still benefitted from the subsidy.
- (102) As set out in Implementing Regulation (EU) 2020/776, Chinese exporting producers were found to benefit from a number of subsidy schemes by the Government of the PRC as well as regional and local governments in China. In this respect, PGTEX China and CPIC were found to benefit also from a number of subsidy schemes such as preferential interests on loans, grant programmes, and tax benefits.
- (103) No new information became available in this investigation that would question the conclusion from the initial subsidy investigation that such subsidy schemes were no longer valid.
- (104) PGTEX China is the parent company of PGTEX Morocco SARL, whereby the latter company purchased 100 % of the glass fibre rovings it used from its related parent company PGTEX China, which on its turn bought them from CPIC, the manufacturer of these glass fibre rovings,
- (105) A pass-through of subsidies between related parties can be legally presumed,<sup>(30)</sup> in particular when the related downstream company was assembling and exporting the final product to the Union. In this case, since PGTEX China and PGTEX Morocco SARL make and export GFF and they use glass fibre rovings manufactured by CPIC, the amount of countervailable subsidies granted upon them should take into account the fact that, because of their relationship, they are capable of passing through those benefits to the product concerned exported to the Union as they see fit.
- (106) The Commission therefore concluded that the imported like product and/or parts thereof still benefit from the subsidy.
- (107) Following disclosure, the PGTEX Group claimed that there was no evidence that imports of GFF from Morocco still benefit from subsidies granted to Chinese GFF producers for the following reasons. First, the original anti-subsidy investigation (see recital (1)) did not relate to the subsidisation of glass fibre rovings and yarns, but related only to the subsidisation of GFF, which is a different product. Second, assembly operations are not covered by the basic Regulation as they cannot result in a subsidy, granted by either the country of origin or the country of export, benefitting the product allegedly circumvented. Third, the purchases by PGTEX Morocco from PGTEX China, and the purchases by PGTEX China from CPIC were at arm's length. In this respect, the PGTEX Group claimed that PGTEX China often paid a higher price compared to other customers of CPIC. As a result, CPIC did not pass through any benefits from subsidies to PGTEX China, and subsequently to PGTEX Morocco.
- (108) The Commission rejected these claims for the following reasons. First, even if the original anti-subsidy investigation was in the first place related to the subsidisation of GFF, the PGTEX Group fully cooperated during such investigation. In this respect, the original anti-subsidy investigation showed that both CPIC and PGTEX China, which are related to PGTEX Morocco SARL, received subsidies from the Chinese Government. Second, as already mentioned in recital (33), Article 23(3) of the basic Regulation also covers other circumvention practices, which are not explicitly listed in that Article, such as assembly operations. Third, as explained in recital (105), a pass-through of subsidies between related parties can be legally presumed, in particular when the related downstream company was assembling and exporting the final product to the Union. Moreover, a pass-through to related companies can occur in many ways (such as by charging certain management fees), and is not necessarily limited to the level of prices of input material charged to customers. In any event, a price comparison of glass fibre rovings and yarns, based on its questionnaire reply, showed that PGTEX China charged lower prices to PGTEX Morocco SARL than to other customers during the investigation period.

<sup>(30)</sup> WTO Appellate Body Report, *United States – Final Countervailing Duty Determination with respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, 19 January 2004, para. 143)



### 3. MEASURES

- (109) Based on the above findings, the Commission concluded that the definitive countervailing measures imposed on imports of GFF originating in the PRC were being circumvented by imports of the product under investigation consigned from Morocco by PGTEX Morocco SARL. Given that the reported export sales of PGTEX Morocco SARL were higher than total imports to the Union from Morocco, and no other company in Morocco came forward to request an exemption, the Commission considered that PGTEX accounted for all export of GFF from Morocco to the Union. Thus, it concluded that the findings about circumvention practices found in respect of PGTEX Morocco SARL should be extended to the whole country.
- (110) No evidence was found concerning the circumvention of measures on GFF involving Egypt. As mentioned before, PGTEX Morocco SARL purchased all its glass fibre rovings from China and none in Egypt. The investigation as far as alleged circumvention of GFF originating in Egypt shall therefore be terminated.
- (111) Therefore, in accordance with Article 23(1) of the basic Regulation, the anti-subsidy measures in force on imports of GFF originating in China should be extended to imports of the product under investigation.
- (112) Pursuant to Article 23(2) of the basic Regulation, the measure to be extended should be the one established in Article 1(2) of Implementing Regulation (EU) 2020/776 for 'all other companies', which is a definitive countervailing duty of 30,7 % applicable to the net, free-at-Union-frontier price, before customs duty.
- (113) Pursuant to Articles 23(3) and 24(5) of the basic Regulation, which provide that any extended measure should apply to imports that entered the Union under registration imposed by the initiating Regulation, duties are to be collected on those registered imports of the product under investigation.

### 4. REQUEST FOR EXEMPTION

- (114) PGTEX Morocco SARL was the only Moroccan company that requested an exemption from the possible extended measures in accordance with Article 23(6) of the basic Regulation.
- (115) As described above, PGTEX Morocco SARL was found to be involved in circumvention practices. Therefore, an exemption cannot be granted to this company pursuant to Article 23(6) of the basic Regulation.

### 5. DISCLOSURE

- (116) On 20 December 2021, the Commission disclosed to all interested parties the essential facts and considerations leading to the above conclusions and invited them to comment.
- (117) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 25(3) of Regulation (EU) 2016/1037,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. The definitive countervailing duty imposed by Implementing Regulation (EU) 2020/776 on imports of certain woven and/or stitched glass fibre fabrics ('GFF') originating in the People's Republic of China ('the PRC') is hereby extended to imports of fabrics of woven, and/or stitched continuous filament glass fibre rovings and/or yarns with or without other elements, excluding products which are impregnated or pre-impregnated (pre-preg), and excluding open mesh fabrics with cells with a size of more than 1,8 mm in both length and width and weighing more than 35 g/m<sup>2</sup>, currently falling under CN codes ex 7019 61 00, ex 7019 62 00, ex 7019 63 00, ex 7019 64 00, ex 7019 65 00, ex 7019 66 00, ex 7019 69 10, ex 7019 69 90, ex 7019 72 00, ex 7019 73 00, ex 7019 80 10, ex 7019 80 90, and ex 7019 90 00, consigned from Morocco, whether declared as originating in Morocco or not (TARIC codes 7019 61 00 81, 7019 62 00 81, 7019 63 00 81, 7019 64 00 81, 7019 65 00 81, 7019 66 00 81, 7019 69 10 81, 7019 69 90 81, 7019 72 00 81, 7019 73 00 81, 7019 80 10 81, 7019 80 90 81, and 7019 90 00 81).

2. The extended duty is the countervailing duty of 30,7 % applicable to 'all other companies'.
3. The duty extended by paragraphs 1 and 2 of this Article shall be collected on imports consigned from Morocco, whether declared as originating in Morocco or not, registered in accordance with Article 2 of Implementing Regulation (EU) 2021/863 and Articles 23(4) and 24(5) of Regulation (EU) 2016/1037.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### *Article 2*

The investigation initiated by Commission Implementing Regulation (EU) 2021/863 of 28 May 2021 concerning the possible circumvention on imports of GFF originating in Egypt by imports consigned from Morocco, whether declared as originating in Morocco or not, and making such imports subject to registration, is terminated.

#### *Article 3*

Customs authorities are directed to discontinue the registration of imports established in accordance with Article 2 of Implementing Regulation (EU) 2021/863, which is hereby repealed.

#### *Article 4*

The exemption request submitted by PGTEX Morocco SARL is rejected.

#### *Article 5*

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 G Office:  
CHAR 04/39  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

2. In accordance with Article 23(6) of Regulation (EU) 2016/1037, the Commission may authorise, by decision, the exemption of imports from companies which do not circumvent countervailing measures imposed by Implementing Regulation (EU) 2020/776, from the duty extended by Article 1.

#### *Article 6*

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, 24 February 2022.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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