Commission Implementing Regulation (EU) No 1379/2014 of 16 December 2014 imposing a definitive countervailing duty on imports of certain filament glass fibre products originating in the People's Republic of China and amending Council Implementing Regulation (EU) No 248/2011 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the People's Republic of China

COMMISSION IMPLEMENTING REGULATION (EU) No 1379/2014

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THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community[(1)], and in particular Article 15 thereof, and Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(2)], and in particular Articles 9(4) and 11(3) thereof,

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) By Council Implementing Regulation (EU) No 248/2011[(3)], the Council imposed a definitive anti-dumping duty on imports of certain continuous filament glass fibre products currently falling within CN codes 7019 11 00, ex 7019 12 00 and 7019 31 00 and originating in the People's Republic of China.

2. **Initiation of the anti-subsidy investigation**

(2) On 12 December 2013, the European Commission (the Commission), announced the initiation of an anti-subsidy proceeding with regard to imports into the European Union of certain filament glass fibre products originating in the People's Republic of China ('the PRC' or 'the country concerned') by a notice published in the *Official Journal of the European Union* (the Notice of Initiation of the anti-subsidy investigation)[(4)].

(3) The investigation was initiated by the Commission following a complaint lodged on 28 October 2013 by the European Glass Fibre Producers Association (APFE) (the complainant) on behalf of producers representing more than 25 % of the total Union

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 1379/2014. (See end of Document for details)*

production of certain filament glass fibre products. The complaint contained prima facie evidence of subsidisation of certain filament glass fibre products and of material injury caused by it, which the Commission considered sufficient to justify the initiation of an investigation.

(4) In accordance with Article 10(7) of Regulation (EC) No 597/2009 (the basic anti-subsidy Regulation), the Commission notified the government of the PRC prior to the initiation of the investigation that it had received a properly documented complaint alleging that subsidised imports of certain filament glass fibre products originating in the PRC were causing material injury to the Union industry. The Commission invited the government of the PRC for consultations with the aim of clarifying the situation as regards the content of the complaint and arriving at a mutually agreed solution.

(5) The government of the PRC accepted the offer for consultations which were subsequently held on 5 December 2013. During the consultations, no mutually agreed solution could be found. However, the Commission took due note of comments made by the government of the PRC regarding the schemes listed in the complaint. Following the consultations, a written submission was received from the government of the PRC on 9 December 2013.

(6) Additional consultations were offered to the government of the PRC in regard to additional schemes that were identified during the course of the investigation. The government of the PRC however did not accept the offer as they claimed to have been provided insufficient information in regard to these schemes.

3. **Parallel request for a partial interim review of the anti-dumping measures in force**

(7) The Commission received a request for the initiation of a partial interim review of the anti-dumping measures in force[(5)], limited in scope to the examination of injury, pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009 (the basic anti-dumping Regulation). The request was lodged on 28 October 2013 also by the APFE, on behalf of Union producers representing more than 25 % of the total Union production of certain filament glass fibre products.

(8) Having determined that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced, on 18 December 2013, by a notice published in the *Official Journal of the European Union* (Notice of Initiation of the anti-dumping partial interim review)[(6)] the initiation of a partial interim review under Article 11(3) of the basic anti-dumping Regulation.

(9) One exporting producer claimed that existing measures imposed by Council Implementing Regulation (EC) No 248/2011 are null and void as far as it is concerned and that the current review investigation concerning the existing measures imposed by that regulation should therefore be terminated. It argued that the existing measures are in breach of the WTO Anti-Dumping Agreement since this exporting producer was refused individual treatment under the provisions of Article 9(5) of the basic anti-

dumping Regulation as they existed at the time of adoption of that regulation. In support of its claim it refers to the WTO Appellate Body Report of 28 July 2011 in case DS397[(7)].

(10) Following the WTO Appellate Body Report of 28 July 2011 in case DS397, Article 9(5) of the basic anti-dumping Regulation was amended.[(8)] The amendment applies to all investigations initiated following its entry into force, which was 6 September 2012. With regard to exporting producers subject to measures that were already in force before that date the Commission published a Notice on 23 March 2012[(9)] inviting any exporting producer in non-market economy countries to request a review if they considered that the measures to which they are subject should be reviewed in the light of the Appellate Body Report mentioned above. The Implementing Regulation (EU) No 248/2011 was specifically mentioned in that Notice. The Commission did not receive such request for a review from this exporting producer, nor did the exporting producer request an interim review in accordance with Article 11(3) of the basic Regulation.

(11) Therefore the validity of the existing measures is not at stake and the claim is rejected.

4. **Investigation period and period considered applicable to both investigations**

(12) The investigation of subsidisation and injury covered the period from 1 October 2012 to 30 September 2013 (‘the investigation period’ or ‘IP’). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2010 to the end of the IP (‘the period considered’).

(13) The injury analyses performed in both the anti-subsidy and the anti-dumping partial interim review are based on the same definition of the Union industry, the same representative Union producers and the same investigation period and led to identical conclusions unless otherwise specified. This was considered appropriate in order to streamline the injury analysis and to reach consistent findings in both investigations. For this reason, comments on injury aspects put forward in any one of these proceedings were taken into account in both investigations.

5. **Parties concerned by the investigations**

(14) In both Notices of Initiation, the Commission invited interested parties to contact it in order to participate in both investigations. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the authorities of the PRC, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of both investigations and invited them to participate.

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

6. **Sampling**

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(16) The Commission announced in both Notices of Initiation that it might limit to a reasonable number the exporting producers in the PRC, the unrelated importers and Union producers that would be investigated by selecting samples in accordance with Article 17 of the basic anti-dumping Regulation and Article 27 of the basic anti-subsidy Regulation.

6.1. *Sampling of Union producers applicable to both investigations*

(17) In both Notices of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of production in the Union and sales volumes on the Union market of the like product during the IP and geographical spread. This sample consisted of manufacturing plants of three Union producers located in Belgium, France and Slovakia[10], representing around 52 % of the total Union production and 49 % of all sales on the Union market. Therefore, the sample was considered representative for the Union industry. The Commission invited interested parties to comment on the provisional sample.

(18) During the investigations, the government of the PRC alleged that a different sampling methodology for the Union producers was applied in the original anti-dumping investigation than the one in the current investigations without motivation. The government of the PRC stated (i) that the Commission had already selected a sample prior to the initiations, therefore, the Commission decided prior to the initiations that a sample was necessary, (ii) that in the original investigation all parties that wished to be included in the sample had to provide information to the Commission within 15 days from initiation, while in the present case, the producers already included in the sample are not required to do so, (iii) that parties that wished to be included in the sample were not provided in both Notices of Initiation with any information on what information they are required to provide in order to be included in the sample and that no information as regards the production and sales volume represented by the sampled producers had been provided, (iv) that the used selection criterion *'this sample represents the largest representative volume of producers which can reasonably be investigated with the time available'* was not included in Article 17 of the basic anti-dumping Regulation and a sample selected on this basis was not consistent with this provision.

(19) In both Notices of Initiation the Commission explained that in view of the large number of Union producers and in order to complete the investigations within the time limits, it resorted to sampling and a provisional sample was at the same time proposed. The same methodology, i.e. the application of sampling, was used as in the previous investigation. The use of a provisional sample did not change the methodology but merely allowed to be more efficient as it allowed gaining time while fully respecting the rights of defence. Indeed, the Commission gave opportunity to other Union producers who consider that there are reasons why they should be included in the sample to contact the Commission or to any other interested parties to submit any other relevant information with regard to the sample. The final sample should take into account all comments received, if any. As no comments were received on the

proposed sample, the provisional sample was confirmed. As to the second claim, the producers who were provisionally selected for the sample had filled in the standing form which included the necessary information for the Commission to select a provisional sample. The standing form and the replies have been available for inspection in the non-confidential file. As to the third claim, parties that wished to be included were invited to contact the Commission within 15 days of the date of the publication of both Notices of Initiation and they had the opportunity to consult the non-confidential file where the standing forms could be found. These standing forms contained information on production and sales volume. The fourth claim is also unfounded because Article 17(1) of the basic anti-dumping Regulation clearly refers to the largest representative volume which can reasonably be investigated within the time available.

(20) Following the definitive disclosure, the government of the PRC reiterated its claims as to the alleged procedural inconsistency in the selection of the Union producers' sample prior to both initiations and highlighted that: (i) the Commission's justification of meeting the investigation deadlines is unsustainable since Article 17(2) of the basic anti-dumping Regulation and Article 27(2) of the basic anti-subsidy Regulation clearly envisage sampling after both initiations and pursuant to comments within three weeks of both initiations, (ii) a provisional sample is discriminatory or un-objective and would have worked as a demotivating factor for the other Union producers to come forward, and (iii) the Commission's failure to provide the other Union producers three weeks to come forward.

(21) Article 17(2) of the basic anti-dumping Regulation and Article 27(2) of the basic anti-subsidy Regulation state that ‘preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation’. As to the first claim, the basic anti-dumping Regulation and basic anti-subsidy Regulation do not prevent the Commission from suggesting at the time of initiation a provisional sample on which the parties are invited to comment. Moreover, given that the Union producers (or at least a large part of them) are supporting the complaint and taking into account the information obtained in the standing forms, the Commission had the necessary information with regard to the Union industry at its disposal to select a provisional sample at initiation stage. This knowledge makes the sampling exercise of Union producers different from the one applied to exporting producers. As to the second and third claim, the Notices of Initiation stated that Union producers who consider that they should be included in the sample must contact the Commission within 15 days. The Commission does not see how this infringes the basic Regulation or can be considered discriminatory, un-objective, let alone demotivating.

(22) The government of the PRC claimed that the sample is not representative because no company with significant captive production had been included and therefore a part of the domestic industry had simply not been assessed.