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[1] Text with EEA relevance.

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Notice concerning the provisional application of the Bilateral Agreement between the European Union and the United States of America on prudential measures regarding insurance and reinsurance

The European Union and the United States of America have notified each other of the completion of the procedures necessary for the provisional application of the Bilateral Agreement between the European Union and the United States of America on prudential measures regarding insurance and reinsurance ([1]). Consequently, the Agreement shall, pursuant to its Article 10(2)(a), be provisionally applied as from 7 November 2017.

By virtue of Article 3 of Council Decision (EU) 2017/1792 ([2]) on the signing and provisional application of the Agreement, the Agreement shall, in accordance with its terms, be applied on a provisional basis in accordance with Articles 9 and 10 of the Agreement, pending the completion of the procedures necessary for the conclusion of the Agreement.

([1]) OJ L 258, 6.10.2017, p. 4.
([2]) OJ L 258, 6.10.2017, p. 1.

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1992

of 6 November 2017

entering a name in the register of protected designations of origin and protected geographical indications ('Slavonski kulen'/'Slavonski kulin' (PGI))

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ([1]), and in particular Articles 15(1) and 52(3)(b) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Croatia's application to register the name 'Slavonski kulen'/'Slavonski kulin' as protected geographical indication (PGI) was published in the Official Journal of the European Union ([2]).

(2) On 11 February 2016 the Commission received the notice of opposition from Slovenia. The related reasoned statement of opposition was received by the Commission on 7 April 2016.

(3) Finding such opposition admissible, by letter dated 13 May 2016, the Commission invited Croatia and Slovenia to engage in appropriate consultations for a period of 3 months to seek agreement among themselves in accordance with their internal procedures.

(4) No agreement was reached between the parties. The information concerning the appropriate consultations carried out between Croatian and Slovenian parties was duly provided to the Commission. Therefore, the Commission should adopt a decision in accordance with the procedure referred to in Article 52(3)(b) of Regulation (EU) No 1151/2012, taking into account the results of these consultations.

(5) The Commission has assessed the arguments provided in the reasoned statement of opposition and in the information provided to the Commission regarding the consultations between the interested parties and it has concluded that the name 'Slavonski kulen'/'Slavonski kulin' should be registered as PGI.

(6) In accordance with Article 10(1)(c) of Regulation (EU) No 1151/2012 the opponent alleged that the registration of 'Slavonski kulen'/'Slavonski kulin' as a Protected Geographical Indication would jeopardise the existence of an identical product's name which has been legally on the market for more than 5 years preceding the date of the publication provided for in point (a) of Article 50(2).

(7) According to the opponent, the Slovenian producer Celjske mesnine d.d. has been legitimately producing and marketing Slavonski kulen for over 25 years, with an average annual production output of around 70 tonnes. The Slovenian-made Slavonski kulen brings in some EUR 450 000 in sales annually, and owing to its high quality, production is on the rise. Evidence was given that the Slovenian-made Slavonski kulen has been marketed in Slovenia and elsewhere within the EU (Austria, Germany, Denmark, Sweden, Croatia) and in third countries (Serbia, Bosnia and Herzegovina) in the last 10 years.

(8) The opponent holds, and there is no evidence submitted to the contrary, that the use of the name Slavonski kulen in Slovenia was never meant to exploit the reputation of the name as referred to the Croatian product, and consumers have never been misled as to the product's origin.

(9) In the light of the above, the registration of the name 'Slavonski kulen'/'Slavonski kulin' as PGI, and the resulting prohibition on the use of the name, would jeopardise the existence of an identical product's name utilised by Celjske mesnine. The requirements for the registration of the name 'Slavonski kulen'/'Slavonski kulin' (PGI) have not been challenged. Therefore, that name qualifies for registration as PGI.

([1]) OJ L 343, 14.12.2012, p. 1.
([2]) OJ C 375, 12.11.2015, p. 9.

(10) However, in the light of the information included in the Slovenian opposition, which gives the evidence that the Slovenian-made Slavonski kulen has been legally marketed with that name for more than 5 years but not for more than 25 years, it is appropriate to grant a transitional period of 5 years to the Slovenian company Celjske mesnine d.d., allowing it to continue to use the name jeopardised by the registration while adjusting marketing of its production on the market.

(11) Whereas protection is granted for the term 'Slavonski kulen'/'Slavonski kulin' as a whole, the non-geographical component of that term, 'kulen'/'kulin', which defines a sort of sausage, may further be used, also in translation, throughout the Union, provided the principles and rules applicable in the Union's legal order are respected.

(12) In the light of the above, the name 'Slavonski kulen'/'Slavonski kulin' should be entered in the Register of protected designations of origin and protected geographical indications.

(13) The measures provided for in this Regulation are in accordance with the opinion of the Agricultural Product Quality Policy Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Slavonski kulen'/'Slavonski kulin' (PGI) is registered.

The name in the first paragraph identifies a product from Class 1.2 Meat products (cooked, salted, smoked, etc.) of Annex XI to Commission Implementing Regulation (EU) No 668/2014 ([1]).

Article 2

The term 'kulen'/'kulin' may continue to be used, also in translation within the territory of the European Union, provided the principles and rules applicable in the European Union's legal order are respected.

Article 3

The Slovenian company Celjske mesnine d.d. may continue to use the term 'Slavonski kulen' to designate a product not complying with the specification for 'Slavonski kulen'/'Slavonski kulin' (PGI) for a period of 5 years from the date of entry into force of this Regulation.

Article 4

This Regulation shall enter into force on the twentieth 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, 6 November 2017.

For the Commission
The President
Jean-Claude JUNCKER

([1]) Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1993

of 6 November 2017

imposing a definitive anti-dumping duty on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China as extended to imports of certain open mesh fabrics of glass fibres consigned from India, Indonesia, Malaysia, Taiwan and Thailand, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to 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 [1] ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) Following an anti-dumping investigation ('the original investigation'), by Regulation (EU) No 791/2011 [2], the Council imposed a definitive anti-dumping duty ranging between 48,4 % and 62,9 % on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China ('the PRC' or 'country concerned'). These measures will hereinafter be referred to as 'the measures in force'.

(2) In July 2012, following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, by Implementing Regulation (EU) No 672/2012 [3], the Council extended, from the measures in force, the duty applicable to all other companies to imports of the product concerned consigned from Malaysia, whether declared as originating in Malaysia or not.

(3) In January 2013, following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, by Implementing Regulation (EU) No 21/2013 [4], the Council extended, from the measures in force, the duty applicable to all other companies to imports of the product concerned consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not.

(4) In December 2013, following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, by Implementing Regulation (EU) No 1371/2013 [5], the Council extended, from the measures in force, the duty applicable to all other companies to imports of the product concerned consigned from India and Indonesia, whether declared as originating in India and Indonesia or not.

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[1] OJ L 176, 30.6.2016, p. 21.

[2] Council Implementing Regulation (EU) No 791/2011 of 3 August 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China (OJ L 204, 9.8.2011, p. 1).

[3] Council Implementing Regulation (EU) No 672/2012 of 16 July 2012 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 Malaysia, whether declared as originating in Malaysia or not (OJ L 196, 24.7.2012, p. 1).

[4] Council Implementing Regulation (EU) No 21/2013 of 10 January 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports of certain open mesh fabrics of glass fibres consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not (OJ L 11, 16.1.2013, p. 1).

[5] 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 (OJ L 346, 20.12.2013, p. 20).

(5) In September 2014, following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, by Implementing Regulation (EU) No 976/2014 ([1]), the Commission also extended, from the measures in force, the duty to certain slightly modified open mesh fabrics of glass fibres originating in the People's Republic of China.

(6) Finally, in September 2015, following an investigation pursuant to Articles 11(3) and 13(4) of the basic Regulation, by Implementing Regulation (EU) 2015/1507 ([2]), the Commission exempted certain Indian producers from the extension of the duty applicable to imports of the product concerned consigned from India, whether declared as originating in India or not.

1.2. **Request for an expiry review**

(7) Following the publication of a notice of impending expiry ([3]) of the anti-dumping measures in force on the imports of certain open mesh fabrics of glass fibres originating in the PRC, the Commission received a request for the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

(8) The request was lodged by the Alliance for the Defence of Open Mesh Fabrics ('ADOMF' or 'the applicant') on behalf of producers representing more than 25 % of the total Union production of certain open mesh fabrics of glass fibres.

(9) The request was based on the grounds that the expiry of the measures would be likely to result in the continuation of dumping and recurrence of injury to the Union industry.

1.3. **Initiation of an expiry review**

(10) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 9 August 2016, by notice published in the *Official Journal of the European Union* ([4]) ('the Notice of Initiation') the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

1.4. **Investigation**

Review investigation period and period considered

(11) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 July 2015 to 30 June 2016 (the 'review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2013 to the end of the review investigation period (the 'period considered').

Parties concerned

(12) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, exporting producers, importers and users in the Union known to be concerned, as well as the Chinese authorities of the initiation of the expiry review, and invited them to participate.

([1]) Commission Implementing Regulation (EU) No 976/2014 of 15 September 2014 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 slightly modified open mesh fabrics of glass fibres, also originating in the People's Republic of China (OJ L 274, 16.9.2014, p. 13).

([2]) Commission Implementing Regulation (EU) 2015/1507 of 9 September 2015 amending Council Implementing Regulation (EU) No 1371/2013 of 16 December 2013 extending a definitive anti-dumping duty imposed on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports consigned, inter alia, from India, whether declared as originating in India or not (OJ L 236, 10.9.2015, p. 1).

([3]) OJ C 384, 18.11.2015, p. 5.

([4]) Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China (OJ C 288, 9.8.2016, p. 3).

(13) Interested parties were given the opportunity to make their views known in writing and request a hearing within the time limits set out in the Notice of Initiation. All interested parties who requested so, were granted a hearing with the Commission and/or the Hearing Officer in trade proceedings. In this context, four hearings, including two with the Hearing Officer, were organised at the request of some Union producers, the European Association of Technical Fabrics producers and Chinese producers.

Sampling

(a) Sampling of exporting producers in the PRC

(14) In the Notice of Initiation, the Commission stated that it might sample exporting producers, in accordance with Article 17 of the basic Regulation.

(15) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known 13 exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission requested the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(16) None of the Chinese exporting producers provided the requested information. The Chinese authorities were informed of the non-cooperation.

(17) The non-cooperating Chinese exporting producers nevertheless sent comments disputing the accuracy of the request and opposing the continuation of the measures.

(b) Sampling of Union producers

(18) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 17(1) of the basic Regulation, the Commission selected the sample on the basis of the largest representative volume of sales and production, taking also into account the geographical spread. The preliminary sample consisted of three Union producers. The Commission invited interested parties to comment on the provisional sample. The sampled Union producer Asglatex Ohorn GmbH, which was not amongst the largest producers but qualified as an SME, provided a highly deficient questionnaire reply which moreover highlighted that certain volume information provided at the pre-initiation stage and on the basis of which it had been selected in the sample needed to be corrected. Moreover, it indicated that a verification of the information could be problematic due to the departure of the staff preparing the reply. Therefore, the Commission decided to change the sample by replacing this Union producer with the third largest Union producer, Tolnatext Fonalfeldolgozo es Müszakiszovetgyarto Bt. Having received no comments on the revised sample within the deadline, the Commission confirmed the sample as revised. The final sample accounted for over 70 % of the total Union production and sales during the review investigation period and was therefore considered representative of the Union industry.

(c) Sampling of unrelated importers

(19) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known unrelated importers to provide the information specified in the Notice of Initiation.

(20) The Commission contacted 28 known importers/users. Only one of them replied to the sampling form, so sampling was not considered warranted.

Questionnaires

(21) The Commission sent questionnaires to three cooperating analogue country producers, the three sampled Union producers, three unrelated importers and five potential users in the Union.

(22) The Commission received questionnaire replies from the three sampled Union producers and from three producers in the potential analogue countries (Canada and India).

Verification visits

(23) The Commission sought and verified all the information deemed necessary for a determination of the likelihood of continuation or recurrence of dumping, the likelihood of recurrence of injury, and Union interest. Verification visits under Article 16 of the basic Regulation were carried out at the premises of the following companies:

(a) Union producers

— Saint Gobain Adfors cz S.r.o, Litomysl, Czech Republic,

— Tolnatext Fonalfeldolgozo es Müszakiszovetgyarto Bt., Tolna, Hungary,

— JSC Valmieras Stikla Skiedra, Valmiera, Latvia;

(b) Producer in the analogue country

— Saint-Gobain ADFORS Canada Ltd, Midland, Ontario, Canada.

Subsequent procedure

(24) On 26 June 2017, the Commission disclosed the essential facts and considerations on the basis of which it intended to repeal the anti-dumping duty in force ('the disclosure'). All parties were granted a period within which they could make comments on the disclosure. The applicant made a written submission making known its views on the Commission's findings. In summary, the applicant contested the Commission's preliminary conclusion that injury was unlikely to recur if measures were allowed to lapse. Instead, it claimed that the expected increased imports would lead to a recurrence of material injury. This party also requested the intervention by the Hearing Officer in trade proceedings ('the Hearing Officer') and it submitted additional information after that hearing.

(25) After a thorough analysis of information available to the Commission as well as information submitted subsequent to the disclosure, the Commission adjusted its findings. At the stage of the disclosure, the Commission was of the view that injury was unlikely to recur, if measures were allowed to lapse. However, after taking into account the information submitted after the disclosure, the Commission accepted the applicant's claim that the quality of the Chinese product had evolved to a level equivalent to that of the Union industry. That key determination resulted in the finding of undercutting and shed a markedly different light on the likelihood of recurrence of injury analysis.

(26) Consequently, on 6 September 2017, the Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China ('the additional disclosure'). After additional disclosure, the Commission received comments from different parties.

(27) The Chinese producers made a written submission making their views known on the Commission's findings and overall assessment. First, the Chinese producers claimed that the Commission would have allegedly changed the methodology used in the original investigation by not applying the quality adjustment in its undercutting calculations in the present case (see recital 97 below). As this alleged change would result in a different conclusion concerning the likelihood of recurrence of injury if the measures against the PRC were allowed to lapse, the Chinese producers contested that conclusion. In addition, they further noted that the additional disclosure did not contain a number of elements that were present in the first disclosure. Finally, they claimed that the Commission was no longer permitted to use the analogue country methodology since it anyway had allegedly changed the methodology used for the determination of the normal value as compared to the original investigation.

(28) The applicant made known its views claiming that opening an interim review, as suggested by the Commission in the additional disclosure, should be considered only if the Chinese exporting producers submit a properly reasoned request for such a review. In this respect, the Commission points out that it could consider whether it would be appropriate to initiate, ex officio, an interim review, to eventually determine the impact of the quality issue on export prices of the product concerned, and, therefore, on the dumping and injury margins, as well as the situation of the two groups of producers (the vertically-integrated and the other producers, also referred to as 'weavers', see recital 117) in detail with a view to ensuring that the performance indicators for these producers are not distorted by the dominance in the sample of one group over the other.

(29) In a hearing with the Commission's services after the additional disclosure, the Chinese authorities also made a statement claiming that the adjustment referred to in recital 97 below should be maintained.

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

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(31) The product concerned is certain 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, and originating in the PRC ('the product under review'), currently falling within CN codes ex 7019 51 00 and ex 7019 59 00 (TARIC codes 7019 51 00 19 and 7019 59 00 19).

(32) Open mesh fabrics of glass fibres can be found in different cell sizes and weight per square metre and are mostly used as reinforcement material in the construction sector (external thermal insulation, floor reinforcement, and wall repair).

2.2. Like product

(33) The investigation showed that the following products have the same basic physical and technical characteristics, as well as the same basic uses:

— the product concerned,

— the product produced and sold by the selected producer in Canada, which served as an analogue country,

— the product produced and sold in the Union by the Union industry.

(34) The Commission concluded that these products were like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

(35) In accordance with Article 11(2) of the basic Regulation, the Commission first examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping from the PRC.

(36) No Chinese exporting producer cooperated with the investigation. In the absence of cooperation from exporting producers in the PRC, the overall analysis, including the dumping calculation, was based on facts available pursuant to Article 18 of the basic Regulation. Therefore, the likelihood of a continuation or recurrence of dumping was assessed by using the expiry review request, combined with other sources of information, such as trade statistics on imports and exports (Eurostat and Chinese export data), the reply from the analogue country producer and the comments submitted by the Chinese exporting producers, as well evidence submitted by the applicant.

3.2. Dumping of imports during the review investigation period

(a) *Analogue country*

(37) In the Notice of Initiation, the Commission informed interested parties that it envisaged Canada as possible analogue country and invited parties to comment. Canada was used in the original investigation as an appropriate analogue country. Other potential analogue countries mentioned in the Notice of Initiation were: Bangladesh, India, Indonesia, Moldova, Philippines, Taiwan, Thailand, and Turkey.

(38) Letters were sent to all known genuine producers of certain open mesh fabrics of glass fibres in Bangladesh, India, Philippines and Turkey, asking for their cooperation with the review and enclosing an analogue country questionnaire. In countries where no producers were known, information about producers was requested from the national authorities. Replies were received from two genuine producers in India.

(39) Cooperation was received only from one Canadian producer and from the two genuine producers from India.

Choice of analogue country

(40) As regards the choice between India and Canada, the Commission selected Canada on the following grounds: (i) as mentioned above, Canada was the analogue country in the initial investigation; (ii) the production volume of the cooperating Canadian producer (between 20 million and 30 million square metres) was comparable to the production volumes of the sampled (largest) Chinese producers in the original investigation (production volumes between 23 million and 59 million square metres). The cost structure and economies of scale in Canada were therefore likely to be more comparable with the Chinese producers. Despite the lack of cooperation from Chinese exporters in this case, there is no reason to believe that this is does no longer apply. By contrast, the two Indian producers were smaller (production between 1 and 5 million square metres), and were therefore not comparable to the Chinese producers in terms of cost structure and economies of scale; (iii) the domestic sales of the Canadian producer were larger than the domestic sales of both cooperating Indian producers, taken together, and provided therefore a more representative basis for establishing normal value.

Comments from interested parties on the choice of the analogue country

(41) The Chinese producers commented, by way of first line of argument that the Commission was in their opinion no longer permitted to use the analogue country methodology. In case this methodology was nevertheless used, and by way of second line of argument, they opposed the choice of Canada and requested a different analogue country for the following reasons: (i) findings based on one single producer would be distorted; (ii) the sole Canadian producer was related to one of the complaining Union producers, and so the Canadian entity may have adopted specific pricing or costing policies in view of the upcoming expiry review to be lodged by its mother company; (iii) there was information asymmetry, as the applicant had access to the confidential data to be submitted by its related analogue country producer, whereas the Chinese producers had not.

(42) In relation to the first line of arguments, regarding the use of the analogue country methodology, the Commission points out that all Chinese exporting producers had the opportunity to submit MET (Market Economy Treatment) claim forms to enable individual calculations of dumping margins. None of these exporters made use of that possibility. Therefore, pursuant to Article 2(7) of the basic Regulation, normal value was determined on the basis of data from an analogue country. This argument was, thus, rejected.

(43) In relation to the second line of arguments, regarding the choice of Canada, the Commission points out that Canada, and the same Canadian producer, was already used as the analogue country and the analogue country producer in the original investigation. Given the fact that the exporting producers did not substantiate any of their claims against the choice of Canada, the Commission considered that the choice of Canada was still appropriate. Canada, as mentioned in recital 40 above, was, in any case, more appropriate in terms of volumes of production and domestic sales, both factors determining the establishment of normal value. Finally, there is no legal obstacle to the choice of an analogue country with a single cooperating producer, even if that producer is related to a Union producer. In any case, the Commission ensured that the data provided by the Canadian producer was reliable. Therefore the Commission rejected the exporting producers' claim.

(44) Following the additional disclosure, the Chinese exporting producers repeated their claim that the Commission was no longer permitted to use the analogue country methodology. They claimed that the Commission had changed its method of analysis in other respects, notably concerning the quality adjustment, and therefore the Commission should also have changed its method of analysis as regards the analogue country methodology.

(45) The Commission again rejected the claim. The analogue country methodology was permissible for the reasons outlined in recital 42 above. Furthermore, the Commission's assessment of the quality adjustment is an issue not related to the choice of the analogue country.

(46) Consequently, the Commission concluded that, as in the original investigation, Canada is an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

(b) *Normal value*

(47) The information received from the cooperating producer in the analogue country was used as a basis for the determination of the normal value.

(48) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the total volume of domestic sales of the like product to independent customers made by the cooperating producer in Canada was representative in comparison with the total export volume from the PRC to the Union, namely whether the total volume of such domestic sales represented at least 5 % of the total volume of export sales of the product concerned to the Union. On that basis, it was found that the domestic sales in the analogue country were representative.

(49) The Commission subsequently examined for the analogue country producer whether each type of the like product sold domestically could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each product type the proportion of profitable sales to independent customers on the domestic market during the investigation period. The sales transactions were considered profitable where the unit price was equal or above the cost of production. The cost of production of each product type produced by the Canadian producer during the investigation period was therefore determined.

(50) Where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average sales price of that type was equal to or higher than the cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the investigation period. In all other instances, normal value was constructed in line with Article 2(3) and (6) of the basic Regulation by adding to the average cost of manufacturing of the relevant product type SG&A costs incurred and profit realised on the Canadian market during the investigation period.

(51) The original investigation revealed that, for the purpose of price comparison, there were product differences affecting said prices, including the quality of inputs for the production of the product concerned in China. This resulted in large fluctuations in prices charged by the Chinese exporting producers when exporting the product concerned to the Union. As set out in recitals 97 to 103 below, the applicants, however, presented evidence that this main distinction had disappeared in the meantime and that Chinese producers had moved to higher-quality product types when exporting to the Union.

(52) Accordingly, when determining normal value, the Commission used two calculation scenarios: scenario 1, taking into account all comparable products produced and sold by the analogue country producer, and scenario 2, taking into account only the cheapest product type, which likely corresponded also to lower product quality types. In the latter scenario, normal value was solely based on the actual domestic price, which was calculated as an average price of the domestic sales made during the review investigation period. In the former, more than half of the normal values were based on actual domestic prices and the remainder was constructed, because either the 80 % threshold and/or the profitability requirement as mentioned in recital 50 above was not met or there were no domestic sales of a particular product type.

(53) The analogue country producer during the review investigation period produced the entire range of product qualities and even some niche high added value products which were not taken into consideration for the dumping calculations.

(54) As noted in recitals 59 to 60 below, these two calculation scenarios yielded different dumping margin results.

(c) *Export price*

(55) As stated in recital 16, the Chinese exporting producers did not cooperate in the investigation. Therefore, the export price was based on the best information available, in accordance with Article 18 of the basic Regulation.

(56) The CIF price at Union border was established on the basis of the statistics available on Eurostat.

(d) *Comparison and adjustments*

(57) The Commission compared the normal value (basing itself either on calculation scenario 1 or 2, as set out in recital 52 above) and the export price on an ex-works basis. Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and the export price for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.

(58) Concerning the domestic prices of the analogue country producer, adjustments were made for domestic transportation costs and packing costs, where appropriate, rebates and discounts. The total impact of the adjustments was [5-10 %] of the total invoice value. The corresponding adjustments were made to the cost of production. As regards export prices, the ex-works factory value was determined by deducting from the CIF price at Union border the costs for transport, insurance, handling and other allowances, as calculated in the original investigation ([5-10 %] of the invoice value).

(e) *Dumping margin*

(59) On the basis of the above, when taking into account all comparable products produced and sold by the analogue country producer under scenario 1 (see recital 52 above), the calculated dumping margin expressed as a percentage of the free-at-Union-frontier price, before duty, was 205,5 %. However, as noted above, this calculation included all comparable products produced and sold by the analogue country producer. It was, particularly in light of the non-cooperation by the exporting producers, unclear whether the product types of the analogue country producer matched the ones exported by the Chinese exporting producers to the Union.

(60) Even when only considering the cheapest product type produced and sold by the analogue country producer, under scenario 2 (see recital 52 above), the dumping margin found was still significant at 35,1 %.

(61) The Commission also attempted to perform a product-type-by-product-type dumping margin calculation. However, given the absence of cooperation from Chinese exporting producers and therefore also the absence of real Chinese product-type data, this was deemed impossible for the expiry review investigation period. However, because the Commission was still in possession of product type data from the original investigation, the Commission used this data to perform a *pro forma* third dumping margin calculation to confirm either dumping margin calculation scenario 1 or 2.

(62) That third calculation yielded dumping margins between 35,7 % and 46,4 %. While this third calculation revealed that dumping still existed for the export of the product concerned to the Union, the Commission decided that — beyond that finding of dumping — no reliance could be given to the actual numbers this calculation showed. This was because the investigation revealed no evidence that the product type mix for export to the Union remained the same since the original investigation. Indeed, and as set out in recitals 97 to 103 below, the applicants presented evidence that Chinese exporting producers in the meantime had shifted to higher added-value product types in line with their technological progress. As a consequence, this simulation represents the lowest possible estimate of dumping margins by focusing relatively more on the cheaper product types of the past. Moreover, as mentioned in recital 5 above, certain product types were found to have been slightly modified in order to circumvent the measures. Neither finding was discredited by counter-evidence from Chinese exporting producers.

(63) As a consequence of the above, the Commission decided that the dumping margin calculation performed in scenario 2 (finding a dumping margin of 35,1 %) represented the lowest possible estimate of actual dumping margins in the absence of real Chinese exporting producer data of the product concerned.

(64) The Commission therefore concluded that in any event the Chinese exporting producers continued to export the product concerned to the Union at dumped prices during the review investigation period.

3.3. **Evidence of likelihood of recurrence of dumping**

(65) The Commission further analysed whether there was a likelihood of continuation of dumping should the measures be allowed to lapse. When doing so, it looked into the behaviour of Chinese exporters on other markets, the Chinese production capacity and spare capacity, and the attractiveness of the Union market.

3.3.1. *Exports to third countries*

(66) In the absence of cooperation from Chinese exporting producers, precise export price information from the PRC to the other countries was not available. The price data available from the Chinese export statistics concerned a wider product scope, but was nevertheless referred to by both the applicant and the Chinese exporting producers in their submissions, with opposing conclusions. Furthermore, the product mix of the exports to the third countries could not be known, thereby making it impossible for the Commission to determine the comparable price level of the Chinese exports to other markets.

(67) Consequently, the Commission considered that the evidence provided by the applicant in the form of statistical data referring to a wider product scope, did not allow it to conclude whether there was dumping to other markets or not.

3.3.2. *Production capacity and spare capacity in the PRC*

(68) In the absence of cooperation of Chinese exporting producers, the determination of spare capacity in the PRC was based on a study commissioned by the applicant and included with the expiry review request. An updated version of the study was subsequently submitted by the applicant.

(69) According to the original study, the total capacity in the PRC was 1 840 million square metres, while production volume was 1 390 million square metres, thus leaving a large spare capacity of 450 million square metres. According to the updated version, the total capacity in the PRC was 2 295 million square metres and the production volume was 1 544 million square metres, thus leaving an even larger spare capacity of 751 million square metres. Taking into account that a capacity utilisation rate of 100 % could not realistically be achieved, the applicant itself considered that a maximum utilisation rate of between 85 % and 90 % would be more adequate. On the basis of the more conservative estimate of 85 % capacity utilisation rate, the spare capacity actually available would be 406 million square metres. In comparison, the total Union consumption was 714 million square metres in the review investigation period, thus pointing to a significant spare capacity that would be available to be directed toward the Union market, should the measures be allowed to lapse.

(70) The Chinese exporting producers disputed the reliability of the study and requested the Commission to disregard it. First, they claimed that the lack of a meaningful open version of the study did not allow them to comment. Second, they pointed out that the expert who had compiled the study was not impartial due to his links with the Union industry. Third, they alleged that any spare capacity was going to be absorbed by the increasing domestic demand in the PRC, as suggested by a quote from an article in a specialised magazine which referred to the strong growth of the construction sector in the PRC ([1]).

(71) As regards the first claim by the Chinese exporting producers, the Commission pointed out that an open version of the updated study had been included in the open file. The Commission found this version to be meaningful, allowing the Chinese exporting producers to make more detailed comments and to forward substantiated evidence rebutting the study's statements and conclusions. In any case, the Chinese exporting producers did not specify what part of the open version of the study was not meaningful enough for them to comment on. This argument was, consequently, rejected.

(72) As regards the second claim, the Commission pointed out that in the absence of cooperation from the PRC and any alternative detailed information concerning capacity provided by the Chinese exporting producers, the Commission considered that the study constituted the best fact available. Nor was the Commission able to retrieve information that would call the study into question.

(73) As regards the third claim, the Commission agreed that a portion of the production capacity could be used to meet the rising domestic demand. However, the exporting producers did not provide a figure of the domestic consumption in the PRC that could back up their claim that the planned increase in domestic demand would absorb the entire spare capacity. Nor did the Commission's investigation yield such a figure. It is also likely that part of the spare capacity would be exported to third countries, not only to the Union.

(74) The Commission therefore concluded that, even taking into account the current domestic demand in the PRC, the maximum spare capacity that could be expected to be directed to the Union market was, at most 406 million square metres, should the measures be allowed to lapse. However, it is likely that in the future, part of that spare capacity would also be absorbed by an increase in domestic Chinese consumption and part of it also sold to export markets other than the Union, but, as noted in recitals 66 and 67 to above, no information to this effect was received from interested parties or discovered by the Commission itself.

([1]) Global Construction 2025, Global Construction Perspectives and Oxford Economics, cited in http://www.building.co.uk/global-construction-2025/5057217.article

(75) Following the additional disclosure, the Chinese exporting producers continued to contest the findings concerning spare capacity. They claimed that the assessment of spare capacity was based on mere assumptions and not supported by positive evidence. They claimed that the study submitted by the applicant cited the wrong websites of two Chinese exporting producers, and that the capacity of a third Chinese producer was reported to be 129 million square metres, whereas in reality the capacity was 60 million square metres.

(76) The Commission noted that in the absence of cooperation from the PRC, the assessment of spare capacity was based on best facts available, as explained in recital 72. The Commission pointed out that the spare capacity was estimated to be at most 406 million square metres and that some proportion of the spare capacity was going to be absorbed by domestic Chinese consumption and by export markets other than the Union, as explained in recital 74. The Chinese exporting producers did not contest the capacity estimates of the two Chinese producers with the allegedly wrong web addresses. The Commission considered that, even if the claims by the Chinese producers were correct, a change in the capacity estimate would not have put into doubt the overall finding that there was significant spare capacity in China. Indeed, even if the actual capacity of the third Chinese producer was 60 million square metres, as alleged, and even if the capacity estimates for the two other Chinese producers were based on incorrect websites, the total estimated spare capacity in China would still represent almost 50 % of the Union consumption.

3.3.3. *Attractiveness of the Union market*

(77) In the absence of cooperation from the PRC and of Chinese invoices to other markets, precise export price and product mix information from the PRC to other countries was not available. It was therefore impossible for the Commission to determine the attractiveness of price level in the Union compared with other export markets.

(78) However, as established after the additional disclosure, the undercutting calculations showed that the average prices achieved by the Union producers in the Union market were well above the Chinese import prices during the review investigation period. On that basis, it can be established that the price level in the Union market is attractive for the Chinese exporting producers.

(79) Furthermore, the Commission considered that the attractiveness of the Union market was demonstrated by (i) the level of the Chinese market penetration before the imposition of the measures (51 % market share during the investigation period of the original investigation ([1])) and (ii) the existence of numerous circumvention practices, as outlined in recitals 2 to 5.

(80) Therefore, the Commission concluded that the Union market remains attractive for the Chinese exporting producers.

3.3.4. *Conclusion on the likelihood of recurrence of dumping*

(81) Based on the above, the Commission concluded that in view of significant spare capacity in China and the attractiveness of the Union market there was a likelihood of recurrence of dumping should the current measures be allowed to lapse.

4. LIKELIHOOD OF A RECURRENCE OF INJURY

4.1. Definition of the Union industry and Union production

(82) During the review investigation period, the like product was manufactured by 22 known producers. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(83) The total Union production was established at 694 633 582 square metres during the review investigation period. The companies that supported the review request represented more than 80 % of the total Union production in the review investigation period. As indicated in recital 18, the sampled Union producers represented more than 70 % of the total Union production of the like product.

([1]) 1 April 2009 to 31 March 2010.

4.2. **Union consumption**

(84) The Commission established the Union consumption by adding the volume of sales of the Union industry on the Union market and imports from all countries based on the Article 14(6) database ([1]).

(85) The Commission notes that interested parties, and in particular the applicant, used Eurostat import data for full eight digit codes to estimate the volume of imports from the PRC and other countries. These codes however also include products not covered by the investigation. As mentioned above, the Commission used import data from the Article 14(6) database which concern only imports of the product under investigation and therefore the volume of imports and, consequently, estimated Union consumption are more accurate than if full eight digit codes Eurostat data was used.

(86) Union consumption developed as follows:

Table 1

Union consumption

	2013	2014	2015	RIP
Total Union consumption (square metres)	590 716 421	602 113 728	687 901 767	714 430 620
Index (2013 = 100)	*100*	*102*	*116*	*121*

Source: Verified questionnaire replies and applicant's data, Article 14(6) database.

(87) During the period considered, Union consumption increased every year and by 21 % in total. The strong growth in consumption reflects the general recovery in the construction sector and the strong demand for external thermal insulation materials, which is a downstream product that uses open mesh fabrics of glass fibres. The Union consumption for open mesh fabrics of glass fibres is forecast to continue to grow in the coming years.

4.3. **Imports from the country concerned**

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

(88) Imports into the Union from the PRC developed as follows:

Table 2

Import volume and market share

	2013	2014	2015	RIP
Volume of imports from the country concerned (square metres)	19 684 666	21 047 165	11 547 563	8 422 681
Index (2013 = 100)	*100*	*107*	*59*	*43*
Market share	3,33 %	3,50 %	1,68 %	1,18 %
Index (2013 = 100)	*100*	*105*	*50*	*35*

([1]) The Article 14(6) database contains data on imports of products subject to anti-dumping or anti-subsidy measures or investigations, both from the countries and exporting producers concerned by the proceeding and from other third countries and other exporting producers, at the level of the 10-digit TARIC codes and TARIC additional codes. The Article 14(6) database data on import volume (tonnes) were converted to square metres by using the formula: 1 square metre = 0,14 kg.

	2013	2014	2015	RIP
Volume of imports from the countries under anti-circumvention measures ([1]) (square metres)	20 442 728	1 976 003	2 145 297	1 118 317
Index (2013 = 100)	*100*	*10*	*10*	*5*
Market share	3,46 %	0,33 %	0,31 %	0,16 %
Index (2013 = 100)	*100*	*9*	*9*	*5*

Source: Article 14(6) database.
([1]) India, Indonesia, Malaysia, Taiwan and Thailand.

(89) During the period considered, the volume of imports into the Union from the PRC decreased by 57 %. It increased first between 2013 and 2014 by 7 %, but then decreased sharply by 45 % between 2014 and 2015, and stayed low until the end of the investigation review period. Chinese market share followed this trend, increasing, first, from 2013 to 2014 and then falling sharply first to 1,68 % during 2014, and then to 1,18 % in the review investigation period from the 2014 high of 3,50 %. The decrease of the market share was greater than the decrease in the volume of imports because of the growing Union consumption.

(90) In view of the anti-circumvention measures in force and the applicant's claim that these should be added to the Chinese market share, the Commission also looked at the development of imports from India, Indonesia, Malaysia, Taiwan and Thailand. The total volume of imports from these five countries decreased significantly during the period considered with the sharpest decrease happening from 2013 to 2014. In the review investigation period the total volume of imports from these five countries reached only 1 118 317 square metres corresponding to a market share of only 0,16 %.

(91) The applicant, several Union producers and the European Association of Technical Fabrics producers (TECH-FAB Europe) claimed in the review request, in ad hoc submissions and during hearings that the real volume of imports of the product under review from the PRC was significantly higher than reported in Eurostat or other official statistics due to massive volume of Chinese imports arriving in the Union via Ukraine, Turkey, Republic of Moldova, the former Yugoslav Republic of Macedonia, Serbia, Bosnia and Herzegovina and possibly other countries.

(92) First, the Commission noted that Eurostat import statistics at TARIC level are not available to the applicant and that the 8 digit CN codes relied upon by the applicant are a too broad product category, as already mentioned in recital 85. Therefore, they overstate the volume of imports of the products covered by this investigation. Second, the Commission has not received a request under Article 13(3) of the basic Regulation to investigate the possible circumvention of the measures in force via any of the above-mentioned countries. Moreover, the available import statistics show that imports from Bosnia and Herzegovina, Turkey and Ukraine were negligible during the review investigation period. Concerning imports from countries neighbouring the Union, it should also be noted that in the review request the applicant itself acknowledged that the measures in force had a positive effect, as they increased the diversity of supply including the Union neighbouring countries, which started to develop production. This statement is supported by a submission received from a producer, which is related to a Union producer, located in the former Yugoslav Republic of Macedonia. Accordingly, the assumptions about circumvention were not supported by evidence or facts, so they were not taken into consideration.

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

(93) The Commission also established the trend of the prices of Chinese imports on the basis of Article 14(6) database.

(94) The average price of imports from the country concerned developed as follows:

Table 3

Import prices

	2013	2014	2015	RIP
Chinese import prices (EUR/square metres)	0,15	0,16	0,25	0,23
Index (2013 = 100)	*100*	*106*	*167*	*153*

Source: Article 14(6) database.

(95) Overall, during the period considered average import prices increased by 53 % and reached 0,23 EUR per square metre in the review investigation period.

(96) In the absence of cooperation from any Chinese exporting producers subject to this review, the Commission determined the price undercutting during the review investigation period by comparing the weighted average sales price of the sampled Union producers charged to independent customers in the Union market, adjusted to an ex works level, and the average Chinese export price based on the Article 14(6) database at CIF level after appropriate adjustments for customs duties and post-importation costs. The comparison showed that during the review investigation period there was no price undercutting. However, if no account is taken of the anti-dumping duty, Chinese imports undercut the Union industry prices, on average, by 22,5 %.

(97) In the original investigation, a quality adjustment was made to the Chinese import prices. At the disclosure stage, and in the absence of any claims in this respect, the Commission initially applied the same adjustment in the review investigation as in the original investigation. However, subsequent to the disclosure, the applicant made two sets of comments regarding quality adjustments and the relevant import prices, respectively. Regarding the first set of comments, the applicant submitted that the Chinese producers have improved the quality of their products since the original investigation and demonstrated that the largest Chinese producers currently comply with the quality requirements for all main areas of application. As is set out in recitals 101 to 103 below, on the basis of the evidence provided by the applicant, and absent of any substantiated evidence to the contrary, the Commission decided not to apply the quality adjustment in this review.

(98) Regarding the second set of comments, the applicant further claimed after disclosure that the Chinese import prices used for this price comparison would not be representative in view of the relatively low volumes. The applicant suggested that, in view of these low volumes and the high anti-dumping duty, the imports from China that took place during the review investigation period were imports of very high quality supply for small niche markets. Therefore, the average value would be too high as compared to the average value of Chinese imports in case of no measures, as those imports would represent the 'normal' lower priced product mix.

(99) After the additional disclosure, Chinese producers claimed that the Commission should not have accepted the evidence submitted by the applicant concerning the quality adjustment because it was allegedly unsubstantiated. Furthermore, they submitted that within the framework of an expiry review the Commission is bound to use the same methodology that was applied in the original case and should have therefore continued to apply the quality adjustment that was applied in the original investigation.

(100) The Commission considered and took into account all comments submitted after disclosure and additional disclosure, as appropriate.

(101) Regarding the comments submitted by the applicant, the Commission accepted the first set of comments, related to the quality adjustment. Indeed, the Commission considered that the applicant duly substantiated its claim that there was evidence that Chinese producers had improved the quality of their products and that, therefore, in the context of this expiry review, it was no longer warranted to make the same quality adjustment that was made in the original investigation. In this respect, the applicant, in its comments subsequent to the disclosure, provided relevant details on Chinese offers and quality claims, as they appear on the websites of Chinese producers of the product concerned, and also submitted information on important mergers amongst Chinese manufacturers aimed at improving their performance, strong State support for the open mesh industry for improving the quality, improvement of the production machinery at several key producers, the improvement of the quality of the main raw material used, and an increased focus on product quality management in the Chinese industry concerned.

All these developments would thus result in a major improvement in Chinese open mesh quality, as a result of which Chinese producers currently produce the product concerned at a level that complies with the same quality standards as Union producers concerning such parameters as tensile strength after alkaline exposure (as tested according to ETAG004), machine and cross-machine direction and elongation. In the absence of cooperation from Chinese exporting producers and of any evidence to the contrary submitted by them, and since the Commission was not able to retrieve evidence to the contrary itself, it was established that the quality of the Chinese products substantially improved overall, and that those improvements are likely to also characterise future exports to the Union.

(102) In the original investigation, the adjustment was partly based on the information available to the Commission, obtained from cooperating exporting producers. In this expiry review investigation, the Chinese producers did not reply to any questionnaires and therefore did not submit any relevant verifiable information that would have been able to call the applicant's claim into question or rebut the above findings. This forced the Commission to make a finding on the basis of the information available to it. Accordingly, and due to this lack of cooperation and provision of data pointing to the contrary, the Commission was not able to determine, on the basis of a comparison between the quality of the imports from China and the quality of the like product produced and sold by the Union industry, as substantiated, during the review investigation period, whether a quality adjustment continued to be needed. Finally, the Commission points out that even in their comments to the additional disclosure, the Chinese producers did not provide any substantiated evidence that the applicant's claim that no quality adjustment was anymore warranted was wrong.

(103) The Commission, therefore, accepted the first set of comments made by the applicant and rejected the claims made by the Chinese exporters and concluded that there was no longer any basis for applying the quality adjustment in the undercutting calculations.

(104) As regards the second set of comments submitted by the applicant, the Commission did not accept the applicant's claims, since they were not supported by substantiated evidence. Despite the fact that these claims were rejected, the Commission nevertheless concluded that the 22,5 % undercutting margin (calculated as set out in recital 96 above) remained substantial.

(105) In addition, the Commission pointed out that not making a quality adjustment in the expiry review is not a change in methodology compared to the original investigation. The need for the quality adjustment was assessed in the original investigation in view of circumstances that prevailed at that time and to ensure a comparison of the product concerned with that produced in the Union at the same level of trade. However, in light of the new evidence submitted, this adjustment required re-assessment. As mentioned in recitals 101 to 103, the evidence provided by the applicant pointed towards competition at the same level of trade that did not require the application of a quality adjustment on the part of the product concerned. On the basis of the evidence available to it, the Commission, accordingly, concluded that the circumstances of the present case did not justify such an adjustment anymore.

(106) Finally, regarding the claim of Chinese producers that the Commission should have continued to apply the quality adjustment that was applied in the original investigation, it should be pointed out that the case law ([1]) referred to by Chinese exporters in their submission concerns a change in the methodology for calculating the dumping margin when comparing the export price and the normal value pursuant to Article 2(10) of the basic Regulation (i.e. the investigating authority used the 'input method' in the initial investigation and the 'residual method' in the review). Therefore, the situation differs substantially from the case at hand in which the Commission did not change the methodology compared to the original investigation. Rather, it duly took account of the changed circumstances between the original investigation and the review which no longer justified the application of a quality adjustment.

(107) Accordingly, the Commission rejected the claims made by the Chinese producers mentioned in recital 99 and confirmed its decision not to apply the quality adjustment in this review.

(108) In a hearing with the Commission's services after the additional disclosure, the Chinese authorities submitted that for quite a long time the Chinese producers have been using a special fiberglass formula, C-Glass, which is different than alkali-resistant fiberglass formula widely used in the Union, claiming, therefore, that the quality adjustment should be maintained. First, the Commission observed that this comment was made after the deadline for comments to the additional disclosure. Second, this claim was not substantiated by evidence about the current level of the quality of the Chinese open mesh or any evidence that would show what is the proportion of the use of C-Glass as compared to the use of other fiberglass types by open mesh fabrics producers in the PRC.

([1]) Case T-221/05, Huvis v Council, ECLI:EU:T:2008:258, para. 43.

Third, in the absence of cooperation from exporting producers in the PRC, it was not possible to obtain and verify such a claim with the exporting producers concerned, so the Commission had to make use of the facts available to it. Fourth, this claim concerning the input material for the production of the open mesh fabrics of fibre glass does not invalidate the evidence supporting the applicant's claim that since the original investigation the Chinese producers had improved the quality of their products, including their alkali-resistance, which is part of compliance with ETAG004 standard, a circumstance that renders the quality adjustment not warranted in this review. Consequently, the Commission rejected this claim.

4.4. **Imports from other third countries**

(109) The following table shows the development of imports to the Union from third countries other than the PRC during the period considered in terms of volume and market share as well as average price of these imports. The table is based on data from the Article 14(6) database.

Table 4

Imports from third countries

Country		2013	2014	2015	RIP
Republic of Moldova	Volume of imports (square metres)	8 865 531	9 894 443	18 866 981	20 704 443
	Index (2013 = 100)	*100*	*112*	*213*	*234*
	Market share	1,5 %	1,6 %	2,7 %	2,9 %
	Average price (EUR/square metre)	0,25	0,26	0,28	0,27
	Index (2013 = 100)	*100*	*102*	*113*	*109*
The former Yugoslav Republic of Macedonia	Volume of imports (square metres)	0	0	2 670 400	11 333 114
	Index (2013 = 100)	*No index presented as volume in 2013 and 2014 is zero*			
	Market share	0 %	0 %	0,4 %	1,6 %
	Average price (EUR/square metre)	na	na	0,26	0,27
	Index (2013 = 100)	*No index presented as volume in 2013 and 2014 is zero*			
Serbia	Volume of imports (square metres)	0	750	4 809 343	9 915 393
	Index (2013 = 100)	*No index presented as volume in 2013 is zero*			
	Market share	0 %	0 %	0,7 %	1,4 %
	Average price (EUR/square metre)	na	0,11	0,27	0,27
	Index (2013 = 100)	*No index presented as volume in 2013 is zero*			

Country		2013	2014	2015	RIP
Total of all other third countries	Volume of imports (square metres)	50 450 204	15 857 722	16 506 640	10 614 358
	Index (2013 = 100)	*100*	*31*	*33*	*21*
	Market share	8,5 %	2,6 %	2,4 %	1,5 %
	Average price (EUR/square metre)	0,24	0,31	0,32	0,40
	Index (2013 = 100)	*100*	*128*	*133*	*167*

Source: Article 14(6) database.

(110) During the period considered, the overall volume of imports from countries other than the PRC decreased by 11 % with a particularly sharp drop happening between 2013 and 2014, which can be explained by the effectiveness of the anti-circumvention measures.

(111) Meanwhile, imports from three countries that are located geographically close to the Union — Republic of Moldova, the former Yugoslav Republic of Macedonia, and Serbia — have grown considerably and to a large extent replaced imports from all other third countries. Their combined market share has increased from just 1,5 % in 2013 to 5,9 % in the review investigation period. Since 2013 their price level has in general been considerably lower than the average price level of imports from other third countries, but still higher than the prices of imports from the PRC.

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

4.5.1. *General remarks*

(112) In accordance with Article 3(5) of the basic Regulation, the Commission examined all economic indicators having a bearing on the state of the Union industry during the period considered. As mentioned in recital 18, sampling was used for the Union industry.

(113) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated macroeconomic indicators relating to the whole Union industry on the basis of information provided by the applicants in the review request. These macro indicators were duly verified by the Commission. The Commission evaluated microeconomic indicators relating only to the sampled companies on the basis of the verified data contained in the questionnaire replies. Both sets of data were found to be representative of the economic situation of the Union industry.

(114) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin and recovery from past dumping.

(115) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investment, and ability to raise capital.

(116) At a late stage in the proceeding, several interested parties submitted that the analysis of the microeconomic indicators was blurred by the fact that the sample was dominated by one vertically integrated producer whereas most Union producers would be non-integrated weavers which buy the glass fibres raw material on the free market. Weavers would find themselves in a very different and significantly less prosperous situation as compared to the dominant integrated producer. This argument was resubmitted after the disclosure.

(117) As mentioned in recital 18 and in line with the provisions of Article 17(1) of the basic Regulation, the sample represents the largest representative volume of production and sales which can reasonably be investigated within the time available. It is recalled that it represents ca. 70 % of the production and sales made by the Union producers. At the same time, however, it is true that the microeconomic indicators are, in this review investigation, to a large extent set by one of the sampled parties which has a company set-up and cost structure which is markedly different from that of most other producers. This issue is further addressed in recital 28.

4.5.2. *Macroeconomic indicators*

4.5.2.1. Production, production capacity and capacity utilisation

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

Table 5

Production, production capacity and capacity utilisation

	2013	2014	2015	RIP
Production volume (square metres)	551 246 419	591 314 219	670 397 631	694 633 582
Index (2013 = 100)	*100*	*107*	*122*	*126*
Production capacity (square metres)	672 600 881	766 417 296	821 009 956	836 697 568
Index (2013 = 100)	*100*	*114*	*122*	*124*
Capacity utilisation	82 %	77 %	82 %	83 %
Index (2013 = 100)	*100*	*94*	*100*	*101*

Source: Verified questionnaire replies and applicant's data.

(119) During the period considered, production by volume increased by 26 %. Compared to 2013, it increased each year with a particularly strong growth happening between 2014 and 2015.

(120) In order to meet a growing demand and enable the above-mentioned growth in production, the Union industry increased the production capacity by 24 % during the period considered with a major increase taking place between 2013 and 2014.

(121) The increased production and production capacity was broadly in line with a similar growth in the Union consumption, which allowed the Union industry to keep capacity utilisation rate relatively stable during the period considered.

4.5.2.2. Sales volume and market share

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

Table 6

Sales volume and market share

	2013	2014	2015	RIP
Total sales volume in the Union market (square metres)	511 716 020	555 313 648	633 500 840	653 440 631
Index (2013 = 100)	*100*	*109*	*124*	*128*

	2013	2014	2015	RIP
Market share	86,6 %	92,2 %	92,1 %	91,5 %
Index (2013 = 100)	*100*	*106*	*106*	*106*

Source: Verified questionnaire replies and applicant's data.

(123) During the period considered, the sales volume in the Union market increased by 28 %. It increased every year — by 9 % between 2013 and 2014, by another 15 index points between 2014 and 2015 and further 4 index points between 2015 and the review investigation period.

(124) The growth in sales volume was slightly higher than the growth in the Union consumption during the period considered and allowed the Union industry to increase its market share by 4,9 percentage points from 86,6 % in 2013 to 91,5 % in the review investigation period.

4.5.2.3. Growth

(125) During the period considered, the Union industry witnessed a strong growth of production and sales that allowed it take full advantage of the upward trend of the Union consumption.

4.5.2.4. Employment and productivity

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

Table 7

Employment and productivity

	2013	2014	2015	RIP
Number of employees	1 279	1 390	1 449	1 545
Index (2013 = 100)	*100*	*109*	*113*	*121*
Productivity (square metres/employee)	430 876	425 423	462 745	449 707
Index (2013 = 100)	*100*	*99*	*107*	*104*

Source: Verified questionnaire replies and applicant's data.

(127) During the period considered, the number of employees increased by 21 %, with increases taking place every year.

(128) The longer term restructuring efforts that were undertaken by the Union industry already during the time of the original investigation continued and allowed it to increase production volume more than the number of employees resulting in an overall increase in productivity, measured as output (square metres) per person employed per year, which increased by 4 % during the period considered.

4.5.2.5. Magnitude of the dumping margin and recovery from past dumping

(129) Dumping continued during the review investigation period, as explained under section 3.2.

(130) During the period considered, the volume of the dumped imports from the PRC as well as from countries subject to anti-circumvention measures was low, so it can be concluded that the impact of the magnitude of the dumping margin on the Union industry was not very significant. As compared to the original investigation, the situation of the Union industry has improved in terms of production, sales and market share, which shows that it had fully recovered from past dumping.

4.5.3. *Microeconomic indicators*

4.5.3.1. Prices and factors affecting prices

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

Table 8

Sales prices in the Union and unit cost of production

	2013	2014	2015	RIP
Average unit sales price in the Union market (EUR/square metre)	0,352	0,347	0,334	0,328
Index (2013 = 100)	*100*	*99*	*95*	*93*
Unit cost of production (EUR/square metre)	0,299	0,292	0,282	0,285
Index (2013 = 100)	*100*	*98*	*94*	*95*

Source: verified questionnaire replies of the sampled Union producers.

(132) The unit sales price of the Union industry to unrelated customers in the Union decreased by 7 % during the period considered. With a small time lag, the trend in prices followed the trend in costs of production with the exception of the review investigation period when the unit cost of production increased by approximately 1 %, but the average unit sales price decreased by approximately 1,5 %.

4.5.3.2. Labour costs

(133) The average labour costs developed over the period considered as follows:

Table 9

Average labour costs per employee

	2013	2014	2015	RIP
Average labour costs per employee (EUR/employee)	18 095	17 096	17 695	17 624
Index (2013 = 100)	*100*	*94*	*98*	*97*

Source: verified questionnaire replies of the sampled Union producers.

(134) In 2014 the average labour costs per employee decreased by 6 % as compared to 2013, then increased in 2015 and again decreased in the review investigation period when they reached a level that was 3 % lower than in 2013.

4.5.3.3. Inventories

(135) Stock levels developed over the period considered as follows:

Table 10

Inventories

	2013	2014	2015	RIP
Closing stocks (square metres)	73 758 800	79 909 963	81 506 790	51 864 072
Index (2013 = 100)	*100*	*108*	*111*	*70*

	2013	2014	2015	RIP
Closing stocks as a percentage of production	17,7 %	18,4 %	16,3 %	10,0 %
Index (2013 = 100)	*100*	*104*	*92*	*57*

Source: verified questionnaire replies of the sampled Union producers.

(136) Closing stocks of the Union industry increased by 8 % between 2013 and 2014 and then remained relatively stable in 2015 before decreasing by 30 % in the review investigation period as compared to 2013. Closing stocks as a percentage of production followed a similar trend and were by 43 % lower in the review investigation period than in 2013. The investigation found that stock levels are not an important indicator of injury for the Union industry. The large drop in the closing stock level at the end of the review investigation period as compared to all other periods is due to the seasonality of the construction sector. The Union industry builds up stocks during the low season in winter, so stocks are high on 31 December, but depletes them in high season in summer, so stocks are low at the end of the review investigation period (30 June 2016).

4.5.3.4. Profitability, cash flow, investments, return on investment and ability to raise capital

(137) Profitability, cash flow, investments and return on investment developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2013	2014	2015	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	14,5 %	17,0 %	15,0 %	14,2 %
Index (2013 = 100)	*100*	*118*	*104*	*98*
Cash flow (EUR)	21 046 398	25 541 119	29 034 199	28 362 019
Index (2013 = 100)	*100*	*121*	*138*	*135*
Investments (EUR)	13 878 588	9 063 687	7 939 165	9 718 856
Index (2013 = 100)	*100*	*65*	*57*	*70*
Return on investments	48,1 %	56,3 %	64,9 %	49,4 %
Index (2013 = 100)	*100*	*117*	*135*	*103*

Source: verified questionnaire replies of the sampled Union producers.

(138) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of its sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. During the period considered, the profitability of the Union industry fluctuated between 14,2 % and 17 %. In the original investigation the target profit for the industry was established at 12 % ([1]). Accordingly, it is noted that each year during the period considered the Union industry reached profit that was above the target profit.

([1]) Recital 68 of Implementing Regulation (EU) No 791/2011.

(139) After disclosure, the applicant pointed at the fact that the profit was relatively high during the review investigation period due to exceptionally favourable evolution of raw material costs and exchange rates during that period. After the review investigation period, these trends would have reversed, resulting in a lowering of the industry's profitability. The Commission analysed these comments and found that the conclusion that the profitability of the Union industry, based on the sample, was above target profit during the period considered, was not materially affected by these elements.

(140) The net cash flow is the ability of the Union industry to self-finance its activities. During the period considered cash flow was positive and in line with the development of the profitability.

(141) In order to be able to take advantage of the growing demand for open mesh fabrics of glass fibres both in the Union and abroad, during the period considered the Union industry made significant investments in new capacity. Such investments were particularly high in 2013, which explains why the trend for the entire period considered is negative 30 %.

(142) The return on investment consists of the profit expressed as a percentage of the net book value of the fixed assets. It was positive in each year of the period considered and its development was in line with the development of the profitability.

(143) Given the high profitability of the Union industry and continuously growing sales and demand for open mesh fabrics of glass fibres, there are no indications that the Union industry encountered any difficulty to raise capital during the period considered to finance its large investments.

4.5.4. *Conclusion on the situation of the Union industry*

(144) During the period considered, all injury indicators, except sales prices, showed that the Union industry was in a good situation with all financial indicators being positive. Concerning sales prices, the Commission observed that their decrease to a large extent reflected a similar decrease in the costs of production.

(145) The investigation confirmed that the measures imposed by the original investigation as well as the anti-circumvention measures that followed had benefited the Union industry, which regained and increased its market share, carried out restructuring activities, made major investments, decreased costs of production and increased profitability.

(146) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation.

4.6. **Likelihood of recurrence of injury**

(147) To assess the likelihood of recurrence of injury if the measures against the PRC were allowed to lapse, the potential impact of Chinese imports on the Union market and the Union industry was analysed in accordance with Article 11(2) of the basic Regulation.

(148) In recital 64 the Commission established that dumping continued during the review investigation period, albeit in small volumes.

(149) In recital 74 the Commission established that during the review investigation period the spare capacity in the PRC could reasonably be estimated at 406 million square metres, which represents 57 % of the Union consumption during the same period. In recitals 80 the Commission concluded that the Union market was attractive for the Chinese exporting producers in view of the price level in the Union and its continuing efforts to enter that market. Due to these findings, the Commission concluded, in recital 81, that it is likely that the repeal of the measures would result in increased exports of the product under investigation at dumped prices from the PRC to the Union.

(150) At the same time, the investigation showed that for the past 4 years including the review investigation period the Union industry has been overall in a sound financial situation whereby most of the injury indicators showed positive trends (see recitals 144 to 146). It should however be underlined that the Union market was effectively shielded from the presence of large volumes of dumped imports in that period due to the anti-dumping measures in place and the Union industry could clearly take advantage from that.

(151) At hearings and in their submissions, several Union producers and the European Association of Technical Fabrics producers (TECH-FAB Europe) claimed that, given the large production capacity in the PRC and lower sales prices, the repeal of the measures would immediately lead to a sharp increase of imports of the product under investigation from the PRC in the Union at dumped prices that would be lower than the cost of production of most of the Union producers. After disclosure, these comments were further corroborated as follows.

(152) Firstly, the applicant demonstrated that the quality difference, which was significant at the time of the original investigation, had ceased to exist. Consequently, it could indeed be expected that the increased volumes of low-prized and dumped Chinese imports on the Union market exerted an overall downward pressure on the Union industry's sales prices. The Union industry substantiated, secondly, that a relatively modest price decrease in the order of 0,04 EUR per square metre, which in such context is plausible indeed in view of the current gap between average Union industry sales price and average Chinese import price of at least 0,10 EUR per square metre, would already cancel out all of the profitability it currently achieves.

(153) The Commission therefore acknowledged that in the light of the information available in the current review, should the measures be allowed to lapse, it is likely that the imports from the PRC in the Union of the product under investigation would strongly increase and this would be at dumped prices. Thus, they would exercise significant price pressure on the Union industry's sales prices and at the same time gain market share at the expense of the Union industry.

(154) Whereas the effect of the likely price injury can be established in a relatively straightforward manner, the volume injury is more difficult to establish. Indeed, it is clear that currently there is a significant spare capacity in China which could take up more than 50 % of the Union market. By contrast, whether the Union industry's market share will fall back to 70 %, 60 % or to below 50 %, as in the original investigation, is difficult to forecast in view of the growth in consumption worldwide and the non-cooperation from Chinese parties as a result of which no information could be gathered on the future capacity development in China. However, it is clear that, if measures are allowed to lapse, significant volumes would be lost to Chinese parties and, therefore, that, further to the devastating loss on turnover in view of decreasing sales prices, the Union industry would also be confronted with increased costs which in turn would severely affect the profitability and viability of the Union industry again.

(155) After the additional disclosure, the Chinese exporting producers claimed that the additional disclosure document did not contain a number of elements that were present in the first disclosure.

(156) In this respect, the Commission should first point out that, contrary to this claim, the findings on the healthy situation of the Union industry during the period considered in terms of sales and profitability were not deleted (see recitals 119, 124, and 138 in this Regulation).

(157) Second, as a result of the reassessment of the necessity for a quality adjustment (see recital 97), the following determinations were made. First, during the review investigation period, Chinese imports undercut the Union industry prices, if anti-dumping duties were deducted (see recital 96). Second, the Union industry did not anymore have advantages in terms of quality that would prevent a drop of Union sales price should measures be allowed to lapse (see recital 152). These conclusions shed a markedly different light on several elements in the forward-looking analysis on the likelihood of the recurrence of injury.

(158) Third, regarding the average Union industry sales prices to third countries markets mentioned in the first disclosure document: These prices were found to be at the same level as Union industry sales prices in the Union. Following the additional disclosure, the Union industry submitted comments and provided evidence that their prices to third countries markets had been influenced by the product mix of their sales outside the Union. Indeed, their exports consisted of heavier products than the ones sold in the Union. In addition, the Union industry's export sales represented a low share in their total sales. Consequently, the Commission concluded that findings initially established in the first disclosure were no longer relevant.

(159) Fourth, after the additional disclosure, the Chinese exporting producers questioned the plausibility of the evidence used by the applicant to claim that a modest price decrease, referred to in recital 152, would indeed cancel out all the profitability that the Union industry currently achieves. The Commission points out that such

effect is not a mere possibility, but it is the result of simulations based on the current level of the Union industry's profitability margin per square metre. Therefore this finding was reconfirmed and the Chinese exporting producers' claim was rejected.

(160) Finally, the Chinese exporting producers also claimed that the EU case law would require that the conclusion on the likelihood of recurrence of injury is not based on a mere possibility, but instead is based on a probability that is backed up by a forward-looking analysis seeking to resolve the issue of what would be likely to occur if the measures were terminated. The Commission pointed out that it had undertaken such a forward-looking analysis and described it in recitals 147 to 154 above.

(161) In light of the above, the Commission concluded that the repeal of the anti-dumping measures on imports of certain open mesh fabrics of glass fibres from the PRC would likely result in a recurrence of injury.

5. **UNION INTEREST**

(162) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures against the PRC would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

(163) It is recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union.

(164) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

(165) On this basis, the Commission examined whether, despite the conclusions on the likelihood of a continuation of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

5.1. **Interest of the Union industry**

(166) The investigation found that the existing measures had allowed the Union industry to recover from the past injurious dumping. In particular, the measures have allowed the Union industry to regain market share, do the necessary investments that had long been neglected to take advantage of the increasing demand whilst achieving, overall, a healthy profit. Without the volume and price pressure from dumped imports from the PRC, this process will continue. On this basis, the Commission concluded that the continuation of the anti-dumping measures in force would be in the interest of the Union industry.

5.2. **Interest of importers/traders**

(167) No importers cooperated by replying to the questionnaire (see recital 22). Therefore, there were no indications that the maintenance of the measures would have a negative impact on the importers outweighing the positive impact of the measures, nor did the Commission's investigation establish the contrary.

5.3. **Interest of users**

(168) The Chinese exporting producers submitted that the continued imposition of the duties would deprive users of the possibility to purchase the product concerned at reasonable prices. However, no users cooperated by replying to the questionnaire (see recital 22). Therefore, there were no indications that the maintenance of the measures would have a negative impact on the users outweighing the positive impact of the measures.

5.4. **Conclusion on Union interest**

(169) On the basis of the above, the Commission concluded that there are no compelling reasons of Union interest against the extension of the current anti-dumping measures on imports from the PRC.

6. DEFINITIVE ANTI-DUMPING MEASURES

(170) In view of the conclusions reached with regard to the likelihood of continuation and recurrence of dumping and recurrence of injury, it follows that, in accordance with Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain open mesh fabrics of glass fibres, extended to imports of certain modified open mesh fabrics of glass fibre, originating in or consigned from the PRC, imposed by Implementing Regulation (EU) No 791/2011, should be maintained.

(171) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of the Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed 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, currently falling within CN codes ex 7019 51 00 and ex 7019 59 00 (TARIC codes 7019 51 00 19 and 7019 59 00 19) and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the CIF net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and originating in the People's Republic of China shall be as follows:

Company	Duty (%)	TARIC additional code
Yuyao Mingda Fiberglass Co., Ltd	62,9	B006
Grand Composite Co., Ltd and its related company Ningbo Grand Fiberglass Co., Ltd	48,4	B007
Yuyao Feitian Fiberglass Co., Ltd	60,7	B122
Companies listed in Annex	57,7	B008
All other companies	62,9	B999

3. The definitive anti-dumping duty applicable to imports originating in the People's Republic of China, as set out in paragraph 2, is hereby extended to imports of the same open mesh fabrics consigned from India and Indonesia, whether declared as originating in India and Indonesia or not (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) and by Pyrotek India Pvt. Ltd (TARIC additional code C051), to imports of the same open mesh fabrics consigned from Malaysia, whether declared as originating in Malaysia or not (TARIC codes 7019 51 00 11 and 7019 59 00 11) and to imports of the same open mesh fabrics consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not (TARIC codes 7019 51 00 12, 7019 51 00 13, 7019 59 00 12 and 7019 59 00 13).

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

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

(a) it did not export to the Union the product described in paragraph 1 in the period between 1 April 2009 to 31 March 2010 (original investigation period),

(b) it is not related to any exporter or producer in the People's Republic of China which is subject to the anti-dumping measures imposed by this Regulation,

(c) it has actually exported to the Union the product concerned or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period,

the Commission may amend the Annex by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty of not exceeding 57,7 %.

Article 2

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, 6 November 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

CHINESE COOPERATING EXPORTING PRODUCERS, NOT SAMPLED (TARIC ADDITIONAL CODE B008)

Jiangxi Dahua Fiberglass Group Co., Ltd

Lanxi Jialu Fiberglass Net Industry Co., Ltd

Cixi Oulong Fiberglass Co., Ltd

Jiangsu Tianyu Fibre Co., Ltd

Jia Xin Jinwei Fiber Glass Products Co., Ltd

Jiangsu Jiuding New Material Co., Ltd

Changshu Jiangnan Glass Fiber Co., Ltd

Shandong Shenghao Fiber Glass Co., Ltd

Yuyao Yuanda Fiberglass Mesh Co., Ltd

Ningbo Kingsun Imp & Exp Co., Ltd

Ningbo Integrated Plasticizing Co., Ltd

Nankang Luobian Glass Fibre Co., Ltd

Changshu Dongyu Insulated Compound Materials Co., Ltd.

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1994

of 6 November 2017

initiating a review of Implementing Regulations (EU) 2016/184 and (EU) 2016/185 extending the definitive countervailing and anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not) for the purposes of determining the possibility of granting an exemption from those measures to one Malaysian exporting producer, repealing the anti-dumping duty with regard to imports from that exporting producer and making imports from that exporting producer subject to registration

THE EUROPEAN COMMISSION,

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

Having regard to 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 [1] ('the basic anti-dumping Regulation') and in particular Articles 11(4),13(4) and 14(5) thereof and 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 [2] ('the basic anti-subsidy Regulation') and in particular to Articles 23(6) and 24(5) thereof,

After informing the Member States,

Whereas:

1. REQUEST

(1) The European Commission ('the Commission') received a request for an exemption from the anti-dumping and countervailing measures applicable to imports of crystalline silicon photovoltaic modules and key components (i. e. cells) originating in r consigned from the People's Republic of China extended to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not, as far as the applicant is concerned, pursuant to Articles 11(4) and 13(4) of the basic anti-dumping Regulation and Article 23(6) of the basic anti-subsidy Regulation.

(2) The request was lodged on 23 May 2017 by Longi (Kuching) SDN.BHD ('the applicant'), an exporting producer of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels in Malaysia ('the country concerned').

2. PRODUCT UNDER REVIEW

(3) The product under review is crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels (the cells have a thickness not exceeding 400 micrometres), consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not, currently falling within CN codes ex 8501 31 00, ex 8501 32 00, ex 8501 33 00, ex 8501 34 00, ex 8501 61 20, ex 8501 61 80, ex 8501 62 00, ex 8501 63 00, ex 8501 64 00 and ex 8541 40 90.

(4) The following product types are excluded from the definition of the product under review:

— solar chargers that consist of less than six cells, are portable and supply electricity to devices or charge batteries,

— thin film photovoltaic products,

[1] OJ L 176, 30.6.2016, p. 21.
[2] OJ L 176, 30.6.2016, p. 55.

— crystalline silicon photovoltaic products that are permanently integrated into electrical goods, where the function of the electrical goods is other than power generation, and where these electrical goods consume the electricity generated by the integrated crystalline silicon photovoltaic cell(s),

— modules or panels with a output voltage not exceeding 50 V DC and a power output not exceeding 50 W solely for direct use as battery chargers in systems with the same voltage and power characteristics.

3. EXISTING MEASURES

(5) The Council, by Regulation (EU) No 1238/2013 ([1]) and (EU) No 1239/2013 ([2]), imposed anti-dumping and countervailing measures on crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China ('the PRC' or 'China') ('the original measures'). Also an Undertaking Agreement was accepted. By Implementing Regulations (EU) 2016/184 ([3]) and 2016/185 ([4]), the Commission extended the measures to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan ('the extended measures'), whether declared as originating in Malaysia and in Taiwan or not, with the exception of imports produced by certain companies specifically mentioned.

(6) The Commission, by Regulations (EU) 2017/366 ([5]) and (EU) 2017/367 ([6]) extended the anti-dumping and countervailing measures following an expiry review and terminated the partial interim review investigation which was initiated at the same time.

(7) On 10 February 2017 the Commission initiated a review ([7]) for an exemption request from a new exporting producer. This review investigation is on-going. Also, on 3 March 2017 the Commission initiated a partial interim review ([8]), limited to the form of the measures. On 15 September 2017 the Commission concluded this review by replacing the existing ad valorem duties, coupled with an undertaking, with a Minimum Import Price (MIP) ([9]).

4. GROUNDS FOR THE REVIEW

(8) The applicant alleged that it did not export the product under review to the Union during the investigation period used in the investigation that led to the extended measures, namely the period from 1 April 2014 to 31 March 2015.

(9) In addition, the applicant alleged that it has not circumvented the existing measures.

(10) The applicant further claimed that after the investigation period used in the investigation that led to the extended measures it has entered into an irrevocable contractual obligation to export a significant quantity to the Union.

5. PROCEDURE

5.1. **Initiation**

(11) The Commission examined the evidence available and concluded that there was sufficient evidence to justify the initiation of an investigation pursuant to Articles 11(4) and 13(4) of the basic anti-dumping Regulation and to Article 23(6) of the basic anti-subsidy Regulation for the purposes of determining the possibility of granting the applicant an exemption from the extended measures.

(12) Pursuant to Article 11(4) of the basic anti-dumping Regulation the Union industry known to be concerned was informed of the request for a review and was given an opportunity to comment but no comments were received.

([1]) OJ L 325, 5.12.2013, p. 1.
([2]) OJ L 325, 5.12.2013, p. 66.
([3]) OJ L 37, 12.2.2016, p. 56.
([4]) OJ L 37, 12.2.2016, p. 76.
([5]) OJ L 56, 3.3.2017, p. 1.
([6]) OJ L 56, 3.3.2017, p. 131.
([7]) OJ L 36, 11.2.2017, p. 47.
([8]) OJ C 67, 3.3.2017, p. 16.
([9]) OJ L 238, 16.9.2017, p. 22.

(13) The Commission will pay particular attention to the applicant's relationship with the companies subject to the existing measures in order to ensure that it was not established or used to circumvent the measures. The Commission will also consider whether particular monitoring conditions should be imposed in case the investigation will conclude that granting the exemption is warranted.

5.2. **Repeal of the existing anti-dumping measures and registration of imports**

(14) Pursuant to Article 11(4) of the basic anti-dumping Regulation, the anti-dumping duty in force should be repealed with regard to imports of the product under review which are produced and sold for export to the Union by the applicant.

(15) At the same time, such imports should be made subject to registration in accordance with Article 14(5) of the basic anti-dumping Regulation in order to ensure that, should the review result in a finding of circumvention in respect of the applicant, anti-dumping duties can be levied from the date of the registration of these imports. The amount of the applicant's possible future liabilities cannot be estimated at this stage of the investigation.

5.3. **Existing anti-subsidy measures**

(16) As there is no legal basis in the basic anti-subsidy Regulation to repeal the anti-subsidy measures in force, these measures will remain in force. Only should the review result in the finding that the applicant is entitled to an exemption, the anti-subsidy measures in force will be repealed through a Regulation granting such an exemption.

5.4. **Review investigation period**

(17) The investigation will cover the period from 1 April 2014 to 30 September 2017 ('review investigation period').

5.5. **Investigating the applicant**

In order to obtain information it deems necessary for its investigation, the Commission will send a questionnaire to the applicant. The applicant must submit the completed questionnaire within 37 days of the date of entry into force of this Regulation, unless otherwise specified, pursuant to Article 6(2) of the basic anti-dumping Regulation and Article 11(2) of the basic anti-subsidy Regulation.

5.6. **Other written submissions**

(18) Subject to the provisions of this Regulation, all interested parties are invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence must reach the Commission within 37 days of the date of entry into force of this Regulation.

5.7. **Possibility to be heard by the Commission investigation services**

(19) All interested parties may request to be heard by the Commission investigation services. Any request to be heard must be made in writing and must specify the reasons for the request. For hearings on issues pertaining to the initiation stage of the investigation the request must be submitted within 15 days of the date of entry into force of this Regulation. Thereafter, a request to be heard must be submitted within the specific deadlines set by the Commission in its communication with the parties.

5.8. **Instructions for making written submissions and sending completed questionnaires and correspondence**

(20) Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing a) the Commission to use the information and data for the purpose of this trade defence proceeding and b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their right of defence.

(21) All written submissions, including the information requested in this Regulation, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested should be labelled '*Limited*' ([1]).

(22) Interested parties providing 'Limited' information are required to furnish non- confidential summaries of it pursuant to Article 19(2) of the basic anti-dumping Regulation and Article 29(2) of the basic anti-subsidy Regulation, which will be labelled 'For inspection by interested parties'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such information may be disregarded.

(23) Interested parties are invited to make all submissions and requests by email including scanned powers of attorney and certification sheets, with the exception of voluminous replies which should be submitted on a portable digital storage medium (CD-ROM, DVD, USB flash drive) by hand or by registered mail. By using email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf.

(24) The interested parties must indicate their name, address, telephone and a valid email address and they should ensure that the provided email address is a functioning official business email which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by email, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: CHAR 04/039
1040 Brussels
BELGIUM
Email: TRADE-R677-EXEMPTION-SOLAR@ec.europa.eu

6. NON-COOPERATION

(25) In cases where any 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 on the basis of facts available, in accordance with Article 18 of the basic anti-dumping Regulation and Article 28 of the basic anti-subsidy Regulation.

(26) Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

(27) If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic anti-dumping Regulation and Article 28 of the basic anti-subsidy Regulation, the result may be less favourable to that party than if it had cooperated.

(28) Failure to give a computerised response will not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

([1]) A '*Limited*' document is a document which is considered confidential pursuant to Article 19 of Council Regulation (EC) No 1225/2009 (OJ L 343 22.12.2009 p. 51) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (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).

7. HEARING OFFICER

(29) Interested parties may request the intervention of the Hearing Officer in trade proceedings. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised. The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered.

(30) A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of entry into force of this Regulation. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.

(31) For further information and contact details interested parties may consult the Hearing Officer's web pages on DG Trade's website: http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/.

8. SCHEDULE OF THE INVESTIGATION

(32) The investigation will be concluded, pursuant to Article 11(5) of the basic anti-dumping Regulation and to Article 22(1) of the basic anti-subsidy Regulation, within nine months of the date of the entry into force of this Regulation.

9. PROCESSING OF PERSONAL DATA

(33) 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 [1],

HAS ADOPTED THIS REGULATION:

Article 1

A review of Implementing Regulation (EU) 2016/184 and Commission Implementing Regulation (EU) 2016/185, is hereby initiated pursuant to Articles 11(4) and 13(4) of Regulation (EU) 2016/1036 and Article 23(6) of Regulation (EU) 2016/1037 in order to establish whether the imports of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels (the cells have a thickness not exceeding 400 micrometres), consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not, currently falling within CN codes ex 8501 31 00, ex 8501 32 00, ex 8501 33 00, ex 8501 34 00, ex 8501 61 20, ex 8501 61 80, ex 8501 62 00, ex 8501 63 00, ex 8501 64 00 and ex 8541 40 90 (TARIC codes: 8501 31 00 82, 8501 31 00 83, 8501 32 00 42, 8501 32 00 43, 8501 33 00 62, 8501 33 00 63, 8501 34 00 42, 8501 34 00 43, 8501 61 20 42, 8501 61 20 43, 8501 61 80 42, 8501 61 80 43, 8501 62 00 62, 8501 62 00 63, 8501 63 00 42, 8501 63 00 43, 8501 64 00 42, 8501 64 00 43, 8541 40 90 22, 8541 40 90 23, 8541 40 90 32, 8541 40 90 33), produced by Longi (Kuching) SDN.BHD (TARIC additional code C309), should be subject to the anti-dumping and anti-subsidy measures imposed by Implementing Regulation (EU) 2016/185 and Implementing Regulation (EU) 2016/184.

Article 2

The anti-dumping duty imposed by Implementing Regulation (EU) 2016/185 is hereby repealed with regard to the imports identified in Article 1 of this Regulation.

[1] 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 (OJ L 8, 12.1.2001, p. 1).

Article 3

The Customs authorities shall take the appropriate steps to register the imports into the Union identified in Article 1 of this Regulation, pursuant to Article 14(5) of Regulation (EU) 2016/1036.

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

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 the Member States.

Done at Brussels, 6 November 2017.

For the Commission
The President
Jean-Claude JUNCKER

DECISIONS

COMMISSION DECISION (EU) 2017/1995

of 6 November 2017

to maintain in the *Official Journal of the European Union* the reference of harmonised standard EN 13341:2005 + A1:2011 on static thermoplastic tanks for above-ground storage of domestic heating oils, kerosene and diesel fuels in accordance with Regulation (EU) No 305/2011 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC ([1]), and in particular Article 18(2) thereof,

Whereas:

(1) Pursuant to Regulation (EU) No 305/2011, harmonised standards provided for in Article 17 are to fulfil the requirements of the harmonised system set out in or by means of this Regulation.

(2) In January 2011, the European Committee for Standardisation (CEN) adopted the harmonised standard EN 13341:2005 + A1: 2011 'Static thermoplastic tanks for above ground storage of domestic heating oils, kerosene and diesel fuels — Blow moulded and rotationally moulded polyethylene tanks and rotationally moulded tanks made of anionically polymerized polyamide 6 — Requirements and test methods'. The reference of the standard was subsequently published in the *Official Journal of the European Union* ([2]). The reference of the standard was republished several times with the latest publication in 2017 ([3]).

(3) On 21 August 2015 Germany launched a formal objection procedure in respect of the harmonised standard EN 13341:2005 + A1:2011. The formal objection was based on the lack of harmonised methods in that standard for ensuring the mechanical resistance, load-bearing capacity, stability and resistance to fragmentation or crushing of the products in question when installed in earthquake or flood areas. Consequently, Germany demanded the restriction of the reference of the standard published in the *Official Journal of the European Union* by excluding earthquake or flood areas from its scope, or alternatively the withdrawal of that reference of the standard altogether.

(4) According to Germany, that standard does not contain any stipulations for ascertaining the performance of the construction products in question when they are installed in areas where a risk of earthquakes or flooding exists. The necessary assessment methods for those purposes are completely missing, when it comes to design, support construction or anchoring the tanks. Moreover, the extent to which impacts resulting from loads from earthquakes or floods can be absorbed by them, cannot be assessed either.

(5) Germany considered these shortcomings to constitute a violation of Article 17(3) of Regulation (EU) No 305/2011, as the standard at hand did not entirely satisfy the requirements set out in the relevant mandate as provided in Article 18 of that Regulation.

([1]) OJ L 88, 4.4.2011, p. 5.

([2]) Commission communication in the framework of the implementation of Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ C 246, 24.8.2011, p. 1).

([3]) Commission communication in the framework of the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ C 267, 11.8.2017, p. 16).

(6) When assessing the admissibility of the claims brought forward, it should be noted that the additional alleged needs brought forward by Germany relate to the installation and the subsequent use of the products in question in areas where a risk of earthquakes or flooding exists.

(7) However, according to Article 17(3) of Regulation (EU) No 305/2011, harmonised standards are to provide the methods and the criteria for assessing the performance of the products covered by them. The purpose of the harmonised system set out in or by means of that Regulation is to lay down harmonised conditions for the marketing of construction products, not to provide rules for their installation or their use.

(8) The rights to bring forward formal objections in accordance with Article 18 of Regulation (EU) No 305/2011 cannot, however, be extended to claims focusing on other matters than the content of the standards in question. Such claims are therefore to be considered inadmissible in the context of formal objections.

(9) Therefore, and since the first demand of Germany, to restrict the reference of the standard by excluding earthquake or flood areas from its scope of application, focuses on other matters than the content of the standard in question, it should be considered inadmissible.

(10) The general alternative demand of Germany, to withdraw the reference of the standard altogether, is mainly based on the inadequacy of the standard as it stands, especially when it comes to the installation and the subsequent use of the products in question in earthquake or flood areas.

(11) However, Member States remain fully entitled to regulate the specific conditions for the installation or the use of construction products, provided that such specific conditions do not entail requirements for the assessment of the performance of the products in breach of the harmonised system. Member States are thus able to prohibit or limit the installation or use of the products in question in earthquake or flood areas, as currently is the case in Germany.

(12) On the basis of the contents of EN 13341:2005 + A1:2011 as well as the information submitted by Germany, by CEN and by industry, and after consulting the committees established by Article 64 of Regulation (EU) No 305/2011 and by Article 22 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council [1], it is widely agreed that the reference of that standard should be maintained in the *Official Journal of the European Union*.

(13) The alleged incompleteness of that standard should thus not be considered a sufficient reason for complete withdrawal of the reference of the standard EN 13341:2005 + A1:2011 from the *Official Journal of the European Union*.

(14) The reference of EN 13341:2005 + A1:2011 should therefore be maintained in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

Article 1

The reference of harmonised standard EN 13341:2005 + A1:2011 'Static thermoplastic tanks for above ground storage of domestic heating oils, kerosene and diesel fuels — Blow moulded and rotationally moulded polyethylene tanks and rotationally moulded tanks made of anionically polymerized polyamide 6 — Requirements and test methods' shall be maintained in the *Official Journal of the European Union*.

[1] Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

Article 2

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

Done at Brussels, 6 November 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DECISION (EU) 2017/1996

of 6 November 2017

to maintain in the *Official Journal of the European Union* the reference of harmonised standard EN 12285-2:2005 on Workshop fabricated steel tanks in accordance with Regulation (EU) No 305/2011 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC ([1]), and in particular Article 18(2) thereof,

Whereas:

(1) Pursuant to Regulation (EU) No 305/2011, harmonised standards provided for in Article 17 are to fulfil the requirements of the harmonised system set out in or by means of this Regulation.

(2) In February 2005, the European Committee for Standardisation (CEN) adopted the harmonised standard 12285-2:2005 'Workshop fabricated steel tanks — Part 2: Horizontal cylindrical single skin and double skin tanks for the aboveground storage of flammable and non-flammable water polluting liquids'. The reference of the standard was subsequently published in the *Official Journal of the European Union* ([2]). The reference of the standard was republished several times with the latest publication in 2017 ([3])

(3) On 21 August 2015 Germany launched a formal objection procedure in respect of the harmonised standard EN 12285-2:2005. The formal objection was based on the lack of harmonised methods in that standard for ensuring the mechanical resistance, load-bearing capacity, tightness, stability and resistance to fragmentation or crushing of the products in question when installed in earthquake or flood areas. Consequently, Germany demanded the restriction of the reference of the standard published in the *Official Journal of the European Union* by excluding earthquake or flood areas from its scope, or alternatively the withdrawal of that reference of the standard altogether.

(4) According to Germany, that standard does not contain any stipulations for ascertaining the performance of the construction products in question when they are installed in areas where a risk of earthquakes or flooding exists. The necessary assessment methods for those purposes are completely missing, when it comes to design, support construction or anchoring the tanks. Moreover, the extent to which impacts resulting from loads from earthquakes or floods can be absorbed by them, cannot be assessed either.

(5) Germany considered these shortcomings to constitute a violation of Article 17(3) of Regulation (EU) No 305/2011, as the standard at hand did not entirely satisfy the requirements set out in the relevant mandate as provided in Article 18 of that Regulation.

(6) When assessing the admissibility of the claims brought forward, it should be noted that the additional alleged needs brought forward by Germany relate to the installation and the subsequent use of the products in question in areas where a risk of earthquakes or flooding exists.

(7) However, according to Article 17(3) of Regulation (EU) No 305/2011, harmonised standards are to provide the methods and the criteria for assessing the performance of the products covered by them. The purpose of the harmonised system set out in or by means of that Regulation is to lay down harmonised conditions for the marketing of construction products, not to provide rules for their installation or their use.

([1]) OJ L 88, 4.4.2011, p. 5.

([2]) Commission Communication in the framework of the implementation of Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ C 319, 14.12.2005, p. 1).

([3]) Commission communication in the framework of the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ C 267, 11.8.2017, p. 16).

(8) The rights to bring forward formal objections in accordance with Article 18 of Regulation (EU) No 305/2011 cannot, however, be extended to claims focusing on other matters than the content of the standards in question. Such claims are therefore to be considered inadmissible in the context of formal objections.

(9) Therefore, and since the first demand of Germany to restrict the reference of the standard by excluding earthquake or flood areas from its scope of application, focuses on other matters than the content of the standard in question, it should be considered inadmissible.

(10) The general alternative demand of Germany, to withdraw the reference of the standard altogether, is mainly based on the inadequacy of the standard as it stands, especially when it comes to the installation and the subsequent use of the products in question in earthquake or flood areas.

(11) However, Member States remain fully entitled to regulate the specific conditions for the installation or the use of construction products, provided that such specific conditions do not entail requirements for the assessment of the performance of the products in breach of the harmonised system. Member States are thus able to prohibit or limit the installation or use of the products in question in earthquake or flood areas, as currently is the case in Germany.

(12) On the basis of the contents of EN 12285-2:2005 as well as the information submitted by Germany, by CEN and by industry, and after consulting the committees established by Article 64 of Regulation (EU) No 305/2011 and by Article 22 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council [1] it is widely agreed that the reference of that standard should be maintained in the *Official Journal of the European Union*.

(13) The alleged incompleteness of that standard should thus not be considered a sufficient reason for complete withdrawal of the reference of the standard EN 12285-2:2005 from the *Official Journal of the European Union*.

(14) The reference of EN 12285-2:2005 should therefore be maintained in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

Article 1

The reference of harmonised standard EN 12285-2:2005 'Workshop fabricated steel tanks — Part 2: Horizontal cylindrical single skin and double skin tanks for the aboveground storage of flammable and non-flammable water polluting liquids' shall be maintained in the *Official Journal of the European Union*.

Article 2

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

Done at Brussels, 6 November 2017.

For the Commission
The President
Jean-Claude JUNCKER

[1] Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

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