COMMISSION REGULATION (EU) No 1205/2013

of 26 November 2013

imposing a provisional anti-dumping duty on imports of solar glass from the People's Republic of China

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 28 February 2013, the European Commission ('the Commission') announced, by a notice published in the *Official Journal of the European Union* [2] ('notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Union of solar glass originating in the People's Republic of China ('the PRC' or the 'country concerned').

(2) The investigation was initiated following a complaint lodged on 15 January 2013 by EU ProSun Glass ('the complainant') on behalf of producers representing more than 25 % of the total Union production of solar glass. The complaint contained prima facie evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify opening of an investigation.

(3) Following the publication of the notice of initiation, the Commission was informed that the product was defined incorrectly in point 2 of the notice of initiation. Accordingly, a corrigendum to the notice of initiation was published in the *Official Journal of the European Union* [3], in which the small error was corrected.

(4) On 27 April 2013, the Commission announced, by notice published in the *Official Journal of the European Union* [4], the initiation of a parallel anti-subsidy proceeding with regard to imports into the Union of solar glass originating in the PRC and commenced a separate investigation.

1.2. Registration

(5) A request for registration of imports of solar glass from the country concerned was received with the complaint but was subsequently withdrawn on 2 October 2013.

1.3. Parties concerned

(6) The Commission officially advised the complainant, other known Union producers, the known exporting producers in the PRC, importers, traders, users, suppliers and the authorities of the PRC of the initiation of the investigation. All interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. The Commission also informed producers in potential analogue countries about the initiation and invited them to participate.

1.3.1. Sampling

(a) *Sampling of Union producers*

(7) The investigation revealed that the Union industry currently consists of seven active producers, two of which are SMEs. The Commission announced in the notice of initiation that it had provisionally selected a sample of Union producers. This sample consisted of four Union producers that were known to the Commission prior to the initiation of the investigation to produce solar glass. The Commission selected the sample on the basis of the largest representative sales volume of the like product during the period 1 January 2012 – 31 December 2012. The sampled Union producers accounted for more than 50 % of the total Union production. The Commission informed interested parties of the proposed sample of Union producers by means of a note for the file for inspection by interested parties. The Commission also sent a letter to the Union producers informing them of the proposed sample. Interested parties were also invited in the notice of initiation to make their views known on the provisional sample.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ C 58, 28.2.2013, p. 6 and corrigendum published in OJ C 94, 3.4.2013, p. 11.
[3] OJ C 94, 3.4.2013, p. 11.
[4] OJ C 122, 27.4.2013, p. 24.

(8) One SME showed interest to be part of the sample as well. The Commission decided to include it together with a second company in the sample due to the higher share of sales volume of the latter and to remove from the sample the company with the lowest sales volume. No other comments were received regarding the provisionally selected sample. As a result, the Commission added two companies to the initially proposed sample and removed one other.

(9) Finally, after the verification visits, the Commission decided to remove one of the five sampled companies, as that company was found not to be representative for the Union industry. In particular, it was in a start-up phase (which was not the case for the Union industry taken as a whole) and the profitability trend would hence not have given a true picture of the state of the Union industry.

(10) Consequently, it finally selected a sample of four Union producers. The final sample accounts for 79 % of the sales of the Union industry on the Union market. The sample is thus considered to be representative of the Union industry.

(11) Three of the seven Union producers requested, on the basis of Article 19 of the basic Regulation, that their identities be kept confidential. They claimed that disclosure of their identity could lead to a risk of significant adverse effects to their business activities. Their request was examined and found to be warranted. It was further decided in view of the limited number of Union producers not to disclose the names of those Union producers which did not request anonymity as this could inadvertently lead to the disclosure of the identity of the others. The identity of the company Interfloat Corporation/GMB Glasmanufaktur Brandenburg GmbH ('GMB/IF') is, however, already known as it declared publicly that it is one of the complainants.

(b) *Sampling of unrelated importers*

(12) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all unrelated importers were requested to make themselves known to the Commission and to provide information specified in the notice of initiation.

(13) Four unrelated importers replied to the sampling form attached to the notice of initiation, while only two importers submitted the specific questionnaire response. In view of the low number of cooperating importers, sampling was not deemed to be necessary.

(c) *Sampling of exporting producers*

(14) In view of the high number of exporting producers, sampling was envisaged in the notice of initiation for the determination of dumping, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period from 1 January 2012 to 31 December 2012.

(15) Twelve Chinese exporting producers or groups of exporting producers, representing over 95 % of total Chinese exports to the Union during this period provided the requested information and agreed to be included in the sample.

(16) On the basis of the information received and in accordance with Article 17 of the basic Regulation, the Commission selected a provisional sample of five exporting producers based on the largest representative quantity of exports of solar glass to the Union, which could reasonably be investigated within the time available.

(17) All parties concerned, as well as the authorities of the PRC, were informed of the proposed sample and invited to comment. After having analysed the comments received, the Commission decided to retain the proposed sample of five companies and all interested parties were accordingly informed of the finally selected sample.

(18) Subsequently, the investigation revealed that two exporting producers included in the sample had over-stated their export sales to the Union and had therefore been included in the sample on unjustified grounds. Both companies were therefore excluded from the sample after having been given the opportunity to provide comments. The Commission, after having duly analysed the comments provided by the companies, concluded that they had not provided the incorrect figures intentionally and decided that they should remain being considered as cooperating parties in the meaning of Article 18 of the basic Regulation.

(19) Following these exclusions, an inclusion of other exporting producers into the sample was considered. However, in view of the fact that both exclusions occurred at a late stage of the investigation, this was deemed not feasible, as it could jeopardise the completion of the investigation within the statutory time limits.

(20) The revised sample of exporting producers or groups of exporting producers of solar glass is therefore the following:

— Flat Solar Glass Group Co., Ltd, and related companies (*'Flat Glass Group'*);

— Xinyi PV Products (Anhui) Holdings *('Xinyi')* and its related trader;

— Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd, and related companies *('Hehe Group')*.

(21) The Commission corrected the volume of total exports sales of the product concerned from the PRC after it was informed about the overestimation of exports sales of the two exporting producers (see recital (18) above). The final sample accounts for more than 50 % of the total volume of exports to the Union of the product concerned during the period from 1 January 2012 to 31 December 2012 as reported by the cooperating exporting producers. It is therefore considered representative in terms of volumes of exports of solar glass to the Union from the PRC.

(d) *Questionnaire replies and verification visits*

(22) The Commission sent questionnaires to all Chinese exporting producers that had so requested, as well as to the sampled Union producers, the unrelated importers and their associations, as well as to users that made themselves known within the time limits set out in the notice of initiation.

(23) Questionnaire replies were received from four Chinese exporting producers, from all sampled Union producers, two unrelated Union importers and 12 users.

(24) The Commission sought and verified all the information deemed necessary for the purpose of a provisional determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies or group of companies.

(a) Union producers:

— GMB/IF and other companies subject to confidentiality treatment.

(b) Importers:

— Vetrad NV, the Netherlands.

(c) Users:

— Sunerg Solar SRL, Italy.

(d) Exporting producers in the PRC:

— Sampled companies:

— Zhejiang Jiafu Glass Co., Ltd; Zhejiang Flat Mirror Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd ('Flat Glass Group');

— Xinyi PV Products (Anhui) Holdings Ltd and Xinyi Solar (Hong Kong) Limited ('Xinyi Group');

— Zhejiang Hehe Figured Glass Co., Ltd., Zhejiang Yaohua Import and Export Co., Ltd.,), and Zhejiang Glaverbel Glass Technology Co., Ltd, Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd, Hangzhou Hehe Glass Industry Co., Ltd. ('Hehe Group').

— Company subject to individual examination:

— Henan Yuhua New Material Co., Ltd ('Henan Yuhua').

(e) Producer in the analogue country

— In view of the need to establish a normal value for the exporting producers in the PRC in case market economy treatment as defined in Article 2(7)(b) of the basic Regulation would not be granted, a verification visit to establish normal value on the basis of data from Turkey as analogue country took place at the premises of the following company:

— Trakya Cam Sanayii A.Ş., Turkey.

1.3.2. Investigation period and period considered

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

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

(26) The product subject to this investigation is solar glass consisting of tempered soda-lime-flat-glass, with an iron content of less than 300 ppm, a solar transmittance of more than 88 % (measured according to AM1,5 300-2 500 nm), a resistance to heat up to 250 °C (measured according to EN 12150), a resistance to thermal shocks of Δ 150 K (measured according to EN 12150) and having a mechanical strength of 90 N/mm^2 or more (measured according to EN 1288-3) ('the product concerned').

(27) The product concerned currently falls within CN code ex 7007 19 80.

(28) Solar glass is one of the components for manufacturing crystalline silicon photovoltaic modules and thin film photovoltaic modules producing electricity as well as flat thermal collectors generating hot water.

2.2. **Like product**

(29) The investigation has shown that the product concerned and the product produced and sold on the domestic market of the PRC, the product produced and sold in the Union by the Union industry, and the product produced and sold on the domestic market of Turkey, which was considered serving as an analogue country, have the same basic physical and technical characteristics as well as the same basic uses. They are therefore provisionally considered to be 'like products' within the meaning of Article 1(4) of the basic Regulation.

2.3. **Claims regarding product scope**

(30) An importer requested exclusion of horticultural glass for the construction of greenhouses from the scope of the investigation, arguing that greenhouses use very differently sized glass whereas solar glass is produced in only certain fixed sizes. In addition, the importer provided a certificate showing that part of its imports comprise of glass with iron content higher than 300 ppm. Consequently, that part of the imported horticultural glass clearly does not fall within the scope of the present investigation.

(31) Another importer argued that the furniture glass it imports (used for glass shelves, panel fillings, table tops, sliding door panels, top panels products, etc.) has the same or very similar technical characteristics as solar glass but requested its exclusion from the scope of the investigation as it has a different end use. However, on the basis of the evidence provided, it seems that most of the glass it imports would not share all the technical characteristics of solar glass as described in recital (26) above. In particular, six types of the imported glass have iron content much higher than 300 ppm, while one type of the imported glass has iron content lower than 300 ppm but their solar transmittance is significantly lower than the minimum 88 % required to be defined as solar glass. The importer argued that even though those types of glass do not fulfil one of the technical characteristics of solar glass as described in recital (26) above, they are complying with the primary classification for solar glass, i.e. 'tempered soda-lime-flat-glass'. The Commission is of the preliminary opinion that only those types of glass which fulfil all the technical characteristics of solar glass fall within the scope of the investigation. Consequently, it is provisionally concluded that the types of glass mentioned above and imported by this particular importer fall outside the scope of the investigation.

(32) However, any types of horticultural and furniture glass which may have similar technical characteristics as solar glass remain at this stage within the scope of the product concerned as they can potentially be used as solar glass.

(33) The importer also argued that float glass should be excluded from the product scope since it has a different production process than rolled glass which is perceived by the importer as the only type of solar glass. In addition, since float glass home furnishing products cannot allegedly represent a substitute for solar glass products, it was argued that the float glass should not be considered as a like product and should be excluded from the scope of the investigation. The Commission is of the preliminary opinion that float glass cannot be excluded from scope of the investigation since it complies with all the technical characteristics contained in recital (26) above. Moreover, the investigation showed that float glass can clearly be used as solar glass and it is produced by both the Union industry and the Chinese exporters. Consequently, it is provisionally concluded that float glass remains within the scope of the investigation.

3. **DUMPING**

3.1. **Market economy treatment ('MET')**

(34) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports from the PRC, normal value shall be determined in accordance with Article 2(1) to (6) of the basic Regulation for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(35) Briefly, and for ease of reference only, these criteria are set out below:

(1) business decisions are made in response to market conditions and without significant State interference, and costs reflect market values;

(2) firms have one clear set of basic accounting records, which are independently audited, in line with international accounting standards and applied for all purposes;

(3) there are no significant distortions carried over from the former non-market economy system;

(4) legal certainty and stability is provided by bankruptcy and property laws; and

(5) currency exchanges are carried out at the market rate.

(36) Ten cooperating companies requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadlines. Pursuant to Article 2(7)(d) of the basic Regulation, a MET verification was carried out to the companies which were included in the sample as well as to the company that was granted individual examination (see recital (48) below).

(37) It follows that a MET determination was made in respect of the following four companies or groups of companies.

— Sampled companies:

— Zhejiang Jiafu Glass Co., Ltd; Zhejiang Flat Mirror Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd ('Flat Glass Group');

— Xinyi PV Products (Anhui) Holdings Ltd and Xinyi Solar (Hong Kong) Limited ('Xinyi Group');

— Zhejiang Hehe Figured Glass Co., Ltd., Zhejiang Yaohua Import and Export Co., Ltd.,), and Zhejiang Glaverbel Glass Technology Co., Ltd, Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd, Hangzhou Hehe Glass Industry Co., Ltd. ('Hehe Group').

— Company subject to individual examination:

— Henan Yuhua New Materials Co., Ltd ('Henan Yuhua').

(38) The Commission sought all the information deemed necessary and verified all the information submitted in the MET claims at the premises of the companies in question.

(39) In case of related parties, the Commission shall examine whether the group of the related companies as a whole fulfils the conditions for MET. Therefore, in cases where a subsidiary or any other company related to the applicant in the PRC is involved, directly or indirectly, in the production or sales of the product concerned, the MET examination is carried out in respect of each company individually as well as to the group of companies as a whole.

(40) Accordingly, the MET claims of four exporting producers (groups of companies), comprised of eleven legal entities, were investigated.

(41) The investigation established that all four exporting producers (groups of companies) claiming MET failed to demonstrate that they fulfilled all of the criteria laid down in Article 2(7)(c) of the basic Regulation.

(42) More specifically, three exporting producers failed to demonstrate, either individually or as a group, that they had one set of clear set of accounts that were independently audited in line with international accounting standards and therefore did not fulfil MET criterion 2.

(43) Moreover, all four exporting producers, either individually or as a group, failed to demonstrate that they were not to subject to significant distortions carried over from the non-market economy system. Accordingly, these companies, or group of companies, did not fulfil MET criterion 3. More specifically, all four exporting producers, or groups of exporting producers, benefitted from preferential tax regimes.

(44) In addition, one of these exporting producers also failed criterion 3 on the basis that several companies within the group, notwithstanding their dire financial situation, obtained significant financing during the IP (and before) at rates, which under conditions normally prevailing in a market economy, would be reserved for financially healthy companies. Another group of exporting producers also failed criterion 3 on the basis of the fact that companies within the group purchased natural gas at a reduced rate from a state-owned supplier.

(45) The Commission disclosed the results of the MET investigation to the companies concerned, the authorities of the PRC and the complainant and invited them to comment.

(46) The comments received were not such as to alter the Commission's preliminary findings. After having consulted the Member States in accordance with Article 2(7) (c), all applicants were individually and formally notified, on 13 September 2013, of the Commission's final determination with regard to their respective MET claim.

(47) Accordingly, neither of the four cooperating exporting producers or groups of exporting producers in the PRC that had requested MET could show that they fulfilled all the criteria set out in Article 2(7)(c) of the basic Regulation and their MET claims were therefore rejected.

3.2. **Individual examination**

(48) One of the two exporting producers that had originally been included in the sample but subsequently excluded (see recital (18)) - had requested individual examination, pursuant to Article 17(3) of the basic Regulation, should it not be included in the sample. Following its exclusion from the sample and in view of the fact that an MET verification visit had already taken place (see recital (37) above), it was considered that it would not be unduly burdensome to grant this company individual examination ('IE'). No other exporting producer, which was not included in the sample had requested IE.

3.3. **Normal value**

3.3.1. Choice of the analogue country

(49) In accordance with Article 2(7)(a) of the basic Regulation, the Commission envisaged in the notice of initiation that normal value should be determined on the basis of the price or constructed value in a market economy third country or, should an appropriate market economy third country not be found, the normal value should be established on the basis of Union prices in accordance with Article 2(7)(a) of the basic Regulation. Before resorting to Union prices the Commission would investigate all possibilities for selecting an appropriate analogue country.

(50) Interested parties were invited to comment on the choice of an analogue country and on the use of Union prices.

(51) Comments were received from the China Chamber of Commerce for Export/Import of Light Industrial Products and Arts-crafts ('CCCLA'), from an unrelated importer, as well as from two Chinese exporting producers, which all contested the use of Union prices to establish the normal value. Turkey and India were put forward as appropriate analogue countries.

(52) Meanwhile, in order to investigate all possibilities for selecting an appropriate analogue country, the Commission services had identified eleven market economy third countries with possible production of solar glass and, based on publicly available information, invited 24 companies in those countries to cooperate with the Commission. These countries were: Australia, India, Indonesia, Japan, Saudi Arabia, South Africa, South Korea, Taiwan, Thailand, Turkey and the USA.

(53) Based on the information at the Commission's disposal, apart from the PRC and the Union, only India and Turkey produce the like product. In order to make a proper assessment of the suitability of Turkey and India as appropriate analogue countries, the Commission analysed information concerning the like product and more specifically, the number of producers, the size of the domestic market, the level of imports and the importance of trade and non-trade barriers in both countries. However, only one company from Turkey came forward and expressed its willingness to cooperate with the Commission despite many attempts from the Commission to receive cooperation also from producers in India.

(54) Turkey is a market economy third country. The import duties applicable to the like product are 3 % MFN. Due to the Turkey-EU Customs Union import duties applicable bilaterally are 0 %. There seem to be no other duties or other significant non-trade barriers concerning the like product.

(55) According to the Turkish producer that expressed its willingness to cooperate in the investigation, it is the sole company producing the like product in Turkey. The company has significant production and is both exporting and selling domestically the like product with the export quantity being higher than the quantity sold domestically.

(56) Notwithstanding the absence of trade and non-trade barriers, there were virtually no imports of solar glass on the Turkish market during the IP. In the same time, the Commission's investigation confirmed that the cooperating analogue country producer was making a reasonable and not an excessive profit during the IP.

(57) Based on the above and considering all information available at this stage of the investigation, Turkey has provisionally been chosen as an analogue country in accordance with Article 2(7)(a) of the basic Regulation.

3.3.2. Normal value

(58) In view of the fact that all requests for MET were denied, normal value for all Chinese exporting producers was established on the basis of information received from the producer in the analogue country, pursuant to Article 2(7)(a) of the basic Regulation.

(59) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the sales of the like product in Turkey to independent customers were representative. The sales of the Turkish cooperating producer of the like product were found to be sold in representative quantities on the Turkish domestic market compared to the product concerned exported to the Union by the Chinese exporting producers included in the sample.

(60) The Commission subsequently examined whether these sales could be considered as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable sales to independent customers. The sales transactions were considered profitable where the unit price was equal or above the cost of production. The cost of production of the Turkish producer during the IP was therefore determined.

(61) For those product types where more than 80 % by volume of sales on the domestic market of the type in question were above cost and the weighted average sales price of that type was equal to or above the unit cost of production, normal value, by product type, was calculated as the weighted average of the actual domestic prices of all sales of the type in question, irrespective of whether those sales were profitable or not.

(62) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average price of only the profitable domestic sales of that type made during the IP.

(63) As regards the types of product that were not profitable, normal value was constructed using the cost of manufacturing of the Turkish producer plus SG&A and profit for the product types of the Turkish producer that are profitable.

(64) Due to the lack of coating technology applied on the solar glass produced in Turkey during the IP and because none of the Turkish solar glass was produced using a float production process, there was no sale of several product types on the Turkish domestic market. Therefore, for the product types which were not sold in Turkey during the IP but were exported from the PRC to the Union, the normal value had to be constructed pursuant to Article 2(3) of the basic Regulation on the basis of the Turkish analogue producer's manufacturing costs plus a reasonable amount for selling, general and administrative costs ('SG&A') and for profit. The cost of coating and the cost of the float production process were based on data provided by the Union Industry.

3.4. **Export prices**

(65) The export prices were based on the prices actually paid or payable for the product concerned, in accordance with Article 2(8) of the basic Regulation.

3.5. **Comparison**

(66) The normal value and export price were compared on an ex-works basis. The dumping margins were established by comparing the individual ex-works prices of the sampled exporters to the domestic sales prices of the analogue country producer or to the constructed normal value as appropriate.

(67) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.

(68) On this basis, adjustments were made for transport, ocean freight and insurance costs, handling, loading and ancillary costs, export duties and commissions in all cases where demonstrated to affect price comparability.

3.6. **Dumping margin**

(69) For the sampled exporting producers, the weighted average constructed normal value of each type of the like product in Turkey was compared with the weighted average export price of the corresponding product type, as provided for in Article 2(11) and (12) of the basic Regulation.

(70) Pursuant to Articles 2(11) and 2(12) of the basic Regulation, the dumping margins for the sampled exporting producers and to the one granted IE were established on the basis of a comparison of the weighted average constructed normal value of each product type of the like product established in Turkey, with each company's weighted average export price of the corresponding type of the product concerned, expressed as a percentage of the CIF Union frontier price, duty unpaid.

(71) The weighted average dumping margin for the cooperating exporting producers not included in the sample was calculated in accordance with the provisions of Article 9(6) of the basic Regulation. This margin was established on the basis of the margins established for the sampled exporting producers.

(72) With regard to all other exporting producers in the PRC, the dumping margin was established on the basis of the facts available in accordance with Article 18 of the basic Regulation. To this end the Commission determined the level of cooperation in the PRC. The level of cooperation is the proportion of the volume of exports of the cooperating exporting producers to the Union towards the total export volume from the country concerned to the Union reported in the complaint (see recital (15) above).

(73) The level of cooperation is high since the imports of the cooperating exporting producers constitute more than 80 % of the total exports to the Union during the IP. On this basis, the residual dumping margin applicable to all other exporting producers in the PRC was set at a level corresponding to the highest dumping margin found for the cooperating exporting producers in the sample.

(74) The established provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

	Name of company	Provisional dumping margin
Sampled companies	Flat Glass Group	86,2 %
	Hehe Group	75,3 %
	Xinyi Group	74,0 %
Company with individual dumping margin	Henan Yuhua	31,9 %
Non-sampled cooperating companies for which a sample average will apply		79,8 %
All other companies		86,2 %

4. INJURY

4.1. Definition of the Union industry and Union production

(75) The like product was manufactured by eight producers in the Union during the IP. They constitute the Union industry within the meaning of Article 4(1) of the basic Regulation and will hereafter be referred to as 'the Union industry'.

(76) All available information concerning Union industry, including information provided by the complainant, macro-economic data provided by the Union Industry's association (Glass for Europe) and the questionnaire responses of the sampled Union producers were used in order to establish the total Union production for the IP. Since solar glass is imported in the Union under customs heading 7007 19 80 – Other - Laminated safety glass, which covers other products not subject to the present investigation, Eurostat could not be used to determine import volumes and values. Import volumes and values were based on data provided by the complainant and the Union industry's association. When possible, the data was cross-checked with the questionnaire replies. On this basis, the total Union production was estimated to be around 21 734 000 m^2 during the IP.

(77) As explained in recital (10) above, four Union producers were selected in the sample representing 79 % of the total Union sales of the like product.

4.2. Determination of the relevant Union market

(78) It was found during the investigation that none of the sampled Union producers' production was destined for captive use.

(79) Consequently, for the purpose of this investigation there is no need to make a distinctive analysis of captive sales.

4.3. Union consumption

(80) The Union consumption was established on the basis of the volume of the total Union sales on the Union market of all Union producers, minus their exports, plus imports from the PRC and imports from other third countries. As explained in recital (76) above, the Union consumption was based on data provided by the complainant and the Union industry's association (Glass for Europe) and, when possible, cross-checked with the sampled Union producers' questionnaire replies.

(81) Union consumption developed as follows:

Table 1

Union consumption (1 000 m^2)

	2009	2010	2011	IP
Total Union consumption	19 440	28 504	35 258	29 040
Index	*100*	*147*	*181*	*149*

Source: Glass for Europe and the complainant.

(82) In the period considered, the total Union consumption increased by 49 % between 2009 and the IP, but decreased in the IP compared to 2011. In overall terms the Union consumption of solar glass grew significantly when compared to its 2009 level. This is mainly due to the increase in consumption of the end products, in particular solar modules (see recital (142) below).

4.4. **Imports from the country concerned**

4.4.1. Volume and market share of the dumped imports from the country concerned

(83) Dumped imports into the Union from the country concerned developed as follows:

Table 2

Import volume (1 000 m^2) and market share

	2009	2010	2011	IP
Volume of imports from the PRC (1 000 m^2)	1 200	2 050	6 150	8 350
Index	*100*	*171*	*513*	*696*
Market share	6,2 %	7,2 %	17,4 %	28,8 %
Index	*100*	*117*	*283*	*466*

Source: Glass for Europe and the complainant.

(84) Over the period considered, dumped import volumes of the product concerned to the Union increased considerably by 596 %. This led to significant market share increases of the dumped imports of the product concerned into the Union. In particular, the market share of these imports increased from 6,1 % to 28,7 %. In overall terms the dumped imports of the product concerned increased significantly both in volume and market share between 2009 and the IP.

(85) The increase in dumped imports from the country concerned by far exceeded the increase in the Union consumption for the product concerned and the like products. Consequently, the exporting producers were able to benefit to a much larger extent from the Union's growing consumption and greatly reinforced their position on the market.

4.4.2. Prices of the dumped imports from the country concerned and price undercutting

(86) The average price of dumped imports into the Union from the country concerned developed as follows:

Table 3

Import prices (EUR/m^2)

	2009	2010	2011	IP
PRC	6,02	6,10	4,96	4,38
Index	*100*	*101*	*82*	*73*

Source: Complainant and questionnaire replies of the Chinese exporting producers.

(87) The average import price for the product concerned dropped over the period considered. The average import price decreased by 27,2 % from 6,02 EUR/m^2 in 2009 to 4,38 EUR/m^2 in the IP.

(88) 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 cooperating Chinese producers to the first independent customer on the Union market, established on a CIF basis, with upward adjustments, i.e. custom clearance, duty, handling and loading costs. Those adjustments increase the price, depending on the product control number, by 7 to 15 %.

(89) The price comparison was made on a product type number -by- product type number basis for transactions at the same level of trade, duly adjusted as set out in recital (88) above, and after deduction of rebates and discounts. The result of the comparison, when expressed as a percentage of the sampled Union producers' turnover during the IP, showed a weighted average undercutting margin between 10,6 % and 26,7 % of the prices of the sampled Union producers by the dumped imports of the product concerned.

4.5. **Economic situation of the Union industry**

(90) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic factors and indices having a bearing on the state of the Union industry during the period considered.

(91) As explained in recitals (7)-(8) above, sampling was used for the examination of the possible injury suffered by the Union industry.

(92) For the purpose of the injury analysis, the Commission distinguished between macro-economic and micro-economic injury indicators. The Commission analysed the macro-economic indicators for the period considered on the basis of the data provided by the Union industry relating to all Union producers. The Commission analysed the micro-economic indicators on the basis of the sampled Union producers' questionnaire responses.

(93) For the purpose of this investigation, the following macro-economic indicators were assessed: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin and recovery from past dumping.

(94) The following micro-economic indicators were assessed: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital.

4.6. **Macro-economic indicators**

4.6.1. Production, production capacity and capacity utilisation

(95) The total Union production, production capacity and capacity utilisation developed as follows over the period considered:

Table 4

Production, production capacity and capacity utilisation

	2009	2010	2011	IP
Production capacity (1 000 m^2)	39 000	44 611	48 511	54 615
Index 2009	*100*	*114*	*124*	*140*
Production volume (1 000 m^2)	17 540	29 245	31 245	21 734
Index	*100*	*167*	*178*	*124*
Capacity utilisation	45 %	66 %	64 %	40 %
Index	*100*	*146*	*143*	*88*

Source: Complainant and Union producers' questionnaire replies.

(96) Production of the Union industry increased over the period considered in line with consumption. Production reached a peak in 2011 and then dropped by 30 % in the IP. Against the background of a high increase in consumption, the Union industry increased its production capacity during the period considered by 40 %. Even though production levels were higher, the Union producers' capacity utilisation rate decreased by 5 percentage points, as the Union industry had ramped up its production capacity in response to strong demand, reaching 40 % during the IP.

(97) Even if the Union industry expanded its capacity in response to an increased consumption, the Union industry's production levels increased at a lower rate than the consumption and the capacity utilisation, after a substantial increase in the first three years of the period considered, decreased during the investigation period, which coincided with an increased market share of the dumped imports from the country concerned.

4.6.2. Sales volume and market share

(98) The Union industry's sales volume and market share developed as follows over the period considered:

Table 5

Sales volume and market share

	2009	2010	2011	IP
Sales volume (1 000 m^2)	17 540	25 568	27 821	19 667
Index	*100*	*146*	*159*	*112*
Market share	90,2 %	89,7 %	78,9 %	67,7 %
Index	*100*	*99*	*87*	*75*

Source: Glass for Europe and the complainant.

(99) During the period considered the Union industry's sales volume increased by 12 %. However, in the context of an increase in Union consumption by 49 %, this was translated into a decrease of the Union industry's market share from 90,2 % in 2009 to 67,7 % during the IP, i.e. a considerable decrease by 25 % over the period considered. The Union industry's sales grew much less than the dumped imports from the country concerned. Consequently, the Union producers could not fully benefit from the growing consumption and thus their market share decreased during the period considered.

4.6.3. Growth

(100) The growth of the Union industry is reflected in its volume indicators such as production, sales but in particular, in its market share. Despite an increase in consumption during the period analysed the market share of the Union producers did not grow in line with consumption. The market share of the Union industry declined over the period as the volume of imports rose. During the same period, the market share of the imports from the PRC increased by 366 %. The fact that the Union industry could not fully benefit from market growth had an overall negative impact on its economic situation.

4.6.4. Employment and productivity

(101) Employment and productivity developed as follows over the period considered:

Table 6

Employment and productivity

	2009	2010	2011	IP
Employment - Full time equivalent (FTE)	565	792	932	857
Index	*100*	*140*	*165*	*152*
Productivity (1 000 m^2/FTE)	31	37	34	25
Index	*100*	*119*	*108*	*82*

Source: Complainant and Union producers' questionnaire replies.

(102) Overall, employment increased by 52 % between 2009 and the IP. However, the increase took place in the period until 2011 when it reached its peak of 932 Full time equivalent (FTE) and subsequently decreased to 857 FTE during the IP. Productivity remained relatively stable throughout the period 2009-2011. This is partially due to the fact that the production of the like product is highly automated and requires a small number of personnel. However, during the IP it decreased by 24,4 % in comparison with 2011. This was a result of the decrease by around 30 % in production during the same period.

(103) Therefore, employment decreased during the IP, responding to the trend in the Union production of the like product during the IP.

4.6.5. Magnitude of the dumping margin and recovery from past dumping

(104) All dumping margins are significantly above the de minimis level. Given the volume and prices of imports from the country concerned, the impact of the magnitude of the actual margins of dumping on the Union industry can be considered substantial.

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

4.6.6. Micro-economic indicators

(106) As indicated above in recital (92), the micro-economic indicators are analysed on the basis of the questionnaire responses provided by the sampled Union producers. For the majority of the sampled Union producers 2009 was the year when they made their initial investments and started the production of the like product. Thus, all the indicators analysed below are significantly influenced by this start-up phase in 2009. In order to show the trends without the distortive impact of the start-up phase of the sampled companies, indexes are also shown from 2010.

4.6.7. Prices and factors affecting prices

(107) The average sales prices of the sampled Union producers to unrelated customers in the Union developed as follows over the period considered:

Table 7

Average sales prices in the Union

	2009	2010	2011	IP
Average unit selling price on the Union market (EUR/m^2)	10,64	9,07	8,91	8,20
Index 2009	*100*	*85*	*84*	*77*
Index 2010	*117*	*100*	*98*	*90*
Unit cost of production (EUR/m^2)	13,00	8,34	8,42	9,30
Index 2009	*100*	*64*	*65*	*72*
Index 2010	*156*	*100*	*101*	*112*

Source: Union producers' questionnaire replies.

(108) Unit sales prices fell continuously throughout the period considered, but the decrease in prices was particularly pronounced during the IP when they dropped by 7,9 % in comparison with 2011, by 9,5 % in comparison with 2010 and by 23 % in comparison with 2009.

(109) Despite the big difference between Union industry's average unit selling price and the Chinese import prices, as explained in recital (89) above, the actual undercutting based on a comparison per product type was much lower, i.e. between 10,6 % and 26,7 % during the investigation period.

(110) The unit cost of production increased by more than 10 % between 2011 and the IP, while it remained relatively stable between 2010 and 2011. The cost of production generally followed the trend of the sales price between 2009 and the IP. The increase in the unit cost of production was due to decrease in production volume, while the total cost of production actually decreased between 2011 and the IP.

4.6.8. Labour costs

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

Table 8

Average labour costs per employee

	2009	2010	2011	IP
Average costs per employee (EUR)	45 232	44 503	48 288	50 615
Index 2009	*100*	*98*	*107*	*112*
Index 2010	*102*	*100*	*109*	*114*

Source: Union producers' questionnaire replies.

(112) Between 2009 and the IP, the average labour costs per employee continuously increased, overall by 12 %. However, the major increase was between 2011 and the IP, i.e. by 4,8 %. The overall increase of labour costs can be partly explained by inflation and redundancy costs incurred by some Union producers linked to the downsizing of the industry between 2011 and the IP.

4.6.9. Inventories

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

Table 9

Inventories

	2009	2010	2011	IP
Closing stocks (1 000 m^2)	1 540	1 875	1 657	1 778
Index 2009	*100*	*122*	*108*	*115*
Index 2010	*82*	*100*	*88*	*95*

Source: Union producers' questionnaire replies.

(114) Stocks increased by 7,3 % between 2011 and the IP and by 15 % between 2009 and the IP, while they dropped by 11,6 % between 2010 and 2011.

(115) The investigation showed that given the reduction in sales both in volume and in value, Union producers would tend to hold limited stocks for the like product. Therefore, the increase in stocks for the like product over the period considered is a relevant indicator in establishing if the Union industry suffered material injury.

4.6.10. Profitability, cash flow, investments, return on investments and ability to raise capital

(116) Profitability, cash flow, investments and return on investments of the sampled Union producers developed as follows over the period considered:

Table 10

Profitability, cash flow, investments and return on investments

	2009	2010	2011	IP
Profitability	– 20,3 %	8,3 %	8,2 %	– 14,5 %
Index 2009	*100*	*241*	*240*	*129*
Index 2010	*– 244*	*100*	*99*	*– 174*
Cash flow (1 000 EUR)	– 21 550	29 574	33 425	6 200
Index 2009	*100*	*337*	*355*	*229*
Index 2010	*– 73*	*100*	*113*	*21*
Investments (1 000 EUR)	46 087	18 230	7 633	10 712
Index 2009	*100*	*40*	*17*	*23*
Index 2010	*253*	*100*	*42*	*59*
Return on investments	– 6,9 %	9,6 %	13,3 %	– 11,5 %
Index 2009	*100*	*339*	*393*	*66*
Index 2010	*– 72*	*100*	*139*	*– 120*

Source: Questionnaire replies of the Union producers.

(117) Profitability of the sampled Union producers was established by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of such sales.

(118) In 2009 most of the sampled Union producers incurred losses, which, as explained above, were mainly due to the fact they started their production of the like product at that time. In 2010 the average profit was already 8,31 %. Subsequently the profitability slightly decreased in 2011 when the dumped imports started increasing. Finally, the industry suffered significant losses during the IP, i.e. a drop by 276,6 % in comparison with 2011.

(119) The trend in net cash flow, which is the ability of the sampled Union producers to self-finance their activities, had a pronounced drop of 81 % between 2011 and the IP. It was increasing progressively as from 2010 and overall it increased over the period considered.

(120) The return on investments ('ROI') was expressed as the profit in percentage of the net book value of investments.

(121) The table above shows that after the start-up phase in 2009 when industry made major investments in the like product, investments constantly decreased between 2009 and 2011 and then increased in the IP. However, investments remained at low level in the IP in comparison with 2009 levels. The investments made in the IP were mainly linked to R&D as well as improving and maintaining production technology and process in order to improve efficiency. In particular, the industry invested in new product types that are not imported from the PRC during the same period and that are research and innovation intensive.

(122) By contrast, the return on investments decreased by 34 % between 2009 and 2012. However, it constantly increased before the IP, i.e. it increased by 293 % between 2009 and 2011, but it dropped by 186 % during the IP in comparison with 2011.

(123) As far as the ability to raise capital is concerned, it has been found that there was a constant deterioration of the ability of the Union industry to generate cash for the like product and, consequently, a weakening of the financial situation of the Union industry.

4.7. **Conclusion on injury**

(124) The analysis of the situation of the Union industry shows a clear downward trend of most of the injury indicators. Against a generally increasing consumption, overall production increased in the period considered. Although the volume of sales increased, the market share of the Union industry shrank in the IP in the background of the higher rate of increase of consumption during the period considered. Average sales price fell sharply during the period considered, negatively impacting all the financial performance indicators such as profitability, cash flow, return on investments and ability to raise capital.

(125) Over the period considered, the overall Union industry's sales volume increased. However, the increase in sales volumes of the Union industry was accompanied by a significant decrease in average sales price, as well as in the Union industry's market share.

(126) In view of the above, the investigation confirmed in particular the fact that the Union industry's sales prices are below their production costs, thus having a negative effect on the Union industry's profitability, reaching significant negative levels during the IP.

(127) However, capacity developed positively between 2009 and the IP. In addition, although investments did decrease between 2009 and the IP, they increased between 2011 and the IP. This is due to the fact that, as explained in recital (121), the sampled companies continued investing in the like product by, amongst other things, concentrating on product types in market niches where there are no exports of these particular product types yet from the country concerned and which are research and innovation intensive. At the same time, it is evident that the Union industry also needs to be able to produce and sell the high volumes of the more basic product types (which are currently in competition with the dumped imports from the PRC) in order to dilute fixed costs and achieve economies of scale.

(128) Consequently, it can be concluded that the Union industry not only suffered material injury during the IP, but also actively sought ways to reduce of its exposure to the dumped imports of the product concerned whereby developing innovative products which are not yet imported from the country concerned.

(129) In the light of the foregoing, it is provisionally concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

(130) In accordance with Article 3(6) and (7) of the basic Regulation, it was examined whether the dumped imports from the country concerned have caused injury to the Union industry to a degree that may be considered as material. Known factors other than the dumped imports, which could at the same time have injured the Union industry, were also examined in order to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

5.1. Effects of the dumped imports

(131) The investigation showed that dumped imports increased dramatically over the period considered, increasing their volumes significantly by 596 % and their market share by 366 %. Therefore, it is confirmed that volume of imports and market share for the product concerned increased dramatically during the period considered. There was a clear coincidence in time between the increase in dumped imports and the loss of market share of the Union industry. The investigation also established that as mentioned in recital (89) above, the dumped imports undercut the prices of the Union industry during the IP.

(132) The investigation showed that the prices of the dumped imports decreased by 27,2 % during the period considered and led to higher undercutting margins. Against this extreme price pressure, the Union industry underwent considerable effort to decrease its production costs. Despite these efforts the exceptionally low level of Chinese import prices forced the Union industry to further decrease its sales price to unprofitable levels. Thus, the profitability of the Union industry decreased dramatically during the period considered and showed losses during the IP.

(133) Based on the above, it is provisionally concluded that the presence of dumped imports and the massive increase of their market share at prices constantly undercutting those of the Union industry have had a determining role in the material injury suffered by the Union industry.

5.2. Effects of other factors

5.2.1. Imports from third countries

(134) The volume of imports from other third countries developed as follows over the period considered:

Table 11

Imports from third countries (1 000 m^2)

	2009	2010	2011	IP
Volume (m^2)	700	886	1 287	1 023
Index	*100*	*127*	*184*	*146*
Market share	3,6 %	3,1 %	3,7 %	3,5 %
Index	*100*	*86*	*101*	*98*
Average price EUR/m^2	10,50	10,09	9,60	8,40
Index	*100*	*96*	*91*	*80*

Source: Glass for Europe and the complaint.

(135) The volume of imports from other third countries during the period considered increased by 46 %, in line with increase in Union consumption. Their market share slightly decreased during the IP in comparison with 2011 (3,5 %) but overall it remained stable over the period considered. Turkey is the second largest exporter after the PRC, followed by India.

(136) The information available as regards imports from all third countries shows that the average import price was higher than the average Chinese import price. This is also valid for unit price per particular types of the product concerned. On the other hand, the third countries' average import price was similar or higher than the Union industry's average price.

(137) On these grounds, in particular in view of the import volumes and market shares from third countries as well as their price levels, it can be provisionally concluded that third country imports could not break the causal link between the dumped imports and the injury suffered by the Union industry.

5.2.2. Export performance of the Union industry

(138) The volume of exports of the sampled Union producers developed as follows over the period considered:

Table 12

Export performance of the sampled Union producers

	2009	2010	2011	IP
Export sales value (1 000 EUR)	19 313	19 814	27 419	7 001
Index	*100*	*103*	*142*	*36*
Export sales volume (1 000 m^2)	1 460	1 713	2 708	760
Index	*100*	*117*	*185*	*52*
Average price (EUR/m^2)	13,22	11,56	10,12	9,21
Index	*100*	*87*	*77*	*70*

Source: Questionnaire replies of the Union producers.

(139) Export sales of the sampled Union producers increased between 2009 and 2011, but dropped suddenly in the IP by 74 % in value and by 71,9 % in volume. Based on the replies of the sampled Chinese exporters, this is most probably due to very low prices of Chinese exports to the Union industry's major destinations of exports (i.e. US, Canada).

(140) Export sales of the sampled Union producers constituted 20 % of their total sales in volume in 2009 (in the start-up phase), during 2010 11 % and during the peak year of 2011 only 14 %. 2012 showed a further decrease to 5 % when they entered in competition with Chinese low price exports to major third country destinations. Consequently, as the Union market is the main market for the Union industry, also because solar glass is relatively heavy and fragile, which translates into additional costs when transported over a distance (due to breakage and corrosion), it cannot be concluded at this stage that the deteriorated export performance of the sampled Union producers breaks the causal link between the dumped imports and the injury suffered by the Union industry.

5.2.3. Development of consumption

(141) As mentioned above, the Union consumption increased between 2009 and the IP by 49 %. It had its peak in 2011 when it increased by 81 % in comparison with 2009. However, the Union industry could not benefit from this increase in consumption. Its market share fell constantly during the period considered reaching a drop of 25 % during the IP in comparison with 2009 (– 14,1 % in comparison with 2011). On the contrary, the Chinese market share was increasing sharply, even when consumption fell between 2011 and IP, resulting in an increase by 64,8 % between 2011 and the IP and an overall increase by 366 % during the whole period. The increase of Chinese imports was a massive 596 % during the period considered.

(142) As the Union consumption increased in the period considered, its development is such that reinforces the causal link between the increasing dumped imports and the injury suffered by the Union industry and it is not itself a cause of injury to the Union industry. In addition, even in the IP, when consumption decreased, Chinese dumped imports were able to further increase their market share at the detriment of the Union industry. Therefore, it can provisionally be concluded that the decrease in consumption in the IP could not break the causal link between the dumped imports and the injury suffered by the Union industry.

5.2.4. Trends in solar modules

(143) According to the information at the Commission's disposal, around 80-85 % of solar glass sales are made to solar modules producers (Crystalline silicon photovoltaic modules and thin-film photovoltaic modules), and around 15-20 % of the sales are made to producers of solar thermal flat plate collectors producing hot water. Consequently, the trends observed in solar modules have an important impact on the consumption of solar glass. Consumption of solar modules increased constantly throughout the same period, i.e. 2009-2012, and even though there was a decrease in 2012, the level of consumption remained 221 % higher than in 2009 and 44 % higher than in 2010 ([1]). In addition, it was established that while demand for modules in the Union was initially generated by the feed-in-tariffs (FITs), it could not be concluded that the FITs cutbacks (at the end of 2011, beginning of 2012) had broken the causal link between dumped imports and injury ([2]). This was due to the fact that demand for solar modules remained relatively high over the same period 2009-2012.

(144) Consequently, the level of consumption of solar modules, and as a result the demand of solar glass, remained high during the period considered. Its slight decrease in 2012 cannot be regarded on its own as a factor such as to break the causal link established between the dumped imports from the PRC and the material injury by the Union industry.

5.2.5. Conclusion

(145) The investigation has established a causal link between the material injury suffered by the Union industry and the dumped imports from the PRC. Other possible causes of injury, such as imports from other third countries, consumption and the market situation of some of their users such as solar modules were analysed and none of them, analysed both individually and cumulatively, were found to be such as to break the causal link established between the dumped imports from the PRC and the material injury suffered by the Union industry.

(146) Based on the above analysis, which 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, it is therefore provisionally concluded that the dumped imports from the country concerned have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

6. UNION INTEREST

(147) In accordance with Article 21 of the basic Regulation, the Commission examined whether, despite the provisional conclusion on injurious dumping, compelling reasons existed for concluding that it was not in the Union interest to adopt measures in this particular case. The analysis of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, raw materials suppliers and users of the product concerned.

6.1. **Interest of the Union industry**

(148) The Union industry directly employed about 860 people in the IP in the production and sale of the like product. The investigation established that the Union industry has suffered material injury caused by the dumped imports from the country concerned during the investigation period. Some Union producers were already forced to close down their production facilities while some others have faced insolvency. In the absence of measures, a further deterioration in the Union industry's economic situation appears very likely.

(149) It is expected that the imposition of anti-dumping duties will restore fair trade conditions on the Union market, allowing the Union industry to align the prices of the like product to reflect the costs of production thus improving its profitability. It can also be expected that the imposition of measures would enable the Union industry to regain at least part of the market share lost during the period considered, with a positive impact on its overall financial situation. Moreover, the Union industry should be able to have better access to capital and to further invest in R&D and innovation in the solar glass market. Finally, it is likely that the Union producers who were forced to cease production as a result of the pressure of the Chinese dumped imports might restart their business activity. Overall, under this scenario, not only the existing jobs would be secured, but there would also be a reasonable prospect for further production expansion and increase in employment.

([1]) Tables 1-a and 1-b on p. 16 of Commission Regulation (EU) No 513/2013 of 4 June 2013 imposing a provisional anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China and amending Regulation (EU) No 182/2013 making these imports originating in or consigned from the People's Republic of China subject to registration, OJ L 152, 5.6.2013, p. 5. ('Solar Panels Regulation'). According to section B of the Solar Panels Regulation, the product covered by that investigation is crystalline silicon photovoltaic modules or panels and cells and wafers of the type used in crystalline silicon photovoltaic modules or panels. Therefore, thin-film photovoltaic modules are not subject to that investigation and their consumption is not covered.

([2]) See section 3.2 of the Solar Panels Regulation.

(150) Should measures not be imposed, further losses in the market share are expected with a further deterioration of the Union industry's profitability. This would be unsustainable in the short to medium-term. As a consequence, in addition to the large number of the Union producers that were already forced out of the market, other producers could be facing insolvency which would in the short to medium term lead to a likely disappearance of the Union industry with the consequent significant impact of the existing jobs.

(151) It is therefore provisionally concluded that the imposition of the anti-dumping duties would be in the interest of the Union industry.

6.2. **Interest of unrelated importers and traders**

(152) For the two cooperating importers the major business activity consisted of trading the product concerned. Both of them had diversified sources of the product concerned, i.e. they were not only sourcing from the PRC, but also from the Union and third countries.

(153) An argument was put forward that the imposition of measures on the product concerned will negatively affect the importers' business activity. Firstly, the imposition of duties should not result in the elimination of all imports from the PRC. Secondly, although it can be expected that the imposition of measures may have a negative effect on the financial situation of the importers importing only or mainly from the PRC, in view of the possibility to source from third countries, the importers can be expected to be flexible and shift their sources of supply if deemed necessary.

(154) It is therefore provisionally concluded that the imposition of measures at the proposed level may have a certain negative impact on the situation of unrelated importers of the product concerned, but that its impact is mitigated by the fact that importers and traders can use other sources of supply, both from third countries and the Union industry, the latter having the capacity to increase its production, and in any case it would not weight out the positive impact on other parties.

6.3. **Interest of raw materials suppliers**

(155) No raw materials supplier cooperated with the investigation. In the absence of data from such suppliers, there was no evidence that the imposition of measures would be against the interest of these parties.

6.4. **Interest of users**

(156) All users that responded are producers of solar modules and/or thermal collectors. Three users are firmly in favour of imposing anti-dumping duties, arguing that the Union industry produces better quality solar glass which cannot always be supplied by Chinese companies. By contrast, three other users were against the imposition of anti-dumping measures. Those users expect that the imposition of anti-dumping duties would have a negative impact on their business. They expect not to be able to pass on the increase in prices to final consumers given the dire situation of the solar modules industry.

(157) According to the information submitted by users, solar glass constitutes only around 6-8 % of the total costs of the solar modules. Thus, solar glass constitutes only a limited part of the costs and of the final value of the photovoltaic modules. In addition, it can be estimated that if anti-dumping duties are imposed on solar glass imported from the PRC, the impact on the total costs of the solar modules should be less than 1 %. This is mainly due to the fact that cooperating users buy significant quantities of the solar glass from Union producers. Accordingly, while a possible imposition of anti-dumping duties will most probably slightly increase input prices for solar modules, they should not have a significant negative impact on the costs and on the final prices of the Union solar modules industry.

(158) In addition, some of the users already have other sources of supply such as Turkey and India which would not be negatively influenced by the imposition of anti-dumping duties. Other users can switch to other sources of supply as well, either from third countries or from the Union industry.

(159) In view of the above, the arguments brought forward by some of the users against the imposition of measures are provisionally rejected.

6.5. **Competition aspects**

(160) One importer argued that since some Union producers participated in a world cartel of flat glass (solar glass is part of it) and were fined by the European Commission in 2007, they are using the anti-dumping tool as a way of recuperating the losses they made on fines for the cartel and on losing market share in the Union. In addition, if the access to the Union market were to be restricted by means of anti-dumping duties, there will be stronger incentives for the Union producers to enter into a cartel or other anti-competitive behaviour in respect of products with low volume leverage capabilities in the Union like home furnishing products.

(161) These arguments are provisionally rejected. Firstly, the cartel has ceased to function in 2007 at the latest. Therefore, the effects of the cartel in the past had no impact on the industry during the period considered. Secondly, it did not concern any of the sampled Union producers and the majority of the current Union producers with highest sales volume. Thirdly, the possible imposition of anti-dumping duties is not expected to have any impact on the competitive behaviour of the Union industry since, on the one hand, it will not change the structure of the Union market and, on the other hand, companies have a general duty to comply with the applicable Union and national competition rules, irrespective of whether duties are imposed or not.

(162) It was also argued by an importer that the imposition of duties would have a negative impact on the Union market of antireflective coating of solar glass. This market, identified by the importer as a related market, is allegedly dominated by the Union producers and the imposition of measures would reinforce their position to the detriment of competing providers of anti-reflective coating. Furthermore, it was stated that importers faced difficulties in obtaining orders from the Union producers or in having such orders delivered within a reasonable period of time and at reasonable prices.

(163) Firstly, the market of anti-reflective coating is part of the investigation and not a related market. The investigation showed that indeed Union producers still remain competitive on this niche market despite the relatively higher prices they charge thanks to the seemingly lower quality of the coated solar glass imported from the PRC. No evidence was however provided that the Union industry would not be able to meet the demand of a possible increase of antireflective coated solar glass. Consequently, this argument is rejected at this stage. Regarding the claims that Union producers have refused providing orders or on-time delivery at reasonable prices, it is entirely up to each producer to choose its commercial strategy to the extent that such producer or producers do not enjoy single or joint dominance on the relevant market. There is sufficient competition on the Union market in order to change and/or diversify suppliers. Therefore, this argument is provisionally rejected as well.

6.6. **Conclusion on Union interest**

(164) In view of the above, it was provisionally concluded that, based on an appreciation of all the various interests taken as a whole, including the interest of the Union industry, importers and users, no compelling reasons exist against the imposition of provisional measures on imports of solar glass originating in the PRC.

7. **PROVISIONAL ANTI-DUMPING MEASURES**

(165) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, provisional measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.

7.1. **Injury elimination level**

(166) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury suffered by the Union industry, without exceeding the dumping margins found.

(167) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax on the sales of the like product in the Union that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports. A profit margin of 8,3 % of turnover is regarded as an appropriate minimum which the Union industry could have expected to obtain in the absence of injurious dumping. This profit margin is based on 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.

(168) On this basis, a non-injurious price was calculated for the Union industry of the like product. The non-injurious price was obtained by adding the above-mentioned profit margin of 8,3 % to the cost of production during the IP of the sampled Union producers.

(169) The necessary price increase was then determined on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers in the PRC, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the weighted average import CIF value.

7.2. **Provisional measures**

(170) In the light of the foregoing, and in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping measures should be imposed on imports of solar glass originating in the PRC at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.

(171) On the basis of the above, the anti-dumping duty rates have been established by comparing the injury elimination margins and the dumping margins. Consequently, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, are as follows:

Company	Dumping margin	Injury margin	Provisional anti-dumping duty
Xinyi Group	74,0 %	39,3 %	39,3 %
Hehe Group	75,3 %	32,3 %	32,3 %
Flat Glass Group	86,2 %	42,1 %	42,1 %
Henan Yuhua	31,9 %	17,1 %	17,1 %
Other cooperating companies	79,8 %	38,4 %	38,4 %
All other companies	86,2 %	42,1 %	42,1 %

(172) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of product concerned originating in the countries concerned and produced by the companies and thus by the specific legal entities mentioned. Imported product concerned produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'. Due to the fact that there was high level of cooperation from the exporting producers (above 80 %, see recital (15) above), this duty rate is based on the highest individual injury margin established for the sampled exporting producers. The duty applicable to 'other cooperating companies' is based on the weighted average of the sampled exporters and applies to all cooperating non-sampled companies (except for Henan Yuhua, which is subject to individually established duty following its request for individual examination (see recital (48) above).

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

[1] European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

7.3. **Final provisions**

(174) In the interests of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of solar glass consisting of tempered soda-lime-flat-glass, with an iron content of less than 300 ppm, a solar transmittance of more than 88 % (measured according to AM1,5 300-2 500 nm), a resistance to heat up to 250 °C (measured according to EN 12150), a resistance to thermal shocks of Δ 150 K (measured according to EN 12150) and having a mechanical strength of 90 N/mm^2 or more (measured according to EN 1288-3), currently falling within CN code ex 7007 19 80 (TARIC code 7007 19 80 10) and originating in the People's Republic of China.

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

Company	Provisional anti-dumping duty	TARIC additional code
Xinyi PV Products (Anhui) Holdings Ltd;	39,3 %	B943
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd;	32,3 %	B944
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	42,1 %	B945
Henan Yuhua New Material Co., Ltd	17,1 %	B946
Other cooperating companies listed in Annex I	38,4 %	
All other companies	42,1 %	B999

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

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

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

Article 2

1. Without prejudice to Article 20 of Council Regulation (EC) No 1225/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission and/or the Hearing Officer for DG Trade within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Regulation (EC) No 1225/2009, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 26 November 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Cooperating exporting producers not sampled and not granted individual examination

Name	TARIC additional code
Henan Ancai Hi-Tech Co., Ltd	B947
Henan Succeed Photovoltaic Materials Corporation	B948
Avic Sanxin Sol-Glass Co. Ltd; Avic (Hainan) Special Glass Material Co., Ltd	B949
Wuxi Haida Safety Glass Co., Ltd	B950
Dongguan CSG Solar Glass Co., Ltd	B951
Pilkington Solar Taicang, Limited	B952
Zibo Jinxing Glass Co., Ltd	B953
Novatech Glass Co., Ltd	B954

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):

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 solar glass 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,