Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1336

of 25 September 2020

imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols 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 Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)] ('the basic Regulation'), and in particular Article 9(4) thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 30 July 2019, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of certain polyvinyl alcohols ('PVA') originating in the People's Republic of China ('PRC' or 'the country concerned') on the basis of Article 5 of Regulation (EU) 2016/1036. It published a Notice of Initiation in the *Official Journal of the European Union*[(2)] ('the Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 19 June 2019 by Kuraray Europe GmbH ('the complainant') on behalf of producers representing more than 60 % of the total Union production of PVA. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Interested parties

(3) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the authorities of the PRC, the known importers and users about the initiation of the investigation and invited them to participate.

(4) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. All interested parties who so requested were granted a hearing.

1.3. **Comments on initiation**

(5) After the initiation, several users of the product concerned argued that the non-confidential summary of the information provided in the open version of the complaint was not sufficiently detailed or was incomplete, thus did not allow for a reasonable understanding of the substance of the confidential information.

(6) The Commission considered that the non-confidential version of the complaint open for inspection by interested parties contained all the essential evidence and non-confidential summaries of data provided under confidential cover in order for interested parties to exercise their rights of defence throughout the proceedings.

(7) Article 19 of the basic Regulation and Article 6(5) of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade allow for the safeguarding of confidential information in circumstances where its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information.

(8) The information provided confidential treatment falls under these categories. In any event, the complainant provided summaries of the contents of the confidential segments of the complaint and the relevant bracketing of numerical data. The Commission verified these documents before initiation. It concluded that they satisfied the provisions of Article 19 and allowed for a reasonable understanding of the substance of the confidential information.

(9) The claim was therefore dismissed.

(10) One interested party claimed that the complaint is part of a strategy of the complainant to enhance its monopoly on the Union market, by deliberately reducing sales volume and increasing prices.

(11) The information collected during the investigation showed no evidence of any anti-competitive practices carried out by the Union industry. On the contrary specific evidence, such as commercial offers and email exchanges, that the industry is capable and willing to supply any user of the product concerned was collected.

(12) The complainant itself had [25 % – 30 %] market share of the Union free market during the investigation period, far below the share to allow it to exercise dominance of any kind.

(13) Concerning the alleged strategy to reduce volumes and increase prices, the investigation showed that the complainant initially attempted to improve its economies of scale, increasing production output and investments in order to reduce its unit costs of production. Moreover it tried to follow Chinese dumped prices with price

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/1336. (See end of Document for details)*

suppression of its own in order to maintain market share. This strategy did indeed allow the complainant to maintain market share but pushed it into significant losses. As explained below in recital (528), the complainant was thus forced to abandon its attempts to maintain market share against imports from the PRC, and consequently concentrated its sales on more expensive grades where profitable sales could still be achieved albeit with a corresponding significant loss of market share.

(14) Therefore this claim was rejected.

(15) After the initiation, a Union producer, Wacker Chemie AG, claimed that the estimation of the Chinese overcapacity in the complaint was inaccurate and presented its own estimation.

(16) The estimation of the Chinese overcapacity in the complaint was based on an objective and established source, IHS Chemical Economics handbook. Whilst different estimations of the supply and demand on the Chinese market may justifiably exist, the Commission considered that the estimation in the complaint met the criteria of sufficient accuracy and reliability required for *prima facie* evidence. Therefore, this claim was rejected.

(17) Wacker Chemie AG also submitted comments as regards the methodology for calculating the dumping margins pursuant to Article 2(6a) of the basic Regulation, notably arguing that the application of Article 2(6a) of the basic Regulation would be WTO-inconsistent and that there was absence of evidence of cost distortion. The issues related to the existence of significant distortions and application of the Article 2(6a) of the basic Regulation are discussed in the section 3.1.1 below.

(18) After the initiation, Wacker Chemie AG also claimed that the complainant's estimation of the dumping margin and the normal value was incorrect because Chinese producers were vertically integrated and did not buy vinyl acetate monomer (VAM) for their production.

(19) The complaint indicated distortions for a number of raw materials that can be used for production of the VAM, depending on the production method. These same raw materials are also used in case the producers are vertically integrated and do not purchase VAM from other companies, and therefore, the distortions of these raw materials were relevant for the calculation of the normal value. It should also be noted that the normal value calculation in the complaint is sufficient evidence of dumping and that the investigation established the normal value based on the verified data of the cooperating Chinese exporting producers. Therefore this claim was dismissed.

(20) At initiation Wacker and Carbochem claimed that the Commission used a PCN system that did not properly ensure price comparability. The argument was reiterated after disclosure by Wacker, Carbochem, Gamma Chimica, FAR Polymer and Ahlstrom-Munksjö.

(21) Wacker claimed that the PCN had too wide ranges of viscosity, hydrolysis and methanol contents and did not take into account the particle size and the pH value. Carbochem, Gamma Chimica and FAR Polymer argued that the molecular weight was

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/1336. (See end of Document for details)*

not taken into account by the PCN, while Ahlstrom-Munksjö argued that the ash content range was too wide.

(22) The Commission disagreed that there is an issue with the PCN structure. The PCNs contained the basic and essential properties of the product concerned, universally defined by the core elements therein included in the PCN (i.e. viscosity, hydrolysis, ash and methanol content). These parameters are essential for all PVA grades and considered industrial standards for all applications of the product concerned. Thus, while it may be true that certain characteristics not present in the PCN could be relevant for certain applications, these are user (and not product) specific.

(23) The argument was therefore rejected.

1.4. **Sampling**

(24) In its Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.4.1. *Sampling of Union producers*

(25) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the reported production volume of the like product in the Union. This sample consisted of 3 Union producers. The sampled Union producers accounted for more than 90 % of the estimated total EU production of the like product. The Commission invited interested parties to comment on the provisional sample.

(26) One party expressed reservations about the inclusion in the sample of a producer, Wacker Chemie AG, which manufactures the product concerned exclusively for its captive use. In its opinion, the inclusion of Wacker in the sample, with no sales in the free market, could have potentially distorted the injury analysis.

(27) The Commission also took note of the situation of one of the sampled companies. However, it must be noted that the entire Union industry, including the three Union producers initially sampled, produce the product concerned for captive consumption as well. Therefore, it was considered that the inclusion of Wacker Chemie AG in the sample did not distort the injury analysis, and allowed the Commission to analyse thoroughly the situation also of the captive market of PVA in the Union. Therefore, the sample was considered representative of the Union industry.

(28) In order to have a complete assessment of the facts of the case, the Commission considered the interest of the Union producers Wacker and Solutia also as users of the product under investigation.

(29) Later in the proceeding, one of the three sampled producers, Sekisui Specialty Chemicals Europe S.L., informed the Commission that it could not cooperate in full as a sampled producer. In fact, its reply to the questionnaire only included information with respect to macro-indicators, which was insufficient for the purposes of the investigation.

Hence, the Commission decided to revise the sample of Union producers by removing Sekisui Specialty Chemicals Europe S.L.

(30) The amended sample, composed of two union producers, represents more than 80 % of the estimated total EU production of the like product. The sample is representative of the Union industry.

1.4.2. *Sampling of importers*

(31) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

(32) Six unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three unrelated importers on the basis of the largest volume of imports into the Union. In accordance with Article 17(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample. No comments were made.

1.4.3. *Sampling of exporting producers in the PRC*

(33) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(34) Four exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three, on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all interested parties, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were received.

1.5. **Individual examination**

(35) Originally, all four groups of exporting producers that returned the sampling form requested individual examination under Article 17(3) of the basic Regulation. On the day of the initiation, the Commission made the questionnaire for exporting producers available on its website. Moreover, when announcing the sample, the Commission informed the exporting producer that was not sampled that it was required to provide a full questionnaire reply if it wished to be examined individually. The exporting producer did not provide a questionnaire reply. In the absence of a reply, the exporting producer did not comply with the requirements and, therefore, individual examination could not be granted.

1.6. **Questionnaire replies and verification visits**