Commission Regulation (EC) No 1289/2005 of 4 August 2005 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 408/2002 on imports of certain zinc oxides originating in the People's Republic of China by imports of certain zinc oxides consigned from Kazakhstan, whether declared as originating in Kazakhstan or not, and making such imports subject to registration

COMMISSION REGULATION (EC) No 1289/2005

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community (the basic Regulation)[1] and in particular Articles 13(3), 14(3) and 14(5) thereof,

After having consulted the Advisory Committee,

Whereas:

A. REQUEST

(1) The Commission has received a request pursuant to Article 13(3) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of certain zinc oxides originating in the People's Republic of China.

(2) The request has been lodged on 27 June 2005 by Eurometaux on behalf of producers representing more than 45 % of the Community production of certain zinc oxides.

B. PRODUCT

(3) The product concerned by the possible circumvention is zinc oxide (chemical formula ZnO) with a purity of not less than 93 % zinc oxide originating in the People's Republic of China, normally declared under CN code 2817 00 00 (the product concerned). This code is given for information only.

(4) The product under investigation is zinc oxide (chemical formula ZnO) with a purity of not less than 93 % zinc oxide consigned from Kazakhstan (the product under investigation) normally declared under the same codes as the product concerned.

C. EXISTING MEASURES

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 1289/2005. (See end of Document for details)*

(5) The measures currently in force and possibly being circumvented are antidumping measures imposed by Council Regulation (EC) No 408/2002[(2)], as last amended by Regulation (EC) No 1623/2003[(3)].

D. GROUNDS

(6) The request contains sufficient *prima facie* evidence, that the anti-dumping measures on imports of certain zinc oxides originating in the People's Republic of China are being circumvented by means of transhipment via Kazakhstan of certain zinc oxides.

(7) The evidence submitted is as follows:

The request shows that a significant change in the pattern of trade involving exports from the People's Republic of China and Kazakhstan to the Community has taken place following the imposition of measures on the product concerned, and that there is insufficient due cause or justification other than the imposition of the duty for such a change. This change in the pattern of trade appears to stem from the transhipment of certain zinc oxides originating in the People's Republic of China via Kazakhstan.

Furthermore, the request contains sufficient *prima facie* evidence that the remedial effects of the existing anti-dumping measures on imports of the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of certain zinc oxides from Kazakhstan appear to have replaced imports of the product concerned.

Finally, the request contains sufficient *prima facie* evidence that the prices of certain zinc oxides are dumped in relation to the normal value previously established for certain zinc oxides.

Should circumvention practices via Kazakhstan covered by Article 13 of the basic Regulation, other than transhipment, be identified in the course of the investigation, the investigation may cover these practices also.

E. PROCEDURE

(8) In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13 of the basic Regulation and to make imports of certain zinc oxides consigned from Kazakhstan, whether declared as originating in Kazakhstan or not, subject to registration, in accordance with Article 14(5) of the basic Regulation.

a) Questionnaires

(9) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the exporters/producers and to the associations of exporters/producers in Kazakhstan, the exporters/producers and to the associations of exporters/producers in the People's Republic of China, to the importers and to the associations of importers in the Community which co-operated in the investigation that led to the existing measures and to the authorities of the People's Republic of China

and Kazakhstan Information, as appropriate, may also be sought from the Community industry.

(10) In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 in order to request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

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

b) Collection of information and holding of hearings

(12) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

c) Exemption of registration of imports or measures

(13) Since the possible circumvention takes place outside the Community, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers of the product concerned that can show that they are not related to any producer subject to the measures and that are found not to be engaged in circumvention practices as defined in Articles 13(1) and 13(2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

(14) In consideration of the fact that an exemption may only be granted to companies which can be treated individually, producers wishing to obtain an exemption should demonstrate that they meet the criteria for individual treatment indicated in Article 9(5) of the basic Regulation. For this purpose, duly substantiated claims should be submitted on the basis of claim forms provided by the Commission, and within the specific time limit indicated in Article 3(3) of this Regulation.

(15) As stated above, should circumvention practices via Kazakhstan covered by Article 13 of the basic Regulation, other than transhipment, be identified in the course of the investigation, the investigation may cover these practices also. Insofar as assembly practices may be identified, it would be necessary, in making an examination of the assembly operation in accordance with the provisions of Article 13(2) of the basic Regulation, to determine whether the company claiming the exemption operates under market economy conditions i.e. that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation. For this purpose, duly substantiated claims should be submitted on the basis of claim forms provided by the Commission, and within the specific time limit indicated in Article 3(3) of this Regulation.

F. REGISTRATION

(16) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation should 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 retroactively from the date of registration of certain zinc oxides consigned from Kazakhstan.

G. TIME LIMITS

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

— interested 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,

— producers in Kazakhstan may request exemption from registration of imports or measures, and submit duly substantiated claim forms for (i) individual treatment pursuant to Article 9(5) of the basic Regulation and (ii) demonstrating that the company operates under market economy conditions, i.e. that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation. The latter claim form is only required to be submitted by companies involved in assembly operations,

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

(18) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits mentioned in Article 3 of this Regulation.

H. NON-COOPERATION

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

(20) 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. If an interested party does not cooperate or cooperates only partially and findings are therefore based on 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,

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3) of Regulation (EC) No 384/96, in order to determine if imports into the Community of certain zinc oxide (chemical formula: ZnO) with a purity of not less than 93 % zinc oxide, falling within CN code 2817 00 00 (TARIC code 2817 00 00 13) consigned from Kazakhstan whether declared as originating in Kazakhstan or not, are circumventing the measures imposed by Regulation (EC) No 408/2002.