Commission Implementing Regulation (EU) 2020/39 of 16 January 2020 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 (EU) 2016/1036 of the European Parliament and of the Council

COMMISSION IMPLEMENTING REGULATION (EU) 2020/39

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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:

1. PROCEDURE

1.1. Measures in force

(1) In October 2007, the Council imposed a definitive anti-dumping duty on imports of peroxosulphates originating in the People's Republic of China ('the PRC' or 'China') by Council Regulation (EC) No 1184/2007[(2)] ('the original measures'). Two companies were granted market economy treatment (MET), one of which received individual dumping duties of 24,5 %. The other company was found not to be dumping and excluded from measures. All other companies are subject to a duty rate of 71,8 %. In December 2013, the Council, following an expiry review, extended the anti-dumping measures by Council Implementing Regulation (EU) No 1343/2013[(3)] ('the measures in force').

1.2. Initiation of an expiry review

(2) Following the publication of a notice of impending expiry of the measure in force[(4)], RheinPerChemie GmbH and United Initiators GmbH ('the applicants'), representing 100 % of the total Union production of peroxosulphates, requested the initiation of an expiry review. They argued that the expiry of the measures would likely result in continuation or recurrence of dumping and injury to the Union industry.

(3) On 17 December 2018 the Commission announced, by a notice published in the *Official Journal of the European Union*[(5)] ('the Notice of Initiation'), the initiation of an expiry review of the measures in force pursuant to Article 11(2) of the basic Regulation.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/39. (See end of Document for details)*

(4) On 26 September 2019 the Commission initiated, on its own initiative, an investigation concerning the possible circumvention of the anti-dumping measures in force by the company ABC Chemicals (Shanghai) Co. Ltd, a company which was found not to be dumping in the original investigation, and made imports of the product under review by that company subject to registration[6]. The outcome of this expiry review investigation in no way prejudices the outcome of the anti-circumvention investigation.

1.3. **Investigation**

1.3.1. *Review investigation period and period considered*

(5) The investigation of a continuation or recurrence of dumping covered the period from 1 October 2017 to 30 September 2018 ('the review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2015 to the end of the review investigation period ('the period considered').

1.3.2. *Interested parties*

(6) In the Notice of Initiation, the Commission invited all interested parties to participate in the investigation. In particular, it contacted the applicants, the known exporting producers in the PRC, the known unrelated importers in the Union and the authorities of the PRC.

(7) All interested parties were invited to make their views known, submit information and provide supporting evidence within the time limits set out in the Notice of Initiation. Interested parties were also granted the opportunity to request a hearing with the Commission investigation services and/or the Hearing Officer in trade proceedings.

1.3.3. *Sampling*

(8) In the Notice of Initiation, the Commission stated that it might sample exporting producers in the PRC and unrelated importers in accordance with Article 17 of the basic Regulation. Only one exporting producer — United Initiators (Hefei) Co. Ltd and its parent company United Initiators (Shanghai) Co., Ltd, came forward and provided the required information. Therefore, it was not necessary to select a sample of exporting producers.

(9) Several importers made themselves known at initiation of the investigation but none of them were importing significant amounts of the product under review during the review investigation period. Therefore, the Commission did not sample the importers.

1.3.4. *Questionnaires and verification visits*

(10) The Commission made available the questionnaires for all exporters and sent the questionnaires to the Union producers and users. The Commission also sent a questionnaire to the government of the PRC ('GOC'). Replies were received from two Union producers and one exporting producer in the PRC.

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(11) The Commission verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:

(a) Chinese exporting producer:

— United Initiators (Hefei) Co., Ltd. and its related sales company United Initiators (Shanghai) Co., Ltd.

(b) Union producers:

— RheinPerChemie GmbH & Co. KG, Germany,

— United Initiators GmbH & Co. KG, Germany.

1.3.5. *Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation*

(12) In view of the sufficient evidence available in the request for review pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the review having regard to Article 2(6a) of the basic Regulation.

(13) Consequently, in order to collect the necessary data for the possible application of Article 2(6a) of the basic Regulation, the Commission invited in the Notice of Initiation all known producers in the PRC to provide the information requested in Annex III to the Notice regarding the inputs used for producing the product under review. The only producer that sent a sampling reply also submitted the information requested in Annex III.

(14) Moreover, in order to obtain information the Commission deemed necessary for its investigation with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, it also sent a questionnaire to the GOC. In that questionnaire, the GOC was invited to provide its views on the evidence contained in the applicants' request, on any other evidence on the file concerning the existence of significant distortions, including the evidence set out in the 'Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations' ('the Report')[7], as well as on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand. The Commission did not receive any reply from the GOC.

(15) The Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within a deadline provided for in the Notice of Initiation.

(16) In the Notice of Initiation the Commission also specified that, in view of the evidence available, it might need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.

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(17) On 15 January 2019, the Commission informed all interested parties by way of a first note to the file[8] ('the Note of 15 January') of the relevant sources that the Commission might use for the determination of the normal value, in accordance with Article 2(6a)(e) second paragraph of the basic Regulation. Based on the replies to Annex III to the Notice of Initiation, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of peroxosulphates. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified Turkey as the most appropriate representative country at that stage.

(18) The Commission gave the opportunity to all interested parties to comment. The Commission received comments from the applicants.

(19) The Commission addressed those comments in a second note[9] on the sources for the determination of the normal value, dated 6 May 2019 ('the Note of 6 May'). In the Note of 6 May, the Commission further specified the list of factors of production and reiterated the conclusion that Turkey was the most appropriate representative country under Article 2(6a)(a), first indent of the basic Regulation. The Commission invited interested parties to comment. No comments were received.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

(20) The product under review is peroxosulphates (persulphates), including potassium peroxymonosulphate sulphate, originating in the PRC, currently falling under CN codes 2833 40 00 and ex 2842 90 80 (TARIC code 2842908020) ('the product under review').

(21) Peroxosulphates are used as an initiator or as an oxidising agent in a number of processes. Some examples include their use as polymerisation initiator in the production of polymers, as an etching agent in the production of printed circuit boards, or as a bleaching agent in hair cosmetics.

2.2. Like product

(22) As established in the original investigation, peroxosulphates sold by the Union industry in the Union and peroxosulphates produced and sold on the domestic market of the PRC and peroxosulphates imported into the Union from the PRC share the same basic physical and chemical characteristics and the same end uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

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

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3.1. **Continuation of dumping of imports during the review investigation period**

3.1.1. *Normal value*

(24) According to Article 2(1) of the basic Regulation, '*the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting countr y'.*

(25) However, according to Article 2(6a)(a) of the basic Regulation, '*in case it is determined […] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmark s',* and '*shall include an undistorted and reasonable amount of administrative, selling and general costs and for profit s '* ('administrative, selling and general costs' is referred hereinafter as 'SG&A'). As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC and absence of any claims from the exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

3.1.2. *Existence of significant distortions*

3.1.2.1. Introduction

(26) Article 2(6a)(b) of the basic Regulation states the following. *Significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements*:

— *the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;*

— *state presence in firms allowing the state to interfere with respect to prices or costs;*

— *public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;*

— *the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;*

— *wage costs being distorted;*

— *access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state*.

(27) It follows that in assessing the existence of significant distortions pursuant to Article 2(6a)(b) of the basic Regulation, regard shall be had to the potential impact of one or more of these elements on prices and costs in the exporting country of the