Commission Implementing Regulation (EU) No 470/2014 of 13 May 2014 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China

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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 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)], and in particular Article 9(4) and 14(1) thereof,

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) On 28 November 2013, the European Commission (the Commission) imposed a provisional anti-dumping duty on imports of solar glass from the People's Republic of China by Regulation (EU) No 1205/2013 (the provisional Regulation)[(2)].

(2) The proceeding was initiated on 28 February 2013 following a complaint lodged on behalf of producers representing more than 25 % of the total Union production of solar glass[(3)].

(3) The investigation of dumping and injury covered the period from 1 January 2012 to 31 December 2012 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2009 to the end of the investigation period (the period considered).

2. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed (the provisional disclosure), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(6) Subsequently, 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 solar glass originating in the People's Republic of China (the PRC) and definitively collect the amounts secured by way of provisional duty (the definitive disclosure). All parties were granted a period within which they could make comments on the final disclosure.

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

3. **Sampling**

(8) One exporting producer claimed that the total number of Union producers was not clearly presented in recitals 7, 11 and 75 of the provisional Regulation. In this respect, the Commission hereby confirms that there were eight Union producers which came forward and were active during the IP. The identity of all but one Union producer had been withheld. In its reply to the general disclosure document, the complainant named three Union producers that had gone out of business (Guardian, AGC and Centrosolar Glass), and a fourth company that significantly reduced production (Saint Gobain).

(9) In the absence of other comments concerning the method of sampling of exporting producers in the PRC and of Union producers, the provisional findings in recitals 7 to 24 of the provisional Regulation are confirmed.

4. **Questionnaire replies and verification visits**

(10) After the adoption of the provisional Regulation, a verification visit was carried out at the premises of a second cooperating user, namely Viessmann Faulquemont SAS, France.

5. **Procedural rights**

(11) One exporting producer claimed that the provisional disclosure provided to it was inadequate, in particular with regard to dumping, undercutting and injury margin calculations. In the absence of an adequate disclosure it was deprived of its fundamental rights of defence, guaranteed by Regulation (EC) No 1225/2009 (the basic Regulation), the WTO Anti-dumping Agreement as well as the European Charter of Fundamental Rights.

(12) Regarding the calculation of the dumping margin the exporting producer claimed that no details were provided in the provisional disclosure in relation to the amount of adjustment applied on the cost of coating and the cost of the float production process (see recital 64 of the provisional Regulation) or the percentage of selling, general and administrative costs and profit.

(13) This claim was accepted and the Commission disclosed additional information. Where exact data could not be provided due to confidentiality reasons, ranges were disclosed.

(14) Following the definitive disclosure the exporting producer claimed that the disclosed data was still not sufficient and argued, in particular that it was unclear whether the adjustment applied on the cost of coating took into account the cost of single-side coating, double-side coating or both.

(15) As explained in recital 68 below no evidence was provided by interested parties demonstrating that there is a consistent difference in costs of production between single-side and double-side coated solar glass. The Commission therefore did not make a distinction between single-side and double-side coated solar glass when calculating the level of the adjustment.

(16) Regarding injury the same exporting producer complained that in its specific disclosure document the sales prices and target prices of the Union producers in relation to two out of total five product types had been marked as limited or provided in ranged format for reasons of confidentiality.

(17) The company also argued that in this case there is a high level of confidentiality whereby the name of only one sampled Union producer is known. Consequently, the company was of the opinion that even if for certain product types the information relates to the data of one or two Union producer(s) only, by no means it would be possible to identify of those companies, and as a result, to give significant competitive advantage to the exporting producer vis-à-vis any of its Union competitors individually or collectively.

(18) Under Article 20 of the basic Regulation the Commission is indeed bound to disclose after provisional measures the details underlying the essential facts and consideration on the basis of which the measures have been imposed. However, the Commission is also obliged under Article 19 of the basic Regulation to treat as confidential any information which is such by nature or which is provided on a confidential basis.

(19) In this particular case the actual sales prices and target prices of the Union producers for two product types have been either removed or replaced with ranges because the information of one of the product types comes exclusively from only one or two Union producer(s). In addition, it is a widely known fact in this business that this particular product type is not produced by any other Union producers. Consequently, the Commission considers this information confidential by nature since its disclosure would be of significant competitive advantage to competitors and/or would have a significantly adverse effect upon the company(ies) supplying the information. In addition, the same type of information has been removed for a second product type in order to avoid that the figures for the first product type could be deducted from the total figures available.

(20) Following definitive disclosure, the company reiterated its claim that the level of disclosure of injury margin calculations was insufficient and inadequate. Specifically, it complained that it was not clear how the second product type whose figures have been removed had been selected. The Commission clarifies that this was done on a purely random basis.

(21) As a solution to the alleged insufficient disclosure, the company proposed that its lawyers could meet the Commission's staff and discuss in detail the dumping and injury margin calculations without taking a copy of any confidential document, or alternatively have access to a data room at the Commission's premises where notes could be made.

(22) The Commission could not accommodate this request. In order for the company's lawyers to be able to verify the calculations, exact figures from one or two companies would have to be provided. This could not be done as the Commission is obliged to keep this data confidential in accordance with Article 19 of the basic Regulation.

(23) Moreover, the Commission explicitly mentioned in the definitive disclosure that as far as any issues related to the company's rights of defence are concerned — such as access to file — it may address itself to the Hearing officer under the Terms of Reference of the Hearing officer[(4)]. The company however did not request an intervention of the Hearing officer within the deadline for submitting comments on the definitive disclosure.

(24) In view of the above, the Commission rejects the claims made regarding possible violation of the procedural rights of the exporting producer in question.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(25) As set out in recital 26 of the provisional Regulation, the product concerned is solar glass consisting of tempered soda-lime-flat-glass, with an iron content of less than 300 ppm, a solar transmittance of more than 88 % (measured according to AM1,5 300-2 500 nm), a resistance to heat up to 250 °C (measured according to EN 12150), a resistance to thermal shocks of Δ 150 K (measured according to EN 12150) and having a mechanical strength of 90 N/mm^2 or more (measured according to EN 1288-3) ('the product concerned', commonly referred to as 'solar glass'). The product concerned currently falls within CN code ex 7007 19 80.

2. Claims regarding the product scope

(26) One exporting producer claimed after provisional disclosure that, contrary to what was stated in recital 32 of the provisional Regulation, horticultural glass which complies with the technical characteristics of solar glass, as defined in recital 26 of the provisional Regulation, should be excluded from the product scope. First, according to the exporter, the physical characteristics of the horticultural glass are quite different from those of the solar glass: (i) horticultural glass has different sizes according to the requirement of the customers, while solar glass is in certain fixed sizes; (ii) the horticultural glass may be double-side coated, but the solar glass for photovoltaic modules (PV modules) is not double-side coated. Second, horticultural glass has allegedly different use: it cannot be used either for manufacturing PV modules or thermal collectors.

(27) The Commission rejects the claim for the following reasons. Firstly, the fact that solar glass used for greenhouse manufacturing has different sizes than solar glass used for PV modules or thermal collectors is irrelevant since size requirements may vary both for PV modules and for greenhouses. Also, any product exclusion on such basis may give rise to possible circumvention of the anti-dumping measures. Secondly, horticultural glass sold on the market is not only double-side coated solar glass, but can also be non-coated and single-side coated. Moreover, as explained in recital 68 below double-side coated glass is also used for both PV modules and thermal collectors. Therefore, this physical characteristic cannot distinguish solar glass used for horticultural glass from any other use. Finally, it cannot be excluded that solar glass destined for greenhouse manufacturing will be used for manufacturing PV modules and/or thermal collectors.

(28) After disclosure, one importer argued that since solar glass that can also be used as furniture glass was not excluded from the scope, this results in administrative burden and delays for companies. This is allegedly caused by the fact that companies are required to send test reports to Customs Authorities in the Union every time the Customs Authorities question if the goods being imported are subject to the measures.

(29) The Commission considers that those types of glass should not be excluded from the scope of the investigation, because solar glass can potentially have horticultural and furniture use. In order to ensure adequate protection of the Union industry against the injurious effect of the dumped imports, loopholes that may allow for circumvention should be avoided. The positive effect of adequate protection outweighs the negative effect of the additional administrative burden arguably suffered by the importer concerned.

(30) Another exporting producer claimed that float glass should be excluded from the product scope since the one it produces is used in the building market and greenhouse market. Moreover, it alleged that float glass is not used for PV modules manufacturing. However, on the basis of the arguments put forward by the Commission in recital 33 of the provisional Regulation, the Commission reiterates that float glass clearly complies with the technical characteristics of solar glass, as set out in recital 26 of the provisional Regulation. Also, float glass is produced by both the Union industry and the exporting producers. This is confirmed by publicly available information on the internet[(5)]. Consequently, this claim is rejected.

3. Conclusion

(31) In the absence of other comments regarding the product concerned and the like product, the conclusions reached in recitals 26 to 33 of the provisional Regulation are confirmed.

C. DUMPING

1. Market Economy Treatment (MET)