

Commission Implementing Regulation (EU) 2020/477 of 31 March 2020 amending Commission Implementing Regulation (EU) 2020/39 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) 2020/477

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

Whereas:

1. **PROCEDURE**

1.1. **Existing measures**

- (1) On 11 October 2007, the Council imposed, by Council Regulation (EC) No 1184/2007⁽²⁾, a definitive anti-dumping duty on imports of peroxosulphates originating, inter alia, in the People's Republic of China ('the original measures'). Two companies were granted market economy treatment (MET). One received an individual anti-dumping duty rate of 24,5 %. The other company, ABC Chemicals (Shanghai) Co., Ltd. (hereafter referred to as 'ABC Shanghai'), was found not to be dumping and therefore received an individual anti-dumping duty rate of 0 %. All other companies are subject to an anti-dumping duty rate of 71,8 %. The investigation that led to the original measures will be hereinafter referred to as 'the original investigation'.
- (2) On 17 December 2013, the Council, following an expiry review, extended the anti-dumping measures against imports from the People's Republic of China ('the PRC') by Council Regulation (EU) No 1343/2013 ('the extended measures')⁽³⁾.
- (3) On 17 December 2018, following the publication of a notice of impending expiry of the measure in force⁽⁴⁾, the Commission announced, by a notice published in the *Official Journal of the European Union*⁽⁵⁾ ('the Notice of Initiation'), the initiation of a second expiry review of the measures pursuant to Article 11(2) of the basic Regulation.
- (4) On 17 January 2020, following its second expiry review, the Commission maintained the original measures by Commission Implementing Regulation (EU)

2020/39⁽⁶⁾. These measures will hereinafter be referred to as ‘the measures currently in force’.

1.2. ***Ex-officio* initiation**

- (5) In the first half of 2019, the Commission analysed available evidence on the patterns and channels of sales of peroxosulphates since the imposition of the original measures. Import statistics showed a change in the pattern of trade following the imposition of the definitive anti-dumping duty on the product concerned. Those statistics also showed that Chinese imports are now mainly entering the Union under the TARIC additional code for products manufactured by ABC Shanghai, and are not subject to anti-dumping duties. However, evidence in the possession of the Commission showed that ABC Shanghai was no longer producing peroxosulphates, so the change in the pattern of trade seemed to be due to channelling of exports. There seemed to be no due cause or economic justification for this channelling of exports other than the existing 0 % duty for ABC Shanghai.
- (6) Furthermore, the Commission had sufficient evidence that the remedial effects of the existing anti-dumping measures on peroxosulphates were being undermined both in terms of quantities and prices.
- (7) Finally, the Commission had sufficient evidence that the prices of exports of peroxosulphates by ABC Shanghai were currently dumped in relation to the normal value previously established.
- (8) The Commission therefore decided, after having informed the Member States, to initiate, on its own initiative, an investigation pursuant to Article 13 of the basic Regulation concerning the possible circumvention of the anti-dumping measures currently in force by the company ABC Shanghai and to make imports of peroxosulphates from ABC Shanghai subject to registration. The initiation of the investigation was announced by the publication of an Implementing Regulation in the *Official Journal of the European Union* on 26 September 2019 (‘the Initiating Regulation’)⁽⁷⁾.

1.3. **Investigation**

- (9) The Commission informed the authorities of the People’s Republic of China (‘PRC’), the company ABC Shanghai and the Union industry about the initiation of the investigation. Interested parties were given the opportunity to make their views known in writing, as well as to request a hearing.
- (10) In addition, the Commission specifically requested ABC Shanghai to inform the Commission whether it wished to cooperate in the proceeding and fill in a questionnaire. On 8 October 2019, ABC Shanghai confirmed that it would cooperate with the Commission in order to prove that its practice and pattern of sales are economically and legally justified. Consequently, on 9 October 2019, a questionnaire was sent to it.

- (11) On 19 November 2019, the Commission received questionnaire replies from ABC Shanghai and its two related companies, i.e. Siancity Xiamen Co., Ltd ('Siancity') and Fujian Hongguan Chemical Corp ('Hongguan').
- (12) On 28 January 2020, the Commission informed all interested parties of the essential facts and considerations based on which it intended to make ABC Shanghai subject to the residual duty rate of 71,8 %. All parties were granted a period within which they could make comments on the disclosure.
- (13) On 12 February 2020, ABC Shanghai commented on the Commission's disclosure. These comments were analysed and taken into account where appropriate. No other interested party submitted comments on the Commission's disclosure.

1.4. **Reporting period and investigation period**

- (14) The investigation period covered the period from 1 January 2016 to 30 June 2019 (the 'IP'). For the IP data were collected to investigate, inter alia, the alleged change in the pattern of trade and the practice, process or work behind it. For the period from 1 July 2018 to 30 June 2019 (the reporting period or 'the RP'), more detailed data were requested in order to examine the possible undermining of the remedial effects of the measures in force and the existence of dumping.

2. **RESULTS OF THE INVESTIGATION**

2.1. **General considerations**

- (15) The Commission analysed, pursuant to Article 13(1) of the basic Regulation, (i) whether there was a change in the pattern of trade with respect to individual exporting producers in the PRC, (ii) whether this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty, (iii) whether there was evidence of injury or that the remedial effects of the duty were being undermined in terms of prices and/or quantities of the product under investigation, and (iv) whether there was evidence of dumping in relation to the normal values previously established for the like product.

2.2. **Product concerned and product under investigation**

- (16) The product concerned is 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 PRC ('the product concerned').
- (17) 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.
- (18) The product under investigation during this proceeding is the same as that defined in recital (16), currently falling under the same codes as the product

concerned and imported under the TARIC additional code A820 ('the product under investigation').

2.3. Detailed findings of the investigation

2.3.1. Information received from national customs authorities

(19) On 14 June 2019, the German customs authorities informed the Commission that the invoices of Siancity, a trader related to ABC Shanghai, systematically included a declaration certifying that the imported peroxosulphates had been produced by the company ABC Shanghai, and therefore the consignments were cleared for free circulation in Germany under the TARIC additional code A820.⁽⁸⁾

(20) On 2 September 2019, the French customs authorities informed the Commission that they had received an invoice dated 3 June 2019 from Siancity, including a declaration certifying that the imported peroxosulphates had been produced by the company ABC Shanghai.

2.3.2. The questionnaire reply from ABC Shanghai and its related companies Siancity and Hongguan

(21) As mentioned in recital (11), on 19 November 2019, the Commission received questionnaire replies from ABC Shanghai and its two related companies, i.e. Siancity and Hongguan (hereafter 'ABC Group' and/or 'ABC Shanghai and its related companies'). The ABC Group also submitted, on the same day, a more detailed explanatory note, with some detailed preliminary comments on the initiation of this anti-circumvention proceeding.

(22) The main elements of the statements in these documents can be summarised as follows:

- Before and in 2017, ABC Shanghai, which is located in Shanghai, was producing the product concerned.
- In February 2017, one of the shareholders of ABC Shanghai acquired 20 % shareholding in Hongguan by contributing both cash and ABC Shanghai's production facilities. Hongguan is located in Fujian province, about 900 km from Shanghai. Since then, ABC Shanghai and Hongguan are related companies. The latter had been set up in November 2009 and was restructured into a joint stock company in December 2016.
- Due to a series of enactments and modifications of the environmental protection laws, including an enactment to relocate dangerous chemical enterprises located in urban and residential areas, the controlling shareholder of ABC Shanghai was compelled to cease the production at its premises in Shanghai. It relocated the production to its related company Hongguan in Fujian province. ABC Shanghai ceased 'officially' its production on 31 December 2017 and became a trading company from 1 January 2018 onwards.
- ABC Shanghai moved all its production facilities from its premises in Shanghai to the premises of its related company Hongguan in 2018⁽⁹⁾. Since 2018⁽¹⁰⁾, Hongguan produced and sold its peroxosulphates to ABC Shanghai,

Changes to legislation: There are currently no known outstanding effects for the
Commission Implementing Regulation (EU) 2020/477. (See end of Document for details)

which in its turn is selling to its customers, including its related company Siancity, which is exporting the product under investigation to the Union market.

— ABC Shanghai's decision and action were allegedly not meant to evade the measures in force.

2.3.3. *Analysis of the submitted documents by ABC Shanghai and its related companies*

(23) ABC Shanghai was the legal entity specifically identified as an exporting producer in all regulations imposing anti-dumping duties on peroxosulphates originating in the PRC. It is subject to an anti-dumping duty rate of 0 %, applicable to imports under company-specific TARIC additional code A820⁽¹¹⁾.

(24) Furthermore, the original investigation as well as the two expiry review Regulations, referred to in recitals (1), (2) and (4) provided that the application of any individual duty rate – including the 0 % duty rate of ABC Shanghai – would be conditional upon the presentation of a valid commercial invoice, bearing a declaration that the product concerned was manufactured by (company name and address) (TARIC additional code).

(25) Following the initiation of the present anti-circumvention investigation, ABC Shanghai informed the Commission, for the first time, on 19 November 2019, that it did not itself manufacture anymore the product under investigation since it ceased its production at the end of 2017. Nevertheless, as mentioned below in recital (39) and on the basis of the statements referred to in recital (40) below, ABC Shanghai still exported at least more than 85 % of the total Chinese import volumes of the product under investigation in 2018 and the RP respectively.

(26) Moreover, as part of its questionnaire reply, Siancity submitted on 19 November 2019 three invoices issued in 2018 to Union importers. These three invoices bear a declaration that the legal entity ABC Shanghai with the TARIC additional code A820, subject to 0 % duty rate, was the manufacturer of the product under investigation covered by the invoice, i.e. peroxosulphates.

(27) The declarations on these three invoices, which led to the application of the 0 % anti-dumping duty rate, were incorrect. As mentioned in recital (22), ABC Shanghai 'officially' ceased its production at the end of 2017. It was, therefore, not the manufacturer of the peroxosulphates covered by the three invoices. Those imports should have been declared under the TARIC additional code for 'all other companies' and should have been subject to an anti-dumping duty rate of 71,8 %, that is, the anti-dumping duty rate applicable to all other companies not specifically having an individual anti-dumping duty rate.

(28) Based on the above, the Commission concluded that ABC Shanghai and its related companies intentionally concealed the fact that the legal entity ABC Shanghai was not anymore manufacturing the product under investigation as from 2018, as well as the other significant changes in its group structure, to continue to be able to