COMMISSION IMPLEMENTING REGULATION (EU) 2017/325

of 24 February 2017

imposing a definitive anti-dumping duty on imports of high tenacity yarns of polyesters originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([1]) ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

A. **PROCEDURE**

1. **Measures in force**

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

(2) The measures imposed took the form of an *ad valorem* duty with a residual rate set at 9,8 % while the companies on which anti-dumping duties were imposed received an individual duty rate ranging from 5,1 % to 9,8 %. Two companies were found not to be dumping in the original investigation.

2. **Request for an expiry review**

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

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

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

3. **Initiation of an expiry review**

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

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) OJ L 315, 1.12.2010, p. 1.
([3]) OJ C 77, 5.3.2015, p. 9.
([4]) OJ C 397, 28.11.2015, p. 10.

4. **Investigation of the expiry review**

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

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

4.2. *Parties concerned by the investigation and sampling*

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

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

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

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

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

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

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

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

4.3. *Questionnaires and verification*

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

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

(a) Union producers:

— Brilen Tech SA, Spain

— Sioen Industries NV, Belgium

— DuraFiber Technologies (DFT) SAS, France

— DuraFiber Technologies (DFT) GmbH, Germany

— PHP Fibers GmbH, Germany

(b) Analogue country producer:

— DuraFiber Technologies, United States of America ('USA').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(18) The product concerned is high tenacity yarn of polyesters (other than sewing thread), not put up for retail sale, including monofilament of less than 67 decitex originating in the PRC ('the product concerned' or 'HTY') currently falling within CN code 5402 20 00.

2. Like product

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

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

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

1. Cooperation from the PRC

(21) No Chinese exporting producer cooperated with the investigation. In the absence of cooperation from exporting producers in the PRC, the overall analysis, including the dumping calculation, was based on facts available pursuant to Article 18 of the basic Regulation. Therefore, the likelihood of a continuation or recurrence of dumping was assessed by using the expiry review request, combined with other sources of information, such as trade statistics on imports and exports (Eurostat and Chinese export data), the reply from the analogue country producer and other information publicly available ([1]).

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

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

([1]) In the present Regulation, all the publicly available information relied upon was included in sector-specific reports (PCI Fibres — World Synthetic Fibres Supply/Demand Reports for 2008 and 2013 — see recitals 42, 47, 52 below, as well as PCI Fibres — Technical Fibres Report, September 2014 and January 2015 — see recital 58 below), issued by a consultancy company named PCI Wood Mackenzie.

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

(a) *Analogue country*

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

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

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

(27) Based on the import statistics and information from the review request, in addition to Taiwan, the Commission considered a number of other countries as potential analogue countries, such as the Republic of Korea, India, Japan, and the USA ([1]). Requests for cooperation were sent to all known producers and associations from these countries. Only one producer in the USA (Dura Fibres) agreed to cooperate.

(28) The Commission found that the USA has a significant (8,8 %) conventional customs duty rate on imports of HTY from third countries, but no anti-dumping duties. Dura Fibres is the only producer of the product concerned in the USA having around 30 % market share during the review investigation period, it is subject to strong competition from exporting countries ([2]).

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

(b) *Normal value*

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

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

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

(c) *Export price*

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

([1]) The Republic of Korea together with China and Taiwan represents over 90 % of total imports of HTY during the review investigation period. India and Japan, although with limited import volumes, were considered because of the overall production volumes and the size of their domestic market.

([2]) Imports, including China, represented around 71 % of the total consumption in 2015 (source: US Department of Commerce and the US International Trade Commission).

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

(35) One interested party claimed that the volumes from Chinese producers who were found not to be dumping in the original investigation should not have been excluded from the dumping calculation because there is no provision in this sense in the basic Regulation. However, it is the Commission's practice ([1]), in application of the interpretation of the ADA provided by the WTO Dispute Settlement Body in the *Beef and rice* case ([2]), to exclude from the review companies in respect of which a *de minimis* dumping margin was found in the initial investigation. Therefore, the request is rejected.

(d) *Comparison*

(36) The Commission compared the normal value and the export price on an ex-works basis. Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and the export price for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.

(37) Concerning domestic prices of the analogue country producer adjustments were made for domestic transportation costs and packing costs ([2 %-4 %] of the invoice value) and commissions [0,5 %-1,5 %]. As regards export prices, the ex-works factory value was determined by deducting from the CIF price at Union border the percentage for transport, insurance, handling and other allowances, as estimated in the request for review (12,98 %). With respect to the allowances for export sales, one interested party criticised the application of Article 18 of the basic Regulation and suggested that the allowances from the analogue country producer should be used instead of the estimate contained in the request for review. However, this suggested method does not seem to be appropriate as the allowances reported by the analogue country producer refer to domestic sales in the USA and they have no relevance for the estimation of export allowances from the PRC to the Union. Therefore, in the absence of other reliable information, the Commission relies on the estimate for export sales allowances provided in the request.

(e) *Dumping margin*

(38) On the basis of above, the dumping margin expressed as a percentage of the free-at-Union-frontier price, before duty, was found to be 54,4 %.

(39) Notwithstanding the significant difference between the dumping margin found in the original investigation and the one resulting from the current analysis, there has been no indication of a change in the exporting behaviour from the Chinese producers. On the contrary, it is plausible that the reason for the difference could mainly be found in the impossibility (due to the lack of cooperation from Chinese exporting producers) to perform a detailed analysis by product type.

(f) *Conclusion on dumping in the review investigation period*

(40) The Commission found that Chinese exporting producers continued to export the product concerned to the Union at dumped prices during the review investigation period.

3. **Evidence of likelihood of continuation of dumping**

(41) The Commission further analysed whether there was a likelihood of continuation of dumping should the measures lapse. When doing so, it looked into the Chinese production capacity and spare capacity, the behaviour of Chinese exporters on other markets, the situation on the domestic market of China and the attractiveness of the Union market.

([1]) See for example OJ L 343, 19.12.2008, recital 143.
([2]) See Appellate Body Report Mexico — Definitive Anti-Dumping Measures on Beef and Rice: Complaint with Respect to Rice (WT/DS295/AB/R), adopted on 20 December 2005, paragraphs 300-307.

(a) *Production and spare capacity in the PRC*

(42) The determination of spare capacity in China suffers from the lack of cooperation of Chinese exporting producers. In order to collect the largest amount of information possible, the Commission requested information from two Chinese exporters' associations (the China Chamber of International Commerce, 'CCOIC', and the China Chamber of Commerce for import and export of textiles, 'CCCT'), whose members account for more than half of the Chinese estimated production capacity. These associations sent a detailed reply, which however could not be verified due to the lack of cooperation from the exporting producers. The following paragraphs expose the information provided, and compare it with the other available information (from the review request and other available sources ([1])).

(43) According to CCOIC-CCCT, the spare capacity in China presented only a limited increase in the period 2012-RIP and could be estimated as evolving from a starting level of 150 000-250 000 metric tons (MT) in 2012 to a level of 200 000-300 000 MT in the review investigation period.

(44) The Commission services also performed a detailed spare capacity calculation on the basis of other available information. The main elements of this calculation are (i) installed capacity of Chinese producers; (ii) domestic demand; (iii) exports to other countries.

(45) Concerning the Chinese domestic consumption, all interested parties seem to agree on the data contained in the request. These data project a growth of domestic demand in China in the period considered (+ 20 %, from around 900 000 MT in 2012 to around 1 150 000 MT in 2015).

(46) Concerning Chinese export data, the Commission considered the Chinese export statistics, showing a growth of 47 % in the period 2012-RIP.

(47) Finally, concerning the estimate of Chinese production capacity, according to the complainant's request, which refers to an internationally recognised sector study ([2]), the Chinese capacity started at more than 1 600 000 MT in 2012 and reached around 2 400 000 MT in the review investigation period.

Table 1

(in 1 000 MT)	2012	2013	2014	RIP
Chinese capacity ([1])	1 633	1 828	2 126	2 370 ([2])
Domestic demand ([1])	896	985	1 057	1 158 ([2])
Exports ([3])	255	294	362	376
Capacity utilisation (%)	71	70	67	65
Spare capacity	482	549	707	836

([1]) Complainant's estimate.
([2]) The figure refers to calendar year 2015 as no precise determination was available for the RIP.
([3]) Chinese customs database.

(48) On the basis of this calculation, the spare capacity of the Chinese producers was estimated at more than 800 000 MT in the review investigation period, i.e. about seven times the total available EU market ([3]) and almost nine times the production volumes from EU producers (estimated at 92 461 MT).

([1]) See request for review, page 19 and PCI Fibres — World Synthetic Fibres Supply/Demand Reports for 2008 and 2013.
([2]) PCI Fibres — World Synthetic Fibres Supply/Demand Reports for 2008 (pages 393-410) and 2013 (pages 379-408).
([3]) The available EU market has been calculated by considering only the Union consumption which can still absorb Chinese products. Indeed, out of around 217 000 MT of estimated consumption in the Union in the RIP, around 98 000 MT were already covered by Chinese products (out of which, 39 741 MT not subject to the measures and 57 464 MT subject to the measures). Therefore, the available Union consumption is calculated at around 119 000 MT.

(49) In conclusion, there are reasons to believe that the capacity estimation proposed by CCOIC and CCCT would be too conservative. In particular, when compared with estimates of Chinese domestic demand and exports, these studies would lead to a capacity utilisation rate above 90 % for the years 2012 and 2013, which suggests that the production capacity for those years has been largely underestimated. In any case, also accepting this calculation, the existing spare capacity of Chinese producers would still amount to 200 000-300 000 MT, which is equal or higher than the total size of the European market (around 217 000 MT, of which around 98 000 MT already served by Chinese products).

(50) With respect to the calculation of capacity proposed by CCOIC and CCCT, the same associations contested the conclusion that their capacity estimation would be too conservative. In their view, in the absence of verified data both their estimate and the independent study should be considered as 'equally unreliable'. However, the estimate supplied by CCOIC and CCCT did not appear overestimated only with respect to the data contained in the independent study, but also to known or uncontested data such as domestic Chinese consumption and Chinese exports. For example, with respect to the year 2012, the Chinese associations estimated a Chinese actual production of 1 000 000 MT. However, for that year, the sum of Chinese domestic consumption (a data which is not contested by the associations) and export volumes (as extracted from the Chinese export database) amounted to 1 151 000 MT, i.e. 15,1 % higher than the estimated production figure. Therefore, in this case, the data provided by the two associations appears overly conservative as the reported production figures do not allow to sustain the calculated consumption.

(51) Moreover, while the data collected by the Chinese associations represents only roughly half of the producers in China, the independent study was supplied by a consultancy company with 30 years of experience in the field, which professionally provides its subscribers with forecasts and estimates on the fibres market. Therefore, taking into account both the source of the data and the reliability of the same (also compared with what was indicated by an independent study ([1])), it is not necessary to change the conclusion according to which the spare capacity calculation provided by the Chinese association would be too conservative. Nonetheless, it should be mentioned that even accepting the proposed calculation, as described in the following paragraph, the conclusion on spare capacity would not change.

(52) Therefore, on the basis of the calculations exposed above, it appears undeniable that the Chinese spare capacity is enormous and ranges (depending on the estimates) from a size representing 92-138 % of the size of the Union market, to around 385 %. If we compare the Chinese spare capacity to the part of Union market which is not yet served by Chinese products, it ranges from around 168-252 % to around 700 %. Finally, the Chinese spare capacity represents from 216-324 % to 904 % of the Union production of the product under investigation in the review investigation period.

(53) Therefore, the Commission concluded that Chinese producers dispose of enormous spare capacity, if compared to the size of the European market.

(b) *Attractiveness of the Union market*

(54) China exports significant quantities of the product concerned to third countries other than the Union, in particular to the USA, the Republic of Korea, Brazil, India and Turkey. Comparison on average price levels per kg showed that the average price on the main export markets in the review investigation period was in line or below the average sale price to the Union. In the USA market (second to the EU in exported volumes), the average price in the RIP is slightly below the European one (1,85 USD/kg v 1,89 USD/kg), while in the Korean market (third export market for the product concerned after the EU and USA) the average price is significantly lower (1,58 USD per kg, i.e. around 16 % lower than EU prices). With respect to these findings, one interested party claimed that there are three significant export markets of Chinese goods where the average prices are above the prices to the Union market, namely Canada (1,90 USD/kg), Indonesia (2,07 USD/kg) and Brazil (1,95 USD/kg). With respect to this claim, it should be firstly noticed that the difference in prices is relatively small (from + 0,5 % to + 9,4 %); moreover, the size of the exports on those markets is rather limited if compared to the exports to Europe. Indeed, while the Union market absorbed 30,3 % of Chinese exports in the RIP, Canada represents only 3,1 % of the total and Brazil 5,1 %. In addition to this, Indonesia, which is the country which highlights the highest difference in prices (+ 9,4 %), only represents 2 % of the Chinese exports, therefore the conclusions which can be taken from its prices are limited. Moreover, the interested party does not mention four other export markets presenting similar volumes of imports, i.e. India (5,6 %), Turkey (4,3 %), Taiwan (2,4 %), South

([1]) PCI Fibres — World Synthetic Fibres Supply/Demand Reports for 2008 (pages 393-410) and 2013 (pages 379-408).

Africa (2,3 %). In all these countries the average prices were below the ones reported in the Union during the RIP, by percentages ranging from around 4 % to above 12 %. Therefore, the evidence provided was not sufficient to change the conclusion with respect to the attractiveness of the Union market in terms of prices.

(55) Although this comparison cannot be considered to be conclusive due to the lack of information on the product type mix, the level of the prices on the main export market seems to indicate that the existence of dumping practices could be structural and common also to other main markets of destination of the Chinese goods.

(56) The main evidence of the likelihood of continuation of dumping is, however, when Chinese export volumes to the EU are considered. Indeed, the evolution of export sales in the period 2012-RIP shows that the export of Chinese producers increased by 47 %. This holds true even when the analysis excludes the sales of the two exporters which were found not to be dumping in the original investigation and therefore they are not subject to the current anti-dumping measures. Indeed, export sales of the remaining companies in the same period followed a similar trend (+48 %). When the Commission compared this rate of growth to the more limited rate of growth of the domestic demand in the same period (+20 %), and to the much faster rate of growth of installed capacity in China (+54 % according to the exporters' associations, and +69 % according to the complainant), it became clear that Chinese companies have to rely on aggressive pricing strategies in their export market in order to achieve an acceptable level of capacity utilisation.

(57) With respect to these export figures, one interested party claimed that the share of Chinese exports directed to the Union market is decreasing. Indeed, the share of Chinese exports directed to the Union decreased in the period 2012-RIP from around 35 % to 30 %. With respect to this claim, it should firstly be mentioned that the EU keeps being the main export market for Chinese exporters. Moreover, this slight decrease is mainly a consequence of the good performance of Chinese exporters in other markets; a performance which seems to be caused also by aggressive pricing policies in those markets. For example, in the same period 2012-RIP, Chinese exports to the Republic of Korea (a market in which, as seen above, Chinese prices are lower than the prices in the EU in the RIP by around 16 %) increased by around 72 %. On the other hand, on the Indonesian market, which was mentioned above as an example of fair pricing (+ 9,4 % over the Union average price), the Chinese export performance suffered, with volumes decreasing by around 16 %. Therefore, in light of this analysis, the conclusion that Chinese companies have to rely on aggressive pricing strategies in their export market is confirmed.

(58) Furthermore, concerning the projections for the future, a sectorial independent study foresees that demand in China for manmade fibres (a wider product category, which includes the product concerned) will remain flat until at least 2018 ([1]). Another study also suggests that Chinese inventories are full, as a result from a fall in the raw material prices ([2]). This has made the downstream industry reduce their supply of high tenacity yarns to the minimum necessary, in order to avoid risks due to the fluctuations of prices.

(59) Therefore, it is likely that if the measures were allowed to lapse the Chinese exporting producers would keep engaging in aggressive pricing practices, in order to conquer additional market share in Europe for their significant over-capacity.

4. **Conclusion on dumping and likelihood of continuation of dumping**

(60) The investigation, relying on the best facts available, showed that Chinese producers have been dumping during the review investigation period. It was established that China disposes of enormous spare capacity (when compared with the size of the Union market). Moreover, given the slow growth of the Chinese domestic market, Chinese exporting producers need to keep entering the Union market with significant quantities of the product concerned in order to achieve an acceptable level of sales.

(61) Under these circumstances, it is concluded that, should the measures be allowed to lapse, it is very likely that the dumping practices, which were not stopped by the measures, would continue in the EU market.

([1]) PCI Fibres — Technical Fibres Report, January 2015, page 1.
([2]) PCI Fibres — Technical Fibres Report, September 2014, page 8.

D. **LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF INJURY**

1. **Definition of the Union industry and Union production**

(62) During the review investigation period, the like product was manufactured by six Union producers who constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation. None of them opposed the initiation of this review.

2. **Union consumption**

(63) The Commission established the Union consumption on the basis of the available import statistics, the actual sales of cooperating Union producers on the Union market and estimated sales of the non-cooperating Union producers. The definition of consumption relates to free market sales, inclusive of sales to related parties but exclusive of captive use. Captive use, that is, internal transfers of the like product within the integrated Union producers for further processing, have not been included in the Union consumption figure, because these internal transfers are not in competition with sales of independent suppliers in the free market. The sales to related companies were included in the Union consumption figure since, according to the data collected during the investigation, those related companies were free to purchase the product concerned also from other sources. In addition, the Union producers' average sales prices to related parties were found to be in line with the average sales prices to unrelated parties.

(64) On this basis, Union consumption developed as follows:

Table 2

Union consumption

	2012	2013	2014	RIP
Volume (tonnes)	196 478	209 076	222 306	217 171
Index	*100*	*106*	*113*	*111*

Source: Questionnaire replies and Article 14(6) database.

(65) Union consumption increased by 11 % from 196 478 tonnes in 2012 to 217 171 tonnes in the review investigation period. Consumption during most of the period considered was higher than the consumption of 205 912 tonnes in the investigation period of the original investigation (July 2008 to June 2009).

(66) One interested party claimed that the Commission services should have included captive sales into the determination of consumption and that by doing so the Chinese market share would have been stable. It suggests that the Commission services have wrongly distinguished between three markets, i.e. sales to unrelated companies, sales to related companies intended for free market sales and sales to related companies intended for captive use, whereas allegedly all these sales should have been included in the determination of Union consumption.

(67) First, it should be underlined that no distinction was made between three different markets. Captive use by related companies were excluded because these products are not put into free circulation on the EU market and do therefore not compete with imports. These sales merely consist in transfer of products to related entities for their incorporation into the production process of other products, not under investigation. That captive use therefore cannot be considered as part of the Union consumption of the product concerned.

(68) Secondly, in any event, the hypothetical addition of captive sales to Union consumption would not make the evolution of Chinese market share stable. On the contrary, the trend remains largely the same as shown below in Table 3.

3. **Imports subject to measures from the country concerned**

(a) *Volume and market share*

(69) It is recalled that in the original investigation, import volumes found not to be dumped were excluded from the analysis of the development of the imports from the PRC on the Union market and the impact on the Union industry.

(70) The volume and market share of dumped imports from China were established on the basis of the Article 14(6) database and developed as follows:

Table 3

Volume and market share of imports subject to measures

Country		2012	2013	2014	RIP
China	Volume (tonnes)	44 484	48 339	60 078	57 465
	Index	*100*	*109*	*135*	*129*
	Market share (%)	22,6	23,1	27	26,5
	Market share in relation to consumption plus captive use (%)	21,3	21,8	25,5	24,9

Source: Article 14(6) database.

(71) While Chinese dumped imports accounted for 18,8 % market share and 38 404 tonnes in the original investigation period, they have increased considerably over the period considered in this review. In fact, dumped imports from China increased from 44 484 to 57 465 tonnes over the period considered and accounted for a 26,5 % market share during the review investigation period.

(b) *Prices of imports subject to measures from the country concerned and price undercutting*

(72) Import prices were established on the basis of Article 14(6) database and on average decreased 12 % during the period considered.

Table 4

Prices of imports subject to measures

Country		2012	2013	2014	RIP
China	Average price (EUR/kg)	1,79	1,63	1,54	1,57
	Index	*100*	*91*	*86*	*88*

Source: Article 14(6) database

(73) Because of non-cooperation from Chinese producers, and therefore the lack of product-type-related export price data, the Commission could not make a detailed price comparison by product type. For these reasons, the undercutting calculations were performed based on a comparison between the average prices of the Chinese exports subject to measures and the average Union Industry's prices during the review investigation period. After adjusting for the conventional custom duty rate of 4 %, an undercutting margin of 22,7 % was established. The original investigation found a similar undercutting margin of 24,1 %. However, this margin was based on a comparable product type comparison, since Chinese exporters cooperated in that case.

(74) The Commission therefore concluded that there is a consistent behaviour on the part of the PRC exporters in undercutting the EU producers' prices.

(75) One interested party claimed that the non-dumped imports should have been included in the undercutting calculation.

(76) The Commission however considers that such inclusion is not warranted, based on the application of the interpretation of the ADA provided by the WTO Dispute Settlement Body in the *Beef and rice* case ([1]), as already mentioned above in recital 35.

4. **Economic situation of the Union industry**

(77) In accordance with Article 3(5) of the basic Regulation, the Commission examined the impact of the dumped imports on the Union industry based on the evaluation of all relevant economic indicators for an assessment of the state of the Union industry from 2012 to the end of the RIP.

(78) When doing so, the Commission distinguished between macroeconomic and microeconomic injury indicators. The macroeconomic indicators for the period considered were established, analysed and examined on the basis of the data provided for the Union industry. The microeconomic indicators were established on the basis of the data collected and verified at the level of the cooperating Union producers. Due to problems of reconciliation regarding the data of one subsidiary of the DuraFiber group after its reorganisation (DuraFiber Technologies (DFT) GmbH, Germany), its submitted data and questionnaire reply were excluded from the determination of the microeconomic indicators.

(79) One interested party claimed that the exclusion of DuraFiber Germany possibly had altered the injury indicators in a fundamental way.

(80) First it should be noted that the exclusion of the partially verified data from DuraFiber Germany only affected the establishment of the microeconomic indicators. The analysis of the macro indicators is therefore not affected. Furthermore, these micro indicators were based on the data of the remaining four Union producers representing around 80 % of the Union production. Therefore, the specific indicators remain representative for the Union industry. Finally, the partially verified data provided by DuraFiber Germany generally followed the trend of the microeconomic indicators of the four Union producers whose data were taken into account.

(81) In light of both considerations above, it is concluded that the exclusion of DuraFiber Germany from the analysis of the micro indicators did not change the injury indicators trends and the corresponding conclusions are therefore representative of the overall industry.

(82) In the following sections, the macroeconomic indicators are: production, production capacity, capacity utilisation, stocks, sales volume, market share and growth, employment, productivity, magnitude of the actual dumping margin, recovery from past dumping. The microeconomic indicators are: average unit prices, cost of production, profitability, cash flow, investments, return on investment, ability to raise capital and labour costs.

Macroeconomic indicators

(a) *Production, production capacity and capacity utilisation*

(83) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation

	2012	2013	2014	RIP
Production volume (tonnes)	92 753	91 985	93 990	92 461

([1]) See Appellate Body Report Mexico — Definitive Anti-Dumping Measures on Beef and Rice: Complaint with Respect to Rice (WT/DS295/AB/R), adopted on 20 December 2005.

	2012	2013	2014	RIP
Production volume (*Index*)	*100*	*99*	*101*	*100*
Production capacity (tonnes)	109 398	108 869	108 690	110 285
Production capacity (*Index*)	*100*	*100*	*99*	*101*
Capacity utilisation (%)	85	84	86	84

Source: Questionnaire replies.

(84) During the period considered the production, production capacity and capacity utilisation remained stable.

(b) *Sales volume and market share*

(85) The Union industry's sales volume and market share in the Union developed over the period considered as follows:

Table 6

Sales volume and market share

	2012	2013	2014	RIP
Sales volume in the Union (tonnes)	67 527	69 407	68 007	65 733
Sales volume in the Union (*Index*)	*100*	*103*	*101*	*97*
Market share (%)	34,4	33,2	30,6	30,3

Source: Article 14(6) database and questionnaire replies.

(86) The Union industry's sales volume in the Union market decreased by -3 % and their respective market share declined by 4,1 percentage points, from 34,4 % to 30,3 % over the period considered.

(c) *Growth*

(87) While Union consumption increased by 11 % over the period considered, the sales volume of the Union industry decreased by – 3 %.

(d) *Employment and productivity*

(88) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity

	2012	2013	2014	RIP
Number of employees	941	875	902	911
Number of employees (*Index*)	*100*	*93*	*96*	*97*

	2012	2013	2014	RIP
Productivity (unit/employee)	98,6	105,2	104,2	101,5
Productivity (unit/employee) (*Index*)	*100*	*107*	*106*	*103*

Source: Questionnaire replies.

(89) Employment decreased by – 3 % during the period considered. At the same time, productivity increased by 3 %, as shown in Table 7 in recital 88.

(e) *Magnitude of the dumping margin and recovery from past dumping*

(90) The dumping margin established for China in the original investigation was well above *de minimis* level. The investigation established that imports of high tenacity yarns of polyesters from China continued to enter the Union market at dumped prices. The dumping margin established during this review investigation period was also well above *de minimis* level, see recital 38. This coincided with an increase in volumes of dumped imports from China at decreasing prices, resulting in a gain of market share during the period considered. As a consequence, the Union industry lost both market share and sales volume during the same period. However, it managed to reduce its losses.

Microeconomic indicators

(f) *Prices and factors affecting prices*

(91) The average sales prices of the Union industry to unrelated customers in the Union developed over the period considered as follows:

Table 8

Average sales prices

	2012	2013	2014	RIP
Average unit selling price in the Union (EUR/kg)	2,39	2,31	2,23	2,17
Average unit selling price in the Union (*Index*)	*100*	*97*	*93*	*91*
Unit cost of production (EUR/kg)	2,50	2,43	2,26	2,19
Unit cost of production (*Index*)	*100*	*97*	*90*	*87*

Source: Questionnaire replies.

(92) The Union industry's unit selling price to unrelated customers in the Union decreased by 9 %. This is partially explained by the decrease of the unit cost of production by 13 %. Prices however decreased less than costs, which explain the positive impact in the profitability of the Union industry as shown below in recital 98.

(g) *Labour costs*

(93) The average labour costs of the Union industry developed over the period considered as follows:

Table 9

Average labour costs per employee

	2012	2013	2014	RIP
Average labour costs per employee (EUR)	39 273	41 674	39 711	39 850
Average labour costs per employee (*Index*)	*100*	*106*	*101*	*101*

Source: Questionnaire replies.

(94) The average labour costs per employee remained stable over the period considered. This could be mainly explained by the increasing efforts of the Union industry to control the cost of production and maintain in this way its competitiveness.

(h) *Inventories*

(95) Stock levels of the Union producers developed over the period considered as follows:

Table 10

Inventories

	2012	2013	2014	RIP
Closing stocks (tonnes)	8 050	6 872	8 244	8 387
Closing stocks (*Index*)	*100*	*85*	*102*	*104*
Closing stocks as a percentage of production (%)	8,7	7,5	8,8	9,1

Source: Questionnaire replies.

(96) In the period considered, the Union industry's stocks increased overall by 4 %. A significant part of the high tenacity yarns of polyesters production consists of standard products. The Union industry therefore has to maintain a certain level of stock in order to be in a position to swiftly satisfy the demand of its customers. The closing stock as a percentage of the production remained relatively stable, following the evolution of the Union's industry production.

(i) *Profitability, cash flow, investments, return on investments and ability to raise capital*

(97) Profitability, cash flow, investments and return on investments of the Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2012	2013	2014	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	– 4,7	– 5,3	– 1,4	– 1,1

	2012	2013	2014	RIP
Cash flow (EUR)	– 2 993 463	– 4 156 375	– 4 895 147	– 2 111 763
Cash flow (Index)	*– 100*	*– 139*	*– 164*	*– 71*
Investments (EUR)	2 313 235	1 284 905	3 511 528	12 801 375
Investments (*Index*)	*100*	*56*	*152*	*553*
Return on investments (%)	– 4,3	– 4,2	– 2,0	– 1,4

Source: Questionnaire replies.

(98) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of its turnover. Profitability was still negative, although it improved from – 4,7 % to – 1,1 % during the period considered. This is however still lower than the target profit of 3 % established in the original investigation.

(99) The net cash flow is the Union industry's ability to self-finance their activities and it was negative during the period considered. Although the indicator registered a significant improvement of 29 %, it is still negative. This raises concerns as to the ability of the Union industry to carry on the necessary self-financing of its activities.

(100) Investments increased significantly during the period, primarily to meet maintenance needs, with a small part corresponding to modernisation, which caused a small impact on capacity expansion.

(101) The return on investments is the net profit as a percentage of the gross book value of investments. This indicator increased from – 4,3 % to – 1,4 % over the period considered as a result of the increasing profitability and stagnation in investments during the period considered.

(102) Taking into account the negative profitability and negative cash flow, the industry's ability to raise capital remained very limited.

(j) *Conclusion on injury*

(103) During the period considered, most of important injury indicators pertaining to the Union industry showed a negative trend. Its market share decreased by 4,1 percentage points from 34,4 % to 30,3 %, sales volume and the unit sales price in the EU declined 3 % and 9 %, respectively. At the same time, employment decreased 3 %, export sales volume to unrelated companies decreased 28 %, and the corresponding unit export sales prices decreased 17 %. Productivity increased 2,9 %.

(104) Despite the above trends, the profitability improved from – 4,7 % to – 1,1 % during the period considered. Although this is a considerable improvement compared to the profitability of the Union Industry during the IP of the original investigation (1 July 2008 to 30 June 2009) which was – 13,3 %, profitability is still negative. This loss-making situation of the Union industry resulted in a continuous negative return on investment. Nevertheless, the cash flow improved.

(105) The original investigation concluded that the market share of 18,8 % of the Chinese imports that were found to be dumped and undercut the Union industry's sales prices by 24,1 % were sufficient to cause material injury to the Union industry. Comparable situation was found during the review investigation period. Chinese dumped imports represented 26,5 % of the market share and undercut the Union industry's sales prices by 18,6 % as explained below in recital 110.

(106) One interested party claimed that the Union industry does not suffer material injury, as production, production capacity and capacity utilisation remain stable. The evolution of other indicators such as sales volumes and market share are considered tainted by the wrong definition of consumption as alleged in recital 66.

(107) The allegation of a wrongful determination of consumption was rebutted in recital 67. Moreover, according to Article 3(5) of the basic Regulation not any one or more of the relevant injury factors can necessarily give decisive guidance. The fact that some factors remained stable does therefore not alter the conclusions on injury.

(108) For the above reasons, it is concluded that the Union industry is still suffering from material injury within the meaning of Article 3(5) of the basic Regulation.

5. **Causality**

(109) Given the above findings of material injury, the Commission examined whether the dumped imports from China caused material injury to the Union industry. The Commission also examined whether other known factors could at the same time have injured the Union industry.

5.1. *Effects of the dumped imports*

(110) The Union Industry remains in a situation of fragile partial recovery and it is considered that, despite the measures in force, Chinese dumped imports continued to cause material injury. Indeed, even when taking into consideration the combined effect of the post importation costs of 2,7 % as verified at the level of cooperating unrelated importers, the conventional custom duty rate of 4 % and the anti-dumping duties paid during the review investigation period, the average prices of Chinese dumped imports were still found to significantly undercut the average Union industry sales price by 18,6 %. These imports also continued to increase in the last years, and this had a negative impact on the market overall by depressing prices and contributing to the reduction of market share of the Union industry. The continued pressure exercised on the Union market did not allow the Union industry to fully benefit from the decline in raw material costs.

(111) An interested party claimed the absence of a correlation between Chinese prices and the state of the Union industry.

(112) That analysis was however based on trends established for the period 2011-2015 which are different from the period considered in the current investigation, which is from 2012 to RIP (ending in September 2015). This analysis could therefore not be taken into consideration. In any event, it should be noted that the Chinese dumped import prices generally decreased over the period considered and were undercutting the Union industry prices. The fact that for certain year (the RIP) the Chinese export price increased and the situation of the Union industry did not deteriorate, does not put the validity of that observation into question. The claim is therefore rejected.

5.2. *Effects of other factors*

(113) Based on the information collected during the investigation, the proportion of captive production was found not to be significant. Approximately only 15 % of the Union industry's production is used captively. In general, a higher volume of production leads to economies of scale, which is beneficial for the producer concerned. Only a small part of the Union industry is vertically integrated and the captive production is 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. Given the above considerations, the Commission considers that the captive production of the Union industry did not have any negative impact on its financial situation.

(114) Major exporting countries to the Union are Republic of Korea, Taiwan, Switzerland, Belarus and Turkey. Total imports of the product concerned from third countries including imports not subject to measures from China increased by 11 % (from 84 467 to 93 973 tonnes) over the period considered, representing 43,3 % of the Union consumption. During the same period, the average unit import price has been steadily decreasing

from 2,19 EUR to 2,09 EUR per kg, a decrease of 4 %. A trend of decreasing import prices was also found in most of other third country exporters to the Union market (Korea – 7 %, Switzerland – 15 %, Belarus – 13 %, Turkey – 6 %). At the same time, unit import prices of the imports not subject to measures from PRC only declined by 3 %.

Table 12

Imports from third countries

Country		2012	2013	2014	RIP
China (imports not subject to measures)	Volumes (tonnes)	29 109	33 865	36 977	39 742
	Index	*100*	*116*	*127*	*137*
	Market share (%)	14,8	16,2	16,6	18,3
	Average price (EUR/kg)	1,75	1,72	1,69	1,69
	Index	*100*	*99*	*97*	*97*
Republic of Korea	Volumes (tonnes)	27 948	31 145	33 048	32 545
	Index	*100*	*111*	*118*	*116*
	Market share (%)	14,2	14,9	14,9	15,0
	Average price (EUR/kg)	2,15	2,13	2,03	2,01
	Index	*100*	*99*	*95*	*93*
Taiwan	Volumes (tonnes)	10 153	9 599	9 251	8 364
	Index	*100*	*95*	*91*	*82*
	Market share (%)	5,2	4,6	4,2	3,9
	Average price (EUR/kg)	1,78	1,91	1,85	1,90
	Index	*100*	*107*	*104*	*107*
Switzerland	Volumes (tonnes)	5 610	5 263	4 895	5 190
	Index	*100*	*94*	*87*	*93*
	Market share (%)	2,9	2,5	2,2	2,4
	Average price (EUR/kg)	4,30	4,09	4,01	3,66
	Index	*100*	*95*	*93*	*85*
Belarus	Volumes (tonnes)	3 384	3 189	3 344	2 374
	Index	*100*	*94*	*99*	*70*
	Market share (%)	1,7	1,5	1,5	1,1
	Average price (EUR/kg)	2,13	2,06	1,99	1,86
	Index	*100*	*97*	*93*	*87*

Country		2012	2013	2014	RIP
Turkey	Volumes (tonnes)	1 443	1 545	1 455	1 594
	Index	*100*	*107*	*101*	*110*
	Market share (%)	0,7	0,7	0,7	0,7
	Average price (EUR/kg)	2,95	2,66	2,65	2,77
	Index	*100*	*90*	*90*	*94*
Total third countries including imports not subject to measures from China	Volumes (tonnes)	84 467	91 330	94 222	93 973
	Index	*100*	*108*	*112*	*111*
	Market share (%)	43,0	43,7	42,4	43,3
	Average price (EUR/kg)	2,19	2,15	2,10	2,09
	Index	*100*	*98*	*96*	*96*

Source: Article 14(6) database.

(115) As shown in Table 12, the market share of the imports from other countries and the decrease in the prices of the imports from China not subject to measures were not so significant as to be considered the cause of the Union industry's injury during the review investigation period.

(116) The Commission received comments in respect to the reasons for the current negative situation of the Union industry such as the evolution in the prices of the raw material, lack of investments and modernisation, mismanagement and lack of vision, outdated production methods, lack of large-scale plants and low quality of the produced products. The investigation showed that the situation of the Union industry could not be attributed to these reasons. Rather, it revealed that the Union industry continued to operate effectively in a very competitive market, optimising the use of the existing assets, without investing heavily in capacity expansion and modernisation, managing in that way to increase its profitability after the imposition of the definitive measures in 2010. Thus, these claims were rejected.

(117) One interested party claimed that the Union industry's allegedly significant investments affected the cash flow and the profit of the Union industry and that such effect should not have been attributed to Chinese imports and that these factors should have been incorporated in a separate non-attribution analysis.

(118) In the first place, despite the investments made during the RIP, the profit and cash flow of the Union industry improved, illustrating that such investments were warranted and had a positive effect. Secondly, profit can only be influenced by the pro rata *temporis* depreciations related to the investments and the financial costs borne by the companies while financing the investments. Finally, as depreciations are deductible costs that are not accompanied by a cash outflow, the cash flow of the Union industry cannot be directly affected by them, only the financial costs would have an effect.

(119) Some parties also claimed that there was either a lack of injury caused by the Chinese dumped imports over the period considered, or that injury was caused by imports from other countries. Since it was found that the prices of the Chinese dumped import continued to undercut the Union industry's prices and were lower than the import prices from the other countries, this claim was rejected.

(120) One interested party claimed that the Commission should have better explained the impact of other factors of causality in its so-called non-attribution analysis.

(121) In this respect, it should be pointed out that the purpose of the non-attribution analysis is to establish whether the observed causal link between dumped imports and the Union industry's material injury could have been broken by another factor, making the causality unlikely or even impossible. None of the factors taken into consideration had such quality and the claim is therefore rejected.

5.3. *Conclusion on causation*

(122) Even though other factors might also contribute to the injury, these were not found to be sufficient to break the causal link between dumped imports from China and the Union industry's injury.

E. **LIKELIHOOD OF CONTINUATION OF INJURY**

(123) It was found that the Chinese exporters had excessive spare capacity during the period considered as indicated in recital 50 when compared to the size of the European market.

(124) During the period considered the Chinese exports to the Union market increased significantly 29 %. As mentioned in recital 54, China exported the product concerned to the Union market mainly at higher prices than to the rest of the world. The investigation found no evidence that this situation will change at least in the short run. Therefore, the Union market was found to be rather attractive to Chinese exporters because of the opportunity to export significant quantities at higher prices than to the rest of the world.

(125) The investigation showed that 60 % of the Chinese imports were made at dumped prices and that there was a likelihood of continuation of dumping should the measures be allowed to lapse. The Chinese dumped imports continued to significantly undercut the prices of the Union producers at the similar levels as in the initial investigation. Specifically, the Chinese imports subject to measures were found to undercut by 22,8 %, demonstrating an aggressive behaviour in pricing. This is likely to cause further depression to the prices and jeopardise the fragile recovery of the Union industry. Thus, there is a clear risk that material injury to the Union industry will continue should measures be allowed to lapse.

(126) In the light of the foregoing, it is concluded that the repeal of measures on the imports from China would in all likelihood result in the continuation of material injury to the Union industry.

F. **UNION INTEREST**

(127) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures against China would be against the interest of the Union. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

(128) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

(129) On this basis the Commission examined whether, despite the conclusions on the likelihood of recurrence of dumping and injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

1. **Interest of the Union industry**

(130) The Union industry has consistently lost market share and has suffered material injury during the period considered. It nevertheless improved its profitability to a level which is close to break-even (but still negative) whilst sales remained almost at the same level. This development towards stability in the market is most likely attributable to the measures in place. Should measures be repealed, the Union industry would in all likelihood be found in an even worse situation.

(131) It was therefore concluded that maintaining the measures in force against China would be in the interest of the Union industry.

2. **Interest of importers/traders**

(132) Fifteen unrelated importers filled in sampling forms at the stage of initiation, so it was decided to apply provisions on sampling. Three importers were selected and were asked to fill in a questionnaire. Ultimately, only one importer submitted a questionnaire reply which was verified.

(133) The investigation revealed that the company imported from only one Chinese producer subject to measures, with whom it has a long-term business relationship. The investigation showed that the impact of the measures in force on the company was not significant. This is confirmed by the fact that the importer decided not to change source of supply despite the imposition of the original measures.

3. **Interest of users**

(134) Twenty-five users came forward at the initiation stage and requested to fill in questionnaires. Ultimately, questionnaire replies were received from only four users. They were all visited and their submitted data was verified. However, it is noticeable that there was considerably less participation by the user industry in this expiry review than there was when measures were first imposed. In the original investigation 33 users cooperated with the investigation whereas only four participated in the expiry review. The majority of users appear to have been able to adjust to the imposition of the measures with little detriment to their operations.

(135) For one user, which was active in the sewing thread industry, the Commission found that the impact of the current measures on its costs and profitability was not significant. For the other three users, all of which import HTY from China and which were active in the weaving industry (belts, strap, lashings, etc.), it was found that although the impact of the current measures on their costs was small, the impact on profitability was more pronounced, since these companies conduct their business at very low profit margins. Nevertheless, the impact of the duties appeared to be limited as there were many alternative available suppliers with competitive prices.

(136) Users who made submissions, commented on problems they experience with the Union producers, such as lack of capacity, lack of certain qualities and untimely deliveries. The users claimed that the existing measures (0 %-9,8 %) in conjunction with the regular import duty of 4 % benefit their competitors to import into the EU market downstream products at lower prices since their competitors do not need to pay duties for their raw materials (product concerned). They believe that this situation will lead to a further transfer of downstream operations to locations outside the EU and put at stake the future of allegedly 4 000 employees in their industry. The investigation found that the evidence supporting these claims and alleged risks could not support that these were recurrent and structural problems in respect of the Union industry.

(137) It should first be recalled that the cooperation from the users in this investigation was quite limited as compared to the cooperation in the original investigation (33 users cooperated at that time), and therefore the above problems are most likely not common to all the users operating on the Union market.

(138) As to the specific claims of the cooperating users, the investigation showed that the Union industry still has enough idle capacity (capacity utilisation during the review investigation period was 84 %) and offers a wide range of products and qualities. Furthermore, in addition to the five producers in the EU, there are many alternative suppliers from other third countries with competitive prices and wide range of products, including Chinese imports not subject to the anti-dumping duties. Given the relatively low anti-dumping duty level and the fact that a large portion of Chinese imports are not subject to measures also makes it unlikely the measures in force would be the determinant factor for the alleged relocation of the downstream industries. Finally, the evidence of untimely deliveries was negligible.

(139) With respect to the capacity utilisation of the Union industry during the review investigation period, one interested party claimed that a level of 84 % capacity utilisation represents close to full capacity and thus there was not enough available idle capacity.

(140) The investigation revealed that the average waste production of the Union industry was around 6 % of total production during the RIP, corresponding in that way to a theoretical maximum capacity utilisation of 94 %, which is a more reasonable estimation of full capacity utilisation than the 84 % mentioned in the claim. On the basis of the remaining idle capacity of at least 10 %, the claim was rejected.

(141) The same interested party claimed that the Union producers and the non-Chinese producers are incapable of satisfying the total demand and the size of single orders of the European user industry.

(142) It should be noted that the continuation of the measures does not change the existing underlying market conditions. The investigation did not reveal any fundamental changes in users' demands regarding order sizes or quality. Moreover, it is an established fact that the Union industry cannot fulfil market demand by itself and that imports are necessary in this respect. Furthermore, and more importantly, the objective of anti-dumping measures is to restore a level playing field and fair trade conditions amongst all parties concerned by removing the material injury caused by Chinese dumped imports. There is therefore no need for the Union Industry to be able to supply the Union market on its own. In the present case, there are imports from many different sources, and imports subject to measures also continued despite the existence of the measures. Continuation of the measures in their current form and at their current level therefore does not prohibit users of obtaining Chinese product. In this context, the provisions of the anti-dumping Regulation were respected and as a consequence the argument should be rejected.

(143) It was also claimed that the European producers have not taken advantage of the anti-dumping duties to increase their production capacity or modernise their equipment which made them incapable of maintaining their market share in a growing market and brought them in an extremely comfortable position without trying to be competitive.

(144) It should firstly be recalled, as mentioned above that the objective of anti-dumping measures is to remove injurious dumping, and there is no legal requirement that the Union industry should restructure or modernise.

(145) In any event, as already shown in recital 138 the Union industry was capable of increasing its sales as there was enough available idle capacity. In addition, the positive evolution of the profitability reveals that the production methods of the Union industry are still competitive in a market that is protected from dumping practices. Furthermore, the situation of the Union industry cannot be considered as extremely comfortable at all, as the investigation showed that the Union industry continued to suffer material injury during the period considered by losing market share and making losses. It is exactly the fragile situation of the Union industry caused at least partially by past dumping practices and the continued undercutting of its prices that prevented the Union industry from investing heavily in capacity expansion and more pronounced modernisation.

(146) Another claim regards the delocalisation of downstream industries due to the existence of the anti-dumping duties. The claim was supported by referring to an earlier submission and hearing in which the same allegation was made.

(147) It should be noted that the investigation found that the impact on the profitability of the sampled users was limited and thus cannot be considered the determinant for the delocalisation of the Union user industry. Furthermore, the continuation of the measures occurs at the same level as before. Finally, the submission accompanying the hearing does not enumerate any companies that have effectively delocalised.

(148) A claim regarding the economic hardship linked to the switching of suppliers of the product concerned due to the long period needed for the testing phase and the risk of losing clients in case of unstable quality and irregular deliveries was put forward by one importer.

(149) In this respect, it should be noted that a period of almost six years elapsed during which the measures were in force, and that this can be considered sufficient time for an importer to find alternative suppliers, even against the background of time-consuming testing.

4. **Conclusion on Union interest**

(150) Based on the above, the investigation concluded that the impact of the measures on the users and importers is not significant and thus there are not any obvious reasons for terminating the measures based on Union interest.

G. **ANTI-DUMPING MEASURES**

(151) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration.

(152) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of high tenacity yarns of polyester originating in China, imposed by Regulation (EU) No 1105/2010 should be maintained.

(153) In order to minimise the risk of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures, which apply to companies for which an individual duty rate is introduced, include the following: the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Article 1, paragraph 3 of this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti- dumping duty applicable to all other producers.

(154) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission [1]. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.

(155) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Company	Duty (%)	TARIC additional code
Zhejiang Guxiandao Industrial Fibre Co. Ltd	5,1	A974
Zhejiang Hailide New Material Co. Ltd	0	A976
Zhejiang Unifull Industrial Fibre Co. Ltd	5,5	A975
Companies listed in the Annex	5,3	A977
Hangzhou Huachun Chemical Fiber Co. Ltd	0	A989

[1] European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi/Wetstraat 170, 1040 Bruxelles/Brussel, BELGIQUE/BELGIË.

Company	Duty (%)	TARIC additional code
Oriental Industries (Suzhou) Ltd	9,8	A990
All other companies	9,8	A999

3. The application of the individual duty rate specified for the company mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of high tenacity yarn of polyesters sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

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

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, 24 February 2017.

For the Commission
The President
Jean-Claude JUNCKER

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 Co. Ltd	Shanghai
Wuxi Taiji Industry Co. Ltd	Wuxi
Zhejiang Kingsway High-Tech Fiber Co. Ltd	Haining City