



EUROPEAN COMMISSION

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COM(2011) 488 final

2011/0215 (NLE)

Proposal for a

### **COUNCIL REGULATION**

**amending Regulation (EU) No 1105/2010 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**

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ("the basic Regulation") in the proceeding concerning imports of high tenacity yarn of polyester 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.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Council Regulation (EU) No 1105/2010 imposing a definitive anti-dumping duty on imports of high tenacity yarn of polyesters originating in the People's Republic of China.

Proposal for granting new exporting producer treatment to new exporter of the product concerned to the European Union.

- **Consistency with other policies and objectives of the Union**

Not applicable.

### 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not make provision for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The attached proposal for a Council Regulation is based on the definitive finding that one Chinese exporting producer has met all criteria to be granted the new exporting producer status and therefore be subject to the weighted average duty anti-dumping duty of 5,3 %.

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ("the basic Regulation").

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

Council Regulation (EU) No 1105/2010 imposing a definitive anti-dumping duty on imports of high tenacity yarn of polyesters originating in the People's Republic of China leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

The above-mentioned basic Regulation does not foresee alternative options.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Union budget.

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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 ('the basic Regulation')<sup>1</sup>, and in particular Article 9 thereof,

Having regard to Article 4 of Council Regulation (EU) No 1105/2010<sup>2</sup>,

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

Whereas:

### **A. MEASURES IN FORCE**

- (1) By Regulation (EU) No 1105/2010, the Council imposed a definitive anti-dumping duty 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, originating in the People's Republic of China ('PRC'), currently falling within CN code 5402 20 00 ('the product concerned').
- (2) Given the large number of cooperating exporting producers in the investigation that led to the imposition of the anti-dumping duty ('the original investigation') in the PRC, a sample of Chinese exporting producers was selected and individual duty rates ranging from 0 % to 5,5 % were imposed on the companies included in the sample, while other cooperating companies not included in the sample were attributed a duty rate of 5,3 %. Two cooperating non-sampled companies were granted individual examination within the meaning of Article 17(3) of the basic Regulation, they received duties of 0 % and 9,8 %. A duty rate of 9,8 % for the PRC was imposed on all other companies.

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<sup>1</sup> OJ L 343, 22.12.2009, p. 51.

<sup>2</sup> OJ L 315, 1.12.2010, p. 1.

- (3) Article 4 of Regulation (EU) No 1105/2010 gives the possibility to new Chinese exporting producers which meet the criteria set out in that Article to be granted the duty rate applicable to the cooperating companies not included in the sample, i.e. 5,3 %.

#### **B. NEW EXPORTING PRODUCERS' REQUESTS**

- (4) Two companies (the applicants) have requested to be granted 'New Exporting Producer Treatment' (NEPT).
- (5) An examination has been carried out to determine whether each of the applicants fulfils the criteria for being granted NEPT as set out in Article 4 of Council Regulation (EU) No 1105/2010, by verifying that the applicant:
- is a producer of the product concerned in the People's Republic of China,
  - did not export the product concerned to the Union during the investigation period on which the measures are based (1 July 2008 to 30 June 2009),
  - 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 that Regulation,
  - 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.
- (6) Questionnaires were sent to the applicants who were asked to supply evidence to demonstrate that they met the criteria mentioned above.
- (7) The Commission sought and verified all information it deemed necessary for the purpose of determining whether the criteria set out in Article 4 of Regulation (EU) No 1105/2010 had been fulfilled. Verification visits were carried out at the premises of the two applicants:
- Jiangsu Hengli Chemical Fibre Co. Ltd,
  - Amann Twisting Yancheng Co. Ltd.

#### **C. FINDINGS**

- (8) Concerning one applicant, Jiangsu Hengli Chemical Fibre Co. Ltd, the examination of the information submitted showed that it had provided sufficient evidence to prove that it meets the criteria set out in Article 4 of Council Regulation (EU) No 1105/2010. Therefore, this applicant could be granted the weighted average duty rate for the cooperating companies not included in the sample (i.e. 5,3 %) in accordance with Article 4 of Council Regulation (EU) No 1105/2010, and should be added to the list of exporting producers of Article 1(2) of that Regulation.
- (9) Concerning the other applicant, Amann Twisting Yancheng Co. Ltd, the examination of the information submitted showed that it had not provided sufficient evidence to prove that it meets the criteria set out in Article 4 of Council Regulation (EU) No

1105/2010. In particular, the investigation revealed that the main raw material used in the manufacturing process, high tenacity yarn of polyesters, is not produced by the applicant but purchased from unrelated suppliers. The filament is processed by the applicant through different production steps, including twisting, and finally exported under the definition of the product concerned. As the applicant did not produce the product concerned but actually merely processed it, it was concluded that Amann Twisting Yancheng Co. Ltd can not be considered to be a producer of the product concerned. It therefore does not fulfil the requirement for NEPT that the company requesting it must be a "producer" of the product concerned.

(10) Its request for NEPT was therefore rejected.

**D. MODIFICATION OF THE LIST OF COMPANIES BENEFITING FROM INDIVIDUAL DUTY RATES**

(11) In consideration of the findings of the investigation as indicated in recital (8) above, it is concluded that the company Jiangsu Hengli Chemical Fibre Co. Ltd should be added to the list of individual companies mentioned under Article 1(2) of Regulation (EU) No 1105/2010 with a duty rate of 5,3 %.

(12) The applicants and the Union industry have been informed of the findings of the investigation and were given the opportunity to submit their comments.

(13) All arguments and submissions made by interested parties were analysed and duly taken into account where warranted,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Annex mentioned in Article 1(2) of Council Regulation (EU) No 1105/2010 shall be replaced by the following:

**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
Sinopec Shanghai Petrochemical Company	Shanghai
Wuxi Taiji Industry Co. Ltd	Wuxi

*Article 2*

This Regulation shall enter into force on the day following that of 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.

Done at Brussels,

*For the Council*  
*The President*