Commission Implementing Regulation (EU) 2017/2179 of 22 November 2017 imposing a definitive anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

COMMISSION IMPLEMENTING REGULATION (EU) 2017/2179

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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)], and in particular Article 11(2) thereof,

Whereas:

A. PROCEDURE

1. Measures in force

(1) Following an anti-dumping investigation (‘the original investigation’), the Council imposed, by means of Implementing Regulation (EU) No 917/2011[(2)], a definitive anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China (‘the PRC’ or ‘China’ or ‘country concerned’).

(2) The measures took the form of an *ad valorem* duty and the duty levels imposed ranged from 13,9 %[(3)] to 36,5 % for cooperating producers. Furthermore, a country-wide duty rate of 69,7 % was imposed on Chinese companies which either did not make themselves known or did not cooperate with the investigation.

2. Request for an expiry review

(3) Following the publication of a notice of impending expiry[(4)] of the anti-dumping measures in force, the Commission received a request for the initiation of an expiry review of the measures in force pursuant to Article 11(2) of Regulation (EU) 2016/1036 (‘the basic Regulation’) (‘the request’).

(4) The request was lodged by the European Ceramic Tile Manufacturers' Federation (‘the applicant’ or ‘CET’) on behalf of producers representing more than 25 % of the total Union production of ceramic tiles.

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(5) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and continuation or recurrence of injury to the Union industry.

3. **Initiation of an expiry review**

(6) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 13 September 2016, by a notice published in the *Official Journal of the European Union*[(5)] ('Notice of Initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. **Review investigation period and period considered**

(7) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 July 2015 to 30 June 2016 (the 'review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of recurrence of injury covered the period from 1 January 2013 to the end of the review investigation period (the 'period considered').

5. **Parties concerned by the investigation**

(8) The Commission advised the applicants, other known Union producers, exporting producers in the PRC, known importers, users and traders known to be concerned, associations representing Union producers and users and representatives of the exporting countries of the initiation of the expiry review.

(9) Interested parties were given opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation.

(10) The Union producers, represented by the applicant, took this opportunity to request that their names are kept confidential for fear that they could face retaliation by customers or competitors implicated by this investigation, in line with Article 19(1) of the basic Regulation. The Commission individually examined each of these confidentiality requests for merit thereof. It established that there was indeed evidence of a significant possibility of retaliation in each case and accepted that the names of these companies should not be disclosed.

(11) The Chinese Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (the 'CCCMC') requested a hearing. The hearing took place on 6 December 2016.

(12) At the hearing and in the subsequent submissions the CCCMC requested full access to the dumping margin, price effects, injury margin and injury indicators calculations, and any other confidential information on which calculations were based. The CCCMC argued that the lawyers that would be granted the access are registered at a European bar association and are subject to strict bar rules and disclosing confidential information to their clients would result in severe disciplinary actions, including disbarment and potential criminal action. Therefore, the CCCMC argued that the

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access to the confidential file would not breach the Commission's obligation to protect confidential information whilst allowing an effective exercise of the rights of defence.

(13) Article 19 of the basic Regulation stipulates that the Commission must not reveal any information which is by nature confidential without specific permission from the supplier of such information. It does not envisage that any other party, including lawyers registered at a European bar association, is granted the access. Furthermore, the jurisprudence of the Court of Justice reveals that the protection of rights of the defence must be, where necessary, reconciled with the principle of confidentiality, which is specifically laid down in Article 19 of the basic Regulation.[(6)] While that reconciliation permits the receipt of non-confidential summaries of such information (carried out, for instance, in the form of ranges and/or indexed elements of information) where that information would not lead to a disclosure of business secrets, it is not absolute. Accordingly, and while the CCCMC could have been granted access to, for instance, ranges and/or indexed elements of the information requested, full disclosure of that information was not deemed reconcilable with the duty to protect confidential information. In like measure, and because the Union legislator did not foresee this exception in the basic Regulation, the Commission considered that the fact that the lawyers registered at a European bar association are subject to strict bar rules and are potentially subject to sanctions in case of breach of these rules does not allow the Commission services to grant access contrary to the applicable legislation. The Commission thus concluded that the access to confidential information by lawyers registered at a European bar association could not be granted. In any case, an additional element for safeguarding, in this respect, the rights of defence of interested parties, is the possibility of having recourse to the Hearing Officer in Trade Proceedings under Article 15 of his terms of reference[(7)] who did not call into question the Commission's position on confidentiality. Hence, the Commission deemed the information provided in the disclosure documents sufficient to satisfy the former's rights of defence.

5.1. *Sampling*

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

5.2. *Sampling of exporting producers in the PRC*

(15) On the basis of information provided by the applicant, the Commission found that the PRC ceramic industry was largely fragmented with 1 452 producers in 2014. Therefore, in view of the apparently large number of exporting producers in the PRC, sampling was envisaged in the Notice of Initiation.

(16) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, it asked the mission of the PRC to the Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation. In total, the information specified in the Notice of Initiation was sent to 119 companies in the PRC.

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(17) Nineteen producers or group of producers in the PRC provided the requested information and agreed to be included in the sample. Given the number of companies which could have come forward, this was considered low cooperation. In accordance with Article 17(1) of the basic Regulation, the Commission provisionally selected a sample of four groups of exporting producers on the basis of their declared volume of exports to the Union during the review investigation period and their production capacity which could reasonably be investigated within the time available. Following the disclosure to interested parties of this provisional sample, the group of exporting producers with the largest production capacity withdrew its cooperation. Thus, the proposed sample was amended by adding the exporting producer with the second largest production capacity. Following the disclosure of the amended sample to the interested parties, no comments were received. Therefore, the sampling proposal was confirmed in accordance with Article 17(2) of the basic Regulation.

(18) The four sampled groups of exporting producers had an annual production of 55 million m^2 of the product concerned, representing around 34 % of the overall declared production and sales of all cooperating exporting producers or groups of exporting producers of the product concerned to the Union. The four sampled groups covered around 8 % of the total Chinese exports to the Union according to Eurostat in the review investigation period.

5.3. *Sampling of Union producers*

(19) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 17(1) of the basic Regulation, the Commission selected the sample on the basis of the largest representative volume of sales and production, taking into account geographical spread and also the high fragmentation of the ceramic tiles industry in line with the methodology detailed below in recitals (20) to (21).

(20) In the original investigation the Commission concluded that the ceramic tiles sector is very fragmented. Therefore, in order to ensure that the results of large companies did not dominate the injury analysis and to ensure that the situation of the small and medium-sized companies, collectively accounting for the largest share of the Union production, was adequately reflected, the Commission decided to establish three segments based on the volume of yearly production:

— Segment 1: large companies — production in excess of 10 million m^2,

— Segment 2: medium-sized companies — production between 5 and 10 million m^2,

— Segment 3: small companies — production below 5 million m^2.

(21) The Commission's investigation did not reveal any changes to the ceramic tiles market, which continues to be fragmented, and thus dominated by small Union producers as opposed to larger producers able to influence the market's direction. Accordingly, the Commission considered that the high fragmentation of the ceramic tiles sector should also be taken into consideration in the current expiry review. It,

therefore, decided to apply the same methodology for the selection of the sample as in the original investigation and considered that all segments, namely small, medium-sized and large companies should be represented in the sample.

(22) The provisional sample consisted of nine Union producers. The sampled Union producers accounted for over 8,5 % of total estimated Union production in 2015. Companies from all of the three sectors were represented: Two companies were from the segment of large companies, three companies were from the segment of medium-sized companies and four companies were from the segment of small companies. The sampled companies were situated in Germany, Italy, Poland, Portugal and Spain.

(23) In order to reflect different situations that can be encountered in the Union in the different Member States, when selecting the sample, the Commission also took into account the geographical spread (see recital (19)). The sample thus covered Member States where approximately 90 % of the production is situated. Thus the methodology applied by the Commission ensured that the sample was representative of the Union production as a whole and complied with Article 17(1) of the basic Regulation.

(24) The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline and the provisional sample was thus confirmed. The sample was considered representative of the Union industry.

(25) On 28 October 2016, 11 days after the announcement of the final sample, one of the sampled Union producers, the Polish producer, informed the Commission that it had decided to stop cooperating with the investigation. In order not to impact the representativeness of the sample, the Commission decided to replace the company by another Union producer from the same market segment and informed all the interested parties of the change in the sample. The new sample accounted for 7,7 % of the total Union production. The new sample covered Member States where approximately 80 % of the production is situated. The replacement of the non-cooperating company with a company from the same market segment was done to ensure that the final sample remained representative of the Union industry, even though the unexpected non-cooperation of the first company invariably reduced the representativeness of total Union production.

5.4. *Sampling of unrelated importers*

(26) To decide whether sampling was necessary and, if so, to select a sample, all known (in total more than 1 000) importers/users were invited to fill in the sampling form attached to the Notice of Initiation.

(27) Eleven companies replied to the sampling form. The Commission decided to select four companies. In accordance with Article 17(1) of the basic Regulation, the Commission selected the sample of the unrelated importers on the basis of the size of the imports taking into accounts the geographical spread. The sampled importers were situated in Belgium, Denmark and Germany. The sampled unrelated importers accounted for around 6,5 % of total imports from the PRC.