Commission Implementing Regulation (EU) 2017/325 of 24 February 2017 imposing a definitive anti-dumping duty on imports of high tenacity yarns of polyesters 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) 2017/325

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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(2) thereof,

Whereas:

A. PROCEDURE

1. Measures in force

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

(2) 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. Request for an expiry review

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

(4) The request was lodged on 31 August 2015 by CIRFS ('The European Manmade Fibres Association' or 'the applicant') on behalf of producers representing more than 25 % of the total Union production of high tenacity yarns of polyester.

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

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3. **Initiation of an expiry review**

(6) Having determined, after having consulted the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 28 November 2015, by a notice published in the *Official Journal of the European Union*[4] ('Notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. **Investigation of the expiry review**

4.1. *Relevant periods covered by the expiry review investigation*

(7) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 October 2014 to 30 September 2015 (the 'review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2012 to the end of the review investigation period (the 'period considered').

4.2. *Parties concerned by the investigation and sampling*

(8) The Commission officially advised the applicant, exporting producers and importers known to be concerned and the representatives of the exporting country concerned of the initiation of the expiry review.

(9) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limits set in the Notice of initiation. No interested party requested a hearing with the Commission.

(10) In view of the apparent large number of Chinese exporting producers and unrelated importers in the Union, sampling was envisaged in the Notice of initiation in accordance with Article 17 of the basic Regulation.

(11) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a representative sample, Chinese exporting producers and unrelated importers were requested to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the Notice of initiation.

(12) No Chinese exporting producer cooperated with the investigation.

(13) In total six known unrelated importers were contacted at the stage of the publication of the Notice of initiation. Replies were received from 15 unrelated importers. In view of the large number of cooperating importers the Commission applied sampling. The Commission selected the sample on the basis of the largest representative volume of imports which could reasonably be investigated within the time available. The selected sample originally consisted of three companies and represented 29 % of the estimated import volume from the PRC to the Union and 85

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% of the import volumes reported by the 15 respondents. A questionnaire reply was received only from one unrelated importer.

(14) In total 10 known users were contacted at the stage of the publication of the Notice of initiation. Replies were received from four of them. Sampling was not envisaged for users and the Commission decided to investigate all.

(15) Five Union producers which represented around 97 % of the Union production of high tenacity yarns of polyesters in the RIP cooperated with the Commission. In view of this small number, the Commission decided not to apply sampling.

4.3. *Questionnaires and verification*

(16) Questionnaires were sent to the five cooperating Union producers and to one producer in a potential analogue country, who agreed to cooperate.

(17) Verification visits were carried out at the premises of the following companies:

(a) Union producers:
- Brilen Tech SA, Spain
- Sioen Industries NV, Belgium
- DuraFiber Technologies (DFT) SAS, France
- DuraFiber Technologies (DFT) GmbH, Germany
- PHP Fibers GmbH, Germany

(b) Analogue country producer:
- DuraFiber Technologies, United States of America ('USA').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(18) The product concerned 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.

2. Like product

(19) The review investigation confirmed that the product concerned, high tenacity yarns of polyesters produced and sold by the Union industry on the Union market and high tenacity yarns of polyesters produced and sold in the analogue country (USA) have the same basic physical, technical and chemical characteristics and the same basic uses. Therefore these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

(20) In accordance with Article 11(2) of the basic Regulation, the Commission first examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping from the PRC.

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1. **Cooperation from the PRC**

(21) No Chinese exporting producer cooperated with the investigation. In the absence of cooperation from exporting producers in the PRC, the overall analysis, including the dumping calculation, was based on facts available pursuant to Article 18 of the basic Regulation. Therefore, the likelihood of a continuation or recurrence of dumping was assessed by using the expiry review request, combined with other sources of information, such as trade statistics on imports and exports (Eurostat and Chinese export data), the reply from the analogue country producer and other information publicly available[(5)].

(22) The absence of cooperation affected the comparison of the normal value with the export price of the various product types. In accordance with Article 18 of the basic Regulation, it was considered appropriate to establish both the normal value and the export price on a global basis.

(23) In accordance with Article 11(9) of the basic Regulation, the same methodology used to establish dumping in the original investigation was followed whenever it was found that circumstances had not changed.

2. **Dumping during the review investigation period**

(a) *Analogue country*

(24) Normal value was determined on the basis of the prices paid in an appropriate market economy third country (the 'analogue country'), in accordance with Article 2(7)(a) of the basic Regulation.

(25) In the original investigation Taiwan was used as analogue country for the purposes of establishing the normal value with regard to the PRC. In the Notice of initiation the Commission informed interested parties that it envisaged using Taiwan as analogue country and invited parties to comment. The Notice of initiation also added that, according to the information available to the Commission, other market economy suppliers of the Union may have been located, inter alia, in the USA and the Republic of Korea.

(26) One interested party supported the choice of Taiwan as analogue country, because of the similar equipment and production process to the ones used by Chinese producers. However, no producer from Taiwan agreed to cooperate with the investigation.

(27) Based on the import statistics and information from the review request, in addition to Taiwan, the Commission considered a number of other countries as potential analogue countries, such as the Republic of Korea, India, Japan, and the USA[(6)]. Requests for cooperation were sent to all known producers and associations from these countries. Only one producer in the USA (Dura Fibres) agreed to cooperate.

(28) The Commission found that the USA has a significant (8,8 %) conventional customs duty rate on imports of HTY from third countries, but no anti-dumping duties.

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Dura Fibres is the only producer of the product concerned in the USA having around 30 % market share during the review investigation period, it is subject to strong competition from exporting countries[7].

(29) In view of the above and in the absence of any further comments, the Commission concluded that the USA is an appropriate analogue country under Article 2(7)(a) of the basic Regulation.

(b) *Normal value*

(30) The information received from the cooperating producer in the analogue country was used as a basis for the determination of the normal value.

(31) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the total volume of domestic sales of the like product to independent customers made by the cooperating producers in the USA was representative in comparison with the total export volume from the PRC to the Union, namely whether the total volume of such domestic sales represented at least 5 % of the total volume of export sales of the product concerned to the Union. On that basis, it was found that the domestic sales in the analogue country were representative.

(32) The Commission also examined whether the domestic sales of the like product could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. Normal value was thus based on the actual domestic price, which was calculated as an average price of the domestic sales made during the review investigation period.

(c) *Export price*

(33) As stated in recital 15 above, the Chinese exporting producers did not cooperate in the investigation. Therefore, the export price was based on the best information available, in accordance with Article 18 of the basic Regulation.

(34) The CIF price at Union border was established on the basis of the statistics available on Eurostat. Volumes imported from Chinese producers who were found not to be dumping in the original investigation (about 40 % of the Chinese imports) were not considered for the determination of the export price.

(35) One interested party claimed that the volumes from Chinese producers who were found not to be dumping in the original investigation should not have been excluded from the dumping calculation because there is no provision in this sense in the basic Regulation. However, it is the Commission's practice[8], in application of the interpretation of the ADA provided by the WTO Dispute Settlement Body in the *Beef and rice* case[9], to exclude from the review companies in respect of which a *de minimis* dumping margin was found in the initial investigation. Therefore, the request is rejected.

(d) *Comparison*

(36) The Commission compared the normal value and the export price on an ex-works basis. Where justified by the need to ensure a fair comparison, the Commission