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Proposal for a

## **COUNCIL IMPLEMENTING REGULATION**

**extending the definitive anti-dumping duty imposed by Council Regulation (EC) No 1458/2007 on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China to imports of gas-fuelled, non-refillable pocket flint lighters consigned from the Socialist Republic of Vietnam, whether declared as originating in the Socialist Republic of Vietnam or not**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

#### **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the investigation of possible circumvention of the anti-dumping measures imposed by Council Regulation (EC) No 1458/2007 on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China by imports of gas-fuelled, non-refillable pocket flint lighters consigned from the Socialist Republic of Vietnam.

#### **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation and in particular Article 13 thereof.

#### **Existing provisions in the area of the proposal**

The measures were imposed by Council Regulation (EC) No 1458/2007 imposing a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China. These measures have expired on 13 December 2012.

#### **Consistency with the other policies and objectives of the Union**

Not applicable.

### **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

#### **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

#### **Collection and use of expertise**

There was no need for external expertise.

#### **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **Summary of the proposed action**

The attached proposal for a Council Implementing Regulation is based on the findings of the investigation, which has confirmed that assembly of lighters in Vietnam using Chinese parts is taking place and that all other criteria for the establishment of circumvention as set out in Article 13(1) of the basic Regulation are met.

It is therefore proposed that the Council adopt the attached proposal to extend the anti-dumping measures on gas-fuelled, non-refillable pocket flint lighters originating in the PRC to imports of the same product consigned from Vietnam.

The relevant Council Regulation should be published in the *Official Journal of the European Union* no later than 23 March 2013.

#### **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community and in particular Article 13 thereof.

#### **Subsidiarity principle**

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

#### **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how the financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

#### **Choice of instruments**

Proposed instruments: Regulation.

Other means would not be adequate for the following reason: The above-mentioned basic Regulation does not provide for alternative options.

### **4. BUDGETARY IMPLICATION**

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community<sup>1</sup> ('the basic Regulation'), and in particular Article 13 thereof,

Having regard to the proposal from the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas:

### 1. PROCEDURE

#### 1.1. Background

- (1) In 1991, the Council, by Regulation (EEC) No 3433/91<sup>2</sup>, imposed a definitive anti-dumping duty of 16.9% on imports of gas-fuelled, non-refillable pocket flint lighters originating, inter alia, in the People's Republic of China ('PRC') (the product under investigation).
- (2) In 1995, by Council Regulation (EC) No 1006/95<sup>3</sup> the original ad valorem duty was replaced by a specific duty of ECU 0,065 per lighter.
- (3) Further to an investigation in accordance with Article 13 of the basic Regulation the above measures were extended by Council Regulation (EC) No 192/1999<sup>4</sup> to (1) imports of gas-fuelled, non-refillable pocket flint lighters consigned from or originating in Taiwan and (2) imports of certain refillable lighters originating in the PRC or consigned from or originating in Taiwan with a free-at-Community frontier, duty unpaid value per piece below EUR 0,15.
- (4) In 2001, the Council, by Regulation (EC) No 1824/2001<sup>5</sup> confirmed the definitive anti-dumping duties imposed by Council Regulation (EC) No 1006/95 as extended by Council Regulation (EC) No 192/1999 ('existing measures') pursuant to Article 11(2) of the basic Regulation.

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<sup>1</sup> OJ L 343, 22.12.2009, p. 51.

<sup>2</sup> OJ L 326, 28.11.1991, p. 1.

<sup>3</sup> OJ L 101, 4.5.1995, p.38.

<sup>4</sup> OJ L 22, 29.1.1999, p.1.

<sup>5</sup> OJ L 248, 18.9.2001, p.1.

- (5) In 2007, the Council, by Regulation (EC) No 1458/2007<sup>6</sup> ('the original Regulation') confirmed the definitive anti-dumping duty imposed by Regulation (EC) No 1824/2001 pursuant to Article 11(2) of the basic Regulation. These measures will hereinafter be referred to as 'the original measures' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.
- (6) The Commission, published on 12 December 2012<sup>7</sup> a notice of expiry of the anti-dumping measures.
- (7) With the expiry of the measures on 13 December 2012, by Regulation EC No 1192/2012<sup>8</sup> the registration of imports of gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam, whether declared as originating in Vietnam or not was therefore discontinued as from the same date (see also recital (14)).

## 1.2. Request

- (8) On 17 April 2012, the European Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation (the request) to investigate the possible circumvention of the anti-dumping measures imposed on imports of gas-fuelled, non-refillable pocket flint lighters originating in the PRC and to make imports of gas-fuelled, non-refillable pocket flint lighters consigned from the Socialist Republic of Vietnam ('Vietnam'), whether declared as originating in Vietnam or not, subject to registration.
- (9) The request was lodged by Société BIC, a Union producer of gas-fuelled, non-refillable pocket flint lighters.
- (10) The request contained sufficient *prima facie* evidence that the original measures were being circumvented by means of assembly operations in Vietnam.
- (11) The request showed that following the imposition of the original measures, a significant change in the pattern of trade involving exports from the PRC and Vietnam to the Union occurred, for which there was insufficient due cause or economic justification other than the imposition of the original measures. This change in the pattern of trade stemmed allegedly from the assembly operations of lighters in Vietnam using parts originating in the PRC.
- (12) Furthermore, the *prima facie* evidence pointed to the fact that the remedial effects of the original measures were being undermined both in terms of quantity and price. The evidence showed in particular that the increased imports from Vietnam were made at prices below the non-injurious price established in the original investigation.
- (13) Finally, there was also sufficient *prima facie* evidence that prices of gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam were dumped in relation to the normal value established during the original investigation.

## 1.3. Initiation

- (14) Having determined, after consulting the Advisory Committee, that sufficient *prima facie* evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission initiated an investigation by Commission

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<sup>6</sup> OJ L 326, 12.12.2007, p. 1.

<sup>7</sup> OJ C 382, 12.12.2012, p. 12.

<sup>8</sup> OJ L 340, 13.12.2012, p. 37.

Regulation (EU) No 548/2012<sup>9</sup> ('the initiating Regulation'). Pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam, whether declared as originating in Vietnam or not.

#### 1.4. Investigation

- (15) The Commission officially advised the authorities of the PRC and Vietnam, the exporting producers in those countries, the importers in the Union known to be concerned and Société BIC (the applicant), a Union producer representing more than 75% of the production of gas-fuelled, non-refillable pocket flint lighters in the European Union, of the initiation of the investigation.
- (16) Questionnaires were sent to 70 exporting producers in the PRC and 15 exporting producers in Vietnam known to the Commission from the request. Questionnaires were also sent to 59 importers in the Union named in the request. 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 initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.
- (17) Eight out of the 15 known exporting producers in Vietnam came forward, one of which claimed that it did not want to be considered as interested party as it did not produce the product under investigation and did not have any exports to the Union.
- (18) The following seven companies submitted replies to the questionnaires and verification visits were subsequently carried out at their premises:
- Viet Giai Thanh Co. Ltd, Ho Chi Minh City
  - Hoa Hung Co. Ltd, Tay Ninh Province
  - Trung Lai Gas Lighter Manufacture Co. Ltd, Nghe An Province
  - Textion Plastic Co. Ltd, Binh Duong Province
  - Cherry Year Vietnam Lighter Manufacture Co. Ltd, Tay Ninh Province
  - Huaxing Vietnam Manufacture Co. Ltd, Tay Ninh Province
  - Top Field Enterprises Co. Ltd, Tay Ninh Province
- (19) None of the known exporting producers in the PRC came forward or submitted a questionnaire reply.
- (20) As regards importers, eight submitted a questionnaire reply whereas six companies came forward and claimed that they did not want to be considered as interested parties as they did not import in the Union gas-fuelled, non-refillable pocket flint lighters from Vietnam (the product under investigation). The remaining known companies did not come forward at all.
- (21) Following the initiation of the investigation, two importers requested and were granted a hearing which was held in the course of September 2012. The importers also provided their observations in writing. Their observations questioned the grounds of the initiation of the investigation as regards the product scope, import volumes,

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<sup>9</sup> OJ L 165, 26.6.2012, p. 37.

economic justification for the changes in the pattern of trade, the motivations behind the request and the financial situation of the Union producer having made the request. In the opinion of the importers, there were insufficient grounds to initiate an investigation.

- (22) The Commission provided a detailed reply to the observations and gave the parties an opportunity to comment. The Commission outlined why it considered that the request contained sufficient *prima facie* evidence to justify the initiation of the investigation. The comments made by the two importers did not demonstrate that there would not have been sufficient *prima facie* evidence to justify the initiation of the investigation.

#### 1.5. Investigation period

- (23) The investigation period covered the period from 1 January 2008 to 31 March 2012 ('the IP'). Data were collected for the IP to investigate, *inter alia*, the alleged change in the pattern of trade. More detailed data were collected for the reporting period from 1 April 2011 to 31 March 2012 ('the RP') in order to examine the possible undermining of the remedial effect of the measures and the existence of dumping.

## 2. RESULTS OF THE INVESTIGATION

### 2.1. General considerations

- (24) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was made by analysing successively whether there was a change in the pattern of trade between the PRC, Vietnam and the Union; if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the product under investigation; and whether there was evidence of dumping in relation to the normal values previously established in the original investigation, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

### 2.2. Product concerned and the product under investigation

- (25) The product concerned is as defined in the original investigation: gas-fuelled, non-refillable pocket flint lighters currently falling within CN code ex 9613 10 00 and originating in the People's Republic of China ('the product concerned').
- (26) The product under investigation is the same as that defined in the previous recital, but consigned from Vietnam, whether declared as originating in Vietnam or not, currently falling within the same CN code as the product concerned ('the product under investigation').
- (27) The investigation showed that gas-fuelled, non-refillable pocket flint lighters, as defined above, exported from the PRC to the Union and those consigned from Vietnam to the Union have the same basic physical and technical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

### 2.3. Degree of cooperation and determination of the trade volumes

#### Vietnam

- (28) As stated in recital (18), seven companies submitted questionnaire replies. For the RP, the total volume of lighters reported as sold to the Union according to these replies represented more than 100% of the total volume of lighters reported as imported into

the Union according to the Eurostat Comext database. Despite the fact that the information regarding sales volumes in the replies was considered to be unreliable as explained in recital (29) below, it is considered that this still gives an indication that cooperation was high and that the companies investigated are representative.

- (29) During the verification visits carried-out at the premises of the seven Vietnamese exporting producers, it was found that they all had submitted information which could not be considered to be reliable for the purpose of establishing the findings relevant to the investigation. In particular, the seven companies were found to have wrongly stated their production volumes, imports of lighter parts and total sales. It was also found that part of the business relating to the product under investigation was not included in the official accounts and that certain assembly operations were carried out by unofficial subcontractors. Moreover, quantities of imports of parts from the PRC were not declared or wrongly stated, and part of the sales were not accounted for in the accounts of the companies. As a result, it has not been possible to reliably establish in particular the total production and total sales volumes of the companies concerned and to reconcile the actual sale prices of the product under investigation and the costs relating to key input materials such as gas with the data provided in the questionnaire replies.
- (30) In view of the situation described above in recital (29), the exporting producers were informed that pursuant to Article 18 of the basic Regulation it was envisaged to base the findings and conclusions of the investigation on best facts available. Parties were given an opportunity to comment and were granted a hearing when requested. Each party received an individual letter outlining the specific and detailed findings which led to the conclusion that the data provided could not be considered to be reliable and was not suitable to establish the facts necessary for the investigation.
- (31) Two exporting producers did not provide any comments on the intention to apply Article 18 of the basic Regulation. The other five exporting producers, composed of two individual companies and one group of three companies, requested and were granted a hearing which was held in the course of November 2012. These exporting producers also provided their observations in writing. They disputed the Commission's intention to disregard the data they provided and the possible conclusion of the existence of circumvention based on the application of best facts available.
- (32) Four of the exporting producers did not contest the fact that the information they provided was not complete or reliable and admitted the discrepancies in their accounting and the fact that not all operations were disclosed or recorded in their books. However, they claimed that these differences only concerned their domestic sales and did not have any effect on their export sales. One party claimed that its records had been destroyed by a fire, which explained the incompleteness of the information available. They further claimed that the quantity of gas contained in the lighters was wrongly estimated by the Commission and that therefore the findings regarding the production volumes were not correct. One company claimed that the discrepancy in gas consumption was explained by intentional releases of gas during the warmer months. These parties could however not provide any substantiated evidence to support these claims.
- (33) The companies also stated that they were fully cooperative and were not withholding any information concerning their business. They admitted to have provided deficient replies but strongly contested having submitted false and misleading information. In



their view, undisclosed and unverifiable data in itself does not constitute a proof of circumvention and according to them, the Commission has not demonstrated that circumvention was taking place based on positive evidence.

- (34) It should nevertheless be pointed out that although the companies have not themselves provided complete and accurate records of their activities, the Commission has used alternative methods, such as the consumption of raw materials, to reconcile the key data provided in the questionnaire replies with the information provided and discovered on spot. Such alternative methods, even if inevitably less precise than actual records, showed that the data provided was not reliable. For instance, the outcome concerning production volume showed that the production quantities declared by the companies did not match with their consumption of raw materials.
- (35) The Commission considers that the absence of reliable records, the withholding of information which is relevant for the investigation and the submission of false or misleading information rendered the data unreliable following a verification process.
- (36) Given the above, findings in respect of imports of gas-fuelled, non-refillable pocket flint lighters from Vietnam into the Union had to be made on the basis of facts available in accordance with Article 18(1) of the basic Regulation. As a consequence, in order to ensure that the failure of the parties to provide the information does not hinder the investigation, the Commission has replaced the unverifiable data provided by the Vietnamese producers with other available data, such as the Eurostat Comext database to determine the overall import volumes from Vietnam into the Union, and cost data provided in the request to determine the share of Chinese parts (see recital (50) below).

#### *The People's Republic of China*

- (37) There was no cooperation from the Chinese exporting producers. Therefore, findings in respect of imports of the product concerned into the Union and exports of gas-fuelled, non-refillable pocket flint lighters from the PRC to Vietnam had to be made on the basis of facts available in accordance with Article 18(1) of the basic Regulation. UN Comtrade statistics provided in the request were used for the determination of the overall exports from the PRC to Vietnam.

#### 2.4. Change in the pattern of trade

##### *Imports of gas-fuelled, non-refillable pocket flint lighters into the Union*

- (38) Imports of the product concerned from PRC dropped in 1991 when the measures were first introduced. The imports have remained small throughout the successive modifications and extensions of the measures in 1995, 1999, 2001 and 2007.
- (39) Imports of lighters from PRC between 1 January 2008 to 31 March 2012 were relatively stable in terms of volume, around 50 million pieces for 2008 and 2009, 70 million pieces in 2010 and 60 million in 2011 and the RP. They consisted however only of refillable models and electrical piezo lighters which were not subject to the measures.
- (40) The imports of the product under investigation from Vietnam have increased over time. While in 1997 there were practically no imports into the Union of the product under investigation from Vietnam, since 2007 there was a rapid increase in the import volume of the product under investigation.
- (41) In RP imports from Vietnam represented 84% of all imports to the EU.

Imports from Vietnam into the EU27 of non-refillable lighters in % of all imports					
	2008	2009	2010	2011	RP
Market share	80%	84%	83%	84%	84%
<i>Source: statistics provided in the request</i>					

Exports of lighter parts from the PRC to Vietnam

- (42) Flint lighter parts were exported from the PRC to Vietnam during the IP. Vietnam is the most important export destination of flint lighter parts from PRC. According to the statistics provided in the request, the exports of lighter parts from PRC to Vietnam have increased significantly since 1999. In 1999, exports of lighter parts from the PRC to Vietnam were less than 3% of total exports, whereas in 2010 Vietnam became the first export destination of lighter parts with a share of 26%. In volumes, this would correspond to an increase from less than 50 million to 200 million finished lighters.

Production volumes of gas-fuelled, non-refillable pocket flint lighters in Vietnam

- (43) As the information provided by the Vietnamese producers had to be disregarded, no verifiable information could be obtained on the possible levels of the genuine production of gas-fuelled, non-refillable pocket flint lighters.

2.5. Conclusion on the change in the pattern of trade

- (44) The overall decrease of the exports from the PRC to the Union and the increase of exports from Vietnam to the Union since 2007 and the significant increase of exports of lighter parts from the PRC to Vietnam since 1999 constituted a change in the pattern of trade between the above mentioned countries, on the one hand, and the Union, on the other.

2.6. Nature of the circumvention practice

- (45) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, *inter alia*, the assembly of parts by an assembly operation in a third country. For this purpose the existence of assembly operations is determined in accordance with Article 13(2) of the basic Regulation.

Assembly operations

- (46) As mentioned above, the absence of reliable records and withholding information which was relevant for the investigation has led to the application of Article 18 of the basic Regulation. Whether or not an assembly operation in Vietnam could be considered to circumvent the measures had to be based on facts available.
- (47) The investigation has revealed that the circumvention is taking place through assembly operations conducted by Vietnamese companies that operate in close cooperation with Chinese and Hong Kong registered companies. The cooperating Vietnamese producers are in vast majority owned by Chinese and Hong Kong companies. Also the management of the Vietnamese companies is to a large extent composed of Chinese professionals who have previously worked for lighter producers in PRC.
- (48) The Vietnamese producers import their lighter parts from PRC through related companies registered in Hong Kong. Some of the Vietnamese producers operate under

processing agreements with Chinese and/or Hong Kong principals. Under these agreements, the Chinese principal provides the lighter parts and plastic to the Vietnamese factory, and sells the finished lighters. Even in the absence of such processing agreements, the lighters produced in Vietnam are typically sold to Hong Kong companies who are in charge of the commercial relationship with EU importers.

- (49) Due to the unreliability of the information provided by the Vietnamese producers, it has not been possible to determine whether the percentage thresholds set out in Article 13(2) of the basic Regulation are fulfilled or not. It has not been possible to verify whether the lighter parts originating from the PRC constitute more or less than 60% of the total value of the assembled lighters and whether or not the value added to the parts brought in has been greater or lesser than 25% of the manufacturing cost.
- (50) In the absence of reliable information from the Vietnamese producers, the determination must be made on the basis of the facts available. The information provided in the request shows that the lighter parts originating from PRC represent between 60% and 70% of the total value and that the value added to the parts brought in corresponds to 12% of the manufacturing costs. These values are based on comparable production costs of a manufacturer located in the PRC. The underlying calculations are considered to be reasonably accurate and to reflect the division of costs in Vietnam, because the lighter parts and raw materials used are the same in both the PRC and Vietnam. Any adjustments due to lower local costs in Vietnam would result in an even larger share of Chinese value in the finished lighters.
- 2.7. Insufficient due cause or economic justification other than the imposition of the anti-dumping duty
- (51) The investigation did not bring to light any other due cause or economic justification for the assembly operations than the avoidance of the original measures on the product concerned. The Vietnamese producers have claimed that the cause for moving the production would be the lower labour costs in Vietnam, but the claim has not been substantiated. In any case a general labour cost difference would not explain why the production in a specific sector (lighters) would move to Vietnam, whereas PRC continues to be a producer in other sectors and of lighter parts for example.
- 2.8. Injury or undermining of the remedial effect of the anti-dumping duty
- (52) The existence of injury having been addressed in the original regulation, the scope of the current investigation included the assessment of whether the remedial effects of the duties in place are being undermined in terms of the prices and/or quantities of the like product.
- (53) To assess whether the imported product under investigation had, in terms of quantities and prices, undermined the remedial effects of the original measures on imports of the product concerned, Eurostat Comext dataset was used as the best data available concerning quantities and prices of imports from Vietnam. The prices so determined were compared to the injury elimination level established for Union producers in recital (63) of Regulation No1006/95.
- (54) The increase of imports from Vietnam to the Union from 0.6% of Union imports in 1998 to 80% in 2008 (start of the IP) and to 84% of Union imports in the RP (the end of the IP), see the table in paragraph 2.4 above, was considered to be significant in terms of quantities. In the same period, the imports from PRC into the Union decreased significantly, from 30% to 10% of share of all imports.

(55) The comparison of the injury elimination level as established in the original investigation and the weighted average export price for Vietnamese declared exports showed significant underselling. It was therefore concluded that the remedial effects of the duty, as determined in the original regulation are being undermined in terms of both quantities and prices.

#### 2.9. Evidence of dumping

(56) Finally, in accordance with Article 13(1) and (2) of the basic Regulation it was examined whether there was evidence of dumping by comparing the normal value previously established in the original investigation with the export prices from Vietnam.

(57) In the original investigation the normal value was established on the basis of prices in Brazil, which in that investigation was found to be an appropriate market economy analogue country for the PRC.

(58) The export prices from Vietnam were based on facts available, i.e. on the average export price of gas-fuelled, non-refillable pocket flint lighters during the RP as reported in Eurostat Comext database. The use of facts available was due to unreliable information from the Vietnamese producers concerning the product under investigation.

(59) For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for differences in transport, insurance and packing costs. Given that there was no reliable information obtained from the producers in Vietnam and the PRC, the adjustments had to be established on the basis of the best facts available. Thus, the adjustments for these allowances were based on a percentage calculated as the proportion of the total transport, insurance and packing costs over the value of the sales transactions to the Union with CIF delivery terms provided by the cooperating Chinese exporting producers in the original investigation.

(60) In accordance with Articles 2(11) and 2(12) of the basic Regulation, dumping was calculated by comparing the weighted average normal value as established in the original Regulation and the corresponding weighted average export prices for Vietnamese declared exports during this investigation's RP according to the Comext database, expressed as a percentage of the CIF price at the Union frontier duty unpaid.

(61) The comparison of the weighted average normal value and the weighted average export price, after the adjustments explained in recital (59) above, showed the existence of significant dumping.

#### 2.10. Comments to the disclosure

(62) Following the disclosure, a group of interested parties composed of Vietnamese producers and EU importers, even though admitting not being directly concerned by the measures, commented on the findings of the investigation. They argued again that any misleading information had not been provided intentionally, that the Commission had not found any positive evidence of circumvention and that there was no remedial effect to be achieved by retroactive imposition of the measures, also demonstrated by the non-prolongation of the original measures against China. According to these parties, the non-prolongation of the original measures against China was based on findings concerning the same time-period as the conclusion that the circumvention

practices undermine the remedial effects of the original measures. Finally they also questioned the intended effect and what the Union interest would be in extending the measures which were terminated in December 2012. In their view the extension of the measures would bring no benefit to the EU industry and would only penalise EU importers.

- (63) Upon presentation and admittance of a valid request for an anti-circumvention investigation, the Commission has a legal obligation to fully investigate the matter and take appropriate action if justified. In the case at hand it was found that all the conditions of Article 13 of the basic Regulation to determine that circumvention is taking place were fulfilled. Consequently, the measures had to be extended in the appropriate manner to imports from Vietnam.
- (64) When assessing whether circumvention practices undermine the remedial effects of the original measures, the Commission must base its analysis on the developments following the imposition of these measures and takes into consideration the findings from the original investigation on the basis of which the remedial effects have been determined. By contrast, the assessment of the necessity to initiate an expiry review is determined on the basis of the likelihood of continuation or recurrence of dumping and injury in the future on the basis of findings relating to a different period of time. Therefore, contrary to what the interested parties have alleged, the two findings do not concern the same time period. As regards the claim that only EU importers would be affected and that there would be no benefit to the Union industry, the Commission has to point out that the Union interest for the imposition of the measures was confirmed in the original investigation. In accordance with article 13 of the basic Regulation, the extension of the remedial effects of the original measures against circumvention is in this respect justified as long as the original measures are in force. The purpose of the extension of the measures is in any case not to penalise parties but to correct the distortive effect of the circumvented dumped imports from Vietnam had on the Union market by introducing a level playing field in terms of prices or quantities of such imports. In any event, it must be noted that the alleged sole influence of the measures on importers is not supported by any evidence or analysis.
- (65) One other interested party, an importer, submitted comments on the investigation arguing that it had not been informed about the initiation of the circumvention investigation. It has to be noted in this respect that this party was not known to the Commission prior to the initiation of the investigation and that the initiation notice was made public by means of publication in the official journal.
- (66) One further importer reacted by announcing that it would within six months submit evidence demonstrating that their imports of lighters did not involve circumvention. The Commission notes that all interested parties have been invited in the initiation notice to submit evidence during the investigation (see in particular recitals 10, 19 and 20 and Article 3(2) of the Commission Regulation (EU) No 548/2012<sup>10</sup>). The Commission must conclude the investigation within the legal deadline of 9 months and therefore cannot await additional submissions at this stage.

### 3. MEASURES

- (67) Given the above, it was concluded that the definitive anti-dumping duty imposed on imports of gas-fuelled, non-refillable pocket flint lighters originating in the PRC was

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<sup>10</sup> OJ L 165, 26.6.2012, p. 37.

circumvented by assembly operations via Vietnam within the meaning of Article 13(1) and 13(2) of the basic Regulation.

- (68) In accordance with the first sentence of Article 13(1) of the basic Regulation, the original measures on imports of the product concerned, should be extended to imports of the product under investigation, i.e. the same product but consigned from Vietnam, whether declared as originating in Vietnam or not.
- (69) In light of the non-cooperation in this investigation, the measures to be extended should be the measures established in Article 1(2) of Regulation (EC) No 1458/2007, i.e. a definitive anti-dumping duty of EUR 0,065 per lighter.
- (70) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provides that any extended measure should apply to imports which entered the Union under registration imposed by the initiating Regulation, duties should be collected on those registered imports of gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam. Given that the original measures have expired on 13 December 2012 and the registration has been terminated on the same day, the collection of duties would only apply up to that date.

#### 4. REQUESTS FOR EXEMPTION

- (71) The seven companies in Vietnam submitting questionnaire replies requested an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation.
- (72) All of these seven companies were found to have provided false or misleading information. In accordance with Article 18(4) of the basic Regulation, these companies were informed of the intention to disregard the information submitted by them and were granted a time-limit to provide further explanations.
- (73) Further explanations by these companies were not such so as to lead to a change in the conclusion. Therefore in accordance with Article 18(1) of the basic Regulation, findings with regard to these companies were based on facts available.
- (74) Taking into account the nature of the false and/or misleading information as set out above, the exemptions as requested by these seven companies could, in accordance with Article 13(4) of the basic Regulation, not be granted.

#### 5. DISCLOSURE

- (75) All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. The oral and written comments submitted by the parties were considered. None of the arguments presented gave rise to a modification of the findings.

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. The definitive anti-dumping duty imposed by Article 1(2) of Regulation (EC) No 1458/2007 on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China is hereby extended to imports of gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam, whether declared as originating in Vietnam or not, currently falling under CN code ex 9613 10 00.

2. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Vietnam from 27 June 2012 until 13 December 2012, whether declared as originating in

Vietnam or not, registered in accordance with Article 2 of Regulation (EU) No 548/2012 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009.

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

#### Article 2

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

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

Done at Brussels,

*For the Council*  
*The President*