Council Implementing Regulation (EU) No 1105/2010 of 29 November 2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of high tenacity yarn of polyesters originating in the People's Republic of China and terminating the proceeding concerning imports of high tenacity yarn of polyesters originating in the Republic of Korea and Taiwan

COUNCIL IMPLEMENTING REGULATION (EU) No 1105/2010

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Article 9(4) thereof,

Having regard to the proposal submitted by the European Commission (the Commission) after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission, by Regulation (EU) No 478/2010[(2)] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of high tenacity yarn of polyesters (HTY) originating in the People's Republic of China (PRC). No provisional measures were imposed on imports of HTY originating in the Republic of Korea (Korea) and Taiwan.

(2) The proceeding was initiated as a result of a complaint lodged on 27 July 2009 by CIRFS-European Man-made Fibres Association (the complainant) on behalf of producers of HTY representing a major proportion, in this case more than 60 % of the total Union production of HTY.

(3) As set out in recital 15 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2008 to 30 June 2009 ('investigation period' or 'IP'). The examination of the trends for the assessment of injury covered the period from January 2005 to the end of the investigation period (period considered).

1.2. Subsequent procedure

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1105/2010. (See end of Document for details)*

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures (provisional disclosure), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(5) As regards the Union interest aspects, additional verification visits were carried out at the following companies:

Users in the Union:

— Continental AG,
— Oppermann Automotive Webbing GmbH,
— Katradis Marine Ropes Industry SA,
— Mehler Texnologies GmbH,
— E. Oppermann GmbH,
— Oppermann Industrial Webbing SRO,
— Contitech Transportbandsysteme GmbH.

(6) One interested party requested a hearing and the intervention of the Hearing Officer. This request was made after the provisional disclosure. The hearing in the presence of the Hearing Officer was granted.

(7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of HTY originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty (final disclosure). The parties were also granted a period within which they could make representations subsequent to this disclosure.

2. PRODUCT CONCERNED AND LIKE PRODUCT

(8) The product concerned is HTY (other than sewing thread), not put up for retail sale, including monofilament of less than 67 decitex originating in the PRC, Korea and Taiwan (the product concerned) currently falling within CN code 5402 20 00.

(9) Following the provisional disclosure, one party claimed that the Commission had not addressed the differences between the yarn used in the production of tyres, the so-called ‘high modulus low shrinkage’ (HMLS) yarn, and other types of yarns, as this type requires lengthy and costly technical tests before getting approvals for the HMLS specifications imposed by the purchasers. Moreover, this party claimed that it was not clear which factors were going into the provisional determination of the existence of a single product. Another party argued that HMLS and other types of yarns have different cost structures.

(10) In reply to these claims it should first be noted that the product concerned is used in a number of diverse applications such as tyre reinforcement, broad fabrics, seatbelts, airbags, ropes, nets and a number of industrial applications. There are therefore a great number of different applications and consequently many different types and specifications exist.

(11) In the determination that HMLS and other types of yarns constitute one single product, the main criteria were the basic physical, technical and chemical characteristics. Indeed, as explained in recital 19 of the provisional Regulation, the investigation showed that although HMLS yarn has some distinctive characteristics compared to other types of HTY (e.g. modulus, shrinkage, tensile strength and fatigue resistance), it is considered that all the different types of the product concerned share the same basic physical and chemical characteristics. They are therefore considered to constitute one single product.

(12) Regarding the claimed differences in cost structure, it should be noted that this does not constitute in itself a decisive criterion when determining whether HMLS constitutes a distinct product from other types of HTY. Differences in costs, prices and production process do not per se justify that a certain product type such as HMLS should be considered as a different product as long as this type shares the same basic physical, technical and chemical characteristics as the other product types.

(13) It was therefore not considered warranted to exclude HMLS from the scope of the investigation and consequently the claims in this respect had to be rejected.

(14) In the absence of any other comments concerning the product concerned and the like product, recitals 16 to 20 of the provisional Regulation are hereby confirmed.

3. DUMPING

3.1. Taiwan

3.1.1. *Normal value*

(15) One exporting producer in Taiwan provided evidence which demonstrated that the price of the main raw materials, purified terephthalic acid (PTA) and mono ethylene glycol (MEG), it purchased to produce HTY varied during the IP. In particular it emerged that the purchase prices sharply declined in particular in the fourth quarter of 2008. Hence it claimed that this should be taken into account when establishing its normal values in order to ensure a fair comparison with the export prices.

(16) The findings in recital 18 are the result of a very detailed analysis of the data submitted by the exporter and which was verified during the verification visit. Hence, it was considered that establishing normal values for certain periods of the IP to take account of the variation in raw material prices was justified in this case.

(17) There were no other comments concerning the method described in the provisional Regulation in recitals 86 and 87. The method used to establish normal value for the Taiwanese exporting producers can be confirmed.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1105/2010. (See end of Document for details)*

3.1.2. *Export price*

(18) The investigation showed that the Taiwanese producer mentioned in recital 15 sold higher volumes of the product concerned to the Union market in the first half of the IP when raw material prices were lower. This finding should also be seen in the light of the contents of recital 16.

(19) In the absence of any comments concerning the export price, recital 88 of the provisional Regulation is hereby confirmed.

3.1.3. *Comparison*

(20) The normal value and export price were established as explained above. The normal value thus established for the said producer and its export price were compared at periods which were as close as possible to take account of differences affecting price comparability. This is in line with Article 2(10) of the basic Regulation.

(21) No other comments concerning the comparison of the normal value and the export price of the Taiwanese exporting producers were received. Hence, the contents of recital 89 of the provisional Regulation can be confirmed.

3.1.4. *Dumping margins*

(22) It is recalled that it was concluded in recital 92 of the provisional Regulation that the countrywide dumping margin for Taiwan was *de minimis*. The definitive dumping margin established for the Taiwanese producer mentioned in recital 15 is now below the *de minimis* threshold. It is therefore confirmed that the countrywide definitive dumping margin for Taiwan is *de minimis.*

3.2. **The PRC**

3.2.1. *Market economy treatment (MET)*

(23) It is recalled that 11 exporting producers in the PRC made themselves known. These companies represented 100 % of total exports of the product concerned to the Union market during the IP. A sample of three exporting producers or groups of related companies was selected based on the highest export volume for the purpose of establishing dumping for the PRC. The three sampled exporting producers requested MET, but only one was found to merit it.

(24) Following disclosure of the findings concerning MET, the two exporting producers to which MET was not granted submitted comments which are summarised below.

(25) The first exporting producer made comments concerning a restrictive clause in its business activities, problems encountered with its accounting and the payment of certain assets such as land use rights.

(26) This exporter admitted the existence of a restrictive clause in its Articles of Association (AoA). It claimed, but did not demonstrate, that such a clause had ceased to

produce legal effects on its activity. Similarly, regarding the accounting problems, the company admitted the existence of discrepancies between the accounting records and the audited financial statements, but it claimed that these discrepancies were minor and explained during the investigation. It should be clarified that the problems encountered in the accounting of that company which led to the rejection of MET were not minor but substantial, in particular concerning the booking of certain assets and discrepancies found between certain ledgers and documents provided during the on-the-spot visit.

(27) The second exporting producer made comments in particular on the findings regarding the capital contribution, a restrictive clause in its business activities, and the acquisition of land use rights.

(28) Regarding the capital contribution, the exporter reiterated the same arguments as those made at the provisional stage, namely that the capital had been duly contributed. It argued that technical know-how is a special category of knowledge which does not require being patented or registered, and therefore, the capital contribution, although in kind, was correctly made. With regard to the latter issues, it reiterated that the restrictive clause is not mandatory for the company and that the investment requirements linked to the acquisition of the land are not distortions but are related to the authorities' land development policy.

(29) However, these arguments were already raised and rejected at the provisional stage. Even if the investment requirements are related to the authorities' land development policy, they are not considered to be compatible with the MET. No new evidence that could change the provisional conclusions reflected in the MET assessment in recitals 50 and 51 of the provisional Regulation was provided.

(30) On the basis of the above, the provisional findings made in recitals 46 to 52 of the provisional Regulation are confirmed.

3.2.2. *Individual examination*

(31) As mentioned in recital 28 of the provisional Regulation, two exporting producers which were not included in the sample requested that an individual margin of dumping be established pursuant to Article 17(3) of the basic Regulation. However, the requests for individual examination could be examined only after the imposition of the provisional measures.

(32) These companies replied to the MET claim form within the given deadlines. After the imposition of the provisional measures, the Commission sought and verified the information provided in the claim forms and all other information deemed necessary at the premises of the companies in question:

— Oriental Industries Co. Ltd,

— Hangzhou Huachun Chemical Fibers Co. Ltd.

(33) Briefly, and for ease of reference only, the MET criteria are set out in a summarised form below: