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►**B** **COMMISSION IMPLEMENTING REGULATION (EU) No 470/2014**

of 13 May 2014

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China

(OJ L 142, 14.5.2014, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Commission Implementing Regulation (EU) 2015/588 of 14 April 2015	L 98	6	15.4.2015

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COMMISSION IMPLEMENTING REGULATION (EU) No 470/2014

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imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in 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]), and in particular Article 9(4) and 14(1) thereof,

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) On 28 November 2013, the European Commission (the Commission) imposed a provisional anti-dumping duty on imports of solar glass from the People's Republic of China by Regulation (EU) No 1205/2013 (the provisional Regulation) ([2]).

(2) The proceeding was initiated on 28 February 2013 following a complaint lodged on behalf of producers representing more than 25 % of the total Union production of solar glass ([3]).

(3) 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. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed (the provisional disclosure), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.

([1]) OJ L 343, 22.12.2009, p. 51.

([2]) 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 (OJ L 316, 27.11.2013, p. 8).

([3]) Notice of initiation of an anti-dumping proceeding concerning imports of solar glass originating in the People's Republic of China (OJ C 58, 28.2.2013, p. 6).

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(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(6) Subsequently, the Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of solar glass originating in the People's Republic of China (the PRC) and definitively collect the amounts secured by way of provisional duty (the definitive disclosure). All parties were granted a period within which they could make comments on the final disclosure.

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

3. **Sampling**

(8) One exporting producer claimed that the total number of Union producers was not clearly presented in recitals 7, 11 and 75 of the provisional Regulation. In this respect, the Commission hereby confirms that there were eight Union producers which came forward and were active during the IP. The identity of all but one Union producer had been withheld. In its reply to the general disclosure document, the complainant named three Union producers that had gone out of business (Guardian, AGC and Centrosolar Glass), and a fourth company that significantly reduced production (Saint Gobain).

(9) In the absence of other comments concerning the method of sampling of exporting producers in the PRC and of Union producers, the provisional findings in recitals 7 to 24 of the provisional Regulation are confirmed.

4. **Questionnaire replies and verification visits**

(10) After the adoption of the provisional Regulation, a verification visit was carried out at the premises of a second cooperating user, namely Viessmann Faulquemont SAS, France.

5. **Procedural rights**

(11) One exporting producer claimed that the provisional disclosure provided to it was inadequate, in particular with regard to dumping, undercutting and injury margin calculations. In the absence of an adequate disclosure it was deprived of its fundamental rights of defence, guaranteed by Regulation (EC) No 1225/2009 (the basic Regulation), the WTO Anti-dumping Agreement as well as the European Charter of Fundamental Rights.

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(12) Regarding the calculation of the dumping margin the exporting producer claimed that no details were provided in the provisional disclosure in relation to the amount of adjustment applied on the cost of coating and the cost of the float production process (see recital 64 of the provisional Regulation) or the percentage of selling, general and administrative costs and profit.

(13) This claim was accepted and the Commission disclosed additional information. Where exact data could not be provided due to confidentiality reasons, ranges were disclosed.

(14) Following the definitive disclosure the exporting producer claimed that the disclosed data was still not sufficient and argued, in particular that it was unclear whether the adjustment applied on the cost of coating took into account the cost of single-side coating, double-side coating or both.

(15) As explained in recital 68 below no evidence was provided by interested parties demonstrating that there is a consistent difference in costs of production between single-side and double-side coated solar glass. The Commission therefore did not make a distinction between single-side and double-side coated solar glass when calculating the level of the adjustment.

(16) Regarding injury the same exporting producer complained that in its specific disclosure document the sales prices and target prices of the Union producers in relation to two out of total five product types had been marked as limited or provided in ranged format for reasons of confidentiality.

(17) The company also argued that in this case there is a high level of confidentiality whereby the name of only one sampled Union producer is known. Consequently, the company was of the opinion that even if for certain product types the information relates to the data of one or two Union producer(s) only, by no means it would be possible to identify of those companies, and as a result, to give significant competitive advantage to the exporting producer vis-à-vis any of its Union competitors individually or collectively.

(18) Under Article 20 of the basic Regulation the Commission is indeed bound to disclose after provisional measures the details underlying the essential facts and consideration on the basis of which the measures have been imposed. However, the Commission is also obliged under Article 19 of the basic Regulation to treat as confidential any information which is such by nature or which is provided on a confidential basis.

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(19) In this particular case the actual sales prices and target prices of the Union producers for two product types have been either removed or replaced with ranges because the information of one of the product types comes exclusively from only one or two Union producer(s). In addition, it is a widely known fact in this business that this particular product type is not produced by any other Union producers. Consequently, the Commission considers this information confidential by nature since its disclosure would be of significant competitive advantage to competitors and/or would have a significantly adverse effect upon the company(ies) supplying the information. In addition, the same type of information has been removed for a second product type in order to avoid that the figures for the first product type could be deducted from the total figures available.

(20) Following definitive disclosure, the company reiterated its claim that the level of disclosure of injury margin calculations was insufficient and inadequate. Specifically, it complained that it was not clear how the second product type whose figures have been removed had been selected. The Commission clarifies that this was done on a purely random basis.

(21) As a solution to the alleged insufficient disclosure, the company proposed that its lawyers could meet the Commission's staff and discuss in detail the dumping and injury margin calculations without taking a copy of any confidential document, or alternatively have access to a data room at the Commission's premises where notes could be made.

(22) The Commission could not accommodate this request. In order for the company's lawyers to be able to verify the calculations, exact figures from one or two companies would have to be provided. This could not be done as the Commission is obliged to keep this data confidential in accordance with Article 19 of the basic Regulation.

(23) Moreover, the Commission explicitly mentioned in the definitive disclosure that as far as any issues related to the company's rights of defence are concerned — such as access to file — it may address itself to the Hearing officer under the Terms of Reference of the Hearing officer ([1]). The company however did not request an intervention of the Hearing officer within the deadline for submitting comments on the definitive disclosure.

(24) In view of the above, the Commission rejects the claims made regarding possible violation of the procedural rights of the exporting producer in question.

([1]) Decision 2012/199/EU of the President of the European Commission of 29 February 2012 on the function and terms of reference of the hearing officer in certain trade proceedings (OJ L 107, 19.4.2012, p. 5).

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B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(25) As set out in recital 26 of the provisional Regulation, the product concerned 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', commonly referred to as 'solar glass'). The product concerned currently falls within CN code ex 7007 19 80.

2. **Claims regarding the product scope**

(26) One exporting producer claimed after provisional disclosure that, contrary to what was stated in recital 32 of the provisional Regulation, horticultural glass which complies with the technical characteristics of solar glass, as defined in recital 26 of the provisional Regulation, should be excluded from the product scope. First, according to the exporter, the physical characteristics of the horticultural glass are quite different from those of the solar glass: (i) horticultural glass has different sizes according to the requirement of the customers, while solar glass is in certain fixed sizes; (ii) the horticultural glass may be double-side coated, but the solar glass for photovoltaic modules (PV modules) is not double-side coated. Second, horticultural glass has allegedly different use: it cannot be used either for manufacturing PV modules or thermal collectors.

(27) The Commission rejects the claim for the following reasons. Firstly, the fact that solar glass used for greenhouse manufacturing has different sizes than solar glass used for PV modules or thermal collectors is irrelevant since size requirements may vary both for PV modules and for greenhouses. Also, any product exclusion on such basis may give rise to possible circumvention of the anti-dumping measures. Secondly, horticultural glass sold on the market is not only double-side coated solar glass, but can also be non-coated and single-side coated. Moreover, as explained in recital 68 below double-side coated glass is also used for both PV modules and thermal collectors. Therefore, this physical characteristic cannot distinguish solar glass used for horticultural glass from any other use. Finally, it cannot be excluded that solar glass destined for greenhouse manufacturing will be used for manufacturing PV modules and/or thermal collectors.

(28) After disclosure, one importer argued that since solar glass that can also be used as furniture glass was not excluded from the scope, this results in administrative burden and delays for

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companies. This is allegedly caused by the fact that companies are required to send test reports to Customs Authorities in the Union every time the Customs Authorities question if the goods being imported are subject to the measures.

(29) The Commission considers that those types of glass should not be excluded from the scope of the investigation, because solar glass can potentially have horticultural and furniture use. In order to ensure adequate protection of the Union industry against the injurious effect of the dumped imports, loopholes that may allow for circumvention should be avoided. The positive effect of adequate protection outweighs the negative effect of the additional administrative burden arguably suffered by the importer concerned.

(30) Another exporting producer claimed that float glass should be excluded from the product scope since the one it produces is used in the building market and greenhouse market. Moreover, it alleged that float glass is not used for PV modules manufacturing. However, on the basis of the arguments put forward by the Commission in recital 33 of the provisional Regulation, the Commission reiterates that float glass clearly complies with the technical characteristics of solar glass, as set out in recital 26 of the provisional Regulation. Also, float glass is produced by both the Union industry and the exporting producers. This is confirmed by publicly available information on the internet [1]. Consequently, this claim is rejected.

3. **Conclusion**

(31) In the absence of other comments regarding the product concerned and the like product, the conclusions reached in recitals 26 to 33 of the provisional Regulation are confirmed.

C. **DUMPING**

1. **Market Economy Treatment (MET)**

(32) Following provisional disclosure and subsequently after definitive disclosure, one exporting producer claimed that the Commission erred in rejecting its request for MET. The same claim in relation to the MET determination had already been made at the provisional stage and was rejected by the Commission in recitals 43 and 47 of the provisional Regulation.

(33) The exporting producer claimed that the benefits received from preferential tax regimes and grants do not represent a significant proportion of their turnover. In this respect, it is recalled that this argument, along with other arguments, was already addressed in the Commission's letter to the exporter dated 13 September

[1] http://www.fsolar.de/cms/fileadmin/user_upload/Bilder/PVSEC_2013/Presse_Information_EU_PVSEC_2013_Paris_ENG.pdf

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2013 in which the Commission notified the party with regard to its MET determination. In particular, it was stressed that due to the nature of this advantage, the absolute benefit received during the IP is irrelevant for assessing whether the distortion is 'significant'. This claim is therefore rejected.

(34) Having regard to the above, the finding that all MET claims should be denied, as established in recitals 34 to 47 of the provisional Regulation, is confirmed.

2. **Normal Value**

2.1. *Selection of an analogue country*

(35) In the provisional Regulation, Turkey was selected as an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation. One exporting producer claimed that Turkey is not a suitable analogue country for the purpose of establishing the normal value due to the fact that there is only one producer of solar glass in Turkey and that there are virtually no import of solar glass on the Turkish market. The exporting producer also claimed that the profit margin on the Turkish domestic solar glass market was particularly high, therefore artificially inflating the level of the normal value. In addition, the same exporting producer recalled that there was no coating technology applied on the solar glass produced in Turkey and that none of the Turkish solar glass was produced using the float production process. As a consequence, key elements needed for the establishment of the normal value could not be obtained from the Turkish domestic market of the like product. The exporting producer therefore argued that Union prices should have been used instead as a basis for the determination of the normal value.

(36) First, the Commission recalls that there are no significant trade barriers in Turkey concerning the like product. Therefore, it cannot be concluded that the Turkish solar glass market is foreclosed to international trade. On the contrary, the market is open and the price on that domestic market of the like product is being determined freely by the interaction of supply and demand.

(37) Second, concerning the allegation of particularly high profits on the Turkish domestic market, the Commission underlines that it did not observe an excessive profit margin on the like product market in Turkey during the IP compared to profit margins realised by Union producers during the period considered.

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(38) Third, the lack of certain product types in a third country does not make it unsuitable as an analogue country. On the contrary, Article 2(3) of the basic Regulation stipulates that in the absence of domestic sales of certain product types the Commission shall construct a normal value based on the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits. The cost contribution for coating and the float production process were based on verified data from the Union industry.

(39) In view of the above, the claim that Turkey is not a suitable analogue country is rejected.

(40) Also, the Commission cannot accept the argument that the normal value should have been established on the basis of prices actually paid in the Union. According to Article 2(7)(a) of the basic Regulation, the Commission can only revert to Union prices for determining normal value if it is not possible to determine that value on the basis of data from an appropriate analogue country. Since an appropriate analogue country with sufficient cooperation from a producer was found to exist the Commission was obliged to determine the normal value based on the data from this analogue country and not revert to Union prices [1].

(41) The Commission confirms the selection of Turkey as an analogue country within the meaning of Article 2(7) of the basic Regulation.

2.2. *Normal value*

(42) One exporting producer claimed that the Commission erred in the determination of the normal value by basing it on only the profitable sales in the analogue country and adding a hypothetical profit margin to those sales which were not profitable.

(43) The Commission confirms that for the determination of the normal value, as explained in recitals 61 and 62 of the provisional Regulation and as required by Article 2(4) of the basic Regulation, it had verified that at least 80 % of the sales of all product types of the like product on the Turkish domestic market were profitable. Accordingly, all the sales on the Turkish domestic market, whether profitable or not, were taken into account for the determination of the normal value. This claim is therefore unfounded and accordingly rejected.

(44) In the absence of further comments regarding the determination of the normal value, recitals 58 to 64 of the provisional Regulation are confirmed.

[1] Case 338/10 *Grunwald Logistik Service (GmbH) (GLS)* v *Hauptzollamt Hamburg-Stadt*.

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2.3. *Export price*

(45) In the absence of any comments regarding export prices, recital 65 of the provisional Regulation is confirmed.

2.4. *Comparison*

(46) After provisional disclosure and subsequently after definitive disclosure one exporting producer claimed that the Commission erroneously adjusted its export price under Article 2(10)(i) of the basic Regulation. It argued that the producer and the related trader constitute a single economic entity and that such an adjustment is therefore precluded. In any event, the level of the adjustment is too high since the Commission based it on the actual mark-up which was not established at arms-length but was rather the result of a transfer pricing agreement. Instead the Commission should have made the adjustment, if any, on the basis of an estimated mark-up between a producer and unrelated importer at arms-length.

(47) The investigation revealed that the exporting producer had itself a fully functional export department that negotiated sales conditions and terms with Union customers, placed the production orders, organised and carried out the shipping to the Union customers, including all shipping documents, of the final product, handled the export customs clearance and prepared sales documents. Indeed, there was no duplication of export related tasks between the exporting producer and the related trader. However, the exporting producer issued sales invoices in to the trader, which, in turn, issued a sales invoice to the Union customer at the contractual price. The related trader collected the payment, deducted a mark-up and paid the remaining amount to the exporting producer.

(48) The Commission therefore finds that the related trader cannot be considered as an internal sales department, even if the two companies would be considered as constituting a single economic entity, and that an adjustment under Article 2(10(i) to be fully justified. Moreover, since the adjustment made reflects the mark-up actually charged between the related companies there is no reason to replace it with another theoretical amount. This claim is therefore rejected.

(49) One exporting producer claimed that its production capacities were much higher than those of the Union industry, and that it therefore had an advantage in terms of lower costs in its production process of the product concerned. The Commission should therefore consider this alleged advantage related to its lower cost of production and make a necessary adjustment.

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(50) The Commission cannot accept this claim. First, the exporting producer does not suggest a relevant legal provision under which such an adjustment could be made. Second, it is not demonstrated that lower costs due to higher production capacities would affect the prices or price comparability within the meaning of Article 2(10) of the basic Regulation. Indeed, even if a cost difference could be demonstrated it is not clear how this is reflected in the final price and whether it is not offset by a difference in other costs.

(51) In addition, the alleged benefit claimed by the exporting producer concerns the allegedly lower costs of production compared to the costs incurred by the Union Industry. In this respect it is recalled that the exporting producer was not granted MET and that its costs were therefore not verified. Under Article 2(7)(a) of the basic Regulation, the Commission determined the normal value on the basis of the actual prices and/or costs of the analogue country producer because prices and costs in non-market economy countries are not the result of market forces and are therefore, as such, not a reliable proxy for market prices or costs.

(52) One exporting producer in the PRC claimed that the Commission should adjust the ex-factory export price of one of its competitors by deducting from it a service fee and a licence fee it allegedly paid to a third party.

(53) The Commission rejects this claim. First, the exporting producer does not suggest a relevant provision of the basic Regulation under which such an adjustment could be made. Second, even if this claim could be construed as falling under Article 2(10)(e) of the basic Regulation, which provides for adjustments for transport, insurance, handling, loading and ancillary costs, that provision does not relate to service fees or costs related to a licence agreement. Such costs constitute business costs which are normally incurred by a producer of goods using a technology licence acquired from a third party irrespective of whether they are exported or sold domestically. Such costs should therefore be reflected in the final price of both the export as well as the domestic sales. These costs can therefore not affect the comparability between the export price and the normal value. An adjustment under Article 2(10) is therefore not warranted and the claim is therefore rejected.

(54) As stipulated in recitals 67 and 68 of the provisional Regulation, 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.

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(55) On this basis, company specific 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. However, after the imposition of provisional measures the Commission noted a clerical omission in relation to the VAT adjustment. This has been accordingly corrected for the dumping calculations reflected in the relevant table under recital 169 below.

(56) Two exporting producers claimed that the price comparison between the export price and the normal value has not been correctly made as far as one product type is concerned. This claim is addressed in recitals 67-68 below.

2.5. *Dumping margins*

(57) In the absence of comments, the methodology used for calculating the dumping margins, as set out in recitals 69 to 73 of the provisional Regulation, is herewith confirmed.

(58) One exporting producer claimed that, in the anti-dumping questionnaire, it had erroneously filled in incorrect Cost, Insurance and Freight values (CIF values) of a number of its export sales of the product concerned to the EU. The reported CIF values were too low thereby inflating the company's dumping margin as well as its injury margin.

(59) The Commission examined this request thoroughly. Having counterchecked and verified on spot the CIF prices of the respective transactions with the EU importer the Commission was able to verify the validity of this claim. This claim was therefore accepted.

(60) Taking into account the adjustments made to the normal value and to the export price, and in the absence of any further comments, the definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Dumping margin
Xinyi PV Products (Anhui) Holdings Ltd	83,1 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	78,4 %
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	90,1 %
Henan Yuhua New Material Co., Ltd	41,6 %
Other cooperating companies	84,7 %
All other companies	90,1 %

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D. **INJURY**

1. **Definition of the Union industry and Union production**

(61) No comments were received in respect to the definition of the Union industry and Union production. Therefore, the Commission confirms recitals 75 to 79 of the provisional Regulation.

2. **Union consumption**

(62) After provisional disclosure, the sales volume figures submitted by the complainant concerning the sampled Union producers have been updated with data from the sampled Union producers. Accordingly, Table 1 was corrected (see below). The correction does not change or invalidate the trend or the conclusions drawn from the data in the provisional Regulation. Therefore, in the absence of any comments with respect to Union consumption, the trend in Union consumption established in recitals 80-82 of the provisional Regulation is confirmed.

Table 1

Union consumption (1 000 m^2)

	2009	2010	2011	IP
Total Union consumption	16 596	28 239	33 993	27 412
Index	*100*	*170*	*205*	*165*

Source: Glass for Europe, the complainant and sampled Union producers' questionnaire replies.

3. **Volume, price and market share of dumped imports from the country concerned**

(63) Due to the correction made in Union industry sales (see recital 62 above), the market share of the imports from the country concerned had to be corrected as well (see Table 2). The correction does not change the trend or the conclusions drawn from the data in the provisional Regulation.

(64) Consequently, the Commission confirms recitals 83-87 of the provisional Regulation.

Table 2

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

	2009	2010	2011	IP
Market share	7,2 %	7,3 %	18,1 %	30,5 %
Index	*100*	*100*	*250*	*421*

Source: Glass for Europe, the complainant and sampled Union producers' questionnaire replies.

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4. **Price undercutting**

(65) Recitals 88 to 89 of the provisional Regulation set out how the price undercutting during the IP has been determined. The weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market and adjusted to an ex-works level were compared to the corresponding weighted average prices per product type of the imports from the sampled cooperating exporting producers. The imports in question were to the first independent customer on the Union market, established on a CIF basis, with upward adjustments, that is to say custom clearance, duty, handling and loading costs. Those adjustments increase the price, depending on the product control number, by 7 % to 15 %.

(66) 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 the recital 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.

(67) Two exporting producers claimed that the price comparison has not been correctly made as far as one product type is concerned. In particular, it was argued that double-side coated solar glass should have been compared separately from single-side coated solar glass. Allegedly, the cost and price of the double-side coated solar glass is much higher than the cost and price of single-side coated solar glass. It was further claimed that double-side coated solar glass has solar transmittance coefficient 'normally' much higher than single-side coated solar glass. Finally, one exporter stated that PV modules never use double-side coated solar glass as its price is much higher than the price of single-side coated solar glass but the solar transmittance coefficient of double-side coated solar glass is the same as that of single-side coated solar glass when used in the production of PV modules. By contrast, for solar thermal applications the higher transmittance achieved by double-side coated solar glass is allegedly important since thanks to it the solar thermal applications can be much more efficient.

(68) The Commission rejects the claims put forward by the exporting producers for the following reasons. First, beyond general allegations no evidence was provided by the exporting producer that there is a consistent difference in costs of production between single-side and double-side coated solar glass. The Union industry argued the contrary and claimed that depending on

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the coating technology used, production costs differ, and double-side coated glass is not necessarily more expensive than single-side coated and vice versa. Second, indeed double-side coated glass can achieve higher solar transmittance than single-side coated glass (the former can reach maximum 98 % solar transmittance, while the latter — up to 95 %) and indeed this technical characteristic only matters for solar thermal applications, while it is irrelevant for PV modules. However, contrary to what the exporting producer claims, double-side coated solar glass is also sold to producers of PV modules and even constitutes its main market. In fact, during the IP the Union industry sales of double-side coated glass to thermal collectors was negligible (less than 1 % of all double-side coated glass sales; all other sales were destined to PV modules).

(69) Concerning the post-importation cost, two comments were received after provisional disclosure. In the first comment, the complainant argued that cost adjustments for the custom clearance, duty, handling and loading costs should be at much lower rate, that is to say EUR 0,26/m^2 for custom clearance, handling and loading costs plus 3 % duty, instead of EUR 0,40/m^2 plus 3 % duty which had been used.

(70) The second comment came from an exporting producer who claimed that no breakdown details had been disclosed, apart from an overall 0,40 EUR/m^2 covering costs of handling, customs clearance fees and temporary storage of the imported products at the point of importation. It also alleged that the criteria applied in order to determine whether an adjustment was considered reasonable or not had not been explained.

(71) The adjustments in question applied by the Commission are based on verified data received from importers of solar glass produced in the PRC and reflect the actual weighted average costs incurred for importing the product concerned during the IP. By contrast, the complainant provided a statement of regular standard charges applied by an independent freight forwarder for imports from China in standard sea-containers. This statement does not constitute valid evidence of the actual charges applied by freight forwarders to imports of the product concerned during the IP. Consequently, the claim put forward by the complainant is rejected.

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(72) Regarding the claim of the exporting producer, no further breakdown of the amount of 0,40 EUR/m^2 could be provided as this amount is a weighted average calculated on the basis of numerous actual invoices issued during the IP of imports of Chinese solar glass at different EU ports. Thus, the actual post-importation costs incurred vary depending on the EU port of entry, the product type, the usage of temporary storage at the point of importation, etc.

(73) Furthermore, the post-importation costs adjustment made by the Commission in the provisional Regulation is considered reasonable as it is based on verified actual invoices of imports of Chinese solar glass incurred by independent importers.

(74) In the absence of any other comments on the methodology used for calculating undercutting, the price comparison method explained in recitals 89 and 90 of the provisional Regulation is confirmed.

5. **Macroeconomic indicators**

(75) As set out in recital 92 of the provisional Regulation, for the purpose of the injury analysis the Commission distinguished between macroeconomic and microeconomic injury indicators. The macroeconomic indicators for the period considered were analysed on the basis of the data provided by the Union industry relating to all Union producers that came forward during the investigation.

(76) One exporting producer claimed that the Commission has failed to conduct the injury analysis in line with Article 3(2) and Article 3(5) of the basic Regulation as it conducted the injury analysis on the basis of two separate and allegedly inconsistent sets of data, that is to say the macro- and microeconomic injury indicators. It further contends that the alleged inconsistency of the analysis based on the two sets of data casts serious doubts on the appropriateness, fairness and objectivity of the overall injury picture.

(77) Following definitive disclosure, the same company reiterated its claim. It also quoted a number of prior investigations where allegedly the Union institutions defined in an inconsistent way different sets of data as belonging either to macro or micro data.

(78) The Commission cannot accept this claim. This is a methodology applicable in sampling cases in order to analyse the situation of the Union industry and to take into consideration not only the trends displayed by the sample but also by the Union industry

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as a whole. All the factors prescribed by Article 3(5) of the basic Regulation were considered in the analysis. The conclusion on injury is also drawn on the basis of them all. Accordingly, the injury analysis was conducted in line with Article 3(2) and Article 3(5) of the basic Regulation.

(79) In the absence of any further comments, the Commission confirms recitals 90-94 of the provisional Regulation.

(80) Concerning the macroeconomic indicators analysed by the Commission in recitals 95 to 103 of the provisional Regulation, due to the correction made in Union industry sales (see recital 62 above), the market share of the Union producers slightly changed (see Table 5). However, the correction does not change the trend or the conclusions drawn from the data in the provisional Regulation. Consequently, the Commission confirms recitals 95 to 105 of the provisional Regulation.

Table 5

Sales volume and market share

	2009	2010	2011	IP
Sales volume (1 000 m^2)	14 696	25 303	26 556	18 039
Index	*100*	*172*	*181*	*123*
Market share	88,6 %	89,6 %	78,1 %	65,8 %
Index	*100*	*101*	*88*	*74*

Source: Glass for Europe, the complainant and sampled Union producers' questionnaire replies.

6. **Microeconomic indicators**

(81) After provisional disclosure, the Unit cost of production of the sampled Union producers has been updated. Accordingly, Table 7 was slightly modified (see below). The correction does not change or invalidate the trend or the conclusions drawn from the data in the provisional Regulation. Therefore, in the absence of any comments the Commission confirms recitals 106 to 123 of the provisional Regulation.

Table 7

Average sales prices in the Union

	2009	2010	2011	IP
Unit cost of production (EUR/m^2)	13,13	8,38	8,44	9,34

Source: sampled Union producers' questionnaire replies.

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7. **Conclusion on injury**

(82) In the absence of any other comments, the Commission confirms the conclusion contained in recitals 124 to 129 of the provisional Regulation that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

E. CAUSATION

1. **Effect of the dumped imports**

(83) In recitals 131, 132 and 133 of the provisional Regulation the Commission concluded that there is a causal link between the material injury suffered by the Union industry and the dumped imports from the PRC. This conclusion was contested by several interested parties, which claimed that there is no reasonable and coherent coincidence in time between the injury and the increased imports from the country concerned. This is due to the fact that between 2009 and 2011 Chinese imports increased significantly. Furthermore, the average price of Chinese imports in 2011 was 4,96 EUR/m^2, an amount near to that of 2012 (4,38 EUR/m^2).

(84) The same parties contended that the conclusion that the injury suffered by the Union industry should be attributed to the Chinese imports in 2012 is at odds with its findings that the Chinese imports had allegedly no negative impact whatsoever the year before, especially as far as the Union industry's profit margin is concerned, even though the average import price was very similar.

(85) From the start of the period considered to the end of the IP imports rose by 596 %, with an increase by 321 % in their market share. Import prices dropped by 27,2 % over the period considered.

(86) It is correct that the Union industry's profit margin in 2011 was only slightly lower than in 2010, despite the high increase of imports from the PRC already in 2011. However during 2011 the Union consumption of solar glass increased significantly, that is to say by 20,4 % between 2010 and 2011, while imports from the PRC increased by 150 % over the same period. In the IP, whereas consumption dropped by slightly more than 19 %, the volume of Chinese imports further increased by more than 35 % compared to 2011. This clearly shows the coincidence in time between the material injury suffered by the Union industry in the IP and the strong increase of the dumped Chinese imports. Also, logically it takes some time before some of the negative effects of the increased dumped imports are felt by the Union producers (for example loss of clients, incur of losses, reduction of return on investments and cash flow, etc.). Therefore, the claim is rejected.

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(87) After definitive disclosure, the same parties contended that the coincidence in time between the material injury suffered and the dumped Chinese imports cannot be assessed on the basis of the whole period considered from 2009 to the end of the IP, without taking into account the intervening trends observed during this period.

(88) The Commission also analysed the intervening trends during the period considered. The fact that indeed in 2011 the Union industry was still profitable even though Chinese imports already strongly increased in that year, does not affect the conclusion that in the IP there was a coincidence in time between the injury suffered by the Union industry and the dumped Chinese imports.

(89) In the IP, whereas consumption dropped by slightly more than 19 %, the Chinese exporting producers:

— increased their market share by 12,4 percentage points compared to 2011 while the Union industry's share dropped by 12,3 percentage points,

— increased the volumes of Chinese imports by more than 35 % against a drop of 32 % in the sales of the Union industry, and

— reduced further their already very low export prices by more than 10 % and undercut the Union industry prices by up to 26,7 % thereby contributing to the losses suffered by the Union industry in the IP.

(90) Based on the above analysis, the Commission concludes that the presence of dumped imports and the considerable increase of their market share at prices constantly undercutting those of the Union industry have caused the material injury suffered by the Union industry.

(91) In the absence of any other comments as regards the effect of the dumped imports, the Commission confirms recitals 131, 132 and 133 of the provisional Regulation.

2. **Effect of other factors**

2.1. *Imports from third countries*

(92) Due to the correction made in Union industry sales data (see recital 62 above), the market share of the imports from third countries slightly changed (see corrected Table 11 below). However, the correction does not change the trend or the conclusions drawn from the data in the provisional Regulation.

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(93) In the absence of any other comments, the Commission confirms recitals 134 to 137 of the provisional Regulation.

Table 11

Imports from third countries (1 000 m^2)

Third Countries	2009	2010	2011	IP
Market share	4,2 %	3,1 %	3,8 %	3,7 %
Index	*100*	*74*	*90*	*88*

Source: Glass for Europe, the complainant and Union producers' questionnaire replies.

2.2. *Export performance of the Union industry*

(94) One party contested the Commission's findings in recital 139 of the provisional Regulation that the drop of export sales of the sampled Union producers during the IP was most probably due to very low prices of Chinese exports to the Union industry's major destinations of exports (namely US, Canada). The party considered that this conclusion is unwarranted since Chinese exports were present also in 2011 and thus there is no reason why the impact should have occurred only in 2012. It is also of the view that the actual reason for their low export sales was the fact that the Union industry was not competitive and, when world market prices decreased, the Union industry could not remain competitive. Consequently, the party claimed that the drop in export sales of the Union industry during the IP further contributed to the injury suffered.

(95) 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 %.

(96) The Commission rejects these claims for the following reasons. The Union market, being one of the largest in the world, has always been and is still the main market for the Union industry and not third country markets. Also, the fact that solar glass is relatively heavy and fragile translates into additional costs when transported over a distance (due to breakage and corrosion). On the basis of the information at the Commission's disposal from the questionnaire replies of the sampled exporting producers, the prices of the Chinese exports to the Union industry's main export destinations were indeed very low and decreased even further during the IP in comparison with 2011. This shows that the reduced export performance of the Union industry is mainly due to the increasingly low priced Chinese exports, also in third country markets as confirmed during the investigation.

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(97) After definitive disclosure, the same party claimed that the investigation concerned the Union market and did not assess any alleged unfair pricing in third country markets.

(98) In addition, the findings by the EU institutions, even assuming they were correct, allegedly attributed injury caused by other factors to the dumped imports into the Union. Thus the alleged low-priced or subsidised Chinese exports to third countries were not the dumped imports into the EU and, as such, qualified as another factor, the injurious effects of which could not be attributed to the dumped imports.

(99) The Commission rejects this claim. It did not investigate whether prices of imports of the PRC to third countries are dumped and/or subsidised. It merely established, on the basis of export prices to third countries which were submitted by the sampled exporting producers, that those prices have been constantly decreasing in the recent years.

(100) In the same vein, the Commission analysed the price decrease of the imports from the PRC to third countries as a separate factor and did not attribute it to the dumped imports into the Union. Indeed, this fact was only used as a possible explanation for the reduced Union industry's exports to its main third countries destinations in the context of the fact that those markets were not and have never been the main markets for the Union industry. Even in its peak years 2010 and 2011, more than 85 % of the Union industry sales were sold on the Union market.

(101) Therefore, the conclusion in recital 140 of the provisional Regulation that the deteriorated export performance of the sampled Union producers cannot break the causal link between the dumped imports and the injury suffered by the Union industry is confirmed.

2.3. *Development of consumption, capacity and capacity utilisation*

(102) One party claimed that the injury suffered by the Union industry was due to the drop in Union consumption. This is allegedly the only factor which appeared to drop for the first time in 2012 and to which the injury can be reasonably linked, while the Chinese imports started already in 2011 at prices comparable to those in 2012. After definitive disclosure, the same party reiterated its claim.

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(103) Indeed, in 2012 consumption dropped in comparison with the previous years. However, the Commission's analysis runs from the start of the period considered in 2009 to the end of the IP and in this period Union consumption increased in overall by 65 %. During the period considered the market share of the Union industry constantly and considerably decreased, that is to say by 25,7 % in overall, while the market share of the Chinese imports increased by 321 %. The increase of Chinese imports was 596 % during the period considered.

(104) In addition, in the IP the Union consumption was still at a comparable level as in 2010, while, as indicated in table 10 of the provisional Regulation, 2010 was the year when the Union industry achieved a reasonable profit. Therefore, the drop in the Union consumption during the IP cannot, in itself, have led to the losses suffered by the Union industry in the IP. In addition, the Union industry's market share dropped by 26,6 % between 2010 and 2012, while the market share of the Chinese imports increased by 318 % during the same period. Finally, if the drop in consumption during the IP should have inflicted the injury suffered by the Union industry, then the drop should have also affected the Chinese imports. However, this was clearly not the case. On the contrary, during the IP the Chinese imports significantly increased both in volume and in market share.

(105) Consequently, the Commission rejects this claim and confirms the conclusions reached in recitals 141 and 142 of the provisional Regulation.

(106) Regarding the production capacity of the Union industry contained in Table 4 of the provisional Regulation, the Commission is of the view that its increase clearly followed the trend in the increase of Union consumption up until 2011.

(107) The Commission also established that the main reason for the increase by 12,5 % of the production capacity between 2011 and end of the IP was the entry into the solar glass market of one company, whereas the production capacity of all other companies on the market slightly decreased during the same period.

(108) Consequently, the Commission is of the view that, in overall, the trend in the Union industry's capacity development followed the development of Union consumption. The Commission thus considers that the high production capacity of the Union industry, which was already high at the start of the period considered and which remained high during the IP, cannot break the causal link between the dumped imports and the injury suffered by the Union industry.

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(109) After definitive disclosure, several parties argued that the Commission failed to take into account the alleged overcapacity as an important cause of injury. During the period considered the increase in capacity was allegedly not justified by the increase in consumption as the Union industry experienced a constant huge gap between production capacity and consumption which is, in their opinion, not economically viable. One party further claimed that the fact that there was a new entrant on the market between 2011 and the end of the IP contributed to the injury suffered as it increased domestic competition.

(110) It was also claimed that the decreasing Union consumption, the increasing production capacity, combined with a drop in export sales, resulted in a low capacity utilisation rate. This low utilisation rate caused high fixed costs, which, in its opinion, severely impacted the Union solar glass industry.

(111) The Commission observes that the level of capacity of the whole Union industry has constantly been higher than the total Union consumption during the whole period considered. Nevertheless, this has not prevented the sampled Union industry companies to achieve profits during the two years prior to the IP, while they incurred significant losses of 14,5 % only in the IP.

(112) In addition, the capacity of the sampled Union producers increased only by 4 % between 2010 and 2011 and by 2,6 % between 2011 and the IP, resulting in a modest overall increase by 6,7 % between 2010 and the IP.

(113) Consequently, the difference between the consumption and the capacity existed during the whole period considered and, even though slightly higher in the IP, cannot explain the huge losses incurred by the sampled companies during the IP. As a result, the Commission rejects the claim that the Union industry's level of capacity is not economically viable.

(114) Regarding the argument that the new entrant in 2012 contributed to the injury suffered by the Union industry, the Commission observes that this new entrant, even though it had installed a high capacity, had very limited production and sales volumes,

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in the range of 2 % of total EU sales, during the IP. As a result, its entry had hardly an impact on the performance of the Union industry as a whole, except that it significantly inflated the latter's capacity and capacity utilisation data. Indeed, without this company's data, the capacity of all other Union producers actually decreased between 2011 and 2012.

(115) In addition, the investigation did not confirm that the solar glass industry is severely impacted by fixed costs. In fact, the average fixed costs of the sampled Union producers were in the range of 25 %-35 % of the total costs of production during the IP. In the preceding years 2010 and 2011, the percentage of fixed costs was slightly lower, but still within the same range. This clearly shows that the high capacity in the IP had obviously an impact on the cost of production, but its impact was not significant and cannot explain the high losses incurred in the IP, in particular, compared to the profits achieved in previous years. In addition, the capacity utilisation rate of the sampled Union producers went down compared to previous years but was still at the level of 65 % in the IP.

(116) Finally, in its analysis the Commission has also taken into account that the installed capacity can be adapted for the production of other types of glass, which fall outside the scope of this investigation. Accordingly, also because of this element the Commission disagrees with the interested party that the high installed capacity is economically not viable.

(117) In view of the above, the Commission rejects the claims put forward by the party and reiterates that the developments in consumption, capacity and capacity utilisation during the period considered, analysed both separately and cumulatively, are not such as to break the causal link found between the material injury suffered by the Union industry and the dumped imports.

2.4. *Trends in solar modules*

(118) Two parties claimed that, in addition to the development in consumption of the product concerned, the injury suffered by the Union industry was also caused by the drop in consumption of solar modules and the losses suffered by this industry in the end of 2011/beginning of 2012. The impact of the financial distress of the solar panels producers on the solar glass market allegedly started to appear in the end of 2011 and in 2012, due to the necessary time lag between the two events.

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(119) The same arguments were repeated by one party following definitive disclosure.

(120) In recital 143 of the provisional Regulation the Commission indeed found that the trends observed in solar modules have an important impact on the consumption of solar glass as 80-85 % of the solar glass sales are made to solar modules producers (Crystalline silicon photovoltaic modules and thin-film photovoltaic modules). However, as stated in recitals 143 and 144 of the provisional Regulation, consumption of solar modules increased constantly over the period considered, that is 2009-2012, and even though it decreased 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 the feed-in tariffs (FITs) cutbacks at the end of 2011/beginning of 2012 had not broken the causal link between the dumped imports of solar modules and the material injury found ([2]) as the demand for solar modules remained relatively high over the period 2009-2012.

(121) In view of the above, the Commission concludes that the decrease in 2012 of the level of consumption of solar modules cannot be regarded on its own as a factor such as to break the causal link established between the dumped imports of solar glass from the PRC and the material injury suffered by the Union industry.

(122) Similarly, since the demand for solar modules remained relatively high over the period 2009-2012 and the demand of solar glass increased by 65 % over the same period, the impact on solar glass consumption of the deterioration of the financial situation of solar modules producers in the end of the 2011/beginning

([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 (namely 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 Provisional Regulation). According to section B of the Solar Panels Provisional 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]) The findings of the Solar Panels Provisional Regulation contained in recitals 107-109 were confirmed in recitals 245 to 265 of the Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ L 325, 5.12.2013, p. 1).

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of 2012 cannot be regarded on its own as a factor to be such as to break the causal link established between the dumped imports of solar glass from the PRC and the material injury suffered by the Union industry.

(123) In the absence of any other comments, the conclusion reached in recital 144 of the provisional Regulation is confirmed.

2.5. *Conclusion on causation*

(124) In view of the above, the Commission confirms its findings in recitals 130-133 of the provisional Regulation that imports of the product concerned from the country concerned were dumped during the IP and they undercut the sales of the Union industry. Furthermore, there is a clear coincidence in time between the increasing volumes of dumped imports and the deterioration of the situation of the Union industry. The dumped imports were in direct competition with the Union industry's production and as a result the Union industry lost profitability and market share during the period considered. Other possible causes of injury were analysed above 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.

(125) No new evidence was provided to change that conclusion and in the absence of any other comments regarding the conclusion on causation, the Commission confirms recitals 145 and 146 of the provisional Regulation.

F. **UNION INTEREST**

1. **Interest of the Union industry**

(126) In the absence of any comments regarding the interest of the Union industry, the Commission confirms recitals 148 to 151 of the provisional Regulation.

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

(127) In the absence of any comments regarding the interest of unrelated importers and traders, the Commission confirms recitals 152, 153 and 154 of the provisional Regulation.

3. **Interest of raw materials suppliers**

(128) In the absence of any comments regarding the interest of raw materials suppliers the Commission confirms recital 155 of the provisional Regulation.

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4. **Interest of users**

(129) One user came forward and indicated that the anti-dumping measures will not affect it as it has not used solar glass produced in the PRC and does not intend to do so.

(130) One exporting producer claimed that the imposition of anti-dumping duty on Chinese solar glass may benefit the Union solar glass industry a little, but harm the Union PV and solar thermal industry a lot as they will have to pay more for the product concerned. Furthermore, this would arguably go against the environmental protection target of the Union as it would increase prices for PV modules and solar thermal applications and it would favour the solar glass industry which it perceived as energy intensive.

(131) As set out in recital 157 of the provisional Regulation, the imposition of the anti-dumping duties will have only very limited impact (less than 1 %) on the total costs of the solar modules. No evidence was received that would question the accuracy of this analysis. This claim is therefore rejected.

(132) In the absence of any other comments received concerning Union interest, the Commission confirms recitals 155 to 159 of the provisional Regulation.

5. **Competition aspects**

(133) In the absence of any comments regarding the competition aspects identified in recitals 160 to 163 of the provisional Regulation, the Commission confirms the recitals in question.

6. **Conclusion on Union interest**

(134) No comments were received that would change the analysis of the Union interest as set out in the provisional Regulation. Therefore, the Commission confirms recital 164 of the provisional Regulation.

G. DEFINITIVE ANTI-DUMPING MEASURES

1. **Injury elimination level**

(135) Several interested parties contested the use of 8,3 % as the target profit for the Union industry set out in recital 167 of the provisional Regulation, stating that it was unrealistically high. They argued that the 8,3 % profit margin in 2010 was the highest during the period considered, because 2010 was the best year for the world PV industry. They also claimed

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that it is impossible for the Union solar glass industry to obtain the same profit margin in 2012 in the absence of dumping when the global PV module industry including the Union PV module industry allegedly entered into big recession in 2012.

(136) The Commission rejects this claim. The Commission used as target profit 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. Therefore, the profit margin used to establish the injury elimination level corresponds to a period when the Union industry could reasonably expect a profit under normal conditions of competition, not affected by the dumped imports yet ([1]).

(137) Finally, as far as the solar glass industry is concerned, its peak year was not 2010, as claimed by the parties, but 2011 when it experienced the highest Union consumption and highest sales volume of the Union industry.

(138) Following definitive disclosure, one party reiterated its claim contesting the profit margin used as a target profit. It argued that the Commission should take into account all other factors which affected profitability in the IP. It claimed that the reasonable target profit could not be higher than 5 %.

(139) The Commission rejects this claim for the following reasons. The target profit used is not based on estimation but on an actual profit achieved by the Union industry prior to the distortion of competition caused by the Chinese dumped imports. The Commission considers this a reasonable profit, and has taken into account that the market situation was not significantly different compared to the IP, left aside the impact of the Chinese dumped imports. The statement of the party in this respect that the consumption in 2010 was much higher than in 2012 is factually incorrect. As indicated in Section E.2.3 above, the consumption in 2010 was at a similar level to the one in 2012. Also, in 2010 the Union industry was building up capacity in view of the expected strong increase of demand, which affected negatively its profit in that year. Finally, the proposed target profit of 5 % is arbitrary as it is not based on any data or actual calculations and is therefore rejected.

([1]) Cf; T-462/04 *HEG and Graphite India* v *Council*, judgment of 17 December 2008 (§§ 161-162).

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(140) The complainant claimed on the other hand that the profit margin is too low and the Commission should increase it to 15 % as the complainants' profits for 2010 were higher than 10 %. The lower profit margins which other sampled EU producers seem to have achieved in 2010 are allegedly not representative of the profits that can reasonably be expected in the absence of unfairly traded imports. Most likely, there are reasons linked to management policies or issues of those companies, possibly including short-term pricing policies aimed at gaining market share, which would explain why they only obtained a lower margin in that year and why they were among the first to experience injury from the dumped imports.

(141) The Commission does not accept this claim. As explained above in this section, in the Commission's view the average profit in 2010 for the whole Union industry correctly reflects the average profit under normal conditions of competition. This conclusion is not contradicted by the fact that some members of the Union industry have taken management decisions which have led to profit margins lower or higher than other members of the same industry. Indeed, the existence of such differences is an intrinsic characteristic of the behaviour of companies in a market economy.

(142) In the absence of any other comments, the Commission confirms the methodology described in recitals 166 to 169 of the provisional Regulation.

2. **Definitive measures**

(143) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on the imports of the product concerned at the level of the injury margins, in accordance with the lesser duty rule. In this case the duty rate should accordingly be set at the level of the injury margins found.

(144) Following provisional disclosure, the complainant claimed that the provisional *ad valorem* duties were not effective. Therefore it requested the Commission to impose definitive measures in the form of a minimum import price (MIP). The complainant argued that such MIP would render the measures more effective, especially if two different MIPs would be imposed, one for coated and one for uncoated solar glass. The reasons put forward by the complainant were the following:

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(145) Firstly, the complainant claimed that after the IP the exporting producers have been selling coated glass to the EU market for the same price at which they had sold uncoated solar glass during the IP. It also alleged that coated glass has higher production costs than uncoated glass and is therefore normally sold at prices that are 20 % to 25 % higher than those of uncoated glass.

(146) Secondly, the complainant claimed that after the IP demand in the Union shifted from uncoated to coated solar glass. The users have been purchasing in increasing proportion coated solar glass rather than uncoated solar glass. Consequently, coated solar glass has accounted for almost the totality of imports from the PRC into the EU in the second half of 2013 while during the IP the reverse was the case.

(147) Anti-dumping measures may indeed take different forms. While the Commission has a large discretion when choosing the form of the measures, the purpose remains to remove the effects of the injurious dumping.

(148) The investigation confirmed that there is a significant difference in both costs and prices between uncoated and coated solar glass due to the difference in the technical characteristics of the two products. Indeed, coated solar glass, which depending on the technology used can be single or double-side coated, increases transmittance in comparison with uncoated solar glass and could have additional self-cleaning, anti-soiling or hardness properties. A high quality uncoated solar glass can achieve a solar transmittance of up to 92 %. Coating can reduce reflection by approximately 3 % (per side) and consequently increase transmittance of single-side coated solar glass to a maximum of 95 % and double-side coated solar glass to a maximum of 98 %.

(149) During the IP 81 % of the imported, from the PRC, solar glass sold in the EU was uncoated whereas only 19 % was coated. Both price and cost differences found between uncoated and coated solar glass during the IP were around 30 %.

(150) However, the Commission considers that the evidence provided by the complainant was not sufficiently substantiated. Furthermore, the Commission does not have at its disposal sufficient evidence or data from any other sources that would allow it to conclude that since the imposition of provisional anti-dumping measures demand has shifted from uncoated to coated solar glass and that prices of, in particular, coated glass have decreased significantly as alleged by the complainant.

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(151) Consequently, the Commission cannot accept this claim and considers appropriate to impose *ad valorem* duties instead of MIPs. Nevertheless, in order to address the concerns raised above, two different Integrated Community Tariff codes (TARIC codes) — one for coated and one for uncoated solar glass — will be created. They would enable the Commission to closely monitor the developments of the market and to decide in due time whether any further measures are needed.

(152) The Commission also recalls that in the past, it has used MIPs in specific circumstances, in particular in the following situations:

— A particular high export price for one product type, which meant that there was no dumping with regards to that product type ([1]),

— Considerations linked to market power and market share of Union producers, which made it necessary to ensure, for reasons of Union interest, that prices of imports do not exceed a certain level ([2]).

(153) Furthermore, minimum import prices have been used mainly for homogenous products, and not for products like the present one, which comes in a variety of product types.

(154) Also for those reasons, the Commission takes the view that minimum import prices are not suitable for the present file.

(155) Following definitive disclosure, the complainant reiterated its request for the imposition of a MIP and commented on recitals 152 to 156 above by indicating the following.

(156) First, those recitals allegedly do not address considerations on the effectiveness of the form of the measures to remove the injurious effects of dumping and subsidisation which is also a valid reason to employ MIPs.

([1]) Council Regulation (EC) No 119/97 of 20 January 1997 imposing definitive anti-dumping duties on imports of certain ring binder mechanisms originating in Malaysia and the People's Republic of China and collecting definitively the provisional duties imposed (OJ L 22, 24.1.1997, p. 1), recital 70.

([2]) Council Implementing Regulation (EU) No 457/2011 of 10 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of melamine originating in the People's Republic of China (OJ L 124, 13.5.2011, p. 2), recital 76.

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(157) Second, the Commission allegedly did not explain why these considerations are relevant in the present case and how they outweigh the EU industry's interest.

(158) Third, it argued that the product concerned is sufficiently homogenous to allow the practical administration of a MIP as the two main product types have clear distinctive features which allow a proper price differentiation and easy administration and monitoring, especially as nearly all imports are currently coated solar glass.

(159) Regarding the first claim, it appears that demand may indeed have shifted from uncoated to coated solar glass. However, as no additional evidence was provided, the Commission cannot conclude that prices of, in particular, coated solar glass have decreased significantly. Consequently, it has no reasons to change its previous conclusion that *ad valorem* duties are more appropriate to remove the injurious effects of dumping and subsidisation.

(160) With regard to the second comment, the purpose of the recitals in question was to illustrate that the Commission does not consider that this case is appropriate for the imposition of a MIP, unless the claims made by the complainant were further substantiated. As this was not done, the Commission does not deem necessary to further analyse the benefit of a possible MIP for the EU industry's interest.

(161) As far as the third comment is concerned, the complainant has not put into question the different product types defined by the Commission in the investigation, and has not demonstrated that there would be no price difference. The offer for an undertaking made by the exporting producers, which foresees different MIPs, indicates as well that these differences are real. Therefore, that claim is rejected. In any event, even if the Commission were to accept that the product concerned may be rather homogenous, it considers this issue irrelevant as it rejects the request for a MIP also for the other two reasons set out above. It also recalls that the Commission can take into consideration information that relates to the period subsequent to the investigation period only in exceptional cases (see Article 6(1) of the basic Regulation). The complainants have not demonstrated that the situation is such an exceptional situation, and that other available remedies, such as monitoring through the creation of an additional TARIC code, would not be sufficient.

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(162) In conclusion, the Commission hereby rejects these claims.

(163) After definitive disclosure several solar modules producers also requested a MIP. Their main concerns were:

— after the IP the production capacity of solar glass declined massively and many Union manufacturers dropped irrevocably out of the market. The only three Union producers left on the market are no longer able to cover more than 50 % of the European demand. Thus solar modules manufacturers need to cover their needs with supplies from the PRC. One user claimed that it would be forced to rely for its supply on only one or two Union producers which would be able to meet the required technical product specifications,

— duties, as they are now proposed, would increase product costs for solar modules significantly (by around 3 cents per watt which is allegedly five percent of the MIP established in the solar panels case),

— the MIP should be designed in a way not to lead to higher costs for solar modules in the EU.

(164) On the first argument, the Commission does not have any reasons to believe that those Union producers which have reduced or have temporarily ceased their production would not restart their business at full capacity once the imports are again made at fair prices. As described in recitals 106 to 112 above, the Union industry disposes of sufficient capacity to satisfy the whole Union consumption. Consequently, this claim is rejected. The Commission also rejects the claim of one user that it would be forced to rely on only one or two Union producers for supplies. In fact, Chinese exporting producers would still be able to supply the Union market. The anti-dumping measures, irrespective of their form, should ensure that imports are made at fair prices, and are not meant to cease imports from the PRC altogether.

(165) On the second argument, the users did not provide any evidence proving their claim. By contrast, the Commission established in recital 157 of the provisional Regulation that the impact of the measures would be less than 1 % on the total costs of the solar modules produced by companies which cooperated in the investigation. This claim is thus rejected.

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(166) It is therefore not necessary to take a view on the third point raised by the solar modules producers.

(167) An anti-subsidy investigation was carried out in parallel with the anti-dumping investigation. 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 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. On the basis of the above, the rate at which such duties will be imposed are set as follows:

Company	Subsidy margin	Dumping margin	Injury elimination level	countervailing duty	Anti-dumping duty
Xinyi PV Products (Anhui) Holdings Ltd	3,2 %	83,1 %	39,3 %	3,2 %	36,1 %
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	17,1 %	78,4 %	26,2 %	17,1 %	9,1 %
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	12,8 %	90,1 %	42,1 %	12,8 %	29,3 %
Henan Yuhua New Material Co., Ltd	16,7 %	41,6 %	17,1 %	16,7 %	0,4 %
Other cooperating companies	12,4 %	84,7 %	36,5 %	12,4 %	24,1 %
All other companies	17,1 %	90,1 %	42,1 %	17,1 %	25,0 %

(168) 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 country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported product concerned produced by any other company whose name is not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should not benefit from these rates and should 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 of the provisional Regulation), 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 of the provisional Regulation)).

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(169) Any claim requesting the application of these individual company anti-dumping duty rates (for example 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 can be amended accordingly by updating the list of companies benefiting from individual duty rates.

3. **Undertakings**

(170) Following definitive disclosure, the three sampled exporting producers and Henan Yuhua offered price undertakings pursuant to Article 8(1) of the basic Regulation. They envisage different MIPs corresponding to different groups of product types.

(171) The Commission notes that the proposed MIPs by all companies are much lower than the non-injurious prices which it established during the investigation. Consequently, the Commission does not consider them to be set at the injury elimination level, in accordance with Article 8(1) of the basic Regulation.

(172) Even if they were set at the injury elimination level, the sampled companies propose a quarterly adjustment only of the price of coated solar glass on the basis of the change in prices in the solar modules market. The Commission cannot accept this method of indexation for the following reasons.

(173) First, the prices of all product types should be regularly adjusted, otherwise there may soon be an artificially created gap between the price levels of coated and non-coated solar glass. Second, the Commission does not consider appropriate to adjust the prices of solar glass on the basis of the final users' prices (that is prices of solar modules). This could lead to an unjustified squeeze of the profit margins of the solar glass industry, if the prices of solar modules for example decrease because of the drop in prices of other solar modules components.

(174) In general, the Commission considers appropriate to index the MIPs with the prices of raw materials. However, in this particular case no raw material was found to constitute a significantly high proportion of the overall costs of manufacturing.

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

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(175) The Commission also established that the prices of solar glass were significantly unstable during the IP in the PRC and Turkey.

(176) In addition, there is a high risk of cross compensation since some of the companies in question sell the product concerned as well as other products to the same customers. Finally, the proposed MIPs by the sampled companies do not seem to cover all product types manufactured by the respective exporting producers. These factors render the effective implementation of undertakings impracticable and difficult to monitor.

(177) Consequently, for the reasons stated above, the Commission rejects the undertaking offers.

4. **Definitive collection of the provisional duties**

(178) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected. Amounts secured in excess of the combined definitive rates of the anti-dumping and the countervailing duties should be released.

5. **Enforceability of the measures**

(179) If market conditions change significantly after the imposition of definitive measures, the Commission may, on its own initiative, review the form of the measures in order to assess whether the measures are achieving the intended results in removing the injury and whether a change in the form of the measures is warranted.

(180) In order to best guard against any possible absorption of the measures, the Commission intends to immediately initiate a review under Article 12(1) of the basic Regulation and may subject imports to registration in accordance with Article 14(5) of the basic Regulation, should any evidence of such behaviour be provided. Under Article 12(3) of the basic Regulation, the amount of duty imposed may be increased up to twice the initially imposed amount of duty.

(181) The Commission will rely, inter alia, on import surveillance information provided by national customs authorities, as well as information provided by Member States pursuant to Article 14(6) of the basic Regulation.

(182) The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion,

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HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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 and originating in the People's Republic of China. Coated solar glass (single or double-side coated) shall fall under TARIC code 7007 19 80 19 and uncoated solar glass shall fall under TARIC code 7007 19 80 11.

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

▼M1

Company	Anti-dumping duty	TARIC additional code
Xinyi PV Products (Anhui) Holdings Ltd	36,1 %	B943
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	9,1 %	B944
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	29,3 %	B945
Henan Yuhua New Material Co., Ltd	0,4 %	B946
Other cooperating companies listed in Annex I, but not listed in Annex I to Commission Implementing Regulation (EU) No 471/2014 ([1])	19,4 %	
Other cooperating companies listed in Annex I	24,1 %	
All other companies	25,0 %	B999

([1]) 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 L 142, 14.5.2014, p. 23).

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3. The application of the indsividual 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.

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Article 2

The amounts secured by way of the provisional anti-dumping duties pursuant to Commission Regulation (EU) No 1205/2013 ([1]) shall be definitively collected. The amounts secured in excess of the combined rates of the anti-dumping duties contained in Article 1(2) above and of the countervailing duties adopted by Commission Implementing Regulation (EU) No 471/2014 ([2]) shall be released.

Article 3

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

— it did not export to the Union the product described in Article 1(1) during the investigation period (1 January 2012 to 31 December 2012),

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

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

article 1(2) may be amended by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 24,1 %.

Article 4

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

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

([1]) 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 (OJ L 316, 27.11.2013, p. 8).

([2]) 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 (see page 23 of this Official Journal).

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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

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ANNEX II

The valid commercial invoice referred to in Article 1(3) must be issued showing the following:

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 (area in m^2) 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 People's Republic of China. I declare that the information provided in this invoice is complete and correct.'

3. Date and signature of the official of the entity issuing the commercial invoice.