

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

COMMISSION IMPLEMENTING REGULATION (EU) No 1379/2014  
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THE EUROPEAN COMMISSION,

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

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

Whereas:

A. **PROCEDURE**

1. **Measures in force**

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

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

- (2) On 12 December 2013, the European Commission (the Commission), announced the initiation of an anti-subsidy proceeding with regard to imports into the European Union of certain filament glass fibre products originating in the People's Republic of China ('the PRC' or 'the country concerned') by a notice published in the *Official Journal of the European Union* (the Notice of Initiation of the anti-subsidy investigation)<sup>(4)</sup>.
- (3) The investigation was initiated by the Commission following a complaint lodged on 28 October 2013 by the European Glass Fibre Producers Association (APFE) (the complainant) on behalf of producers representing

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

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more than 25 % of the total Union production of certain filament glass fibre products. The complaint contained prima facie evidence of subsidisation of certain filament glass fibre products and of material injury caused by it, which the Commission considered sufficient to justify the initiation of an investigation.

- (4) In accordance with Article 10(7) of Regulation (EC) No 597/2009 (the basic anti-subsidy Regulation), the Commission notified the government of the PRC prior to the initiation of the investigation that it had received a properly documented complaint alleging that subsidised imports of certain filament glass fibre products originating in the PRC were causing material injury to the Union industry. The Commission invited the government of the PRC for consultations with the aim of clarifying the situation as regards the content of the complaint and arriving at a mutually agreed solution.
  - (5) The government of the PRC accepted the offer for consultations which were subsequently held on 5 December 2013. During the consultations, no mutually agreed solution could be found. However, the Commission took due note of comments made by the government of the PRC regarding the schemes listed in the complaint. Following the consultations, a written submission was received from the government of the PRC on 9 December 2013.
  - (6) Additional consultations were offered to the government of the PRC in regard to additional schemes that were identified during the course of the investigation. The government of the PRC however did not accept the offer as they claimed to have been provided insufficient information in regard to these schemes.
3. **Parallel request for a partial interim review of the anti-dumping measures in force**
- (7) The Commission received a request for the initiation of a partial interim review of the anti-dumping measures in force<sup>(5)</sup>, limited in scope to the examination of injury, pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009 (the basic anti-dumping Regulation). The request was lodged on 28 October 2013 also by the APFE, on behalf of Union producers representing more than 25 % of the total Union production of certain filament glass fibre products.
  - (8) Having determined that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced, on 18 December 2013, by a notice published in the *Official Journal of the European Union* (Notice of Initiation of the anti-dumping partial interim review)<sup>(6)</sup> the initiation of a partial interim review under Article 11(3) of the basic anti-dumping Regulation.
  - (9) One exporting producer claimed that existing measures imposed by Council Implementing Regulation (EC) No 248/2011 are null and void as far as

it is concerned and that the current review investigation concerning the existing measures imposed by that regulation should therefore be terminated. It argued that the existing measures are in breach of the WTO Anti-Dumping Agreement since this exporting producer was refused individual treatment under the provisions of Article 9(5) of the basic anti-dumping Regulation as they existed at the time of adoption of that regulation. In support of its claim it refers to the WTO Appellate Body Report of 28 July 2011 in case DS397<sup>(7)</sup>.

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

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

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

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

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

**5. Parties concerned by the investigations**

- (14) In both Notices of Initiation, the Commission invited interested parties to contact it in order to participate in both investigations. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the authorities of the PRC,

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known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of both investigations and invited them to participate.

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

## 6. **Sampling**

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

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

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

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

- (19) In both Notices of Initiation the Commission explained that in view of the large number of Union producers and in order to complete the investigations within the time limits, it resorted to sampling and a provisional sample was at the same time proposed. The same methodology, i.e. the application of sampling, was used as in the previous investigation. The use of a provisional sample did not change the methodology but merely allowed to be more efficient as it allowed gaining time while fully respecting the rights of defence. Indeed, the Commission gave opportunity to other Union producers who consider that there are reasons why they should be included in the sample to contact the Commission or to any other interested parties to submit any other relevant information with regard to the sample. The final sample should take into account all comments received, if any. As no comments were received on the proposed sample, the provisional sample was confirmed. As to the second claim, the producers who were provisionally selected for the sample had filled in the standing form which included the necessary information for the Commission to select a provisional sample. The standing form and the replies have been available for inspection in the non-confidential file. As to the third claim, parties that wished to be included were invited to contact the Commission within 15 days of the date of the publication of both Notices of Initiation and they had the opportunity to consult the non-confidential file where the standing forms could be found. These standing forms contained information on production and sales volume. The fourth claim is also unfounded because Article 17(1) of the basic anti-dumping Regulation clearly refers to the largest representative volume which can reasonably be investigated within the time available.
- (20) Following the definitive disclosure, the government of the PRC reiterated its claims as to the alleged procedural inconsistency in the selection of the Union producers' sample prior to both initiations and highlighted that: (i) the Commission's justification of meeting the investigation deadlines is unsustainable since Article 17(2) of the basic anti-dumping Regulation and Article 27(2) of the basic anti-subsidy Regulation clearly envisage sampling after both initiations and pursuant to comments within three weeks of both initiations, (ii) a provisional sample is discriminatory or un-objective and would have worked as a demotivating factor for the other Union producers to come forward, and (iii) the Commission's failure to provide the other Union producers three weeks to come forward.
- (21) Article 17(2) of the basic anti-dumping Regulation and Article 27(2) of the basic anti-subsidy Regulation state that 'preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation'. As to the first claim, the basic anti-dumping Regulation and basic anti-subsidy Regulation do not prevent the Commission from suggesting at the time of

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initiation a provisional sample on which the parties are invited to comment. Moreover, given that the Union producers (or at least a large part of them) are supporting the complaint and taking into account the information obtained in the standing forms, the Commission had the necessary information with regard to the Union industry at its disposal to select a provisional sample at initiation stage. This knowledge makes the sampling exercise of Union producers different from the one applied to exporting producers. As to the second and third claim, the Notices of Initiation stated that Union producers who consider that they should be included in the sample must contact the Commission within 15 days. The Commission does not see how this infringes the basic Regulation or can be considered discriminatory, un-objective, let alone demotivating.

- (22) The government of the PRC claimed that the sample is not representative because no company with significant captive production had been included and therefore a part of the domestic industry had simply not been assessed.
- (23) This claim is rejected as the sampled Union producers indeed had captive sales. Moreover, the government of the PRC did not indicate which Union producer should have been included and which one should have been excluded.
- (24) One exporting producer claimed that the Union producers' sample was not representative as none of the sampled Union producers produced/sold chopped strand mats.
- (25) Indeed, the sampled entities of the three Union producers did not produce chopped strand mats but they did produce filament mats as well as the other main product types. Therefore, the sampled entities were considered to be representative, also because they represented around 52 % of the total Union production, 49 % of all sales on the Union market, and represented a good geographical spread. The fact that one of the wide varieties of product types was not produced by the sampled Union producers does not alter this conclusion.

6.2. *Sampling of importers applicable to both investigations*

- (26) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in both Notices of Initiation.
- (27) Given that only two unrelated importers replied to the sampling form, no sampling was necessary.

6.3. *Sampling of exporting producers in the PRC applicable to both investigations*

- (28) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notices of Initiation. In addition, the Commission

asked the Permanent Mission of the PRC to the Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

- (29) Eight exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic anti-subsidy Regulation and Article 17(1) of the basic anti-dumping Regulation, the Commission selected a sample of three exporting producers based on the largest representative volume of exports which could reasonably be investigated within the time available. In accordance with Article 27(2) of the basic anti-subsidy Regulation and Article 17(2) of the basic anti-dumping Regulation, all known exporting producers concerned, and the authorities of the country concerned, were invited to comment on the provisionally selected sample. No comments were made. The Commission thus decided to retain the proposed sample and all interested parties were accordingly informed of the finally selected sample.
- (30) The sample of exporting producers or groups of exporting producers is the following:
- Chongqing Polycomp International Corporation ('CPIC'),
  - Jiangsu Changhai Composite Materials Holding Co., Ltd ('OCH') and its related companies; Changzhou New Changhai Fiberglass Co., Ltd ('NCH') and Changzhou Tianma Group Co., Ltd ('Tianma'). These three companies are referred to as the 'Jiangsu Changhai Group',
  - Jushi Group Co., Ltd, and its related companies; Jushi Group Chengdu Co., Ltd and Jushi Group Jiujiang Co., Ltd. These three companies are referred to as the Jushi Group.
- (31) The sample represented 78 % of the total export sales from the PRC in volume to the Union during the IP, based on the replies to the sampling forms.

## **7. Questionnaire replies and verification visits**

- (32) The Commission sent questionnaires to the government of PRC, all Chinese exporting producers that had so requested, as well as to the sampled Union producers, users and trade associations that made themselves known within the time limits set out in both Notices of Initiation.
- (33) Questionnaire replies were received from the government, three sampled Chinese exporting producers, from the three sampled Union producers, from 14 users and from two unrelated importers. However, the reply of one of the users was insufficient which did not allow the Commission to carry out a meaningful analysis of these data despite having sent several reminders.
- (34) Moreover, an association representing the glass industries 'Glass Alliance Europe' came forward as an interested party on behalf of its members and submitted a position statement.

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

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- (35) Written submissions were also received from several associations of users, notably the ‘Danish Wind Industry Association’, the ‘Danish Plastics Federation’ and the ‘Groupement de la Plasturgie Industrielle et des Composites (GPIC)’, as well as from Siemens Wind Power AG.
- (36) In addition, the China Chamber of Commerce for Import/Export of Light Industrial products & Arts-Crafts (CCCLA) submitted comments.
- (37) The Commission sought and verified all the information deemed necessary for the determination of subsidisation, of injury and of the Union interest. Verification visits pursuant to Article 16 of the basic anti-dumping Regulation and Article 26 of the basic anti-subsidy Regulation were carried out at the government of PRC and at the premises of the following companies:

*Union producers:*

- 3B Fibreglass SPRL, Belgium,
- Owens Corning Fibreglass France, France,
- Johns Manville Slovakia a.s., Slovakia.

*Exporting producers in the PRC:*

- Chongqing Polycomp International Corporation,
- Jiangsu Changhai Composite Materials Holding Co., Ltd,
- Changzhou New Changhai Fiberglass Co., Ltd,
- Changzhou Tianma Group Co., Ltd,
- Jushi Group Co., Ltd,
- Jushi Group Chengdu Co., Ltd,
- Jushi Group Jiujiang Co., Ltd.

*Traders related to the exporting producers located in the PRC:*

- China National Building Materials and Equipment Import and Export Corporation (CMBIE),
- China National Building Materials International Corporation (CNBMIC).

*Traders related to the exporting producers located in the Union:*

- Jushi Italia Srl,
- Jushi Spain SA,
- Jushi France SAS.

*Unrelated imports:*

- Helm AG, Germany.

*Users:*

- Basell Polyolefine, Germany,
- DSM, The Netherlands,
- DuPont de Nemours, Belgium,
- Exel Composites, Belgium,
- Fiberline Composites, Denmark,

- Formax, United Kingdom,
- Polyone, Germany,
- Vestas Wind Systems, Denmark.

- (38) The government of the PRC claimed, in summary, that its rights of defence in relation to access to the file open for inspection by interested parties were violated because information was missing from the non-confidential file without ‘good cause’ being shown or sufficiently detailed summaries had not been provided, or exceptionally, the reasons for not providing a non-confidential summary had not been given.
- (39) The Commission considered that the non-confidential file open for inspection by interested parties contained sufficient information in order to allow interested parties to inspect the data that was used by the Commission in its analysis and the claim was therefore considered unfounded. The government was informed of the reasons why the Commission considered that the claims were unfounded.
- (40) Following the definitive disclosure, the government of the PRC as well as one exporting producer reiterated that the confidentiality provision was used too extensively and requested disclosure of the product types sold by the Union producers as well as the total quantities per PCN.
- (41) The Commission considers that there was no breach of the rights of defence as all exporting producers have received a specific disclosure of the PCNs produced by the sampled Union producers on which there was competition with the PRC. Therefore this claim was rejected.

## **B. PRODUCT CONCERNED AND LIKE PRODUCT**

### **1. Product concerned**

- (42) The product concerned by both investigations is the same as the product defined in the Council Implementing Regulation (EU) No 248/2011 and described in both Notices of Initiation, namely chopped glass fibre strands, of a length of not more than 50 mm; glass fibre rovings, excluding glass fibre rovings which are impregnated and coated and have a loss on ignition of more than 3 % (as determined by the ISO Standard 1887); and mats made of glass fibre filaments excluding mats of glass wool (‘the product concerned’ or ‘filament glass fibre products’), currently falling within CN codes 7019 11 00, ex 7019 12 00 and 7019 31 00 (the latter code replaced 7019 31 10 on 1.1.2014) and originating in the PRC.
- (43) The product concerned is the raw material most often used to reinforce thermoplastic and thermoset resins in the composites industry. The resulting composite materials (filament glass fibre reinforced plastics) are used in a large number of industries: automotive industry, electric/electronics, wind

mill blades, building/construction, tanks/pipes, consumer goods, aerospace/military, etc.

- (44) There are three basic types of filament glass fibre products covered by this proceeding — namely chopped strands<sup>(11)</sup>, rovings<sup>(12)</sup> and mats<sup>(13)</sup> (other than of glass wool). The investigation has shown that, despite differences in appearance and possible differences in final applications of various types, all the different types of the product concerned share the same basic physical, chemical and technical characteristics and are basically used for the same purposes.

## 2. **Product exclusion requests**

### 2.1. *CN code 7019 31 90*

- (45) Following the publication of both Notices of Initiation, CCCLA commented that both Notices of Initiation referred to CN code 7019 31 10, whereas the complainant referred to CN code 7019 31 00 and that the latter code no longer exists. They stated that the products previously classified within CN code 7019 31 00 are now classified under two different CN codes: 7019 31 10 (glass fibre mats of filaments) and 7019 31 90 (glass fibre mats of other). Given that the present investigations cover certain filament glass fibre products, the CCCLA believes that the products classified under CN code 7019 31 90, namely ‘mats made of glass fibre with no filament’, should be excluded from the scope of the product concerned.
- (46) This claim is beside the point because such product is not product concerned in the first place.
- (47) The complainant referred to the CN code ex 7019 31 00 and explicitly stated that glass wool mats (i.e. other mats or mats made of glass fibre with no filament) are excluded. This is why ‘ex’ is mentioned before the CN code.
- (48) Both Notices of Initiation were published in December 2013 and stated ‘currently falling within CN codes [...] 7019 31 10’. Given that from 1 January 2012, the products previously falling under CN code 7019 31 00 were divided into CN codes 7019 31 10 and 7019 31 90, the Notice of Initiation does not include ‘mats made of glass fibre with no filament’ as it stated ‘currently falling under CN codes [...] 7019 31 10’.
- (49) The current Regulation however states ‘currently falling within CN codes [...] 7019 31 00’ given that the two CN codes 7019 31 10 and 7019 31 90 were merged again as from 1 January 2014 given that the CN code 7019 31 90 stayed in practice empty (as glass fibre mats of other, namely glass wool mats, were rather classified under the CN code 7019 39 00).
- (50) Therefore, the claim for the exclusion of the CN code 7019 31 90 is not relevant.

2.2. *Texturised rovings*

- (51) One user requested texturised rovings<sup>(14)</sup> to be removed from the product scope based on the fact that the Union filament glass fibre manufactures do not produce them.
- (52) However, three companies in the Union were identified as producers of texturised rovings with enough capacity to supply market needs. The investigations showed that, despite possible differences in final applications, all the different types of the product concerned share the same basic physical, chemical and technical characteristics and are basically used for the same purposes. The request to exclude texturised rovings from the product scope is therefore denied.
- (53) Following the definitive disclosure, the government of the PRC claimed that texturised rovings should be excluded as (i) only one Union producer supplied texturised rovings to the market in limited quantities and that therefore any imports of such products could not injure the Union industry, (ii) the fact that texturised rovings are different from direct rovings as the latter have better cross directional strength of a pultruded composite profile and a different production process and (iii) contrary to what was done in the original anti-dumping investigation in the context of yarns, the Commission considers that the limited substitutability is not a significant factor to permit the exclusion of texturised rovings.
- (54) As to the first claim, the Commission reiterates that there are several producers in the Union that have the capacity to supply the market needs of texturised rovings, but only one is currently selling this product type. The argument of the government of the PRC that only one Union producer is actually selling the product is rather an indication of injury as this means that users have switched to other suppliers outside the Union, in particular from the PRC.
- (55) As to the second claim, the production process for texturised rovings is identical to the one of 'normal' rovings, with the exception that there is one extra step of blowing air inside the roving, which requires only relatively inexpensive additional equipment and does not change the essential technical and physical characteristics of the product. The texturised roving merely appears somewhat bushier than the 'normal' roving.
- (56) As to the third claim, the Commission followed the same approach as in the previous investigation where texturised rovings were also part of the product concerned and a request to exclude them was rejected. No arguments were brought forward that would lead to a different conclusion.
- (57) The request to exclude texturised rovings from the product scope is therefore denied.

2.3. *Products on which the Union industry does not face competition from the PRC*

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

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- (58) The government of the PRC requested that products on which the Union industry does not face competition from Chinese imports (as stated in the non-confidential version of the anti-subsidy complaint), be removed from the product scope. The referred products were wet use chopped strands (WUCS) and mats.
- (59) WUCS have a limited shelf life and higher transport costs due to the additional weight of the water content. WUCS are nevertheless globally traded. The investigation has shown that, despite some difference in appearance and possible differences in final applications, all the different types of the product concerned share the same basic physical, chemical and technical characteristics and are basically used for the same purposes. WUCS and mats, like any other product types of the product concerned, are used as reinforcement material. Moreover, the claim of the government of the PRC that some Chinese filament glass fibre products are not yet present in large quantities on the Union market does not preclude a change in future business behaviour as to exports of these particular types. Therefore, the request to exclude these products from the product scope is denied.
- (60) Following the definitive disclosure, the government of the PRC claimed that (i) only one Union producer is producing WUCS and that therefore any imports of such products could not injure the Union industry, (ii) the Union producers are not suffering any injury on the above mentioned products as the Union industry claimed in the open version of the complaint that they can make a profit of above 8 %-10 % on those products, (iii) the fact that WUCS have a higher water content, limited shelf life and a different production process and therefore physically and chemically different from the normal chopped strands and (iv) contrary to what was done in the previous investigation in the context of yarns, the Commission considers that the limited substitutability is not a significant factor to permit the exclusion of the WUCS and the mats.
- (61) The first claim is rejected as several Union producers sell WUCS and therefore the Union industry is not excluded from injury on this product type.
- (62) As to the second claim, the fact that some product types at certain points in time are profitable is not sufficient reason to exclude those product types. In addition, WUCS are imported into the Union in much lower quantities than the other filament glass fibre products. The profit margin for this sole product type is therefore not representative for the product concerned.
- (63) As to the third claim, the product concerned is not defined by reference to its water content. The water content of WUCS does therefore not justify its exclusion. In addition, the production process of WUCS is the same as the one for dry use chopped strands (DUCS), with one production step less which consists of the drying phase.

(64) As to the fourth claim, the Commission followed the same approach as in the previous anti-dumping investigation where WUCS were also part of the product concerned. No arguments were brought forward that would lead to a different conclusion.

(65) Therefore, the request to exclude WUCS from the product scope is denied.

### 3. **Like product**

(66) Similar to the previous anti-dumping investigation, the product concerned and the filament glass fibre products produced and sold on the domestic market of the PRC, as well as the filament glass fibre products produced and sold in the Union by the Union industry were found to have the same basic physical, chemical and technical characteristics and uses. Therefore, these products are like products for the purposes of the present investigations within the meaning of Article 1(4) of the basic anti-dumping Regulation and Article 2(c) of the basic anti-subsidy Regulation.

## C. **SUBSIDY**

### 1. **Introduction**

(67) The 12th Five Year Plan for National Economic and Social Development of the PRC highlights the strategic vision of the government of the PRC for improvement and promotion of key industries, includes, amongst others, the production of glass fibre products. In particular, Chapter 9, of the 12th Five Year Plan, which concerns the transformation and upgrade of the manufacturing industry states:

*We will focus on developing new materials such as photovoltaic glass, ultra-thin substrate glass, special glass fibre and, special ceramics.*

(68) Section 3 of Chapter 9 of the abovementioned Plan concerning the technological upgrading of enterprises states specifically that the government of PRC ‘...will encourage enterprises to become better able to develop new products, raise the technological content and value added of their products and update and upgrade their products more quickly.’

(69) Moreover Chapter 10, Section 1 of the same Plan stipulates the following:

*The development focus for the new material industry will be on new functional materials, advanced structural materials, high-performance fibres and the composite material made from them, and general-purpose basic materials.*

(70) The importance of innovation and new materials in general is clearly spelled out both in the ‘12th Five Year Industrial Technology Innovation Programme’ as well as in the ‘National Long-term Science and Technology Development Plan (2006-2020)’.

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

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- (71) In addition, ‘The Industrial Restructuring Guidance Catalogue 2011’ (Decision No 9) explicitly mentions as an encouraged industry ‘*Wire drawing of E-glass fibre furnace [...], development and production of high-performance fibreglass and its product.*’ Also, the ‘Guideline Catalogue For Foreign Investment Industries’, which lists industries in which foreign investments are encouraged<sup>(15)</sup>, refers explicitly to the production of fibreglass products and special fibreglass.
- (72) The government of the PRC claimed that these plans are only guidance and not binding. However, as it is clearly stated in the 12th Five Year Plan it is legally binding:

*This Plan, upon deliberation and approval by the National People's Congress, bears legal validity.*

- (73) Following disclosure, the government of the PRC argued that the product concerned is only standard fibre glass products (E-glass) and not the more technologically advanced high performance glass fibre (special purpose fibre glass or S-glass). Therefore, the product concerned by this investigation falls outside the scope of encouraged industries since only special fibre glass or high performance fibres are among those industries that are encouraged. The government of the PRC refers amongst others to the 12th Five Year Plan which only refers to ‘high performance fibres’ and ‘special fibreglass’.
- (74) First, the product concerned is certain products of filament glass fibre. The product definition makes no distinction whether those products are made of standard fibre glass fibres (hereafter referred to as E-glass) or special glass fibre (s-glass). Second, no interested party came forward with a product exclusion request claiming that special fibre glass should not be part of the product scope. Third, the government of the PRC did not dispute the fact that the government is encouraging the development of ‘special glass fibres’. Indeed, even standard fibre glass products are referred to as an industry for which foreign investments are encouraged (see recital 71).
- (75) In any event, even if one were to accept that only the development of high performance fibreglass (e.g. S-glass) is encouraged by the government of PRC, the investigation did not reveal any distinction between a standard fibre glass industry on the one hand and a special fibre glass industry on the other hand. On the contrary, fibre glass products, whether made from E-glass or from a high performance glass fibre, such as S-glass, are all produced by the same fibre glass industry. In this regard the Commission found, in particular, that all the sampled Chinese exporting producers use both standard fibre glass (E-glass) as well as high performance glass fibre (e.g. S-glass) in their production process, and that there is no mechanism in place to limit the support provided, be it in the form of preferential loans or provision of land use rights, to one segment of the production. It follows that the explicit encouragement for developing high performance glass fibre products cannot, either by law or

by fact, exclude the basic fibre glass industry from the overall strategic policy to encourage enterprises to become better able to develop new products, raise the technological content and value added of their products and update and upgrade their products more quickly.

- (76) It follows from the above that the claim that the product concerned does not form part of the encouraged industry is ill-founded and is therefore rejected.
- (77) In addition, ‘Decision No 40 of the State Council on Promulgating and Implementing the “Temporary Provisions on Promoting the Industrial Structure Adjustment”’ (which, together with ‘Temporary Provisions on Promoting the Industrial Structure Adjustment’ are referred to as ‘Decision No 40’) states that the government of the PRC will actively support the development of different types of industries<sup>(16)</sup>.
- (78) Although Decision No 40 does not explicitly refer to the filament glass fibre industry or more generally to the new material industry, it nevertheless instructs all financial institutions to provide credit support to encouraged projects only and envisages the implementation of ‘other preferential policies on the encouraged projects’<sup>(17)</sup>. It can therefore be concluded that the provisions of the Decision No 40 were applicable to the filament glass fibre industry.
- (79) The government of the PRC claimed that Decision No 40 only implies that encouraged industries should receive credit support ‘according to the credit principles’ and that it cannot be inferred that such support should be given on a preferential basis.
- (80) The investigation has shown that the sampled companies benefited from the preferential lending policies. Indeed some of the loss making companies continued to obtain financing on preferential terms. The Commission therefore rejects the government of the PRC’s assertion that lending to the filament glass fibre industry was done ‘according to the credit principles’. The key point remains that according to Decision No 40, all financial institutions shall provide credit to encouraged industries, which includes the filament glass fibre industry, and that that support is de facto provided on preferential terms.
- (81) Furthermore, the ‘National Outline for the Medium and Long-term Science and Technology Development (2006-2020)’ undertakes to ‘give the first place to policy finance’, ‘encourage financial institutions to grant preferential credit support to major national scientific and technological industrialisation projects’, to ‘Encourage financial institutions to improve and strengthen financial services to high-tech enterprises’ and to ‘implement the preferential tax policies to promote the development of high-tech enterprises’.
- (82) Filament glass fibre production falls under the description of a high technology enterprise, as is shown by the number of manufacturers with New

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

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and High Technology status in PRC. Indeed the investigation revealed that some of the sampled companies received the certificate of High and New Technology Enterprises, which could benefit from the preferential treatment outlined in the ‘National Outline for the Medium and Long-term Science and Technology Development (2006 — 2020)’ referred to above.

## 2. **Non-cooperation and use of facts available**

### 2.1. *The application of the provisions of Article 28(1) of the basic anti-subsidy Regulation to one exporting producer*

(83) During the verification visit to one of the companies in the PRC, it was revealed that the company had replaced the audited financial statement that had been originally submitted to the Commission in its reply to the anti-subsidy questionnaire. The company did not voluntarily disclose this information and the existence of a different audited financial statement was only revealed when the company was asked to provide an original copy of the financial statement. In addition, this new statement was only made available in Chinese. Since circulating two sets of audit financial statements is in breach of International Standards on Auditing (No 560: concerning ‘subsequent events’), the verification team emphasised that this was a serious concern as it cast doubts about the credibility of the submitted financial statements. The company explained that the audited financial statements initially submitted in the reply to the questionnaire had contained errors and had therefore been replaced by a new version issued by the same auditing company and backdated and re-issued with the same sequential number as the original financial statements report which had been destroyed.

(84) After the verification visit and once the translation of the ‘second’ set of financial statements were available, the Commission sent a letter to the company outlining the specific and detailed reasons why it considered that some of the data provided in the questionnaire could not be deemed as verified. The company was informed that the Commission may decide to base its findings on facts available pursuant to Article 28(1) of the basic anti-subsidy Regulation and was granted the opportunity to comment.

(85) The company provided its comments both in writing as well as during a hearing with the Hearing Officer. Its response indicated the existence of yet another (third) audited financial statements (in the format used for listed companies). Although there did not appear to be substantial differences between the ‘second’ and the ‘third’ statements, the latter was however much more detailed, and comprehensive. It had already been issued and albeit available to the company during the verification visit<sup>(18)</sup> also the existence of this financial statement was not disclosed to the Commission in a timely manner during the verification. Contrary to the other financial statements, this ‘third’ version listed explicitly and in detail all subsidies (including their legal basis) that the company had received during the IP. Therefore, an examination

of this financial statement would have been very useful during the verification visit in order to countercheck all the information submitted concerning the individual subsidy schemes received by the company.

- (86) The audited financial statements is an essential document for allowing a proper verification of the information provided by the company to the Commission in respect of, amongst others, grants, loans, land-use rights, tax deferrals, etc.
- (87) As outlined above the company's cooperation was not forthcoming and created a serious impediment to a proper verification of the information submitted to the Commission, which could not therefore properly verify the information received concerning, amongst others, the level of subsidies received by the company. As a consequence, the Commission could not reach a reasonably accurate finding, in particular with regard to the level of subsidies received.
- (88) It is considered that the company provided misleading information and failed to cooperate adequately. The Commission therefore decided to apply the provisions of Article 28(1) of the basic anti-subsidy Regulation. Since the company was part of a group the provisions of Article 28(1) of the basic anti-subsidy Regulation was applicable to the entire group.
- (89) However, as for establishing the level of subsidisation for the group, the Commission used the actual data of the two companies within the group that had cooperated fully in both investigations and which information was considered reliable in regard to their levels of subsidisation. Regarding the company within the group, which provided misleading information, the determination of the level of subsidisation was based on facts available. In establishing the level of subsidisation for that legal entity, the facts available used by the Commission were the highest level of subsidisation found for each subsidy scheme for any of the legal entities belonging to the sampled companies or group of companies referred to in recital 30 and which had fully cooperated in the investigation.
- (90) Following disclosure, the complainant claimed that the methodology used for the calculation of the level of subsidisation of the group was not correct. It argued that since the subsidy margin of the group is the sum of the highest subsidy margins found for each subsidy scheme for any of the cooperating companies it should be much higher.
- (91) This claim is based on a misunderstanding. The methodology used for the calculation of the level of subsidisation, described in recital 89 above, was applied only to the company (within the group) which provided misleading information and not to the group as a whole. The claim was therefore rejected.
- (92) The company which provided misleading information was not exporting the product concerned. Within the group, exports of the product concerned were

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

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made by one of its related companies. The latter however cooperated fully in both investigations and provided reliable information about the group's export price. Therefore, the submitted information was used for the Commission's definitive findings in that proceeding.

- (93) Following disclosure, the exporting producer claimed that the Commission erred in applying the provisions of Article 28(1) of the basic anti-subsidy regulation.
- (94) First, it was argued that in the letter sent to the company in which the Commission outlined the detailed reasons for the proposed application of the provisions of Article 28(1) of the basic anti-subsidy regulation, it never stated that it could not verify the information concerning subsidies. Therefore the Commission cannot rely on this argumentation in its definitive conclusions as the company had not been given the opportunity to comment on that argument.
- (95) This claim cannot be accepted. The Commission in the letter did state explicitly that it 'cannot conclude that the information concerning the level of subsidies received by [the company] was verified'. In any event, the company was fully informed of the reasons for applying the best facts available in the final disclosure document and granted the opportunity to comment thereon, which it also did.
- (96) Second, the exporting producer argued that even if the Commission were to apply the provisions of Article 28(1) of the basic anti-subsidy regulation the Commission should not refer to the data of other companies as the basis for determining the level of subsidisation but should rather base itself on the company's actual set of audited financial statements as it is still the 'most appropriate' and 'most suited' information about the company's level of subsidisation.
- (97) As explained in recitals 83-88 above the Commission has serious doubts as to the credibility of the submitted financial statements and could therefore not rely on those in order to verify the level of subsidisation for different schemes and/or subsidy programmes such as preferential loans and land-use rights at less than adequate remuneration. Indeed, reliable audited financial statements are crucial for verifying the accuracy and completeness of information otherwise provided. Therefore, the Commission had to resort to the best facts available to determine the level of subsidisation, which in this case was verified information on relevant subsidy schemes from other cooperating entities. This claim is therefore rejected.
- (98) The company also claimed that the Commission mistakenly applied international accounting standards (IAS) as a criterion to reject the set of audited financial statements. According to the company a distinction should be made between the role of a set of audited financial statements and the relevance of IAS in an assessment of market economy treatment in anti-dumping proceedings, on the one hand, and anti-subsidy proceedings, on

the other hand. A violation of IAS cannot constitute a reason to apply the provisions of Article 28(1) of the basic anti-subsidy regulation.

- (99) The Commission notes that the breach of international accounting standards that was discovered during the investigation was not per se the reason for applying the provisions of Article 28(1) of the basic anti-subsidy regulation. The reason was the fact that different versions of the set of audited financial statements were provided to the Commission which cast doubts on their credibility and hence led the Commission to the conclusion that other information regarding the level of subsidisation could not be verified. This claim is therefore rejected.
- (100) The company also claimed that the Commission's methodology of calculating its subsidy margin which consisted in taking the highest countervailing rate for each scheme as found for each cooperating legal entity (and not each group) was unjustified. The company claimed that this methodology is flawed since companies within the same group may decide to concentrate subsidies in one specific entity to the benefit of the entire group.
- (101) As explained in recital 89, in the calculation of the level of subsidisation within the group, the Commission used the actual data of the two other companies within the group that had cooperated in both investigations when calculating the level of subsidisation for the whole group. The facts available applied only to the one legal entity within the group which provided misleading information. In order to determine the level of subsidisation of a legal entity within the group, the Commission found that it was most appropriate to base the calculations at the same level within the corporate structure and take the highest level of subsidisation found for any of the legal entities (within the group if applicable) belonging to the sampled companies or groups of companies. This claim is therefore rejected.
- 2.2. *The application of the provisions of Article 28(1) of the basic anti-subsidy Regulation to State-owned banks*
- (102) The Commission did not receive cooperation from any of the State-owned banks in the PRC. They were invited to provide the necessary information for the purposes of the anti-subsidy investigation by completing a questionnaire. Therefore, the Commission notified the government of the PRC that it would consider basing its findings on facts available pursuant to Article 28(1) of the basic anti-subsidy Regulation as far as the information related to the State-owned banks was concerned.
- (103) In the reply to the Commission's letter and subsequently following disclosure, the government of the PRC objected to the application of Article 28(1) of the basic anti-subsidy Regulation as far as the information which was requested from the State-owned banks was concerned. It argued that a large amount of information was provided by the government of the PRC in this investigation. However, the Commission found that that information could not substitute

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

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entirely a reply by the State-owned banks to the specific questionnaires. The government of the PRC did not dispute the fact that the state owned banks had not submitted a reply to the questionnaire, neither that the banks were State-owned. Therefore, the Commission had to rely on the facts available for its findings concerning the state owned banks.

### 3. Schemes investigated

(104) The Commission sent questionnaires to the government of the PRC, which included questionnaires intended for the State-owned banks, and the sampled exporting producers, requesting information on the schemes that allegedly involved the granting of subsidies to the filament glass fibre industry. The following schemes were investigated:

(a) Preferential policy loans, guarantees and insurances to the filament glass fibre industry:

- Preferential policy loans
- Export credit subsidy programmes
- Export guarantees and insurances for new materials
- Benefits from access to offshore holding companies and loan repayments by government

(b) Grant programmes:

- Subsidies for development of ‘famous brands’ and ‘China world top brands’
- Central government grants
- Sub-central government grants
- Funds for outward expansion of industries in Guangdong Province

(c) Government provision of resources at less than adequate remuneration (LTAR)

- Government provision of power,
- Government provision of water
- Government provision of raw materials
- Government provision of land for LTAR

(d) Income and other direct tax exemption and reduction programmes

- ‘Two Free, Three Half’ programme for Foreign Invested Enterprises (FIEs)
- Income Tax reductions for export-oriented FIEs
- Income Tax benefits for FIEs based on geographic location
- Local Income Tax exemption and reduction programmes for ‘productive’ FIEs
- Tax reductions for FIEs purchasing Chinese-made equipment
- Tax offsets for research and development by FIEs

- Tax refunds for reinvestment of FIE profits in export oriented enterprises
  - Preferential tax programmes for FIEs recognised as High or New Technology Enterprises
  - Tax reductions for High and New Technology Enterprises involved in designated projects
  - Preferential Income Tax policy for enterprises in the Northeast Region
  - Guangdong Province tax programmes
  - Dividend exemption between qualified resident enterprises
  - Reduced corporate tax rates
- (e) Indirect tax and import tariff programmes:
- VAT exemptions for use of imported equipment
  - VAT rebates on FIEs' purchases of Chinese-made equipment
  - VAT and tariff exemptions for purchases of fixed assets under the Foreign Trade Development Programme
4. **Preferential policy loans, other financing, guarantees and insurance**
- 4.1. *Preferential loans*
- (a) *Introduction*
- (105) Findings with regard to State-owned banks were made on the basis of facts available in accordance with Article 28(1) of the basic anti-subsidy Regulation as explained in section C.2.2.
- (b) *Legal basis*
- (106) The following legal provisions provide for preferential lending in the PRC: *The Law of the PRC on Commercial Banks* (the banking law) [2003], *The General Rules on Loans* promulgated by the People's Bank of China (PBOC) on 28 June 1996 and Decision No 40 of the of the State Council.
- (c) *Findings of the investigation*
- Existence of a subsidy**
- (107) Whilst the Chinese authorities have provided only limited information concerning shareholding/ownership of banks in the PRC the investigation has, based on facts available, established that the Chinese financial market is characterised by significant government influence and control. When analysing whether banks possess, are vested with or exercise government authority (i.e. they are public bodies) the Commission used all available information concerning not only government ownership of the banks but also other characteristics such as government presence on the board of directors, government influence and control over banks activities, the pursuit

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

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of government policies or interests and whether bank entities were created by statute.

- (108) From the available information it is concluded that the fully State-owned banks with a board of directors dominated by the government of the PRC hold the highest market share and are the predominant players in the Chinese financial market. State-owned banks are subject to legal rules which require them, inter alia, to carry out their loan business according to the needs of the national economy, provide credit support to encouraged projects<sup>(19)</sup> or give priority to the development of high and new technology industries<sup>(20)</sup>.
- (109) Another sign of State involvement in the Chinese financial market is the role played by the PBOC in setting specific limits on the way interest rates are set and fluctuate.<sup>(21)</sup> Financial institutions are requested to provide loan rates within a certain range of the benchmark loan interest rate of the PBOC. For preferential loans the interest rates are not allowed to float upwards. Limits on the loans interest rates together with the ceilings imposed on deposit rates create a situation in which the banks have guaranteed access to cheap capital (because of the deposit rates regulation) and are able to lend to the selected industries at favourable rates in accordance with the governmental policy of directing banks to act in a particularly supportive manner to certain encouraged and/or high-tech industries, such as the filament fibre glass fibre industry.
- (110) The Commission sought clarifications from the government of the PRC on the definition and wording stated in the Circular 251 as well as to its preceding legislation (Circular of the PBOC concerning expansion of Financial Institution's Loan Interest Rate Float Range — YinFa [2003] No 250). However, as described in Section C.2.2 above, the government of the PRC did not provide these Circulars. The government of PRC claimed however that Circular 250 has been repealed by Circular 251 and that the floor lending rates have been abolished as from July 2013 and therefore there is no State involvement in the banking sector.
- (111) The abolition of the floor lending rates occurred however during the investigation period. Accordingly, the PBOC influenced the setting of interest rates by State-owned banks for the main part of the investigation period. In addition, the investigation did not show any immediate effect from the abolition on the loans received by the sampled producers. In any case the floor on interest rates that existed during the investigation period is not the sole argument as to why the Commission considers State-owned banks as public bodies.
- (112) The findings established in the anti-subsidy investigations concerning Solar Panels<sup>(22)</sup> and Solar Glass<sup>(23)</sup>, where it was established that State-owned banks in the PRC act as public bodies (see recitals 158 to 168 of the solar panels Regulation and recital 73 of the Solar Glass regulation) are also facts available

in this investigation with regard to the public body status of the state owned banks. These facts are summarised as follows:

- State-owned banks hold the highest market share and are the predominant players on the market in the PRC,
  - on the basis of facts available State-owned banks are controlled by the government by means of ownership and administrative control of their commercial behaviour including limits on interest rates they can offer,
  - the banking law and other laws and Regulations require banks to lend according to the needs of the national economy, provide credit support to encouraged projects, and give priority to new and high technology enterprises.
- (113) On the basis of the above, it is concluded that State-owned banks perform government functions on behalf of the government of the PRC, namely mandatory promotion of certain sectors of the economy in line with state planning and policy documents. The extensive government ownership in the State-owned banks confirms that the banks are controlled by the government in the exercise of their public functions. The government of the PRC exercises meaningful control over State-owned banks through the government's omnipresent involvement in the financial sector and the requirement for State-owned banks to follow government policies. State-owned banks are therefore considered to be public bodies because they possess, are vested with, and exercise, governmental authority.
- (114) Following disclosure the government of the PRC disputed this conclusion stating that the Commission had not set out the reasons why they considered that State-owned banks were public bodies. The Commission is satisfied that the facts set out in the above recitals justify the conclusion that State-owned banks are public bodies.
- (115) While the overwhelming majority of the loans received by the sampled exporting producers are provided by State-owned banks, the investigation revealed that a small amount of loans is provided by privately-owned banks. The Commission therefore analysed whether privately-owned banks in the PRC are entrusted and/or directed by the government of the PRC to provide preferential loans to filament glass fibre producers, within the meaning of Article 3(1)(a)(iv) of the basic anti-subsidy Regulation.
- (116) Article 34 of the banking law states that private banks are also instructed to 'carry out their loan business upon the needs of national economy and the social development and with the spirit of state industrial policies'<sup>(24)</sup>.
- (117) The investigation showed that for the sampled exporting producers the interest rates applied by State-owned and private banks were in general at very similar levels. This indicates that State-owned banks, which are the predominant actors on the banking and lending market in the PRC, set the interest rate levels and that private banks are simply following the rates set by State-owned banks (public bodies).

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

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- (118) In these circumstances, it is concluded that private banks do not set their rates independently from State interference and that the lending strategy of the privately owned banks is directed by the government of the PRC.
- (119) Following disclosure the government of the PRC disputed the Commission's interpretation of Article 34 of the banking law, stating that 'the Commission is reading into Article 34 a meaning which is clearly not attributable to it'. The government of the PRC has drawn the Commission's attention to other articles of the Banking Law, namely Articles 4, 5 and 7, which serve to ensure that loans are made without interference and after a credit assessment.
- (120) The Commission acknowledges that these Articles exist but considers that they should be understood and read in light of the provisions of Article 34. In this respect it is recalled that neither the government of the PRC, nor the banks or the sampled companies concerned were able to demonstrate that loans were made without interference or with a proper credit assessment. On the contrary, the investigation revealed that one of the exporting producers was incurring losses but nevertheless succeeded in receiving loans from banks at normal interest rates without any mark-up for risk related to its difficult financial situation.
- (121) The Commission therefore concludes that privately owned banks are entrusted or directed by the government to provide preferential financing in a similar manner that the one provided by State-owned banks and thus, a financial contribution exists within the meaning of in Article 3(1)(a)(iv) of the basic anti-subsidy Regulation.

***Specificity***

- (122) With respect to the banks that provided loans to the cooperating exporting producers, the majority of them are State-owned banks and ultimately controlled by the government of the PRC. These include the major commercial and policy banks in the PRC like the China Development Bank, the EXIM Bank, the Agricultural Bank of China, the Bank of China, the China Construction Bank and the Industrial and Commercial Bank of China.
- (123) Moreover, the Commission notes that the government of the PRC directs preferential lending to a limited number of industries. For instance, Decision No 40 states that the government of the PRC will actively support the development of new materials industries and the filament glass fibre industry is considered as a new material industry. Also, all financial institutions are instructed to provide credit support only to encouraged projects, the category in which the filament glass fibre projects belong. That decision also promises the implementation of '*other preferential policies on the encouraged projects*'.
- (124) The government of the PRC claimed the Commission wrongfully relied on decision 40 since the product concerned is not classified as an encouraged

industry. Moreover even if it was accepted that the industry is encouraged the government claimed that the reliance on Decision No 40 cannot extend to an industry which is not listed in Decision No 9 ('Industrial Restructuring Guidance Catalogue 2011').

- (125) The sampled exporting producers belong to the categories of encouraged industries as established above (recitals 67-76) as well as to the high and new technology industries. In addition, contrary to the government's claim, special fibre glass and its products as well as furnaces for e-glass production are explicitly listed in Chapter XII point 6 of Decision No 9.<sup>(25)</sup> The claim is therefore unfounded.

***Benefit***

- (126) A benefit exists to the extent that government loans, or loans from private bodies entrusted or directed by the government, are granted on terms more favourable than the recipient could actually obtain on the market.

***The necessity to rely on a benchmark***

- (127) The Commission purported to verify the credit risk assessments carried out by the banks that lent money to the sampled exporting producers during the investigation period. Some of the exporting producers were incurring losses. They nevertheless succeeded in receiving loans from banks at the benchmark rate without any mark-up for risk related to their worsening financial situation. Therefore, the Commission has reasons to question whether loans to filament glass fibre companies were based on a diligent risk assessment, and the interest rate set as a result of such an exercise.
- (128) As explained above, since the loans provided by Chinese banks reflect substantial government intervention in the banking sector and do not reflect rates that would be found in a functioning banking market, an appropriate market benchmark has been constructed using the method described below. Furthermore, due to the lack of cooperation by the government of the PRC, the Commission has also resorted to facts available in order to establish an appropriate benchmark interest rate.
- (129) When constructing an appropriate benchmark for RMB denominated loans, it is considered reasonable to apply Chinese interest rates, adjusted to reflect normal market risk. Indeed, in a context where the exporters' current financial state has been established in a distorted market of bank loans and there is no reliable information from the Chinese banks on the measurement of risk and the establishment of credit ratings, it is considered necessary not to take the creditworthiness of the Chinese exporters at face value, but to apply a mark-up to reflect the potential impact of the Chinese distorted market on their financial situation.
- (130) The same situation applies for the loans denominated in foreign currencies. The BB rated corporate bonds with relevant denominations issued during the IP were used as a benchmark.

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

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- (131) As explained above, both the government of the PRC and the cooperating exporting producers were requested to provide information on the lending policies of the Chinese banks and the way loans were attributed to the exporting producers. Such information was however not provided. Accordingly in view of this lack of cooperation, given the totality of facts available, and in line with the provisions of Article 28(6) of the basic anti-subsidy Regulation, it is deemed appropriate to consider that all firms in China would be accorded the highest grade of 'Non-investment grade' bonds only (BB at Bloomberg) and apply the appropriate premium expected on bonds issued by firms with this rating to the standard lending rate of the People's Bank of China.
- (132) Therefore to calculate the benchmark interest rate for loans to the sampled companies during the IP, a risk premium was calculated by using the difference between interest rates on bonds issued by companies with BB ratings and bonds issued by companies with AAA ratings (which is the credit rating on bonds issued by the PRC), as recorded by Bloomberg. This risk premium was then added to the published lending rates of the PBOC for BB rated bonds taking into account the duration of the loans.
- (133) The benefit to the exporting producers was then calculated as the difference between the interest actually paid in the IP by the companies and the interest that would have been paid if the benchmark interest rate would have applied to the loans. This benefit was then expressed as a percentage of the total turnover of each cooperating exporting producer.
- (134) Following disclosure the government of the PRC claimed that the Commission should not have referred to any benchmark for the calculation of the benefit as it claimed that loans were granted on market terms and therefore no benefit was conferred.
- (135) As explained in recitals 127-130, the market for bank loans in the PRC is distorted and therefore the Commission considers that resorting to a benchmark is fully justified.
- (136) Moreover the government of the PRC claimed that the Commission's choice of this particular benchmark was not sufficiently reasoned.
- (137) The Commission considers that when constructing an appropriate benchmark for loans, it is considered reasonable to apply Chinese interest rates, adjusted to reflect normal market risk. Indeed, in a context where the exporters' current financial state has been established in a distorted market and there is no reliable information from the Chinese banks on the measurement of risk and the establishment of credit ratings, it is considered necessary to apply a mark-up to reflect the potential impact of the Chinese distorted market on their financial situation.
- (d) *Conclusion*

- (138) On the basis of the findings of the investigation, the Commission concludes that the filament glass fibre industry in the PRC benefited from preferential loans during the IP, both from State-owned banks and from private banks. The financing of the filament glass fibre industry constitutes a subsidy within the meaning of the basic anti-subsidy Regulation as there is
- (a) a financial contribution by government as set out in Article 3(1)(a)(i);
- (b) entrustment and direction by government as set out in Article 3(1)(a)(iv); and
- (c) a benefit is thereby conferred as required by Article 3(2).
- (139) In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, this subsidy is countervailable.
- (e) *Calculation of the subsidy amount*
- (140) Article 6(b) of the basic anti-subsidy Regulation provides that the benefit on preferential loans should be calculated as the difference between the amount of interest paid and the amount that would be paid for a comparable commercial loan which the firm could obtain on the market. As stated, in the absence of any meaningful risk assessment, the Commission established a market benchmark for comparable commercial loans.
- (141) The benefit was calculated for the IP as the difference between the interest actually paid during the IP, and the interest that would have been paid using the benchmark.
- (142) One of the exporting producers claimed that the Commission had used the wrong interest rate actually paid by the company for one loan when calculating the benefit. This claim was accepted and the Commission revised the calculation. The revised calculation had however no effect on the subsidy margin found.
- (143) The subsidy margins calculated for the sampled exporting producers based on this methodology are as follows:

<b>Preferential loans</b>	
<b>Company Name</b>	<b>Subsidy margin</b>
Chongqing Polycomp International Corporation	6,3 %
Jiangsu Changhai Composite Materials Holding Co., Ltd <sup>a</sup>	2,6 %
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	7,4 %

<sup>a</sup> The calculation of the subsidy margin for this group was based on facts available as explained in recital 89.

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

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#### 4.2. *Other preferential lending schemes*

- (144) During the IP, no financial contribution was received by the sampled exporting producers under the remaining preferential lending schemes mentioned in section C.3 above.

#### 5. **Grant programmes**

- (145) No financial contribution was received by the sampled companies from 'Famous Brands', 'China World Top Brands' or 'Funds for Outward Expansion of Industries in Guangdong Province' programmes during the IP.

##### 5.1. *Specific grant programmes and grants*

###### (a) *Introduction*

- (146) The sampled companies received one-off grants from various government authorities at different levels resulting in the receipt of a benefit during the IP. These grants are considered as falling under the grant programmes allegations in the complaint as the complaint alleged that producers of filament glass fibre received one-off grants from provincial and local government bodies and that these conferred a benefit as the monies were received without adequate consideration.
- (147) The Commission offered consultations with the government of the PRC regarding these specific grants.
- (148) The government of the PRC opposed the consultations claiming that this would not be in line with the Agreement on Subsidies and Countervailing Measures ('ASCM') as such consultations should take place prior to the initiation of the investigation and that it would be putting a disproportionate burden on the Chinese authorities to verify the information concerning every single scheme.
- (149) Most of the grants concerned negligible amounts. Therefore, the Commission did not investigate these any further.
- (150) However, the Commission investigated one particular, relatively large grant for the purpose of building dormitories to the company employees that had been provided to one of the sampled companies and is considered linked to the grant programmes allegations in the complaint.

###### (b) *Conclusion*

- (151) The ad hoc character of the grant mentioned above clearly demonstrated that it was not available to other companies and was therefore specific as defined in Article 4(2)(a) of the basic anti-subsidy Regulation. On the basis of the evidence collected with regard to the receipt of this grant and in the absence of any other information, the Commission consider this grant to be a subsidy

within the meaning of Article 3(1)(a)(i) and (2) of the basic anti-subsidy Regulation and a benefit was thereby conferred to the exporting producer concerned.

- (152) Following disclosure, the company that received the grant claimed that the grant was given to the company for renovation of fixed assets, which are amortised in 50 years. Therefore, this subsidy should be allocated over a period of 50 years and only the proportion of 1/50 which corresponds to the benefit received during the IP should be taken into account in the calculation of the subsidy margin.
- (153) The company did not provide any evidence justifying a depreciation period of 50 years for investment in fixed assets, in this case a building used as a dormitory for staff. The actual period of depreciation of a company's fixed assets is normally much shorter and corresponds to a period of 10 to 20 years. On this basis the benefit incurred by this grant is negligible and should therefore not be countervailed.

## 6. **Direct tax exemption and reduction programmes**

### 6.1. *The 'two free, three half' programme for foreign invested enterprises*

#### (a) *Introduction*

- (154) The 'two free, three half' programme entitles foreign invested enterprises ('FIEs') to pay no corporate income tax for the first two years, and to pay only 12,5 % rather than 25 % for the next three years.

#### (b) *Legal basis*

- (155) The legal basis of this programme is Article 8 of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (the 'FIE Tax Law') and Article 72 of the Rules for the Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises According to the government of the PRC this programme was terminated under Article 57 of the Enterprise Income Tax Law ('EIT Law') of 2008 with a transition period until the end of 2012. The law therefore makes clear that there would be a benefit under this scheme in the tax year 2012.

#### (c) *Findings of the investigation*

- (156) This 'two free, three half' scheme conferred benefits on companies during the financial year 2012, after which, according to the government of the PRC, the scheme has been withdrawn. In any case, none of the sampled companies is a foreign owned enterprise which could be eligible for this tax scheme during the IP.

#### (d) *Conclusion*

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

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- (157) No financial contribution was received by the sampled companies under this programme during the IP. The investigation furthermore established that the scheme has indeed been withdrawn by the government of the PRC.

## 6.2. *High and New Technology Enterprises*

### (a) *Introduction*

- (158) This programme allows companies that can show that they meet a certain set of criteria to be recognised as a ‘High and New Technology Enterprise’ to receive a reduction to 15 % on their corporate income tax, as compared to the standard rate of 25 %.

### (b) *Legal basis*

- (159) The legal bases of this programme are Article 28(2) of the Enterprise Income Tax Law of 2008 (‘the EIT law’), along with the ‘Administrative Measures for the Determination of High and New Technology Enterprises’ (Guo Ke Fa Huo [2008] No 172); and Article 93 of the Regulations on the Implementation of Enterprise Income Tax Law, along with the Notice of the State Administration of Taxation on the issues concerning the Payment of Enterprise Income Tax by High and New Technology Enterprises (Guo Shui Han [2008] No 985).

### (c) *Findings of the investigation*

- (160) This scheme applies to High and New Technology Enterprises recognised as such by the government of the PRC. To be eligible for this scheme enterprises shall have core independent intellectual property rights and must meet the following requirements which are set out in the legal basis and summarised as follows:

- (a) their production is included in the scope of the products in the ‘High-Tech Fields with Key State Support’;
- (b) their total expenses for R & D shall account for 3-6 % of total sales income;
- (c) their income from high and new technology products shall account for over 60 % of the total sales income;
- (d) the personnel engaged in R & D shall account for 10 % of the total staff;
- (e) the other requirements set by the ‘2008 Administrative Measures for High and New Tech Enterprises’ are met.

- (161) Some of the sampled exporting producers were found to be using this scheme, and thereby only paying 15 % corporate income tax rather than 25 %. These companies had applied to be New and High Technology Enterprises and received official notification that they had met the criteria of the scheme and would therefore be entitled to complete their corporate tax returns accordingly.

### (d) *Conclusion*

- (162) The Commission considers that this scheme is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic anti-subsidy Regulation because there is a financial contribution in the form of revenue foregone by the government of the PRC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.
- (163) This subsidy is specific as defined in Article 4(2)(a) of the basic anti-subsidy Regulation since it is limited to the enterprises receiving the certification of High and New Tech Enterprises and complying with all the requirements of the 2008 administrative measures. The sampled exporting producers concerned received such certification. No objective criteria for the eligibility were established by the legislation or the granting authority.
- (164) After disclosure, the government of the PRC challenged the Commission's conclusions, maintaining that the eligibility criteria were objective and apply equally to all companies in the PRC. Therefore they do not fulfil the criterion of specificity.
- (165) The Commission does not accept this claim. The grant is only available to companies with specific characteristics (High and New technology enterprises) and not to all industries and all sectors. Furthermore, eligibility is also not automatic but depends on the grant of a High and New Technology Enterprise certificate, which is released after a discretionary procedure by the competent authority. Therefore the scheme is specific in nature.
- (166) The Commission therefore considers this subsidy as countervailable.
- (e) *Calculation of the subsidy amount*
- (167) The Commission has calculated the amount of countervailable subsidy as the difference between the amount of tax normally paid during the IP and the amount of tax actually paid during the IP by the companies concerned.

<b>High and New Technology Enterprises</b>	
<b>Company Name</b>	<b>Subsidy margin</b>
Chongqing Polycomp International Corporation	0,0 %
Jiangsu Changhai Composite Materials Holding Co., Ltd <sup>a</sup>	1,3 %
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	0,8 %
<b>a</b> The calculation of the subsidy margin for this group was based on facts available as explained in recital 89.	

### 6.3. *Income tax reductions for FIEs purchasing Chinese-made equipment*

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

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(a) *Introduction*

- (168) This programme allows a company to claim tax credits on the purchase of domestic equipment if a project is consistent with the industrial policies of the Government of the PRC. A tax credit up to 40 % of the purchase price of domestic equipment may apply to the incremental increase in tax liability from the previous year.

(b) *Legal basis*

- (169) The legal bases of this programme are the Provisional measures on enterprise income tax credit for investment in domestically produced equipment for technology renovation projects of 1 July 1999 and the Notice of the State Administration of Taxation on Stopping the Implementation of the Enterprise Income Tax Deduction and Exemption Policy of the Investments of an Enterprise in Purchasing Home-made Equipment, No 52 [2008] of the State Administration of Taxation, effective 1 January 2008.

(c) *Findings of the investigation*

- (170) The government of the PRC claimed that this programme has been terminated as from January 2008 according to the mentioned Notice No 52. The investigation has revealed however that one of the sampled companies has benefited from this programme during the IP.

(d) *Conclusion*

- (171) This programme constitutes a subsidy as it provides a financial contribution in the form of revenue forgone by the government of the PRC according to Article 3(1)(a)(ii) of the basic Regulation. This programme provides a benefit to the recipients for an amount equal to the tax saving in the meaning of Article 3(2) of the basic anti-subsidy Regulation. This subsidy is specific under Article 4(4)(b) of the basic anti-subsidy Regulation since the tax saving is contingent on the use of domestic over imported goods.

(e) *Calculation of the subsidy amount*

- (172) The Commission has calculated the amount of countervailable subsidy as the difference between the amount of tax normally paid during the IP and the amount of tax actually paid during the IP by the companies concerned.
- (173) The subsidy rate established with regard to this subsidy during the IP for the Jiangsu Changhai Group amounts to 0,2 %.
- (174) Following disclosure, one exporting producer claimed that it was not eligible for any financial contribution under the scheme 'Income tax reductions for FIEs purchasing Chinese-made equipment' as it is not a foreign-invested company. Therefore the Commission erroneously attributed a benefit under this scheme to it on the basis of facts available. It also claimed that

minor calculation mistakes were found. Both claims were accepted and the calculation of the subsidy margin was revised accordingly.

6.4. *Other direct tax exemption schemes and reduction programmes*

(175) The tax offset for R & D was also investigated. This measure concerned however negligible amounts. Therefore, the Commission did not investigate it any further.

(176) During the IP, no financial contribution was received by the sampled exporting producers under the remaining tax exemption programmes mentioned in section C.3 above.

7. **Indirect Tax and Import Tariff Programmes**

7.1. *VAT exemptions and import tariff rebates for the use of imported equipment*

(a) *Introduction*

(177) This programme provides an exemption from VAT and import tariffs in favour of FIEs or domestic enterprises for imports of capital equipment used in their production. To benefit from the exemption, the equipment must not fall in a list of non-eligible equipment and the claiming enterprise has to obtain a Certificate of State-Encouraged project issued by the Chinese authorities or by the NDRC in accordance with the relevant investment, tax and customs legislation.

(b) *Legal basis*

(178) The legal bases of this programme are Circular of the State Council on Adjusting Tax Policies on Imported Equipment, Guo Fa No 37/1997, Notice of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation on the Adjustment of Certain Preferential Import Duty Policies, Announcement of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation [2008] No 43, Notice of the NDRC on the relevant issues concerning the Handling of Confirmation letter on Domestic or Foreign-funded Projects encouraged to develop by the State, No 316 2006 of 22 February 2006 and Catalogue on Non-duty-exemptible Articles of importation for either FIEs or domestic enterprises, 2008.

(c) *Findings of the investigation*

(179) All sampled companies benefited from this scheme.

(d) *Conclusion*

(180) This programme is considered to provide a financial contribution in the form of revenue forgone by the government of the PRC within the meaning of Article 3(1)(a)(ii) as FIEs and other eligible domestic enterprises are relieved from payment of VAT and/or tariffs which would be otherwise due. It

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

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therefore confers a benefit on the recipient companies in the sense of Article 3(2) of the basic anti-subsidy Regulation. The programme is specific within the meaning of Article 4(2)(a) of the basic anti-subsidy Regulation since the legislation pursuant to which the granting authority operates limits its access to enterprises that invest under specific business categories defined exhaustively by law and belonging either to the encouraged category or the restricted category B under the *Catalogue for the guidance of industries for foreign investment and technology transfer* or those which are in line with the *Catalogue of key industries, products and technologies the development of which is encouraged by the State*.

- (181) Following disclosure the government of the PRC challenged the Commission's conclusions, maintaining that the eligibility criteria were objective and apply equally to all companies in the PRC. Therefore they do not fulfil the criterion of specificity. The government of the PRC did not however point to any particular provisions in the legislation substantiating its views and did not provide any conclusive evidence that eligibility is automatic.
- (182) The Government of the PRC as well as one of the exporting producers also claimed that the Commission cannot countervail any possible VAT benefits that may have been received by the three sampled companies as VAT exemptions granted in the past could no longer be availed of with effect from the year 2009. Therefore, even assuming the 5 to 10-year average depreciation period for the imported equipment in question, the alleged benefit would either expire prior to the imposition of the measures or be unlikely to continue during the full five-year period of the measures.
- (183) The Commission notes that the depreciation period of some of the imported equipment is much longer than 10 years and could last 15 or 20 years in some cases. In any event, the Commission did not countervail any benefit arriving from any of the purchases after 2009 of imported equipment. Moreover, the government of the PRC acknowledges that the companies could still benefit from the scheme 'slightly afterwards' from the imposition of the measures. This argument is therefore rejected.
- (e) *Calculation of the subsidy amount*
- (184) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of VAT and duties exempted on imported equipment. In order to ensure that the countervailable amount only covered the IP period the benefit received was amortized over the life of the equipment according the exporting producer's normal accounting procedures.
- (185) The subsidy rate established with regard to this scheme during the IP for the sampled exporting producers amounts to:

<b>VAT exemptions and import tariff rebates for the use of imported equipment</b>	
<b>Company/Group</b>	<b>Subsidy Rate</b>
Chongqing Polycomp International Corporation	0,5 %
Jiangsu Changhai Composite Materials Holding Co., Ltd <sup>a</sup>	0,1 %
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	0,5 %
<b>a</b> The calculation of the subsidy margin for this group was based on facts available as explained in recital 89.	

7.2. *Other indirect tax exemption schemes and reduction programmes*

(186) No financial contribution was received by the sampled exporting producers from the remaining indirect tax exemption programmes mentioned in section C.3 above during the IP.

8. **Government provision of goods and services for less than adequate remuneration**

8.1. *Provision of raw materials, provision of electricity, provision of water*

(187) No subsidies were found to be linked to the purchase of raw materials, water or electricity by the sampled exporting producers during the IP.

8.2. *Provision of land use rights*

(a) *Introduction*

(188) Companies are not allowed to purchase land outright in the PRC, but only purchase a land use right from local authorities.

(b) *Legal basis*

(189) The Land Administration Law of the PRC states that all land belongs to the people, and cannot be bought or sold, but sets out the conditions by which land use rights can be sold to businesses by bidding, quotation or auction.

(c) *Findings of the investigation*

(190) In principle a system of auction would allow the market to judge the price of a particular land use right, and therefore the price would be set independently. However, the government of the PRC stated that in any case they set floor prices for each grade of land (land is graded from 1 to 15 based on the quality of the land parcel) below which the price for the land use right cannot fall.

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

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- (191) The government of the PRC also controls the supply of land, by restricting by quota the area of land for which land use rights can be sold for industrial or residential purposes, by province and by year.
- (192) In any case, for each and every land use right purchase by the sampled exporting producers, the Commission found no evidence of an auction process that independently set the price of the land use right. The exporting producer awarded the land bid the starting price, and, as it was the only bidder, it was awarded the land use right. Following disclosure the Government of the PRC stated that it disagrees with the Commission's findings that there is no functioning market for the sale of land use right in the PRC. It however did not provide any new arguments to support this view.
- (193) The findings of the investigation confirm that the situation concerning land provision and acquisition in the PRC is unclear and non-transparent and the prices are often arbitrarily set by the authorities. The authorities set the prices according to the Urban Land Evaluation System which instructs them among other criteria to consider also industrial policy when setting the price of industrial land<sup>(26)</sup>.
- (194) Also, the independent publicly available information suggests that the land in the PRC is provided for below the normal market rates<sup>(27)</sup>.
- (195) In effect therefore the sampled companies paid the price set by the government of the PRC. The land use right is provided at less than adequate remuneration when compared to a market benchmark, which is set out in section (e) below.
- (196) The situation concerning land in the PRC is also discussed in the IMF Working Paper which confirms that the provision of land use rights to Chinese industries does not respect market conditions<sup>(28)</sup>.
- (d) *Conclusion*
- (197) The Commission concludes that the provision of land use rights by the government of the PRC should be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic anti-subsidy Regulation in the form of provision of goods conferring a benefit upon the companies. As the investigation did not reveal the existence of a functioning market for the sale of land use rights in the PRC the use of an external benchmark (see section (e) below) demonstrates that the amount paid for land use rights by the sampled exporters is below the market rate.
- (198) The subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic anti-subsidy Regulation because Decision No 40 of the State Council requires that public authorities ensure that land is provided to encouraged industries, of which filament glass fibre is one as explained in details in recitals 67 to 82. Article 18 of Decision No 40 makes clear that industries that are 'restricted' will not have access to land use rights.

- (e) *Calculation of the subsidy margin*
- (199) The benefit is the difference between the price paid for the land use right, and an appropriate external benchmark.
- (200) The Commission considers Chinese Taipei as a suitable external benchmark for the following reasons:
  - (a) the comparable level of economic development, GDP and economic structure in Chinese Taipei and a majority of the provinces and cities in the PRC where the sampled exporting producers are based;
  - (b) the physical proximity of the PRC and Chinese Taipei;
  - (c) the high degree of industrial infrastructure in both Chinese Taipei and many provinces of the PRC;
  - (d) the strong economic ties and cross border trade between Chinese Taipei and the PRC;
  - (e) the high density of population in many of the provinces of the PRC and in Chinese Taipei;
  - (f) the similarity between the type of land and transactions used for constructing the relevant benchmark in Chinese Taipei with those in the PRC; and
  - (g) the common demographic, linguistic and cultural characteristics between Chinese Taipei and the PRC.
- (201) Following disclosure the Government of the PRC disputed the use of Chinese Taipei as a benchmark claiming that the population density in Chinese Taipei is many times higher than in the PRC which makes the land situation and prices in the two countries not comparable. The Commission considers however that for the many reasons spelled out in the previous recital the benchmark has been selected on a reasonable basis.
- (202) Moreover following disclosure one of the sampled exporting producers suggested that the use of Chinese Taipei was not suited to the economic conditions in the particular province in which they were located, but did not suggest an alternative. It also claimed that physical proximity between the PRC and Taipei should not be considered as a valid criterion for the selection of this particular benchmark but failed to substantiate its claim. Given the lack of alternative benchmark suggestions, the use of Chinese Taipei is confirmed.
- (203) Taking all these factors into account, the Commission concluded that land use right prices in the PRC, if market conditions prevailed, for the sampled exporting producers, would be very similar to land prices in Chinese Taipei.
- (204) Average land prices in Chinese Taipei for 2012 were taken from the Industrial Bureau of the Ministry of Economic Affairs and adjusted backwards for

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

inflation and GDP growth to fix a benchmark price for land in each calendar year. As land use rights are valid for 50 years and depreciated on this basis, the benefit in the IP will be 1/50 of the difference between the benchmark price and the actual price paid.

- (205) The subsidy rate established for provision of land at less than adequate remuneration is as follows:

<b>Provision of land at LTAR</b>	
<b>Company Name</b>	<b>Subsidy margin</b>
Chongqing Polycomp International Corporation	2,9 %
Jiangsu Changhai Composite Materials Holding Co., Ltd <sup>a</sup>	1,6 %
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	1,6 %
<b>a</b> The calculation of the subsidy margin for this group was based on facts available as explained in recital 89.	

## 9. Conclusion on subsidisation

- (206) The Commission calculated the amount of countervailable subsidies in accordance with the provisions of the basic anti-subsidy Regulation for the investigated companies scheme by scheme, and added these figures together to calculate a total subsidy amount for each exporting producer for the IP.
- (207) To calculate the overall subsidy margins below, the Commission first calculated the percentage subsidisation, being the subsidy amount over total company's turnover. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the IP.
- (208) The subsidy amount per tonne of product concerned exported to the Union during the IP was then calculated, and the margins below calculated as a percentage of the *Costs, Insurance and Freight* ('CIF') value of the same exports per tonne.
- (209) In accordance with Article 15(3) of the basic anti-subsidy Regulation, the total subsidy margin for the cooperating companies not included in the sample is calculated on the basis of the total weighted average subsidy margin established for the cooperating exporting producers in the sample with the exclusion of the Group to which the exporting producer subject to the provisions of Article 28(1) belongs.

<b>Company Name</b>	<b>Subsidy margin</b>
<b>a</b> The calculation of the subsidy margin for this group was based on facts available as explained in recital 89.	

Chongqing Polycomp International Corporation	9,7 %
Jiangsu Changhai Composite Materials Holding Co., Ltd <sup>a</sup>	5,8 %
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	10,3 %
Other cooperating companies	10,2 %

<sup>a</sup> The calculation of the subsidy margin for this group was based on facts available as explained in recital 89.

## D. INJURY

### 1. Union production and Union industry

- (210) The like product was manufactured by eight producers in the Union during the investigation period. They constitute the ‘Union industry’ within the meaning of Article 4(1) of the basic anti-dumping Regulation and Article 9(1) of the basic anti-subsidy Regulation.
- (211) The total Union production during the investigation period was established between 530 000 and 580 000 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry as provided by APFE. As indicated in recital 17, manufacturing plants of three Union producers were selected in the sample representing 52 % of the total Union production of the like product.
- (212) On the basis of the information included in the complaint/request for review where the actual macroeconomic indicators of the complainants/applicants were disclosed, and the fact that only a very limited number of Union producers did not form part of the complainants/applicants, it appears appropriate not to disclose the actual aggregated macroeconomic indicators related to all of the Union producers since it would be feasible for any interested party to discern the missing company-specific figures of the non-complainants/applicants.
- (213) Following the definitive disclosure, the government of the PRC objected to the confidential treatment and the provision of ranges for the total Union consumption and the other macroeconomic injury indicator data.
- (214) Following the request to do so and when a good cause was given, the Commission has the obligation to respect the confidential data of the producers which were not the complainants. The disclosure of the precise macroeconomic indicators would allow identifying confidential data of such producers and would harm their interests. The claim is therefore rejected.

### 2. Union consumption

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

- (215) The Commission established the Union consumption on the basis of (i) the volume of sales of the Union industry on the Union market based on data provided by APFE and (ii) imports from third countries based on data extracted from Eurostat (Comext).
- (216) Union consumption developed as follows:

*Table 1*

<b>Union consumption (metric tonnes)</b>				
	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>IP</b>
<b>Total Union consumption</b>	700 000 – 750 000	680 000 – 730 000	710 000 – 760 000	720 000 – 770 000
<b>Index (2010 = 100)</b>	100	97	101	103

*Source:* Data provided by APFE; Eurostat (Comext).

- (217) Between 2010 and the IP, the Union consumption increased by 3 %.
- (218) Following the definitive disclosure, one user claimed that the union consumption dropped almost 30 % in 2009. In that perspective, they claim that a 3 % increase from 2010 is not significant. However, the Commission did not qualify this increase as significant but noted that consumption increased over the period considered.

### 3. Imports from the country concerned

#### 3.1. Volume and market share of dumped and subsidised imports

- (219) The below analysis encompasses both the dumped and the subsidised imports following the identical sampled producers in the PRC and the identical IP period.
- (220) The volume of the imports from the PRC of the product concerned developed as follows:

*Table 2*

<b>Import volume (metric tonnes), market share</b>					
	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>IP</b>
<b>Volume of imports (tonnes)</b>	98 916	152 514	109 172	125 781	130 958

*Source:* Eurostat (Comext).

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

Table 2

**Import volume (metric tonnes), market share**

<b>Index (2010 = 100)</b>	65	100	72	82	86
<b>Index (2009 = 100)</b>	100	154	110	127	132
<b>Market share</b>	13 % - 18 %	19 % - 24 %	13 % - 18 %	15 % - 20 %	15 % - 20 %
<b>Index (2010 = 100)</b>	87	100	73	81	83
<b>Index (2009 = 100)</b>	100	115	84	93	97

Source: Eurostat (Comext).

- (221) The volume of imports from the PRC decreased by 14 % over the period considered and their market share by 17 %. However, 2010 is not a suitable reference year and import trends would be more accurately analysed when also looking at the preceding year 2009, as shown in the table above. 2010 was characterised by significant Union importers' stockpiling of Chinese filament glass fibre products prior to the imposition of the provisional duties in September 2010. Indeed the investigation revealed that during the first nine months of 2010 much larger quantities than usual were imported from the PRC. Imports from the PRC amounted to around 99 000 tonnes in 2009, whereas in 2010 they were above 152 000 tonnes and then dropped in 2011 to around 109 000 tonnes. The trend shows a clear increase in imports from 2009 onwards. As from 2011 Chinese imports increased by 20 % in volume terms which resulted in regained market share of 2 percentage points.
- (222) Several parties reiterated their claims that imports from the PRC and its market share decreased between 2010 and the end of the IP, and that therefore no significant increase in imports has been demonstrated as required by Article 3(2) of the ADA and Article 15(2) of the ASCM. Furthermore, they claim that 2009 is not an appropriate reference year for the following reasons: i) there is no legal basis in the anti-dumping and anti-subsidy basic Regulation and the *Mexico-Steel Pipes and Tubes Panel* held that '*an investigating authority is precluded from using temporal subsets within a period*', ii) there is no evidence for the claim that the imports in 2010 were the result of stockpiling and iii) 2009 data has not been considered for any other aspect of the injury assessment, which rendered the assessment therefore not objective.

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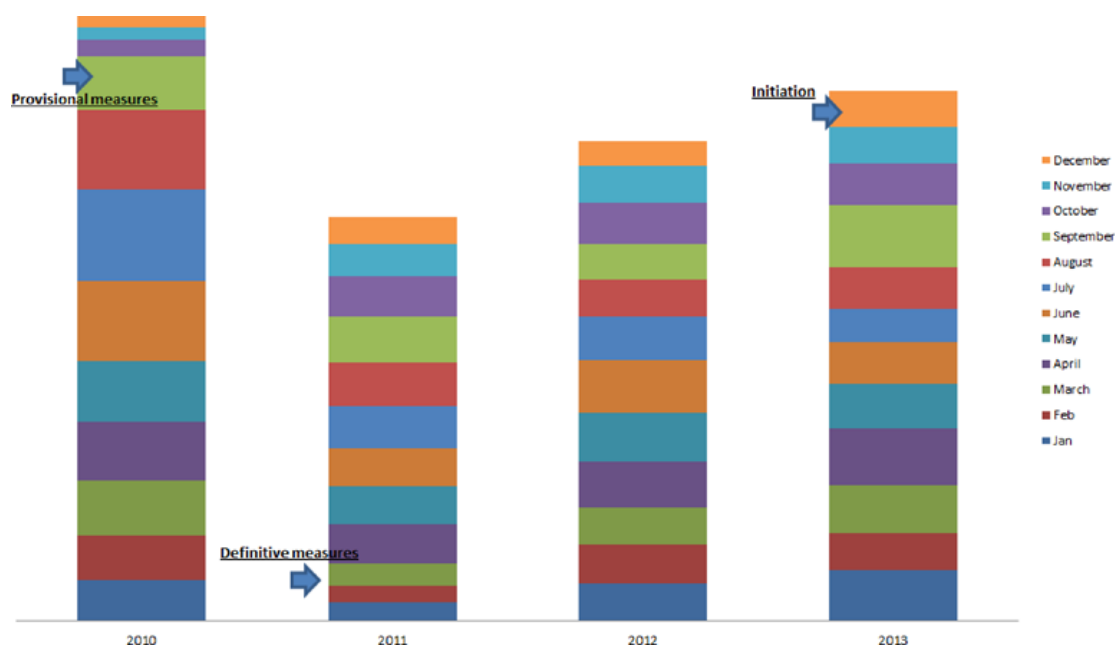
**Changes to legislation:** There are currently no known outstanding effects for the Commission  
Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

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- (223) As to the first and the third claim, the basic anti-dumping Regulation and basic anti-subsidy Regulation, being the applicable law, do not detail which period should be considered in order to analyse trends. Therefore there is no reason why the year 2009 could not be considered in order to analyse the trends of the imports from the PRC. This does not make the analysis un-objective, on the contrary, it further completes the analysis made with regards to the situation of the Union industry. Only with regard to the specific injury indicators related to the Chinese imports, the year 2009 was taken into consideration in addition to the period considered as explained above in 219. For the other injury indicators, there was no objective reason why not all years of the period considered could be fully taken into account.
- (224) As to the second claim, the stockpiling effect is shown very clearly in the monthly import data obtained from the database as set up in line with Article 14.6 of the basic anti-dumping Regulation (see graph 1 below)<sup>(29)</sup>. Prior to the imposition of provisional measures, imports of the product concerned from the PRC strongly increased in the second and third quarter of 2010 (for consumption before the end of 2010/beginning of 2011 due to the limited shelf life). This did not correspond to a similar increase in consumption, which indicates that these imports were made with the purpose of stockpiling in anticipation of the measures to be imposed. The government of the PRC did not provide another explanation for this increase and therefore the Commission can reasonably consider that stockpiling took place prior to the imposition of provisional measures at the end of 2010. This is further demonstrated by the fact that the level of monthly imports of the PRC in the period between the provisional and definitive measures (fourth quarter of 2010 and first trimester of 2011) was very low. When the measures were lowered at the definitive stage (in March 2011), the monthly import levels increased again to a stable level.

*Graph 1 Imports of the product concerned from the PRC (Monthly quantity)*

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Source: Article 14(6) database

### 3.2. Prices of dumped and subsidised imports

(225) Chinese import prices (excluding anti-dumping duties in force) developed as follows:

Table 3

#### Import prices

	2010	2011	2012	IP
<b>Average CIF price (EUR/tonne)</b>	911	877	892	834
<b>Index (2010 = 100)</b>	100	96	98	92

Source: Eurostat (Comext).

(226) The Chinese CIF import prices (excluding anti-dumping duties in force) evolved from 911 EUR/tonne to 834 EUR/tonne during the period considered. This represents a 8 % decrease over the period considered.

(227) The government of the PRC and a user claimed that a comparison of average import prices in the absence of an analysis of the product mix was misleading. The government of the PRC further stated that the majority of the imports from the PRC consisted of the cheapest product type, that is to say rovings.

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

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- (228) Contrary to the claim, the product mix was fully taken into account in the analysis as the Commission compared the selling prices of the Chinese exporting producers with those of the sampled Union producers per product type. The same approach was used in the original investigation.
- (229) Following the definitive disclosure, the government of the PRC requested Chinese import prices per product type in table 3, given that data per product type was used for the undercutting and injury margin calculations.
- (230) The average Chinese import price from table 3 is used to demonstrate the trend over the period considered. For this purpose of showing trends, the use of average prices is appropriate. For the determination of the undercutting and injury margin calculations, data per product type was used.
- (231) In order to determine price undercutting during the IP, the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices per product type of the imports from the sampled Chinese producers to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for customs duties, anti-dumping duties and post-importation costs. The price comparison was made on a type-by-type basis for transactions at the same level of trade. The result of the comparison was expressed as a percentage of the sampled Union producers weighted average ex-works price during the investigation period. It showed for a major Chinese exporter to the Union an undercutting margin of 2 % despite the current anti-dumping measures (and custom duties) that were added to the import price. The vast majority of other imports were made at price levels comparable to Union prices.
- (232) Following the definitive disclosure, one exporting producer claimed that there were some inaccuracies with the CIF values of 3 PCN's.
- (233) The claim was correct and the Commission has adjusted the respective CIF values which led to a small change in the undercutting and underselling margins for this exporting producer (see recital 440).
- (234) Several parties claimed that there was no significant price undercutting during the IP. They stated that an undercutting margin of 2 % for a single exporter is almost a *de minimis* one and cannot be considered as significant. In addition, they refer to Commission practice where limited price undercutting or price undercutting of 6 % was held to have no effect on the general price level in the Union due to the limited volume of exports.
- (235) Despite the current anti-dumping duties, there is still undercutting. The reference to Commission practice is misleading. In the case of 'dense sodium carbonate'<sup>(30)</sup>, the 6 % price undercutting was held to have had practically no effect on general price levels because of the limited volume

of imports combined with a market share of 1,4 % by the exporting country. In comparison, the market share of the PRC in the IP is between 15 % and 20 %. The ‘certain laser optical reading systems’<sup>(31)</sup> case referred to limited price undercutting for the imports concerned in view of (i) major increase in the Union consumption (129 %) and (ii) the nature of the product concerned, a non-homogeneous product with a great variety of features and technical differences and subject to rapid technological development. In the current investigations, the market of the product concerned is of a totally different nature and hence the magnitude of the price undercutting has to be considered in that particular market context. The product concerned is a basic homogeneous reinforcement product in a market which is rather stable. Such a market is more sensitive to price differences and even a smaller price difference can have a major impact on the market. The fact that no major undercutting took place does therefore not change the Commission's conclusions. On the contrary, this element was fully taken into account in the assessment. In any event, each case is assessed on its own merits and the injury picture consists of many indicators and none can have a decisive importance.

#### 4. **Economic situation of the Union industry**

- (236) In accordance with Article 3(5) of the basic anti-dumping Regulation and Article 8(4) of the basic anti-subsidy Regulation, the examination of the impact of the dumped and subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (237) As mentioned in recitals 17 to 25, sampling was used for the determination of possible injury suffered by the Union industry.
- (238) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data provided in the complaint and in the review request as well as in subsequent submissions and cross-checked where possible with statistics. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (239) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping and subsidy margins, and recovery from past dumping or subsidisation.
- (240) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

## 5. Macroeconomic indicators

### 5.1. Production, production capacity and capacity utilisation

- (241) A variation in yearly production is common to the Union industry given that the furnaces have to be rebuilt every 7 to 10 years, which creates a higher production volume in the previous year to build stock, and a lower production volume in the year when the furnace is out of order for the rebuild. Whenever a furnace is out of order for a rebuild, the production capacity of that given year will also be lower.
- (242) Bearing in mind these caveats, the total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 4

#### Production, production capacity and capacity utilisation

	2010	2011	2012	IP
<b>Production volume (in tonnes)</b>	560 000 – 610 000	580 000 – 630 000	510 000 – 560 000	530 000 – 580 000
<b>Index</b>	100	103	92	95
<b>Production capacity (in tonnes)</b>	670 000 – 720 000	680 000 – 730 000	650 000 – 700 000	640 000 – 690 000
<b>Index</b>	100	101	97	96
<b>Capacity utilisation</b>	84 %	86 %	81 %	84 %
<b>Index</b>	100	102	95	99

Source: Data provided by APFE.

- (243) In the context of increasing Union consumption (by 3 %), the Union industry's production of the like product decreased between 2010 and the IP by 5 %. The production capacity also decreased between 2010 and the IP, in the region of 4 %. The capacity utilisation stayed fairly stable over the period considered with the exception of a drop in 2012.
- (244) A production drop by 11 percentage points and a production capacity drop by 4 percentage points can be noted between 2011 and 2012. This was the result of the restructuring of the Union industry and the closure of some of its plants. The filament glass fibre producer Ahlstrom ceased production at the end of 2011 and the Owens Corning Vado Ligure plant in Italy closed its plant in 2012 as they were not able to recover from the dumped imports. The Union Industry believes however that after restructuring and once a level playing is

re-established, it can remain a viable industry, which explains why the Union industry still invests in rebuilding the existing furnaces.

- (245) Following the definitive disclosure, the government of the PRC claimed that the Commission referred to a shorter than average lifespan for the furnaces and that there are therefore considerable inefficiencies in the Union producers' investments and/or usage of the furnaces.
- (246) It was demonstrated that furnace rebuilding decisions by the Union industry were taken based on production and energy efficiency considerations. There were no indications that the lifespan of the furnace as applied by the sampled Union producers, was not a good practice in the industry and in line with the requirements of the product mix.
- (247) Several parties claimed that a longer period than 2010 till the IP has to be considered specifically because of the furnace rebuilt costs, which would affect all the macro- and micro economic indicators. The government of the PRC stated that no data or information was given on the years in which the Union producers undertook furnace rebuilds.
- (248) Furnace rebuilds are inherent to the industry and recurrent. They are essential to ensure the continuity of the operations and to maintain the capacity. R & D investments made are directly linked to the operational capacity and to enable to develop tailor made products for the client's needs. Therefore, these investments are not exceptional to the period considered. Whatever the timespan considered, there will always be effects of furnace repairs or rebuilds on the production volume. Company specific information when rebuilds have taken place is considered confidential.
- (249) One user also claimed that the Union industry was able to avoid any damaging effect (of subsidised and dumped imports) as the capacity utilisation stayed fairly stable over the period from 2010 till the end of the IP.
- (250) The production of the like product is a continuous process which cannot be adapted to short term fluctuations in demand. The fairly stable capacity utilisation has to be seen in the light of a declining production capacity. Therefore, the claim is rejected.

## 5.2. Sales volume and market share

- (251) The free market sales volumes of the Union industry on the Union market as well as the captive market sales volumes on the Union market and the respective market shares developed over the period considered as follows:

Table 5

### Sales volume and market share

	2010	2011	2012	IP
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Source: Data provided by APFE.

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Table 5

**Sales volume and market share**

<b>Free market sales volume on the Union market (in tonnes)</b>	420 000 – 470 000	390 000 – 440 000	400 000 – 450 000	420 000 – 470 000
<b>Index</b>	100	94	96	99
<b>Market share of free market sales</b>	58 % - 63 %	56 % - 61 %	55 % - 60 %	56 % - 61 %
<b>Index</b>	100	96	95	97
<b>Captive market sales volume on the Union market (in tonnes)</b>	20 000 – 70 000	30 000 – 80 000	30 000 – 80 000	30 000 – 80 000
<b>Index</b>	100	114	123	121
<b>Market share of captive market sales</b>	4 % - 9 %	5 % - 10 %	5 % - 10 %	5 % - 10 %
<b>Index</b>	100	117	122	118

Source: Data provided by APFE.

- (252) During the period considered the Union industry free market sales volume of filament glass fibre products (that is to say to unrelated customers) decreased slightly by 1 % over the period considered. However, in the context of an increase of Union consumption by 3 %, this resulted in a decrease of the Union industry's market share from 58 % - 63 % in 2010 to 56 % - 61 % during the IP. The lower sales volume in 2011 is a result of the stockpiling effect of Chinese imports in 2010, which gradually came on the market in 2011.
- (253) During the period considered, the captive market sales of the Union industry represented between 11 % and 14 % of the total sales (free market and captive) of the Union industry on the Union market. The captive market sales have an increasing trend between 2010 and 2012, where after it stabilises in the IP. The increase in captive market sales between 2010 and 2011 is limited when looked at in absolute figures.

### 5.3. Employment and productivity

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- (254) The Union producers' employment and productivity developed over the period considered as follows:

Table 6

**Employment and productivity**

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>IP</b>
<b>Number of employees</b>	3 450 – 3 950	3 350 – 3 850	3 200 – 3 700	3 000 – 3 500
<b>Index</b>	100	97	95	89
<b>Productivity (unit/employee)</b>	153	163	150	164
<b>Index</b>	100	106	98	107

Source: Data provided by APFE.

- (255) The employment level of the Union producers shows that the Union industry tried to rationalize production throughout the period considered with the objective of reducing manufacturing costs. Indeed, over the period considered the number of employees decreased by 11 %.
- (256) The combined effect of a change in the number of employees and the production volume over the same period considered, has resulted in an increase of the productivity of the Union producers' workforce, measured as output (tonnes) per person employed per year, of 7 % between 2010 and the IP.

5.4. *Growth*

- (257) As stated in recital 217 above, the Union consumption increased over the period considered by 3 %. Given the many applications of the like product, it is expected by the Union industry and the users that this growth pattern will continue in the near future.

5.5. *Magnitude of the dumping and subsidy margin and recovery from past dumping or subsidisation*

- (258) The Union industry had been suffering injury due to dumped imports from the PRC until 2011 when duties were put in force. The duties in force against imports from the PRC were designed to provide a level playing field where the Union industry could compete fairly with these imports and recover from the injury suffered.
- (259) However, this has not happened. The Union industry is now again loss making and continued to lose market share, even though consumption in the Union has risen. Imports from the PRC continued to come in at very low prices and gained market share. The market share of Chinese imports was in the

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

investigation period 3 percentage points above the level prior to the imposition of the duties.<sup>(32)</sup> The Union industry restructured and closed some of its plants (see recital 244 above). Recovery from past dumping has clearly not taken place.

(260) Given the magnitude of the volume, market share and prices of the dumped and subsidised imports from the PRC, and taken into account the existing dumping margins (9,6 % and 29,7 %)<sup>(33)</sup>, the impact on the Union industry's situation can be considered to be significant.

(261) Since this is the first anti-subsidy investigation regarding the product concerned, recovery from past subsidy is not an issue in the assessment.

## 6. Microeconomic indicators

### 6.1. Prices

(262) The weighted average unit sales prices of the sampled Union producers in the Union developed over the period considered as follows:

Table 7

#### Sales prices on the free market and on the captive market in the Union

	2010	2011	2012	IP
<b>Average ex works unit selling price on the free market in the Union (EUR/tonne)</b>	1 061	1 144	1 070	1 035
<b>Index (2010 = 100)</b>	100	108	101	98
<b>Average ex works unit selling price on the captive market in the Union (EUR/tonne)</b>	1 006	1 031	1 027	989
<b>Index (2010 = 100)</b>	100	103	102	98

Source: Data of the sampled Union producers.

(263) Unit sales prices on the free market fell by 2 % over the period considered. As provisional duties entered into force in September 2010, the Union industry was able to increase its prices in 2011. However, as from 2011 the unit sales prices fell by 10 %.

(264) As to the unit sales prices on the captive market (that is to say transfer prices), they followed the same trend as the unit sales prices on the free market whereby the Union industry increased its selling prices on the captive market in 2011 where after those unit sales prices fell by 4 %.

## 6.2. Average unit production costs

(265) The unit cost of production developed over the period considered as follows:

Table 8

### The unit cost of production

	2010	2011	2012	IP
<b>Unit cost of production (EUR/tonnes)</b>	964	990	1 032	976
<b>Index (2010 = 100)</b>	100	103	107	101

Source: Data of the sampled Union producers.

(266) The unit average cost of production increased between 2010 and 2012. After 2012, the unit average cost of production decreased again almost to the level of 2010. The peak in 2012 is attributed to a particular investment situation by one of the Union producers in the sample. Over the whole period considered, the unit average cost of production increased by only 1 %.

(267) Several users claimed that a particular company situation should not justify general conclusions. The conclusion regarding the unit cost of production was that it is fairly stable. The peak of 2012 did not change the general conclusions.

(268) The unit cost of production is based on the overall production volume of the sampled Union producers. The unit sales price in Table 7 is based on sales in the Union to unrelated customers. Hence, the two indicators have a different basis and are not directly comparable.

(269) Following the definitive disclosure, the CCCLA claimed that it is essential for the Commission to provide enough comparable data to assess whether the variation of production costs could explain the slight decrease in Union sales prices.

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

(270) These two indicators have a different basis and whereas the absolute figures are not directly comparable, their trends are.

### 6.3. Labour costs

(271) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

#### Average labour costs per employee

	2010	2011	2012	IP
<b>Average wages per employee (EUR)</b>	40 518	41 590	42 310	42 917
<b>Index (2010 = 100)</b>	100	103	104	106

Source: Data of the sampled Union producers.

(272) The average labour costs per employee had a gradual increasing trend (+ 6 %) during the period considered. This was in line with the labour cost index in the countries where the sampled producers are located.<sup>(34)</sup>

### 6.4. Inventories

(273) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

#### Inventories

	2010	2011	2012	IP
<b>Closing stocks (in tonnes)</b>	18 539	46 585	50 198	52 805
<b>Index (2010 = 100)</b>	100	251	271	285

Source: Data of the sampled Union producers.

(274) The closing stock first increased significantly in 2011 and then continued to increase over the period considered.

- (275) The government of the PRC claimed that stock variations reported in the data provided by APFE highlighted unreported sales and did not indicate injury when compared to Chinese imports.
- (276) The claim should be disregarded. The Commission performed the analysis of the microeconomic indicators such as stock levels on the basis of actual data provided by the sampled Union producers. The investigation of the sampled Union producers did not reveal any unreported sales.
- (277) Following the definitive disclosure, one user claimed that 2010 is not a suitable reference year as the stock levels were unusually low compared to the period 2006 till October 2009 (the period of investigation of the original anti-dumping investigation).
- (278) The claim is rejected as the sampled entities in the current investigations are different from the sample in the previous investigation and hence the data is not comparable. The Commission limited its examination to the period considered, in particular with regard to microeconomic data, and does not have data at its possession with regard to stock levels of the sampled Union producers in the period prior to the period considered. The government of the PRC stated that stock levels in 2011 are also higher in view of a 3 % decrease in Union consumption that year. However, this element does not have an effect on the trend over the period considered.
- 6.5. *Profitability, cash flow, investments, return on investments and ability to raise capital*
- (279) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

*Table 11*

**Profitability, cash flow, investments and return on investments**

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>IP</b>
<b>Profitability of sales in the Union to unrelated customers (% of sales turnover)</b>	3 %	2 %	– 6 %	– 4 %
<b>Index (2010 = 100)</b>	100	66	– 200	– 134
<b>Cash flow (EUR)</b>	32 847 910	10 978 839	– 1 297 704	14 660 203

*Source:* Data of the sampled Union producers.

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

Table 11

**Profitability, cash flow, investments and return on investments**

<b>Index (2010 = 100)</b>	100	33	– 4	45
<b>Investments (EUR)</b>	7 729 022	9 721 478	30 738 820	32 511 238
<b>Index (2010 = 100)</b>	100	126	398	421
<b>Return on investments</b>	2 %	2 %	– 4 %	– 3 %
<b>Index (2010 = 100)</b>	100	69	– 184	– 137

Source: Data of the sampled Union producers.

- (280) The Commission established the profitability of the sampled Union producers by expressing the pre-tax profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. During the period considered the profitability of the sampled Union producers decreased considerably from 3 % to – 4 %.
- (281) The net cash flow is the ability of the Union producers to self-finance their activities. The cash flow has decreased significantly over the period considered (– 55 %).
- (282) The level of investments made by the sampled Union producers followed an increasing trend over the period considered. The increase was more significant in 2012 and the IP. The high investment costs were in view of furnace rebuilds. In this capital intensive industry, furnaces have to be rebuilt every 7 to 10 years and the costs associated with rebuilding a furnace can amount to EUR 8 million — EUR 13 million (range given for reasons of confidentiality). Investments also include substantial structural investment costs related to the alloy consumption from the bushings and its recurrent rebuilding.
- (283) The return on investment is the profit in percentage of the net book value of investments. The return on investment followed clearly the negative trend of the profitability. The deterioration of the return on investment is a clear indication of the deterioration of the economic situation of the Union industry during the period considered.
- (284) The above fragile financial situation was in spite of the increased consumption during the period considered as described in recital 217 above, and the efforts of the Union industry to rationalize production costs, as described in recitals 244 above and 337 below.

- (285) The investigations did not reveal any serious difficulties encountered by the sampled Union producers in raising capital.
- (286) Following the definitive disclosure, several parties noted that the investment levels were that high for the periods 2012 and the IP, that these high investment costs could be the reason as to why the Union industry was unprofitable in the IP. The government of the PRC also claimed that the reduced profitability is directly related to the increase in cost of production and the loss in production resulting from the rebuilding of furnaces.
- (287) Firstly, the EUR 32 million of investments in the IP from 1 October 2012 to 30 September 2013 partly overlaps with the EUR 30 million in the year 2012. Secondly, the investments made in those periods were essential for furnace rebuilds and are recurrent to the business and considered being made within the ordinary course of business as set out in recitals 241-250. Thirdly, the level of investments had an impact on the results of the Union industry because it is generating additional costs. However, the main effects of the investments are reflected in the balance sheet and not in the Profit & Loss statement, showing the recurrent standard depreciation costs, and hence cannot explain in itself the loss-making situation. As to the claim of the government of the PRC, furnace rebuilds are planned carefully in advance. Continuity of supply to customers is ensured by building buffer stocks. Finally, the impact of these investments on costs and company results are spread out over several years.
- (288) In addition, several parties argued that (i) the higher investment costs are reflected in the lower return on investment for the years 2012 and the IP (given that some of the investments do not yield immediate returns) and (ii) it is unreasonable to take a two year snapshot overburdened by heavy investments and conclude that the Union industry has deteriorated on that basis.
- (289) The investments in the furnaces are not exceptional to the period considered. The investigation revealed that since 2004 furnace investments have been taking place nearly every year by the Union industry. Therefore, whatever the timespan considered, there will always be effects of furnace repairs or rebuilds on the production volume and on the return on investment. The deterioration of the profitability of the sampled Union producers indicated that they were not able to charge prices for the like product allowing for essential investments for the continuity of the business.
- (290) The government of the PRC claimed that an industry will first use available cash before using borrowed funds and that therefore it is normal that the cash flow deteriorated when the sampled Union producers invested heavily in 2012 and the IP. Moreover, they claim that a loss making industry could not have invested as much as the sampled companies did.
- (291) The filament glass fibre industry is a global business with financing mechanisms that extend beyond the financial remit of the sampled Union

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

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producers. Investment situations do not necessarily have an impact on the cash flow. Therefore these claims are rejected.

#### 7. **Conclusion on the situation of the Union industry**

- (292) The findings of the investigations confirm that the Union industry suffered material injury as defined by Article 3(5) of the basic anti-dumping Regulation and Article 8(4) of the basic anti-subsidy Regulation.
- (293) The imposition of anti-dumping measures allowed the Union industry to raise its prices in 2011. At the same time, efforts were undertaken by the Union industry to increase efficiency and productivity. Even though Union consumption has been on the rise, the Union industry had no choice but to lower its unit sales prices again as of 2012 in order to maintain its market share.
- (294) The analysis of the price undercutting, see recital 231, and the declining trend in the sales price of the Union producers, see recital 263, clearly shows that the Union producers have tried to compete on price with Chinese imports and have closed the price gap. However, this has led to a strong deterioration of the Union producers' financial results with the Union industry reporting losses since 2012. This situation is not sustainable in the short to medium run.
- (295) Other indicators also developed negatively, even after the imposition of measures against the PRC, such as production, production capacity, employment, inventories and cash flow.
- (296) The findings of both investigations also confirm that the changed circumstances that justified the initiation of the partial interim anti-dumping review, namely the restructuring and the closure of some of the Union plants as explained in recital 244 above, are of a substantial and lasting nature. Following the closure of a plant, the plant is fully dismantled. Moreover, setting a new furnace is highly capital and time consuming and cannot be realized in the short run. The time and costs to set up a new plant with furnaces should therefore not be underestimated. Restructuring and closing some of the plants can therefore be considered as substantial and of a lasting nature.
- (297) Several parties claimed that there were clear signs of lack of injury. The claims are addressed in the following recitals.
- (298) The CCCLA stated that one of the Union producers, 3B Fibreglass, was acquired in 2012 by the Binani group and that the overall performance of the Union industry must be good as no rational economic operator would invest in an industry which is not performing. They also quote the 2013 Annual report of Braj Binani that *'the overall performance of the 2 manufacturing units at Belgium and Norway is considered good'*. In addition, the CCCLA also stated that the turnover of two Union producers increased between 2010 and the IP and that the Union industry is therefore clearly not suffering any injury.

- (299) The Indian Binani Group indeed acquired 3B Fibreglass in 2012. However, irrespective of the individual business motivations of the Binani Group, the Commission refers to its findings of the investigation that the Union industry has lost market share and profitability. The quote should be put into context and reads in full: *'The overall performance of the 2 manufacturing units at Belgium and Norway is considered good and capacity was partially constrained to cope with the lower market demand. The production ramp up to normal efficiencies went on well. Average realization was however, on the lower side due to cheap Asian imports.'*
- (300) The claim that the Union industry is not suffering injury, because two Union producers had an increased turnover between 2010 and the IP, is misleading and not correct. The CCCLA based itself for this analysis on turnover expressed in kg. However, drawing conclusions by only looking at higher sales quantities is not accurate as it does not take into account the price level of those sales and therefore the impact on the profitability of the company.
- (301) The government of the PRC claimed that as APFE members are investing in capacity increases in and outside the Union (e.g. the PRC, Russia, India and Tunisia), there is a clear sign of lack of injury.
- (302) This injury investigation is linked to the performance of the Union producers on the Union market. As seen in table 4 above, the Union industry had a slight capacity increase in 2011 of 1 % where after the capacity reduced by 5 percentage points towards the end of the IP. Therefore, there is no capacity increase in the Union. However, given that many filament glass fibre producers are multinational companies, it is no surprise that these companies also invest outside the Union when there is a business opportunity. Investing in extra capacity outside the Union is done to fulfil the needs of emerging markets and with the prospect of making a profit. Setting up plants in these regions also fits into the picture of being close to these customers. However, the business decision to set up a plant outside the Union or not, stands completely separate from the fact that the Union producers are suffering injury. Similar allegations on large investments made by the Union industry are addressed in the section on self-inflicted injury below.
- (303) Several parties claimed that there is absence of injury given that some Union producers announced that their prices of the like product will increase as from January 2014 in order to compensate for the continued rise in raw material, energy and transportation costs.
- (304) First, price levels in 2014 relate to post IP events. Second, the Union industry has been absorbing over the last years the majority of such price increases via productivity increases. However, there comes a point that further productivity increases are much harder to implement in the short term. Given that in the IP the Union industry was loss making and absorption of these price increases is no longer possible, at a certain point in time it becomes inevitable that such

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

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increases need to be passed on to customers whereby the risk exists that further market share might be lost. On the basis of the above, the claims were rejected.

## E. CAUSATION

### 1. Introduction

(305) In accordance with Article 3(6) and Article 3(7) of the basic anti-dumping Regulation and Article 8(6) and Article 8(7) of the basic anti-subsidy Regulation, it was examined whether the dumped and subsidised imports from the PRC had caused injury to the Union industry to a degree that enabled it to be classified as material.

(306) Known factors other than the dumped imports, which could at the same time have injured the Union industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped and subsidized imports.

#### 1.1. *Effect of dumped and subsidized imports*

(307) The investigations showed that, despite the anti-dumping measures in force, the dumped and subsidised imports from the PRC increased in terms of volume (32 %) during the period considered, taking 2009 as a reference year. This resulted in an increase in the PRC's market share from 13 % — 18 % in 2009 to 15 % — 20 % by the end of the IP.

(308) At the same time, and despite the increase in consumption, the Union industry saw its market share decreasing by three percentage points during the period considered.

(309) The average prices of the dumped and subsidized imports decreased by 8 % between 2010 and the IP, and were lower than those of the Union industry during the same period.

(310) The Union industry was still profitable during 2010 and 2011 and became loss making afterwards which coincided with the increase in dumped and subsidised imports from the PRC. Even after lowering its sales price, the Union industry did not succeed in maintaining its market share. This price decrease was at the expense of profitability, leading to a loss-making situation.

(311) Based on the above, it is concluded that the price level of the dumped and subsidised imports from the PRC together with the increase in volume, had a considerably negative impact on the economic situation of the Union industry and therefore played a decisive role in the material injury suffered by the Union industry.

(312) Following the definitive disclosure, several parties claimed that there is a lack of analysis proving that Chinese imports caused the depressed pricing by the Union industry and the injury suffered and that the Commission merely relies on coincidence in time in its analysis. These parties refer to the China X-Ray

Equipment panel report: *'The Panel acknowledges that an overall correlation between dumped imports and injury to the domestic industry may support a finding of causation. However, such a coincidence analysis is not dispositive of the causation question; causation and correlation are two distinct concepts. In the circumstances of this case, [...], the causation question is not resolved by such a general finding of coincidence'*.<sup>(35)</sup>

- (313) However, the conclusions are based on an analysis of an extensive list of indicators. As set out above in section D, the examination of the impact of the dumped and subsidized imports included an evaluation of all relevant economic facts and indices having a bearing on the state of the Union industry. Many indicators pointed to an injurious situation. In such situation the only reason for the Union industry to lower prices is to keep market share, or at least not to lose further market share, when it is facing competition on price. After the imposition of the original measures, the Union industry managed to increase its prices in 2011, but in the following years had to lower its prices whereas the cost of production did not go down. As further detailed in recitals 320-335 below, exports from third countries were mainly made at high prices over the whole of the period considered, and third country market share remained fairly stable and went even down as from 2011. Therefore the Union industry did not lower its prices because of the imports from third countries, but because of the low dumped and subsidized imports from the PRC. Since 2011, only imports from the PRC increased significantly, only imports from the PRC took away market share from the Union industry, and only import prices from the PRC went down. On this basis, the Commission concluded that the depressed pricing by the Union industry and the injury suffered were caused by the increase in the dumped and subsidized imports from the PRC. Other factors that might break this causal link are analysed below.
- (314) The CCCLA and the government of the PRC claimed that there is absence of price depression or price suppression as *'the sales price decrease of the Union producers is not significant since it only peaked at 2 % during the period considered'*. Several parties also claimed that a 1 % decrease in Union sales, a 2 % increase in the market share of the imports from the PRC and a 3 % decrease in the Union industry's market share does not justify the proposed drastic measures.
- (315) The Commission reiterates as stated above that following the provisional duties of September 2010, the Union industry was able to increase its prices in 2011. However, as from 2011 the unit sales prices fell by 10 %. Therefore, there is clearly a significant drop in sales prices. Even though there are anti-dumping measures in force, the Union industry continued to suffer from a decrease in sales volume, price and market share, whereas at the same time the Chinese imports increased its sales volume and market share to a level significantly higher than the investigation period of the original investigation. Normally, once measures are imposed, the Union industry is supposed to

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Implementing Regulation (EU) No 1379/2014. (See end of Document for details)

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recover from the effects of past dumping or subsidisation. This was clearly not the case. Following some signs of recovery immediately after the imposition of measures, the situation of the Union industry further deteriorated in the course of the period considered.

- (316) One unrelated importer stated that there was no need for the Union producers to decrease prices to the extent they have done, as the Union market had more demand than supply. The government of the PRC claimed that the decrease in Union sales prices as well as the decrease in Chinese import prices cannot be seen in isolation from the global price developments of the product concerned and are in line with the normal course of the market. In addition, the government of the PRC claims that the Commission did not verify whether the market would permit price increases in 2011 (after the imposition of measures in the previous investigation) when seen against the global context and if so, to what extent. Moreover, the Commission has incorrectly refused to accept evidence provided on post-IP price increases by the Union producers and they refer hereby to the *Solar glass* and *Personal fax machine* cases.<sup>(36)</sup>
- (317) The Commission considered that the statement that demand exceeded supply was not substantiated. The loss in market share and the increase in stock levels do not indicate that demand was higher than supply, but rather the contrary. As to the claim of the government of the PRC, the price developments considered are related to sales on the Union market and not on a global level. On the Union market, the competition between the like product and the product concerned is at price level. As demonstrated above, the price decrease cannot be attributed to other factors than this price competition (in view of a fairly stable cost of production and of Union consumption). Furthermore, the government of the PRC did not provide further information on the global price developments. Therefore, this claim was found to be unsubstantiated. As to the claim on post IP price increases, post IP events go beyond the scope of this investigation. In any event, no substantive evidence of actual price increases which would have materialised after the IP, has been provided. Therefore, this claim is rejected.
- (318) In addition, the CCCLA claimed that the average Chinese import price decrease of 8 % as referred to in recital 226 should have taken account of the prices adjusted for customs duty and handling, the anti-dumping duty, the profit margin for importers and the SG&A costs supported by importers. Those adjusted prices would then be at comparable levels with the Union sales prices, as stated in table 7, and could therefore not have played a decisive role in the material injury suffered by the Union industry.
- (319) For the indicator analysis the CIF value of the exporting producers' sales of table 3 is compared with the ex-works price of the Union producers of table 7. This method is accurate for analysing trends. For the undercutting and injury margin calculations, adjusted prices were used indeed as explained in recital 231 above. In this respect, the Commission stresses that the undercutting is

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only one indicator to be looked at, but that all of the injury indicators should be taken together for the analysis. Therefore the claim is rejected.

1.2. *Effects of other factors*

1.2.1. *Imports from other countries*

(320) The volume of imports from third countries, the average unit prices and the market share during the period considered are shown in the table below.

Table 12

**Import volume (metric tonnes), average unit prices (EUR/tonne)**

		<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>IP</b>
<b>Total third countries</b>	<b>Volumes (Tonnes)</b>	128 378	182 601	183 446	174 553
	<b>Index (2010 = 100)</b>	100	142	143	136
	<b>Market share</b>	14 % - 19 %	22 % - 27 %	21 % - 26 %	20 % - 25 %
<b>Malaysia</b>	<b>Volumes (Tonnes)</b>	37 919	70 847	60 931	60 841
	<b>Av. price/ Tonne (EUR)</b>	980	1 029	998	958
	<b>Market share</b>	2 % - 7 %	7 % - 12 %	5 % - 10 %	5 % - 10 %
<b>Norway</b>	<b>Volumes (Tonnes)</b>	25 204	30 496	33 277	30 781
	<b>Av. price/ Tonne (EUR)</b>	1 167	1 044	1 006	944
	<b>Market share</b>	0 % - 5 %	1 % - 6 %	1 % - 6 %	1 % - 6 %
<b>Turkey</b>	<b>Volumes (Tonnes)</b>	18 430	20 017	23 235	19 233
	<b>Av. price/ Tonne (EUR)</b>	1 199	1 231	1 064	1 067
	<b>Market share</b>	0 % - 5 %	0 % - 5 %	0 % - 5 %	0 % - 5 %

Source: Eurostat (Comext).

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

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- (321) Besides the PRC, the product concerned is imported mainly from Malaysia, Norway and Turkey. Some minor imports also come from Mexico, the United States and Taiwan. The overall market share of the third countries was characterised by a sharp increase between 2010 and 2011. Subsequently, the market share decreased in the IP.
- (322) The majority of imports from third countries (with the exception of some small quantities from Taiwan) were priced significantly higher than the Chinese imports. Moreover, the overall average prices of imports from other countries were higher than or similar to the Union industry's prices.
- (323) Malaysia accounted for the largest share of the third country imports into the Union (40 %). However, the imports from Malaysia were limited to one type of filament glass fibre products, namely chopped strands. Malaysia's market share on the Union market increased over the period considered. On average, the chopped strands import prices from Malaysia were also higher than those from the PRC and nearly as high as those from the Union industry. In addition, Malaysian prices did not prevent the prices of the Union producers to increase between 2010 and 2011 when provisional duties were imposed against the PRC. If Malaysian prices were truly inflicting material injury on the Union industry, the Union producers could not have increased their prices when the provisional anti-dumping duties were imposed on imports from the PRC. Imports from Malaysia are competing with Union industry production but have been a stable factor throughout the period considered, in terms of price, product type and quantities.
- (324) Imports from Norway accounted for the second largest share of third country imports into the Union. Norway's market share on the Union market stayed stable over the period considered. The average import prices per product type from Norway have been higher than those from the PRC. These Norwegian imports are mainly rovings made by one single company belonging to the same group as one of the Union producers. Moreover, all of the Norwegian production is sold through the Union producer. Hence we do not consider Norway to be third country competition.
- (325) Imports from Turkey accounted for the third largest share of third country imports into the Union. Turkey's market share on the Union market stayed stable over the period considered. On average, the import prices per product type of the like product were also significantly higher than those from the PRC.
- (326) The government of the PRC also stated that Union stocks increased in 2011 following a massive increase in imports from third countries, whilst imports from the PRC decreased in the same year.

- (327) Indeed, between 2010 and 2011 the Chinese imports decreased and the third country imports increased. However, the Union industry was still profitable during 2010 and 2011 and became loss making afterwards which coincided with the increase of dumped and subsidised imports from the PRC. Third country imports decreased after 2011 and can therefore not be the reason why the Union industry became loss making subsequently. For the above reasons, it is reasonable to conclude that whereas part of the imports from other countries might have affected negatively the Union industry, it has not been to the extent as to break the causal link between dumped and subsidised imports from the PRC and the injury to the Union industry.
- (328) Following the definitive disclosure, several parties claimed that the product mix as used for the undercutting analysis (price comparisons between Chinese and Union producers) has not been used for imports from third countries. The government of the PRC explicitly requested details on the product mix of the third country imports which are not discernible from Eurostat statistics.
- (329) The Commission did take the product mix fully into account for the analysis of the third country imports by comparing the third country prices per product type with the corresponding Union prices per product type. Given that for the three third countries there is only one producer, no specific data could be disclosed for confidentiality reasons.
- (330) The government of the PRC claimed that the Commission's conclusion that a part of the third country imports may have affected the situation of the Union producers but did not break the causal link is not objective, nor based on a reasoned analysis.
- (331) The three main third countries that exported the like product to the Union were Malaysia, Norway and Turkey. As already stated above, the Malaysian imports were focused on one product type with comparable price levels to the Union industry. The Norwegian producer is not considered to be third country competition for the reasons stated above. The market share of the Turkish imports has stayed stable and relatively low in volume over the period considered. The claim that third country imports have broken the causal link is herewith rejected.
- (332) The government of the PRC also claimed that the Commission neglected the effects of the imports from Taiwan and Mexico which show significant changes in prices and volumes.
- (333) Given the limited volumes of imports from Taiwan and Mexico, these imports could not have broken the causal link.
- (334) In addition, the government of the PRC claimed that the Commission neglected in its analysis of Chinese stockpiling the fact that between 2010 and 2011 the third country imports increased with more than 40 %.

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

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- (335) The statistics (see recital 224) show that stockpiling of Chinese products took place in the second and third quarter of 2010 (for consumption before the end of 2010/beginning of 2011 due to the limited shelf life). The increase in third country imports has been recorded in 2011, when the stockpiling effect had run out and when measures against imports from the PRC entered into force, which turned out to be beneficial for third country producers. Therefore this claim is rejected.

#### 1.2.2. *Cost of production*

- (336) Several parties stated that the increase in the cost of production of the Union industry, mainly due to the increase in raw materials, energy, transportation and personnel costs impacted negatively the profitability of the Union industry. One party also identified the failure of the customers to return bobbins as an important cost factor, without further developing the cost impact. They supported these claims by providing quotes from the Union producers that they were indeed facing cost increases.
- (337) The Union industry faced indeed cost increases in raw materials, energy, transportation and personnel cost. However, as can be seen in table 8 above, the average cost of production for the Union industry per tonne increased only by 1 % between 2010 and the IP. This means that the Union industry was able to offset most cost increases via efficiency gains and a higher productivity. Therefore, it is concluded that the increase in the cost of production did not contribute to the injury and therefore, could not break the causal link.
- (338) Following the definitive disclosure, several parties reiterated their claims without bringing new arguments forward.

#### 1.2.3. *Development of consumption*

- (339) As mentioned above, Union consumption increased by 3 % between 2010 and the IP. Consumption is expected to increase further given the new applications in which the like product is used, as was stated both by the Union industry and many users. However, the Union industry was not able to maintain its market share and it lost part of it, while dumped and subsidised imports from the PRC have been increasing their market share since 2011. Therefore, the changes in consumption in the Union could not have broken the causal link between injury and the dumped and subsidised imports from the PRC.

#### 1.2.4. *Insufficient production capacity and stocks in the Union*

- (340) The government of the PRC claimed that injury, if any, is caused by the insufficient production capacity of the Union producers. The government of the PRC referred to a number of financial statements by Union producers. The 2010 financial statements of 3B Fibreglass state that '*our limited production capacities have not allowed them to take additional market shares*' and '*have forced us to deal with the evolution of demand of our clients with a limited*

*level of inventory'. The 2011 financial statements of 3B Fibreglass state that 'the signs of redress of the economy in 2010 were confirmed in the first half of 2011 but the production performance levels of the company being lower than expected in the first trimester, have not allowed us to fully benefit from the uptake in activity and have led us to limit our contractual engagements in 2011'. The 2011 financial statements of Lanxess state that 'In 2011, the glass fibre production at Lanxess was operating at maximum capacity' and 'In the second quarter of 2012, the planned shutdown of furnace 1 will take almost 10 weeks and the annual production will thus be 14 % lower in 2012'.*

- (341) The stock levels in 2010 were indeed low, see table 10 above. This was the result of a reduction in the level of production in 2009 when several production lines were dismantled, temporarily closed or curtailed in view of the price erosion and loss of market share caused by the dumped imports from the PRC.<sup>(37)</sup> However, the Union industry has increased its stock levels by more than 150 % in 2011 and continued increasing it ever since. Referring to statements of some scarce inventory for only the year 2010 is not appropriate, instead a trend should be discerned for the whole period considered.
- (342) In addition, some of the quotes refer to reduced production performance levels as a result of furnace repairs/rebuilds. As explained in recital 241 above, such repairs/rebuilds are inherent to this sector and it is customary to build up stock in view of repairing/rebuilding a furnace allowing a continuation of supply to key customers.
- (343) Moreover, the Union industry could invest in more capacity if there would be a fair level playing field allowing the Union industry to make a profit that justifies and allows capacity expansion.
- (344) Union production capacity and stocks are not considered to be insufficient and hence, could not have contributed to the injury and therefore could not have broken the causal link between dumped and subsidised imports and the injury suffered by the Union industry.

#### 1.2.5. *Impact of the economic crisis*

- (345) Several parties claimed that the injury suffered by the Union industry was caused by the economic crisis which had resulted in a sharp decline in demand by the user industries (such as the automotive industry and the wind energy market).
- (346) The government of the PRC quoted several Union producers such as the 2010 financial statements of European Owens Corning Fibreglass SPRL ('EOCF') where it said that *'This decrease is partly explained by the strong dependence of this activity on the wind energy market, the degradation of which has continued because of the difficulty of the actors involved in this market to finance new projects'*, the 2011 financial statements of Lanxess where it said that *'Following the introduction of anti-dumping measures against Chinese*

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

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*imports LANXESS was able to increase its selling prices. In the second half of 2011, however, we note a decrease of 16 % compared to 2010 because of the downward economic trend' and the 2012 financial statements of EOCF where it said that the turnover of 2012 'is mainly due to the continuing economic crisis that does not allow them to operate at full capacity'.*

- (347) Indeed, a drop of 3 % in Union consumption of filament glass fibre products could be observed between 2010 and 2011. However, by the end of the IP, Union consumption had increased again by 6 percentage points.
- (348) The quote that one of the companies had to lower its prices by 16 % in the second half of 2011 as compared to 2010, only gives a partial view on the situation of 2011. The investigation revealed an increase of 8 % in the unit price for the full year of 2011 (as compared to 2010).
- (349) In addition, whereas the Union industry was still profitable during 2010 and 2011, it became loss making afterwards which coincided with the increase in dumped and subsidised imports from the PRC undercutting the prices of the Union industry.
- (350) The economic downturn between 2010 and 2011 could be considered as contributing to a deterioration of the economic situation of the Union industry. However, the economic downturn does not explain the loss making situation of the Union industry in 2012 and the IP. The main losses occurred only after the economic downturn in a period when consumption was increasing again.
- (351) As to the 2011 Owens Corning quote, it is important to note that the quote comes from EOCF which is Owens Corning's trading entity for all of their businesses in Europe and the Middle East. In addition to the like product, EOCF also sold during that period non-woven products, fabrics, roofing products (shingles) and insulation products, which are not covered by the proceeding. This quote is therefore not specific to the like product on the Union market.
- (352) As to the 2012 Owens Corning quote, it refers specifically to the fabrics business conducted by EOCF in one of its plants. Given that fabrics are not part of the like product, this quote is not relevant.
- (353) Given the above circumstances, the economic downturn might have affected negatively the Union industry but not to such an extent that it could break the causal link between the dumped and subsidised imports and the injury suffered by the Union industry.

#### 1.2.6. *Competitiveness of dumped and subsidised imports from the PRC*

- (354) Some parties claimed that the outdated technology of the Union industry as compared to the modern technology applied by the Chinese exporting producers caused injury, rather than dumping or subsidising of the product concerned.

- (355) However, the investigation confirmed that the Union industry has up to date production processes as well. The claim that the state of the Union industry's technology would break the causal link between the dumped and subsidised imports and the injury suffered by the Union industry is therefore rejected.

1.2.7. *Self-inflicted injury*

- (356) Several parties claimed that the injury might be self-inflicted as (i) the prices offered by Union producers in 2014 were lower than the quotes such parties received from Chinese exporting producers, as (ii) investments made by the applicants in recent years contradict injury, as large investments are difficult to reconcile with a notion of an industry suffering injury and did not lead to a higher market share for the Union industry, as (iii) investments made by the applicants might have been in the restructuring and installing of additional capacity for the production of the 'wrong' filament glass fibre products, for example products for which there is more limited demand, and not for example for chopped strands for which the parties claim there was significant demand and in fact a potential supply shortage in the Union.
- (357) Regarding the first claim on lower prices offered by Union producers, it should be noted that this allegation consists of a post IP event and price levels in 2014 could not be considered. Moreover, given that furnaces operate 24 hours a day and that it is very costly to slow down production, the Union industry has been trying to keep market share by selling at lower prices and therefore still covering part of its fixed costs.
- (358) As regards the large investments done by the Union industry over the recent years, it should be reminded that in this capital intensive industry, furnaces have to be rebuilt every 7 to 10 years and the costs associated with rebuilding a furnace can amount to EUR 8 million — EUR 13 million (range given for reasons of confidentiality). A good part of the other, more structural high investment costs is linked to the alloy consumption from the bushings and the consequent rebuilding of bushings. Therefore, these investments are inherent to the industry and are necessary to maintain the current capacity. Investments which are dedicated to R & D are also necessary in order to stay in the market and to fulfil the client's needs.
- (359) As to the third claim on allegedly 'wrong' investments for other products than chopped strands, it should be noted that (i) the Union industry restructured in view of being able to offer a wide variety of products. No evidence was provided that such type of restructuration was not economically viable, and (ii) the ceased production of chopped strands that took place due to restructuring over the recent years was transferred to another production plant that was converted.
- (360) The government of the PRC claimed that Union producers were keeping stock of imports from third countries and quoted the 2011 financial statements of

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

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one of the Union producers that stated that: *‘Merchandise inventories (EUR 21,4 million at 31 December 2011) are increasing due to global slowdown experienced in our business during the second half of the year, the stock consisting up to 75 % of finished products imported from companies of the [...] [our] group outside of Europe, the rest being mainly materials and products necessary for the Fabrics activity’.*

- (361) The increase in this Union producer's 2011 reported stock levels is explained by a stock-up to supply one of its non-EU plants when the latter had a furnace rebuild in 2012. No imports from other non-EU plants would have been done if those products for the non-EU plant could have been produced in the Union.
- (362) Following the definitive disclosure, the government of the PRC requested to make clear if such imports were from the PRC or elsewhere and how much the volumes were. However, the sampled Union producers did not purchase the product concerned from the PRC in the period considered.
- (363) The government of the PRC also claimed that the injury might be self-inflicted as the Union producer 3B Fibreglass decided to rebuild stock for BASF in 2011 at times when there was insufficient production. They quote hereby from 3B Fibreglass's 2011 financial statements: *‘to rebuild our stocks for BASF and to face the repair in cold of oven No 2.’.*
- (364) However, it is normal business behaviour to secure stock to be able to fulfil contractual obligations with key accounts. Moreover, the quote also refers to a planned furnace repair which requires to make stock provisions to be able to supply the customers (and to fulfil 3B's contractual supply agreements to its customers) during the repair.
- (365) In view of the above, the claim of self-inflicted injury that would break the causal link between the dumped and subsidised imports and the injury suffered by the Union industry is therefore rejected.

#### 1.2.8. *Export sales of the Union producers and relocations to be closer to markets*

- (366) The government of the PRC claims that the alleged injury, if any, was caused by the decision to relocate to the location of the user industries. They add that this does not only happen at the Union level but also on a global scale. The Government of the PRC states that the Union producer P+D expanded its activities in Russia and India, the Union producer 3B in Tunisia, the Union producer PPG in the PRC and the Union producer Ahlstrom shifted its production from Europe to the PRC in early 2011 to better serve the growing wind energy markets in Asia and the PRC in particular.
- (367) Given that many filament glass fibre producers are multinational companies, it is no surprise that these companies also invest outside the Union when there is a business opportunity. Investing in extra capacity outside the Union is done to fulfil the needs of emerging markets and with the prospect of making a profit. Setting up plants in these regions does indeed fit into the picture of

being close to these customers. However, a business decision to set up or not a plant outside the Union stands completely separate from the fact that the Union producers are suffering injury.

- (368) Following the definitive disclosure, the government of the PRC reiterated its claim that large overseas investments have taken production, jobs and export sales away from the Union and therefore caused injury.
- (369) This claim is not substantiated. Filament glass fibre producers operate according to a regional proximity model where clients are supplied by production plants in their respective region. The indicators related to capacity and employment do not show that potential large overseas investments were made to the detriment of the Union operations.
- (370) The government of the PRC also claimed that the decreases in the Union industry's export sales had serious negative effects which were not analysed by the Commission.
- (371) In the present investigations, the weight of the export sales of the Union industry (to related and unrelated customers) accounted between 11 % and 13 % of the total sales of the Union industry (to related and unrelated customers) over the period 2010 till the end of the IP. Similarly, during the original anti-dumping investigation this weight fluctuated between 10 % and 14 % from 2006 till September 2009. Given that the fluctuations of the export volumes are not significant and in line with export volumes of the previous anti-dumping investigation, the evolution of export sales did not have serious negative effects as claimed above.
- (372) For the above reasons, export sales of the Union producers and relocations did not contribute to the injury and therefore cannot break the causal link between dumped and subsidised imports and the injury suffered by the Union industry.

#### 1.2.9. *EUR/USD exchange rate*

- (373) The government of the PRC claimed that Chinese supplies involve risks linked to higher logistics complexity and exchange rate fluctuations and that therefore customers are reluctant to become overly exposed to such risks. One user stated that Chinese filament glass fibre product prices are strongly dependent on the exchange rate between EUR and USD. Given that the USD has gradually become weaker in comparison to the EUR since the 2000, allegedly this could have broken the causal link.
- (374) Indeed, in early 2000, the EUR was weaker as compared to the USD than today. However, it should be noted that the EUR/USD exchange rate was fairly stable over the period considered. During the period considered the profitability of the sampled Union producers decreased nevertheless considerably from 3 % to -4 %. Even if the EUR/USD exchange rate could be considered as contributing to the injury, this cannot in any way diminish

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

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the damaging injurious effects of low priced dumped imports from the PRC in the Union market over the period 2011 till the end of the IP.

- (375) Therefore, the EUR/USD exchange rate did not contribute to the injury and could not break the causal link between dumped imports and the injury suffered by the Union industry.

1.3. *Conclusions on causation*

- (376) In conclusion, the above analysis has demonstrated that there was an increase in the volume and market share of the dumped and subsidised imports from the PRC. The pressure exercised by the increase of the dumped and subsidised imports on the Union market did not allow the Union industry to set its sales prices in line with normal market conditions and the recorded cost increases. Even after lowering its sales price, the sampled Union producers did not succeed in maintaining market share. This price decrease was at the expense of profitability, leading to a non-sustainable loss-making situation.

- (377) The analysis above has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. Based on this analysis, the conclusion is that the dumped and subsidised imports from the PRC have caused material injury to the Union industry within the meaning of Article 3(6) of the basic anti-dumping Regulation and Article 8(5) of the basic anti-subsidy Regulation.

- (378) The known factors other than the dumped and subsidised imports have been assessed in line with Article 3(7) of the basic anti-dumping Regulation and Article 8(6) of the basic anti-subsidy Regulation. None of these factors, analysed both individually and cumulatively, were found to break the causal link between the dumped and subsidised imports and the injury suffered by the Union industry.

- (379) Following the definitive disclosure, the government of the PRC claimed that the Commission only dismissed the arguments of the interested parties instead of examining all known factors other than the dumped imports which are causing injury to the Union industry.

- (380) The Commission has looked into the effect of the following other factors: imports from other countries, cost of production, development of consumption, production capacities and stocks, economic crisis, competitiveness of imports from the PRC, self-inflicted injury, export sales of the Union producers and relocations, and EUR/USD exchange rate. The investigation did not reveal any other factors that could possibly break the causal link.

**F. UNION INTEREST**

- (381) In accordance with Article 31 of the basic anti-subsidy Regulation, the Commission examined whether, despite the conclusion on injurious

subsidisation, compelling reasons existed for concluding that it was not in the Union interest to adopt measures in this particular case. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

- (382) All interested parties were given the opportunity to make their views known pursuant to Article 31(2) of the basic anti-subsidy Regulation. The Commission sent questionnaires to 5 independent importers and to 34 users. Eventually, 2 importers and 13 users submitted a complete questionnaire reply within the time limits set. In addition, several users and associations of users came forward in the course of the investigation with letters expressing opposition to any possible measures in this case. The government of the PRC and the CCCLA also brought submissions forward with claims against any possible measures in this case.
- (383) In the original anti-dumping investigation the imposition of measures was considered not to be against the interest of the Union. As the interim review is limited to injury, the Union interest findings at the time remain valid. The below analysis therefore concerns the anti-subsidy investigation.

**1. Interest of the Union industry**

- (384) The existing anti-dumping measures have not led to a reduction in dumped imports from the PRC and have not offered relief to the Union industry. As mentioned above, the Union industry continued suffering material injury following the price erosion caused by dumped imports from the PRC. Not imposing measures would most likely lead to a continuation of the negative trend of the financial situation of the Union industry. The situation of the sampled Union producers was particularly marked by a decrease in profitability from + 3 % in 2010 to – 4 % by the end of the IP. Any further decline in performance would ultimately lead to cuts in production lines and more closures of production sites, which would therefore threaten employment and investments in the Union.
- (385) The imposition of measures would restore fair competition on the market. The Union industry's downward trend in profitability is the result of its difficulty in competing with the subsidised, low-priced, imports originating in the PRC. It is expected that the imposition of anti-subsidy measures would therefore put an end to the price depression and loss of market share and that the sales price of the Union industry will start to recover, resulting in an improvement of the Union industry's profitability towards levels considered necessary for this capital intensive industry.
- (386) Measures would give the Union industry the opportunity to recover from the injurious dumping found during the investigation.
- (387) Accordingly, it is concluded that the imposition of anti-subsidy measures would clearly be in the interest of the Union industry.

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

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(388) Following the definitive disclosure, one industry association claimed that increased measures would not bring any relief to the Union industry given that the original measures of 2011 apparently did not have any effect.

(389) The Commission rejects this claim and refers to the recitals above where is concluded that not imposing increased measures would most likely lead to a continuation of the negative trend of the financial situation of the Union industry.

## 2. **Interest of importers**

(390) As indicated above, sampling was not applied for the unrelated importers and two unrelated importers fully cooperated in this investigation by submitting a questionnaire reply. Activities related to the product concerned represent only a minor part of the overall turnover of the two importers (less than 0,5 %). They both opposed a potential increase in anti-dumping measures as they considered that it could lead to a cessation of imports of the product concerned from the PRC.

(391) Together, the imports declared by these two importers represented a considerable share of all imports from the PRC in the IP and hence are considered to be representative of importers in the Union. No other importers have cooperated by submitting a questionnaire reply or substantiated comments. On that basis, it is concluded that, given the limited share of the product concerned in the overall activity of the importers, the imposition of measures will not have significant negative effects on the overall interest of the Union importers.

## 3. **Interest of users**

(392) The like product is used for a large number of applications such as automotive industry, wind energy turbines, marine, transportation, and aerospace and infrastructural applications. Cooperation was obtained from a large variety of users which were grouped according to the sector of operation: manufacturers of compounds, manufacturers of composite materials, multiaxial fabric weavers and wind turbine manufacturers. This allowed the Commission to assess the impact of increased measures on different types of users.

(393) Cooperating users purchased around 13 % of the product concerned from the PRC during the IP. Accordingly, the large majority of the like product was purchased from other sources such as third countries and the Union industry. Only a few of them bought the product concerned exclusively from the PRC.

(394) There is a wide range of downstream industries using the like product and they also differ in size, ranging from global companies to SME. From the information submitted during the investigation it further appears that the Union users' industry employs a significant number of people estimated at

100 000 people although no comprehensive and substantiated data has been submitted.

3.1. *Possible impacts of measures on users' profitability*

- (395) Overall, based on the questionnaire replies, the filament glass fibre user industries were found to be in relatively good shape. Indeed, most of the cooperating users reported profits on the sales of their products using the product concerned throughout the period considered. Whereas only a couple of users reported a loss on this activity during the IP, the profit of most others was ranging between 2 % and 22 %. Therefore, even under the current measures the user industries were still able to make a profit.
- (396) Based on the data received, a user impact analysis was carried out for each of the user groups.
- (397) The investigation revealed that, depending on the characteristics of the various user industries, the ability to pass on any increase in duty to their customers is different and hence, the impact of an increase in duty on the profit margin will be different for each user industry.
- (398) In summary, the imposition of combined measures would result in a decrease of the profit of the users by less than one percentage point for the vast majority of the user industries, with the exception of the multiaxial weaver industry. For the latter, the share of the product concerned in the costs of production is higher than for the other user industries considered. Hence, these particular users will be affected more significantly than the other users assessed.
- (399) Based on the above analysis, it is highly likely that the users in the compounding, composites and wind turbines industries can absorb part or the entirety of the cost increase. Moreover, they might also be able to pass on part of the increased costs to their customers. In this respect, one major user active in the wind turbine manufacturing commented that it settled with the conclusions of the investigation and that it will absorb the duties.
- (400) This overall limited impact on profitability also means that the employment at the user industry level is not threatened by the proposed increase of the duties to the extent as alleged by several users.
- (401) In any event, any potential negative effect would be mitigated by the continued access for users to third country imports. The imposition of measures does not preclude the users from sourcing from different suppliers.
- (402) Following the definitive disclosure, several users claimed that the arguments of the users were dismissed on the basis of qualitative statements only. They also claimed that the decrease of their profit margin is much higher than one percentage point as stated in recital 398 above, especially when considered on an individual product basis.

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

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- (403) These claims are dismissed for the following reasons. On the basis of data provided by the users, the Commission carried out detailed calculations to assess the quantitative impact of an increase in measures on the user's profitability. The industries using the product concerned are heterogeneous and show a great deal of differences in terms of size (ranging from SMEs to Multinational Enterprises), their dependence on the product concerned and the applications of their final product and their customer base (small to large companies, sales in the Union versus export sales). As already explained above in recital 398, the Commission recognises that some user segments will be more impacted than others. Based on the data provided by the cooperating users, the share of the product concerned used, purchased from the PRC, was rather limited (less than 13 % — see recital 393). Furthermore, the share of the product concerned from the PRC in the total cost of production was on average also limited, i.e. less than 4 %. The latter is significantly higher for the multiaxial weaver examined though. The impact of an increase in duties was calculated under the assumptions that a similar volume of glass fibre would be purchased from the PRC as reported in the IP, and that the Chinese imports' prices would be subject to duties of some 30 %, even though the large majority of Chinese exporting producers will be subject to lower duties. Under these assumptions, the calculations showed that, on average for all cooperating users, the impact of an increase in price of the product concerned originating in the PRC on profitability will be less than one percentage point as stated above.

3.2. *Lack of interchangeability*

- (404) It was claimed by several users that many of the filament glass fibre products needed by the user industry could not be purchased off-the-shelf. Instead, suppliers would need to go through a lengthy and complicated qualification process which could take 6 to 12 months, without a guarantee of success. Therefore, to change supplier in order to avoid paying duties would be costly, impossible in the short term and risky from a technological point of view.
- (405) In this respect, it is recognised that, in particular applications, the characteristics of the product concerned can indeed result in a lengthy qualification process which includes testing. However, also in view of the comments received from several users, at this moment, multiple sources exist in most cases. Moreover, the investigation found that users usually have multiple supply options as a fall-back position and often have qualified the product of several suppliers in order not to be dependent on just one supplier. It should also be recalled that measures are not meant to deny certain suppliers' access to the Union market — as any measure proposed is only meant to restore fair trade and correct a distorted market situation.

- (406) Therefore, it is unlikely that imposing measures on the product concerned from the PRC will result in a temporary cessation of raw material supply to the user industry.
- 3.3. *Inability to pass on cost price increases and increased competition from non-Union downstream products*
- (407) Several users claimed that they are facing fierce competition from non- Union producers and hence, would not be in a position to pass on the product concerned price increases to their customers as this will lead to a loss in sales. Given the diversity among the user companies, the ability to pass on potential cost increases to the customers will be different from one type of user to another. Nonetheless, on the basis of the data in the questionnaire replies, for users not in a position to pass on most of the cost increase, in most cases, their turnover and profitability would be affected only to a limited extent.
- (408) Several users expressed the concern that the imposition of anti-subsidy duties would create a competitive disadvantage towards non-Union suppliers which have access to the product concerned without measures. Users claim to be in competition with imports from the PRC on their downstream markets. The imposition of combined measures would further exacerbate the competition situation. In view of these circumstances, it was argued that it would not be possible to pass on a price increase in their raw material to the customers. It was argued further that this would lead to the relocation of the production outside of the Union triggering important losses of employment.
- (409) It should be noted that the fact that the imposition of anti-subsidy measures might trigger more competition, cannot be a reason for not imposing measures, if warranted. These investigations concern a specific product. Any user industry is fully entitled to resort to the Union trade law and request an anti-dumping investigation for their products. In addition, corporate location decisions depend on a large number of factors. It is unlikely that a relocation decision depends solely on duties on one raw material.
- (410) Several parties claimed that the Union producers are global foreign-owned companies and that most of the composite companies are, however, small or medium size and locally owned. These SMEs claimed that an increase in duties will trigger job losses. Also the CCCLA claimed that job losses will occur in the Union when users will relocate due to the increase in duties. In addition, one user also stated that any relocation by the users will lead also to lower sales for the Union industry.
- (411) The Commission equally considers all jobs in the Union, regardless of the ownership and the size of the company. In this respect, the Commission refers also to recitals 400 and 403. In addition, the Commission considers the claims on relocation, potential job losses, and lower sales for the Union industry as speculative and unsubstantiated.

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

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(412) Several parties stated that products are currently manufactured in the Union for the global market in competition with third countries. One user stated that it can import the product concerned under inward processing control without paying anti-dumping duties as long as the finished product that they manufacture is then exported outside the Union. However, the result of this is that this user can offer their non-Union customers more competitive prices than their Union customers.

(413) Indeed, users can make use of importing the product concerned under inward processing control without paying the anti-dumping duties as long as the finished product that they manufacture is then exported outside the Union. This does however not alter the conclusions of the Commission in this investigation.

#### 3.4. *Shortage of supply*

(414) One user stated that the Union industry is not in a position to fully meet demand in the Union in particular with respect to certain types of large orders of tailor-made filament glass fibre products. In addition, that user states that most likely due to limited Union production capacities, no Union producer would be willing to dedicate a large part of its capacity supplying a single customer. Another user stated that there is no excess supply of chopped strands and that excluding the PRC from the Union market would lead, especially in view of a rise in demand, to significant supply problems in the Union market. The government of the PRC quotes the Union producer 3B that no new melting capacity has been installed in the industry since 2002, and that in order to meet market needs, particularly in Europe, there is a need for an additional production capacity of 200 000 tonnes.

(415) In this respect, it should first be noted that the purpose of anti-subsidy measures is to remedy unfair trading practices having an injurious effect on the Union industry and to re-establish a situation of effective competition on the Union market, not to eliminate imports. The measures as proposed are not such as to close the Union market for the exporting producers from the PRC even at non-injurious prices, and will therefore allow the continued presence of imports of chopped strands, as well as other filament glass fibre products from the PRC on the Union market.

(416) As concerns the ability of the Union industry to cater to any potential shortage of chopped strands, the current level of capacity utilisation of the Union industry allows for some additional production by the Union industry.

(417) Chopped strands, just as any other product types of the product concerned, could also be imported into the Union from third countries such as Malaysia.

(418) Moreover, Chinese filament glass fibre producers have been setting up plants in closer proximity to the Union (Egypt and Bahrain) as a basis for supplying the Union market.

- (419) In view of the above, it can be concluded that a potential shortage of supply of chopped strands can be addressed by extended capacity utilisation of the Union industry, by imports from other sourcing countries as well as by continuing imports from the PRC at a non-injurious price.
- (420) On the basis of the sections above, it is concluded that the overall effect of the imposition of combined measures on the Union downstream industries is limited, and would not outweigh the positive effect of the measures for the Union industry.
- (421) Following the definitive disclosure, one industry association stated that it is difficult to understand that the Union producers have idle capacity whereas there is a shortage of glass fibre with price increases on the Union market. Several parties reiterated their claims that imposing further measures will lead to shortage of supply from Union producers.
- (422) For the period considered, the investigation has not revealed any shortage of supply. As to potential future supply shortages, the Commission considers that an increase in duties does not prevent imports into the Union from the PRC and from third countries as set out above.

#### **4. Conclusion on Union interest**

- (423) On the basis of the above, it is expected that the imposition of combined measures would provide an opportunity for the Union Industry to improve its situation through increased sales prices and market share. While some negative effects may occur in the form of cost increases for certain users, they are likely to be outweighed by the expected benefits for the Union industry and their suppliers.
- (424) Therefore, it is concluded that on balance, no compelling reasons existed against the imposition of measures on imports of the product concerned originating in the PRC.
- (425) Following the definitive disclosure, several parties claimed that the consequences of the proposed measures are underestimated. They claim that the Commission places more credence on the claim from a small group of glass-fibre manufacturers than on the resistance from a much larger, but fragmented group of mainly small and medium-sized sub-suppliers who have not had a real opportunity to respond with the same clout.
- (426) These claims are rejected as ample opportunities have been given to users to come forward during the investigation. Many have done so and their data has been thoroughly examined and taken into account. Importance has been given to all interested parties during the investigation.

### **G. DEFINITIVE ANTI-DUMPING AND ANTI-SUBSIDY MEASURES**

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

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- (427) On the basis of the conclusions reached by the Commission on subsidy, injury, causation and Union interest, definitive measures should be imposed to prevent further injury being caused to the Union industry by dumped and subsidised imports.

1. **Injury elimination level**

- (428) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.
- (429) The injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports. As in the original investigation, a target profit of 5 % was used.
- (430) A target profit of 10 %-12 % has been requested by APFE. APFE claimed the target profit for the analysis should take into account the need for a highly capital intensive industry to achieve a satisfactory return on capital employed as expected by investors. APFE also refers to a Stern Business School of New York University report which calculated the weighted average costs of capital (WACC), combining the cost of equity and the cost of debt for various industry sectors.<sup>(38)</sup> The Stern report calculates the average WACC for the filament glass fibre industry at between 8,3 % and 8,4 %. In addition, APFE refers to the profit of 8.3 % used in the China solar glass case<sup>(39)</sup>. They further claim that considering that equity and debt costs are somewhat higher in the Union than the US, the rate for the Union would be slightly higher, in the range of 10 % to 12 %.
- (431) The actual profit made during the period considered cannot be used given that there were still significant volumes of dumped imports coming in from the PRC despite the current duties in force.
- (432) In the solar glass case from the PRC, 8,3 % target profit was used as this was the average profit achieved by the sampled Union producers in 2010 when the imports of the product concerned were still small and therefore could not have distorted the normal conditions of competition yet (i.e. a profit not affected by dumped imports yet).
- (433) While it is undisputable that the Union industry is a highly capital intensive industry, APFE was not able to demonstrate that the target profit based on the WACC of the Stern Report meets the applicable test. Therefore the claim was rejected.
- (434) Following the definitive disclosure, APFE argued that the findings about the target profit should be revised given that the Union industry is capable of

achieving profit levels above 5 % in relation to product types, such as wet use chopped strands (WUCS) for nonwovens and WUCS for gypsum, where they can compete fairly with imports from third countries and where they do not face aggressive underselling by dumped and subsidised Chinese filament glass fibre products.

- (435) A target profit of 5 % was used in the previous investigation. In the absence of substantiated arguments regarding changed market conditions which would justify a higher target profit, this target profit has been maintained.
- (436) In addition, whereas WUCS, like any other types of the product concerned, are used as reinforcement material, WUCS have a limited shelf life and higher transport costs due to the weight of the water content (see recital 63). WUCS are imported into the Union in much lower quantities than the other filament glass fibre products. The profit margin for this sole product type is therefore not representative for the product concerned.
- (437) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the sampled exporting producers from the PRC, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (438) Following the definitive disclosure, one exporting producer claimed that there were some inaccuracies with the CIF values of 3 PCN's.
- (439) Upon verification, the Commission has adjusted the respective CIF values which led to a small change in the undercutting and underselling margins for this exporting producer.
- (440) As a result, the following injury elimination levels have been established:

<b>Company</b>	<b>Injury elimination level</b>
Jushi Group	24,8 %
Jiangsu Changhai Group	4,9 %
Chongqing Polycomp International Corporation	29,6 %
Other cooperating companies	26,1 %

- (441) One user claimed that all the facts remained the same and that therefore, the only way the Commission can reach a conclusion that the injury allegedly caused by imports from the PRC has worsened is if the Commission were to employ a different methodology in calculating the injury margin as compared to the original investigation.

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

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- (442) The facts have not remained the same. Therefore, applying the methodology of the original investigation, the calculation of the current injury margin is leading to a different result, in view of a change in the underlying data, such as the costs, prices and losses.
- (443) Following the definitive disclosure, one exporting producer wondered what change in circumstances would justify a PCN-based calculation of injury margin as opposed to the simple average price-to-price comparison as made in the original investigation.
- (444) The Commission considers that the basic methodology of the current investigations is the same as the one applied in the previous investigation. Sampling was applied and any comparison was carried out on a like-to-like basis. A PCN-based calculation of the injury margin allowed for a more detailed and accurate calculation, but this cannot be considered as a change in methodology.
- (445) The same exporting producer also stated that chopped strand mats made from glass fibre filaments form part of the product concerned but that the injury margin calculation does not reflect PCN's for chopped strand mats. The exporting producer wondered if (i) the Union producers were not producing any longer those chopped strand mats and (ii) why the Commission did not seem to have had in the past any difficulty in finding a substitute to a major product type for the purpose of an injury margin calculation even if there was no exact match on a PCN basis.
- (446) The product concerned does indeed include chopped strand mats and some (entities of) Union producers produce these mats. The sampled Union producers produced types of mats which were not imported from the PRC during the IP. However, overall, the PCN matching was high and therefore there was no need to resort to any substitutes.
- (447) In addition, this exporting producer wondered i) why a level of trade ('LOT') adjustment was necessary and to whom the Union producers actually sell their products, and ii) why, for Chinese sales, EU transportation costs to the warehouse and warehousing costs were not taken into account in the injury margin.
- (448) Sales by the sampled Union producers are made predominantly directly to the end-users. For the sampled Chinese exporters, this was not the case. More sales were going via distributors or other intermediate sales channels. Hence, bringing all sales to the level of an end-user sale was deemed to make prices more comparable. According to standard methodology, the undercutting calculation takes into account post-importation costs whereas the injury margin is based on the CIF value of the Chinese export sales.

- (449) The exporting producer also wondered why the existing anti-dumping duty is not included in the injury margin as including this duty in the CIF value would be consistent with the applied price undercutting methodology.
- (450) The injury elimination margin as presented in this Regulation reflects the full margin necessary to eliminate the injury. When the existing anti-dumping margin would have been included in the injury elimination margin, one would have only obtained a partial elimination margin.
- (451) Following definitive disclosure, the complainant claimed that due to the fact that Jiangsu Changhai Group was found not to be fully cooperating with the investigation (see section C. 2.1. above), the information related to Jiangsu Changhai Group's export price was unreliable and therefore, it should not be used in the calculation of the injury margin. The complainant argued that the group's export price may be flawed in the event it is being established based on the company's costs of production which could not have been properly verified because of the company's lack of full cooperation with the investigation. The group's export price should rather be established on facts available pursuant to Article 18(1) of the basic anti-dumping Regulation and to Article 28(1) of the basic anti-subsidy Regulation.
- (452) As explained in recital 92, within the group, the product concerned was not exported by the company which provided misleading information but only by OCH. The latter however cooperated fully in both investigations and provided reliable information about the group's export price (e.g. invoices were provided and were verified by the Commission on spot). Therefore, the Commission has no reason to question the group's export price. The calculation of the injury margin was done based on the actual verified export price — as appearing on the sales invoices — irrespective on how it was being set and whether it was based on any of the company's costs of production. This claim was therefore rejected.

## 2. **Definitive measures**

- (453) The anti-subsidy investigation was carried out in parallel with the review of the anti-dumping measures, limited to injury. In view of the use of the lesser duty rule, and the fact that the definitive subsidy margins are lower than the injury elimination level, the Commission should, in accordance with Article 15 of the basic anti-subsidy Regulation, impose the definitive countervailing duty at the level of the established definitive subsidy margins and then impose the definitive anti-dumping duty up to the relevant injury elimination level.
- (454) On the basis of this methodology and of the facts of the case, in particular the fact that the measures are limited by the injury margin, the Commission considers that no 'double-counting' issue arises in this case.
- (455) Given the high rate of cooperation of Chinese exporting producers, the 'all other companies' duty was set at the level of the highest duty to be imposed

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

on the companies sampled or cooperating in the investigations. The ‘all other companies’ duty will be applied to those companies which had not cooperated in the investigations.

- (456) For the other cooperating non-sampled Chinese exporting producers listed in Annex I, the definitive duty rate is set at the weighted average of the rates established for the cooperating exporting producers in the sample, with the exclusion of the Group to which the exporting producer subject to the provisions of Article 28(1) belongs.
- (457) Following the definitive disclosure, one exporting producer requested to qualify for individual treatment under Article 9(5) of the basic anti-dumping Regulation, and to receive an individual dumping margin calculation.
- (458) However, given that the partial interim review is limited to the injury, the dumping margins as established in the previous anti-dumping investigation remain unchanged. The request for an individual dumping margin was therefore rejected.
- (459) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Chinese exporter	Dumping margin (established in original investigation)	Subsidy margin	Injury elimination level	Countervailing duty	Anti-dumping duty
Jushi Group	29,7 %	10,3 %	24,8 %	10,3 %	14,5 %
Jiangsu Changhai Group	9,6 %	5,8 %	4,9 %	4,9 %	0 %
Chongqing Polycomp International Corporation	29,7 %	9,7 %	29,6 %	9,7 %	19,9 %
Other cooperating companies	29,7 %	10,2 %	26,1 %	10,2 %	15,9 %
All other companies duty rates				10,3 %	19,9 %

- (460) The individual company anti-dumping and anti-subsidy duty rate specified in this Regulation was established on the basis of the findings of the

present investigations. Therefore, it reflects the situation found during these investigations with respect to the company concerned. This duty rate (as opposed to the countrywide duty applicable to ‘all other companies’) is thus exclusively applicable to imports of products originating in the country concerned and produced by the company mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, 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’.

(461) A company may request the application of the individual duty rate if it changes subsequently the name of its entity. The request must be addressed to the Commission.<sup>(40)</sup> The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.

(462) In order to ensure a proper enforcement of the anti-dumping duty, the duty level for all other companies should not only apply to the non-cooperating exporting producers, but also to those producers which did not have any exports to the Union during the IP.

### 3. Undertaking

(463) One Chinese exporting producer offered a price undertaking in accordance with Article 8(1) of the basic anti-dumping Regulation and Article 13(1) of the basic anti-subsidy Regulation. The undertaking offer contained Minimum Import Prices (MIPs) for several main product types and sub product types of the product concerned.

(464) The Commission considers that the product concerned exists in a multitude of sub product types and grades whereby the difference of prices vary up to 700 %. Therefore there is a high risk for cross-compensation. Within one product type, prices also can range up to 550 % depending on the sub product types. Moreover, the different MIP's as proposed by the Chinese exporting producer were well under the non-injurious price and would therefore not remove the injury as suffered by the Union industry.

(465) In view of the above, for customs, it would not be possible to distinguish the specification without individual analysis of each transaction imported in order to determine into which MIP group the product would fall, thus rendering the monitoring very burdensome, if not impracticable.

(466) In addition, the company exports to the Union also other products which are not subject to measures. Accordingly, there exists a risk for compensation if those products are sold to the same customers. Some of its Union customers

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

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are related companies which trade also with other related companies from outside the Union. These complex trade and business links create further potential risks of cross-compensation.

(467) Based on the above, the undertaking offer was rejected.

(468) The Committee established by Article 15(1) of the basic anti-dumping Regulation did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

### *Article 1*

1 A definitive countervailing duty is hereby imposed on imports of chopped glass fibre strands, of a length of not more than 50 mm; glass fibre rovings, excluding glass fibre rovings which are impregnated and coated and have a loss on ignition of more than 3 % (as determined by the ISO Standard 1887); and mats made of glass fibre filaments excluding mats of glass wool, currently falling within CN codes 7019 11 00, ex 7019 12 00 (TARIC codes 7019 12 00 21, 7019 12 00 22, 7019 12 00 23, 7019 12 00 25, 7019 12 00 39) and 7019 31 00 and originating in the People's Republic of China.

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

<b>Company</b>	<b>Definitive countervailing duty (%)</b>	<b>TARIC additional code</b>
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	10,3	B990
Changzhou New Changhai Fiberglass Co., Ltd; and Jiangsu Changhai Composite Materials Holding Co., Ltd; Changzhou Tianma Group Co., Ltd	4,9	A983
Chongqing Polycomp International Corporation	9,7	B991
Other cooperating companies listed in Annex I	10,2	
All other companies	10,3	A999

3 The application of the individual countervailing 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

Article 1 of Council Implementing Regulation (EU) No 248/2011 is hereby replaced by the following.

- (1) A definitive anti-dumping duty is hereby imposed on imports of chopped glass fibre strands, of a length of not more than 50 mm; glass fibre rovings, excluding glass fibre rovings which are impregnated and coated and have a loss on ignition of more than 3 % (as determined by the ISO Standard 1887); and mats made of glass fibre filaments excluding mats of glass wool, currently falling within CN codes 7019 11 00, ex 7019 12 00 (TARIC codes 7019 12 00 21, 7019 12 00 22, 7019 12 00 23, 7019 12 00 25, 7019 12 00 39) and 7019 31 00 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 manufactured by the companies listed below shall be as follows:

Company	Definitive anti-dumping duty (%)	TARIC additional code
Jushi Group Co., Ltd; Jushi Group Chengdu Co., Ltd; Jushi Group Jiujiang Co., Ltd	14,5	B990
Changzhou New Changhai Fiberglass Co., Ltd; Jiangsu Changhai Composite Materials Holding Co., Ltd; Changzhou Tianma Group Co., Ltd	0	A983
Chongqing Polycomp International Corporation	19,9	B991
Other cooperating companies listed in Annex 1	15,9	
All other companies	19,9	A999

- (3) The application of the individual anti-dumping 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 3

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

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

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This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 16 December 2014.

*For the Commission*

*The President*

Jean-Claude JUNCKER

## ANNEX I

Cooperating exporting producers not included in the sample:

Name	TARIC additional code
Taishan Fiberglass Inc.; PPG Sinoma Jinjing Fiber Glass Company Ltd	B992
Xingtai Jinniu Fiberglass Co., Ltd	B993
Weiyuan Huayuan Composite Material Co., Ltd	B994
Changshu Dongyu Insulated Compound Materials Co., Ltd	B995
Glasstex Fiberglass Materials Corp.	B996

## ANNEX II

A declaration signed by an official of the entity issuing the commercial voice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3) and Article 2(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 filament glass fibre products sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the PRC. I declare that the information provided in this invoice is complete and correct'.
3. Date and signature.

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

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- (1) [OJ L 188, 18.7.2009, p. 93.](#)
- (2) [OJ L 343, 22.12.2009, p. 51.](#)
- (3) Implementing Regulation (EU) No 248/2011 of 9 March 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain continuous filament glass fibre products originating in the People's Republic of China ([OJ L 67, 15.3.2011, p. 1.](#)).
- (4) Notice of Initiation of an anti-subsidy proceeding concerning imports of certain filament glass fibre products originating in the People's Republic of China ([OJ C 362, 12.12.2013, p. 66.](#)).
- (5) Implementing Regulation (EU) No 248/2011, [OJ L 67, 15.3.2011.](#)
- (6) Notice of Initiation of a partial interim review of the anti-dumping measures applicable to imports of certain filament glass fibre products originating in the People's Republic of China ([OJ C 371, 18.12.2013, p. 19.](#)).
- (7) Appellate Body report, European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China, WT/DS397/AB/R, p. 152
- (8) Regulation (EU) No 765/2012 of the European Parliament and of the council of 13 June 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community ([OJ L 237, 3.9.2012, p. 1.](#)).
- (9) Notice regarding the ruling of the Dispute Settlement Body of the World Trade Organisation adopted on 28 July 2011 ([OJ C 86, 23.3.2012, p. 5.](#)).
- (10) 3B Fibreglass SPRL, Owens Corning Fibreglass France and Johns Manville Slovakia a.s.
- (11) Chopped strands are continuous glass strands chopped to a desired length and available with a wide variety of surface treatments to ensure compatibility with most resin systems. These can be dry use chopped strands or wet use chopped strands.
- (12) Rovings are continuous glass strands, gathered together, without any mechanical twist and wound, to form a tubular cylindrical package.
- (13) Mats of filament are chopped or continuous bonded strands.
- (14) Texturised rovings are rovings which are unwound from one bobbin onto another and in that process voluminised/texturised by a texturising machine that blows air inside the direct roving strand.
- (15) Chapter XIV, point 6 of the Catalogue for industries which encourages foreign investments refers to fibre glass products explicitly: 'Production of fibreglass products and special fibreglass'.
- (16) Chapter II, Article 5 of the Temporary Provisions on Promoting the Industrial Structure Adjustment.
- (17) Chapter III, Article 17 of the Temporary Provisions on Promoting the Industrial Structure Adjustment.
- (18) The 'third' set of audited financial statements was dated 15 May 2014 whereas the verification visit at the company's premises took place on 29-30 May 2014.
- (19) Decision No 40, Article 17.
- (20) Law of the PRC on Scientific and Technological Progress (Order No 82) (Article 18). which provides that 'The State shall encourage financial institutions to carry out the business of hypothecation of intellectual property rights, encourage and give guidance to such institutions in supporting the application of scientific and technological advances and the development of high and new technology industries by granting loans, etc., and encourage insurance agencies to introduce insurance products in light of the need for development of high and new technology industries'.
- (21) PBOC's Circular on the Issues about the Adjusting Interest Rates on Deposits and Loans-Yinfa (2004) No 251 ('Circular 251').
- (22) [OJ L 325, 5.12.2013, p. 66.](#)
- (23) [OJ L 142, 14.5.2014, p. 32.](#)
- (24) Article 34 of the Commercial Banking Law.
- (25) *'Wire drawing of E-glass fibre furnace [...], development and production of high-performance fibreglass and its product.'*

- (26) Council Regulation (EU) No 215/2013 of 11 March 2013, recital 116.
- (27) George E. Peterson, Land leasing and land sale as an infrastructure-financing option, World Bank Policy Research Working Paper 4043, at 7 November 2006, IMF Working Paper (WP/12/100), An End to China's Imbalances, April 2012, p. 12.
- (28) IMF Working Paper (WP/12/100), An End to China's Imbalances, April 2012, p. 12.
- (29) The 14(6) database by DG TRADE contains data on imports of products subject to anti-dumping or anti-subsidy measures or investigations, both from the countries concerned by the proceeding and from other third countries, at the level of the 10-digit TARIC codes.
- (30) Commission Decision of 7 September 1990 terminating the review of the anti-dumping measures concerning dense sodium carbonate originating in the United States of America, [OJ 1999, L 283, p. 38](#).
- (31) Commission Decision of 21 December 1998 terminating the anti-dumping proceeding concerning imports of certain laser optical reading systems, and the main constituent elements thereof, for use in motor vehicles, originating in Japan, Korea, Malaysia, the People's Republic of China and Taiwan ([OJ 1999, L 18, p. 62](#)).
- (32) Implementing Regulation (EU) No 248/2011 ([OJ L 67, 15.3.2011, p. 6](#)), recital 64.
- (33) Implementing Regulation (EU) No 248/2011 ([OJ L 67, 15.3.2011, p. 6](#)), recital 54.
- (34) Ycharts.com
- (35) Panel report — China — Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union — WT/DS425/R, para. 7.247.
- (36) Commission Implementing Regulation (EU) No 471/2014 of 13 May 2014 imposing definitive countervailing duties on imports of solar glass originating in the People's Republic of China, [OJ \[2014\] L142/23, Recital 319](#).  
Council Regulation (EC) No 495/2002 of 18 March 2002 repealing Regulation (EC) No 904/98 with respect to the imposition of a definitive anti-dumping duty on imports into the Community of personal fax machines originating in the People's Republic of China, Japan, the Republic of Korea, Malaysia, Singapore, Taiwan and Thailand, [OJ \[2002\] L78/1, Recital 12](#).
- (37) Commission Regulation (EU) No 812/2010 ([OJ L 243, 16.9.2010, p. 47](#)), recital 69.
- (38) [http://.../pages.stern.nyu.edu/~adamodar/New\\_Home\\_Page/datafile/wacc.htm](http://.../pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/wacc.htm)
- (39) Commission Implementing Regulation (EU) No 470/2014, recital 136 ([OJ L 142, 14.5.2014, p. 15](#)).
- (40) European Commission, Directorate-General for Trade, Directorate H, Office CHAR 04/039, 1049 Bruxelles/Brussel, Belgique/België.

**Changes to legislation:**

There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 1379/2014.