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► **B** **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

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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⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 135, 2.6.2010, p. 3.

▼B**1.2. Subsequent procedure**

- (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 Technologies 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.

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- (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.

▼B**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.

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.

▼B3.1.4. *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.

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- (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:
1. business decisions and costs are made in response to market conditions, and without significant State interference; costs of major inputs substantially reflect market values;
 2. firms have one clear set of basic accounting records which are independently audited in line with International Accounting Standards (IAS) and are applied for all purposes;
 3. there are no significant distortions carried over from the former non-market economy system;

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4. bankruptcy and property laws guarantee legal certainty and stability;
 5. exchange rate conversions are carried out at the market rate.
- (34) Both companies had a restrictive clause concerning the repartition of sales between export and domestic markets in their registration documents. For one exporter, a number of inconsistencies and shortcomings in the accounting system of the applicant have been found, leading to the conclusion that the accounts were not clear, not prepared nor audited in accordance with international accounting standards. Finally, certain distortions carried over from the non-market economy system were found in particular with regard to the purchase of the company's land use rights.
- (35) On this basis, it was concluded that none of the two companies demonstrated that they fulfilled all the criteria of Article 2(7)(c) of the basic Regulation and could not be granted MET.

3.2.3. *Individual treatment (IT)*

- (36) Pursuant to Article 2(7)(a) of the basic Regulation, a countrywide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all the criteria set out in Article 9(5) of the basic Regulation to be granted IT.
- (37) The two exporting producers which requested individual examination did not meet the MET criteria but claimed IT in the event that they would not be granted MET.
- (38) Briefly, and for ease of reference only, the IT criteria are set out below:
1. in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;
 2. export prices and quantities, and conditions and terms of sale are freely determined;
 3. the majority of the shares belong to private persons. State officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;
 4. exchange rate conversions are carried out at the market rate; and
 5. State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

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- (39) On the basis of information available, it was established that these two exporting producers in the PRC, not included in the sample, which required individual examination, met all the above requirements to be granted IT as set forth in Article 9(5) of the basic Regulation.

3.2.4. Analogue country

- (40) As mentioned in recitals 57 to 62 of the provisional Regulation, it was considered that the USA was not an appropriate analogue country for the purpose of establishing normal value for the PRC. Instead Taiwan was chosen as the appropriate analogue country to establish normal value for the PRC in accordance with Article 2(7) of the basic Regulation.
- (41) Following the imposition of provisional measures, some parties suggested instead the use of Korea as an analogue country. They claimed that Korea was more appropriate than Taiwan because Korean exporting producers also use the recent one-step production technology, they have a high volume of comparability in end-products with the PRC, the Korean domestic market is large and comparable to that of the PRC and no company in Korea was found to be dumping.
- (42) Regarding the selection of an analogue country, the following criteria were examined: the comparability of the production volume of end-products in the non-market economy country and in the potential analogue country, the representativeness of domestic sales (transactions) to unrelated customers as compared to exports of the product concerned originating in the non-market economy country, the level of competition in the domestic market of the analogue country, the comparability of access to raw material and energy, the readiness of exporters in the potential analogue country to cooperate in the investigation.
- (43) A further analysis carried out after the imposition of the provisional measures was made on the basis of all the information available to analyse the relevant criteria. This analysis showed that there are indeed similarities between Korea and Taiwan in terms of some criteria. However, it appeared that on balance, Taiwan was the most suitable analogue country.
- (44) The analysis showed that Korea and Taiwan have a high level of comparability in the volume of end-products manufactured with the producers in the PRC and a large volume of products sold domestically in both countries could be compared to exports made from the PRC. This criterion showed a slightly higher level of volume comparability for Korea as its production volume is larger than Taiwan.
- (45) However, the importance of this criterion should not be over-estimated over other criteria such as the representativeness of domestic sales transactions as compared to exports, the access to raw material and the level of competition in the analogue country.

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- (46) It was found that both Korea and Taiwan had a high number of representative domestic sales for which normal value would not be constructed, as compared to exports from the PRC. However, the transactions made by the Taiwanese exporters were found to be overall more representative than those of the Korean exporters. The normal value for a higher volume and for more types of the product concerned would have had to be constructed had Korea been chosen as analogue country.
- (47) Regarding the level of competition, one party alleged that one Taiwanese exporting producer held a dominant position in its domestic market and that this should also preclude using Taiwan as an analogue country.
- (48) A high number of producers may be an indication of competition in the country. But what also needs to be examined is whether or not producers in the analogue country are subject to competition which allows sufficient but not excessive profit.
- (49) It was found that there are four domestic producers in Korea and that imports of HTY complement the domestic market. As regards Taiwan, there are two producers and the domestic market is also served by outside sources. Nevertheless, the investigation showed that, despite lower costs in Korea, the level of domestic prices was not lower than in Taiwan. The profits realised on the Korean market was 18 % on average with Korean HTY producers achieving profits above 20 % on turnover for the product concerned. This is much higher than Taiwan, where profits ranged between 5 % and 9 %.
- (50) It is therefore considered that there is a high level of competition in Taiwan and that profits are not excessive.
- (51) Concerning access to raw materials, Korea is by far one of the largest producers and exporters of PTA worldwide after Thailand. This competitive advantage of the Korean producers may explain, to a certain extent, why the raw material price in Korea was on average lower than in Taiwan and in the PRC. The investigation showed that most of the verified Korean companies sourced their raw material from related companies or could produce it themselves. By contrast, in Taiwan none of the companies investigated produced its raw material and mainly sourced it from related and unrelated parties, as is the case in the PRC.
- (52) The information available and the fact that the Taiwanese exporting producers have related producers of HTY in the PRC suggest that the same sources of supply of raw material are used within the groups in order to realize economies of scale and obtain better prices. Hence it was considered that the conditions of access to raw material in the PRC are very similar to those in Taiwan.

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- (53) On that basis, it is considered that the choice of Taiwan was not unreasonable and more appropriate in this case. Taiwan is therefore confirmed as the analogue country.

*3.2.5. Normal value**3.2.5.1. Sampled exporting producer granted MET*

- (54) In the absence of comments concerning the normal values established for the company granted MET, recitals 64 and 65 of the provisional Regulation are confirmed.

3.2.5.2. Exporting producers not granted MET

- (55) As mentioned in recital 15, one exporter in Taiwan demonstrated that its purchase price of the main raw material used for the production of HTY varied during the IP and claimed to take this into account when establishing the normal value. This claim was considered to be founded and the normal values established for Taiwan, the analogue country in this case, were revised accordingly.

3.2.6. Export price

- (56) As explained in recital 68 of the provisional Regulation, all sales of the product concerned made by the sampled exporting producers on the Union market were made directly to independent customers in the Union. Consequently, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of prices actually paid or payable. The export sales of the individually examined companies were also made directly to unrelated customers and therefore the method described in recital 68 of the provisional Regulation was used also for these companies in order to establish their export price.

- (57) In the absence of any comments concerning the export price, recital 68 of the provisional Regulation is hereby confirmed.

3.2.7. Comparison

- (58) The revised normal values established for the analogue country were compared with the export price of the cooperating exporting producers in the PRC. As shown in recital 63 below this led to reduced definitive dumping margins for the three sampled exporting producers in the PRC.

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- (59) It is noted that the indirect taxation adjustment mentioned in recital 69 of the provisional Regulation represents the difference between the value added tax (VAT) payable on domestic sales and that payable on the export sales transactions, due account being taken of the VAT refund rate on export sales. The cooperating exporting producers contested the manner in which the adjustment was calculated and claimed that the VAT regime applicable to specific processing and sales operations should be taken into consideration when assessing the amount of VAT not refunded.
- (60) Regarding this claim it is noted that the adjustment was based on the provisions of Article 2(10)(b) of the basic Regulation which provides for an adjustment to normal value for import charges and indirect taxes — a category which includes VAT. On this basis the claim was rejected.
- (61) In the absence of any other comments concerning the comparison, which would alter the provisional findings, recital 69 of the provisional Regulation is hereby confirmed.

3.2.8. Dumping margins

- (62) The revised average normal values established for Taiwan, the analogue country, and the comparison with the export price of the Chinese exporting producers led to lower definitive dumping margins.
- (63) These definitive dumping margins for the Chinese exporting producers are as follows:
- 5,1 % for Zhejiang Guxiandao Industrial Fibre Co. Ltd,
 - 0 % for Zhejiang Hailide New Material Co. Ltd,
 - 5,5 % for Zhejiang Unifull Industrial Fibre Co. Ltd,
 - 5,3 % for cooperating companies not included in the sample.
- (64) For the companies which requested individual examination the definitive dumping margins are the following:
- 9,8 % for Oriental Industries (Suzhou) Ltd,
 - 0 % for Hangzhou Huachun Chemical Fiber Co. Ltd.

3.3. The Republic of Korea**3.3.1. Normal value**

- (65) In the absence of any other comments concerning the normal value, explained in recitals 75 to 76 of the provisional Regulation, these findings are hereby confirmed.

3.3.2. Export price

- (66) In the absence of any comments concerning the export price, recitals 77 to 78 of the provisional Regulation are hereby confirmed.

▼B**3.3.3. Comparison**

- (67) In the absence of any other comments concerning the comparison, which would alter the provisional findings, recitals 79 to 81 of the provisional Regulation are hereby confirmed.

3.3.4. Dumping margins

- (68) In the absence of any other comments concerning the dumping margins, which would alter the provisional findings concerning Korea, recitals 82 to 85 of the provisional Regulation are hereby confirmed.

4. INJURY**4.1. Union production**

- (69) In the absence of any comments concerning the Union production, recitals 94 to 96 of the provisional Regulation are hereby confirmed.

4.2. Definition of the Union industry

- (70) In the absence of any comments concerning the definition of the Union industry, recital 97 of the provisional Regulation is hereby confirmed.

4.3. Union consumption

- (71) It is recalled that the Union consumption was established on the basis of the total imports, derived from Eurostat, the total sales on the Union market of the Union industry, including an estimate based on data in the complaint of the sales of the silent producers.

Table 1

| Union Consumption | 2005 | 2006 | 2007 | 2008 | IP |
|-------------------------|------------|------------|------------|------------|-----------|
| Tonnes | 221 277 | 233 969 | 265 826 | 241 258 | 205 912 |
| <i>Index 2005 = 100</i> | <i>100</i> | <i>106</i> | <i>120</i> | <i>109</i> | <i>93</i> |

Source: Eurostat, complaint data and questionnaire replies.

- (72) Overall Union consumption decreased by 7 % during the period considered. It increased by 20 % between 2005 and 2007, after which it decreased by 27 % between 2007 and the IP. The downturn in consumption in 2008 and the IP was the result of lower demand, especially in the second half of 2008 due to the economic crisis.

- (73) In the absence of any comments concerning the Union consumption, recitals 98 to 100 of the provisional Regulation are hereby confirmed.

▼B**4.4. Imports into the European Union from the PRC, Republic of Korea and Taiwan***4.4.1. Cumulative assessment of the effects of the imports*

(74) It is recalled that imports from Korea and Taiwan were not cumulated with the dumped imports from the PRC because both the Korean and Taiwanese imports were not made at dumped prices during the IP, as mentioned in recitals 102 and 103 of the provisional Regulation.

(75) It is noted that in order to make an assessment as to whether imports from the countries concerned should be cumulatively assessed in the current investigation, imports from each country were individually examined in the light of the conditions set out in Article 3(4) of the basic Regulation. Since the margin of dumping in relation to the imports from Korea and Taiwan was below *de minimis*, it was concluded that imports from Korea and Taiwan should not be cumulated with the dumped imports from the PRC. Following this conclusion, these imports were analysed separately in recitals 147 to 152 of the provisional Regulation in accordance with Article 3(7) of the basic Regulation.

4.4.2. Dumped imports from the PRC

(76) It is recalled that it was provisionally found that one exporting producer in the PRC was not dumping its products on the Union market. Accordingly, these exports were excluded from the analysis of the development of the dumped imports from the PRC on the Union market. Following individual examinations carried out after the imposition of provisional measures, exports by an additional exporting producer in the PRC were found not to be dumped, as mentioned in recital 64. Therefore these exports were also excluded from the analysis concerning the development of dumped imports from the PRC on the Union market and the impact on the Union industry. Accordingly, data regarding the dumped imports from the PRC was revised.

Table 2

| Dumped imports from the PRC | 2005 | 2006 | 2007 | 2008 | IP |
|-----------------------------|------------|------------|------------|------------|------------|
| Imports (tonnes) | 4 350 | 11 926 | 31 223 | 39 072 | 38 404 |
| <i>Index</i> | <i>100</i> | <i>274</i> | <i>718</i> | <i>898</i> | <i>883</i> |
| Market share | 2,4 % | 5,6 % | 11,9 % | 16,3 % | 18,8 % |
| Average price in EUR/tonne | 2 783 | 1 705 | 1 524 | 1 574 | 1 532 |
| <i>Index</i> | <i>100</i> | <i>61</i> | <i>55</i> | <i>57</i> | <i>55</i> |

Source: Eurostat, complaint data and questionnaire replies.

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- (77) Following the revision of data concerning the dumped imports from the PRC, it was found that their volume increased dramatically by over eight times in the period considered, while at the same time the average import prices decreased sharply by 45 %.

4.4.3. Price undercutting

- (78) In the absence of any comments concerning price undercutting, the methodology described in recitals 110 and 111 of the provisional Regulation to establish price undercutting is confirmed. However, following the individual examinations granted after the imposition of provisional measures, as mentioned in recital 31, the price comparison of similar product types was reassessed. This reassessment confirmed that the dumped imports from the PRC were undercutting the Union industry's prices by 24,1 % during the IP.

4.5. Economic situation of the Union industry

- (79) It is recalled that because imports from Korea, Taiwan and two Chinese companies were found not to be dumped, they should not be cumulated with the dumped imports from the PRC. They were therefore excluded from the analysis of the impact of the dumped imports on the Union industry and assessed separately.
- (80) As mentioned in recital 113 of the provisional Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators for an assessment of the state of the Union industry from 2005 to the end of the IP.
- (81) It is recalled that the injury picture was clear at the provisional stage with most of the injury indicators showing a declining trend during the period considered: production volume (– 36 %), sales volume (– 29 %), sales prices (– 9 %) and market share (– 23 %). In addition, the injury indicators related to the financial performance of the Union industry, such as profitability (– 16,3 percentage points) and cash flow (– 141 %) also deteriorated dramatically, while investments decreased significantly (– 89 %).
- (82) In the absence of any comments with regard to production, production capacity and capacity utilisation, sales volume and market share, prices, stocks, employment, wages and productivity, and the financial performance indicators of the Union industry, the provisional findings made in recitals 114 to 126 of the provisional Regulation are hereby confirmed.
- (83) In the absence of any other comments regarding the economic situation of the Union industry, the conclusion that the Union industry suffered material injury, as set out in recitals 127 to 130 of the provisional Regulation, is confirmed.

▼B**5. CAUSALITY****5.1. Preliminary remark**

- (84) In accordance with Article 3(6) and (7) of the basic Regulation, it was examined whether the dumped imports of the product concerned originating in the PRC caused injury to the Union industry to a degree that can be considered as material. Known factors other than the dumped imports, which could at the same time be injuring the Union industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

5.2. Effect of the dumped imports

- (85) The dumped imports from the PRC increased dramatically over the period considered. Following the revision of the data concerning the dumped imports originating in the PRC, as described in recital 76, the volume of the dumped imports from the PRC increased more than eight times between 2005 and IP, increasing their market share by about 16 percentage points. During the same period, Union consumption decreased by 7 %.
- (86) During the period considered, the Union industry faced a significant drop of 29 % in its sales volume and consequently lost market share from 51,1 % to 39,2 % — almost 12 percentage points. In the period between 2008 and the IP, the market share of the Union industry dropped by two percentage points whereas that of dumped imports increased, despite the declining demand on the Union market.
- (87) As regards prices of the dumped imports, following the revision of the data as described in recital 76, they decreased by 45 % during the period considered and were significantly undercutting the prices charged by the Union industry on the Union market. Consequently, the Union industry was prevented from increasing its prices to cover the increase in raw material prices. As a result, the profitability of the Union industry's sales on the Union market decreased, as explained in recital 81 of the provisional Regulation, from a profit of 3 % in 2005 to a loss of 13,3 % in the IP.
- (88) The investigation also showed that the increasing volumes of low-priced dumped imports from the PRC had a negative impact on the market overall by depressing the prices. The continued pressure exercised on the Union market did not allow the Union industry to adapt its sales prices to the increased raw material costs, in particular in 2008, when raw material prices peaked. This explained the loss of market share and the loss in profitability of the Union industry.

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- (89) In view of the above, and in the absence of any comments regarding the impact of the dumped imports, it can be confirmed that the surge of the low-priced dumped imports from the PRC had a considerable negative impact on the economic situation of the Union industry.

5.3. Effect of other factors*5.3.1. Non-dumped imports*

- (90) As regards the effect of the non-dumped imports from the PRC, it is recalled that two Chinese exporting producers were found not to be dumping HTY on the Union market. While it cannot be excluded that these imports may have contributed to some extent to the injury of the Union industry, it is considered that in view of the volume and in particular the prices which were on average higher than the prices of the dumped imports, the impact of these non-dumped imports is not such as to break the causal link established between the dumped imports from the PRC and the injury suffered by the Union industry.

5.3.2. Other factors

- (91) It is recalled that other factors were also examined in the causality analysis, namely the development of demand on the Union market, the evolution of the raw material prices, the captive production of the Union industry, the export performance of the Union industry, imports from other countries, including imports from Korea and Taiwan, and the performance of other producers in the Union.
- (92) One party claimed that the causality analysis failed to prove that injury caused by factors other than the dumped imports was not attributed to Chinese imports. In particular, it argued that factors such as the development in demand and increased raw material prices contributed to the injury suffered by the Union industry and were not taken into account in the causation analysis.
- (93) As regards the development in demand, it is recalled that in the context of declining consumption, imports from the PRC still managed to increase their market share. Regarding the increase in raw material prices, it is acknowledged that prices of raw materials increased in the first half of the IP as mentioned in recital 139 of the provisional Regulation. However, prices decreased in the second half of the IP. These fluctuations in raw material prices affected all economic operators. Moreover, in the absence of the price pressure exerted by the low-priced dumped imports from the PRC, it could have been expected that the Union industry would have been in a position to adapt its sales prices, in line with the development of the raw material prices. Therefore, recitals 138 to 140 of the provisional Regulation are confirmed and this claim is consequently rejected.

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- (94) In the absence of any comments concerning captive production or the export performance of the Union industry, recitals 141 to 143 of the provisional Regulation are hereby confirmed.
- (95) Some parties also claimed that the Union producers would not have been able to increase their prices to reflect the changes in raw material costs in view of the low priced imports from Korea and Taiwan.
- (96) In this respect it is firstly noted that prices of imports from Korea and Taiwan remained higher than the average import prices from the PRC throughout the period considered. Secondly, import volumes decreased substantially between 2007 and the end of the IP. It is therefore considered that the volume and prices of these imports could not have been the main cause of material injury to the Union industry and thus cannot break the causal link between the injury suffered by the Union industry and the dumped imports from the PRC. Therefore, this claim was rejected.
- (97) In the absence of any other comments regarding imports from third countries, including Korea and Taiwan, recitals 144 to 152 of the provisional Regulation are hereby confirmed.
- (98) In the absence of any comments concerning other producers in the Union, recitals 153 to 154 of the provisional Regulation are hereby confirmed.
- (99) Following the provisional disclosure, one party claimed that the lower profitability of the Union industry should be attributed to the high ratio that the so-called two-step production process represented in the Union industry's production capacity and to the alleged delays of the Union industry in implementing the modern, so-called one-step production process.
- (100) It should be noted that the range of product types produced and sold by the exporting producers in the PRC largely overlaps with that of the Union industry. The Union industry uses the so-called two-step production process as it allows producing specific product types which are normally sold at a higher price on the market. As explained in recitals 85 to 89, the presence of low-priced dumped imports of HTY from the PRC affected the overall Union market by notably exercising a downward pressure on prices.
- (101) It is therefore considered that the existence of two different production processes cannot per se have had a material impact on profit margins, in particular in view of the price pressure exerted by the dumped imports from the PRC. In addition, no substantiated evidence was submitted in support of the claim that the Union industry suffered material injury because of the lack of more recent technology. Therefore this claim was rejected.

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- (102) In the light of the foregoing and in the absence of any other comments, it is concluded that the dumped imports from the PRC caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation and recitals 155 to 158 of the provisional Regulation are confirmed.

6. UNION INTEREST**6.1. Preliminary remark**

- (103) The Union interest analysis has been adapted to take into account the revisions to the dumping margins following comments to the provisional disclosure and the individual examinations carried out after the imposition of provisional measures. Accordingly, in view of the high level of cooperation, the majority of imports from the PRC would be subject to a duty level of around 5 % as mentioned in recital 63.

6.2. Union industry

- (104) It is recalled that the Union industry is composed of four producers located in different Member States, employing directly over 1 300 people in activities related to HTY. All injury indicators, in particular those related to the financial performance of the Union industry, showed a negative trend during the period considered. Employment also decreased significantly by 23 %, corresponding to a decrease of around 400 full-time equivalents during the period considered.
- (105) Following the imposition of provisional measures, the Union industry has submitted that factories that had been idle due to the dumped imports have recently been reopened. This shows that the provisional measures have already had a positive impact on the Union industry.
- (106) It is expected that the imposition of definitive anti-dumping duties against imports originating in the PRC would have a further positive impact on the economic situation of the Union industry and would enable it to regain at least part of its lost market share.
- (107) In the absence of any other comments with regard to the interest of the Union industry, recitals 160 to 163 of the provisional Regulation are hereby confirmed.

6.3. Importers

- (108) Some parties claimed that the analysis of the impact of measures on importers did not address the difficulty of rapidly switching suppliers of HTY. In this respect, it is acknowledged that switching sources of supply may take some time depending on the end application. However, there will be other sources available, including imports from Korea and Taiwan as well as imports from the two Chinese exporting producers mentioned in recitals 63 and 64, which will not be subject to anti-dumping duties. Therefore, this claim was rejected and the provisional conclusion that measures would not have a significant negative impact on importers is confirmed.

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- (109) In the absence of any other comments, recitals 164 and 165 of the provisional Regulation are hereby confirmed.

6.4. Users

- (110) Users of HTY showed a strong interest in this case. Out of 68 users contacted, 33 cooperated in the investigation. The investigation showed that 24 of the 33 cooperating users purchased HTY in the PRC. 12 % of these imports were from companies that were found not to be dumping.
- (111) At the provisional stage, the analysis regarding the impact of measures on users was made by grouping the users into four separate industrial sectors (tyres, automotive, ropes and industrial applications). Before the imposition of provisional measures, four users were verified (two in the tyre sector, one in the automotive and one in the industrial applications sectors). Following the imposition of provisional measures, it was further investigated to what extent each sector would be affected by measures. To this end, additional verification visits were carried out at the premises of seven users as mentioned in recital 5. Of the 11 users verified in total, five were small and medium-sized enterprises (SMEs). Based on the verified data, the estimated impact of measures on the users' profit margins was revised, taking also into account the revised level of duties and the fact that one additional Chinese exporting producer was found not to be dumping.
- (112) As regards users in the tyres sector, in total four questionnaire replies were received from tyre manufacturers. Out of these, two were verified before the imposition of provisional measures and one after the imposition of provisional measures. According to the available data for this sector, the share of HTY in relation to their cost of production is relatively limited: below 1 % on average. Only one of the cooperating users was found to import the product concerned from the PRC. However, all these imports were from a company in the PRC which was not found to be dumping. It is therefore concluded that on the basis of the data available, the tyre sector will not be affected by the proposed measures.
- (113) In respect of users in the automotive sector (mainly producing seatbelts and airbags), representing 5 % of the total imports of HTY from the PRC in the IP, in total six questionnaire replies were received. Two companies were verified, one before and one after the imposition of provisional measures. After the verification visits, the share of Chinese HTY used by the automotive sector was revised to 15 %. Verification visits also showed that overall, the business using HTY represented more than 30 % of the total turnover of the cooperating companies, instead of 4 % as established at the provisional stage. The average profit achieved in this sector on products using HTY is confirmed to be around 3 %. Based on the above, it is concluded that, should measures be imposed, the automotive sector is not likely to be seriously affected overall since it would still be profitable and in addition, the PRC is not the main source of supply.

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- (114) Regarding users in the rope sector, in total three questionnaire replies were received and one company was verified after the imposition of provisional measures. All cooperating companies in this sector are SMEs and represented less than 1 % of the total imports from the PRC in the IP. It is confirmed that the share of the HTY business is around 18 % of their total business. The average profit margin achieved in the sector using HTY was provisionally established at around 8 %. However, following the verification visit and the subsequent correction of the data submitted in the questionnaire replies, the profit margin achieved in this sector was revised to – 0,4 %. The investigation showed that the majority of the imports (71 %) were from the PRC during the IP while 22 % were from Korea. In view of the revised level of duty, however, the impact on companies in this sector, if they continued to source HTY from the PRC, should be limited. In addition, a number of alternative sources of supply exist.
- (115) Finally, regarding the users within the sector of industrial applications, in total 20 questionnaire replies were received from users representing 21 % of the total imports from the PRC. Five companies were verified, one before the imposition of provisional measures and four after the imposition of provisional measures. Based on the information available for this sector after the verification visits, the share of the business related to HTY was revised to 54 % of the total business. The investigation showed that these users mainly purchased HTY from the PRC (42 %) and from Korea (24 %), whereas 29 % was sourced from suppliers in the Union and in third countries. The data collected during the verification visits which took place after the imposition of provisional measures lead to an adjustment of the average profit margin achieved in this sector, which is established at 17 %. However, the data collected shows that the average profit margin identified for the whole sector is not representative of the situation of the SMEs, which had on average a negative profit margin of – 1,9 % during the IP. In the worst case scenario, i.e. should these SMEs buy from Chinese exporting producers subject to measures and not change their source of supply, their profitability would decrease from – 1,9 % to – 3,3 % with the imposition of definitive measures. This would be due to the fact that they source the HTY from the PRC in greater proportion compared to the large companies, which would remain highly profitable. It is expected however, that these SMEs could shift at least part of their purchases to suppliers not subject to measures.
- (116) Some users argued that the negative impact of the anti-dumping measures on their profitability had been underestimated in the provisional analysis regarding the Union interest. They also claimed that they would have difficulties in passing on the cost increase to their customers and questioned the possibility to find alternative sources of supply. Some parties also questioned the Union producers' capacity to supply the required products. Finally, the negative effect of measures on the downstream industry and consequently on employment in the Union were raised.

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- (117) As regards the claim on profitability, the analysis based on the revised data following verification visits after the imposition of provisional measures indeed showed that part of the sectors of ropes and industrial applications would be negatively impacted by the measures should those users that buy from Chinese exporting producers subject to measures continue to do so and not change their source of supply. However, this impact is likely to be limited in view of the reduced level of duty and the existence of alternative supply sources.
- (118) As regards the claim that it would not be possible for users to pass on the cost increase to their customers, the investigation showed that in some sectors it may indeed be difficult to increase prices. However, it is recalled that in view of the high level of cooperation by the Chinese exporting producers, the majority of imports from the PRC would be subject to a duty of around 5 % as stated in recital 103. Therefore, it is expected that users could pass on at least some of the cost increase to their customers, and in any event, even without price increases, the impact on their profitability is estimated to be rather limited.
- (119) Concerning the claim that the Union industry would not be able to supply the required products if anti-dumping measures were imposed, the investigation showed that some irregularities occasionally occurred in supplies previously provided by Union producers to certain users. However, the investigation did not point to any evidence that these irregularities were on a continued basis. As regards the reported difficulty in switching sources of supplies, indeed verification visits showed that before a new HTY can be used in production on a large scale, it should pass a number of tests aimed at verifying both the compatibility of the new raw material with the machinery and the required quality standards of the end-products. The duration of the testing process varies accordingly to the application of the end-product. It is therefore acknowledged that switching suppliers could be a lengthy and costly process for certain users, even though to a different extent depending on the manufactured products. Verification visits showed, however, that some companies were seeking to put into place a strategy of expansion of their suppliers in order to avoid relying solely on one source.
- (120) Some parties also highlighted the situation of SMEs, claiming that SMEs have difficulties in sourcing their raw materials because they do not reach the minimum order quantities required by producers. In this respect, it is noted that difficulties regarding minimum order quantities appear to be an existing pattern of business regardless of the imposition of measures. Therefore it is considered that the imposition of duties would not per se affect the already established business patterns among economic operators. Therefore, these claims were not considered warranted.

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- (121) Finally, some interested parties claimed that the Union industry would not represent a reliable source due to the incompleteness of its product range, the lower quality and the higher prices of products. In this respect it is noted that even if Union producers were not able to supply the full range of products required, alternative supply sources exist which should allow completing product ranges. Moreover, the relatively low duty level should not prohibit users to complete their product range by continuing to recur to imports from the PRC as well. In addition, the recent reopening of factories, as mentioned above, should contribute to address this concern insofar as it would allow for a bigger capacity being allocated to the manufacturing of a wider range of products. Therefore this claim was rejected.
- (122) As regards the claim on the effect of measures on the downstream industry, and consequently on employment in the Union, it is considered that in view of the above, the impact should be negligible.

6.5. Conclusion on Union interest

- (123) Based on the above, it was concluded that there are no compelling reasons against the imposition of definitive anti-dumping duties against imports of HTY originating in the PRC.

7. DEFINITIVE ANTI-DUMPING MEASURES**7.1. Injury elimination level**

- (124) In the absence of any substantiated comments that would alter the conclusion regarding the injury elimination level, recitals 179 to 183 of the provisional Regulation are hereby confirmed.

7.2. Definitive measures

- (125) In the light of the foregoing, it is considered that, in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in respect of imports of HTY originating in the PRC at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule. Accordingly, all duty rates should be set at the level of the dumping margins found.
- (126) Given that the dumping margins established for Korea and Taiwan were below the *de minimis* level, no definitive anti-dumping duties are to be imposed on imports originating in Korea and Taiwan.

- (127) The proposed anti-dumping duties are the following:

| Company | Injury elimination margin | Dumping margin | Anti-dumping duty rate |
|---|---------------------------|----------------|------------------------|
| Zhejiang Guxiandao Industrial Fibre Co. Ltd | 57,1 % | 5,1 % | 5,1 % |
| Zhejiang Hailide New Material Co. Ltd | N/A | 0 | 0 % |

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| Company | Injury elimination margin | Dumping margin | Anti-dumping duty rate |
|--|---------------------------|----------------|------------------------|
| Zhejiang Unifull Industrial Fibre Co. Ltd | 57,6 % | 5,5 % | 5,5 % |
| Cooperating companies not included in the sample | 57,3 % | 5,3 % | 5,3 % |
| Hangzhou Huachun Chemical Fiber Co. Ltd | N/A | 0 | 0 % |
| Oriental Industries (Suzhou) Ltd | 53,2 % | 9,8 % | 9,8 % |
| All other companies in the PRC | 57,6 % | 9,8 % | 9,8 % |

(128) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to ‘all other companies’) are thus exclusively applicable to imports of products originating in the People’s Republic of China and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to ‘all other companies’.

(129) Any claim requesting the application of an individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission⁽¹⁾ forthwith with all relevant information, in particular any modification in the company’s activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

(130) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period within which they could make representations subsequent to this disclosure. The comments submitted by the parties were duly considered and, where appropriate, the findings have been modified accordingly.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Office N105 04/090, 1049 Brussels, Belgium.

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- (131) In order to ensure equal treatment between any new exporters and the cooperating companies not included in the sample, mentioned in the Annex to this Regulation, provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise be entitled to a review pursuant to Article 11(4) of the basic Regulation as Article 11(4) does not apply where sampling has been used.

7.3. Definitive collection of provisional duties

- (132) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

8. TERMINATION OF THE PROCEEDING

- (133) In view of the findings regarding imports originating in Korea and Taiwan, the proceeding with respect to these two countries shall be terminated,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of high tenacity yarn of polyesters (other than sewing thread), not put up for retail sale, including monofilament of less than 67 decitex, currently falling within CN code 5402 20 00 and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies below shall be as follows:

| Company | Duty (%) | TARIC additional code |
|---|----------|-----------------------|
| Zhejiang Guxiandao Industrial Fibre Co. Ltd | 5,1 | A974 |
| Zhejiang Hailide New Material Co. Ltd | 0 | A976 |
| Zhejiang Unifull Industrial Fibre Co. Ltd | 5,5 | A975 |
| Companies listed in the Annex | 5,3 | A977 |
| Hangzhou Huachun Chemical Fiber Co. Ltd | 0 | A989 |
| Oriental Industries (Suzhou) Ltd | 9,8 | A990 |
| All other companies | 9,8 | A999 |

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3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The anti-dumping proceeding concerning imports of high tenacity yarn of polyesters originating in the Republic of Korea and Taiwan is hereby terminated.

Article 3

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EU) No 478/2010 on imports of high tenacity yarn of polyesters (other than sewing thread), not put up for retail sale, including monofilament of less than 67 decitex currently falling within CN code 5402 20 00 and originating in the People's Republic of China shall be definitively collected at the rate of the definitive duty imposed pursuant to Article 1. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 4

Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- it did not export to the Union the product described in Article 1(1) during the investigation period (1 July 2008 to 30 June 2009),
- it is not related to any of the exporters or producers in the People's Republic of China which are subject to the measures imposed by this Regulation,
- it has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 5,3 %.

Article 5

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

▼ **M1**

ANNEX

CHINESE COOPERATING EXPORTING PRODUCERS NOT SAMPLED**TARIC Additional Code A977**

| Company name | City |
|--|----------|
| Heilongjiang Longdi Co. Ltd | Harbin |
| Jiangsu Hengli Chemical Fibre Co. Ltd | Wujiang |
| Hyosung Chemical Fiber (Jiaxing) Co. Ltd | Jiaxing |
| Shanghai Wenlong Chemical Fiber Co. Ltd | Shanghai |
| Shaoxing Haifu Chemistry Fibre Co. Ltd | Shaoxing |
| ► <u>C1</u> Sinopec Shanghai Petrochemical Co., Ltd ◀ | Shanghai |
| Wuxi Taiji Industry Co. Ltd | Wuxi |