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

COUNCIL IMPLEMENTING REGULATION (EU) No 672/2012

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THE COUNCIL OF THE EUROPEAN UNION,

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)] ('the basic Regulation'), and in particular Article 13 thereof,

Having regard to the proposal from the European Commission,

Whereas:

1. **PROCEDURE**

1.1. **Existing measures**

(1) By Implementing Regulation (EU) No 791/2011[(2)], ('the original Regulation'), the Council imposed a definitive anti-dumping duty of 62,9 % on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China ('the PRC') for all other companies than the ones mentioned in Article 1(2) and Annex I to that Regulation. These measures will hereinafter be referred to as 'the measures in force' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

1.2. **Request**

(2) On 27 September 2011, the Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of certain open mesh fabrics of glass fibres originating in the PRC and to make imports of certain open mesh fabrics of glass fibres consigned from Malaysia, whether declared as originating in Malaysia or not, subject to registration.

(3) The request was lodged by Saint-Gobain Adfors CZ s.r.o., Tolnatext Fonalfeldolgozó és Műszakiszövet-gyártó Bt., Valmieras stikla šķiedra AS and Vitrulan

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Technical Textiles GmbH, four Union producers of certain open mesh fabrics of glass fibres.

(4) The request contained sufficient prima facie evidence that following the imposition of the measures in force, a significant change in the pattern of trade involving exports from the PRC and Malaysia to the Union occurred, for which there was insufficient due cause or economic justification other than the imposition of the measures in force. This change in the pattern of trade stemmed allegedly from the transhipment of certain open mesh fabrics of glass fibres originating in the PRC via Malaysia.

(5) Furthermore, the evidence pointed to the fact that the remedial effects of the measures in force were being undermined both in terms of quantity and price. The evidence showed that these increased imports from Malaysia were made at prices below the non-injurious price established in the original investigation.

(6) Finally, there was evidence that prices of certain open mesh fabrics of glass fibres consigned from Malaysia were dumped in relation to the normal value established for the like product during the original investigation.

1.3. **Initiation**

(7) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission initiated an investigation by Commission Regulation (EU) No 1135/2011[3] ('the initiating Regulation'). Pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of certain open mesh fabrics of glass fibres consigned from Malaysia.

1.4. **Investigation**

(8) The Commission officially notified the authorities of the PRC and Malaysia, the exporting producers in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation. Questionnaires were sent to the producers/exporters in the PRC and Malaysia known to the Commission or which made themselves known within the deadlines specified in recital 14 of the initiating Regulation. Questionnaires were also sent to importers in the Union. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation.

(9) Three exporting producers in Malaysia, and three unrelated importers in the Union made themselves known and submitted replies to the questionnaires.

(10) The following exporting producers submitted replies to the questionnaires and verification visits were subsequently carried out at their premises.

Exporting producers in Malaysia:

— GFTex Fiberglass Manufacturer Sdn Bhd, Selangor,

— Gold Fiberglass Sdn. Bhd, Selangor, and

— GRI Fiberglass Industries, Selangor.

1.5. **Investigation period**

(11) The investigation period covered the period from 1 January 2008 to 30 September 2011 ('the IP'). Data were collected for the IP to investigate, inter alia, the alleged change in the pattern of trade. More detailed data were collected for the reporting period 1 October 2010 to 30 September 2011 ('the RP') in order to examine the possible undermining of the remedial effect of the measures in force and existence of dumping.

2. **RESULTS OF THE INVESTIGATION**

2.1. **General considerations**

(12) In accordance with Article 13(1) of the basic Regulation, the investigation of the existence of circumvention was made by the successive analysis of whether there was a change in the pattern of trade between the PRC, Malaysia and the Union; whether this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; whether there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the like product; and whether there was evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2. **Product concerned and the product under investigation**

(13) The product concerned is as defined in the original investigation: 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, originating in the PRC, currently falling within CN codes ex 7019 51 00, and ex 7019 59 00.

(14) The product under investigation is the same as that defined in the previous recital, but consigned from Malaysia, whether declared as originating in Malaysia or not.

(15) The investigation showed that open mesh fabrics of glass fibres, as defined above, exported from the PRC to the Union and those consigned from Malaysia to the Union have the same basic physical and technical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

2.3. **Degree of cooperation and determination of the trade volumes**

Malaysia

(16) As stated in recital 10, three exporting producers in Malaysia submitted questionnaire replies.

(17) On the spot verification visits were subsequently carried out to these three exporting producers.

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(18) The three Malaysian exporting producers covered 75 % of the total exports of the product under investigation from Malaysia to the Union in the RP as reported in Comext[(4)].The overall export volumes were based on Comext.

(19) One of the three Malaysian exporting producers, stopped cooperating following the first day of the verification visit, therefore Article 18 of the basic Regulation was applied.

(20) For the other two companies the application of Article 18(1) of the basic Regulation was also found to be warranted for the reasons explained in recitals 34 and 52 to 59.

People's Republic of China

(21) There was no cooperation from the PRC exporting producers. Therefore, findings in respect of imports of certain open mesh fabrics of glass fibres from PRC into the Union and exports of the product concerned from the PRC to Malaysia had to be made partially on the basis of facts available in accordance with Article 18(1) of the basic Regulation. Comext data was used to determine overall import volumes from the PRC to the Union. PRC and Malaysian national statistics were used for the determination of the overall exports from the PRC to Malaysia. Data were also cross-checked with detailed import and export data that were provided by the customs authorities of Malaysia.

(22) The import volume recorded in Malaysian and PRC statistics covered a larger product group than the product concerned or the product under investigation. However, in view of Comext data and the data provided by the three Malaysian exporting producers, it could be established that a significant part of this import volume covered the product concerned. Accordingly, these data could be used to establish a change in the pattern of trade.

2.4. **Change in the pattern of trade**

Imports of certain open mesh fabrics of glass fibres into the Union

(23) Imports of the product concerned from the PRC to the Union dropped dramatically subsequent to the imposition of the provisional measures in February 2011[(5)] and of the definitive measures imposed in August 2011 (pursuant to the original Regulation).

(24) On the other hand, total exports of the product under investigation from Malaysia to the Union increased significantly in 2011. Based on Comext, exports from Malaysia to the Union increased sharply in the last year whereas they were at insignificant levels in previous years. The trend is also confirmed by the corresponding Malaysian statistics with regard to exports of open mesh fabrics of glass fibres to the Union from Malaysia.

(25) Table 1 shows import quantities of certain open mesh fabrics of glass fibres from the PRC and Malaysia into the Union from 1 January 2008 to 30 September 2011.

Import volumes in millions of m^2	**2008**	**2009**	**2010**	**1.10.2010-30.9.2011**
PRC	307,82	294,98	383,76	282,03
Malaysia	0,02	0,04	0,02	76,1

Source: Comext statistics.

(26) The data above clearly show that imports from Malaysia into the Union were at negligible levels for the period from 2008 to 2010. However, in 2011, following the imposition of the measures, the imports surged suddenly and to some extent replaced the exports from the PRC on the Union market in terms of volume. Moreover, since the imposition of the measures in force, the decrease of the exports from PRC to the Union has been significant (26 %).

Exports from the PRC to Malaysia

(27) A dramatic increase of exports of open mesh fabrics of glass fibres can also be observed from the PRC to Malaysia within the same period. From a relatively small amount in 2008 (4,65 million m^2) exports increased to 32,78 million m^2 in the RP. The trend is also confirmed by the corresponding Malaysian statistics with regard to imports of open mesh fabrics of glass fibres in Malaysia from the PRC.

Table 2

Exports of open mesh fabrics of glass fibres from the PRC to Malaysia from 1 January 2008 to 30 September 2011

	2008	**2009**	**2010**	**1.10.2010-30.9.2011**
Quantity(million m^2)	4,65	5,78	5,94	32,78
Yearly change (%)		*24 %*	*2,8 %*	*452 %*
Index (2008 = 100)	*100*	*124*	*128*	*705*

Source: PRC statistics.

(28) To establish the trend of the trade flow of certain open mesh fabrics of glass fibres from PRC to Malaysia, both Malaysian and PRC statistics were considered. Both of these data are only available at a higher product group level than the product concerned. However, in view of Comext data and the data provided by the three Malaysian exporters which cooperated initially, it could be established that a significant part covered the product concerned. Therefore, these data could be taken into account.