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

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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 9(4) thereof,

Having regard to the proposal submitted by the European Commission ('the Commission') after having consulted the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Provisional measures**

(1) By Regulation (EU) No 138/2011[(2)] ('the provisional Regulation') the Commission imposed a provisional anti-dumping duty on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China (PRC).

(2) The proceeding was initiated following a complaint lodged on 6 April 2010 by Saint-Gobain Vertex s.r.o., Tolnatext Fonalfeldolgozó és Müszakiszövetgyártó, Valmieras stikla šķiedra AS, and Vitrulan Technical Textiles GmbH ('the complainants'), representing a major proportion, in this case more than 25 %, of the total Union production of certain open mesh fabrics of glass fibres.

(3) As set out in recital 13 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 April 2009 to 31 March 2010 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the investigation period ('period considered').

2. **Subsequent procedure**

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 791/2011. (See end of Document for details)*

('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. In addition to the verifications mentioned in recital 11 of the provisional Regulation, further verification visits were carried out at the premises of the following companies:

Exporting producer which had requested individual examination:

— Yuyao Feitian Fiberglass Co. Ltd,

and its related trader:

— Yuyao Winter International Trade Co. Ltd.

Unrelated importer in the Union:

— Vimaplás – Tecidos Técnicos Lda., Portugal.

(6) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain open mesh fabrics of glass fibres originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). All parties were granted a period of time within which they could make representations subsequent to this final disclosure.

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

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(8) The product concerned is, as set out in recital 14 of the provisional Regulation, 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 originating in the PRC ('the product concerned') and currently falling within CN codes ex 7019 40 00, ex 7019 51 00, ex 7019 59 00, ex 7019 90 91 and ex 7019 90 99.

(9) After the imposition of provisional measures, a further analysis showed that the product concerned cannot be classified under three of the five CN codes referred to in recital 8. Therefore CN codes ex 7019 90 91, ex 7019 90 99 and ex 7019 40 00 should be removed from the description of the product concerned.

(10) It is also recalled that, as explained in recital 16 of the provisional Regulation, one Chinese exporting producer requested clarification whether fibreglass discs are included in the product definition. The Union industry was of the opinion that fibreglass discs are a downstream product with different characteristics than those of the product concerned. However, it was decided to collect further information from interested parties before making a definitive conclusion on this issue.

(11) Further to the provisional disclosure, evidence was submitted by the Union industry and the Federation of European Producers of Abrasives ('FEPA') representing the users of the fibreglass discs showing that there are a number of steps in the production process that have to be undertaken to convert glass fibre open mesh fabric into fibreglass discs. The physical shape of the disc is also different from the product concerned which is normally supplied in rolls (narrow or wide) and it is also normally intended for a different end use (reinforcement of grinding wheels). These arguments were shared by the Chinese exporting producer.

(12) It is additionally noted that fibreglass discs were not produced or sold by any of the sampled exporting producers in the PRC or Union producers.

(13) One Union producer of fibreglass discs which came forward after the imposition of provisional measures argued that fibreglass discs should not be excluded from the product scope. It claimed that fibreglass discs are not a downstream product but that a clear line between the product concerned and a downstream product should be drawn at the stage when open mesh rolls are coated. According to the company, the coating of open mesh rolls used in the construction sector is different from that of open mesh rolls that are later used for making fibreglass discs. In the latter case the rolls are coated with phenol resin. In other words, the chemical characteristics of open mesh rolls intended for making fibreglass discs are allegedly identical to those of the fibreglass discs. According to the company these types of open mesh rolls cannot be used in construction reinforcement, which is the main application of the product concerned. Therefore the company argued that if fibreglass discs were to be excluded from the product scope, open mesh rolls coated with phenol resin should also be excluded.

(14) As explained in recital 13 the company came forward only after the imposition of provisional measures and thus did not provide verifiable data in support of its claims. As no data was available from the investigation with regard to the different types of coating used, the company's claim could not be assessed in light of data obtained from the investigation. Moreover, regardless the coating, different types of open mesh rolls share the same basic physical characteristics and therefore open mesh rolls coated with phenol resin should not be excluded. This claim was therefore rejected.

(15) Based on the data gathered during the investigation and the evidence submitted by the exporting producer mentioned in recital 10, the Union industry and FEPA in their comments to the provisional disclosure, the claim to exclude fibreglass discs from the product scope is hereby accepted. It is thus concluded that fibreglass discs as a downstream product do not share the same physical characteristics and have different uses as compared to open mesh fabrics and therefore should be excluded from the definition of the product concerned as defined in the provisional Regulation. Fibreglass discs are therefore definitively excluded from the proceeding.

2. **Like product**

(16) In the absence of any other comments regarding the like product, recital 17 of the provisional Regulation is hereby confirmed.

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C. DUMPING

1. Market Economy Treatment (MET)

(17) As set out in recitals 18 to 32 of the provisional Regulation, it was initially proposed to grant MET to two companies but at a later stage of the proceeding it was decided to reverse this proposal after investigating allegations received concerning the MET status of the companies concerned which were found to be correct.

(18) One exporting producer, to which Article 18 of the basic Regulation was applied, reiterated the arguments already brought forward when it was informed that the Commission intended to refuse MET. It argued again that the Articles of Association and the Joint Venture Contract received by the Commission were an old version which never entered into force and had therefore no impact on the findings of the company's MET assessment.

(19) As set out in recital 28 of the provisional Regulation, these arguments could not remove the doubts on the authenticity of the initial documents and information provided by the exporting producer in its MET Claim form submission.

(20) With regard to the argument that the application of the Article 18(1) of the basic Regulation is disproportionate in this case, the Commission applies the provisions of this Article on a case-by-case basis according to the merits of each case. In the present proceeding the use of this Article has been considered appropriate as already indicated in recitals 26, 27 and 31 of the provisional Regulation, since the provision of the falsified documents casts doubts on all documents provided by the company.

(21) The second exporting producer to which MET was refused but Individual Treatment (IT) granted instead, disputed the grounds on which the Commission had reversed its decision. They considered that there was no new compelling evidence that would significantly undermine the original findings to justify the repeal of the initial decision for granting MET. They argued that the inaccuracies and incompleteness found in their financial statements and not reported by the auditor had no material impact on the reliability of these accounts.

(22) As set out in recital 30 of the provisional Regulation, these arguments could not remove the doubts as to the accuracy and completeness of the figures presented in the financial statements.

(23) They also consider that the outcome of the investigation and their individual duty rate is unfair and disproportionate since the company has cooperated within the course of the proceeding and is subject to the highest duty rate like the non-cooperating companies and the company subject to Article 18 of the basic Regulation. In this regard it is noted that the company is subject to a duty which is the result of the usual methodology applied for companies granted IT.

(24) In the absence of any other comments concerning MET, recitals 18 to 32 of the provisional Regulation are hereby confirmed.

2. **Individual Examination (IE)**

(25) As set out in recital 37 of the provisional Regulation, a non-sampled group of related companies requested individual examination in accordance with Article 17(3) of the basic Regulation and replied to the MET claim form within the given deadline.

(26) As mentioned in recital 5 a verification visit was carried out at the premises of the group of related companies and it was found that the companies did not meet criteria 1, 2 and 3 of Article 2(7)(c) of the basic Regulation.

(27) With regard to criterion 1, the two related companies failed to provide sufficient evidence concerning the shareholders' contribution to the companies' capital. The shareholders took over the companies initially established with State funds without paying any contribution themselves. In addition, contrary to the requirements of the Articles of Association, no shareholders' meetings were held, no minutes of these meetings were provided raising doubts whether business decisions were taken by the shareholders without any State interference. In light of the above, it is considered that the companies could not demonstrate that their business decisions are not made without significant State interference.

(28) With regard to criterion 2, the investigation showed that the accounting records of two related companies were not audited in line with international accounting standards since they contained a number of accounting shortcomings and errors such as taxes booked/paid; continuous errors in dividends payable account; and missing depreciation were found which were not mentioned in the audit reports.

(29) Concerning criterion 3, one related company failed to provide their Land Use Right Agreement, no booking in their accounts was found and no proof of payment was provided. The second company obtained a land use right from its related company at no cost which is not booked in its records and thus not depreciated.

(30) In view of the above it was proposed to refuse MET to the group of companies that requested individual examination.

(31) The Commission officially disclosed the results of the MET findings to the group of related companies concerned in the PRC and to the complainants. They were also given an opportunity to make their views known in writing and to request a hearing if there were particular reasons to be heard. No comments were received following disclosure of the MET findings.

3. **Individual Treatment (IT)**

(32) It was provisionally established that one of the sampled exporting producer group of companies in the PRC to which MET was denied, met all the requirements for IT.

(33) In addition, as set out in recital 35 of the provisional Regulation, the exporting producer to which MET was reversed, met the conditions of Article 9(5) of the basic Regulation to be granted IT instead.