Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain manganese dioxides originating in South Africa

(2013/C 72/06)

Following the publication of a notice of impending expiry (1) of the anti-dumping measures in force on imports of certain manganese dioxides originating in South Africa, the European Commission (‘the Commission’) has received a request for review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (2) (‘the basic Regulation’).

1. Request for review

The request was lodged on 11 December 2012 by Cegasa Internacional SA and Tosoh Hellas A.I.C. (‘the applicants’), the only Union producers of certain manganese dioxides.

2. Product under review

The product subject to this review is electrolytic manganese dioxides (i.e. manganese dioxides produced through an electrolytic process) not heat-treated after the electrolytic process (‘the product under review’), currently falling within CN code ex 2820 10 00.

3. Existing measures

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 221/2008 (3).

4. Grounds for the review

4.1. Grounds for the expiry review

The request is based on the grounds that the expiry of the measures would be likely to result in recurrence of dumping and recurrence of injury to the Union industry.

4.1.1. Allegation of likelihood of recurrence of dumping

In the absence of reliable data on domestic prices for South Africa (‘the country concerned’), the allegation of likelihood of recurrence of dumping is based on a comparison of a constructed normal value (manufacturing costs, selling, general and administrative costs (SG & A) and profit) in South Africa with the export price (at ex-works level) of the product under review when sold for export to other third countries, in view of the current absence of significant import volumes from South Africa to the Union.

The applicants allege that the removal of injury has been mainly due to the existence of measures and that any recurrence of substantial imports at dumped prices from the country concerned would likely lead to a recurrence of injury to the Union industry should measures be allowed to lapse.

On the basis of the above comparison, which shows dumping, the applicants allege that there is a likelihood of recurrence of dumping from the country concerned.

4.1.2. Allegation of likelihood of recurrence of injury

The applicants allege the likelihood of recurrence of injury. They have provided prima facie evidence that shows that, should measures be allowed to lapse, the current import level of the product under review from the country concerned to the Union is likely to increase due to the existence of unused capacity of the manufacturing facilities of the exporting producers in South Africa.

Following the publication of a notice of impending expiry (1) of the anti-dumping measures in force on imports of certain manganese dioxides originating in South Africa, the European Commission (‘the Commission’) has received a request for review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (2) (‘the basic Regulation’).
5. Procedure

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of an expiry review, the Commission hereby initiates a review in accordance with Article 11(2) of the basic Regulation.

The expiry review will determine whether the expiry of the measures would be likely to lead to a continuation or recurrence of dumping of the product under review originating in the country concerned and a continuation or recurrence of injury to the Union industry.

5.1. Procedure for the determination of a likelihood of recurrence or continuation of dumping

Exporting producers (1) of the product under review from the country concerned, including those that did not cooperate in the investigation leading to the measures in force, are invited to participate in the Commission investigation.

5.1.1. Investigating exporting producers

All exporting producers and associations of exporting producers in South Africa are invited to contact the Commission, preferably by e-mail, immediately but no later than 15 days after the publication of this notice in the Official Journal of the European Union, unless otherwise specified, in order to make themselves known and request a questionnaire.

In order to obtain the information it deems necessary for its investigation with regard to exporting producers, the Commission will send questionnaires to the known exporting producers in South Africa, to any known association of exporting producers, and to the authorities of that country.

The exporting producers must submit the completed questionnaire within 37 days of the date of publication of this notice in the Official Journal of the European Union, unless otherwise specified.

The questionnaire will request information on, inter alia, the structure of the exporting producer’s company(ies), the activities of the company(ies) in relation to the product under review, the cost of production, the sales of the product under review on the domestic market of the country concerned and the sales of the product under review to the Union.

5.1.2. Investigating unrelated importers (2) (3)

Unrelated importers of the product under review from South Africa to the Union are invited to participate in this investigation.

In view of the potentially large number of unrelated importers involved in this expiry review and in order to complete the investigation within the statutory time limits, the Commission may limit to a reasonable number the unrelated importers that will be investigated by selecting a sample (this process is also referred to as ‘sampling’). The sampling will be carried out in accordance with Article 17 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all unrelated importers, or representatives acting on their behalf, including the ones who did not cooperate in the investigation leading to the measures subject to the present review, are hereby requested to make themselves known to the Commission. These parties must do so within 15 days of the date of publication of this notice in the Official Journal of the European Union, unless otherwise specified, by providing the Commission with the information on their company(ies) requested in Annex to this notice.

In order to obtain information it deems necessary for the selection of the sample of unrelated importers, the Commission may also contact any known associations of importers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this notice in the Official Journal of the European Union, unless otherwise specified.

(1) Only importers not related to exporting producers can be sampled. Importers that are related to exporting producers have to fill in Annex I to the questionnaire for these exporting producers. In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife; (ii) parent and child; (iii) brother and sister (whether by whole or half blood); (iv) grandparent and grandchild; (v) uncle or aunt and nephew or niece; (vi) parent-in-law and son-in-law or daughter-in-law; (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context, ‘person’ means any natural or legal person.

(2) An exporting producer is any company in the country concerned which produces and exports the product under review to the Union market, either directly or via a third party, including any of its related companies involved in the production, domestic sales or exports of the product under review.
If a sample is necessary, the importers may be selected based on the largest representative volume of sales of the product under review in the Union which can reasonably be investigated within the time available. All known unrelated importers and associations of importers will be notified by the Commission of the companies selected to be in the sample.

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled unrelated importers and to any known association of importers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified.

The questionnaire will request information on, inter alia, the sales of the product under review.

5.2. Procedure for the determination of a likelihood of recurrence or continuation of injury

In order to establish whether there is a likelihood of a recurrence of injury to the Union industry, Union producers and importers of the product under review are invited to participate in the Commission investigation.

5.2.1. Investigating Union producers

In order to obtain the information it deems necessary for its investigation with regard to Union producers, the Commission will send questionnaires to known Union producers and to any known association of Union producers, namely to:

Cegasa Internacional SA;
Tosoh Hellas A.I.C.

The aforementioned Union producers and the associations of Union producers must submit the completed questionnaire within 37 days of the date of publication of this notice in the Official Journal of the European Union, unless otherwise specified.

The questionnaire will request information on, inter alia, the structure of their company(ies), the activities of the company(ies) in relation to the product under review and the sales of the product under review.

Any Union producer and association of Union producers not listed above is invited to contact the Commission, preferably by e-mail, immediately but no later than 15 days after the publication of this notice in the Official Journal of the European Union, unless otherwise specified, in order to make itself known and request a questionnaire.

5.3. Procedure for the assessment of Union interest

Should the likelihood of continuation or recurrence of dumping and injury be confirmed, a decision will be reached, pursuant to Article 21 of the basic Regulation, as to whether maintaining the anti-dumping measures would not be against the Union interest. Union producers, importers and their representative associations, users and their representative associations, and representative consumer organisations are invited to make themselves known within 15 days of the date of publication of this notice in the Official Journal of the European Union, unless otherwise specified. In order to participate in the investigation, the representative consumer organisations have to demonstrate, within the same deadline, that there is an objective link between their activities and the product under review.

Parties that make themselves known within the above deadline may provide the Commission with information on the Union interest within 37 days of the date of publication of this notice in the Official Journal of the European Union, unless otherwise specified. This information may be provided either in a free format or by completing a questionnaire prepared by the Commission. In any case, information submitted pursuant to Article 21 will only be taken into account if supported by factual evidence at the time of submission.

5.4. Other written submissions

Subject to the provisions of this notice, all interested parties are hereby invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence must reach the Commission within 37 days of the date of publication of this notice in the Official Journal of the European Union.

5.5. Possibility to be heard by the Commission investigation services

All interested parties may request to be heard by the Commission investigation services. Any request to be heard must be made in writing and must specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation, the request must be submitted within 15 days of the date of publication of this notice in the Official Journal of the European Union. Thereafter, a request to be heard must be submitted within the specific deadlines set by the Commission in its communication with the parties.

5.6. Instructions for making written submissions and sending completed questionnaires and correspondence

All written submissions, including the information requested in this notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' (1).

Interested 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'. These summaries must be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such information may be disregarded.

Interested parties are required to make all submissions and requests in electronic format (non-confidential submissions via e-mail, confidential ones on CD-R/DVD), and must indicate their name, address, e-mail address, telephone and fax numbers. However, any powers of attorney, signed certifications, and any updates thereof, accompanying questionnaire replies must be submitted on paper, i.e. by post or by hand, at the address below. If an interested party cannot provide its submissions and requests in electronic format, it must immediately contact the Commission in compliance with Article 18(2) of the basic Regulation. For further information concerning correspondence with the Commission, interested parties may consult the relevant web page on the website of the Directorate-General for Trade: http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: N105 08/020
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax +32 22993704
E-mail: TRADE-AD-EMD@ec.europa.eu

6. Non-cooperation

In cases where 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.

Where it is found that any interested party has supplied false or misleading information, the information may 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.

7. Hearing Officer

Interested parties may request the intervention of the Hearing Officer for the Directorate-General for Trade. The Hearing Officer acts as an interface between the interested parties and the Commission’s investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation, the request must be submitted within 15 days of the date of publication of this notice in the Official Journal of the European Union. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.

The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered on issues pertaining, among other things, to the likelihood of a recurrence of dumping and injury.

For further information and contact details interested parties may consult the Hearing Officer's web pages on DG Trade's website: http://ec.europa.eu/trade/tackling-unfair-trade/hearing-officer/index_en.htm

8. Schedule of the investigation

The investigation will be concluded, pursuant to Article 11(5) of the basic Regulation, within 15 months of the date of the publication of this notice in the Official Journal of the European Union.

9. Possibility to request a review under Article 11(3) of the basic Regulation

As this expiry review is initiated under Article 11(2) of the basic Regulation, the findings thereof will not lead to the level of the existing measures being amended but will lead to those measures being repealed or maintained in accordance with Article 11(6) of the basic Regulation.

If any interested party considers that a review of the level of the measures is warranted so as to allow for the possibility to amend (i.e. increase or decrease) the level of the measures, that party may request a review pursuant to Article 11(3) of the basic Regulation.

Parties wishing to request such a review, which would be carried out independently of the expiry review mentioned in this notice, may contact the Commission at the address given above.
10. Processing of personal data

Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (\(^1\)).

\(^1\) OJ L 8, 12.1.2001, p. 1.
ANNEX

☐ 'Limited' version (1)
☐ Version 'For inspection by interested parties'
(tick the appropriate box)

EXPIRY REVIEW INVESTIGATION OF THE ANTI-DUMPING MEASURES CONCERNING IMPORTS OF CERTAIN MANGANESE DIOXIDES ORIGINATING IN SOUTH AFRICA

INFORMATION FOR THE SELECTION OF THE SAMPLE OF UNRELATED IMPORTERS

This form is designed to assist unrelated importers in responding to the request for sampling information made in point 5.1.3 of the notice of initiation.

Both the 'Limited' version and the version 'For inspection by interested parties' should be returned to the Commission as set out in the notice of initiation.

1. IDENTIFY AND CONTACT DETAILS

Supply the following details about your company:

<table>
<thead>
<tr>
<th>Company name</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td></td>
</tr>
<tr>
<td>Contact person</td>
<td></td>
</tr>
<tr>
<td>E-mail address</td>
<td></td>
</tr>
<tr>
<td>Telephone</td>
<td></td>
</tr>
<tr>
<td>Fax</td>
<td></td>
</tr>
</tbody>
</table>

2. TURNOVER AND SALES VOLUME

Indicate the total turnover in euros (EUR) of the company, and the turnover and weight in metric tonnes for imports into the Union (2) and resales on the Union market after importation from South Africa, during the period 1 January 2012 to 31 December 2012, of certain manganese dioxides as defined in the notice of initiation:

<table>
<thead>
<tr>
<th></th>
<th>Tonnes</th>
<th>Value in euros (EUR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total turnover of your company in euros (EUR)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Imports of the product under review from South Africa into the Union</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resales on the Union market after importation from South Africa of the product under review</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


(2) The 27 Member States of the European Union are: Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, and the United Kingdom.
3. ACTIVITIES OF YOUR COMPANY AND RELATED COMPANIES (*)

Give details of the precise activities of the company and all related companies (please list them and state the relationship to your company) involved in the production and/or selling (export and/or domestic) of the product under review. Such activities could include, but are not limited to, purchasing the product under review or producing it under subcontracting arrangements, or processing or trading the product under review.

<table>
<thead>
<tr>
<th>Company name and location</th>
<th>Activities</th>
<th>Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. OTHER INFORMATION

Please provide any other relevant information which the company considers useful to assist the Commission in the selection of the sample.

5. CERTIFICATION

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will involve completing a questionnaire and accepting a visit at its premises in order to verify its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The Commission’s findings for non-cooperating importers are based on the facts available and the result may be less favourable to that company than if it had cooperated.

Signature of authorised official:

Name and title of authorised official:

Date:

(*) In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another’s businesses; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife; (ii) parent and child; (iii) brother and sister (whether by whole or half blood); (iv) grandparent and grandchild; (v) uncle or aunt and nephew or niece; (vi) parent-in-law and son-in-law; or daughter-in-law; (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context, 'person' means any natural or legal person.