Commission Implementing Regulation (EU) 2017/763 of 2 May 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain lightweight thermal paper originating in the Republic of Korea

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THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Provisional Measures

(1) On 16 November 2016 the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the Union of certain lightweight thermal paper ('LWTP') originating in the Republic of Korea ('the country concerned') by Commission Implementing Regulation (EU) 2016/2005[(2)] ('the provisional Regulation').

(2) The investigation was initiated on 18 February 2016[(3)] following a complaint lodged on 4 January 2016 by the European Thermal Paper Association ('ETPA' or 'the complainant') on behalf of producers representing more than 25 % of the total Union production of certain LWTP.

(3) As stated in recital (14) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 January 2015 to 31 December 2015 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to the end of the investigation period ('the period considered').

1.2. 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), three 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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/763. (See end of Document for details)*

(5) Both the Hansol Group and ETPA requested the intervention by the Hearing Officer in trade proceedings ('the Hearing Officer'). During the hearings held on 13 December 2016 and 2 March 2017, the Hansol Group came back on issues discussed in the hearing of 10 March 2016 (i.e. on the exemption from replying to the questionnaire requested for a number of related converters) and contested the methodology used for dumping and injury calculations. In the hearing of 22 March 2017, the Hansol Group referred to some dumping calculations issues and proposed a change in the form of the measures. In the hearing of 24 January 2017, ETPA expressed concern about some confidentiality issues and contested the Hansol Group's claims regarding the product scope and the level of support to measures.

(6) After the imposition of the provisional measures, the Commission continued seeking and verifying all information it deemed necessary for its definitive findings. 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 into the Union of LWTP originating in the Republic of Korea (the definitive disclosure). All parties were granted a period within which they could make comments on the definitive disclosure. After definitive disclosure, further changes were made to the dumping and injury calculations for which all parties were informed and granted a period within which they could make comments (the additional final disclosure). Subsequently, all parties were granted a period within which they could make comments on the change of the form of the measures.

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

1.3. Product concerned and like product

1.3.1. *Product concerned*

(8) As set out in recital (15) of the provisional Regulation, the product concerned is lightweight thermal paper weighing 65 g/m^2 or less; in rolls of a width of 20 cm or more, a weight of the roll (including the paper) of 50 kg or more and a diameter of the roll (including the paper) of 40 cm or more ('jumbo rolls'); with or without a base coat on one or both sides; coated with a thermo-sensitive substance (that is a mixture of dye and a developer that react and form an image when heat is applied) on one or both sides; and with or without a top coat, originating in the Republic of Korea, currently falling within CN codes ex 4809 90 00, ex 4811 90 00, ex 4816 90 00 and ex 4823 90 85.

1.3.2. *Claims on the product scope*

(9) The Hansol Group reiterated its request for excluding phenol-free LWTP from the product scope on the grounds that the Commission failed to carry out an appropriate assessment of a series of factors. According to the Hansol Group, phenol-free and other types of LWTP have different chemical composition, production processes and consumer perception.

(10) In terms of chemical composition, the party stated that phenol-containing LWTP and phenol-free LWTP have a very different chemical composition on the grounds that they are treated differently in the EU market from a regulatory point of view, depending on the developer used in their production. It should however be noted that only bisphenol A ('BPA'), i.e. one of the numerous possible phenol-containing developers, was recently banned in the Union with effect in 2020, and that there is no separate legal treatment for all other phenol-containing developers. The alleged more strict regulatory treatment of two bisphenol-containing developers does not demonstrate that all bisphenols and phenolic substances used as developers are different from other colour developers. It is further noted that, although of key importance, the developer is just one of the numerous types of chemicals required to produce LWTP. In addition, nothing on file supports the allegation that LWTP containing BPA had already been banned in some Member States. Therefore, it is concluded, from a material point of view, that phenol-containing LWTP and phenol-free LWTP do not have a different chemical composition. The claim is therefore rejected.

(11) As regards production processes, the party claimed that it is not possible to produce phenol-free and BPA-free LWTP on the same production line. The investigation however showed that, technically, it is possible to produce phenol-free LWTP and phenol-containing LWTP on the same production line, albeit in different batches, and that Union producers do so.

(12) As to consumer perception, the party alleged that consumers are aware of the presence of bisphenol in LWTP. Furthermore the Hansol group claimed that an American LWTP producer started producing phenol-free LWTP in response to customer demand and that a supermarket chain in the Union expressed concerns about the type of developer used in LWTP. However, while there may be different consumer preferences, in general all product types are interchangeable from a demand side point of view (without any changes being made by end-users) and compete between each other.

(13) The Hansol group also alleged that there is limited availability of Pergafast 201 (a phenol-free dye developer) and a significant price difference between phenol-free and phenol-containing LWTP in light of the purchase prices of two companies in the Union related to the Hansol Group.

(14) Given the existence of many types of developers, the alleged limited availability of only one specific type, i.e. the Pergafast 201 (that, in any case, the Hansol Group does not seem to have used), is irrelevant, because there are other alternative sources. For instance, in 2015 the European Chemical Agency's Committees, namely the Committee for Risk Assessment ('RAC') and the Committee for Socioeconomic Analysis ('SEAC'), considered that then there were some 10 realistic alternatives to bisphenol A in thermal paper plus novel promising alternatives[(4)]. The suppliers of chemical developers are expected to be ready for the ban on BPA mentioned in recital (10) and for the expiry of the patent on Pergafast 201 by 2019.

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(15) As to the alleged price difference, it is common that the product covered by an anti-dumping investigation includes various types with different price ranges. This price difference is however not sufficient in itself to consider the various types as different products for the purpose of defining a product subject to an anti-dumping investigation, as long as the various types share the same basic characteristics and compete with each other, which is the case here. In any event, any element affecting prices is taken into consideration for the purpose of the price comparison. The Hansol group reiterated that there is a significant price difference between phenol-free and phenol containing LWTP (according to the purchase prices of its converters in the Union), which would allegedly demonstrate that they are different products. In this respect, the overall finding in recital (113) of the provisional Regulation that the unit sales prices of phenol-free LWTP dropped less than the unit sales prices of phenol-containing LWTP cannot be contradicted by the purchase prices of two companies in the Union related to the Hansol Group, which represent a small share of the Union consumption.

(16) The Hansol group initially claimed that phenol-free LWTP should not be covered by the investigation on the grounds that phenol-free LWTP is neither produced nor exported from the Republic of Korea. In this respect, the Hansol Group's webpages show that this party has bisphenol-free thermal paper and LWTP without BPA on offer.

(17) The Hansol Group also claimed that the Commission was incorrect in defining a too broad product scope, because it will hamper future technological developments. In particular, the party alleged that the complainants' catalogues do not show LWTP weighing less than 44 g/m^2, reiterating its claim mentioned in recital (20) of the provisional Regulation that such type of LWTP should be excluded.

(18) The above claim was not supported by any evidence. First, nothing on file shows that LWTP of less than 44 g/m^2 has different physical, technical and chemical characteristics, use, consumer perception, distribution channels, manufacturing process, costs of production and quality from other LWTP or is not interchangeable. Second, there is no technical barrier that would prevent producers from producing LWTP of less than 44 g/m^2. In fact, one Union producer currently sells LWTP weighing 42 g/m^2. Third, there is no clear dividing line when it comes to grammage. Thermal paper producers work with a tolerance in terms of weight. It is for instance possible that a paper marketed as 45 g/m^2 weighs actually a bit less or that a paper marketed as 44 g/m^2 weighs indeed more than announced. Thus, the claim was dismissed.

1.3.3. *Conclusion*

(19) Accordingly, the conclusions regarding the product concerned and the like product reached in recitals (16) to (24) of the provisional Regulation were confirmed.

2. DUMPING

2.1. Normal value

(20) As explained in recital (12) of the provisional Regulation, the Hansol Group comprises of the Korean exporting producers Hansol Paper and Artone. In the case of

Artone, there were two product types with no or unrepresentative domestic sales. For these two product types, the normal value was, pursuant to Article 2(3) of the basic Regulation, calculated on the basis of Artone's cost of production (see recitals (34) to (36) of the provisional Regulation). Following provisional disclosure, the Hansol Group claimed that, in the determination of the normal value for these two product types, the Commission should have used the prices of the other producer, Hansol Paper, instead of constructing the normal value on the basis of Artone's cost of production. This claim was reiterated after definitive disclosure.

(21) The claim was rejected, since the Commission established that the cost structure and sales prices of Artone were significantly different from that of Hansol Paper. In addition, for one of these two product types sold by Hansol Paper, the domestic sales quantities were found to be unrepresentative. Therefore, the Commission confirmed that under these circumstances it was more appropriate that the normal value for these product types be calculated on the basis of Artone's cost of production plus a reasonable amount for selling, general and administrative costs ('SGA') and profit, in accordance with the first option under Article 2(3) of the basic Regulation.

2.2. **Export price**

(22) In its comments on the provisional disclosure, the Hansol Group contested the inclusion of small rolls in the dumping calculations for two reasons. First, the volume of jumbo rolls sales to unrelated parties would be significant and therefore a calculation on the basis of those sales would be representative. Second, small rolls are not the product concerned.

(23) As explained in recitals (25) and (37) of the provisional Regulation, the vast majority (between 75 % and 85 %) of the Union sales by Hansol Paper and Artone were sales to related parties destined for conversion into small rolls. In view of the significant quantity of the jumbo rolls that were converted into small rolls and only then resold to unrelated customers, the Commission maintained that these small rolls could not be ignored in the calculations. It was thus appropriate that for the sales of jumbo rolls to related parties for conversion into small rolls, the export price be established on the basis of the price at which the imported and converted product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation.

(24) Following definitive disclosure, the Hansol Group repeated its objection to the inclusion of small rolls in the dumping calculation. However, no new elements were brought forward.

(25) Furthermore, the Hansol Group criticised the fact that, as concerns sales through related parties, the dumping margin was based on data from one related converter and not on data from all four related converters.

(26) In this respect, the following is to be noted. On 19 February 2016, the Hansol Group requested the Commission to fully exempt three of the four related converters from replying to the questionnaire. On 23 February 2016, the Commission accepted that request while specifically reserving the right to make further enquiries/requests for