

REGULATIONS

COMMISSION REGULATION (EU) No 809/2013

of 27 August 2013

initiating a ‘new exporter’ review of Council Implementing Regulation (EU) No 1389/2011 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People’s Republic of China, repealing the duty with regard to imports from one exporter in this country and making these imports subject to registration

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 (30 November 2009) on protection against dumped imports from countries not members of the European Community (the basic Regulation) ⁽¹⁾ and in particular Article 11(4) thereof,

After having consulted the Advisory Committee in accordance with Articles 11(4) and 14(5) of the basic Regulation,

Whereas:

1. REQUEST

- (1) The European Commission (Commission) has received a request for a ‘new exporter’ review pursuant to Article 11(4) of the basic Regulation.
- (2) The request was lodged on 3 May 2013 by Liaocheng City Zhonglian Industry Co. Ltd (the applicant), an exporting producer in the People’s Republic of China (PRC) of trichloroisocyanuric acid.

2. PRODUCT

- (3) The product under review is trichloroisocyanuric acid and preparations thereof (TCCA), also referred to as ‘symclosene’ under the international non-proprietary name (INN), currently falling within CN codes ex 2933 69 80 and ex 3808 94 20 (TARIC codes 2933 69 80 70 and 3808 94 20 20), and originating in the People’s Republic of China.

3. EXISTING MEASURES

- (4) The measures currently in force are a definitive anti-dumping duty imposed by Council Implementing Regulation (EU) No 1389/2011 ⁽²⁾, under which imports into the Union of the product under review originating in the PRC, including the product produced by the applicant, are subject to a definitive anti-dumping duty of 42,6 %

with the exception of several companies specially mentioned in Article 1(2) of that Regulation which are subject to individual duty rates.

4. GROUNDS

- (5) The applicant claims that it operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation.
- (6) It further claims that it did not export the product under review to the Union during the period of investigation on which the anti-dumping measures were based, i.e. the period from 1 April 2003 to 31 March 2004 (the original investigation period).
- (7) Furthermore, the applicant claims that it is not related to any of the exporting producers of the product under review which are subject to the above-mentioned anti-dumping measures.
- (8) The applicant further claims that it has begun exporting the product under review to the Union after the end of the original investigation period.

5. PROCEDURE

- (9) Union producers known to be concerned have been informed of the request for a review and have been given an opportunity to comment.
- (10) Having examined the evidence available, the Commission concludes that there is sufficient evidence to justify the initiation of a ‘new exporter’ review, pursuant to Article 11(4) of the basic Regulation, with a view to determine the applicant’s individual margin of dumping and, should dumping be found, the level of the duty to which its imports of the product under review into the Union shall be subject. Upon receipt of the claim mentioned below under recital 15, it will be determined whether the applicant operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 346, 30.12.2011, p. 6.

- (11) If it is determined that the applicant fulfils the requirements to have an individual duty established, it may be necessary to amend the rate of duty currently applicable to imports of the product under review from companies not individually mentioned in Article 1(2) of Implementing Regulation (EU) No 1389/2011.

(a) *Questionnaires*

- (12) In order to obtain information it deems necessary for its investigation, the Commission will send a questionnaire to the applicant.

(b) *Collection of information and holding of hearings*

- (13) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence.

- (14) Furthermore, the Commission may hear interested parties, provided that they make a request in writing showing that there are particular reasons why they should be heard.

(c) *Market economy treatment*

- (15) In the event that the applicant provides sufficient evidence that it operates under market economy conditions, i.e. that it meets the criteria laid down in Article 2(7)(c) of the basic Regulation, normal value will be determined in accordance with Article 2(7)(b) of the basic Regulation. For this purpose, a duly substantiated claim must be submitted within the specific time limit set in Article 4(3) of this Regulation. The Commission will send claim forms to the applicant, as well as to the authorities of the PRC.

(d) *Selection of the market economy country*

- (16) In the event that the applicant is not granted market economy treatment, an appropriate market economy country will be used for the purpose of establishing normal value in respect of the PRC in accordance with Article 2(7)(a) of the basic Regulation. The Commission envisages using Japan again for this purpose as was done in the investigation which led to the imposition of measures on imports of the product under review from the PRC. Interested parties are hereby invited to comment on the appropriateness of this choice within the specific time limit set in Article 4(2) of this Regulation.

- (17) Furthermore, in the event that the applicant is granted market economy treatment, the Commission may, if necessary, also use findings concerning the normal value established in an appropriate market-economy country, e.g. for the purpose of replacing any unreliable cost or price elements in the PRC which are needed in

establishing the normal value, if reliable required data are not available in the PRC. The Commission envisages using Japan also for this purpose.

6. REPEAL OF THE DUTY IN FORCE AND REGISTRATION OF IMPORTS

- (18) Pursuant to Article 11(4) of the basic Regulation, the anti-dumping duty in force should be repealed with regard to imports of the product under review which are produced and sold for export to the Union by the applicant. At the same time, such imports should be made subject to registration in accordance with Article 14(5) of the basic Regulation, in order to ensure that, should the review result in a finding of dumping in respect of the applicant, anti-dumping duties can be levied retroactively to the date of the initiation of the review. The amount of the applicant's possible future liabilities cannot be estimated at this stage of the proceeding.

7. TIME-LIMITS

- (19) In the interest of sound administration, time-limits should be stated within which:
- (20) interested parties may make themselves known to the Commission, present their views in writing and submit any information to be taken into account during the investigation,
- (21) interested parties may make a written request to be heard by the Commission,
- (22) interested parties may comment on the appropriateness of Japan which, in the event that the applicant will not be granted market economy treatment, is envisaged as a market-economy country for the purpose of establishing normal value,
- (23) the applicant should submit a duly substantiated claim for market economy treatment.
- (24) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party making itself known within the time-limits indicated in Article 4 of this Regulation.

8. NON-COOPERATION

- (25) 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, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.
- (26) 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.

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

9. SCHEDULE OF THE INVESTIGATION

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

10. PROCESSING OF PERSONAL DATA

- (29) It is noted that 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 of 18 December 2000 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⁾.

11. HEARING OFFICER

- (30) Interested parties may request the intervention of the Hearing Officer of the Directorate-General for Trade. The Hearing Officer acts as an interface between the interested parties and the Commission 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 party's rights of defence are being fully exercised.
- (31) A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. 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.
- (32) For further information and contact details interested parties may consult the Hearing Officer's web pages on the Directorate-General for Trade's website: http://ec.europa.eu/trade/tackling-unfair-trade/hearing-officer/index_en.htm

HAS ADOPTED THIS REGULATION:

Article 1

A review of Implementing Regulation (EU) No 1389/2011 is hereby initiated pursuant to Article 11(4) of Regulation (EC) No 1225/2009 in order to determine if and to what extent the imports of trichloroisocyanuric acid and preparations thereof, also referred to as 'symclosene' under the international non-proprietary name (INN), currently falling within CN codes ex 2933 69 80 and ex 3808 94 20 (TARIC codes 2933 69 80 70 and 3808 94 20 20), originating in the

People's Republic of China, produced and sold for export to the Union by Liaocheng City Zhonglian Industry Co. Ltd (TARIC additional code A998) should be subject to the anti-dumping duty imposed by Implementing Regulation (EU) No 1389/2011.

Article 2

The anti-dumping duty imposed by Implementing Regulation (EU) No 1389/2011 is hereby repealed with regard to the imports identified in Article 1 of the present Regulation.

Article 3

The Customs authorities are hereby directed, pursuant to Article 11(4) and Article 14(5) of Regulation (EC) No 1225/2009, to take the appropriate steps to register the imports into the Union identified in Article 1 of this Regulation.

Registration shall expire nine months following the date of entry into force of this Regulation.

Article 4

1. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit a reply to the questionnaire indicated in recital 12 of this Regulation or any information to be taken into account within 37 days from the date of the publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

Interested parties may also apply to be heard by the Commission within the same 37-day time-limit.

2. Parties to the investigation wanting to comment on the appropriateness of Japan, which is envisaged as a market-economy third country for the purpose of establishing normal value in respect of the PRC, must submit their comments within 10 days of the date of entry into force of this Regulation.

3. A duly substantiated claim for market economy treatment must reach the Commission within 37 days of the date of the entry into force of this Regulation.

4. 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 inform 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>

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

All written submissions, including the information requested in this Regulation, questionnaire replies and correspondence provided by interested parties on a confidential basis must be labelled as 'Limited' ⁽¹⁾ and, in accordance with Article 19(2) of Regulation (EC) No 1225/2009, must be accompanied by a non-confidential version, which must be labelled 'For inspection by interested parties'.

Commission address for correspondence:

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Article 5

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 August 2013.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ A 'Limited' document is a document which is considered confidential pursuant to Article 19 of Council Regulation (EC) No 1225/2009 (OJ L 343, 22.12.2009, p. 51) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).