Commission Implementing Regulation (EU) 2017/1159 of 29 June 2017 amending Council Implementing Regulation (EU) No 1105/2010 and Commission Implementing Regulation (EU) 2017/325 as regards the definition of the product scope of the current anti-dumping measures concerning imports of high tenacity yarns of polyesters originating in the People's Republic of China, and providing for the possibility of repayment or remission of duties in certain cases

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1159

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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)] ('the basic Regulation'), and in particular Article 11(3) and Article 14 thereof,

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Implementing Regulation (EU) No 1105/2010[(2)] ('the original Regulation') the Council imposed a definitive anti-dumping duty on imports of high tenacity yarns of polyesters ('HTY') originating in the People's Republic of China ('China').

(2) Following an expiry review ('the expiry review') based on Article 11(2) of the basic Regulation, the original measures were prolonged for 5 years by Commission Implementing Regulation (EU) 2017/325[(3)] ('the expiry review Regulation').

(3) The measures imposed took the form of an ad valorem duty with a residual rate set at 9,8 %, while the companies on which anti-dumping duties were imposed received an individual duty rate ranging from 5,1 % to 9,8 %. Two companies were found not to be dumping in the original investigation.

2. Initiation on interim review

(4) A Slovenian importer, A&E Europe ('the applicant'), on 4 October 2016 lodged a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. The applicant requested the exclusion of certain types of sewing thread

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/1159. (See end of Document for details)*

(ST), namely greige sewing thread ('GST'), from the scope of the measures in force on the basis of their allegedly different physical and technical characteristics.

(5) Having determined, after informing the Member States, that sufficient evidence exists to justify the initiation of a partial interim review, the European Commission ('the Commission') announced by a notice ('the Notice of Initiation') published in the *Official Journal of the European Union*[(4)], the initiation of a partial interim review of the anti-dumping measures applicable to imports of HTY originating in China.

(6) The current review was limited to the examination of the definition of the product scope in order to clarify whether certain types of ST, in particular GST, fall within the scope of the original measures, as prolonged.

(7) The applicant's claim was explicitly supported by one of the Union producers of HTY (DuraFiber) which represented 49 % of the Union production of HTY in the expiry review investigation.

(8) The representatives of the applicant were invited to present their case before the Commission. The meeting took place on 29 September 2016.

3. **Parties concerned by the review**

(9) The four known Union producers of HTY, their association and the representative of the exporting country were informed by the Commission of the initiation of the review.

(10) The Commission requested information from all the abovementioned parties and from those other parties who made themselves known within the time limit set in the Notice of Initiation. The Commission also gave interested parties the opportunity to make their views known in writing and to request a hearing.

(11) None of the Chinese exporting producers or their association came forward in the proceedings.

(12) No hearings were requested during the investigation by any of the parties.

(13) Amann Group was the sole importer of GST and user of HTY that came forward as interested party for this investigation. The company came forward on its own initiative and supported the applicant's request for the exclusion of the GST from the product scope of the existing measures. The party also opposed the claims made from the association of the Union producers of HTY, presented below in recitals (15) to (20).

(14) None of the Union producers of the product concerned came forward during the review.

(15) The European Manmade Fibres Association (CIRFS) submitted comments opposing any change to the existing product definition. First, CIRFS claimed that the subject of the request would fall under the competence of the national Customs

authorities in their role of implementing the basic Regulation, rather than giving rise to a product scope review.

(16) However, it should be noted that anti-dumping measures are imposed on specific products and that therefore an adequate product definition is a crucial element for their correct application. Pursuant to Article 11(3) of the basic Regulation, the need for the continued imposition of the measures may be reviewed and in particular the product scope can be reassessed in order to clarify whether certain product types fall within the definition of the scope of an anti-dumping measure. The claim was therefore rejected.

(17) Second, CIRFS claimed that the letter of support mentioned above in recital (7) came from DuraFiber, which is only one of the four complaining producers which requested the expiry review investigation. Allegedly, the other three producers would be opposed to the request for review. However, since no evidence or specific letters in this respect were provided by other producers, the claim was therefore rejected.

(18) Third, CIRFS claimed that other users and/or importers could also take example from the request for partial interim review and also request the exclusion of other types of HTY with certain specific and particular characteristics. In the opinion of CIRFS, the possibilities in this respect are endless and the prefix 'ex' should not be put before the CN code in order to avoid its fragmenting. In this respect, in should be pointed out that the present review is limited to clarifying whether certain types of sewing thread (greige sewing thread) were part of the product scope. Any interested party has the right to request a clarification whether certain products fall or not under the product scope of anti-dumping measures. The Commission will assess the merits of each request on an individual basis and open a proceeding when warranted. The claim was therefore rejected.

(19) Fourth, CIRFS further claimed that the level of expertise regarding fibres and textiles at Customs in different Member States is allegedly not consistent, which puts doubt on the correct implementation of the anti-dumping measures and the detection of possible circumvention. In this respect, it should be noted that all Customs officials in all Member States are bound by the same Union Customs framework. If any party has concerns regarding the existence of possible circumvention practices, it may request the Commission to initiate a circumvention investigation pursuant to Article 13(3) of the basic Regulation. Given that CIRFS did not make such request and did not substantiate its allegations, the claim was therefore rejected.

(20) Fifth and finally, CIRFS claimed that the request was made at a very late stage and the support letter was drafted a few days after the opening of the expiry review. In this respect, it should be pointed out that the basic Regulation does not establish a time limit for requesting a review regarding the clarification of the product scope. Thus, the claim was rejected.

B. PRODUCT CONCERNED AND PRODUCT UNDER REVIEW

1. Product concerned

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(21) The product concerned, as defined in Article 1(1) of the expiry review Regulation, is high tenacity yarn of polyesters (other than sewing thread), not put up for retail sale, including monofilament of less than 67 decitex originating in the PRC ('the product concerned' or 'HTY') currently falling within CN code 5402 20 00.

(22) Note 5 to Section XI of the Combined Nomenclature defines 'sewing thread' (ST) as follows:

… the expression "sewing thread" means multiple (folded) or cabled yarn:

(a) Put up on supports (for example, reels, tubes) of a weight (including support) not exceeding 1 000 g;

(b) Dressed for use as sewing thread; and

(c) With a final "Z" twist.

2. **Product under review**

(23) In its request for review, the applicant claimed that 'greige sewing thread' ('the product under review' or 'GST'), which is undyed and/or unfinished sewing thread in the state following final plying, should not fall within the scope of the measures.

(24) The applicant explained that the Slovenian customs authorities could not accept declaring the product under review as ST, as the weight of the imported products exceeded the 1 000 g limit (including support) and would thus not meet the above mentioned (a) condition defined in Section XI — Note 5 from the Combined Nomenclature. The product under investigation is actually imported with a weight not exceeding 2 000 g (including support).

C. **FINDINGS OF THE REVIEW**

(25) In order to assess whether GST was covered by the original measures, the Commission examined whether GST and HTY share the same basic physical, chemical and technical characteristics and end-uses. The interchangeability and competition between GST and HTY was also assessed. All information with respect to the scope of the existing anti-dumping measures was also collected and verified.

(26) HTY is the basic material for the production of ST, which is therefore a downstream product of the product subject to measures. Consequently, the required machinery for the production of the product under review (GST) differs completely from that of the product concerned (HTY). This was confirmed during a verification visit to a European manufacturer, Amann Group, and during the verification visits to the Union producers of the product concerned in the context of the recent expiry review investigation of the measures in force.

(27) Furthermore, the investigation revealed that GST, since it consists of HTY that has been 'Z' twisted in a certain way to form a sewing thread, it is no longer appropriate for the uses to which HTY is typically an input.

(28) In fact, the product under review meets the requirements to be considered in substance as ST, a product excluded from the scope of the original measures, although it does not fulfil two conditions of the relevant section note of the Combined Nomenclature on 'sewing thread': (1) its weight exceeds 1 000 grams at importation when put up on a support — a plastic, perforated bobbin on which the product is loosely wound for purposes of later dyeing and dressing; and (2) it is not dressed for use as 'sewing thread'.

(29) However, unlike the above two conditions, Z-twisting is a determinant factor for the applications of the product. The manufacturing of GST requires that two or more HTY undergo a Z-twisting process that changes in an irreversible way the physical characteristics of the HTY to an extent that makes the twisted product inappropriate to be used in the place of a HTY. In fact, the Z-twisting in itself in essence transforms the HTY into a type (semi-finished) of sewing thread (GST) that is ready for its later colouring and/or lubrication. Once GST is manufactured, the process is irreversible. Thus, there is no interchangeability between HTY (the product concern) and GST (the product under review).

(30) Accordingly, the above findings show that GST and HTY are two different products.

(31) Furthermore, the Commission recalls that the present review investigation was limited to the clarification of the product scope and that it found that GST should not have been covered by the definition of scope in the original measured.

D. CONCLUSION ON PRODUCT SCOPE

(32) The review investigation has showed that the product concerned in the original investigation, HTY, and the product under review, GST, are two different products.

(33) Furthermore, GST was never intended to be in the scope of the anti-dumping investigation on HTY and did not form part of the analysis on which the findings concerning dumping and injury were originally based.

(34) The change in the definition of the product scope in the original Regulation proposed by the applicant, namely, to replace the general exclusion of ST in the product definition with that of GST, coupled with the introduction of a maximum bobbin weight of 2 kg cannot, however, be accepted. Such modification would artificially enlarge the scope of the original measures, since it would subject all ST other than GST to the duties. Furthermore, another importer that made itself known in the review proceedings suggested an even higher threshold of less than 2,5 kg because it imports on bobbins of that weight.

(35) It is therefore appropriate to amend the wording of the product definition in the anti-dumping measures in force as to create clarity on the exclusion of both ST and GST, the latter being an intermediate product in the production process of ST. Moreover, in order to prevent any future claims with respect to the specific weight restriction of GST,