

Official Journal

of the European Union

L 204



English edition

Legislation

Volume 54

9 August 2011

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II

(Non-legislative acts)

REGULATIONS

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

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 Műszakiszövetgyártó, Valmieras stikla šķiedra AS, and Vitrolan 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 ('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.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 43, 17.2.2011, p. 9.

- (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.
- (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.

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/m² 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.
- (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.

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.
- (34) The Union industry questioned the decision to grant IT to the company for which the decision to grant MET was reversed, claiming that the incomplete accounts and the discrepancies discredit the entire dataset of the company. However, it was found that the irregularities found in the accounts had no impact on the reliability of the export prices of the company. The claim of the Union industry was therefore rejected.
- (35) In view of the above, the initial conclusion that two of the three sampled exporting producers met all requirements for IT is therefore confirmed. Recitals 33 to 36 of the provisional Regulation with regard to IT are hereby confirmed.
- (36) In addition, the group of the two related companies that requested individual examination, also requested IT, should the investigation establish that they did not meet the conditions for MET. It was found that they fulfilled the conditions of Article 9(5) of the basic Regulation to be granted IT.
- (37) The Union industry questioned also the decision to grant IT to the group of two related companies claiming that as the companies' data was proven to be unreliable for the assessment of MET then this data could not be considered sufficient for granting IT. The claim of the Union industry was rejected as it was found that the irregularities identified in regard to the MET assessment had no impact on the eligibility for an individual duty rate and therefore IT could be granted.

4. Normal value

(a) Choice of the analogue country

- (38) No comments were received on the choice of the analogue country. Therefore, it is confirmed that Canada was an appropriate and reasonable analogue

country in accordance with Article 2(7) of the basic Regulation. Recitals 39 to 45 of the provisional Regulation are hereby confirmed.

(b) Determination of normal value

- (39) It is recalled that it was considered more appropriate to construct normal value in order to take into account differences in quality between the like product produced and sold in Canada and the product concerned from the PRC. Normal value was therefore constructed using the cost of manufacturing of the Canadian producer plus a reasonable amount for selling, general and administrative expenses ('SG&A') and for profit on the domestic market.
- (40) The companies that were granted IT disputed the calculation of the constructed normal value ('NV'), and one of them particularly questioned whether it was constructed per product type. It was confirmed that the NV was constructed per product type on the basis of data obtained from the sole producer of the product concerned in the analogue country. Given the need for confidentiality, NV was disclosed in the form of price ranges.
- (41) Three parties claimed that the disclosed NV did not provide a reasonable understanding of the facts and considerations on the basis of which the dumping margin was determined. All companies requested more details on the construction of the NV including the amount of the various adjustments made to the NV in order to take into account the quality differences. However, having regard to the obligation to respect confidentiality of the data, it was considered that the companies were provided with all the information that could be disclosed.
- (42) Therefore this claim was rejected. Recitals 46 to 49 of the provisional Regulation with regard to the determination of the normal value are hereby confirmed.

(c) Export prices for the exporting producers granted IT

- (43) One of the companies granted IT at the provisional stage, requested explanation of the calculation of the packaging costs as they considered that the disclosed data on packaging did not show a consistent correlation to either the volume or the value of transactions. Since this company had not claimed any packaging costs in its reply to the anti-dumping questionnaire, packaging cost was therefore calculated on the basis of information obtained from the other two sampled exporting producers.
- (44) In the absence of any other comments with regard to the determination of the export price, recital 50 of the provisional Regulation is hereby confirmed.

- (45) Following disclosure of the definitive findings, the group of related companies that is to be granted IT claimed that commission costs should not have been taken into account while calculating the various allowances deducted from the export price. The claim was accepted and export price was adjusted accordingly while the group's dumping margin was revised as a result.

(d) *Comparison*

- (46) In the absence of any comments with regard to the comparison of the normal value and the export prices on an ex-works basis, recitals 51 and 52 of the provisional Regulation are hereby confirmed.

5. Dumping margins

(a) *For the cooperating exporting producers granted IT*

- (47) One importer of the product concerned in the Union welcomed the imposition of the provisional measures as they would restore the import price to non-injurious levels. Nevertheless, he considered that a difference of more than 10 % between the various duties imposed could distort the market. Hence, he requested that the measures be revised so that the company granted IT subject to the lower individual duty rate should not benefit from it. The importer claimed that the risk of circumvention from the exporting producer with the lower individual duty rate was increased. However, no additional information or proof was provided to substantiate this claim, it was therefore disregarded.

- (48) On this basis the definitive dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are:

Company	Definitive dumping margin
Yuyao Mingda Fiberglass Co., Ltd	62,9 %
Grand Composite Co., Ltd and its related company Ningbo Grand Fiberglass Co., Ltd	48,4 %
Yuyao Feitian Fiberglass Co., Ltd	60,7 %

(b) *For all other exporting producers*

- (49) In the absence of any comments with regard to the dumping margins, recitals 53 to 57 of the provisional Regulation are hereby confirmed.
- (50) On this basis the countrywide level of dumping is definitely established at 62,9 % of the CIF Union

frontier price, duty unpaid and recital 58 of the provisional Regulation is hereby confirmed.

D. INJURY

1. Union production

- (51) It is made clear that in recital 59 of the provisional Regulation the term 'Union industry' refers to all Union producers. In the absence of any comments concerning the Union production, recital 60 of the provisional Regulation is hereby confirmed.

2. Union consumption

- (52) As explained in recital 9, 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. The exclusion of these codes did not alter the findings as regards Union consumption, including imports, which were based on figures contained in the complaint, supplemented by verified figures obtained from cooperating companies and Eurostat figures.
- (53) In the absence of any comments concerning the Union consumption, recitals 61 to 63 of the provisional Regulation are hereby confirmed.

3. Imports from the country concerned

- (54) In the absence of any comments concerning the volume, price and market share of the dumped imports from the country concerned, the findings set out in recitals 64 to 66 of the provisional Regulation are hereby confirmed.
- (55) In the absence of any comments concerning price undercutting, the methodology described in recitals 67 and 68 of the provisional Regulation to establish price undercutting, including the quality adjustment is confirmed. However, following the individual examination granted after the imposition of provisional measures to one group of exporting producers in the PRC, the price comparison of similar product types was reassessed. This reassessment confirmed that the dumped imports from the PRC were undercutting the Union industry's prices by 30-35 % during the IP.

4. Situation of the Union industry

- (56) In the absence of any comments regarding the situation of the Union industry, recitals 69 to 84 of the provisional Regulation are hereby confirmed.

5. Conclusion on injury

- (57) In the absence of any comments regarding the conclusion on injury, recitals 85 to 87 of the provisional Regulation are hereby confirmed.

E. CAUSATION

1. Effects of the dumped imports

- (58) In the absence of any comments regarding effects of the dumped imports, recitals 89 to 91 of the provisional Regulation are hereby confirmed.

2. Effects of other factors

- (59) In the absence of any comments regarding effects of other factors, recitals 92 to 96 of the provisional Regulation are hereby confirmed.

3. Conclusion on causation

- (60) In the absence of any comments regarding conclusion on causation, recitals 97 to 99 of the provisional Regulation are hereby confirmed.

F. UNION INTEREST

1. Interest of the Union industry

- (61) In the absence of any comments with regard to the interest of the Union industry, recitals 101 to 103 of the provisional Regulation are hereby confirmed.

2. Interest of importers

- (62) In the absence of comments on the interest of importers, it was concluded that the imposition of definitive measures on imports of the product concerned would not be against the interests of importers.

3. Interest of users and consumers

- (63) It is recalled that at the provisional stage of the investigation no cooperation of users or consumers' organizations was received. Following the publication of the provisional Regulation, one users' association submitted comments. However, the comments addressed only the potential negative impact of imposition of measures on the fibreglass discs, should they not be excluded from the product scope. As described in recital 15 it is considered that the fibreglass discs should be excluded from the product scope. Therefore the imposition of definitive anti-dumping measures will not have a negative impact on users of fibreglass discs.

- (64) In the absence of any other comments on the interest of users and consumers, it was concluded that the imposition of definitive measures on imports of the product concerned would not be against their interests.

4. Conclusion on Union interest

- (65) Based on the above it was concluded that there are no compelling reasons against the imposition of definitive

anti-dumping duties on imports of open mesh fabrics of glass fibres originating in the PRC.

G. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

- (66) Further to the provisional disclosure one Chinese exporting producer claimed that it was not provided with sufficiently detailed data on its injury margin calculation as data regarding the volumes, values and prices of the Union industry per product type were not disclosed. The company argued that since the sample consisted of four Union producers this information could not be considered as confidential. However, it should be noted that some product types were sold in the IP by a very limited number of Union producers. It was therefore considered prudent not to disclose prices, volumes and values of such transactions. Furthermore, revealing the detailed figures for each and every product type is not considered necessary in order to provide parties with a sufficient understanding of the calculation methodology and the result of the calculation.

- (67) The same Chinese exporting producer questioned the target profit used in the injury margin calculation, in particular the fact that the target profit was identical to the Union industry's weighted average profit during the IP. It also questioned the use of the data from the sampled Union producers when establishing the target profit as opposed to data referring to the Union industry as a whole. Finally, it questioned the level of the target profit used compared to the one used in another recent investigation concerning a closely related product sector.

- (68) As explained in recital 112 of the provisional Regulation the target profit reflects the average profit achieved by the Union industry in the years 2006-07 whereas the weighted average profit in the IP was calculated based on the data of the four sampled companies. In addition, as explained in recital 79 of the provisional Regulation this profit did not take into account the extraordinary restructuring costs reported by some of the sampled producers. It is therefore a mere coincidence that these two profit figures are identical.

- (69) As regards the question of which data to use for the determination of the target profit, it should be noted that when sampling is applied, the profit level is one of the micro indicators of the injury analysis. Consequently the figure established for the sample is deemed representative for the Union industry as a whole. In an investigation where sampling is applied, the target profit used in the injury margin calculation is always based on data collected from the sampled companies.

(70) Finally, regarding the reference made to the target profit used in another anti-dumping investigation, it should be underlined that the findings and conclusions of each investigation are based on the data collected from the cooperating companies of each investigation, for a specific product description and period of time. Therefore it is impossible to draw a direct link between the findings of these two separate investigations and two different IP.

(71) With regard to the injury elimination level, as a result of the correction of a clerical error in the calculation of the provisional injury margin concerning one exporting producer its margin was adjusted upward. This fact however does not affect the level of the anti-dumping duty of this company since the duty is based on the dumping margin.

(72) It should also be noted that as a result of granting IT to another group of Chinese exporting producers as explained in recital 32, an individual injury margin was calculated for them.

(73) As a consequence of revisions referred to in recital 71 the weighted average injury margin for the cooperating exporting producers not included in the sample and the residual injury margin for non-cooperating producers were also revised.

(74) On this basis, the definitive injury margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are:

Company	Definitive injury margin
Yuyao Mingda Fiberglass Co., Ltd	69,1 %
Grand Composite Co., Ltd and its related company Ningbo Grand Fiberglass Co., Ltd	77,4 %
Yuayo Feitian Fiberglass Co., Ltd	87,6 %
Sample weighted average for the cooperating exporting producers not included in the sample	72,1 %
Residual margin for non-cooperating exporting producers and Ningbo Weishan Duo Bao Building Materials Co., Ltd	87,6 %

2. Definitive measures

(75) In the light of the foregoing, it is considered that, in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in respect of imports of the product concerned at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule. Accordingly, all duty rates should be set at the level of the dumping margins found.

(76) The proposed anti-dumping duties are the following:

Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate
Yuyao Mingda Fiberglass Co., Ltd	69,1 %	62,9 %	62,9 %
Grand Composite Co., Ltd and its related company Ningbo Grand Fiberglass Co., Ltd	77,4 %	48,4 %	48,4 %
Yuayo Feitian Fiberglass Co., Ltd	87,6 %	60,7 %	60,7 %
Sample weighted average for the cooperating exporting producers not included in the sample	72,1 %	57,7 %	57,7 %
Residual for non-cooperating exporting producers and Ningbo Weishan Duo Bao Building Materials Co., Ltd	87,6 %	62,9 %	62,9 %

(77) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the People's Republic of China and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(78) Any claim requesting the application of an individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

(79) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period within which they could make representations subsequent to final disclosure. The comments submitted by the parties were duly considered, and, where appropriate, the findings have been modified accordingly.

(80) The group of two related companies that requested individual examination and was granted IT expressed its intention to offer an undertaking. However, the group did not send any offer for undertaking within the deadline set out in Article 8(2) of the basic Regulation and thus it could not be taken into consideration.

(81) In order to ensure equal treatment between any new exporters and the cooperating companies not included in the sample, mentioned in the Annex to this Regulation, provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise be entitled to a review pursuant to Article 11(4) of the basic Regulation as that Article does not apply where sampling has been used.

3. Definitive collection of provisional duties

(82) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, be definitively collected to the extent of the amount of the definitive duties imposed. As fibreglass discs are now excluded from the product scope (see recital 15), the amounts provisionally secured on imports of fibreglass discs should be released. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of 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/m², excluding fibreglass discs, currently falling within CN codes ex 7019 51 00 and ex 7019 59 00 (TARIC codes 7019 51 00 10 and 7019 59 00 10) and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union frontier price, before duty, of the product described in paragraph 1 and produced by the companies below shall be as follows:

Company	Duty (%)	TARIC additional code
Yuyao Mingda Fiberglass Co., Ltd	62,9	B006
Grand Composite Co., Ltd and its related company Ningbo Grand Fiberglass Co., Ltd	48,4	B007
Yuyao Feitian Fiberglass Co., Ltd	60,7	B122
Companies listed in Annex I	57,7	B008
All other companies	62,9	B999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the duty applicable to all other companies shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. The amounts secured by way of the provisional anti-dumping duty pursuant to Commission Regulation (EU) No 138/2011 on imports of fibreglass discs originating in the People's Republic of China shall be released upon request.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Office N105 04/090, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË.

2. The amounts secured by way of the provisional anti-dumping duty pursuant to Commission Regulation (EU) No 138/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China shall be definitively collected in so far as it concerns products currently falling within CN codes ex 7019 51 00 and ex 7019 59 00. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released, including amounts which would have been secured for products currently falling within CN codes ex 7019 40 00, ex 7019 90 91 and ex 7019 90 99.

Article 3

Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- it did not export to the Union the product described in Article 1(1) during the investigation period (1 April 2009 to 30 March 2010),

- it is not related to any of the exporters or producers in the People's Republic of China which are subject to the measures imposed by this Regulation,

- it has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 57,7 %.

Article 4

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 August 2011.

For the Council
The President
M. DOWGIELEWICZ

ANNEX I

CHINESE COOPERATING EXPORTING PRODUCERS, NOT SAMPLED (TARIC ADDITIONAL CODE B008)

Jiangxi Dahua Fiberglass Group Co., Ltd
Lanxi Jialu Fiberglass Net Industry Co., Ltd
Cixi Oulong Fiberglass Co., Ltd
Jiangsu Tianyu Fibre Co., Ltd
Jia Xin Jinwei Fiber Glass Products Co., Ltd
Jiangsu Jiuding New Material Co., Ltd
Changshu Jiangnan Glass Fiber Co., Ltd
Shandong Shenghao Fiber Glass Co., Ltd
Yuyao Yuanda Fiberglass Mesh Co., Ltd
Ningbo Kingsun Imp & Exp Co., Ltd
Ningbo Integrated Plasticizing Co., Ltd
Nankang Luobian Glass Fibre Co., Ltd
Changshu Dongyu Insulated Compound Materials Co., Ltd

ANNEX II

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

- (1) the name and function of the official of the entity issuing the commercial invoice;
- (2) the following declaration:

'I, the undersigned, certify that the (volume) of open mesh fabrics of glass fibres sold for export to the European Union covered by this invoice was manufactured by (company name and registered seat) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.

Date and signature'.

COUNCIL IMPLEMENTING REGULATION (EU) No 792/2011

of 5 August 2011

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain ring binder mechanisms originating in Thailand

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:

1. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EU) No 118/2011 of 10 February 2011⁽²⁾ (the provisional Regulation) imposed a provisional anti-dumping duty on imports of certain ring binder mechanisms originating in Thailand.
- (2) The proceeding was initiated as a result of a complaint lodged on 6 April 2010 by Ring Alliance Ringbuchtechnik GmbH (the complainant) on behalf of producers representing a major proportion, in this case more than 50 % of the total Union production of certain ring binder mechanisms (RBM). The complaint contained prima facie evidence of dumping of the said product and of material injury resulting there from, which was considered sufficient to justify the initiation of a proceeding.
- (3) It is recalled that, as set out in recital 7 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 April 2009 to 31 March 2010 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the investigation period (injury investigation period).

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 (provisional disclosure), several interested parties made written

submissions making known their views on the provisional findings. The parties who so requested, in particular two importers and the Thai producer, were granted the opportunity to be heard.

- (5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings with respect to dumping, injury, causality and Union interest. In addition to the verifications mentioned in recital 6 of the provisional Regulation, a further verification was carried out at the premises of Rima Benelux Holding BV, the only user that had cooperated in the investigation by replying to a user's questionnaire.
- (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 ring binder mechanisms originating in Thailand and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period of time within which they could make representations subsequent to this disclosure.
- (7) The oral and written comments submitted by the interested parties were considered and taken into account where appropriate.

3. PRODUCT CONCERNED AND LIKE PRODUCT

- (8) In the absence of any comments concerning the product concerned and the like product, recitals 8 to 11 of the provisional Regulation are hereby confirmed.

4. DUMPING

4.1. Normal Value

- (9) It is recalled that, as explained in recital 14 of the provisional Regulation, only one Thai exporting producer cooperated in the investigation and that its exports to the Union during the IP accounted for all Thai exports to the Union. The exporting producer and one cooperating unrelated importer claimed that the independent external expert who assisted the Commission during the on-spot visit to the exporting producer made some calculation errors in his report. One of the tasks of the expert was to examine the nickel coating process and the amount of raw materials consumed by the exporting producer in the different production phases. As mentioned in recital 15 of the provisional Regulation, the investigation revealed that the exporting producer provided incomplete and incorrect information with regard to significant elements of its cost of production and other raw materials. The allegations made by the exporting

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 37, 11.2.2011, p. 2.

producer and an importer regarding calculation errors in the expert's report were examined by the Commission and it was concluded that they were not founded. Therefore, the findings as set out in recital 15 of the provisional Regulation are confirmed.

- (10) The exporting producer and an importer also contested the provisional findings as set out in recitals 19 to 20 of the provisional Regulation. In particular, they claimed that the methodology used for the provisional determination of the normal value for types other than those for which a specific normal value was established was over-stated, because it had been incorrectly based on an arithmetic average of the normal values. The Commission accepted the claim, adjusted the methodology and revised the calculation of the normal values for these other types taking account of the product mix of the Thai producer, which more accurately reflects his situation.
- (11) The exporting producer further argued that the rates used for selling, general and administrative expenses (SGA) and profit margins of respectively 16 % and 8 % were too high. The exporting producer argued that the SGA rate should not exceed 12,59 %, reflecting its own SGA excluding inland freight costs.
- (12) It is recalled that as outlined in recitals 15 to 17 of the provisional Regulation the exporting producer did not cooperate with the investigation and consequently did not provide data about its full SGA costs. Under these circumstances and given the fact that no further information was provided on the company's full SGA costs, it was decided to continue to rely on the information available in the complaint. Furthermore, in the light of the information available and insofar as it could be verified, a SGA rate of 16 % was considered to be reasonable. Therefore, the claim was rejected.
- (13) The exporting producer claimed that the profit level of 8 % used in the provisional calculation was too high and instead, a profit level of 5 % should have been used. The arguments put forward were, firstly, a profit level of 5 % has been used for the target profit in the injury analysis and, secondly, a profit level of 5 % would be in line with previous investigations on the same product. On the first argument, the Commission noted that the determination of a target profit for the Union industry and the profit level used for the determination of a normal value do not follow the same logic and therefore, do not have to be the same. On the second argument, the Commission agreed that there were some grounds for using the same profit level as in previous investigations on the

same product and decided to accept this claim and to change the profit level used in the calculation of the normal values accordingly.

- (14) Further to final disclosure, the Union industry and the exporting producer submitted some comments. The Union industry disagreed with the correction made regarding the profit margin arguing that a profit rate of 5 % would not be sufficient to cover the profitability requirements of the three related companies involved in the production and sales of the product concerned, but without providing any other substantial arguments. Therefore, the claim was rejected.
- (15) The exporting producer claimed that the cost for depreciation, building and insurance used in the calculation of the normal value of one type was not the same as the one used for the other types and the same figure should apply to all types. The Commission verified the claim and indeed found an error in the calculation. However, contrary to the exporting producer's claim the error was found to be made in the calculation of the normal value of the other types. A correction to the normal value for the other types was made accordingly.
- (16) The exporting producer also claimed that the normal values for types other than those for which a specific normal value was established did not take fully into account the actual product mix of the exporting producer. In this respect, the exporting producer reiterated his claim that a weighted average of the normal values found should be used for the other types, thus reflecting the actual product mix of the exporting producer. As mentioned in recital 10 above, the Commission agreed to revise the calculation of the normal values for these other types in order to take into account of the actual product mix of the Thai producer and, irrespective of the actual sales volumes for each type, a normal value for small, medium and large RBM was calculated. However, the Commission rejected the argument that in addition a weighting factor based on the exporter's sales to the Union should be taken into consideration in the absence of substantiated reasons.
- (17) In addition, the exporting producer claimed that the Commission's method of calculating NV on the basis of the length of the ring binder mechanisms was imprecise and incomplete and proposed a new method for the calculation of the averages which would take into account their various lengths more accurately. As explained in recital 16 above the Commission calculated a normal value for types other than those for which a specific normal value was established and calculated

normal values reflecting small, medium and large RBM. The exporter's calculation was found to be flawed and result-oriented. Therefore, the claim was rejected.

- (18) Apart from the changes mentioned above and in the absence of any other comments, the content of recitals 15 to 20 of the provisional Regulation concerning the establishing of the normal value is hereby definitively confirmed.

4.2. Export price and comparison

- (19) The exporting producer claimed that the currency used for the computation of transport costs in the dumping calculation was not the correct one. The Commission accepted this claim.
- (20) In the absence of any other comments, the content of recitals 21 to 24 of the provisional Regulation concerning the establishing of export prices and comparing the export prices with the respective normal value is hereby definitively confirmed.

4.3. Dumping margin

- (21) The exporting producer claimed that the calculation of the dumping margin did not take into account the specific normal value for two types. The claim was accepted and corrected accordingly.
- (22) In the light of the above-mentioned changes in the calculation of the normal value and the comparison, and after correction of the calculation error regarding export price mentioned above, the amount of dumping finally determined, expressed as a percentage of the CIF Union frontier price, duty unpaid, is as follows:

Exporting producer	Dumping margin
Thai Stationery Industry Co. Ltd, Bangkok, Thailand	16,3 %

- (23) Since the cooperating exporting producer accounted for all Thai exports to the Union of the product concerned, it was considered that the residual dumping margin should be set at the level of dumping margin found for this cooperating exporting producer, i.e. 16,3 %.

5. DEFINITION OF THE UNION INDUSTRY

- (24) In the absence of any comments concerning the definition of the Union industry, the findings set out in recitals 28 to 32 of the provisional Regulation are hereby confirmed.

6. INJURY

6.1. Union consumption and imports from Thailand

- (25) The Thai producer and several importers questioned the trends in Union consumption established in the provisional Regulation. In particular, they argued that the consumption decreased to a higher extent than what was provisionally established (by around 30 %). They also asked for clarifications concerning the methodology followed by the Commission to establish consumption, because the RBM is included in a customs tariff heading including other products.
- (26) It should be mentioned that although these interested parties contested the findings related to the consumption, no supporting evidence or figures have been provided to substantiate their arguments. They also did not point to any methodological flaw.
- (27) As to the methodology, it should be recalled that, as mentioned in recital 33 of the provisional Regulation, the consumption was established on the basis of the verified sales figures provided in the questionnaire's reply of the cooperating parties (the two Union producers and the Thai exporter for the periods 2008-IP) and on the basis of Eurostat figures for the rest of the imports. Given that RBM from other sources are subject to anti-dumping measures, imports (from all sources) are registered under sub-headings codes in the customs tariff database (TARIC) which are very largely specific to the product under investigation. These sub-headings were used in order to ensure that only imports of the product concerned were considered, despite a minor update of the product definition in this investigation.
- (28) Furthermore, given that Eurostat figures are expressed in kilograms, while the consumption has been calculated in pieces, one importer requested clarifications as to the methodology used to convert kilograms into pieces. It should thus be clarified that a conversion factor of 50 gram/piece has been used, which is in line with previous investigations and was found to be reasonable, when compared to the information provided by the Thai exporting producer. It should be also added that, if the Commission had used exactly the average weight per piece resulting from the information provided by the Thai exporting producer, the imports from Thailand would have shown during the overall injury investigation period a steeper increase in terms of both absolute volume (by 25 %, as compared to 19 % established in the provisional Regulation) and market shares (from 11,8 % to 15,5 %, as compared to 12,0 % to 15,0 % established in the provisional Regulation).
- (29) One importer also claimed that the Thai imports actually decreased by 40 % during the injury investigation period,

but this was based on the import value — and not on the volume — for the totality of the customs code, thus including products other than those under investigation. This claim had to be rejected.

- (30) In view of the above, the findings in recitals 33 to 40 of the provisional Regulation concerning the Union consumption (which decreased by more than 15 % between 2008 and the IP) and the imports from Thailand, are hereby confirmed.

6.2. Economic situation of the Union industry

- (31) One importer submitted that the injury analysis was biased because the poor financial situation of the Union industry should be seen in conjunction with the situation of one of its related companies, which is allegedly making profits in the RBM's business. In this respect it is noted that the injury analysis should only focus on the Union industry's sales on the Union market of the product concerned produced in the Union. Since, as mentioned in recital 69 of the provisional Regulation, the related company in question is not a producer in the Union and is mostly trading products not originating in the Union, it should not be taken into consideration for the purpose of the injury analysis.
- (32) Without prejudice to the above, it is nevertheless underlined that the importer has provided no information showing that the above-mentioned related company would be in a good financial situation. To the contrary, the figures obtained during the investigation show that also this company decreased significantly its sales volume of RBM during the investigation period.
- (33) Account taken of the above and in the absence of other comments in respect to the injury analysis, the recitals 41 to 57 of the provisional Regulation are hereby confirmed, and it is concluded that the Union industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

7. CAUSATION

7.1. Effects of the dumped imports

- (34) Even though some interested parties contested the provisional findings regarding the effect of other factors (see below), none of them contested the provisional conclusion that dumped imports from Thailand caused injury to the Union industry. The recitals 58 to 64 of the provisional Regulation are thus hereby confirmed.

7.2. Effects of other factors

- (35) Some interested parties contested the provisional findings concerning the effect of other factors, and submitted that alternately contraction in demand, competition between Union producers, imports from India and self-inflicted injury would be the main cause of injury.
- (36) Concerning the contraction in demand, reference is made to recitals 25 to 30 above which confirm the trend of the consumption established in the provisional Regulation. The allegations that the effects of the contraction in demand have been underestimated should therefore be rejected. Nevertheless, it should be recalled that the recital 67 of the provisional Regulation concluded that the decrease in consumption indeed might have contributed to the material injury suffered by the Union industry, although this effect was considerably reinforced by the effect caused by the dumped imports. However, the effect of the decrease in consumption was not such as to break the causal link between the dumped imports and the injury found.
- (37) It was also argued by the Thai exporter that the injury suffered by the Union industry was also caused by the competition between the Union producers. This is mainly because the loss of the Union industry's market share coincided with the market share increase of the other Union producer.
- (38) In this respect, even if the calculations presented by the Thai exporter are not entirely correct, it is true that overall the market share of the second producer also increased during the injury investigation period. It should however be recalled that, as mentioned in the recital 30 of the provisional Regulation, this producer is importing a significant quantity of RBM from Thailand. Interestingly, the year when this producer managed to increase its sales of Union made products and market shares it also significantly increased its sales of RBM from Thailand. Actually, it even became a significant importer of Thai RBM, by purchasing a major part of the Thai exports during that year. Therefore, even if indeed the second Union producer managed to take over some market shares from the Union industry, it is difficult not to conclude that this company managed to do this because it also benefited from the dumped imports of RBM from Thailand. It is recalled that this producer was excluded from the definition of the Union industry because of his important import activities as compared to his own production.
- (39) Furthermore, the claim already addressed in recital 69 of the provisional Regulation that Indian imports also caused injury to the Union industry was reiterated

by interested parties. This was based on the fact that India holds around 50 % share of the Union market, i.e. three times more than Thailand, and that the corresponding average prices decreased by 3 % between 2009 and IP, while undercutting Union prices by 24 %. It was also underlined that a significant portion of the Indian imports was purchased by a company related to the Union industry.

- (40) No new arguments were however given in this respect and these claims were already addressed in the provisional Regulation. Even if the absolute level of Indian imports was indeed overall higher than that of Thailand, it was shown in the provisional Regulation that these imports developed differently: while Thai imports increased overall during the injury investigation period, both in absolute and relative terms, Indian imports decreased (by almost 10 %) and market shares also slightly diminished. In addition, the Indian average price level was also higher than the Thai import price. Furthermore, even if a company related to the Union industry is importing RBM from India, the investigation established that the level of these imports has significantly decreased over the years as mentioned above in recital 32.

- (41) Finally, several interested parties also claimed that the complainant lost its customers because it became active on the downstream market via its mother company, Ring International Holding (RIH), and that sales of RBM to related companies should be considered carefully because they would not be made at arm's length. These claims have however been rejected because they were not substantiated and the investigation showed that sales to related companies were negligible as compared to total sales.

7.3. Conclusion on causation

- (42) Based on the above, the provisional conclusions laid down in recitals 65 to 76 of the provisional Regulation are hereby confirmed. Even if factors other than imports also had some impact on the situation of the Union industry, it is concluded that dumped imports from Thailand have caused material injury to the Union industry, within the meaning of Article 3(6) of the basic Regulation, based on an analysis which has properly distinguished and separated the effects of all known factors from the injurious effects of the dumped imports.

8. UNION INTEREST

- (43) Two of the five importers that cooperated during the investigation reacted to the disclosure of the provisional findings and submitted comments in writing. One of these importers requested to be heard as well as another importer. The Commission also decided to carry out a visit at the premises of the sole user that participated to the investigation.

- (44) No comments were made with respect to the recitals 79 to 90 of the provisional Regulation concerning the description of the market and the section related to the interest of the Union industry.

8.1. Importers and traders

- (45) It is firstly recalled that in the provisional Regulation it was concluded that the imposition of measures could only have a significant negative impact on the situation of one importer, which also produces RBM in the Union. This importer did not react to the imposition of the provisional measures.
- (46) One other importer, which also requested a hearing chaired by the Hearing Officer, mainly questioned the calculation of the dumping margin, the injury analysis and the calculation of the Union consumption. It did however not raise any new comment regarding the Union interest analysis.

- (47) A third importer, representing 20 % of the overall Thai imports, requested a hearing during which it was explained that, contrary to the information submitted previously during the investigation, it did not cease all its activities related to RBM — as mentioned in recital 92 of the provisional Regulation — but has transferred them to another office. During the hearing, this importer explained that its RBM-business is only complementary to its core one covering other products and did not exclude importing RBM from Thailand even if measures are imposed. However, because of the overhead costs of its large distribution network, this will depend on the level of the anti-dumping duties and on the possibility to increase the price to customers. Alternatively, this importer would not suffer significant negative consequences from stopping the RBM-business given the minor importance of this activity as compared to its overall business.

8.2. Users

- (48) As mentioned in recital 5 above, the questionnaire reply of the only cooperating user was verified during the visit at its premises after the imposition of the provisional measures. This user is purchasing from a variety of sources, including the Union, India and Thailand. It also used to import from China but changed its source of supply since the imposition of anti-dumping duties.
- (49) Thai imports represent around 10 % of its total purchases of RBM, and the company decided not to import Thai products since the imposition of the provisional

measures. Even if so far the measures did not seem to have significantly affected its economic situation, this company nevertheless deplored the limitation of its sources of supply, and especially the fact that now it cannot rely always on short-term delivery of RBM.

- (50) Interested parties reiterated their claim, already addressed in the provisional Regulation, that the imposition of measures would lead to limited sources of supply on the Union market. It is thus worth restating that indeed the investigation showed that the Union market is characterised by a limited number of players: there is one producer in India, one in Thailand, two in the Union and some in China. The purpose of anti-dumping measures is to restore fair competition on the Union market and not to prevent imports. This may indeed result in a reduction of the level of imports, while measures offset the trade distorting nature of these imports. This is however, as such, not a sufficient reason to question the imposition of measures against dumped imports. It could even be argued that fair competition should be guaranteed on the Union market to ensure the continued existence of all sources of supply in the long term.

- (51) It is expected that with a level of the definitive duty, which is lower than the provisional one, Thai imports could still enter the Union market, while the investigation has shown that there are also other sources of supply, even if in limited number.

8.3. Conclusion on the Union interest

- (52) In the light of the above, and in the absence of any other comments, recitals 77 to 110 of the provisional Regulation are hereby confirmed and it is concluded that overall, based on the information available concerning the Union interest, there are no compelling reasons against the imposition of definitive measures against imports of RBM originating in Thailand.

9. DEFINITIVE ANTI-DUMPING MEASURES

9.1. Injury elimination level

- (53) In the absence of any comments as to the injury elimination level, recitals 111 to 114 of the provisional Regulation are hereby confirmed.

9.2. Definitive measures

- (54) With respect to the amount of duty necessary to remove the effects of the injurious dumping, it has been commented that the anti-dumping duty should be

reduced to 6 %, since allegedly Indian imports are not dumped and are 6 % higher than Thai imports. In this respect, it is noted that the purpose of anti-dumping duties is not to align prices to those of other sources but to eliminate the distorting effects of injurious dumping.

- (55) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the dumping found. This was calculated at 16,3 % having fallen significantly since the provisional stage.
- (56) On the basis of the above, the rate of the definitive anti-dumping duty for the cooperating exporter is 16,3 %.

10. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

- (57) In view of the magnitude of the dumping margin found and given the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of the duty definitively imposed by this Regulation. Since the definitive duty is lower than the provisional duty, the amounts secured in excess of the definitive duty rate should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on certain ring binder mechanisms, currently falling within CN code ex 8305 10 00 (TARIC codes 8305 10 00 11, 8305 10 00 13, 8305 10 00 19, 8305 10 00 21, 8305 10 00 23, 8305 10 00 29, 8305 10 00 34, 8305 10 00 35 and 8305 10 00 36) originating in Thailand. For the purpose of this Regulation, ring binder mechanisms shall consist of at least two steel sheets or wires with at least four half-rings made of steel wire fixed on them and which are kept together by a steel cover. They can be opened either by pulling the half rings or with a small steel trigger mechanism fixed to the ring binder mechanism.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 shall be 16,3 %.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 1 of this Regulation. The amounts secured in excess of the rate of the definitive anti-dumping duty shall be released.

Article 2

Amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EU) No 118/2011 shall be definitively collected at the rate of the definitive duty imposed pursuant to

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 August 2011.

For the Council
The President
M. DOWGIELEWICZ

COMMISSION REGULATION (EU) No 793/2011**of 5 August 2011****establishing a prohibition of fishing in category 9 ‘pelagic freezer trawlers’ in the Mauritanian Economic Zone by vessels flying the flag of a Member State of the European Union**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EC) No 704/2008 of 15 July 2008 on the conclusion of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania for the period 1 August 2008 to 31 July 2012 ⁽²⁾ has limited the fishing opportunities for category 9 (pelagic freezer trawlers) to a reference tonnage of 250 000 tonnes.
- (2) Considering that on the basis of Article 2(3) of this aforementioned regulation, a supplementary quota of 50 000 tonnes has been allocated for the period from 1 August 2010 to 31 July 2011, bringing the total reference tonnage to 300 000 tonnes.
- (3) According to the information received by the Commission, catches reported in this fishing category

by vessels flying the flag of or registered in the Member States concerned have exhausted the quota for the above reference period.

- (4) It is therefore necessary to prohibit fishing activities for this fishing category.

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member States concerned shall be deemed to be exhausted from 19 July 2011.

*Article 2***Prohibitions**

Fishing activities in category 9 by vessels flying the flag of or registered in the Member States concerned shall be prohibited from 19 July 2011 until 31 July 2011. In particular it shall be prohibited to retain on board, relocate, tranship or land fish caught by those vessels during this period.

*Article 3***Entry into force**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 August 2011.

*For the Commission,
On behalf of the President,*

Lowri EVANS
Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 203, 31.7.2008, p. 1.

COMMISSION REGULATION (EU) No 794/2011**of 8 August 2011****approving amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Parmigiano Reggiano (PDO))**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Pursuant to Article 6(2) of Regulation (EC) No 510/2006, Italy's application for approval of amendments to the specification for the name 'Parmigiano Reggiano' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) Belgium, Denmark and the Association des Importateurs de fromage registered in Basel, Switzerland, objected to the registration pursuant to Article 7(1) of Regulation (EC) No 510/2006. The objections by Belgium and Denmark were deemed admissible under points (a) and (c) of the first subparagraph of Article 7(3) of that Regulation. The objection by the Association des Importateurs de fromage was deemed inadmissible on the grounds of its having been submitted after the deadline.
- (3) By letters dated 30 October 2009 the Commission invited the interested parties to hold appropriate consultations.
- (4) Denmark's objection concerned the lack of justification for the obligation henceforth for cheese bearing the name 'Parmigiano Reggiano' to be portioned, grated and packaged within the defined geographical area. Following clarifications provided by Italy in the said consultations, Denmark withdrew its objection.
- (5) Belgium's objection also concerned the lack of justification of such an obligation to portion, grate and package cheese bearing the name 'Parmigiano Reggiano' within the defined geographical area.
- (6) Given that no agreement was reached between Belgium and Italy within a time limit of 6 months, the

Commission must adopt a decision in accordance with the procedure laid down in the third subparagraph of Article 7(5) and in Article 15(2) of Regulation (EC) No 510/2006.

- (7) In point 3.6 of the single document, Italy states that the said obligation 'is required because the marks identifying "Parmigiano Reggiano" on the whole cheese are lost or not visible on the grated or portioned product, making it necessary to guarantee the origin of the pre-packaged product. It is also required because of the need to guarantee that the cheese is packaged quickly after portioning using appropriate methods to prevent the cheese being dehydrated, oxidised or losing its original "Parmigiano Reggiano" organoleptic characteristics. Cutting into the cheese wheel deprives the cheese of the natural protection provided by the crust which, being itself highly dehydrated, insulates the cheese very well against the ambient air.'
- (8) In the Commission's view, such a reason, designed to ensure the origin of the product in question, ensure optimum control thereof and preserve the product's physical and organoleptic quality is not vitiated by any manifest error of judgement on the part of the Italian authorities.
- (9) Belgium, furthermore, in its objection cited Article 7(3)(c) of Regulation (EC) No 510/2006. Pursuant to that Article, statements of objection are admissible if they 'show that the registration of the name proposed would jeopardise [...] the existence of products which have been legally on the market for at least 5 years preceding the date of the publication provided for in Article 6(2).'
- (10) Belgium failed to provide concrete evidence of potential damage arising to Belgian undertakings from the entry into force of the amendments to the specification.
- (11) It is, nonetheless, public knowledge that there are actually companies outside the defined geographical area engaged in portioning and/or packaging cheese bearing the name 'Parmigiano Reggiano'. Article 13(3) of Regulation (EC) No 510/2006 in this connection permits a transitional period of up to 5 years where a statement of objection has been declared admissible on the grounds that registration of the proposed name would jeopardise the existence of products which have been legally on the market for at least 5 years preceding the date of the publication provided for in Article 6(2) of that Regulation. Having regard in particular to ongoing contractual obligations and the need to adapt the market

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 87, 16.4.2009, p. 14.

progressively following the amendments to the specification for the name 'Parmigiano Reggiano', operators not established in the geographical area defined in the specification should be allowed a transitional period of 1 year in so far as they were legally engaged in portioning and packaging 'Parmigiano Reggiano' outside the defined geographical area for at least 5 years prior to 16 April 2009. The duration of that transitional period is the same as that granted by Italy to operators engaged in portioning and packaging operations on its territory but outside the defined geographical area.

- (12) In the light of the above, the amendments should be approved and a transitional period of 1 year introduced.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Protected Geographical Indications and Protected Designations of Origin,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* on 16 April 2009 regarding the name in the Annex to this Regulation are hereby approved.

Article 2

A transitional period of 1 year is introduced for operators not established within the geographical area defined in the specification for the name 'Parmigiano Reggiano' and who were legally engaged in the portioning and packaging of cheese bearing the name 'Parmigiano Reggiano' outside the said defined geographical area for at least 5 years prior to 16 April 2009.

Article 3

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 August 2011.

For the Commission

The President

José Manuel BARROSO

ANNEX

Products listed in Annex I to the Treaty, intended for human consumption:

Class 1.3 Cheeses

ITALY

Parmigiano Reggiano (PDO)

COMMISSION IMPLEMENTING REGULATION (EU) No 795/2011**of 8 August 2011****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 August 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 August 2011.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0707 00 05	TR	105,8
	ZZ	105,8
0709 90 70	TR	124,2
	ZZ	124,2
0805 50 10	AR	73,4
	CL	76,3
	TR	57,0
	UY	53,9
	ZA	87,4
	ZZ	69,6
0806 10 10	EG	168,5
	MA	187,2
	TR	160,8
	ZZ	172,2
0808 10 80	AR	104,7
	BR	68,8
	CL	105,2
	CN	56,0
	NZ	100,6
	US	100,4
	ZA	84,6
0808 20 50	ZZ	88,6
	AR	81,9
	CL	81,6
	CN	49,3
	NZ	108,0
	ZA	102,2
0809 20 95	ZZ	84,6
	CA	870,0
	TR	337,4
	US	510,8
0809 30	ZZ	572,7
	TR	129,2
0809 40 05	ZZ	129,2
	BA	50,1
	IL	149,1
	XS	57,7
	ZZ	85,6

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COMMISSION IMPLEMENTING DECISION

of 5 August 2011

authorising the placing on the market of phosphated maize starch as a novel food ingredient under Regulation (EC) No 258/97 of the European Parliament and of the Council

*(notified under document C(2011) 5550)***(Text with EEA relevance)**

(2011/494/EU)

THE EUROPEAN COMMISSION,

(5) Therefore the European Food Safety Authority (EFSA) was consulted on 10 February 2010.

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

(6) On 10 September 2010, EFSA in the ‘Scientific opinion on the safety of “phosphated distarch phosphate” as a novel food ingredient’⁽²⁾ came to the conclusion that phosphated distarch phosphate was safe under the proposed conditions of use and the proposed levels of intake.

Having regard to Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients⁽¹⁾, and in particular Article 7 thereof,

(7) On the basis of the scientific assessment, it is established that phosphated distarch phosphate complies with the criteria laid down in Article 3(1) of Regulation (EC) No 258/97.

Whereas:

(1) On 23 August 2005 the company National Starch Food Innovation made a request to the competent authorities of the United Kingdom to place phosphated distarch phosphate (phosphated maize starch) on the market as a novel food ingredient.

(8) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

(2) On 27 April 2009 the competent food assessment body of the United Kingdom issued its initial assessment report. In that report it came to the conclusion that phosphated distarch phosphate was acceptable as a novel food ingredient.

HAS ADOPTED THIS DECISION:

(3) The Commission forwarded the initial assessment report to all Member States on 4 May 2009.

Article 1

Phosphated distarch phosphate as specified in the Annex may be placed on the market in the Union as a novel food ingredient for the uses in baked bakery products, pasta, breakfast cereals and cereal bars with a maximum content of 15 %.

(4) Within the 60-day period laid down in Article 6(4) of Regulation (EC) No 258/97 reasoned objections to the marketing of the product were raised in accordance with that provision.

Article 2

The designation of phosphated distarch phosphate authorised by this Decision on the labelling of the foodstuff containing it shall be ‘phosphated maize starch’.

⁽¹⁾ OJ L 43, 14.2.1997, p. 1.

⁽²⁾ EFSA Journal 2010; 8(9): 1772.

Article 3

This Decision is addressed to National Starch Food Innovation, Corn Products UK Ltd, Prestbury Court, Greencourts Business Park, 333 Styal Road, Manchester M22 5LW, England.

Done at Brussels, 5 August 2011.

For the Commission

John DALLI

Member of the Commission

ANNEX

SPECIFICATIONS OF PHOSPHATED MAIZE STARCH

Description:

The novel food ingredient is a white or nearly white powder.

Phosphated maize starch (phosphated distarch phosphate) is a chemically modified resistant starch derived from high amylose starch by combining chemical treatments to create phosphate cross-links between carbohydrate residues and esterified hydroxyl groups.

CAS No: 11120-02-8

Chemical formula: $(C_6H_{10}O_5)_n [(C_6H_9O_5)_2PO_2H]_x [(C_6H_9O_5)PO_3H_2]_y$

n = number of glucose units; x, y = degrees of substitution

Chemical characteristics of phosphated distarch phosphate

Loss on drying	10 to 14 %
pH	4,5 to 7,5
Dietary fibre	Not less than 70 %
Starch	7 to 14 %
Protein	Not more than 0,8 %
Lipids	Not more than 0,8 %
Residual bound phosphorus	Not more than 0,4 % (as phosphorus) 'high amylose maize' as source

CORRIGENDA**Corrigendum to Commission Regulation (EU) No 861/2010 of 5 October 2010 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff**

(Official Journal of the European Union L 284 of 29 October 2010)

On page 191, CN code 2620 99 20, column 2:

for: 'Containing mainly niobium and tantalum',

read: 'Containing mainly niobium or tantalum'.

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