Commission Implementing Regulation (EU) 2020/492 of 1 April 2020 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt

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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 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 21 February 2019, the European Commission initiated an anti-dumping investigation with regard to imports into the Union of certain woven and/or stitched glass fibre fabrics ('GFF') originating in the People's Republic of China ('the PRC') and Egypt (together referred to as 'the countries concerned') pursuant to Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union*[(2)] ('the Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 8 January 2019 by Tech-Fab Europe ('the complainant') on behalf of producers representing more than 25 % of the total Union production of GFF. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

(3) On 16 May 2019, the Commission initiated a separate anti-subsidy investigation with regard to imports into the Union of GFF originating in the PRC and Egypt and commenced a separate investigation. It published a Notice of Initiation in the *Official Journal of the European Union*[(3)].

1.2. Registration of imports

(4) On 31 July 2019, the complainant submitted a request for registration of imports of GFF originating in the countries concerned under Article 14(5) of the basic Regulation. The complainant argued that after the investigation period, imports of GFF increased substantially and there is stockpiling in the Union at a scale that threatens to undermine the remedial effect of potential anti-dumping measures.

(5) One exporting producer, one user and the China Chamber Of Commerce for Import & Export of Light Industrial Products & Arts-Crafts ('CCCLA') opposed the request for registration. Those parties argued that the request did not provide sufficient evidence as required by Article 14(5) of the basic Regulation. They further argued that import data from the PRC and Egypt should be analysed separately and that, in any event, the imports in question are not likely to seriously undermine the remedial effect of the definitive anti-dumping duty as the average unit price of imports had increased from 2018 to 2019.

(6) As explained in recitals (48) and (50), the Commission decided not to impose provisional measures in this case. Therefore, the request for registration became redundant and thus its further analysis, together with the analysis of the comments summarised in recital (5), became unnecessary.

1.3. **Interested parties**

(7) 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 complainant, other known Union producers, the known exporting producers and the Chinese and Egyptian authorities, known importers and users about the initiation of the investigation and invited them to participate.

(8) Interested parties had the opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(9) The intervention of the Hearing Officer was requested by Zhejiang Hengshi Fiberglass Fabrics Co. Ltd. The hearing took place on 28 October 2019. The agenda of the hearing was the proposed application of Article 18 of the basic Regulation to that company. The Commission analysed the points raised and addressed them in the final disclosure. There were no specific follow up actions recommended by the Hearing Officer.

(10) As mentioned in recital (48), the Commission clarified the product scope during the investigation and gave interested parties concerned by the clarification, or who might not have made themselves known because they believed they were not concerned by the proceeding, the opportunity to make themselves known and request a questionnaire within a time limit. No additional parties came forward.

1.4. **Sampling**

(11) In its Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.4.1. *Sampling of Union producers*

(12) In the Notice of Initiation, the Commission stated that it had decided to limit the investigation to a reasonable number of Union producers by applying sampling. It added that it had provisionally selected a sample of Union producers based on the

reported production volume of the like product in the Union between October 2017 and September 2018 and also taking into consideration the geographical spread. This sample consisted of three Union producers accounting for more than 40 % of the estimated total Union production of GFF. The Commission invited interested parties to comment on the provisional sample.

(13) Only one Union producer commented, suggesting the inclusion of a fourth company into the sample to enlarge the geographical representativeness, the production volume and product types covered.

(14) Striving to sample the largest representative production volume the Commission decided to enlarge the sample to four companies. The final sampled Union producers accounted for more than 40 % of the estimated total Union production of GFF. The sample is representative of the Union industry.

1.4.2. *Sampling of importers*

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

(16) Only one unrelated importer (Euroresins UK Ltd.) provided the requested information and agreed to be included in the sample. In view of the low number, the Commission decided that sampling was not necessary.

1.4.3. *Sampling of exporting producers in the PRC*

(17) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked 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.

(18) Nine exporting producers or groups of exporting producers in the PRC provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of two groups of exporting producers based on the largest representative volume of exports to the Union, which could reasonably be investigated within the time available. The sampled groups of exporting producers represented 79 % of the reported exports of GFF from the PRC to the Union during the investigation period.

(19) The sample of exporting producers or groups of exporting producers is the following:

- China National Building Materials Group ('CNBM group'), including
  - Jushi Group Co. Ltd ('Jushi');
  - Zhejiang Hengshi Fiberglass Fabrics Co. Ltd ('Hengshi');
  - Taishan Fiberglass Inc ('Taishan').
- Yuntianhua Group ('Yuntianhua group'), including:

— PGTEX China Co. Ltd ('PGTEX'),

— Chongqing Tenways Material Corp. ('CTM').

(20) In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the PRC were consulted on the selection of the sample.

(21) Comments on the selection of the sample were received from one non-sampled exporting producer, one sampled exporting producer and the CCCLA.

(22) The non-sampled exporting producer claimed that both sampled groups of exporting producers have a vertically integrated production process, which was different from its own manufacturing process (not integrated) and, therefore, it considered that the sampled groups of exporting producers would not be representative for its own situation. Likewise, the CCCLA claimed that the two sampled groups of exporting producers were vertically integrated and, therefore, the sample was not representative of the Chinese glass fibre fabric industry that also included non-integrated producers.

(23) Pursuant Article 17(1) of the basic Regulation the selection of the sample should be based on the largest representative volume of production, sales or exports which can reasonably be investigated within the time available. As stated in recital (18), the sampled groups of exporting producers represented 79 % of the reported exports from the PRC to the Union during the investigation period and that was considered representative. In any event, the two sampled groups of exporting producers included both vertically integrated and non-integrated entities and the Commission's analysis properly takes into account this element. In fact, the majority of the exports to the EU were made by non-integrated entities. Therefore, the claim was rejected.

(24) In addition, all non-sampled exporting producers had the opportunity to request individual examination under Article 17(3) of the basic Regulation. As stated in recital (39), none of the exporting producers requested individual examination.

(25) The CCCLA also claimed that by selecting only two groups of exporting producers, this risked materially affecting the outcome of the investigation in the sense of Article 17(4) of the basic Regulation, should one of the selected groups stop cooperating or decide to withdraw from the investigation.

(26) The CCCLA argued that under such scenario, the duty rate for the non-sampled cooperating Chinese exporting producers, if any, would be based on the duty established for the remaining sampled group and that the sample would no longer be representative. Therefore, the CCCLA asked the Commission to extend the sample by including one more exporting producer.

(27) As stated in recital (19), the sampled groups of exporting producers included five exporting producing entities. Furthermore, as stated in recital (18) the sample covered 79 % of the reported exports from the PRC to the Union and it was considered representative. Therefore, the Commission decided not to extend the sample as it would

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/492. (See end of Document for details)*

have prevented it to investigate all the entities within the time limits of the investigation. Nevertheless, as mentioned in recital (24) the cooperating non-sampled companies had the opportunity to request individual examination under Article 17(3) of the basic Regulation, but none of the exporting producers requested individual examination.

(28) Regarding CNBM group, while Jushi and Hengshi did not dispute the fact that they were related companies, they claimed that they were not related to Taishan. Jushi claimed that the Commission could not mechanically rely on Article 127(1)(d) or (f) of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015[(4)] (the 'Customs Code Implementing Act') to treat Hengshi, Jushi and Taishan as a single entity. In support of that claim, Jushi referred to the WTO Panel in Korea – Certain Paper[(5)] and the Guidelines for related transactions of listed companies of Shanghai Stock Exchange.

(29) Taishan also disputed the fact that it was related to Jushi and Hengshi arguing that (i) they did not directly own each other's shares; (ii) they had no common direct shareholding; (iii) they had different decision-making processes and management institutions; (iv) there was no overlap in the members of their boards; (v) there were no related transactions between Hengshi/Jushi and Taishan; (vi) they were competitors on the market; and (vii) that they were geographically located far away from Jushi and Hengshi. Finally, Taishan claimed that in a similar situation in a previous anti-dumping investigation concerning imports of crystalline silicon photovoltaic modules and key components originating in the PRC[(6)], companies had not been treated as related.

(30) The investigation revealed that China National Building Materials ('CNBM') is a Chinese state-owned enterprise owned directly and indirectly as to 41,27 % by CNBM Parent, which is in turn wholly-owned by the State-owned Assets Supervision and Administration Commission of the State Council ('SASAC'). CNBM owns 26,97 % stake in China Jushi Co., Ltd. ('China Jushi'), which is the sole shareholder of Jushi Group[(7)].

(31) In September 2017, CNBM entered into a Merger Agreement[(8)] with Sinoma that was finalised in May 2018. Sinoma, through its subsidiary Sinoma Science & Technology Co., was the owner of Taishan. After the merger, Sinoma was merged into and absorbed by CNBM. As a consequence, CNBM holds 26,97 % stake in China Jushi (the sole shareholder of Jushi) and 60,24 % in Sinoma Science & Technology Co., Ltd. (sole shareholder of Taishan).

(32) Article 127(d) of the Customs Code Implementing Act establishes that two persons shall be deemed to be related if: a third party directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them. CNBM holds 26,97 % stake in China Jushi (the sole shareholder of Jushi) and 60,24 % in Sinoma Science & Technology Co., Ltd. (sole shareholder of Taishan). Therefore, the companies were found to be related.

(33) Furthermore, according to a company report by the Chinese brokerage company Guotai Junan Securities from 2019[(9)], CNBM has been reorganising its operating entities in order to enhance regional coordination and eliminate horizontal