Council Regulation (EC) No 1184/2007 of 9 October 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of peroxosulphates (persulphates) originating in the United States of America, the People's Republic of China and Taiwan

COUNCIL REGULATION (EC) No 1184/2007

of 9 October 2007

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of peroxosulphates (persulphates) originating in the United States of America, the People's Republic of China and Taiwan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 390/2007[(2)] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of peroxosulphates (persulphates), currently classifiable within CN codes 2833 40 00 and ex 2842 90 80, originating in the United States of America (USA), the People's Republic of China (PRC) and Taiwan.

(2) As set out in recital 12 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2005 to 30 June 2006 (IP). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2003 to the end of the IP (period considered).

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of provisional anti-dumping duties on imports of persulphates originating in the USA, the PRC and Taiwan, some interested Parties submitted comments in writing. The Parties who so requested were also granted the opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(4) All Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of persulphates originating in the USA, the PRC and Taiwan and the

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1184/2007. (See end of Document for details)*

definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

(5) The Commission intensified the investigation with regard to Community interest aspects and carried out analysis of data within the questionnaire reply provided by a user in the Community after the imposition of the provisional anti-dumping measures.

(6) One additional verification visit was carried out at the premises of the following company:

— Antec International Ltd, Sudbury, UK — user in the Community.

(7) The oral and written comments submitted by the Parties were considered and, where appropriate, the findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(8) It is recalled that as mentioned in recital 14 of the provisional Regulation the product concerned consists of the following four main product types: ammonium persulphate $(NH_4)_2S_2O_8$ (APS), sodium persulphate $(Na_2S_2O_8)$ (SPS/NPS), potassium persulphate $(K_2S_2O_8)$ (PPS/KPS) and potassium monopersulphate ($2KHSO_5 * KHSO_4 * K_2SO_4$) (KMPS).

(9) One exporting producer in the USA reiterated its claim to exclude KMPS from the scope of the investigation on the grounds that KMPS had different chemical characteristics and was used in applications which differed from those of the other three product types. This exporting producer claimed that the interchangeability of all product types was limited to some niche applications. Thus, only a very small quantity of its exports of KMPS to the Community would be used in typical applications of the three remaining product types. To support its claim, the exporting producer reiterated that KMPS was sold at constantly higher price levels which showed that it would be sold to types of customers for applications which differed from those of the remaining three product types.

(10) The same exporting producer also referred to Council Regulation (EC) No 2961/95[3] which imposed a definitive anti-dumping duty on imports of peroxodisulphates originating in the PRC. Since the product concerned by that investigation did not include KMPS, it was claimed that the provisional findings in the current investigation contradicted the findings in that prior investigation. In particular, the criteria listed in recital 7 of Regulation (EC) No 2961/95 to determine the product concerned would not apply to KMPS, which would show that it is a different product. This exporting producer referred further to an anti-dumping investigation conducted by the authorities of the USA covering persulphates but not KMPS[4].

(11) Subsequent to the provisional disclosure, the same exporting producer also claimed that KMPS was treated differently from the other types for transport purposes

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EC) No 1184/2007. (See end of Document for details)*

as well as in Directive 98/8/EC of the European Parliament and the Council of 16 February 1998 concerning the placing of biocidal products on the market[5] (the Biocide directive). This different treatment would indicate that they are different products.

(12) Finally, the abovementioned exporting producer argued that the only common criterion of KMPS and the other three product types was that they are 'strong oxidants', which is a broad definition applying to many other chemicals such as hydrogen peroxide and sodium hypochlorite which were also used as oxidising agents. Therefore, either KMPS should be excluded from the present product scope or other oxidising agents should be included.

(13) As far as the alleged differences in chemical characteristics are concerned, the abovementioned exporting producer did not bring forward any new information or evidence but mainly repeated the arguments it made prior to the imposition of provisional measures. It is underlined that recital 17 of the provisional Regulation recognises that each type, including KMPS, has a different chemical formula. However, it was also found that, despite these differences, all types have a common structure ($SO3\text{-}O_2$) and similar or comparable physical and chemical properties. Thus, all types have, for example, a comparable appearance (white, crystalline salt), a similar bulk density and comparable active oxygen content. All types were defined as salts of oxoacids of sulphur in the oxidation state number VI which measures the degree of oxidation of an atom in a substance. It was therefore concluded that all product types had similar chemical characteristics. None of the information put forward by the exporting producer concerned was such as to change these findings.

(14) The above characteristics were found to be unique to persulphates which differentiated them from other products. In particular, the investigation revealed that hydrogen peroxide is a colourless liquid with a chemical formula different from that of persulphates (H_2O_2). It does not contain any sulphur and its active oxidant content is around 10 times higher than the one of the product concerned. Hydrogen peroxide is moreover used in different applications to persulphates. Likewise, sodium hypochlorite has a chemical structure which is different from the product concerned (NA^+OCl^-) and does not contain any oxygen/oxygen bond or any sulphur. NA^+OCl^- is a solid compound, but usually commercially available as an aqueous solution. Since it has no active oxygen content at all, it is used in chlorine-based bleaching. It was therefore concluded that the aforementioned products had different properties and applications and were not comparable to persulphates. The argument that the product definition was too broad was therefore rejected.

(15) Regarding the claim that KMPS had end uses that differed significantly from those of the remaining three product types, the arguments brought forward before the imposition of provisional measures were mainly repeated. The exporting producer claimed in particular that KMPS would be largely used in the cleaning and disinfection of swimming pools, whereas other persulphates could allegedly not be used because they were skin-irritant. It was found, however, that not only KMPS but also other persulphate types were allowed by the relevant European standard to be used in the treatment of water intended for human consumption[6]. It was also found that whether

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1184/2007. (See end of Document for details)*

or not they were a skin irritant, other persulphate types were indeed used in cleaning and disinfection applications. This argument had therefore to be rejected.

(16) The abovementioned exporting producer claimed further that KMPS cannot be used in polymerisation processes which are the main field of application of the other persulphate types. However, the investigation revealed that KMPS could be used in polymerisation processes and consequently this argument had also to be rejected. Finally, as mentioned in recital 17 of the provisional Regulation, despite partly distinct end uses, a number of overlapping applications existed such as metal treatment (micro-etching and pickling) and repulping of wet-strength paper. It was therefore concluded that all product types had largely overlapping applications with no clear dividing lines.

(17) As mentioned in recital 9, the exporting producer concerned argued that, while there was a certain overlap in applications, this did not concern a substantial part of its export sales and should therefore be considered as insignificant. In this regard, it should be noted that the precise consumption of each product type in a specific application during the IP could not be determined because of the low co-operation of the users concerned and the unavailability of appropriate data for such determination. The exporting producer concerned did not submit conclusive evidence in this respect, but only unsupported estimates. Furthermore, only two users cooperated in the present investigation, representing only a small part of total consumption (7 %). In any event, the exact extent to which a specific product type was used in a specific application during a specific time period was considered irrelevant. Indeed, whether a certain product type can be used in a specific application has to be determined on the basis of the physical, technical and chemical characteristics. Users may use a certain product type at a certain time but may also be able to switch easily from one product type to the other for one and the same application. This argument had therefore to be rejected.

(18) As regards the different price levels of the different product types, it is already set out in recital 17 of the provisional Regulation that it is considered that price differences between product types *per se* do not justify the conclusion that a certain product type should be considered as a different product. While it is true that sales prices of KMPS are higher than the ones of other types of persulphates, there are also price differences between the remaining three product types. It should be noted that these differences can be seen in all producing countries, including the Community. The different price levels are mainly explained by the limited number of producers of KMPS worldwide (in the Community, the USA and, to a certain extent, the PRC) and are not necessarily reflected in the cost of production. Consequently and given the above findings that no clear dividing lines existed between different applications of the different product types, this claim had also to be rejected.

(19) As far as the different treatment of KMPS and the other three product types with regard to packing for transport and under the Biocide Directive is concerned, it should be noted that these were new arguments provided after the imposition of the provisional measures and therefore outside the required deadlines. In any event, the investigation has shown that packing standards for all types were basically the same, albeit under different classifications. It was also considered that packing standards

as such were not a decisive criterion in determining whether different product types were one single product. As described above, the main criteria to define the product concerned in an anti-dumping investigation are their basic chemical, technical and physical characteristics and end uses.

(20) As far as the Biocide Directive is concerned, it is noted that the different treatment lies in the fact that the Community industry initiated the registration procedures required under this Directive for KMPS but not for the other three product types. Registration procedures had not been started for these other types due to considerations unrelated to their chemical characteristics and end uses, as claimed by the exporting producer concerned. Thus, while for the product type KMPS registration costs were shared between the two main producers of this product type (one in the Community and the other one in the USA), registration procedures were considered very costly and time-consuming, and could be more efficiently handled in terms of cost and time in the wider context the new European Chemicals Regulation (REACH) which entered into force on 1 June 2007[7]. The different treatment under the Biocide Directive can therefore not be considered as an indication that the product types were different on the basis of their chemical properties and/or applications. It was therefore considered irrelevant in the definition of the product concerned and the exporting producer's claim in this regard was rejected.

(21) As far as the findings with regard to the product concerned in the investigations mentioned in recital 10 are concerned, it should be noted that in none of these investigations was KMPS expressively excluded, i.e. there are no findings which would have established that KMPS and the other three product types had different chemical characteristics and end uses and should therefore not be considered as one single product. KMPS was not included in the above complaints (or petitions as applicable) either because it was not exported during the IP of that investigation (Community) or because the domestic complaining industry (USA) did not produce KMPS at that time.

(22) It is in particular noted that the criteria listed in recital 7 of Regulation (EC) No 2961/95 (imposing definitive measures on imports of peroxodisulphates from the PRC) did not aim at differentiating between KMPS on the one hand and the three other product types on the other hand, but rather at defining the main characteristics shared by the three types which formed the product concerned in that investigation. They are therefore tailored to the three product types concerned and not exhaustive. The main findings, however, also apply to KMPS, i.e. that the essential characteristics (persulphate anion) and end uses (initiator and oxidising agent) are the same, that they are interchangeable to a certain extent and that price differences are considered irrelevant. As for the last criterion, the importance in the production process of the downstream industry, the exporting producer claimed that KMPS constituted a high percentage of its users' production costs. In this respect, it was established during the investigation (recitals 112 to 120 below) that although KMPS constitutes a higher proportion of the cost, the impact on the users' profitability is negligible. In any event, it was considered that this should not prevent the Community institutions from considering KMPS as