COMMISSION IMPLEMENTING REGULATION (EU) 2019/1584

of 25 September 2019

initiating an investigation concerning possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 1343/2013 on imports of peroxosulphates (persulphates) originating in the People's Republic of China, and making such imports subject to registration

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 Articles 13(3) and 14(5) thereof,

After having informed the Member States,

Whereas:

A. **EX-OFFICIO INVESTIGATION**

(1) The European Commission ('the Commission') has decided on its own initiative, pursuant to Articles 13(3) and 14(5) the basic Regulation, to investigate the possible circumvention of the anti-dumping measures imposed on imports of peroxosulphates (persulphates) originating in the People's Republic of China and to make such imports subject to registration.

B. **PRODUCT**

(2) The product concerned by the possible circumvention is peroxosulphates (persulphates), including potassium peroxymonosulphate sulphate, currently falling under CN codes 2833 40 00 and ex 2842 90 80 (TARIC 2842 90 80 20), and originating in the People's Republic of China ('the product concerned').

(3) The product under investigation for possible circumvention is the same as that defined in the previous recital, currently falling under the same codes as the product concerned, imported under the TARIC additional code A820 ('the product under investigation').

C. **EXISTING MEASURES**

(4) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Council Implementing Regulation (EU) No 1343/2013 ([2]). An expiry review concerning these measures was initiated on 17 December 2018 and remains pending ([3]).

D. **GROUNDS**

(5) The present investigation of possible circumvention of existing measures is based on sufficient evidence that the anti-dumping measures in force are being circumvented by a reorganisation of patterns and channels of sales of the product concerned.

(6) The measures in force range from 24,5 % to 71,8 %. One of the exporting producers, ABC Chemicals Co. Ltd Shanghai ('ABC'), is subject to a 0 % duty. Import statistics show a change in the pattern of trade following the imposition of the definitive anti-dumping duty on the product concerned. Those statistics also show that Chinese imports are now mainly entering the Union via ABC. However, evidence in possession of the Commission shows that ABC is no longer producing the product concerned. In addition, it appears that the production license of ABC was withdrawn in July 2017, that no new license was issued, and that the company is categorised as a distribution enterprise, not as a manufacturer.

([1]) OJ L 176, 30.6.2016, p. 21.

([2]) Council Implementing Regulation (EU) No 1343/2013 of 12 December 2013 imposing a definitive anti-dumping duty on imports of peroxosulphates (persulphates) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 338, 17.12.2013, p. 11).

([3]) Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of peroxosulphates (persulphates) originating in the People's Republic of China (2018/C 454/06) (OJ C 454, 17.12.2018, p. 7).

(7) There seems to be no due cause or economic justification for this channelling of exports other than the existing 0 % duty for ABC.

(8) Furthermore, the Commission is in possession of sufficient evidence that the remedial effects of the existing anti-dumping measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of the product under investigation appear to have replaced imports of the product concerned. In addition, the Commission is in possession of sufficient evidence that imports of the product under investigation are made at prices below the non-injurious price established in the investigation that led to the existing measures.

(9) Finally, the Commission has obtained sufficient evidence that the prices of the product under investigation are dumped in relation to the normal value previously established.

(10) Should circumvention practices covered by Article 13 of the basic Regulation, other than the one mentioned above, be identified in the course of the investigation, the investigation may also cover these practices.

E. **PROCEDURE**

(11) In light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13(3) of the basic Regulation and to make imports of the products under investigation subject to registration, in accordance with Article 14(5) of the basic Regulation.

(12) The authorities of the People's Republic of China will be notified of the initiation of the investigation.

(a) **Time-limits**

(13) In the interest of sound administration, time-limits should be stated within which:

— parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— parties may make a written request to be heard by the Commission.

(14) Attention is drawn to the fact that the exercise of procedural rights set out in the basic Regulation depends on parties making themselves known within the time-limits laid down in Article 3 of this Regulation.

(b) **Questionnaires**

(15) In order to obtain information it deems necessary for its investigation, the Commission will send a questionnaire to ABC, which is invited to respond to that questionnaire within the time-limit set in Article 3(2) of this Regulation.

(c) **Collection of information and holding of hearings**

(16) Interested parties must make themselves known by contacting the Commission within the time-limit set in Article 3(1) of this Regulation.

(17) All parties, including the Union industry, importers, and any relevant association are invited to make their views known in writing and to provide supporting evidence provided that such submissions are made within the deadline provided for in Article 3(2). Furthermore, the Commission may hear parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

F. **REGISTRATION**

(18) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation shall be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied from the date on which registration of such imports was imposed.

(19) Future liability may emanate from the findings of this investigation. With the information available at this stage, in particular the indication that certain companies currently subject to the residual duty of 71,8 % (TARIC additional code A999) or companies subject to an individual duty rate are selling their products through ABC (which is subject to a 0 % duty), the amount of possible future liability is set at the level of the residual duty, namely 71,8 % *ad valorem* on the CIF import value of the product under investigation, imported under the TARIC additional code A820.

G. **NON-COOPERATION**

(20) If any interested party refuses access to or does not provide the necessary information within the time-limits, or significantly impedes the investigation, findings, affirmative or negative, may be made on the basis of facts available in accordance with Article 18 of the basic Regulation.

(21) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available in accordance with Article 18 of the basic Regulation.

(22) If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

H. **SCHEDULE OF THE INVESTIGATION**

(23) The investigation will be concluded, pursuant to Article 13(3) of the basic Regulation, within nine months of the date of entry into force of this Regulation.

I. **PROCESSING OF PERSONAL DATA**

(24) It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council ([4]) on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.

(25) A data protection notice that informs all individuals of the processing of personal data in the framework of Commission's trade defence activities is available on DG Trade's website: http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/

J. **HEARING OFFICER**

(26) Parties may request the intervention of the Hearing Officer in trade proceedings. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and any other request concerning the rights of defence of parties and third parties as may arise during the proceeding.

(27) The Hearing Officer may organise hearings and mediate between the party/-ies and Commissions services to ensure that the parties' rights of defence are being fully exercised.

(28) A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. The Hearing Officer will examine the reasons for the requests. These hearings should only take place if the issues have not been settled with the Commission services in the due course.

(29) Any request must be submitted in good time and expeditiously so as not to jeopardise the orderly conduct of proceedings. To that effect, parties should request the intervention of the Hearing Officer at the earliest possible time following the occurrence of the event justifying such intervention. In principle, the timeframes set out in Article 3 of this Regulation to request hearings with the Commission services apply *mutatis mutandis* to requests for hearings with the Hearing Officer. Where hearing requests are submitted outside the relevant timeframes, the Hearing Officer will also examine the reasons for such late requests, the nature of the issues raised and the impact of those issues on the rights of defence, having due regard to the interests of good administration and the timely completion of the investigation.

([4]) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

(30) For further information and contact details parties may consult the Hearing Officer's web pages on the Directorate-General for Trade's website: http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/,

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3), in order to determine if imports into the Union of peroxosulphates (persulphates), including potassium peroxymonosulphate sulphate, currently falling under CN codes 2833 40 00 and ex 2842 90 80 (TARIC code 2842 90 80 20), and originating in the People's Republic of China, imported under the TARIC additional code A820, are circumventing the measures imposed by Implementing Regulation (EU) No 1343/2013.

Article 2

(1) The customs authorities of the Member States shall, pursuant to Article 13(3) and Article 14(5) of the basic Regulation, take the appropriate steps to register the imports into the Union identified in Article 1 of this Regulation.

(2) Registration shall expire nine months following the date of entry into force of this Regulation.

Article 3

(1) Parties must make themselves known by contacting the Commission within 15 days from the date of entry into force of this Regulation.

(2) If their comments are to be taken into account during the investigation, parties must present their views in writing and submit any other information within 37 days from the date of publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

(3) Parties may also apply to be heard by the Commission within the same 37-day time-limit.

(4) Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Before submitting to the Commission information and/or data which is subject to third party copyrights, parties must request specific permission to the copyright holder explicitly allowing a) the Commission to use the information and data for the purpose of this trade defence proceeding and b) to provide the information and/or data to parties to this investigation in a form that allows them to exercise their right of defence.

(5) All written submissions, including the information requested in this Regulation, completed questionnaires and correspondence provided by parties for which confidential treatment is requested shall be labelled '*Limited*' ([5]). Parties submitting information in the course of this investigation are invited to reason their request for confidential treatment.

(6) Parties providing '*Limited*' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic Regulation, which will be labelled 'For inspection by interested parties'. Those summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence.

(7) If a party providing confidential information fails to show good cause for a confidential treatment request or does not furnish a non-confidential summary of it in the requested format and quality, the Commission may disregard such information unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.

(8) Interested parties are invited to make all submissions and requests via TRON.tdi (https://tron.trade.ec.europa.eu/tron/TDI), including scanned powers of attorney and certification sheets, with the exception of large replies, which shall be submitted on a CD-R or DVD by hand or by registered mail.

In order to have access to TRON.tdi, interested parties need an EU Login account. Full instructions on how to register and use TRON.tdi are available on https://webgate.ec.europa.eu/tron/resources/documents/gettingStarted.pdf.

([5]) A '*Limited*' document is a document which is considered confidential pursuant to Article 19 of Regulation (EU) 2016/1036 of the European Parliament and the Council (OJ L 176, 30.6.2016, p. 21) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

By using TRON.tdi or email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf. The interested parties must indicate their name, address, telephone and a valid email address and they should ensure that the provided email address is a functioning official business email which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by email, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: CHAR 04/039
1049 Brussels
BELGIUM
TRON.tdi: https://tron.trade.ec.europa.eu/tron/TDI
Email: TRADE-R707@ec.europa.eu

Article 4

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, 25 September 2019.

For the Commission
The President
Jean-Claude JUNCKER