

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 478/2010

of 1 June 2010

imposing a provisional anti-dumping duty on imports of high tenacity yarn of polyesters originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 8 September 2009, the Commission announced, by a notice published in the *Official Journal of the European Union*⁽²⁾ (notice of initiation), the initiation of an anti-dumping proceeding with regard to imports into the Union of high tenacity yarn of polyesters originating in the People's Republic of China (PRC), the Republic of Korea (Korea) and Taiwan (the countries concerned).
- (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 high tenacity yarn of polyesters representing a major proportion, in this case more than 60 % of the total Union production of high tenacity yarn of polyesters. The complaint contained prima facie evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.

1.2. Parties concerned by the proceeding

- (3) The Commission officially advised the complainant Union producers, other known Union producers, the

exporting producers, importers, users, other parties known to be concerned, and representatives of the PRC, Korea and Taiwan of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

- (4) The complainant, other Union producers, exporting producers in the PRC, Korea and Taiwan, importers and users made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (5) In view of the apparent high number of exporting producers in the PRC and Korea and importers, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all known exporting producers in the PRC and Korea and Union importers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period from 1 July 2008 to 30 June 2009.
- (6) As explained in recitals 22 to 27 below, eleven exporting producers in the PRC provided the requested information and agreed to be included in a sample. With regards to Korea, four exporting producers provided the requested information and agreed to be included in the sample.
- (7) On the basis of the information received from the co-operating exporting producers, the Commission selected a sample of three exporting producers in the PRC or groups of related companies having the largest volume of exports to the Union. All exporting producers concerned, as well as their association and the authorities of the PRC, were consulted and agreed on the selection of the sample.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 213, 8.9.2009, p. 16.

- (8) In the case of Korea only four exporting producers provided the required information for the sampling exercise. In view of the low number of exporting producers which indicated their willingness to cooperate, it was decided that sampling was not necessary.
- (9) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the sampled exporting producers in the PRC and to the exporting producers that requested such forms with the intention to apply for individual examination pursuant to Article 17(3) of the basic Regulation.
- (10) The Commission officially disclosed the results of the MET findings to the exporting producers concerned in the PRC, the authorities of the PRC and the complainants. They were also given an opportunity to make their views known in writing and to request a hearing if there were particular reasons to be heard.
- (11) Two exporting producers which were not included in the sample because they did not meet the criteria set in Article 17(1) of the basic Regulation claimed an individual margin pursuant to Article 17(3) of the basic Regulation. It was considered however that individual examination of the exporting producers concerned, would have led to additional on-the-spot visits and specific analysis, and would have thus been unduly burdensome and would have prevented the timely completion of the investigation. Therefore, it was provisionally concluded that the request for an individual examination of the said exporting producers could not be accepted.
- (12) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation, namely to four Union producers, ten importers and 68 users.
- (13) Replies were received from the complainant Union producers and one additional Union producer which supported this investigation, two unrelated importers and 33 users.
- (14) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:

Producers in the Union:

- Brilen SA, Barbastro, Spain,
- Performance Fibers, Bascharage, Luxemburg and its related companies Performance Fibers Longlaville,

Longwy, France; Performance Fibers GmbH, Bad Hersfeld Germany; Performance Fibers, Bobingen, Germany; Performance Fibers, Guben, Germany,

- Polyester High Performance, Wuppertal, Germany,
- Sioen, Mouscron, Belgium.

Importers in the Union:

- Protex Advanced Textiles GmbH, Rosendahl, Germany.

Users in the Union:

- Autoliv Romania SA, Brasov, Romania,
- Guth & Wolf GmbH, Gütersloh, Germany,
- Michelin, Clermont Ferrand, France,
- Mitas AS, Prague, Czech Republic.

Exporting producers in the PRC:

- Zhejiang Guxiandao Industrial Fibre Co., Ltd, Shaoxing,
- Zhejiang Hailide New Material Co., Ltd, Haining,
- Zhejiang Unifull Industrial Fibre Co., Ltd, Huzhou.

Exporting producers in Korea:

- Hyosung Corporation, Seoul,
- Kolon Industries Inc, Seoul,
- KP Chemtech Corporation, Ulsan,
- Samyang Corporation, Seoul.

Exporting producers in Taiwan:

- Far Eastern Textiles Co., Ltd, Taipei,
- Shinkong Corporation, Tapei.

Related importers in the Union:

- Hyosung Luxembourg SA, Luxembourg.

Producers in the analogue country:

- Performance Fibers, Inc. and Performance Fibers Operations, Inc., Richmond, USA.

1.3. Investigation period

- (15) The investigation of dumping and injury covered the period from 1 July 2008 to 30 June 2009 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from January 2005 to the end of the investigation period (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (16) 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, Korea and Taiwan ('the product concerned' or 'HTY') currently falling within CN code 5402 20 00.
- (17) The product concerned features outstanding properties and is used in a number of diverse applications such as tyre reinforcement, broad fabrics, conveyor belts, safety belt ropes, nets and geo-synthetic products.
- (18) During the course of the investigation, certain parties claimed that the yarn used in the production of tyres, the so called 'High Modulus Low Shrinkage' (HMLS) yarn, should be excluded from the scope of the investigation. They claimed that HMLS has different characteristics and applications compared to other HTY.
- (19) The investigation, however, showed that, although HMLS yarn has some distinctive characteristics compared to other HTY, (e.g., modulus, shrinkage, tensile strength and fatigue resistance), the different types of the product concerned all share the same basic physical and chemical characteristics. They are therefore considered to constitute one single product.

2.2. Like product

- (20) The product exported to the Union from the PRC, Korea and Taiwan, and the product produced and sold domestically in Korea and Taiwan as well as in the PRC by the Chinese exporting producer which was granted MET and also the one manufactured and sold in the Union by the Union producers were found to have the same basic physical and technical characteristics as well as the same uses. They are therefore provisionally considered as alike within the meaning of Article 1(4) of the basic Regulation.

3. SAMPLING

3.1. Sampling of importers

- (21) In view of the large number of importers identified from the complaint, sampling was envisaged for importers in the notice of initiation in accordance with Article 17(1) of the basic Regulation. However, after examination of the information submitted and given the low number of importers which indicated their willingness to cooperate, it was decided that sampling was not necessary.

3.2. Sampling for exporting producers in the PRC

- (22) In view of the large number of exporting producers in the PRC, sampling was envisaged in the notice of initiation for the determination of dumping, in accordance with Article 17(1) of the basic Regulation.
- (23) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers in the PRC were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies involved in the production and/or selling of the product concerned.
- (24) The authorities of the PRC and the producers association, i.e. the China Chamber of Commerce for Import and Export of Textiles, were also consulted for the selection of a representative sample.

3.2.1. Pre-selection of cooperating exporting producers

- (25) In total, eleven exporting producers, including groups of related companies in the PRC, came forward and provided the requested information within the given deadline set in the notice of initiation. All of them reported exports of the product concerned to the Union during the IP and expressed a wish to participate in the sample. Thus, these eleven exporting producers were considered to be cooperating in the present investigation (cooperating exporting producers).
- (26) Exporting producers which did not make themselves known within the aforesaid deadline or did not provide the requested information in due time, were considered as non-cooperating with the investigation. The comparison between Eurostat import data and the volume of exports to the Union of the product concerned reported for the IP by the companies mentioned in recital 25 suggests that the cooperation of Chinese exporting producers was very high as mentioned in recital 73 below.

3.2.2. Selection of the sample of cooperating exporting producers in the PRC

- (27) In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample based on the largest representative volume of exports of HTY to the Union which could reasonably be investigated within the time available. The sample selected consists of three companies or groups of related companies, representing more than 65 % of the total volume of exports to

the Union of the product concerned. In accordance with Article 17(2) of the basic Regulation, all exporting producers concerned, as well as their association and the authorities of the PRC, were consulted and agreed on the selection of the sample.

3.3. Individual examination

- (28) Two exporting producers which were not included in the sample because they did not meet the criteria set in Article 17(1) of the basic Regulation requested that an individual margin of dumping be established pursuant to Article 17(3) of the basic Regulation.
- (29) As mentioned in recital 27 above, the sample was limited to a reasonable number of companies which could be investigated within the time available. The companies investigated for the purpose of the investigation of dumping for the countries concerned are listed in recital 14 above. In view of the number of verification visits to be carried out at the premises of these companies, which in the case of the PRC entailed the verification of MET claims and anti-dumping questionnaire replies, it was considered that individual examinations would be unduly burdensome and would have prevented the timely completion of the investigation.
- (30) Therefore, it was provisionally concluded that the two requests for an individual examination could not be accepted.

4. DUMPING

4.1. General methodology

- (31) The general methodology set out hereinafter has been applied to all exporting producers in Korea, Taiwan, the exporting producer in the PRC granted MET and, taking into account the concept of an analogue country, also for the other two sampled exporting producer in the PRC not granted MET. The presentation of the findings on dumping for each of the countries concerned by this investigation therefore only describes what is specific for each exporting country.

4.1.1. Normal value

- (32) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of the like product to independent customers by each exporting producer were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Union.
- (33) The Commission subsequently identified those product types sold domestically by the companies having overall representative sales which were identical or directly comparable with the types sold for export to the Union.

- (34) For each product type sold by the exporting producers concerned on the domestic market, which was found to be directly comparable with the type sold for export to the Union, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the IP represented 5 % or more of the total volume of the comparable product type sold for export to the Union.
- (35) The Commission subsequently examined whether the domestic sales of each company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each product type the proportion of profitable domestic sales to independent customers.
- (36) Where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average sales price was equal to or higher than the unit cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question.
- (37) Where the volume of profitable sales of a product type represented 80 %, or less of the total sales volume of that product type, or where the weighted average price of that type was below the unit costs, normal value was based on the actual domestic price, which was calculated as the weighted average price of only the profitable domestic sales of the type in question.
- (38) Where the product types were all sold at a loss, it was considered that they were not sold in the ordinary course of trade.
- (39) For sales of product types not made in the ordinary course of trade, as well as for product types which were not sold in representative quantities on the domestic market, the Commission used constructed normal value, in accordance with Article 2(3) of the basic Regulation.
- (40) To construct normal value pursuant to Article 2(3) of the basic Regulation, the selling, general and administrative (SG&A) expenses incurred and the weighted average profit realised by each of the cooperating exporting producers concerned on domestic sales of the like product, in the ordinary course of trade, during the investigation period, was added to their own average cost of production during the investigation period. Where necessary, the costs of production and SG&A expenses reported were adjusted, before being used in the ordinary course of trade test and in constructing normal values.

4.1.2. Export price

- (41) In all cases where the product concerned was exported to independent customers in the Union, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.
- (42) In cases where sales were made via a related importer, the export price was established in accordance with Article 2(9) of the basic Regulation on the basis of the price at which the imported products were first resold to independent customers. In these cases, adjustments were made for all costs incurred between importation and resale, including duties and taxes, as well as a reasonable margin for SG&A and profits. The related importer's own SG&A costs were used and a reasonable profit margin was established on the basis of the one found in the investigation to have been attained by the independent importer of the product concerned.

4.1.3. Comparison

- (43) The comparison between normal value and export price was made on an ex-works basis.
- (44) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

4.1.4. Dumping margin

- (45) According to Article 2(11) of the basic Regulation, the dumping margin for each cooperating exporting producer was established on the basis of a comparison between the weighted average normal value with the weighted average export price.

4.2. The PRC

4.2.1. MET assessment

- (46) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (47) Briefly, and for ease of reference only, these 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;
4. bankruptcy and property laws guarantee legal certainty and stability;
5. exchange rate conversions are carried out at the market rate.

(48) All sampled companies requested MET and replied to the MET claim form within the given deadlines. 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.

(49) The verification established that two sampled exporting producers in the PRC did not meet the requirements of the criteria set forth in Article 2(7)(c) of the basic Regulation to be granted MET.

(50) In particular, one sampled exporting producer did not meet the requirements of criteria 1 to 3. Firstly, it could not demonstrate that its decisions were made in response to market signals and without significant State interference because restrictions in its selling activities, such as the obligation to sell a certain volume of the product concerned on the domestic market, were found to exist. Secondly, it did not demonstrate that its accounting records were audited in line with IAS. The investigation pointed to a number of inconsistencies and shortcomings in the accounts of the applicant, and identified certain breaches of IAS principles. Finally, distortions carried over from the non-market economy system were observed in the form of improper land-use right evaluations.

(51) The other sampled exporting producer could not demonstrate that it met criteria 1 and 3. It could not demonstrate that its decisions were made in response to market signals and without significant State interference because restrictions in its selling activities, similar to those identified in recital 50 above, were found to exist and also despite the existence of a State certification part

of its capital was found not to have been contributed. Distortions carried over from the non-market economy system were also observed in the form of improper land use right evaluations.

- (52) One sampled exporting producer demonstrated that it fulfilled all the criteria of Article 2(7)(c) of the basic Regulation and could be granted MET.

4.2.2. Individual treatment (IT)

- (53) 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 criteria set out in Article 9(5) of the basic Regulation to be granted IT.

- (54) Briefly, and for ease of reference only, these 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.

- (55) The sampled exporting producers which did not meet the MET criteria had also claimed IT in the event that they were not granted MET.

- (56) On the basis of information available, it was provisionally established that the following two exporting producers in the PRC which were included in the sample meet all the requirements for IT as set forth in Article 9(5) of the basic Regulation:

— Zhejiang Guxiandao Industrial Fibre Co., Ltd,

— Zhejiang Unifull Industrial Fibre Co., Ltd.

4.2.3. Analogue country

- (57) According to Article 2(7)(a) of the basic Regulation, in economies in transition, normal value for exporting producers not granted MET has to be established on

the basis of the price or constructed value in a market economy third country (analogue country).

- (58) In the notice of initiation the United States of America (USA) was proposed as an appropriate analogue country for the purpose of establishing normal value in the PRC. The Commission invited all interested parties to comment on this proposal.

- (59) A large number of parties objected to this proposal and suggested the use of Taiwan or Korea because they claimed these countries were more appropriate. The relevant arguments put forward were:

(a) the production processes and costs in the USA vary significantly from those in the PRC because the machinery used in USA is old and obsolete whereas the equipment used by the majority of the Chinese producers is modern and based on the most recent technology. Most of the Chinese, Taiwanese and Korean exporting producers use the recent one-step production technology which makes them more efficient than their US counterparts;

(b) the fact that the Taiwanese and Korean exporters were alleged to be dumping is irrelevant for the purpose of choosing a suitable analogue country;

(c) the complainants have related companies in the USA and it would not be appropriate to base the normal value on the information provided by these related companies;

(d) the conditions of competition in the USA are different from those prevailing in the PRC. The USA market is practically monopolised by one producer whereas Taiwan and Korea have a larger number of domestic producers as it is the case in the PRC.

- (60) The Commission examined the above comments and considered that they were overall valid as far as the choice of an analogue country is concerned. It was further investigated whether Taiwan or Korea would qualify as a possible market economy third country for the purpose of establishing normal value for the PRC.

- (61) The investigation showed in particular that Taiwan had a higher degree of comparability of end products with the PRC. It was noted that exporting producers in Taiwan are also present in the PRC with related producers and that they basically operate under similar conditions in both countries.

- (62) On this basis, it was considered more appropriate to use Taiwan as an analogue country to establish normal value for the PRC in accordance with Article 2(7) of the basic Regulation.

- (63) Following the choice of Taiwan as an analogue country, normal value was calculated on the basis of the data verified at the premises of the Taiwanese exporting producers which cooperated fully with the investigation. Normal value was based on the price paid or payable on sales made in the domestic market of Taiwan for comparable product types, if these were found to be made in representative quantities and in the ordinary course of trade. This was the case for a number of exported product types.

4.2.4. Normal value

4.2.4.1. Sampled exporting producer granted MET

- (64) The majority of the domestic sales of the sampled exporting producer granted MET were found to be made in representative quantities and in the ordinary course of trade. Normal value for these product types was based on the actual prices paid or payable during the investigation period by independent customers in the domestic market of the PRC, in accordance with Article 2(1) of the basic Regulation.

- (65) For sales of product types not made in the ordinary course of trade, as well as for product types which were not sold in representative quantities on the domestic market, normal value had to be constructed as set out in recital 40 above.

4.2.4.2. Sampled exporting producers not granted MET

- (66) As mentioned in recitals 57 to 63 above, normal value for exporting producers not granted MET has to be established on the basis of the price or constructed value in a market economy third country, in this case Taiwan.

- (67) For the other exported product types, which were either not sold in the ordinary course of trade in Taiwan or not sold in representative quantities by the Taiwanese producers on their domestic market, normal value had to be constructed. Normal value was constructed on the basis set out in recital 40 above.

4.2.5. Export Price

- (68) All sales of the product concerned made by the three 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.

4.2.6. Comparison

- (69) In order to ensure a fair comparison between normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, commissions, discounts, rebates and indirect taxation were granted to all investigated exporting producers where applicable and justified.

4.2.7. Dumping margins

4.2.7.1. For the sampled exporting producers

- (70) For the sampled companies, the weighted average normal value of each product type was compared with the weighted average export price of the corresponding type of the product concerned, as provided for in Article 2(11) and (12) of the basic Regulation.

- (71) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are the following:

Company	Provisional dumping margin
— Zhejiang Guxiandao Industrial Fibre Co., Ltd	9,3 %
— Zhejiang Hailide New Material Co., Ltd	0
— Zhejiang Unifull Industrial Fibre Co., Ltd	7,7 %

4.2.7.2. For other cooperating exporting producers

- (72) The weighted average dumping margin of the cooperating exporting producers not included in the sample was calculated in accordance with the provisions of Article 9(6) of the basic Regulation. This margin was established on the basis of the margins established for the sampled exporting producers, disregarding the margin of the exporting producer with a zero dumping margin. On this basis, the dumping margin calculated for the cooperating companies not included in the sample was provisionally established at 8,9 %.

- (73) With regard to all other exporters in the PRC, the Commission first established the level of cooperation. A comparison was made between the total export quantities indicated in the sampling replies received from all cooperating exporting producers and the total imports from the PRC as derived from the Eurostat import statistics. The percentage of cooperation

found was 100 %. On this basis, the level of cooperation was deemed to be high and it was, therefore, considered appropriate to set the dumping margin for the non-cooperating exporting producers at the highest dumping margin established for the sampled exporting producers.

- (74) On this basis, the countrywide level of dumping was provisionally established at 9,3 %.

4.3. Korea

4.3.1. Normal value

- (75) The majority of the domestic sales of the product types sold for export to the Union by all four investigated companies were found to be made in representative quantities and in the ordinary course of trade. Normal value for these product types was based on the actual prices paid or payable during the investigation period by independent customers in the domestic market of Korea, in accordance with Article 2(1) of the basic Regulation.

- (76) For sales of product types not made in the ordinary course of trade, as well as for product types which were not sold in representative quantities on the domestic market, normal value had to be constructed. All four investigated companies had domestic sales of certain product types which were not made in representative quantities or in the ordinary course of trade. In these cases, normal value was constructed on the basis set out in recital 40 above.

4.3.2. Export price

- (77) Part of the export sales of one exporting producer were made directly to a related importer in the Union. Consequently, the export price was established in accordance with Article 2(9) of the basic Regulation on the basis of the prices at which the products were first resold to an independent buyer and in accordance with the methodology described in recital 42 above.

- (78) The remaining exports of the product concerned of the said exporting producer and all the export sales of the three other exporting producers were made directly to independent customers in the Union. For those sales, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of prices actually paid or payable.

4.3.3. Comparison

- (79) In order to ensure a fair comparison between normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments for

differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, commissions, were granted to all investigated exporting producers where applicable and justified.

- (80) All four investigated companies claimed a duty drawback adjustment pursuant to Article 2(10)(b) of the basic Regulation on the grounds that import charges were allegedly borne by the like product when intended for consumption in the exporting country but were refunded or not paid when the product was sold for export to the Union.

- (81) This claim was considered unfounded because all four companies failed to show that import charges refunded to the companies were linked to the exports of the product concerned to the Union.

4.3.4. Dumping margins

- (82) As provided by Article 2(11) of the basic Regulation, for each company the weighted average normal value established for each product type was compared with the weighted average export price of each corresponding product type.

- (83) On this basis, the dumping margins expressed as a percentage of the CIF import price at the Union border, duty unpaid, of all exporting producers concerned in Korea were found to be below the *de minimis* threshold of 2 % in the sense of Article 9(3) of the basic Regulation.

- (84) It should be noted that the four Korean exporting producers represent the entirety of exports originating in that country when compared to the Eurostat import data. Thus, it has been provisionally concluded that the adoption of anti-dumping measures with regard to imports originating in Korea was not warranted.

- (85) Should these findings be confirmed in the further course of the investigation, the proceeding shall be terminated as regards Korea.

4.4. Taiwan

4.4.1. Normal value

- (86) The majority of the domestic sales of the product types sold for export to the Union by the two investigated companies were found to be made in representative quantities and in the ordinary course of trade. Normal value for these product types was based on the actual prices paid or payable during the investigation period by independent customers in the domestic market of Taiwan, in accordance with Article 2(1) of the basic Regulation.

(87) For sales of product types not made in the ordinary course of trade, as well as for product types which were not sold in representative quantities on the domestic market, normal value had to be constructed. Both investigated companies had domestic sales of certain product types, which were not made in representative quantities or in the ordinary course of trade. In these cases normal value was constructed on the basis set out in recital 40 above.

4.4.2. Export price

(88) All sales of the product concerned made by the two cooperating 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.

4.4.3. Comparison

(89) In order to ensure a fair comparison between normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, commissions, discounts and rebates were granted to all investigated exporting producers where applicable and justified.

4.4.4. Dumping margins

(90) As provided by Article 2(11) of the basic Regulation, for each company the weighted average normal value established for each product type was compared with the weighted average export price of each corresponding product type.

(91) On this basis, the dumping margins, expressed as a percentage of the CIF import price at the Union border, duty unpaid, were as follows:

— Far Eastern Textiles Co., Ltd 3,9 %,

— Shinkong Corporation *de minimis*

(92) With regard to imports originating in Taiwan, it should be noted that the two cooperating exporting producers represent the entirety of exports originating in this country when compared to the Eurostat import data. A countrywide margin of dumping was established for Taiwan. This countrywide dumping margin was found to be below the *de minimis* threshold of 2 % set forth in Article 9(3) of the basic Regulation. On this basis, it has been provisionally concluded that the imposition of anti-dumping measures with regard to imports originating in Taiwan is not warranted.

(93) Should these findings be confirmed in the further course of the investigation, the proceeding shall be terminated as regards Taiwan.

5. UNION INDUSTRY

5.1. Union production

(94) All available information concerning Union producers, including information provided in the complaint and data collected from Union producers before and after the initiation of the investigation, was used in order to establish the total Union production.

(95) On that basis, the total Union production was estimated to be around 121 000 tonnes during the IP. This amount included the production of all Union producers that made themselves known and the estimated production of producers which remained silent in the proceeding (silent producers). In the absence of any other information, the data indicated in the complaint in respect of the silent producers was used to establish the total Union production and consumption. The silent producers accounted for around 22 % of total Union production during the IP. None of the known Union producers were neutral or opposed to the initiation of the investigation.

(96) The production volume of the Union producers which supported the complaint amounted to 94 000 tonnes in the IP, thus representing around 78 % of the total estimated Union production.

5.2. Definition of the Union industry

(97) As mentioned in recital 96 above, the investigation showed that the Union producers that supported the complaint and agreed to cooperate in the investigation represented around 78 % of total Union production during the IP. These producers are therefore deemed to constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

6. INJURY

6.1. Union consumption

(98) 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 of the sales of the silent producers.

(99) As mentioned under recital 95 above, in the absence of any other information regarding the silent producers on their production and sales of HTY during the period considered, the data pertaining to these producers provided in the complaint was used instead.

Table 1

Union consumption	2005	2006	2007	2008	IP
Tonnes	221 277	233 969	265 826	241 258	205 912
Index	100	106	120	109	93

Source: Eurostat, complaint data and questionnaire replies.

- (100) Overall, Union consumption decreased by 7 % during the period considered. It was found that the consumption first increased by 20 % between 2005 and 2007, after which it decreased by 22 % between 2007 and the IP. The downturn in consumption in 2008 and the IP was the result of a lower demand, especially in the second half of 2008, due to the economic crisis.

6.2. Imports into the Union from the countries concerned

6.2.1. Cumulative assessment of the effects of the imports from the countries concerned

- (101) The Commission examined whether imports of HTY originating in the PRC, Korea and Taiwan should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.
- (102) As regards the imports from Taiwan and Korea, as mentioned above, it was provisionally assessed that both the Taiwanese and Korean imports were not made at dumped prices during the IP.
- (103) Therefore it was provisionally concluded that the effect of imports from Korea and Taiwan should not be cumulated with the dumped imports from the PRC.

6.2.2. Dumped imports from the PRC

- (104) It should be noted that one exporting producer in the PRC included in the sample was found not to be dumping its products on the Union market. Accordingly, its exports should be excluded from the analysis concerning the development of dumped imports from the PRC on the Union market.
- (105) However, in order to avoid any possibility of disclosing sensitive business data pertaining to the said producer, it was considered appropriate for confidentiality reasons not to exclude the data of the exporter not found to be dumping on the Union market from the publicly available data presented below, such as Eurostat.
- (106) The first table below, therefore, comprises all imports of HTY originating in the PRC whereas the second table shows the indexed data concerning the dumped imports on the Union market during the period considered.

Table 2a

Total imports from the PRC	2005	2006	2007	2008	IP
Volumes (tonnes)	16 200	23 776	42 249	51 406	48 683
Index	100	147	261	317	301
Market share	7,3 %	10,2 %	15,9 %	21,3 %	23,6 %
Index	100	139	217	291	323
Prices (EUR/tonne)	1 871	1 622	1 522	1 571	1 548
Index	100	87	81	84	83

Source: Eurostat.

- (107) The volume of total imports from the PRC increased dramatically by three times over the period considered, while at the same time the average import prices decreased by 17 %. As a result, their market share increased significantly from 7,3 % in 2005 to 23,6 % in the IP. The investigation showed that even in the period between 2007 and the IP, when consumption decreased by 22 %, the volume of imports from the PRC increased by 15 %, leading to an increase of 7,7 percentage points in their market share.

6.2.2.1. Volume, price and market share of dumped imports

Table 2b

Dumped imports from the PRC	2005	2006	2007	2008	IP
Imports (tonnes)					
<i>Index</i>	100	240	582	728	714
Market share					
<i>Index</i>	100	227	485	667	768
Prices (EUR/tonne)					
<i>Index</i>	100	67	61	63	61

Source: Eurostat and questionnaire replies.

- (108) The dumped import volumes from the PRC increased dramatically over the period considered, leading to an increase of their market share by over seven times. In addition, the investigation showed that despite the decrease in consumption in the period between 2007 and the IP, dumped imports gained considerable market share during the IP.
- (109) Average prices of the dumped imports from the PRC showed a decrease of 39 % during the period considered, undercutting the Union industry's prices during the IP, as explained below in recital 112.

6.2.2.2. Price undercutting

- (110) For the purposes of analysing price undercutting, the weighted average sales prices per product type of the Union industry to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports from the PRC to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for the existing duty rights and post-importation costs.
- (111) Cooperation from the Chinese exporters was high and accounted for 69 % of the total export volume from the PRC to the Union during the IP. Given the fact that one Chinese exporting producer was found not to be dumping its products on the Union market, its imports have not been taken into account for the purpose of the price undercutting analysis.
- (112) The comparison showed that during the IP, the dumped product concerned originating in the PRC sold in the Union undercut the Union industry's prices by 24,2 %.

6.3. Economic situation of the Union industry

6.3.1. Preliminary remarks

- (113) In accordance with Article 3(5) of the basic 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.

6.3.2. *Production, production capacity and capacity utilisation*

Table 3

	2005	2006	2007	2008	IP
Production (tonnes)	145 854	145 916	144 053	124 807	94 027
<i>Index</i>	100	100	99	86	64
Capacity (tonnes)	159 813	159 785	159 101	154 783	143 784
<i>Index</i>	100	100	100	97	90
Capacity Utilisation	91 %	91 %	91 %	81 %	65 %
<i>Index</i>	100	100	100	88	72

Source: Questionnaire replies.

- (114) As shown in the above table, the production of the Union industry decreased by 36 % over the period considered. It should be noted that although Union consumption increased by 20 % between 2005 and 2007, the production of the Union industry remained stable during that period, while it decreased significantly between 2007 and the IP, in line with the drop in the Union consumption.
- (115) The Union industry decreased its production capacity to around 144 000 tonnes during the IP. However, in view of stagnating sales and decreasing production volumes, the utilisation of the available capacity decreased from 91 % in 2005 to 65 % in the IP. The main decrease occurred in the period between 2007 and the IP.

6.3.3. *Sales volume and market share*

- (116) The sales figures in the table below relate to the volume sold to the first independent customer on the Union market.

Table 4

	2005	2006	2007	2008	IP
Sales volume (tonnes)	112 998	113 844	117 855	99 495	80 745
<i>Index</i>	100	101	104	88	71
Market share	51,1 %	48,7 %	44,3 %	41,2 %	39,2 %
<i>Index</i>	100	95	87	81	77

Source: Questionnaire replies.

- (117) While Union consumption grew by 20 % during 2005 and 2007, the sales volume of the product concerned by the Union industry to independent customers on the Union market increased by only 4 %. This means that the Union industry could not benefit from the increased consumption in that period. Moreover, in the remainder of the period considered, whereas Union consumption decreased by 22 % the sales volume of the Union industry decreased even more, by 31 %. Consequently the Union industry's sales volume decreased continuously and significantly and the loss in market share was as high as 11,9 percentage points during the period considered.

6.3.4. Average unit prices of the Union industry

- (118) Average ex-works sales prices of the Union industry to unrelated customers on the Union market decreased by 9 % over the period considered. The main decrease occurred between 2007 and the IP, thus coinciding with the surge in the low-priced dumped imports from the PRC. As a consequence, despite the increase in raw material prices the Union industry had to decrease its sales prices in particular during the IP.

Table 5

	2005	2006	2007	2008	IP
Average price (EUR/tonne)	2 592	2 595	2 565	2 510	2 350
Index	100	100	99	97	91

Source: Questionnaire replies.

- (119) Indeed, it was found that the average cost of production of the Union industry increased by 6 % between 2005 and the IP. This was mainly due to an increase in the price of PET chips which is the main raw material used in the HTY production. The average price of PET chips increased by 12 % between 2005 and 2008 after which it decreased to a level equal to that prevailing in 2005. However, during the same period, the Union industry was forced to keep its sales prices down in order to compete with the low-priced dumped imports. Consequently, the sales prices of the Union industry were significantly below their costs during the IP.

6.3.5. Stocks

- (120) Stocks represented around 15 % of the production volume in the IP. The Union industry decreased its stock levels by 9 % during the period considered, in particular between 2007 and the IP. However, this decrease in stocks should be seen in light of the lower level of activity following the downsizing of the Union industry.

Table 6

	2005	2006	2007	2008	IP
Stocks (tonnes)	15 004	16 828	17 402	16 844	13 727
Index	100	112	116	112	91

Source: Questionnaire replies.

6.3.6. Employment, wages and productivity

Table 7

	2005	2006	2007	2008	IP
Employment — full-time equivalent (FTE)	1 727	1 714	1 667	1 498	1 333
Index	100	99	96	87	77
Labour cost (EUR/FTE)	41 089	41 996	42 083	48 499	43 538
Index	100	102	102	118	106
Productivity (unit/FTE)	84,4	85,1	86,4	83,3	70,5
Index	100	101	102	99	84

Source: Questionnaire replies.

- (121) Due to the downsizing activities of the Union industry, the number of employees was reduced substantially by 23 % during the period considered. The decrease in the productivity should be seen in light of the general nature of downsizing activities, where the decrease in the number of employees follows the drop in production only after a certain delay. As regards labour costs, they increase slightly by 6 % over the period considered.

6.3.7. Profitability, cash flow, investments, return on investment and ability to raise capital

Table 8

	2005	2006	2007	2008	IP
Profitability	3,0 %	- 0,7 %	- 1,1 %	- 11,5 %	- 13,3 %
Index	100	- 22	- 37	- 378	- 438
Cash flow (EUR thousand)	15 936	- 1 407	824	- 16 311	- 14 597
Index	100	- 9	5	- 120	- 141
Investments (EUR thousand)	6 713	3 305	8 229	1 295	764
Index	100	49	123	19	11
Return on investments	12,6 %	- 29,4 %	- 15,7 %	- 103,3 %	- 130,6 %
Index	100	- 233	- 124	- 819	- 1 036

Source: Questionnaire replies.

- (122) Profitability of the Union industry was established by expressing the pre-tax net profit of the sales of the like product as a percentage of the turnover of these sales. Over the period considered the profitability of the Union industry decreased dramatically from a profit of 3 % in 2005 to a loss of 13,3 % in the IP. Despite the fact that Union consumption was showing an increasing trend between 2005 and 2007, the Union industry could not benefit from this favourable development due to the low priced dumped imports from the PRC.
- (123) The trend shown by the cash flow, which is the ability of the industry to self-finance its activities, reflects to a large extent the evolution of profitability. Consequently, the cash flow shows a substantial decrease during the period considered. The same comments can be made about the return on investments, which showed a similar negative development in line with the negative results achieved by the Union industry over the period considered.
- (124) Following the above, the ability of the Union industry to invest became limited as the cash flow significantly deteriorated during the period considered. As a consequence, the investments dropped by 89 % during the period considered.

6.3.8. Growth

- (125) While the Union consumption increased by 20 % between 2005 and 2007, the Union industry managed to increase its sales volume on the Union market by a mere 4 %, thus preventing it from taking advantage of the expansion in Union consumption. When looking at the development over the period considered, the drop of 29 % in the sales volume of the Union industry was far more pronounced than the decrease of 7 % in Union consumption. As a consequence, the market share of the Union industry also decreased significantly by 12 percentage points during the same period.

6.3.9. Magnitude of the actual margin of dumping

- (126) The dumping margins for the PRC, specified above in the dumping section, are above *de minimis*. Given the volumes and the prices of the dumped imports, the impact of the actual margins of dumping cannot be considered to be negligible.

6.4. Conclusion on injury

- (127) The investigation has shown that most of the injury indicators such as production (- 36 %), capacity utilisation (- 28 %), sales volume to unrelated customers on the Union market (- 29 %), market share (- 12 percentage points) and productivity (- 16 %) deteriorated during the period considered. In addition, the injury indicators related to the financial performance of the Union industry such as cash flow (- 241 %) and profitability (- 16,3 percentage points) were seriously affected. This means that the ability of the Union industry to raise capital was also undermined in particular during the IP.
- (128) It was found that the main losses occurred in the period between 2008 and the IP when, despite a significant decrease in the Union consumption, the dumped imports from the PRC remained present in high volumes in the Union market, undercutting the prices of the Union industry by over 24 % in the IP.
- (129) The investigation also showed that the cost of production of the Union industry reached its highest level in 2008, mainly due to the sharp increase in the prices of the main raw material. During the IP, the Union industry managed to maintain and control its cost of production with rationalisation efforts and due to the decrease of PET prices which mainly occurred in the second half of the IP. However, in view of the significant price undercutting practiced by the Chinese exporters during the IP, the Union industry was not in a position to increase its sales prices to a level that would have covered its costs. This led to a significant deterioration in its financial situation during the IP.
- (130) In the light of the foregoing, it was concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

7. CAUSALITY

7.1. Introduction

- (131) In accordance with Article 3(6) and 3(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 enables it to be classified 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.

7.2. Effect of the dumped imports

- (132) The investigation showed that dumped imports from the PRC increased dramatically over the period considered, increasing their share of the Union market by more than seven times between 2005 and the IP. It was also found that in the period between 2008 and the IP when the Union consumption decreased by about 15 %, the volume of the dumped imports from the PRC remained high and even increased their market share by 15 %.
- (133) During the period considered, the Union industry faced a significant drop of 29 % in their 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 the dumped Chinese imports increased, despite the declining demand on the Union market.
- (134) As regards prices of the dumped imports, they decreased by 39 % 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 above in recital 122, from a profit of 3 % in 2005 to a loss of 13,3 % in the IP.
- (135) 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.
- (136) It is therefore considered that the continued pressure exercised by the low-priced dumped imports from the PRC 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 PET prices peaked. This explained the loss in market share and the loss in profitability of the Union industry.
- (137) In view of the above it was provisionally concluded 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.

7.3. Effect of other factors

7.3.1. Development of the demand on the Union market

- (138) As mentioned in recital 100 above, the Union consumption of HTY first increased between 2005 and 2007, after which it decreased in 2008 and the IP. During the period considered, the Union industry lost a significant part of their market share. Although it cannot be excluded that this negative evolution of the Union consumption between 2008 and the IP may have had a negative impact on the situation of the Union industry, it is noteworthy that the Chinese exporters managed at the same time to increase their market share. Accordingly, it is considered that the deterioration of the economic situation of the Union industry cannot be explained by the decreased demand but is mainly caused by the surge in the dumped imports from the PRC and the undercutting practised by the Chinese exporters.

7.3.2. Prices of raw material

- (139) Prices of raw material, mainly PET chips, have increased significantly between 2005 and 2008 after which they decreased during the second half of the IP and reached a level equal to the year 2005 by the end of the IP.
- (140) The investigation confirmed that the cost of production of the Union industry to produce HTY followed the same trend as the evolution of the raw material prices, and overall increased by 6 % during the period considered. However, in a market governed by effective trade conditions, namely in the absence of injurious dumping, it could be expected that prices are regularly adapted to reflect the development of the various components of the cost of production. This did not take place in this case. Indeed, the Union industry was forced to keep its sales prices low in order to compete against the low-priced dumped imports from the PRC, which led to a significant drop in its profitability. Accordingly, it is provisionally concluded that the undercutting practised by the Chinese exporters depressed the prices on the Union market and prevented the Union industry from increasing its sales prices to cover its costs.

7.3.3. Captive production of the Union industry

- (141) The investigation showed that only one Union producer which cooperated with the investigation was vertically integrated and that the captive production was used for further processing into value added products in the downstream industry. The investigation did not point to any production problem linked to these downstream products. Indeed, the captive use remained stable over the period considered and represented around 7 % of the production volume.
- (142) On that basis, it was considered that the captive production of the Union industry did not contribute to the deterioration of its financial situation, in particular during the IP.

7.3.4. Export performance of the Union industry

- (143) Although the analysis of injury and causation focused on the situation of the Union industry in the Union market, its export performance was examined as a potential other factor that may explain the injury found. The analysis showed that the export sales to unrelated parties made by the Union industry remained modest (around 3 %) during the period considered. The decrease in export sales volume, from around 18 000 tonnes in 2005 to around 7 000 tonnes during the IP, may be explained by the decrease in production during the same period. However, the export price was higher than the price that the Union industry was charging to its customers on the Union market. Hence, it was considered that the decrease in export volume cannot explain the level of injury suffered by the Union industry and in particular the significant drop in profitability during the IP.

7.3.5. Imports from other third countries

- (144) The trends in import volumes and prices from other third countries between 2005 and the IP were as follows:

Table 9

Other third countries	2005	2006	2007	2008	IP
Imports (tonnes)	29 940	30 350	29 035	21 590	16 478
<i>Index</i>	100	101	97	72	55
Market share	13,5 %	13,0 %	10,9 %	8,9 %	8,0 %
<i>Index</i>	100	96	81	66	59
Price (EUR/tonne)	2 635	2 700	2 584	2 606	2 585
<i>Index</i>	100	102	98	99	98

Source: Eurostat.

- (145) The main other third countries exporting HTY to the Union are Switzerland, Belarus, Japan and Thailand. As shown in the above table, the combined import volume from these countries was rather low in relation to the Union consumption and decreased by 45 % over the period considered. The average import prices remained stable and relatively high during the IP.
- (146) On the basis of the above, it was provisionally concluded that the imports from these third countries did not contribute to the material injury suffered by the Union industry.

7.3.6. Imports from Korea and Taiwan

- (147) As regards the imports from Taiwan and Korea, as mentioned above, it was provisionally assessed that both the Taiwanese and Korean imports were not made at dumped prices during the IP. These imports are shown in tables 10 and 11 below:

Table 10

Total imports from Korea	2005	2006	2007	2008	IP
Volumes (tonnes)	17 542	20 701	27 521	24 908	24 580
<i>Index</i>	100	118	157	142	140
Market share	7,9 %	8,8 %	10,4 %	10,3 %	11,9 %
<i>Index</i>	100	112	131	130	151
Prices (EUR/tonne)	2 105	1 958	1 912	1 911	1 780
<i>Index</i>	100	93	91	91	85

Source: Eurostat.

- (148) As can be seen in the above table, the import volumes from Korea followed by and large a trend similar to that of consumption during the period considered. Import volumes increased from 17 542 tonnes in 2005 to 24 580 tonnes in the IP. This led to an increase in their market share from 7,9 % in 2005 to 11,9 % in the IP. It is however noteworthy that import volumes decreased substantially between 2007 and the end of the IP.
- (149) It is also noteworthy that, while the average import prices from Korea decreased by 15 % during the period considered, they remained higher than the average import prices from the PRC throughout the same period.

Table 11

Total imports from Taiwan	2005	2006	2007	2008	IP
Volumes (tonnes)	7 343	7 761	10 285	11 028	8 163
<i>Index</i>	100	106	140	150	111
Market share	3,3 %	3,3 %	3,9 %	4,6 %	4,0 %
<i>Index</i>	100	100	117	138	119
Prices (EUR/tonne)	1 968	1 734	1 608	1 678	1 687
<i>Index</i>	100	88	82	85	86

Source: Eurostat.

(150) As regards the imports from Taiwan, they increased from 7 343 tonnes in 2005 to 8 163 tonnes in the IP, thus by 11 %. At the same time their market share slightly increased from 3,3 % in 2005 to 4 % in the IP. Like the Korean imports, the Taiwanese import volume decreased considerably between 2007 and the end of the IP.

(151) The average import prices from Taiwan went down by 14 % during the period considered but remained considerably higher than the import prices from the PRC during the same period.

(152) Based on the above, it cannot be ruled out that the imports from Korea and Taiwan may have contributed to some extent the injury suffered by the Union industry. However, import volumes and prices during the IP do not appear to be at a level such as to break the causal link established between the dumped imports from the PRC and the injury suffered by the Union industry.

7.3.7. Other producers in the Union

(153) The analysis of data pertaining to the Union market suggested that the other Union producers did not gain market share during the period considered. The investigation did not point to any particular problem concerning the competition between Union producers or to any trade distorting effects which may explain the material injury found for the Union industry.

(154) Based on the above, it was provisionally concluded that the producers not included in the definition of the Union industry did not contribute to the injury suffered by the Union industry.

7.4. Conclusion on causation

(155) The above analysis demonstrated that there was a substantial increase in the volume and market share of the low-priced dumped imports originating in the PRC over the period considered. In addition, it was found that these imports were made at dumped prices which were below the prices charged by the Union industry on the Union market for similar product types.

(156) This increase in volume and market share of the low-priced dumped imports from the PRC coincided with an overall increase of the demand in the Union during the period between 2005 and 2007 but also with the negative development in the market share of the Union industry during the same period. Furthermore, between 2007 and the IP, when the demand in the Union market decreased, the Chinese exporters managed to increase their market share. At the same time a further negative development in the market share of the Union industry and in the main indicators of its economic situation was

observed. Indeed, over the period considered the surge in the low-priced dumped imports from the PRC, which were constantly undercutting the prices of the Union industry, led to a drop in the Union industry's profitability by more than 16 percentage points, resulting in heavy losses in the IP.

(157) The examination of the other known factors which could have caused injury to the Union industry revealed that these factors do not appear to be such as to break the causal link established between the dumped imports from the PRC and the injury suffered by the Union industry.

(158) Based on the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports, it was provisionally concluded that the dumped imports from the PRC have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

8. UNION INTEREST

8.1. Preliminary remark

(159) In accordance with Article 21 of the basic Regulation, it was examined whether, despite the provisional conclusion on injurious dumping, compelling reasons existed for concluding that it was not in the Union interest to adopt provisional anti-dumping measures in this particular case. The analysis of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users of the product concerned.

8.2. Union industry

(160) The Union industry is composed of four producers located in different Member States of the Union, employing directly over 1 300 people related to the product concerned.

(161) The Union industry has suffered material injury caused by the dumped imports from the PRC. It is recalled that all injury indicators showed a negative trend during the period considered. In particular injury indicators related to the financial performance of the Union industry, such as cash flow, return on investments and profitability were seriously affected. In the absence of measures, a further deterioration in the Union industry's economic situation appears very likely.

(162) It is expected that the imposition of provisional anti-dumping duties will restore effective trade conditions on the Union market, allowing the Union industry to align the prices of HTY to reflect the costs of

the various components and the market conditions. It can be expected that the imposition of provisional measures would enable the Union industry to regain at least part of the market share lost during the period considered, with a further positive impact on its economic situation and profitability.

- (163) It was therefore concluded that the imposition of provisional anti-dumping measures on imports of HTY originating in the PRC would be in the interest of the Union industry.

8.3. Importers

- (164) Questionnaires were sent to ten importers in the Union. Only two importers, located in Germany and Spain, representing 15,4 % and 0,2 % respectively of the total imports from the PRC, cooperated in the investigation. Regarding the first importer, the investigation showed that it imported only from the PRC and that almost its entire turnover related to the product concerned. In the worst case scenario an anti-dumping duty of 9 % would lead to a significant decrease in its profitability, and this company could become loss-making. It is considered however that it could pass at least part of the cost increase to its customers, given its strong market position amongst certain large users. In addition, it could revert to other sources of supply, at least in the longer term. As regards the second importer, the product concerned represented only a limited share of its total business (0-5 %) and any negative impact of the proposed measures is thus likely to be negligible.

- (165) Based on the information available, it was concluded that although the imposition of provisional anti-dumping measures would negatively impact one of the above mentioned importers, this importer should be in a position to pass at least part of the cost increase to its customers and/or shift to other sources of supply. Therefore, the imposition of provisional measures should not have a significant negative impact overall on the importers.

8.4. Users

- (166) Users of HTY have shown a strong interest in this case. Out of the 68 users contacted, 33 cooperated in the investigation. These cooperating users represented 25 % of the total imports from the PRC. These companies are located throughout the Union and are present in various industrial sectors, such as tyres and automotive applications, ropes and industrial applications.

- (167) For the sake of clarity and given that the imposition of provisional measures would impact users differently, depending on the sector where they operate, the

impact of measures on users was analysed by grouping them into separate industrial sectors as described below.

- (168) As regards the users present in the tyres sector, four questionnaire replies were received from tyre manufacturers. According to the data provided by the tyre manufacturers, the share of the HTY in relation to the cost of production of a tyre was relatively limited, below 1 % on average, and the average profit related to the tyre manufacturing business amounted to around 2 %. None of the cooperating users were found to import the product concerned from the PRC. Hence, should provisional anti-dumping duties be imposed, it is considered that these users should not be affected by measures on imports from the PRC. In addition, should any users in this sector import from the PRC, a number of alternative sources of supply exists.

- (169) Regarding the automotive sector (mainly producing seatbelts and airbags), six questionnaire replies were received from these users. These six companies represented 5 % of the total imports of HTY from the PRC in the IP. Overall, it was found that on average the products where HTY is used represented less than 4 % of the total turnover of these companies and that the average profit achieved in this business was around 3 %. Furthermore, it was found that the six companies purchased HTY mainly from the Union producers, while only 11 % of their purchases were imported from the PRC. Therefore, the imposition of provisional measures on imports from the PRC is unlikely to seriously affect the automotive sector overall since these companies were found to be profitable and the PRC was not the main source of supply.

- (170) Concerning the ropes manufactures, three questionnaire replies were received representing less than 1 % of the total imports from the PRC in the IP. The share of business using HTY was around 18 % of their total business and the average profit margin achieved in that business was around 8 % in the IP. On this basis, it was estimated that the imposition of provisional anti-dumping duties on imports from the PRC is likely to only slightly decrease their profit margin. The investigation also showed that the majority of the imports (66 %) were from the PRC during the IP while 20 % was originating in Korea. Therefore, should measures be imposed, this sector is unlikely to be seriously affected since the impact on the profit margin is limited and other sources of supply exist.

- (171) Certain rope manufacturers have argued that since HTY is predominantly used within other sectors, such as the industrial sector and the car industry, the imposition of anti-dumping measures would lead to a lack of availability of the types of HTY used by the ropes manufacturers, since the Union producers would allegedly

focus on the big markets first and supply the remaining sectors only if spare capacity existed. It should be noted however that other sources of supply, including the Union industry, Korea and Taiwan as well as other third countries which are not subject to measures, are available. Therefore, this claim was rejected.

- (172) Regarding the users present within the sector of industrial applications, such as roofing, belts, lashes and industrial textiles, in total 19 questionnaire replies were received. These users represented 19 % of the total imports from the PRC during the IP. Based on the information available for this sector, the share of the business where HTY are used is 64 % of the total business and the average profit achieved within this business was 13 %. The impact of anti-dumping duties is likely to only slightly decrease the average profit margin achieved in this sector. The investigation also showed that these users mainly purchased from Union producers and from the PRC. Therefore, the imposition of measures on imports from the PRC should not have a significant negative impact on this sector considering the limited impact to the profit margin and the existence of other sources of supply.
- (173) Some users argued that if anti-dumping measures were imposed, this would negatively impact them in two ways. They claimed that not only would there be a lack of alternative sources available, but that also the countries concerned would shift their exports from the product concerned to products in the downstream market.
- (174) As regards the claim that there will be no alternative sources available, it is firstly noted that no provisional measures will be imposed against imports from Korea and Taiwan. Moreover, as mentioned in recital 171 other sources of supply from other third countries not subject to measures are available. Secondly, regarding the supply by the Union industry, the investigation did point to some shortcomings in the supply by some Union producers to certain users. However, the analysis did not show any evidence that these shortcomings would have occurred regularly. Based on the above, and in particular due to the existence of other available sources of supply, this claim was rejected.
- (175) As regards the claim that HTY producers in the countries concerned would shift their exports to the downstream market, it should be noted that provisional measures will not be imposed against imports from Korea and Taiwan. Therefore, even if the Chinese exporters shift some of their exports to the downstream market, it is considered that the users of HTY should be able to remain competitive because they would be still able to source HTY from other suppliers which are not subject to measures. Therefore, this claim was rejected.
- (176) Taken the above into consideration, even if some of the users are likely to be negatively impacted by the

measures on imports from the PRC, the impact on the users in the various industrial sectors appears to be limited overall. Therefore, it was provisionally concluded that, on the basis of the information available, the effect of the anti-dumping measures against imports of HTY originating in the PRC will most likely not have a significant negative impact on the users of the product concerned.

8.5. Conclusion on Union interest

- (177) In view of the above, it was provisionally concluded that overall, based on the information available concerning the Union interest, there are no compelling reasons against the imposition of provisional measures on imports of HTY originating in the PRC.

9. NON-IMPOSITION OF DUTIES

- (178) In the light of the findings that the countrywide weighted average dumping margins for imports originating in Korea and Taiwan are *de minimis*, no provisional anti-dumping duties as regards imports originating in these countries are imposed.

10. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES

10.1. Injury elimination level

- (179) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, provisional anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.
- (180) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Union industry.
- (181) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on sales of the like product in the Union. It is considered that the profit that could be achieved in the absence of dumped imports should be based on the year 2005 which is the only year where profits were achieved by the Union industry and when Chinese imports were less present on the Union market. It is thus considered that a profit margin of 3 % of turnover could be regarded as an appropriate minimum which the Union industry could have expected to obtain in the absence of injurious dumping.

- (182) On this basis, a non-injurious price was calculated for the Union industry for the like product. The non-injurious price was obtained by adding the abovementioned profit margin of 3 % to the cost of production.
- (183) The necessary price increase was then determined on the basis of a comparison, per product type, of the weighted average import price of the sampled exporting producers in the PRC, with the non-injurious price of the product types sold by the Union industry on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the average CIF import value of the compared types.

10.2. Provisional measures

- (184) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping measures should be imposed in respect of imports originating in the PRC at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.
- (185) 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'.

- (186) Any claim requesting the application of these individual company anti-dumping duty rates (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 accordingly be amended by updating the list of companies benefiting from individual duty rates.
- (187) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the IP.
- (188) The dumping and injury margins established are as follows:

Company	Dumping margin	Injury margin
Zhejiang Guxiandao Industrial Fibre Co., Ltd	9,3 %	57,1 %
Zhejiang Uniful Industrial Fibre Co., Ltd	7,7 %	57,6 %
Zhejiang Hailide New Material Co., Ltd	0	N/A
Cooperating non-sampled companies	8,9 %	57,3 %
All other companies	9,3 %	57,6 %

11. DISCLOSURE

- (189) The above provisional findings will be disclosed to all interested parties which will be invited to make their views known in writing and request a hearing. Their comments will be analysed and taken into consideration where warranted before any definitive determinations are made. Furthermore, it should be stated that the findings concerning the imposition of anti-dumping duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive findings,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional 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 originating in the People's Republic of China, currently falling within CN code 5402 20 00.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

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

Company	Duty (%)	TARIC additional code
Zhejiang Guxiandao Industrial Fibre Co., Ltd	9,3	A974
Zhejiang Unifull Industrial Fibre Co., Ltd	7,7	A975
Zhejiang Hailide New Material Co., Ltd	0	A976
Companies listed in the Annex	8,9	A977
All other companies	9,3	A999

3. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

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

Article 2

1. Without prejudice to Article 20 of Regulation (EC) No 1225/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 1 month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Regulation (EC) No 1225/2009, the parties concerned may comment on the application of this Regulation within 1 month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of 6 months.

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

Done at Brussels, 1 June 2010.

For the Commission
The President
José Manuel BARROSO

ANNEX

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

Company name	City
Hangzhou Huachun Chemical Fiber Co., Ltd	Hangzhou
Heilongjiang Longdi Co., Ltd	Harbin
Hyosung Chemical Fiber (Jiaxing) Co., Ltd	Jiaxing
Oriental Industries (Suzhou) Ltd	Suzhou
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